

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**THE APPLICATION OF LOUISVILLE )  
GAS AND ELECTRIC COMPANY FOR )  
(1) AN ORDER AUTHORIZING THE )  
ISSUANCE OF SECURITIES AND THE ) CASE NO. 2018-00335  
ASSUMPTION OF OBLIGATIONS AND )  
(2) AN ORDER AMENDING AND )  
EXTENDING EXISTING AUTHORITY )  
WITH RESPECT TO REVOLVING LINE )  
OF CREDIT )**

**VERIFIED APPLICATION**

Louisville Gas and Electric Company (“LG&E” or the “Company”) hereby requests, pursuant to KRS 278.300 and 807 KAR 5:001, Section 18, that the Commission authorize LG&E to incur debt in the form of First Mortgage Bonds in a principal amount not to exceed \$600,000,000. LG&E further requests that the Commission amend and extend LG&E’s existing authority to allow LG&E to exercise extensions of its multi-year revolving credit line in 2019 and 2020 to extend the credit facility maturity date to up to five years from the effective date of the amendment. In support of this Application, LG&E states as follows:

1. The Company’s full name is Louisville Gas and Electric Company. The post office address of LG&E is 220 West Main Street, Louisville, Kentucky 40202. LG&E was incorporated in Kentucky on July 2, 1913 and LG&E is currently in good standing. LG&E can be reached at the email addresses of the counsel listed below.

2. LG&E is a utility as defined by KRS 278.010(3)(a) and (b) and as of June 30, 2018, provides retail electric service to approximately 411,000 customers in nine counties in Kentucky, and retail gas service to approximately 325,000 customers in seventeen counties in Kentucky. A description of LG&E’s properties is set out in Exhibit 1 to this Application.

3. LG&E obtains financing through numerous sources of capital, including the forms of debt that are the subject of this Application. LG&E does not assign specific financing to any particular project or use, and does not project-finance capital projects. All components of LG&E's capital structure are used to fund capital expenditures. Thus, the uses cited below are general reasons for LG&E's need for debt financing, rather than projects to which specific financing will be assigned.

#### **FIRST MORTGAGE BOND DEBT**

4. LG&E requests, pursuant to KRS 278.300, that the Commission authorize it to incur additional long-term debt in the form of First Mortgage Bonds in a principal amount not to exceed \$600,000,000 (the "First Mortgage Bonds," as hereinafter defined).

5. The First Mortgage Bonds will be used to pay down LG&E's short-term debt balance, to fund construction projects LG&E anticipates incurring, to support the ongoing needs of the business, and to finance the estimated reduction in cash receipts related to the Tax Cuts and Jobs Act (TCJA). This includes the approximately \$176 million in commercial paper that is presently outstanding and repayment of a \$200 million term loan that must be repaid in full no later than October 25, 2019. Because the loan had a term of less than two years, LG&E was only required to obtain FERC approval before entering into the transaction. The TCJA surcredit and the impact of the TCJA on other rate mechanisms will lower cash receipts an estimated \$25 million. Finally, the debt balance includes costs for environmental compliance authorized in Case No. 2016-00027, such as the construction of process water systems and impoundment closures<sup>1</sup>. Attached as Exhibits 2-4 are copies of the following contracts and evidence of indebtedness.

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<sup>1</sup> *In the Matter of: The Application of Louisville Gas and Electric for Certificates of Public Convenience and Necessity and Approval of its 2016 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2016-00027, Order (Ky. PSC Aug. 8, 2016).

Portions of the contracts attached as Exhibits 2 and 3 are confidential, and LG&E has contemporaneously filed a Petition for Confidential Protection.

- Mill Creek Generating Station Coal Combustion Residual Treatment System and Coal Combustion Residual Rule Process Water System Project
- Cane Run Generating Station Ash Pond Closure and Landfill Cap
- US Bank \$200 million Term Loan Credit Agreement

Description:	Term Loan
Lender:	US Bank National Association
Nature:	Unsecured Promissory Note
Issuance Date :	10/26/2017
Due Date:	10/25/2019
Par Value:	\$200,000,000.00
Amount:	\$200,000,000.00
Interest Rate:	Variable
Debt Issuance Expense:	\$111,397.14
Use of Proceeds:	Pay down short-term debt and fund pension contribution of \$54 million in January 2018

The First Mortgage Bonds proceeds will also be used to pay down short-term debt that will accumulate from other capital expenditures. LG&E anticipates incurring over \$818 million in capital expenditures in the remainder of 2018 and calendar year 2019, which includes the projects described in the preceding paragraph. The costs of these projects are reflected in LG&E’s capital budget that is attached as Exhibit 5.

6. The Company’s Mortgage Indenture (the “Indenture”) authorizes it to issue, from time to time, first mortgage 3 bonds of one or more series, with each

series having such date, maturity date(s), interest rate(s), and other terms as may be established by a supplemental indenture executed by the Company in connection with such series. All bonds issued under the Indenture would be equally and ratably secured by a first mortgage lien, subject to permitted encumbrances and exclusions, on substantially all of the Company's permanently fixed properties in Kentucky. A copy of the form of the Indenture has been previously filed with the Commission in Case No. 2015-00138.<sup>2</sup>

7. The First Mortgage Bonds may be sold at various times through the remainder of 2018 and in 2019 in one or more underwritten public offerings, negotiated sales, or private placement transactions utilizing the proper documentation.

8. The First Mortgage Bonds of each series would be issued and secured by the Indenture as to be further supplemented and amended by a supplemental indenture creating the bonds of such series. Such supplemental indenture would set forth the terms and provisions of such series, including without limitation, the maturity date(s), interest rate(s), redemption provisions and other applicable terms. The price, maturity date(s), interest rate(s), and the redemption provisions, and other terms and provisions of each series of First Mortgage Bonds (including, if all or a portion of the First Mortgage Bonds bear a variable rate of interest, the method for determining the interest rates), would be determined on the basis of negotiations among LG&E and the underwriters, agents, or other purchasers of such First Mortgage Bonds. The amount of compensation to be paid to underwriters or agents for their services would not exceed one percent (1%) of the principal amount of the First Mortgage Bonds of the series to be sold. Based upon past experience with similar financings, LG&E estimates that issuance costs, excluding underwriting fees, would be approximately \$500,000.

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<sup>2</sup> *In the Matter of: Application of Louisville Gas and Electric Company for an Order Amending and Extending Existing Authority with Respect to Revolving Line of Credit* (Case No. 2015-00138). The Indenture was filed May 11, 2015.

9. Because of the historical spread between long-term fixed interest rates and short-term rates, all or a portion of the bonds could be issued with an interest rate that fluctuates on a quarterly or semi-annual basis.

10. In connection with the issuance of First Mortgage Bonds, LG&E requests authority to enter into one or more interest rate hedging agreements (including an interest rate cap, swap, collar, or similar agreement, collectively, the “Hedging Facility”) through an affiliate company, or directly with a bank or financial institution (the “Counterparty”). If LG&E elects to issue variable rate bonds, the Hedging Facility would be an interest rate agreement designed to allow LG&E to actively manage and limit its exposure to changes in interest rates. If a fixed rate bond is issued, the Hedging Facility would be designed to lower LG&E’s exposure to changes in long term rates between the date of the Hedging Facility and the bond issuance date or to lower the volatility in the value of the bond if the Hedging Facility is entered into after the bond is issued. LG&E requests authority to establish regulatory assets or liabilities for accounting purposes for the losses and gains arising from a Hedging Facility and amortize the gains and losses over the remaining life of the First Mortgage Bonds.

11. The estimated cost of the financing does not include the costs of any Hedging Facility which would be determined at the time of the hedge. However, based on current market conditions, the cost to fix the interest rate of a variable rate bond for three years would be approximately 7 basis points (0.07%). The Hedging Facility could also be used to lock in interest rates in advance of a debt issuance. Thus, LG&E anticipates that it could enter into one or more of the preceding Hedging Facilities prior to issuance of some or all of the First Mortgage Bonds for which approval is being sought. Based on current market conditions, the Company could lock in 10 year rates for six months for a cost of approximately 12 basis points (0.12%).

12. The terms of each Hedging Facility will be negotiated by LG&E with the respective Counterparty and would be subject to market conditions.

### **EXTENDING TERM OF REVOLVING CREDIT LINE**

13. LG&E was first granted authority to enter into multi-year revolving credit facilities in Case No. 2007-00232<sup>3</sup> by Orders dated August 2, 2007, and August 9, 2007. In that case, the Commission found that granting LG&E authority to enter into multi-year revolving credit facilities under which LG&E could incur short-term debt from time to time would reduce the time and cost of negotiating and renewing short-term debt arrangements.<sup>4</sup>

14. By Order dated December 9, 2016, in Case No. 2016-00361, the Commission authorized LG&E to extend the term of its existing revolving credit line, which had a term ending December 31, 2020, through January 31, 2022. The Commission also granted LG&E authority to extend the revolving credit facility five years from the date of the amendment in 2017 and 2018. Subsequently on January 4, 2017, LG&E further extended the termination date by one year to January 27, 2022.<sup>5</sup> On January 26, 2018, LG&E extended the Credit Agreement from January 27, 2022 to January 26, 2023.<sup>6</sup>

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<sup>3</sup> Case No. 2007-00232 (Ky. PSC Aug. 2, 2007).

<sup>4</sup> *In the Matter of: Application of Louisville Gas and Electric Company for an Order Authorizing the Issuance of Securities and the Assumption of Obligation*. LG&E's authority was previously extended by Order dated October 18, 2012, *In the Matter of: Application of Louisville Gas and Electric Company for an Order Amending and Extending Existing Authority with Respect to Revolving Line of Credit* (Case No. 2012-00410), which extended authority granted by Order dated October 10, 2011, *In the Matter of: Application of Louisville Gas and Electric Company for an Order Authorizing the Issuance of Securities and Assumption of Obligations* (Case No. 2011-00308), which extended authority granted by Order dated September 30, 2010, *In the Matter of: Application of Louisville Gas and Electric Company for an Order Authorizing the Restructure and Refinancing of Unsecured Debt and the Assumption of Obligations and for Amendment of Existing Authority* (Case No. 2010-00205). Also, by Order dated August 3, 2012, *In the Matter of: Application of Louisville Gas and Electric Company for an Order Authorizing the Issuance of Securities and Assumption of Obligations* (Case No. 2012-00233), LG&E was authorized to increase the total aggregate amount of its revolving credit facilities to \$500 million.

<sup>5</sup> See the February 2, 2017 filing in Case No. 2016-00361.

<sup>6</sup> See the February 8, 2018 filing in Case No. 2016-00361.

15. In Case No. 2016-00361, LG&E stated that based upon its discussions with providers of credit facilities, LG&E believed that it was likely that future changing market conditions and interest rates would mean that revolving credit facilities would no longer be available on terms as favorable as found in LG&E's current facility. To lock in favorable interest rates for as long of a term as possible, LG&E requested authority to extend the term of its existing revolving line of credit for the maximum five-year term, and authority to exercise additional extensions in 2017 and 2018.

16. The favorable market conditions under which LG&E has been able to obtain the revolving credit facilities has not changed materially since Case No. 2016-00361. In order to optimize the cost of short-term debt, LG&E seeks authority to exercise extensions of its multi-year revolving credit line in 2019 and 2020 to extend the credit facility maturity date to up to five years from the effective date of the amendment. Extending the current revolving credit facilities will allow LG&E to continue to obtain favorable short-term debt costs while avoiding higher commitment fees and related transaction costs expected in the future. This would provide LG&E with flexibility to further optimize its short-term debt costs for its customers. If the Commission grants the authority, LG&E will provide notice of each extension to the Commission within thirty days of execution.

17. Under the current agreements, LG&E must notify the revolving credit service providers of its intent to extend the current lines. As such, LG&E requests authority to amend its existing Credit Agreement to effectuate the extension, and also requests authority to amend and restate the Credit Agreement, if necessary.

18. Although LG&E expects that all of the credit service providers will agree to extend the credit facility at the current individual or aggregate participation levels, LG&E also requests

alternative authority to enter into separate or individual revolving credit lines to replace any non-extended portion of the credit facility, up to the maximum total aggregate sizes, dates and terms described further herein.

19. Pursuant to 807 KAR 5:001, Section 18(1)(d) and (e), the extended credit facilities are expected to be on similar terms as LG&E's existing revolving credit and would be available for the same purposes for which revolving credit is currently available. Loan proceeds could be used to provide short-term financing for LG&E's general financing needs, for example, general costs of operation or costs of LG&E's various construction programs or other obligations, until permanent or long-term financing can be arranged. In addition, the extended credit facilities could be used to provide liquidity or credit support for LG&E's other debt, for example, ensuring that LG&E has readily available funds with which to make payments with respect to variable rate bonds that could be tendered for purchase and not remarketed. However, LG&E does not assign specific financing to any particular capital project or operating or fiscal use and does not project finance projects.<sup>7</sup> Thus, these are general reasons that LG&E might need short-term financing, rather than uses to which such financing would be assigned.

**INFORMATION PERTINENT TO FIRST MORTGAGE BOND DEBT AND  
EXTENDING TERM OF REVOLVING CREDIT LINE**

20. Exhibit 6 to this Application contains the financial exhibit required by 807 KAR 5:001, Section 18(2)(a), as described by 807 KAR 5:001, Section 12. It also contains information required by 807 KAR 5:001, Section 18(2)(b).

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<sup>7</sup> Because LG&E does not assign specific financing to any particular capital project, as in prior cases, there are no maps, plans and detailed estimates to provide. 807 KAR 5:001, Section 18(2)(c). The deed of trust is not involved with these revolving credit facilities.



21. Copies of LG&E's mortgages were filed with the Commission in Case No. 2015-00138,<sup>8</sup> and the most recently executed indentures were filed in Case No. 2016-00361.<sup>9</sup> No additional supplemental indentures have been executed.

22. No contracts have been made for the disposition of any of the securities which LG&E proposes to issue, or for the proceeds of such sale.

23. A certified copy of LG&E's Board of Directors resolution authorizing the assumption of obligations related to the first mortgage debt, and all transactions related thereto, as discussed in this Application, is attached as Exhibit 7 to this Application.

24. Other requirements of the Commission's regulations regarding this Application, 807 KAR 5:001, Section 18, including (1)(c) regarding the amount and kind of notes, etc., (1)(d) regarding the use to be made of the proceeds, (1)(e) regarding the intended construction use of the proceeds, and (1)(f) regarding the obligations being refunded have been supplied in the extensive discussion in the preceding paragraphs of this Application.

**WHEREFORE**, Louisville Gas and Electric Company respectfully requests that the Commission enter its Order authorizing it to incur debt in the form of First Mortgage Bonds in a principal amount not to exceed \$600,000,000. Finally, LG&E requests that the Commission amend and extend LG&E's existing authority to allow LG&E to exercise extensions of its multi-year revolving credit line in 2019 and 2020 to extend the credit facility maturity date to up to five years from the effective date of the amendment. Louisville Gas and Electric Company further requests that the Order of the Commission specifically include provisions stating:

1. LG&E is authorized to issue long-term debt in the form of First Mortgage Bonds in one or more series at one or more times during the remainder of 2018, and in 2019, in an

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<sup>8</sup> The copy was filed with the Commission on May 11, 2015.

<sup>9</sup> A copy was filed with the Commission on October 14, 2016.

aggregate principal amount not to exceed \$600,000,000 in the manner set forth in its Application, including entering into hedging agreements and the establishment of regulatory assets or liabilities for accounting purposes for the losses and gains arising from a Hedging Facility and amortize the losses and gains over the remaining life of the First Mortgage Bonds, all as described in this Application.

2. LG&E is authorized to enter into such agreements and amendments as are necessary for LG&E to exercise extensions in 2019 and 2020, respectively, to extend the facility maturity dates to five years from the date of the amendment in the previously authorized total aggregate amount not to exceed \$500 million, or alternatively replace any credit facilities not extended with similar multi-year revolving credit facilities for the same term.

3. LG&E is authorized to execute, deliver and perform the obligations of LG&E under all such agreements and documents as set out in its Application, and to perform the transactions contemplated by such agreements

4. The proceeds from the transactions authorized herein shall be used only for the lawful purposes set out in the application.

5. LG&E shall agree only to such terms and prices that are consistent with the parameters set out in its application.

6. LG&E shall, within 30 days from the date of issuance, file with the Commission a statement setting forth the date or dates of issuance of the securities authorized herein, the price paid, the interest rate or rates, and all fees and expenses, including underwriting discounts or commissions, or other compensation, involved in the issuance and distribution thereof.

Dated: October 5, 2018

Respectfully submitted,



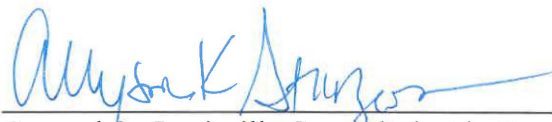
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*Counsel for Louisville Gas and Electric Company*

CERTIFICATE OF COMPLIANCE

This is to certify that Louisville Gas and Electric Company's October 5, 2018 electronic filing of this Application is a true and accurate copy of the same document being filed in paper medium except for the information for which confidential protection is requested; that the electronic filing has been transmitted to the Commission on October 5, 2018; that there are currently no parties the Commission has excused from participation by electronic means; and that an original in paper medium of the Application will be filed with the Commission within two business days from the date of the electronic filing.



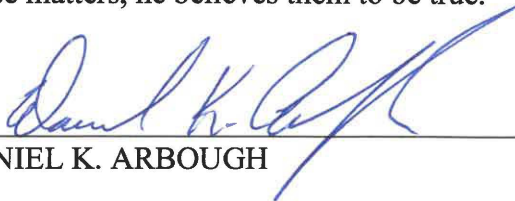
Counsel for Louisville Gas and Electric Company

**VERIFICATION**

COMMONWEALTH OF KENTUCKY

COUNTY OF JEFFERSON

Daniel K. Arbough being first duly sworn, deposes and says that he is Treasurer for Louisville Gas and Electric Company, that he has read the foregoing Application and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to these matters, he believes them to be true.

  
\_\_\_\_\_  
DANIEL K. ARBOUGH

Subscribed and sworn before me this 5<sup>th</sup> day of October, 2018  
My Commission Expires:

**Judy Schooler**  
**Notary Public, ID No. 603967**  
**State at Large, Kentucky**  
**Commission Expires 7/11/2022**

  
\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE

LOUISVILLE GAS AND ELECTRIC  
(807 KAR 5:001, SEC. 18(1)(b))

A DESCRIPTION OF APPLICANT'S PROPERTY, INCLUDING A  
STATEMENT OF THE NET ORIGINAL COST OF THE PROPERTY  
AND THE COST THEREOF TO APPLICANT

August 31, 2018

The applicant's generating, transmission and distribution systems described herein are calculated annually. As of December 31, 2017, the applicant had ownership in 8 and operated 6 coal fired steam electric generating units having a total capacity of 2,059 Mw; owned and operated a hydroelectric generating station having a total capacity of 64 Mw; had ownership in a solar powered generating station having a total capacity of 3 Mw; and had ownership in 15 and operated 12 gas/oil peaking units having a total capacity of 794 Mw.

The applicant's owned electric transmission system included 45 substations (31 of which are shared with the distribution system) with a total capacity of 8 million kVA and 669 pole miles of lines. The electric distribution system included 97 substations (31 of which are shared with the transmission system) with a total capacity of 5 million kVA, 3,892 circuit miles of overhead lines, and 2,553 underground cable miles.

LG&E's natural gas transmission system includes 4,310 miles of gas distribution mains and 396 miles of gas transmission mains, consisting of 260 miles of gas transmission pipeline, 117 miles of gas transmission storage lines, 18 miles of gas combustion turbine lines and one mile of gas transmission pipeline in regulator facilities. Five underground natural gas storage fields, with a total working natural gas capacity of approximately 15 Bcf, are used in providing natural gas service to ultimate consumers.

Other properties include office buildings, service centers, warehouses, garages and other structures and equipment.

The net original cost of the property and cost thereof to the applicant at August 31, 2018, was:

	<u>Electric</u>	<u>Gas</u>	<u>Common</u>	<u>Total</u>
Original Cost	\$ 5,882,779,433	\$ 1,245,151,403	\$ 297,379,484	\$ 7,425,310,321
Less Reserve for				
Depreciation	1,544,505,173	253,601,269	147,711,377	1,945,817,819
Net Original Cost	4,338,274,260	991,550,134	149,668,107	5,479,492,501
Allocation of				
Common				
To Electric and Gas	104,767,675	44,900,432	(149,668,107)	-
Total	<u>\$ 4,443,041,935</u>	<u>\$ 1,036,450,566</u>	<u>\$ -</u>	<u>\$ 5,479,492,501</u>

\* Excludes \$279,932,095 related to cost of removal reserves that is not included in the reserve in the Financial Statements and Additional Information, but instead is included as a regulatory liability.

Mill Creek Generating Station  
Coal Combustion Residuals Treatment System and  
Coal Combustion Residuals Rule Process Water System  
Project

Engineering, Procurement and  
Construction Agreement

Between  
Louisville Gas and Electric Company,  
as Owner

and



as Contractor

**Contract No. 979109**

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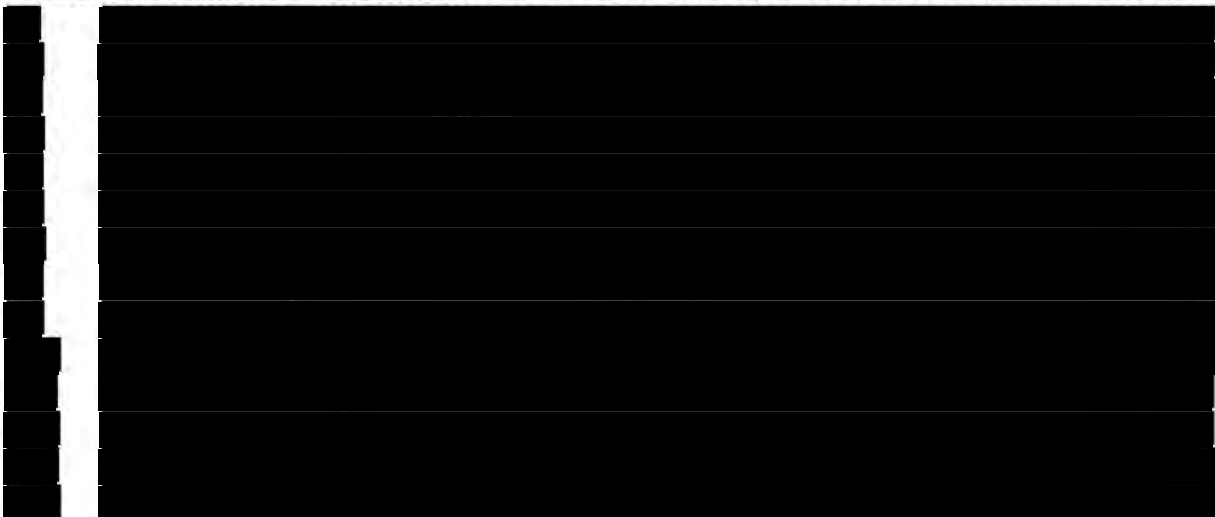
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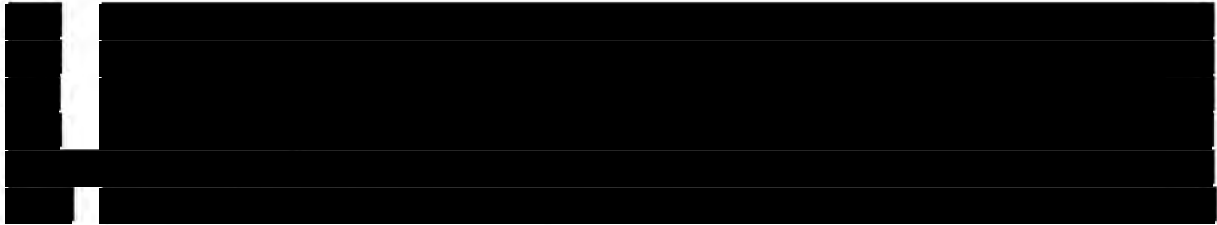
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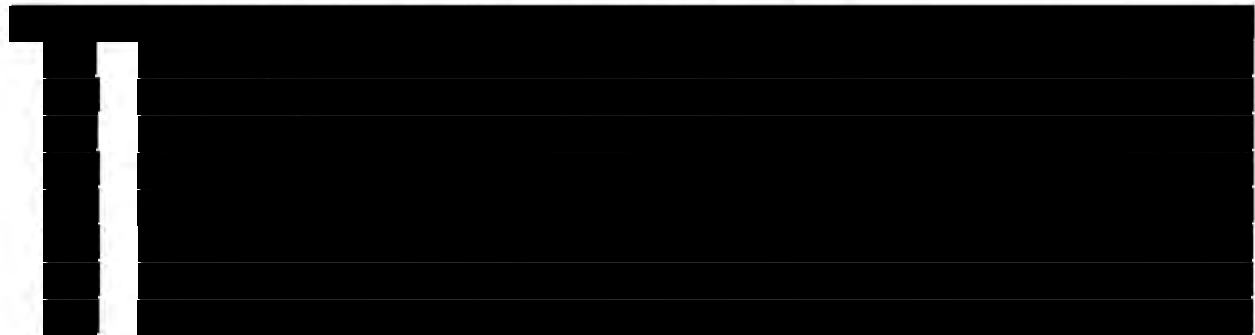
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*JKK*

**ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT**

This Engineering, Procurement and Construction Agreement (this "Agreement") is entered into as of the ~~22<sup>nd</sup>~~ day of JUNE, 2017 ("Effective Date"), by and between Louisville Gas and Electric Company, a Kentucky corporation ("Owner"), and [REDACTED] a Delaware corporation ("Contractor").

**RECITALS**

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

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

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

WHEREAS, Owner has entered into Equipment Contracts with respect to the Dry Bottom Ash Conveying System, attached hereto as Exhibit Y-1, and Gypsum Dewatering Equipment, attached hereto as Exhibit Y-2, to be used in connection with the Work which are to be concurrently assigned to Contractor with the execution of this Agreement.

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

**ARTICLE 1****DEFINITIONS**

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

"**Acceptable Credit Bank**" means a United States based bank, or a bank with a major United States based branch, acceptable to Contractor and Owner, the long term senior debt obligations of which are rated "A-" or better by Standard & Poor's (S&P) or "A3" or better by Moody's (or an equivalent rating from an equivalent rating agency as may be approved by Contractor and Owner), or whose obligations are guaranteed, insured, or otherwise credit enhanced by a bank or financial institution, the long term senior unsecured debt obligations of which are so rated and is United States based or has a major United States based branch.

“**Acceptable Letter of Credit**” means an irrevocable, unconditional standby letter of credit issued by an Acceptable Credit Bank to which Owner is the beneficiary (i) having a stated expiration date of not earlier than 364 Days (or such longer term as may be commercially available) after the date of the original issuance or any renewal thereof; (ii) that automatically renews or permits Owner, on the signature of an authorized representative of Owner, to draw on sight all or any portion of the stated amount if not renewed on or prior to the thirtieth (30<sup>th</sup>) Day prior to any expiration date of the letter of credit, including the final expiration date; (iii) that is payable or negotiable at an office of such Acceptable Credit Bank (or a correspondent bank thereof) in New York City or such other place as the Parties may agree; (iv) which is payable in United States Dollars in immediately available funds; and (v) that is governed by the International Standby Practices, International Chamber of Commerce Publication No. 590 (ISP98), and any amendments or revisions thereto, and, to the extent not governed thereby, the laws of the State of New York; and (vi) that is drawable upon issuance of a drawing certificate signed by an authorized representative of Owner stating that Owner is entitled to be paid under the Agreement; and (vii) that is otherwise in the form set forth in **Exhibit F-10**.

“**Adjustment**” means an equitable adjustment, determined in accordance with the Adjustment Methodology, made to the Contract Price or Major Contract Milestones (based on critical path impact), or other applicable provision of this Agreement with respect to a Change Order or an Excusable Event.

“**Adjustment Methodology**” has the meaning specified in **Section 10.1**.

“**Affiliate**” means with respect to a specified Person any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person.

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

“**Agreement**” has the meaning set forth in the first paragraph hereof and includes the Body of this Agreement and all Exhibits herein referenced, as amended, modified or supplemented from time to time.

“**Applicable Credits**” has the meaning set forth in **Section 8.3**.

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

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

“**As-Built Drawings**” means the following drawings, in each case modified and updated to accurately show the final actual design and construction of the Work upon Final Completion: (i) all drawings prepared in the performance of the Work that are “issued for construction” by

Contractor and (ii) all of the drawings specified by Owner in **Exhibit A, Exhibit V, and Exhibit X.**

“**Basis of Bid**” has the meaning set forth in **Section 4.41.**

“**Body of this Agreement**” means the first paragraph of this Agreement through the execution page.

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

“**Buydown Performance Guarantees**” means those Performance Guarantees for which liquidated damages are specifically provided in **Section 1.2 of Exhibit L.**

“**CCR**” means coal combustion residuals.

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

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

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

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

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

“**Certificate of Tie-in**” will be in the form set forth in **Exhibit F-2.**

“**Change Determination Request**” has the meaning specified in **Section 9.2.3.**

“**Change in Law**” means an amendment, modification, or other change of Applicable Law published, enacted, adopted, issued, or promulgated after the Effective Date by a Governmental Authority. A change in Applicable Law with respect to any of the following will not constitute a Change in Law hereunder: (i) taxes or levies assessed on the basis of Contractor’s income, profits, revenues, gross receipts; (ii) other taxes, duties or imposts for which Contractor is responsible hereunder; (iii) taxes, levies or withholdings that vary the compensation, benefits or amounts to be paid to, on behalf of or on account of Contractor’s or Subcontractors’ employees; and (iv) amendments, modifications, or other changes in Applicable Law published, enacted, adopted, issued, or promulgated before the Effective Date whether or not such changes became effective after the Effective Date.

“**Change Order**” has the meaning set forth in **Section 9.2.2.**

“**Change(s)**” has the meaning set forth in **Section 9.2.2.**

“**Claim Notice**” has the meaning set forth in **Section 20.3.1.**

“**Claims**” means claims, causes of action, proceedings, demands or suits.



“**Climatic Condition**” means a weather condition that is unusually severe and abnormal such as hurricane force winds, tornado force winds, or flooding (at a fifty (50) year or greater recurrence interval level).

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

“**Commercial Operation**” will be determined on a Subproject by Subproject basis and will have been achieved when all of the following have occurred with respect to that Subproject: (i) Mechanical Completion has occurred; (ii) the Work is complete (except Punch List Items and Work required during the Warranty Period, as it may be extended); (iii) all Performance Guarantee Tests have been successfully completed in accordance with this Agreement, including **Exhibit G**, and Contractor has completed making necessary and desirable system adjustments identified during the start-up and testing process; (iv) all Performance Guarantees (other than Buydown Performance Guarantees and Guaranteed Availability) have been simultaneously achieved in a single Commercial Operation Test and each Buydown Performance Guarantee has either been achieved or its applicable liquidated damages (including any provisional liquidated damages as provided for by **Section 1.2.2 of Exhibit L**) have been paid by Contractor; (v) all obligations of Contractor expressly required to have been performed as of the Commercial Operation Date have been properly discharged; (vi) the Subproject is capable of being operated in the normal course of business in compliance with Prudent Utility Practices and the standard written procedures and requirements of the Subcontractor that manufactured each item of Equipment up to individual full Unit generating capacity and up to the full capacity of the Subproject; (vii) Owner has received from Contractor all Permits (other than Owner Permits) (including Permits necessary to allow occupancy and transfer of care, custody, and control of the Subproject to Owner), all of which shall be valid and in full force and effect; (viii) all liquidated damages incurred pursuant to **Article 7** through the date of Commercial Operation have been paid to Owner; (ix) all training required by **Section 4.9** has been completed; (x) levels of Consumables associated with the Subproject are fully charged and filled; (xi) final versions (subject to updates for changes to the Work made after Commercial Operation) of the Operating and Maintenance Manuals, approved by Owner, have been delivered; (xii) each drawing prepared in the performance of the Work and issued for construction shall have been made current as of the Commercial Operation Date (either marked showing as-built conditions or supplemented with an As-Built Drawing) and delivered to Owner; (xiii) all Special Tools and spare parts have been delivered to Owner; (xiv) other submittals required to be submitted prior to or as a condition of Commercial Operation have been submitted to Owner; and (xv) Owner has executed the Certificate of Commercial Operation.

“**Commercial Operation Date**” means with respect to a Subproject, the date on which Commercial Operation is achieved for that Subproject.

“**Commercial Operation Test**” has the meaning set forth in **Exhibit G**.

“**Component**” means any and all of the constituent parts of the Work that are permanently incorporated into the Facility or otherwise retained by Owner following Final Completion. Components include systems, subsystems, subassemblies, materials and equipment (including parts, machinery, special tools, instruments, pipes, valves, software, Computer Programs, and

hardware), spare parts, and every item of whatever nature, including all documentation related thereto.

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

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

**“Connect”** means the provision by Contractor of all labor, Equipment, Consumables, and Construction Aids to effect the connection of the Facility at the applicable Terminal Points.

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

**“Consumables”** means items such as compressed air or gases, chemicals, oils, lubricants, cleaning materials, demineralized water, valve packing, lamps, light bulbs, gaskets, fuel filters and comparable items which, by normal industry practices, are considered consumables and are replaced on a regular basis, required for cleaning, preparing, or completing the Work or are required for the proper operation of the Facility or the Work.

**“Contingency Arrangements”** means with respect to each Subproject, an alternate method to meet the Minimum Required Performance in the event that the Subproject itself cannot meet the Minimum Required Performance.

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

**“Contract Security”** means the Performance Securities and any amounts then held by Owner as cash security for the performance of Contractor’s obligations.

**“Contract Security Release Conditions”** means (i) the applicable Performance Security Threshold has occurred, (ii) no Contractor Default exists or is inchoate, (iii) Contractor is not liable to Owner for unpaid amounts, including liquidated damages, and (iv) no Claim (including a warranty claim) has been made by Owner against Contractor that has not been resolved.

**“Contractor”** has the meaning set forth in the preamble of this Agreement.

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

**“Contractor Hazardous Substances”** means the Hazardous Substances or conditions described in either (i) clauses (a) through (e) of **Section 19.1.1(ii)** and/or (ii) **Section 19.1.3**.

“**Contractor Indemnitees**” means Contractor (and its Affiliates) and their successors, assigns, officers, directors, employees, agents, and representatives.

“**Contractor Outage End Time**” means with respect to (i) a Scheduled Tie-in Outage Period, the date and time specified therefor in **Exhibit D** as such time and date may be adjusted pursuant to this Agreement and (ii) any other outage (of any kind) where Owner allows Contractor access to a Unit or Yard System, the date and time as specified by Owner at the start of such outage when Contractor must be entirely withdrawn from the Unit or Yard System.

“**Contractor Response**” has the meaning set forth in **Section 10.2**.

“**Contractor’s Representative**” has the meaning set forth in **Section 4.6**.

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

“**Culpable Conduct**” means willful misconduct or the failure (by act or omission) to exercise the standard of care that a reasonably prudent Person would have exercised in a similar situation.

“**Day**” means a calendar day, including Saturdays, Sundays and legal holidays.

“**Defect**” (and derivative forms thereof, *e.g.*, “**Defective**”) means a defect, deficiency, error, omission, nonconformity, needed adjustment in the Work or other deviation from the Project Requirements and/or the warranty set forth in **Section 13.1**, including, without limitation, the failure of the Facility to comply with the Performance Criteria throughout the Warranty Period.

“**Design**” (and derivative forms thereof) means all design, calculation, and engineering products or services and the conduct thereof (including all preliminary and detailed design) included in or associated with the Work (including the manner in which the Facility is integrated into the Units and Yard Systems).

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

“**Designated Subproject**” means one of the following: the Pyrites Subproject, the Unit 4 Ash Subproject, and the Gypsum Dewatering Subproject.

“**Differing Conditions**” means Physical Conditions that materially differ from all of the following: (i) conditions stated in **Exhibit S**, (ii) conditions stated in **Exhibit A**, (iii) conditions that are readily observable, and (iv) conditions that a prudent Contractor would reasonably infer from any of the forgoing.

“**Dispute**” means a dispute or other controversy arising out of or otherwise related to this Agreement.

“**Effective Date**” has the meaning set forth in the first paragraph of this Agreement.

“**Emergency Notification List**” means a list of Owner personnel, with associated contact information, that sets forth the individuals to be notified first in the event of an emergency

involving health or safety, including environmental harm, or material damage to property, as such list is amended by Owner and provided to Contractor from time to time.

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

“**Equipment**” means all of the equipment, materials, items, apparatus, structures, tools, machines, supplies or other goods, including Components, which are installed in the Facility or otherwise provided as part of the Work and are to be retained by Owner after Final Completion in accordance with this Agreement.

“**Equipment Accessibility**” means the Design of the Facility will include safe and ready access for maintenance, repairs, removal, and replacement of all Equipment consistent with the other Project Requirements. Such access shall include safe and ready ingress and egress and access for (i) personnel (along with all applicable equipment) to reach each item of Equipment and perform all reasonably expected maintenance and repairs on that Equipment over the life of the Facility and (ii) removing and replacing each item of Equipment, including any necessary overhead space for lifting equipment (e.g., cranes) and overhead structural steel support and load points for any necessary rigging including trolley beams and hoists. All items of Equipment are included in this definition, including those that are expected to be replaced more frequently such as light bulbs, etc.

“**Equipment Accessibility Plan**” means the portion of the Design of the Facility that sets forth in detail the Equipment Accessibility for each item of Equipment.

“**Equipment Contracts**” means the agreements between Owner and each of the individual Equipment Suppliers, copies of which are attached as **Exhibit Y**.

“**Equipment Suppliers**” means equipment suppliers for the following two (2) major equipment packages:

- Ash
- Gypsum Dewatering

“**Excusable Event**” means an Excusable Event Basis as to which (a) such Excusable Event Basis, despite the exercise of reasonable diligence, could not be prevented, avoided or removed; (b) Contractor has taken all reasonable precautions, due care, and reasonable alternative measures in order to avoid the impact and to mitigate the consequences of such Excusable Event Basis on the Contractor’s ability to fulfill its obligations under this Agreement; (c) such Excusable Event Basis is not the result of the Culpable Conduct or other failure of Contractor (or a Subcontractor or other Person for whom either Contractor or a Subcontractor may be responsible) to perform any of its obligations under this Agreement; and (d) Contractor has strictly complied with the requirements of **Section 9.1**.

“**Excusable Event Basis**” means any of the following events to the extent that such event materially and adversely (a) results in an actual delay in the performance of the Work, which Contractor demonstrates extends the critical path of the Work; (b) increases Contractor’s cost of performing the Work; or (c) otherwise adversely affects Contractor’s performance hereunder:

- (i) delays that Contractor demonstrates are caused by the failure of Owner to fulfill any of its obligations under this Agreement;
- (ii) events of Force Majeure; **provided, however**, with respect to the performance of the Work in connection with a Scheduled Tie-in Outage Period, no event of Force Majeure shall constitute an Excusable Event Basis unless the event occurs on the Generating Station Site (including the Job Site) before or during the scheduled duration of the Scheduled Tie-in Outage Period and Contractor has satisfied the Marshaling Requirement, as more particularly described in **Section 6.3.3**;
- (iii) modifications to Owner's security protocols pursuant to **Section 4.39**;
- (iv) a change by Owner in the date or duration of the Scheduled Tie-in Outage Period which is not the consequence of the request or fault of Contractor;
- (v) a suspension of the Work pursuant to **Sections 24.3.2 or 24.4** and a partial termination by Owner pursuant to **Section 24.1**;
- (vi) the discovery of any (a) Pre-Existing Hazardous Substance (other than a Contractor Hazardous Substance) that requires Environmental Action by Owner or (b) protected or endangered plant or animal species, artifacts, fossils or other items of historical, geological, archeological, or other value in accordance with **Section 4.34**;
- (vii) as provided in the last sentence of **Section 4.36** regarding uncovering of Work; and
- (viii) any other events designated explicitly in this Agreement as being Excusable Event Bases, but only to the extent that such events meet the requirements of clause (a), (b), or (c) of this definition.

**"Excusable Event Notice"** has the meaning specified in **Section 9.1**.

**"Exhibits"** means all of the exhibits identified in the list of Exhibits following the "Table of Contents" to the Body of this Agreement.

**"Existing Facilities"** means all facilities, structures, installations, roadways, walkways, natural features, parking facilities, the Units, and auxiliary and support facilities thereto (but excluding any facilities built as part of the Work) now or hereafter located on the Generating Station Site, including all existing facilities used in connection with the generation of electricity; the transportation, handling or storage of fuel; or the transmission of electricity.

**"Existing Facility Requirements"** has the meaning set forth in **Section 4.20**.

**"Extra Test"** has the meaning set forth in **Exhibit G**.

“**Facility**” means all of the facilities, improvements, buildings, equipment, and other deliverables that Contractor, under this Agreement, is required to design, engineer, procure, construct, start-up, commission, and/or test.

“**Final Completion**” will be determined on a Subproject by Subproject basis and will have been achieved when all of the following have occurred with respect to that Subproject: (i) Commercial Operation has been achieved; (ii) all items identified on the Punch List have been completed; (iii) all As-Built Drawings, Information, Design Documents, Operating and Maintenance Manuals, submittals and other documents required to be delivered to Owner hereunder have been so delivered; (iv) all liquidated damages for which Contractor is liable pursuant to **Exhibit L** and other amounts owed by Contractor to Owner under this Agreement, if any, have been paid to Owner; (v) all obligations of Contractor expressly required to have been performed prior to Final Completion will have been properly discharged; (vi) all Work has been completed other than Work (and other obligations) that require future performance (*e.g.*, warranty Work, achievement of Guaranteed Availability, and indemnification); and (vii) Owner has issued the Certificate of Final Completion.

“**Financing**” means any form of construction, interim, long-term debt, lease, tax-exempt, recourse, non-recourse, equity or other form of funding, or refinancing that the Owner or an Affiliate of the Owner obtains, utilizes or attempts to obtain or utilize in connection with such Owner’s obligations hereunder.

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

“**Force Majeure**” means any condition, event, or circumstance to the extent such condition, event, or circumstance is not within the reasonable control of the Party affected, including war, rebellion, civil strife, insurrection, public disorder, Climatic Condition, earthquake, quarantine, act of terrorism, industry-wide or national strike, and Change in Law. Notwithstanding the foregoing, Force Majeure shall not include the following events, conditions or circumstances:

- (i) late delivery of Equipment, Consumables, or Construction Aids required for the Work however caused, including by congestion at a Subcontractor’s plant or elsewhere, oversold market conditions, inefficiencies, transportation delays or other similar circumstances (except to the extent a transportation delay is caused by the occurrence of an independent condition, event or circumstance described in and meeting the conditions of this definition);
- (ii) shortages of supervisors, labor, Equipment, Consumables, or Construction Aids;
- (iii) late performance as a consequence of any violation of Applicable Law or decisions of a Governmental Authority related to the conduct of Contractor’s or any Subcontractor’s business, including insolvency or any delay related to the economic, commercial or labor circumstances of Contractor, any Subcontractor or other business conducted by Contractor or any Subcontractor;

- (iv) breakdown, loss, or damage to or theft of machinery, Equipment, Consumables, or Construction Aids except where such breakdown, loss, or damage is directly due to the occurrence of an independent condition, event, or circumstance described in and meeting the conditions of this definition;
- (v) failure of a Party to pay amounts due and owing under this Agreement;
- (vi) strikes or other labor disturbances affecting Contractor or any of Subcontractors, except as expressly set forth in the examples described in the first full paragraph of this definition;
- (vii) increased costs of the Work, general economic or industry conditions; or
- (viii) weather conditions other than Climatic Conditions.

**“Generating Station”** means the generating station, as more particularly described in **Exhibit S**.

**“Generating Station Site”** means the site, as more particularly described in **Exhibit S**.

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

**“Guaranteed Availability”** has the meaning set forth in **Exhibit G**.

**“Guaranteed Commercial Operation Date”** means the date for Guaranteed Commercial Operation for each Subproject as set forth in **Exhibit D** (such date may be adjusted only in accordance with **Articles 9 and 10** of this Agreement).

**“Guaranteed Final Completion Date”** means the date for Guaranteed Final Completion for each Subproject as set forth in **Exhibit D** (such date may be adjusted only in accordance with **Articles 9 and 10** of this Agreement).

**“Guaranteed Substantial Completion Date”** means the date for Guaranteed Substantial Completion for each Subproject as set forth in **Exhibit D** (such dates may be adjusted only in accordance with **Articles 9 and 10** of this Agreement).

**“Guarantor”** means [REDACTED].

**“Gypsum Dewatering Subproject”** means that portion of the Facility designated in **Exhibit A** as the Gypsum Dewatering Subproject.

**“Hazardous Substance”** means: (i) any chemicals, materials, substances, or wastes which are now or hereafter defined as or included in the definition of “hazardous substance,” “hazardous material,” “hazardous waste,” “solid waste,” “toxic substance,” “extremely hazardous substance,”

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

“**Hazardous Substances Management Plan**” has the meaning set forth in **Section 4.20(vii)**.

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

“**Hour**” means a sixty (60) minute period commencing at the top of each clock hour.

“**Indemnified Parties**” has the meaning set forth in **Section 20.3.1**.

“**Indemnifying Party**” has the meaning set forth in **Section 20.3.1**.

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

“**Insolvency Event**” means, with respect to the Person: (i) the Person’s (a) failure to generally pay its debts as they become due, (b) admission in writing of its inability to pay its debts as they become due or (c) making a general assignment for the benefit of creditors; (ii) any proceeding being instituted by or against the Person seeking: (a) to adjudicate it as bankrupt or insolvent, (b) liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors or (c) the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against the Person, either such proceeding remains undismissed for a period of thirty (30) Days or any of the actions sought in such proceeding occur; or (iii) the Person’s taking any action to authorize any of the actions set forth above in this definition.

“**Intellectual Property**” means all Patent Rights, patent applications, copyrights, trade secrets and all other intellectual property rights.



“**Job Site**” means that portion of the Generating Station Site on which the Work will be performed and the Facility will be constructed, including areas for parking, storage, laydown, and administrative facilities, as more particularly described in **Exhibit A** and **Exhibit S** hereto.

“**Local Contractor**” means a union or non-union local contractor (i.e., a business enterprise) with primary operations within the Commonwealth of Kentucky or one of the Louisville Kentucky, Evansville Indiana, or Cincinnati Ohio Metropolitan Statistical Areas as defined by the United States Census Bureau.

“**LD Criteria**” has the meaning set forth in **Section 7.1**.

“**Liabilities**” means any and all judgments, liabilities, losses, costs, expenses, damages, fines or penalties, court costs, reasonable attorneys’ fees and costs, and pre- and post-judgment interest.

“**Lien Indemnitees**” has the meaning set forth in **Section 20.4**.

“**Liens**” has the meaning specified in **Section 20.4**.

“**Local Hires**” means workers hired as a part of Contractor’s and Subcontractors’ direct craft work force with respect to the Work whose primary residences are located within: (i) the Commonwealth of Kentucky or (ii) the Standard Metropolitan Statistical Area (as defined by the United States Census Bureau) for each of Louisville, Kentucky; Evansville, Indiana; or Cincinnati, Ohio.

“**Major Contract Milestones**” means the Scheduled Tie-in Outage Periods, Scheduled Mechanical Completion Dates, the Guaranteed Substantial Completion Dates, the Guaranteed Commercial Operation Dates, and the Guaranteed Final Completion Dates.

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

“**Marshaling Requirement**” has the meaning set forth in **Section 6.3.3**.

“**Mechanical Completion**” will be determined on a Subproject by Subproject basis and will have been achieved when all of the following have occurred with respect to that Subproject: (i) all Equipment has been furnished and installed in accordance with **Exhibit A** and manufacturers’ requirements (and in a manner that does not void any Subcontractor warranty) and the terms of this Agreement and, as appropriate, checked for alignment, lubrication, rotation, and hydrostatic and pneumatic pressure integrity and the Subproject and the applicable Unit are ready for full load unrestricted operation; (ii) Turnover Acknowledgement of all Systems has been achieved; (iii) all Systems have been installed, cleaned and statically tested and cold commissioning has been completed; (iv) all initial tests have been completed, all instruments have been calibrated, the appropriate Systems have been flushed and cleaned out as necessary, and all motor rotation checks are complete; (v) all Tie-ins have occurred; (vi) the Units and Yard Systems as modified by the Subproject are capable of being safely commissioned, tested and operated in the ordinary course of business; (vii) the Subproject has been properly integrated into individual

Units and Yard Systems (physically and electronically); (viii) the Subproject is ready to commence hot commissioning, testing and integrated operations without the use of temporary equipment or installations; (ix) an initial Punch List has been established and mutually agreed upon by Owner and Contractor; (x) the Performance Guarantee Test Procedures have been submitted to and accepted by Owner; (xi) the training required by **Section 4.9** has been completed; and (xii) Owner has executed the Certificate of Mechanical Completion.

**“Milestone Payment Schedule”** means the schedule of payment milestones and values as set forth in **Exhibit C**, as it may be adjusted in accordance with this Agreement.

**“Minimum Required Performance”** means with respect to a Subproject, that such Subproject is capable of transporting and treating all of the Process Water/CCR applicable to such Subproject in accordance with the Project Requirements except that the throughput of the Subproject may be lower than required by the Project Requirements but only to the extent that such lower throughput is sufficient (i) to transport and treat all of the Process Water/CCR generated by the Units without causing additional costs to Owner and (ii) to not cause an outage or derate of a Unit.

**“Modification”** means: (i) a written amendment to this Agreement signed by all Parties; (ii) a Change Order; or (iii) an Adjustment on account of an Excusable Event pursuant to **Section 9.1**.

**“Month”** means a calendar month.

**“MSDSs”** means SDSs.

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

**“NERC Requirements”** has the meaning set forth in **Section 4.39**.

**“NERC Standards”** has the meaning set forth in **Section 4.39**.

**“Notice”** has the meaning set forth in **Section 25.5**.

**“Operating and Maintenance Manuals”** means the operating and maintenance manuals referred to in **Section 4.14**.

**“Owner”** has the meaning set forth in the preamble of this Agreement.

**“Owner Default”** has the meaning set forth in **Section 24.3.1**.

**“Owner Engineer”** means a third party engineering firm selected by Owner.

**“Owner Indemnitees”** means Owner, Owner Engineer, and the Financing Parties (and all of the Affiliates of all of the foregoing) and their respective successors, assigns, officers, directors, members, employees, agents, and representatives.

“**Owner Permits**” means the Permits designated in **Exhibit P** as Owner’s Permits.

“**Owner Representative**” has the meaning set forth in **Section 5.1**.

“**Owner Review Period**” has the meaning set forth in **Section 6.2.2**.

“**Parent Guarantee**” means the guarantee to be duly executed and delivered by Guarantor, in substantially the form set forth in **Exhibit F-8**.

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

“**Patent Rights**” mean any and all forms of patents issued or granted anywhere in the world arising from or related to the Work, all conditionals, renewals, extensions and continuations in part thereof, and all applications for such patents which have not been abandoned or expired.

“**Performance Criteria**” means the applicable guaranteed value for each Performance Guarantee as set forth in Appendix A of **Exhibit G**.

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

“**Performance Guarantee Test Procedures**” has the meaning set forth in **Exhibit G**.

“**Performance Guarantee Tests**” has the meaning set forth in **Exhibit G**.

“**Performance Securities**” means one or more Acceptable Letters of Credit to be delivered to Owner in the aggregate amount equal to the Performance Security Required Amount, and any replacement letters of credit therefore.

“**Performance Security Percentage**” means at any particular time, [REDACTED] minus the applicable Performance Security Step Downs for each Performance Security Threshold, if any, that have been achieved at that time.

“**Performance Security Required Amount**” means at any time the Performance Security Percentage in effect at that time multiplied by the Contract Price (as such Contract Price may be adjusted from time to time).

“**Performance Security Step Downs**” means the following percentages for the following occurrences (“**Performance Security Thresholds**”):

Performance Security Threshold	Step Down
Achievement of Commercial Operation for the last Designated Subproject to achieve Commercial Operation	[REDACTED]
Achievement of Commercial Operation for the last Process Water Subproject to achieve Commercial Operation	[REDACTED]

*[Handwritten initials]*

Achievement of Commercial Operation for the Unit 1 Ash Subproject	█
Achievement of Commercial Operation for the Unit 2 Ash Subproject	█
Achievement of Commercial Operation for the Unit 3 Ash Subproject	█
Expiration of the Warranty Period for the last Designated Subproject to have its Warranty Period expire	█
Expiration of the Warranty Period for the last Process Water Subproject to have its Warranty Period expire	█
Expiration of the Warranty Period for the Unit 1 Ash Subproject	█
Expiration of the Warranty Period for the Unit 2 Ash Subproject	█
Expiration of the Warranty Period for the Unit 3 Ash Subproject	█

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

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

“**Physical Conditions**” means geotechnical, topographical, geological, seismic, hydrographical, hydrological, or other physical conditions related to the Job Site, the Generating Station Site, and/or the proximate area, including conditions relating to foundation and piling Design and construction, Job Site preparation, Design, construction or any other portion of the Work.

“**Pre-Existing Hazardous Substance**” means a Hazardous Substance existing on the Job Site as of the Effective Date, which Hazardous Substance is of a nature or exists in an amount that requires special handling, disposal or remediation under Applicable Law. Hazardous Substances that are used or useful in the operation of the Existing Facilities that are labeled and in appropriate containers are not considered Pre-Existing Hazardous Substances under this Agreement.

“**Preliminary Tie-in**” means a Tie-in which involves only Connecting a stub, tee, or similar fixture, together with isolation valve(s) at a Terminal Point in a manner such that the Existing Facilities can continue to operate as before, isolated from the Facility. The purpose of a Preliminary Tie-in is for the Connection to be made in an outage occurring prior to the time that the Facility would otherwise be sufficiently complete for the Tie-in to be made hereunder.

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

**“Process Water”** means the water and other effluent to be transported and treated by the Process Water System as specified in the Technical Specifications.

**“Process Water First Subproject”** means that portion of the Facility consisting of all of the Process Water System except one of the two Process Water Treatment Trains (as determined by Contractor). The Process Water First Subproject includes all Process Water Treatment Train Spare Equipment.

**“Process Water Second Subproject”** means that portion of the Facility consisting of the Process Water Treatment Train not included as part of the Process Water First Subproject.

**“Process Water Subproject”** means Process Water First Subproject or Process Water Second Subproject.

**“Process Water System”** means that portion of the Facility designated as such in **Exhibit A**.

**“Process Water Treatment Scope”** means the part of the Process Water System so designated in **Exhibit A**.

**“Process Water Treatment Train”** means one of two trains that together form the Process Water Treatment Scope.

**“Process Water Treatment Train Spare Equipment”** means the Equipment required by the Design to constitute redundant capacity to be on line for use for either Process Water Treatment Train.

**“Professional Standards”** means those standards and practices used by, and the degree of skill and judgment exercised by, recognized United States national engineering and/or construction firms when performing first class quality services in connection with performing work related to operating coal-fired generation facilities similar to the Generating Station.

**“Project Schedule”** means the total integrated resource-loaded fully logic tied, critical path method project schedule showing engineering, procurement, and construction, expressed in Primavera® format, including Major Contract Milestones as such Project Schedule may be adjusted pursuant to this Agreement; **provided, however**, no adjustment shall be made to the Major Contract Milestones other than in accordance with **Articles 9 and 10** of this Agreement.

**“Project Requirements”** means with respect to the Work, including the Facility or any portion thereof: (i) Applicable Law; (ii) Codes; (iii) the provisions of this Agreement; (iv) the Major Contract Milestones; (v) the Performance Guarantees; (vi) the requirements and warranties of Subcontractors, including Equipment Subcontractors; (vii) the requirements of insurers

providing insurance pursuant to **Article 21**; (viii) the Operating and Maintenance Manuals; (ix) Professional Standards; (x) Prudent Utility Practices; and (xi) Equipment Accessibility.

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

**“Punch List”** or **“Punch List Items”** means and refers to a comprehensive list initially prepared prior to certification of Mechanical Completion of a Subproject which may be supplemented thereafter to identify those minor Defects that require repair, completion, correction or re-execution by Contractor, but which in their current state (individually and collectively) do not limit or otherwise interfere with the occupancy, use, operation in automatic mode, safety, legality or reliability of the Subproject or any portion thereof or the associated Units and Yard Systems in the normal course of business.

**“Pyrites Subproject”** means that portion of the Facility designated in **Exhibit A** as the Pyrites Subproject.

**“Records”** has the meaning set forth in **Section 25.11**.

**“Sales Taxes”** has the meaning set forth in **Section 8.2.1**.

**“Scheduled Mechanical Completion Date”** means the date for each Subproject as set forth in **Exhibit D** as the Scheduled Mechanical Completion Date (such date may be adjusted only in accordance with **Articles 9 and 10** of this Agreement).

**“Scheduled Tie-in Outage Period”** means, for each Unit, the scheduled outage period, during which time, but prior to the Contractor Outage End Time, Contractor must complete all Tie-ins requiring such outage (the time and date for such outage and the period during which Contractor may perform Tie-in Work is set forth in **Exhibit D**) as such time and date may be adjusted pursuant to this Agreement.

**“SDSs”** has the meaning set forth in **Section 19.1.3**.

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

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

“**Subcontract**” means a contract, agreement, purchase order, lease or rental agreement or other arrangement (including the Equipment Contracts) to perform a portion of the Work, including the supply of services, Equipment, Consumables, or Construction Aids in connection with the Work; **provided, however**, if Contractor enters into a Subcontract with an Affiliate for performance of Work, such Work will be deemed to be Work directly performed by Contractor hereunder without regard to such Subcontract.

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

“**Subproject**” means one of the following: the Process Water First Subproject, the Process Water Second Subproject, the, the Pyrites Subproject, the Unit 1 Ash Subproject, the Unit 2 Ash Subproject, the Unit 3 Ash Subproject, Unit 4 Ash Subproject, and the Gypsum Dewatering Subproject.

“**Substantial Completion**” will be determined on a Subproject by Subproject basis and will have been achieved when all of requirements of Commercial Operation for that Subproject have occurred except as set forth below with respect to the following clauses of the definition of Commercial Operation:

- (iii) Not applicable
- (iv) Not applicable
- (v) Not applicable
- (viii) Applies only to liquidated damages incurred pursuant to **Article 7** through the date of Substantial Completion
- (xi) Applies except with respect to changes in the Work made after Substantial Completion
- (xii) Applies only with respect to making the drawings current as of the Substantial Completion Date (either marked showing as-built conditions or supplemented with an As-Built Drawing)
- (xv) Applies but applicable Certificate is the Certificate of Substantial Completion.

“**Substantial Completion Date**” means with respect to a Subproject, the date on which Substantial Completion is achieved for that Subproject.

“**Supplier Diversity Policy**” has the meaning set forth in **Section 25.22**.

“**Supported Business Enterprises**” means Minority Business Enterprises, Women Business Enterprises, Veteran Owned Business Enterprises, Service-Disabled Veteran-Owned Small Businesses and Disadvantaged Business Enterprises, as defined under federal law and as certified by a certifying agency that Owner recognizes as proper.

“**System**” means a system or subsystem of the Facility set forth in the plan established pursuant to **Section 6.2**, all of which will be subject to the turnover requirements of **Article 6**; taken together, all Systems compose the entire Facility.

“**System Turnover Package**” means for each System, the collection of documents, drawings, specifications, manuals and other enumerated items of Information including diagnostic equipment tests that comprise a complete description of the System and its operating requirements in form and substance reasonably acceptable to Owner and meeting the requirements of the final turnover plan established pursuant to **Section 6.2**.

“**Technical Specification**” means and refers to **Exhibit A** attached hereto, and documents specified therein.

“**Terminal Points**” means the specific points of connection including the interfaces and terminal points between the Facility and the Existing Facilities specified in **Exhibit T**.

“**Testing Contractor**” means the Owner-approved Third Party certified testing company provided for by Contractor in accordance with the requirements set forth in **Exhibit G**.

“**Third Party**” means any Person that is neither a Party nor an Affiliate of a Party to this Agreement.

“**Tie-in**” shall mean when the applicable Subproject (including the gas path) is Connected as applicable to the Terminal Points of the applicable Unit and/or Yard System.

“**Tie-in Date**” means for each Tie-in, the date on which that Tie-in occurs.

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

“**Unit**” means one of the four existing coal-fired units operating on the Generating Station Site that are commonly identified as Unit 1, Unit 2, Unit 3, and Unit 4. Unless the context indicates otherwise, the term “Units” refers to all four Units.

“**Unit 1 Ash Subproject**” means that portion of the Facility designated in **Exhibit A** as the Unit 1 Ash Subproject.

“**Unit 2 Ash Subproject**” means that portion of the Facility designated in **Exhibit A** as the Unit 2 Ash Subproject.

“**Unit 3 Ash Subproject**” means that portion of the Facility designated in **Exhibit A** as the Unit 3 Ash Subproject.



“**Unit 4 Ash Subproject**” means that portion of the Facility designated in **Exhibit A** as the Unit 4 Ash Subproject.

“**Unit Outage Hour**” has the meaning set forth in **Exhibit L**.

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

“**Work**” means all of the work, services, Equipment, Consumables, and Construction Aids to be performed, provided, or installed by Contractor in accordance with this Agreement, including all Job Site preparation, Design, reconditioning, procurement, transportation, expediting, storage, construction, training, start-up, commissioning, testing, clean-up and waste disposal, and other services or items that are necessary or appropriate to complete the Facility, effect Tie-in and Connect each Subproject, achieve Commercial Operation of each Subproject, and Final Completion of each Subproject, and fulfill Contractor’s obligations during the Warranty Period of each Subproject in accordance with this Agreement. Work specifically includes any options exercised by Owner in accordance with **Exhibit O**. Upon such exercise of any such options by Owner, this Agreement will be modified as provided by the applicable terms set forth in **Exhibit O**.

“**Yard System**” means a portion of the Existing Facilities that is not specific only to one of the Units.

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

- (i) the singular includes the plural and vice versa;
- (ii) reference to any Person includes such Person’s successors and assigns, to the extent that such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity;
- (iii) reference to any agreement (including this Agreement), document, insurance policy or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
- (iv) any accounting term used and not otherwise defined in the Agreement has the meaning assigned to such term in accordance with generally accepted accounting principles consistently applied;
- (v) “including” (and “include”) means: (a) including without limiting the generality of any description preceding such term and (b) with respect to any description following such term, means “including, without limitation” or “including, but not limited to”;

- (vi) reference to Applicable Law means Applicable Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time;
- (vii) when applied to Equipment or Systems, “furnish” “provide” or words of similar import means to secure, pay for, deliver to the Job Site (or other portions of the Generating Station Site, as appropriate), unload, inspect and uncrate, store per manufacturer’s recommendations and any other services or activities appropriate to that portion of the Work;
- (viii) when applied to Equipment or Systems, “install” or “installation” or words of similar import mean to assemble, place in position, incorporate, adjust, clean, make fit for use and any other services or activities appropriate to that portion of the Work;
- (ix) unless the context specifically requires otherwise, the terms “approval,” “consent,” “accept,” “acceptance,” “authorization,” and terms of similar import shall be deemed to be followed by the phrase “which shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed”;
- (x) the words “shall” and “will” have equal force and effect;
- (xi) each use of the term “Contractor” is deemed to also include each Subcontractor in respect of any Work or other obligations hereunder that Contractor has chosen to have performed by that Subcontractor
- (xii) the words “herein,” “hereof,” or “hereunder” or similar terms refer to this Agreement as a whole and not to any specific section or article;
- (xiii) the table of contents and article, section and exhibit titles and similar headings are inserted for convenience only and are not to be used for the purposes of construing or interpreting this Agreement;
- (xiv) the Work is intended to be a term that encompasses all of the necessary performance obligations of Contractor. Any listing of types of work such as “construct,” “erect,” “check” or “align” is not meant to be exclusive in the context of this Agreement or exclude similar or other services or activities appropriate to that portion of the Work;
- (xv) words and abbreviations not defined in this Agreement which have well-known technical or design, engineering or construction industry meanings are used in this Agreement in accordance with such recognized meanings;
- (xvi) all documentation to be supplied under this Agreement shall be provided in the English language;
- (xvii) all dimensions must be specified in the United States customary system;

- (xviii) this Agreement and all terms hereunder (including terms related to the reasonableness of the Owner's actions) shall be construed taking into consideration the Existing Facility Requirements;
- (xix) if a payment obligation to be performed under this Agreement falls due on a Day that is not a Business Day, the payment obligation will instead be due on the next Business Day; and
- (xx) payments under this Agreement which are due must be made exclusively in United States dollars.

## ARTICLE 2

### EFFECTIVENESS

#### 2.1 Effectiveness.

2.1.1 Effectiveness. This Agreement shall be effective and the Parties shall be bound by it upon its execution and delivery by all Parties. Contractor shall commence the Work immediately upon the effectiveness of this Agreement.

2.1.2 Assignment. Contemporaneously with the execution of this Agreement, the Parties shall execute assignment agreements substantially in the form attached hereto as **Exhibit Z** under which, effective as of the Effective Date, Owner shall assign to Contractor all of its right, title, and interest in and to the Equipment Contracts and Contractor shall assume all of Owner's obligations under the Equipment Contracts. Owner hereby represents and warrants the following to Contractor, on and as of the Effective Date, which representations and warranties will survive the execution of this Agreement:

- (i) prior to the Effective Date, there has been no breach or default of any provision of Equipment Contracts for which it is responsible;
- (ii) prior to the Effective Date, no amounts have become due under the terms of the Equipment Contracts that Owner has not paid;
- (iii) prior to the Effective Date, it has provided Contractor with a true and correct copy of the Equipment Contracts together with any amendment and any change order to the Equipment Contracts; and
- (iv) prior to the Effective Date, it has not received from the counterparty to either Equipment Contract any letter of credit, parent company guarantee or other security instrument required to be provided by such counterparty under the Equipment Contracts that has not been assigned to Contractor.

From and after the Effective Date, Owner has no authority to authorize the Equipment Suppliers to make a change to or under the Equipment Contracts. Notwithstanding the foregoing, Contractor will not amend or otherwise restrict any right granted to "Owner" under the Equipment Contracts and Owner may exercise its rights thereunder, including

any required enforcement thereof. Owner shall use reasonable efforts to coordinate the exercise of its rights with Contractor. Contractor represents that it has conducted sufficient due diligence to satisfy itself as to the adequacy of the Equipment Contracts and the Equipment Suppliers in all regards. Contractor shall not be entitled to any Adjustment or other relief under this Agreement based on any claims or assertions with respect to the Equipment Contracts or the Equipment Suppliers including with respect to the completeness and adequacy of the commercial, technical and other terms of the Equipment Contracts and to the competence, capabilities, financing or any other characteristics of the Equipment Suppliers. It is the intent of this Agreement that the Equipment Suppliers and the Equipment Contracts be treated the same as if Contractor procured and entered into the Equipment Contracts directly.

## 2.2 Contractor Commitments and Confirmations.

- (i) Contractor hereby confirms that as of the execution of this Agreement there exist no grounds on which a claim by Contractor pursuant to **Articles 9 or 10** may be based;
- (ii) On or before 30 days after the Effective Date, Contractor shall deliver to Owner the Parent Guarantee; and on or before 14 days after the Effective Date, Contractor shall deliver to Owner the Project Schedule in no less than a Primavera® P6.0 Level 2 format without resource loading;
- (iii) On or before 7 days after the Effective Date, Contractor shall have delivered to Owner certificates of non-project specific insurance policies applicable to the period commencing on the Effective Date evidencing coverages and terms as required by **Exhibit I** (and shall thereafter make copies of such policies available for inspection by Owner and such policies may be redacted to not show the amount by which the limits of such insurance exceeds that required by Exhibit I);
- (iv) At least three (3) weeks prior to on-site mobilization, Contractor shall provide to Owner copies of project specific insurance policies and certificates required to be obtained by Contractor in accordance with **Exhibit I**;
- (v) Prior to mobilization to the Job Site, Contractor shall confirm through receipt of notice from Owner that Owner has received all Owner Permits, set forth in **Exhibit P**, as are necessary to commence construction, on terms and conditions acceptable to Owner, which permits, approvals or licenses have become final and are not subject to rehearing or appeal;
- (vi) Prior to on-site mobilization, Contractor shall deliver the Project Schedule in no less than a Level 3 Primavera® P6 format, with a fully logic-tied schedule developed and resource-loaded;

- (vii) Prior to on-site mobilization, Contractor shall provide Owner with all necessary information to allow Owner to have submitted all necessary filings to Governmental Authorities that are required prior to the commencement of construction; and
- (viii) Contractor acknowledges that separate contractors of Owner will have access to the Job Site for work, including work described in **Exhibit A** or **Exhibit S** and Contractor shall cooperate and coordinate with Owner and such separate contractors such that Contractor and Owner's separate contractors can perform their respective scopes of work without delay.

### ARTICLE 3

#### GENERAL PROVISIONS

**3.1 Intent of Contract Documents.** It is the intent of the Parties that this Agreement be a lump-sum, turnkey contract with a fixed Contract Price and fixed Major Contract Milestones which, in each case, will not be increased or lengthened (or decreased or shortened) whether under contract or tort law (including with respect to any delay, hindrance, interference, and disruption of the Work), except in accordance with **Articles 9 and 10**.

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

**3.3 Subcontracting.** Subject to **Section 3.4**, Contractor may have portions of the Work performed by Subcontractors, including entities related to or affiliated with Contractor; **provided, however**, that (i) Contractor may not Subcontract all or substantially all of the Work and (ii) no Work may be performed by any Subcontractor on or near the Generating Station Site if that Subcontractor does not meet the safety qualifications set forth in **Exhibit H** (unless Contractor first obtains Owner's consent, which may be withheld at Owner's sole discretion). No contractual relationship will exist between Owner and any Subcontractor with respect to the Work to be performed hereunder, except pursuant to **Sections 3.5, 3.6 and 13.4** and except as set forth in the Equipment Contracts as in effect on the Effective Date. Notwithstanding whether or not any provision of this Agreement specifically refers to Contractor's Subcontractors or their employees or other invitees, Contractor will be fully responsible for all acts, omissions, failures or faults of any such Persons as fully as if they were the acts, omissions, failures or faults of Contractor and Contractor shall require Subcontractors to provide or perform their portion of the Work in compliance with Contractor's obligations under this Agreement. If any Subcontractor fails to perform any portion of the Work as such Work is required to be performed in accordance with this Agreement, Contractor is responsible therefor and hereby binds itself to promptly and diligently correct such failure in accordance with this Agreement, at no cost or expense to Owner. The exercise of the right to subcontract will not in any way increase the cost, expense, or liability of Owner hereunder. Contractor shall require any Subcontractor to perform its portion of the Work: (i) under Contractor's supervision and (ii) in accordance with the requirements of this Agreement. Owner may communicate with Contractor's Subcontractors directly, **provided** Contractor is informed of all such communications. However, Contractor shall be solely

responsible for providing all information regarding the Work and direction to Subcontractors necessary for Subcontractors to perform the Work. Contractor shall bind all Major Subcontractors to terms that protect Owner's rights and benefits hereunder and are otherwise not in conflict with the provisions of this Agreement applicable to the subcontracted Work (including the provision of Equipment).

**3.4 Specified Subcontractors.** For those items of Work or Equipment specified in **Exhibit E**, Contractor will only use the services of, and procure Equipment from, those Persons listed under the applicable headings specified in **Exhibit E**. Contractor will be responsible for the negotiation of the terms and conditions of any Subcontracts entered into with such identified Persons (including cost, performance guarantees and equipment warranties), and it will enter into written Subcontracts in its own name directly with such Persons, it being the intent of the Parties that such Persons will be Subcontractors of Contractor and not of Owner. Operability, maintainability, reliability, quality, and compatibility with equipment and consumables utilized in the Existing Facilities must be material selection factors in Contractor's procurement decisions. Contractor shall undertake to include Supported Business Enterprises (of each type) and Local Contractors to the maximum practicable extent on bid lists for portions of the Work. Contractor agrees that before submitting specifications for bids to Major Subcontractors it will give Owner a reasonable opportunity to comment on such specifications and proposed bid list and Owner agrees that if it wishes to comment, Owner will submit such comments within the time period specified for that item in **Exhibit X** and if not so specified, within fifteen (15) Business Days after delivery of the specifications to Owner. Contractor will cooperate and work in good faith with Owner to accommodate Owner's comments. Notwithstanding Owner's right to review and comment in accordance with this **Section 3.4**, no such review or comment will relieve Contractor or otherwise serve as a defense to Contractor's full performance of its obligations hereunder.

**3.5 Certain Provisions in Subcontracts.** All Subcontracts with a Major Subcontractor must contain provisions, which Contractor may not waive, release, modify, or impair: (i) giving Contractor an unrestricted right, without the consent of the Subcontractor, to assign (and for the assignees to thereafter reassign) the relevant Subcontract and/or any or all benefits, interests, rights and causes of action arising under it to Owner and/or its designees (and such assignment right will be assigned as part of such assignment); (ii) complying with the provisions of **Section 20.4**; (iii) authorizing either Owner or Contractor to enforce guarantees and warranties; (iv) requiring Subcontractors that will have a presence on the Generating Station Site to comply with the plan provided for in **Section 14.1** of this Agreement; (v) indemnifying Owner on substantially the terms and conditions set forth in **Section 20.1**; (vi) incorporating **Section 16.3**; (vii) granting a warranty with respect to the portion of Work performed under that Subcontract that, at a minimum, meets the same terms, conditions, and duration as set forth in **Article 13** of this Agreement; (viii) causing Subcontractors of Equipment, upon the request of Owner, to segregate such Equipment at their fabrication facilities and identify Owner's property as such in a manner acceptable to Owner; and (ix) with respect to the Components set forth in **Exhibit AA**, provide warranties substantially on the same terms as in **Article 13** of this Agreement, but with the warranty period as set forth for that component in **Exhibit AA**. Contractor shall notify Owner when it enters into any Subcontract with a Major Subcontractor and shall promptly provide Owner with an electronic copy of such Subcontracts and all change orders and amendments thereto. Copies of other Subcontracts shall be available to Owner upon

request. In no event will Contractor enter into a Subcontract with any Subcontractor that provides for a warranty that has a length or other term that is less than that Subcontractor's standard warranty for the applicable Equipment.

**3.6 Assignment of Subcontracts.** Contractor shall, if so requested by Owner after termination of Contractor pursuant to **Article 24** or the expiration of the applicable Warranty Period as it may be extended, assign: (i) any Subcontract then remaining (together with any retainage, letter of credit or other security provided by such Subcontractor) and/or (ii) the benefits of any remaining applicable Subcontractor warranty (as it may have been extended) to Owner or a designee of the Owner, which assignment must be binding on the Subcontractor and not require consent of the Subcontractor. Upon assignment, any such warranty must be in full force and effect in accordance with its terms.

**3.7 Subcontracts.** All Subcontracts shall provide that title will be transferred in the name of Owner in accordance with **Section 22.1**. Each Subcontract shall limit recourse exclusively to Contractor, except upon any assignment of such Subcontract pursuant to **Section 3.6**. Subcontracts shall allow for suspension of all or a portion of the Work to be performed thereunder and shall be terminable for convenience pursuant to a termination payment schedule.

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

## ARTICLE 4

### CONTRACTOR'S RESPONSIBILITIES

**4.1 Performance of the Work.** Contractor hereby covenants and agrees to continuously and diligently provide, perform, install, and complete the Work and its other obligations hereunder in accordance with Project Requirements and the Major Contract Milestones. Contractor further covenants and agrees to procure, provide and pay for all Equipment, Consumables (other than Consumables to be provided by Owner pursuant to **Section 5.3**), Construction Aids, and other items or services necessary for the proper execution and

completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including all site preparation, installation, construction services, Design, drafting and procurement, all administration, reporting, expediting, inspection, testing, training, scheduling, and coordination; all start-up, commissioning and testing services; all labor (skilled and unskilled); all insurance (as required by **Exhibit I**); Permits, licenses, and inspections (other than those required to be supplied by Owner under this Agreement); and all tools, machinery, storage, and transportation and all other facilities and services necessary to provide and complete the Facility and the Work in accordance with **Exhibit A** and this Agreement, it being understood that to the extent **Exhibit A** does not expressly delineate an aspect of the Work, the Parties intend that the Facility be designed, equipped, completed, and integrated into the Units and Yard Systems consistent with Project Requirements. Contractor shall order, expedite, receive, furnish, handle, inspect (and, as appropriate, reject), store, maintain and install Equipment and Consumables in accordance with vendor/manufacture requirements and, in the absence thereof, in accordance with Project Requirements. Contractor will perform all managerial, supervisory, and administrative services that may be necessary to ensure the proper and timely completion of all activities which form a part of the Work. As such, Contractor agrees that Contractor shall be ultimately responsible for the proper and timely completion of the entirety of the Work in accordance with this Agreement, whether performed by Contractor or by any Subcontractor.

**4.2 Sufficient Personnel.** Contractor shall, at all times during the term of this Agreement, employ a sufficient number of qualified and competent supervisory personnel, craft persons, and other persons, so that the Work and the other obligations to be performed by Contractor hereunder are completed in an efficient, prompt, economical, and professional manner. Contractor shall be responsible for all overtime or other premium time Work (except pursuant to **Article 9 and 10**). Without in any way limiting the foregoing, such personnel must include sufficient qualified buyers, inspectors, and expeditors necessary to provide Equipment, Construction Aids, and Consumables in a timely manner consistent with the Project Requirements. Whenever required by Applicable Law and Professional Standards, licensed (in the applicable jurisdiction) professional engineers will perform the Design services required to perform the Work. Other portions of the Work shall be performed by properly licensed personnel as required by Applicable Law and Professional Standards. Contractor shall also provide all construction and technical services, supervision, and craft personnel as required for system adjustments during start-up, commissioning, and testing. Contractor shall provide for the Testing Contractor in accordance with the requirements set forth in **Exhibit G**. During start-up, testing or the operation of the Work until Commercial Operation, Contractor shall maintain qualified personnel on the Job Site twenty-four (24) Hours a Day to supervise Owner's operators regarding operation and maintenance of the Subproject. Design Documents must be stamped by a Kentucky Registered Professional Engineer as required by Applicable Law.

**4.3 Labor Matters.**

**4.3.1 Labor Peace.** Contractor shall be responsible for labor peace on the Job Site and other portions of the Generating Station Site where Work is to be performed or which is used by Contractor and for maintaining good labor relations with local labor organizations. Contractor shall at all times exert its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid



work stoppages, slowdowns, disputes, or strikes when reasonably possible and practical under the circumstances. Contractor shall advise Owner promptly, in writing, of any actual, anticipated, or threatened labor dispute that might affect the completion of the Work by Contractor (or by any Subcontractor) in accordance with the Major Contract Milestones.

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

**4.4 Discipline and Protection.** Contractor shall enforce strict discipline and good order among Contractor's employees, Subcontractors' employees, and any other Persons carrying out portions of the Work on the Generating Station Site and Contractor shall also provide for the protection and maintenance of the Work and of all Persons and property related thereto. Contractor shall at all times take all necessary precautions to prevent any unlawful or disorderly conduct by or amongst its employees and those employees of Subcontractors and for the preservation of peace and protection of individuals and property at, or in the vicinity of, the Generating Station Site. Contractor shall not permit the employment of unfit individuals or individuals not skilled in tasks assigned to them. Contractor understands the importance of maintaining, and shall maintain, good relations with the community in which the Generating Station Site is located and shall emphasize the importance of good community relations to its and Subcontractors' employees and other Persons under its supervision on the Job Site.

**4.5 Supervision.** Contractor shall supervise, coordinate, and direct the Work, using Contractor's best skill, judgment, and attention and in a manner consistent with Project Requirements. Contractor is responsible for the conduct of Persons under its supervision.

**4.6 Contractor's Key Personnel.** Exhibit K contains a list of Contractor's key personnel who will be responsible for supervising the performance of Contractor's obligations hereunder. Such list includes the designation of Contractor's principal representative (the "**Contractor's Representative**"), who will be Contractor's authorized representative having the responsibility and authority to direct and manage the Work, administer this Agreement, serve as Contractor's primary point of contact from and with Owner to receive and initiate all communications (other than Notices, which shall be made in accordance with **Section 25.5**) and be authorized to make decisions related to the Work and bind Contractor. Contractor recognizes that a good working relationship must exist between its key personnel and Owner. Owner has the right to request replacement of key personnel upon reasonable notice after having given Contractor a reasonable opportunity (not to exceed ten (10) Days) to rectify the situation leading to such request. Upon the expiration of such period, if Owner remains unsatisfied, Contractor shall promptly effect such replacement. Any replacement of key personnel is subject to the prior written approval of Owner. Contractor's Representative shall act as Contractor's liaison with Owner.

#### **4.7 Design and Engineering.**

4.7.1 Design Requirements. As engineer of record, Contractor has full Design responsibility for the performance of the Work. Contractor shall engage all supervisors, engineers, designers, draftsmen, Subcontractors, and others necessary for the Design of the Work (including modification of the drawings of Existing Facilities as appropriate and

including Equipment Accessibility) and the preparation of all drawings, specifications, calculations, plans (including the Equipment Accessibility Plan), reports and other Design documentation (including all media) for the Work, setting forth in detail the requirements for the construction of the Facility in accordance with this Agreement (collectively the “**Design Documents**”). Contractor shall Design the Facility in accordance with Project Requirements and to be capable of operating in conformance with the Project Requirements. During performance of the Work, Contractor shall upload to and maintain the Design Documents on a web-based database as and when such Design Documents (or iterations thereof) are completed or revised and Owner shall have unlimited access (including download capability) to the Design Documents on such web-based database. Contractor will provide hard-copy Design Documents upon request. Notwithstanding anything in this Agreement to the contrary, Contractor shall not commence any of the Work depicted in a Design Document until Contractor has submitted to Owner and received the approval of the Owner for the Equipment Access Plan (and if any further Design Work necessitates any revision to the Equipment Access Plan, until Contractor has submitted and Owner has approved the applicable revisions to the Equipment Access Plan).

**4.7.2 Reviews and Holds.** Design Documents will be available to Owner electronically in an agreed format and in hard copy. Owner will be entitled, but not obligated, to review and comment upon the Design Documents and other required submittals in accordance with **Exhibit X** prior to Contractor commencing with any subsequent phase of the Work related to such Design Documents or submittals. Contractor shall give due consideration to Owner’s comments in the final version of the Design Documents or submittals. Design Documents will be deemed final when stamped by Contractor as “issued for permit or for construction,” except to the extent such documents are subject to review, comment and approval in accordance with **Exhibit X** by Owner. Design Documents that are required to be certified or under seal shall be certified or sealed by professional engineers, licensed and qualified to perform engineering services in the applicable jurisdictions. In no event will any review, comment, or approval of Owner, or acceptance or acknowledgment of any of the Work, in any way, relieve Contractor of any of its guarantees or obligations hereunder, including its full responsibility for Defects, confirming all quantities, selection of fabrication processes, construction techniques, the accuracy of the dimensions, details and the quality of its instruments of service prepared in connection with the Work as well as its responsibility for the quality, integrity, safety, and timely performance of the Work.

**4.8 Quality Control.** Contractor shall develop, implement and maintain a quality assurance plan for the Work in accordance with the provisions of **Exhibit A** which must include: quality assurance; management and control of the Design, engineering, construction, procurement, and supply services; and management and control of Subcontractors and Subcontracts. Such plan must be designed to meet Project Requirements, include procedures for effective implementation, and must be submitted to Owner within ninety (90) Days of the Effective Date for Owner’s review and approval. Contractor shall diligently revise the plan as necessary to obtain Owner’s approval. Contractor shall also require Major Subcontractors to establish, implement, and maintain comparable quality control and safety programs with respect to their respective portions of the Work. Compliance with the quality assurance plan will not relieve Contractor of any duty, obligation or responsibility under this Agreement.

**4.9 Training.** Contractor shall develop and implement a program to adequately instruct and train personnel made available by Owner on a Subproject by Subproject basis in accordance with the provisions of **Exhibit U**. Notwithstanding any other provision of this Agreement, training materials are not Confidential Information. Contractor grants Owner the right to record all training sessions and replay or otherwise provide such recordings for retraining or training of others. Contractor shall provide technical assistance to Owner's operating personnel in connection with the development of training procedures.

**4.10 Certain Contractor-Provided Items.** Contractor shall provide and pay for all utilities and associated fees (not provided or paid for by Owner pursuant to **Section 5.3**) required in connection with the Work including telephone service, Internet service, Consumables, sanitary facilities, and waste and sewage disposal, including sanitary sewage, and wastewater disposal. Contractor's responsibility for payment shall include all rental, connection, removal, usage, and other costs or fees. Contractor shall provide its own information technology and telecommunications, cable, and satellite communications. Contractor shall be responsible for providing a first fill of all Consumables as well as refills and replacements during the period prior to Commercial Operation. Contractor shall "top off" Consumables, as appropriate, promptly after Performance Guarantee Tests that occur prior to or as a condition of Commercial Operation. Contractor shall use its best efforts to use the same products for Consumables that are used by Owner in the Existing Facilities.

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

#### **4.12 Current Records; As-Built Drawings**

**4.12.1 Extranet and Job Site Documents.** Contractor shall establish a secure Internet-based extranet that will allow Owner to access (including download capability), on a seven Day a week, twenty-four hour a Day basis, all Design Documents (and other agreed Information) as and when produced by Contractor or as otherwise made available to Contractor. Contractor shall submit all Design Documents (and other agreed Information) it is required to submit to Owner hereunder by uploading such Design Documents and Information and immediately sending an e-mail-only notice describing the contents of such upload to the Owner Representative. Contractor shall maintain such extranet on a current basis and ensure that the applicable Design Documents, as appropriate, are marked currently to record changes during the Design process and during construction. Contractor shall design the extranet to allow Owner's Design comments and submissions to Contractor to be uploaded for delivery to Contractor. Contractor shall also maintain at the Job Site one record copy of approved shop drawings, product data, samples and other submittals required by Contractor, all of which must be available for Owner's use at all times. Contractor will provide hard copy Design Documents to Owner upon request. From and after Contractor's mobilization to the Job Site, Contractor shall prepare and display for Owner's benefit on the Job Site a visual depiction, in a storyboard format reasonably acceptable to Owner, of the Work to be performed during the current Month and the following Month.

4.12.2 Transition. Contractor shall maintain such extranet on a current basis until one-hundred and twenty (120) Days following the expiration of the Warranty Period, as it may be extended. At least sixty (60) Days prior to terminating such extranet or Owner's access thereto, Contractor shall provide to Owner (in an agreed electronic format) an organized, searchable, editable, electronic copy of all Design Documents and other Information on the extranet. As-Built Drawings on the extranet must show the final configuration of the Work resulting from all changes made during construction to the Design Documents.

4.12.3 Final Completion. Prior to and as a condition of Final Completion of each Subproject, Contractor shall submit a hard-copy set as well as a set of reproducible record drawings (in formats requested by Owner and CAD disks) showing all changes made during construction to the Design Documents and to the drawings of the Existing Facilities.

**4.13 Transportation and Storage.** Contractor shall arrange and pay for all packing, transportation, freight, unloading, storage, and transfer costs (including duties and other charges) of every kind and nature in connection with the Work. Equipment and other items that are stored at a location other than on the Generating Station Site shall be (i) stored in a manner consistent with the Project Requirements and only at locations that have been identified in writing to Owner and (ii) properly tagged and identified as Owner's property and segregated from other goods not intended for use in, or in connection with, the Facility. Contractor shall arrange for and ensure the security of all such items while in transport or in storage off or on the Job Site. Contractor shall be responsible for arranging all shipments of all Equipment to the Job Site and shall consign such shipments to itself as consignee at the project shipping address, costs fully prepaid. Contractor shall be responsible for making demurrage agreements and settlement with carriers for its shipments. Contractor shall advise Owner in advance of major shipments of Equipment and shall coordinate with Owner the arrival, loading, unloading, and release of carriers' equipment. If Contractor is unable to promptly unload its shipment, Contractor may notify Owner of such inability at least two (2) Days in advance of arrival. Owner, at Contractor's risk, may, but shall not be obligated to, unload or make arrangements for others to unload such shipments and Contractor shall reimburse Owner for reasonable expenses (including internal and Affiliate expenses as well as Third Party expenses) incurred in doing so.

**4.14 Operating and Maintenance Manuals.** Contractor shall prepare and provide to Owner the Operating and Maintenance Manuals for each Subproject in accordance with the requirements of Exhibit V. The portions of the Operating and Maintenance Manuals that pertain to a particular item of Equipment shall be provided no later than thirty (30) Days before delivery of such item of Equipment. In any event, all final, Owner approved Operating and Maintenance Manuals for each Subproject shall be provided prior to Commercial Operation for that Subproject.

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

**4.16 Emergency Response.** Within ten (10) Days after execution of this Agreement, Contractor shall develop and provide to Owner an emergency response plan for use in connection

with emergency situations that may occur on the Generating Station Site and arise out of its performance of (or failure to perform) the Work. Within fifteen (15) Business Days of its receipt of such plan, Owner will provide its comments to Contractor. Contractor shall incorporate Owner's comments into a final version of such plan and revise the plan, as necessary, and issue the final version within fifteen (15) Days of receipt of Owner's comments, but in any event at least fifteen (15) Days prior to mobilization to the Job Site. If such an emergency situation occurs, Contractor may not rely on the services of emergency response teams of Owner and shall put its emergency response plan into effect and take such other actions as are necessary to stabilize and ameliorate the situation. Immediately upon the occurrence of an emergency endangering human health or safety, including environmental harm, or material damage to property, Contractor shall: (i) implement its emergency response plan; (ii) without limiting its other reporting obligations hereunder, immediately orally notify an individual on the Emergency Notification List; (iii) cooperate with Owner by providing information, documentation, and reports as may be appropriate such that both Parties can (a) fulfill all reporting obligations required by Applicable Law and (b) implement procedures appropriate to avoiding a repetition of such occurrence; and (iv) if Owner's emergency response team is at the location of the emergency and informs Contractor's responding personnel that it is taking control of the response, Contractor shall assist as requested and not interfere with Owner's emergency response team.

**4.17 Local Conditions.** Information on the Generating Station Site, Job Site and the Units and Yard Systems that is furnished by Owner in specifications, drawings or otherwise is made without representation or warranty of any nature by Owner, is not guaranteed by Owner, and is furnished solely for the convenience of the Contractor. Contractor represents that it has taken steps necessary to examine and ascertain the nature and location of and all conditions relevant to the Work and its surroundings, and that it has investigated and satisfied itself as to the general and local conditions that can affect the Work, the Job Site, the Generating Station Site, the performance of the Work, or the construction and operation of the Facility, including: (i) conditions bearing upon access, egress, transportation, waste and water disposal, handling, laydown, parking, and storage; (ii) the availability, nature, and conditions of labor, materials, water, electric power, the Internet, other utilities, and roads; (iii) Physical Conditions; (iv) typical uncertainties of weather (*i.e.*, other than weather which constitutes a Force Majeure); (v) the availability and character of Construction Aids, Equipment or other facilities needed preliminary to and during the performance of the Work; (v) the condition of the Existing Facilities; and (vi) the proximity of the Existing Facilities, local residences and businesses. Contractor has conducted a transportation survey to assess the circumstances affecting delivery of Equipment, Consumables, and Construction Aids to the Job Site and assumes the risks related to such delivery. Contractor acknowledges that craft labor and other individuals that are to be present on the Generating Station Site for the performance of all or any portion of the Work will be required to park at near-by and potentially remote locations on the Generating Station Site. Contractor shall provide transportation within the Generating Station Site for such individuals as necessary. Contractor assumes the risk of such conditions and the conditions of the Job Site and other portions of the Generating Station Site on which Work is to be performed as more particularly described in **Section 4.18**. Any failure by Contractor to take the actions described in this **Section 4.17** or **Section 4.18** will not relieve Contractor from responsibility for estimating properly the difficulty, time and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to Owner and without impact to the

Major Contract Milestones. Contractor shall only be entitled to adjustments to Contract Price and Major Contract Milestones to the extent provided in **Articles 9 and 10**.

**4.18 Job Site Conditions.** Contractor has inspected the Job Site, the other portions of the Generating Station Site on which Work or access is to occur, the Existing Facilities, and surrounding locations and has had an opportunity to conduct such tests as it may desire, and has reviewed the information provided by or on behalf of Owner (copies of which are attached or referenced in **Exhibit S** and/or **Exhibit A**) relating to river water conditions and surface and subsurface conditions, to the extent it deems necessary for its purposes, and is familiar with the conditions thereof related to the performance of the Work. Contractor is aware of the karstic character of the Generating Station Site and the Job Site. Contractor further understands the scope of construction activity other than the Work that is and will be undertaken on the Generating Station Site during the term of this Agreement and has taken the inherent constraints associated therewith into account in agreeing to the Major Contract Milestones and the Contract Price. Information provided to Contractor concerning the Job Site, other portions of the Generating Station Site, the Existing Facilities or surrounding areas, including the information provided in **Exhibit S** and/or **Exhibit A**, specifications, Design documentation or otherwise is made without representation or warranty of any kind or nature. Such information is not warranted by Owner to be accurate, complete, or otherwise suitable or sufficient for Contractor's purposes and is provided solely as a convenience to Contractor. Any reliance thereon by Contractor is at its sole risk. Contractor shall have a geotechnical investigation of the Job Site performed within sixty (60) Days of the Effective Date and provide a copy of the geotechnical report to Owner promptly when received from its geotechnical Subcontractor. Differing Conditions will neither be deemed nor constitute an Excusable Event Basis except to the extent that such Differing Conditions meet all three of the following criteria: (i) they are underground conditions, (ii) they are detailed in such geotechnical report and (iii) they are detailed in a written notice Contractor gives Owner within ninety (90) Days of the Effective Date. Notwithstanding the foregoing, the discovery of Pre-Existing Hazardous Substances at the Job Site will be handled as provided in **Article 19**.

**4.19 Witnessing and Inspection Rights.** Owner and its employees, agents, representatives, and invitees are hereby granted access by Contractor to the Work (including the Design Documents) at all times so as to enable them to witness and inspect the Work, including inspection at the point of fabrication, sub-assembly, preparation for shipment or elsewhere. Contractor shall cooperate with Owner in scheduling visits to Subcontractor factories or sub-assembly locations for such Persons for purposes of inspecting the Work. Owner has the right to reject any portion of the Work that does not comply with Project Requirements. Contractor shall also afford Owner with the opportunity to witness the events set forth in **Exhibit X** (Submittals Reviews and Hold Points) and such other events as to which Owner gives Contractor notice. Contractor shall provide written notice to Owner of all events Owner is entitled to witness pursuant to the terms of Subcontracts with Major Subcontractors promptly upon execution of such agreements. Contractor shall provide Owner with reasonable notice (but not less than fifteen (15) Days in each instance) of the schedule of the occurrence of all such witness opportunities and with reasonable advance notice of any rescheduling of all such events. Contractor shall cause such events to appear on the Project Schedule.

**4.20 Use of Site.** Contractor's access to the Job Site and other portions of the Generating Station Site provided for in **Section 5.5.1** shall be subject to the restrictions set forth in **Section 5.5.1** and this **Section 4.20**. Access to perform Work on portions of the Generating Station Site outside of the Job Site will be on an as-needed basis as requested by Contractor sufficiently in advance of such needs to allow Owner to schedule such activities without adversely impacting the operations of or related to any of the Existing Facilities. Contractor shall be entitled to utilize the internal roadways of the Generating Station Site as indicated in **Exhibit S**. Such use is not exclusive and must not interfere with the ongoing operations of the Existing Facilities or other construction or maintenance activities affecting Existing Facilities. Any use of such roadways that could result in such interference shall be subject to the prior written approval of Owner. The Existing Facility has generation serving the needs of ratepayers and other customers and supporting the electrical transmission grid. It is critical that the operation of the Existing Facility not be interfered with or otherwise impaired or put at risk except to the extent absolutely necessary for the performance of the Work (the preceding two sentences outline the "**Existing Facility Requirements**"). Even if such interference, impairment or risk is absolutely necessary, Contractor shall be required to coordinate its applicable activities with Owner so that Owner can act to anticipate difficulties that may thereby arise (and Contractor shall comply with Owner's reasonable instruction such as requiring such activities take place at such times and in such a manner so as to reduce any adverse impact on Owner, ratepayers, other customers, and the electrical transmission grid). Contractor shall confine its operations at the Job Site to areas permitted by Applicable Law and this Agreement and, with respect to the Existing Facilities or other areas of the Generating Station Site where Work is to be performed, the instructions of Owner. Notwithstanding anything in this Agreement to the contrary, Contractor may not interfere with the conduct of the Existing Facilities (including operations, maintenance, construction, deliveries, and other activities) or any business operating adjacent to or in close proximity to the Job Site or the Generating Station Site. Contractor shall coordinate the performance of the Work with the requirements and business operations of the Existing Facilities and maintenance and construction activities related thereto. Contractor shall prepare a Job Site coordination plan to be delivered to Owner no later than forty-five (45) Days prior to Contractor's mobilization to the Job Site, setting forth the procedures and guidelines to be implemented by Contractor, Subcontractors, and Owner to maximize site coordination and minimize the likelihood of interference and any adverse effect therefrom on the operations of the Existing Facilities. Owner will be entitled to review and comment on such plan and Contractor shall incorporate any such comments into the final version of such plan. Contractor shall also implement and enforce rules necessary for safe, efficient, and proper prosecution of the Work. At a minimum, Contractor, Subcontractors, and their respective employees and invitees shall be subject to and shall strictly comply with the health, safety, and environmental protection procedures and regulations established by Owner, including the procedures and regulations set forth in **Exhibit H**, as they may be changed from time to time in the sole discretion of Owner. Failure to strictly comply with the requirements of **Exhibit H** shall be grounds for exclusion from the Job Site, the Generating Station Site or the Existing Facilities, at the sole discretion of Owner, and any adverse consequence thereof shall be borne by Contractor. In addition, Contractor shall:

- (i) use, and shall cause all Subcontractors and their respective employees to use, only such gate(s) for access to the Job Site, as identified in **Exhibit S**, except as otherwise designated by Owner. Contractor shall not load, or permit to be loaded,

any part of the Work in such fashion that may damage any part of the Work or endanger safety. Equipment, Consumables, and Construction Aids must be received, stored and routed, and all waste and demolition debris shall be routed and stockpiled in strict accordance with the Job Site coordination plan prepared by Contractor and approved by Owner, as described above;

- (ii) be responsible for the security of the Work and the Job Site, it being acknowledged by Contractor that neither Contractor nor Subcontractors are entitled to rely on any security measures or procedures in place at the Generating Station Site for the protection of individuals or property;
- (iii) at least forty-five (45) Days prior to Contractor's mobilization to the Job Site, Contractor shall develop and provide to Owner a temporary facilities plan. Within fifteen (15) Business Days of its receipt of such plan, Owner will provide its comments to Contractor. Contractor shall incorporate Owner's comments into a final version of such plan and revise the plan, as necessary, and issue the final version at least fifteen (15) Days prior to mobilization to the Job Site. Thereafter, Contractor shall implement the provisions of the plan, confine temporary structures, machinery, and other property of Contractor (and Subcontractors), and the storage of Equipment, Consumables, and Construction Aids to the laydown or other areas more specifically identified in **Exhibit S**, or otherwise provided in the plan, permitted by Applicable Law, by this Agreement and by Owner. Temporary structures shall be neat in appearance, must not constitute a fire or any other safety hazard and must be properly maintained;
- (iv) obtain approval from the Owner Representative prior to performing any Work on the Generating Station Site that is not wholly within the Job Site. Requests for a work order shall be made in writing on the appropriate form set forth in **Exhibit F-7** (as such form may be modified by Owner from time to time) within a reasonable time prior to the need therefor. Contractor understands that it must consult with the Owner Representative to assure that operation of the Existing Facilities will not be adversely affected by the Work to be performed and that decisions made by the Owner Representative hereunder will be based upon the operating, maintenance, and other requirements of the Existing Facilities. Contractor further understands that certain activities associated with the Work will require advance notice or approval of Owner, including submission and approval of forms completed by Contractor. The forms to be submitted by Contractor are set forth in **Exhibit F-7** and must be completed and submitted to the Owner Representative a reasonable time prior to the time Contractor needs to conduct the subject activity;
- (v) except as expressly permitted with the prior written consent of Owner, not deliver any Equipment or perform any Work that would be considered "heavy construction" except on Business Days between the hours of 6 a.m. to 7 p.m. Contractor shall not schedule deliveries during hours that school bus transportation is scheduled to utilize roads in the general vicinity of the Generating Station Site. Contractor shall strictly comply with all applicable sound regulations or restrictions



imposed by Applicable Law to which the construction activity, the Work, or the Existing Facility is subject;

- (vi) no less than forty-five (45) Days prior to Contractor's mobilization to the Job Site, Contractor shall provide to Owner a construction environmental control plan in connection with the Work for the purpose of properly managing the sediment control, erosion, fugitive dust, storm water runoff, noise, and other adverse environmental impacts of construction, all in conformance with the Project Requirements. Within fifteen (15) Business Days of receipt of the plan, Owner shall provide comments to Contractor and Contractor shall incorporate Owner's comments into the final version of such plan which Contractor shall submit to Owner no less than fifteen (15) Days prior to the date on which Contractor mobilizes to the Job Site. Thereafter, Contractor shall implement the provisions of the plan; and
- (vii) no less than forty-five (45) Days prior to Contractor's mobilization to the Job Site (but in any case at least fifteen (15) Days prior to bringing any Hazardous Substances onto the Job Site), Contractor shall provide to Owner a Hazardous Substances management plan ("**Hazardous Substances Management Plan**") that it will vigilantly implement during performance of the Work on any portion of the Generating Station Site. Such plan, at a minimum, must incorporate the Generating Station policies and procedures and require Contractor to cooperate and coordinate with Owner. Within fifteen (15) Business Days of receipt of the plan, Owner shall provide comments to Contractor and Contractor shall incorporate Owner's comments into the final version of such plan which Contractor shall submit to Owner no less than fifteen (15) Days prior to the earlier to occur of bringing any Hazardous Substances onto the Job Site or the date on which Contractor mobilizes to the Job Site. Thereafter, Contractor shall implement the provisions of the plan.

**4.21 Compliance with Applicable Law.** Contractor shall comply, and shall cause Subcontractors to comply, with Applicable Law in effect from time to time relating to the Work and/or the Facility, and shall give all applicable notices pertaining thereto. Contractor shall ensure that the Facility, as designed, engineered, and constructed, complies and, when fully integrated into the Units and Yard Systems and operated in accordance with Prudent Utility Practices, will be capable of complying with Applicable Law.

**4.22 Permits and Approvals.** Contractor shall secure and pay for any and all Permits necessary for the proper execution and completion of the Work, except Owner Permits. Contractor shall maintain and comply with all Permits and monitor and keep accurate records of the status of all Permits. Permits obtained by Contractor shall be maintained on the Job Site and copies shall be available to Owner on request.

**4.23 Periodic Reports and Meetings.**

4.23.1 Monthly Status Report. Within ten (10) Days after the end of each Month after the Effective Date, Contractor shall prepare and submit to Owner a status report, covering the previous Month, that will be prepared in a manner, level of detail, and format

acceptable to Owner and that must include: (i) a detailed description of the progress of the Work and activity status, including a critical path method chart illustrating the progress which has been made during the Month which is the subject of the status report together with an updated Project Schedule pursuant **Section 6.4** and a comparison of the updated Project Schedule with the Project Schedule provided with the immediately previous monthly status report; (ii) a statement of any significant issues and trends, including Adjustments for Change Orders, Change Determination Requests and claims related to Excusable Events that remain unresolved, and Contractor's recommendations for resolution of the same; (iii) an updated report as to Contractor's adherence to the Project Schedule; (iv) a summary of any significant events that are scheduled or expected to occur in connection with the Work during the following thirty (30) Days; (v) a description and status of quality assurance issues identified by Contractor, a Subcontractor or Owner; (vi) status of significant Equipment deliveries; (vii) a report on safety program performance and results for the previous Month, including statistics, lost time accidents, OSHA recordables and near misses, as well as root causes and corrective actions; (viii) the Monthly reports required pursuant to **Section 25.23.3**, (ix) the information required by **Section 11.3**; (x) the report required by **Section 10.4**, and (xi) such additional information reasonably requested by Owner. Contractor shall also comply with the requirements of **Exhibit M**.

**4.23.2 Attendance and Participation.** Until Final Completion of the last Subproject to achieve Final Completion, Contractor shall attend and participate in meetings on a daily, weekly, and Monthly basis between Contractor and Owner for the purpose of discussing the status of the Work and anticipating and resolving problems. So long as procurement of Equipment has not been completed, there shall be one meeting at least each Month (with the first meeting occurring within thirty (30) Days of the Effective Date) at which the status and planning of Contractor's procurement effort (including with respect to **Section 25.22**) is discussed with Owner. Such meetings may also include other Persons at the invitation of Owner, such as consultants of Owner; **provided**, such Persons execute reasonable and customary agreements to maintain Work-related information on a confidential basis. Other Persons shall be permitted to attend with the prior consent of Owner. Contractor shall prepare and distribute notes of Monthly meetings for Owner's comments, which Contractor shall incorporate into the notes. Publication or distribution of (or Owner's comments on) notes of such meetings shall neither constitute a notice pursuant to **Section 25.5** for any purpose under this Agreement nor a waiver, Modification, or other permitted basis to assert Claims under this Agreement. No implication whatsoever shall be drawn as consequence of a failure by any Party to comment upon or object to meeting notes prepared or distributed by the other Party.

**4.24 Signage.** Contractor shall not display, install, erect, or maintain any advertising or other signage at the Generating Station Site without Owner's prior written approval (which Owner may withhold at its sole discretion), except as may be required by Applicable Law.

**4.25 Spare Parts.** Contractor shall provide and properly store and maintain in strict accordance with manufacturer's requirements all spare parts, including start-up and commissioning spare parts, prior to Mechanical Completion for each Subproject, in accordance with Project Requirements. Spare parts must be equivalent or better to and interchangeable with

the original parts they are intended to replace. Such spare parts must be of the same material, of identical manufacture, and must present the same properties as the corresponding parts of the Equipment (except to the extent upgraded by the manufacturer thereof). Spare parts must be properly treated and packed for prolonged storage, considering Job Site ambient conditions. All boxes and packing must be labeled, marked and numbered for identification and a detailed packing list shall be provided by Contractor. Contractor shall deliver spare parts (other than commissioning spares) to storage locations specified by Owner. Contractor shall implement all necessary precautions for proper storage. Contractor shall give Owner the right to purchase, at no more than Contractor's out-of-pocket cost, any surplus items on the Job Site upon Final Completion. Contractor shall be entitled to use any spare parts that are acquired by Owner and are then available on the Job Site; **provided**, that Contractor shall place and expedite an order to replace the spare parts it uses immediately and any such parts shall be replaced DDP (Incoterms 2010) Job Site as soon as possible at Contractor's expense. For each Subproject, Contractor shall provide to Owner a list of strategic and other spare parts that Contractor and Subcontractors recommend be purchased to maintain reliable operations. Such spare part list shall (i) be in an electronic format fully compatible for downloading into the spare parts monitoring software maintained by Owner or in such other format as Owner may designate, (ii) identify for each such part the price (which shall be valid for no less than twenty four (24) Months after Commercial Operation), the manufacturer and other vendors, the manufacturer's part name and the manufacturer's part number, expected shelf and useful lives, typical delivery lead times, and such other information as set forth in **Exhibit F-11** or otherwise reasonably requested by Owner, and (iii) be delivered no later than one hundred eighty (180) Days prior to the Scheduled Mechanical Completion Date of the applicable Subproject (provided, that the entries of such list that pertain to a particular item of Equipment shall be provided no later than sixty (60) Days after a purchase order, purchase contract, or other commitment or agreement is issued by Contractor to procure such item of Equipment, if earlier). At Owner's request, Contractor shall purchase and sell to Owner spare parts in addition to those required to be provided under the Technical Specification. The charge to Owner for such additional spare parts shall be Contractor's out-of-pocket cost for such parts. Contractor will cooperate with Owner to determine the best pricing for obtaining spare parts. The decision of whether and what spare or replacement parts Owner is to purchase is Owner's alone.

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

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

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

**4.29 Cleaning Up.** Contractor shall, at all times during the term of this Agreement, keep the Job Site, other portions of the Generating Station Site and surrounding streets (whether public or private), properties, waterways, sidewalks, and other areas where Contractor performs Work free from accumulations of waste materials, rubbish, dirt, debris and other garbage, liquid and non-liquid materials whether spilled, dropped, left behind, discharged, blown out, or leaked during performance of the Work. Contractor shall maintain its working, storage, laydown, and parking areas in a clean and non-hazardous condition, and shall employ adequate dust control measures. Contractor must provide adequate tire washing facilities for trucks leaving the Job Site and/or the Generating Station Site. Contractor shall properly maintain Equipment and Systems containing any Hazardous Substances. Contractor shall repair (if necessary) roads and other infrastructure (internal, public or private) on or in the vicinity of the Job Site and the Generating Station Site that are adversely affected by Contractor (or Subcontractors) and their employees, agents and representatives' construction activities or traffic, as needed. Hazardous Substances, including chemicals used by Contractor or Subcontractors, must be properly handled and must be properly disposed of off of the Generating Station Site. Prior to Final Completion of the last Subproject to achieve Final Completion, Contractor shall clean up and restore the entire Job Site (including laydown, parking, and construction areas), including, the removal of all tools, trailers, surplus, temporary power cables, laydown gravel, waste materials and rubbish, and cleaning of all glass (inside and out), removal of all paint spots and other smears, stains or scuff marks, cleaning of all plumbing and lighting fixtures, washing of all concrete, tile, and finished floors, and otherwise leaving the Job Site and the Generating Station Site where Work was performed or otherwise utilized by Contractor neat and clean. If Contractor fails to take the actions required by this **Section 4.29**, Owner may do so (or cause it to be done) and the cost thereof will be charged to Contractor.

**4.30 Waste Disposal.** Contractor is responsible for disposal of all wastes generated by it or Subcontractors during the performance of the Work, including Hazardous Substances, waste water, sanitary wastes, demolition debris, construction debris, spoil, surplus excavation material, driven water, office wastes, and wastes related to preparation, commissioning, testing, and start-up of Systems or Equipment. Whenever feasible, Contractor shall recycle waste metal (e.g., steel metals, pipe and copper) and all proceeds from such recycling shall be credited to the Owner. All such wastes must be handled, stored, or disposed of in accordance with Applicable Law in a suitable off-site location except to the extent otherwise directed by Owner in writing. All costs related to such waste disposal are the responsibility of Contractor.

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

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of soil, natural streams or other bodies of water (whether documented or undocumented) in violation of any Applicable Law.

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

**4.33 Deliveries by Truck or Rail.** Contractor shall provide Owner with reasonable advance notice of any delivery of Equipment that is to arrive: (i) by truck and is oversized or is extraordinary in any other material way or (ii) by rail.

**4.34 Artifacts and Other Valuable Items.** If Contractor should discover any artifact, fossil or other items of historical, religious, monetary, geological, archeological or other value, it shall immediately cease Work in the immediate vicinity thereof, notify Owner and take reasonable actions to preserve and protect such items from damage or theft. All such items are the property of Owner and Owner shall provide Contractor with direction on how to proceed.

**4.35 Release.** Contractor is responsible for making all investigations and determinations necessary or desirable for it to enter into this Agreement. Contractor hereby releases Owner from any and all Liabilities in any way arising out of any information, document, statement or report related to the Existing Facilities, the Job Site or the Generating Station Site. Contractor expressly disclaims any entitlement to any Modification based on its reliance on information, actions or omissions or Owner with respect to any information, document, statement or report related to the Existing Facilities, the Job Site or the Generating Station Site set forth herein or otherwise provided by or on behalf of Owner.

**4.36 Covering.** No portion of the Work (including foundations) may be covered or otherwise be made inaccessible for inspection without (i) conducting (and passing) any test or inspection (and allowing Owner to conduct any inspection) required pursuant to this Agreement and (ii) allowing Owner to inspect such Work if a Hold Point has been established in relation to such Work. If any Work is covered or made inaccessible for testing or inspection in violation of the previous sentence, Contractor shall uncover (or make accessible) such Work and pay all costs resulting therefrom, including recovering or reinstallation costs. There will be no adjustment to the Contract Price or Major Contract Milestones or other Modification in connection therewith. In addition, if Owner request to inspect any other portion of the Work (including foundations) that have been covered or otherwise made inaccessible, Contractor shall uncover it or otherwise make it accessible for inspection and (i) if such portion of Work is in accordance with the requirements of this Agreement, such uncovering and replacement will constitute an Excusable Event Basis and (ii) if such portion of Work is not in accordance with the requirements of this Agreement, Contractor shall pay all costs related to such uncovering and replacement and there will be no adjustment to the Contract Price or Major Contract Milestones or other Modification in connection therewith.

**4.37 Administrative Facilities.** Contractor shall provide adequate furnished office facilities for Owner's personnel in Contractor's offices in Atlanta, Georgia, during the Design and procurement phase of the Work. Contractor shall provide temporary office facilities for itself and the Subcontractors on the Generating Station Site. Such facilities, together with office equipment, sanitary facilities, and communications services are to be provided in accordance with the Technical Specification.

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



**4.40 Documentation Requirements or Standards.** Contractor shall provide all drawings required for design, construction, and as-built in accordance with documents contained in Exhibits A and X.

**4.41 Basis of Bid.** On or before the Effective Date, Contractor made available to Owner a detailed line-item estimate of the Work that constitutes the agreed upon basis for the Contract Price and the schedule for the performance of the Work (the "**Basis of Bid**"). Owner and Contractor have initialed each page thereof for identification. Contractor represents that the Basis of Bid constitutes the most detailed analysis and pricing and schedule build-up used by Contractor for determining its proposed pricing submitted in response to Owner's request for quotation (updated to reflect any changes from Contractor's original quotation so that the Basis of Bid reconciles in total to the Contract Price and Major Contract Milestones), including the detail for each and every direct and indirect estimated cost and mark-up (e.g., margin, contingency, etc.). From and after the Effective Date, Contractor shall provide Owner's personnel (or their designees) with unlimited access to the Basis of Bid, which access, upon

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Contractor's mobilization to the Job Site shall be at the Job Site. Contractor shall supplement the Basis of Bid from time to time to reflect any Modifications.

**4.42 Construction Equipment.** Contractor shall ensure that all construction equipment used in the performance of the Work on the Job Site shall be in first-class operating condition, safe, fit for the uses for which intended and suitable for the safe, legal and efficient performance of the Work and protection of the environment. Any such equipment that is not conforming with the foregoing shall be promptly removed by Contractor, and replaced with proper equipment.

## ARTICLE 5

### OWNER RIGHTS, DUTIES AND OBLIGATIONS

**5.1 Key Personnel.** Owner shall designate, from time to time, one or more individuals who will act on Owner's behalf, in connection with the Work, together with the scope of their authority. Among such designees there shall be appointed a principal representative of Owner (the "**Owner Representative**"), who will be Owner's authorized representative, and who will receive and initiate all communications from and with Contractor (other than Notices, which shall be made in accordance with **Section 25.5**) and who will be authorized to render decisions related to the Work and bind Owner.

**5.2 Owner's Review.** Owner will be entitled to review, comment on, evaluate, or approve the Design Documents and other submittals as provided in **Exhibit A** and **Exhibit X**. Contractor shall consider Owner's comments in good faith; **provided, however**, Owner will not have any responsibility or liability for the accuracy or completeness of such documents, for any Defects therein or for any failure of such documents to comply with the requirements set forth in this Agreement, the responsibility for all of the foregoing matters being the sole obligation of Contractor. Contractor shall advise Owner in writing of the disposition of each of the comments.

**5.3 Owner Provided Items.** Owner shall provide to Contractor the items listed in **Exhibit Q** in the quantities listed in **Exhibit Q**. Additional quantities shall be made available by Owner, subject to availability, at Contractor's expense. There are no other items to be provided by Owner, including items necessary for start-up.

**5.4 Right to Apply Monies.** Owner shall have the right to deduct from any funds or monies due or to become due to Contractor (and/or use or draw on any of the Contract Security) any amounts actually due to Owner from Contractor as a result of any Liabilities or unfulfilled obligations for which Contractor is responsible pursuant to the terms and provisions of this Agreement.

#### **5.5 Access and Inspection.**

**5.5.1 Access to Site.** Owner shall provide reasonable, non-exclusive access to the Job Site, other portions of the Generating Station Site, and the Existing Facilities on which Work is to be performed to Contractor and Subcontractors, subject to Applicable Law, applicable Generating Station Site regulations, the concurrent use by Owner and its

contractors to operate, maintain, modify and otherwise utilize the Generating Station Site, and the terms of this Agreement.

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

5.6 **Owner Permits.** Owner is responsible for obtaining Owner Permits.

5.7 **Right to Carry Out the Work.** If a portion of the Work is Defective, Contractor defaults under this Agreement, or otherwise neglects to carry out the Work in accordance with this Agreement and fails within a seven (7) Day period after receipt of written notice from Owner to commence and diligently continue curing such Defect, default, or neglect, Owner, without prejudice to any other rights or remedies Owner may have under this Agreement, including declaring Contractor in default, and with or without terminating this Agreement, may correct such Defect, default, or neglect at Contractor's expense (including Owner's internal, general, and administrative expenses) and Owner shall have the right to: (i) deduct an amount equal to the amounts incurred by Owner in so doing from amounts due or to become due to Contractor; (ii) use or draw on the Contract Security for such amounts; and/or (iii) obtain reimbursement of such amounts from Contractor. The correction of a Defect, default, or neglect by Owner pursuant to the previous sentence will not limit or void Contractor's warranty; **provided**, the correction of such Defect, default, or neglect by Owner is in accordance with Contractor's reasonable recommendations or, in the absence thereof, Prudent Utility Practices.

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

5.9 **Operating Personnel.** Subject to **Section 6.14**, at such time as Contractor has achieved Mechanical Completion (except for the Tie-ins) for each Subproject, it may commence the Tie-ins of that Subproject. Upon the first Tie-in, the commissioning of the Subproject shall commence and shall continue until commissioning is completed after the final Tie-in. Owner shall operate the Units or Yard Systems (as improved by the Subproject) from and after Mechanical Completion of that Subproject with its normal complement of personnel working normally scheduled shifts. Contractor shall communicate with supervisory personnel identified by Owner to convey any directions with which it wants Owner to comply regarding the operation of the Subproject during commissioning, hot testing, and the Commercial Operation Test and any Extra Tests. Owner shall undertake to operate Subproject in accordance with such directions to the extent such directions are consistent with Prudent Utility Practices and comply with Applicable Law. If Contractor directs Owner's operation of the Facility and such direction is responsible for damage to any of the Units, Yard System or the Facility, Contractor shall: (i) reimburse Owner on demand for correction of such damage within any of the Units or Yard Systems; (ii) correct damage within the Facility; and (iii) pay liquidated damages for each resulting Unit Outage Hour, if any, in accordance with **Exhibit L**. Contractor understands that



each of the Units is a critical generating resource for Owner and consequently Contractor will exert maximum efforts to give directions that are consistent with Owner's requirement to maximize Unit operations on an unrestricted basis. If Contractor desires or needs to have additional technical personnel and/or special monitoring or measuring equipment for any tests, then Contractor shall furnish such personnel or equipment at no cost to Owner. Operating personnel supplied by Owner pursuant to this **Section 5.9** shall be under the direct technical supervision and control of Contractor while on the Job Site and performing or assisting Contractor to perform any portion of the Work. Contractor shall reimburse Owner for the reasonable cost of overtime that Owner incurs with respect to operating personnel provided pursuant to this **Section 5.9**.

**5.10 System Needs.** Each of the Units is a critical generating resource for Owner and must be continually available for full operation, including after each Tie-in commences. Thus, Contractor shall plan and implement its Work in such a fashion to ensure that the Units can be so continually operated and that each Subproject shall achieve Substantial Completion by the applicable Guaranteed Substantial Completion Date. Contractor will prepare plans for Contingency Arrangements for each Subproject. If at any time between the Guaranteed Substantial Completion Date and the Commercial Operation Date for a Subproject, the Subproject does not meet the Minimum Required Performance, Contractor shall put the appropriate Contingency Arrangements into effect at its cost and risk. Contractor expressly disclaims any entitlement to (i) any Modification based on Contractor's costs or other impacts of preparing and/or implementing Contingency Arrangements, including the provision of treatment and transportation of Process Water/CCR and (ii) use or cause Owner to use the existing Process Water/CCR treatment, transportation (e.g., hydroveyors), and disposal locations (e.g., ash and gypsum ponds) as all or part of the Contingency Arrangements except to the extent consented to by Owner, which consent may be denied at Owner's sole discretion. If Owner does give such consent, Contractor shall be responsible for all costs associated with maintaining and repairing such facilities in connection with such use, except that Owner will provide operators for routine operation of such equipment. For avoidance of doubt, such Contingency Arrangements may include treating and/or transporting the Process Water/CCR using Subprojects before they have achieved Commercial Operation, so long as it can be done (a) safely and (b) in accordance with all Applicable Laws and Prudent Utility Practices. Any outage or derate of any of the Units that arise as a result of Contractor's failure to comply with this **Section 5.10** shall be subject to liquidated damages under **Section 7.1**. In addition, if at any time prior to Commercial Operation Date for a Subproject, that Subproject (or the performance of the Work) causes a spill of Process Water/CCR (or any other accidental or intentional placement of Process Water/CCR into a location other than to which such Process Water/CCR is intended to be deposited (e.g., fly ash into the fly ash silo) or fails to properly treat Process Water/CCR (e.g., causes it to have too little or too much moisture), then Contractor shall be responsible for remediating such condition (e.g., cleaning, reconditioning, disposal (to an Owner owned or controlled disposal location), etc.); provided that in all cases, Contractor shall not be responsible for any spill that is a result of the Owner's (and those for whom Owner is responsible) acts or omissions (e.g., failure of Owner's operators to comply with the Operating and Maintenance Manuals).

**5.11 Contractor's Personnel.** Owner has the right to object to any representative or Person employed or otherwise engaged by Contractor that engages in misconduct, is believed by

Owner to lack competence for the tasks assigned, or to be disruptive or negligent while on the Job Site or the Generating Station Site. Contractor shall remove such Person from the Job Site or the Generating Station Site, as applicable, upon receipt of Owner's notification to Contractor's Representative. Any cost for replacement Persons will be at Contractor's expense. The rights of Owner under this **Section 5.11** are in addition to the rights of Owner with respect to the personnel pursuant to **Section 4.6**.

**ARTICLE 6**

**PROJECT SCHEDULE**

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**ARTICLE 7**

**LIQUIDATED DAMAGES AND LIABILITY LIMITATIONS**

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**ARTICLE 8**

**CONTRACTOR'S COMPENSATION**

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

[REDACTED]

(the "Contract Price"). The Contract Price shall only be adjusted, (i) in accordance with **Exhibit O** with respect to any Options exercised by Owner and (ii) with respect to Change Orders and Excusable Events pursuant to **Articles 9 or 10**. Contractor shall receive the Contract Price as full compensation for the performance of the Work and its other obligations hereunder whether or not Contractor has properly estimated or anticipated the costs required to fully perform its obligations under this Agreement. The Parties agree that as of the Effective Date, Owner may have made progress payments to the Equipment Suppliers under the Equipment Contracts, which amounts, upon Owner's assignment of the Equipment Contracts to Contractor, will have been made for the benefit of Contractor. Accordingly, notwithstanding

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anything to the contrary herein, Owner shall be entitled to deduct the aggregate amount of its payments to the Equipment Suppliers under the Equipment Contracts from the first amounts due and owing to the Contractor hereunder.

## 8.2 Taxes.

8.2.1 Tax Cooperation and Information. Contractor shall pay all payroll and other related employment compensation taxes for Contractor's employees; federal, state and other taxes that may be assessed on Contractor's net income, net worth, license, privilege, or gross receipts (other than taxes that are designated as sales or use taxes) arising from this Agreement; taxes, duties, excise fees, and other costs associated with the importation or exportation of Equipment, Consumables, Construction Aids, or services; other fees, royalties and assessments of any nature in connection with the Work, contributions and taxes for which Contractor is liable under **Sections 8.2.3 and 8.2.6**, and engineering and business license costs (collectively, the "**Contractor Taxes**"). Sales or use taxes required under Applicable Laws to be (i) collected by Contractor from Owner, or (ii) paid by Contractor or any Subcontractor (and for which no exemption is available) in connection with purchases or sales of Equipment or Consumables required for performance of the Work, (collectively "**Sales Taxes**") including sales or use taxes on Equipment and Consumables provided by Contractor, shall be administered by Contractor in accordance with **Sections 8.2.4 and 8.2.6**. The Contract Price includes Contractor Taxes and excludes Sales Taxes (other than those included in Contractor Taxes). Contractor shall be reimbursed for the full amount of Sales Taxes (other than those included in Contractor Taxes) properly paid by Contractor or Subcontractors in accordance with this Agreement on a Monthly basis at the time Contractor receives payments pursuant to **Section 8.5**, subject to the documentation requirements of **Section 8.6**.

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

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

8.2.4 Sales and Use Taxes. Certain items of Equipment and Consumables purchased in the performance of the Work may be exempt from Sales Taxes in accordance with KRS 139.470 and KRS 139.480 and any successor provisions or similar provisions. Owner is responsible for notifying Contractor in a timely manner as to the nature of items that are exempt from Sales Taxes and, upon Contractor's request, Owner will promptly provide Contractor with tax exemption certificates which, when properly utilized by

Contractor, will allow Contractor to purchase such items from Subcontractors without payment of Sales Taxes. Contractor shall present such certificate to the Subcontractor on a timely basis as needed to qualify for the applicable exemption.

8.2.5 Indemnity and Assessment. Owner shall defend and indemnify and hold Contractor harmless from and against any and all Claims for, and resulting liability for Sales Taxes and related penalties and interest, and any dispute resolution costs and attorneys' fees that may be asserted on all items which Contractor purchased under resale or other exemption certificates provided by Owner and for which Sales Taxes are later assessed by Governmental Authorities; **provided**, that any resulting liability is not caused by the act or omission of Contractor. With Contractor's consent, Owner, at its own expense, will have the right to direct the basis on which any tax assessment will be paid or contested and to control any contest leading to the settlement of assessed taxes. Notwithstanding anything to the contrary herein, Owner retains the right to choose the attorneys who will represent Contractor or Owner's interests regarding any tax assessments and/or litigation. Contractor shall cooperate with Owner in connection with any audit or contest.

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

8.2.7 Tax and Accounting Information. Contractor shall provide assistance as reasonably requested by Owner or its tax consultant(s), in confirming eligibility and qualification for exemptions from Sales Taxes (and any other exemptions, deductions, credits and the like) to the relevant Governmental Authorities. From time to time during the term of this Agreement and within thirty (30) Days of a request therefor, Contractor shall provide Owner with information, including regarding quantities, descriptions, costs, and allocations of property acquired in connection with the Work as reasonably requested by Owner in connection with the preparation of Owner's tax returns, Owner's defense of its tax treatment of such items, for the purpose of satisfying regulatory requirements or as otherwise required in connection with calculating, obtaining exemption from, or rebate of, Sales Tax. Contractor agrees to participate in any Sales Taxes exemption or other exemption or rebate programs identified by Owner, to complete and deliver the applicable documentation to obtain tax-exemption for purchases made by Contractor, including for Equipment, and to pass any Sales Tax savings or rebates through to Owner.

8.3 Progress Payments. Owner shall pay Contractor for the Work in Monthly installments based upon the full and verified completion of milestones in accordance with **Exhibit C**, not to exceed the applicable maximum Monthly amounts set forth in **Exhibit C** for each Month. If there is a change to the Contract Price or Major Contract Milestones pursuant to **Articles 9 and 10**, the Parties will equitably adjust **Exhibit C** as may be appropriate. In addition to milestone payments, Applications for Payment shall include all amounts due Contractor for any Work performed by Contractor for which under this Agreement Contractor is entitled to compensation on a time and material or similar basis of compensation. For purposes of determining Contractor's compensation for such Work, Contractor's cost shall be net of

Applicable Credits. The term “**Applicable Credits**” means any and all refunds, rebates, credits, discounts, or similar amounts whether based on quantity, volume, or any other factor, (including any interest thereon) received by Contractor or to which Contractor is or will be entitled in connection with its performance of the Work.

**8.4 Application for Payment.** On or before the tenth (10th) Day of each Month, Contractor shall furnish Owner with an Application for Payment for (i) amounts that have come due under this Agreement for Work completed through the last Day of the previous Month, accompanied by the items required by **Section 8.6** and (ii) other amounts that have come due under this Agreement, accompanied by substantiating data. Each Application for Payment submitted by Contractor that seeks payment for Work involving the removal, alteration, or destruction of any portion of the Existing Facilities, including any of the Units, must separately identify: (i) Unit involved, (ii) the removal, alteration, or destruction Work performed, and (iii) the portion of the Contract Price associated with such removal, alteration, or destruction. Applications for Payment shall be furnished to Owner as follows (or as Owner otherwise designates from time to time by written notice to Contractor):

Original: 

Copy: 

**8.5 Payment of Substantiated Amount.** Owner shall pay Contractor the amount of each Application for Payment which has been substantiated by Owner, less amounts properly withheld hereunder. Owner shall make such payment within thirty (30) Days after receipt of the complete Application for Payment, subject to the provisions of this **Article 8**. If Owner fails to make a payment in respect of a substantiated Application for Payment when due or improperly withholds amounts due to Contractor, interest will accrue on such overdue amounts at the Agreed Rate from the date such amount was due to have been paid to and until (but not including) the date it is paid. Contractor understands and agrees that Owner’s payment determination under this **Article 8** may be made in conjunction with the Financing Parties and that approval of the Financing Parties may be required prior to making payment in accordance with this **Article 8**, subject to payment being due within thirty (30) Days after receipt of the completed Application for Payment. Payments made to Contractor in respect of Work performed by Subcontractors constitute trust funds for such Subcontractors and shall not be commingled by Contractor with other funds of Contractor or its Affiliates.

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



- (i) a duly executed or acknowledged Contractor's certification stating that: (a) all Subcontractors have been paid amounts properly due under their respective Subcontracts and identifying all Major Subcontractors with whom Contractor has entered into Subcontracts; (b) the applicable Work has been performed in accordance with and complies with this Agreement; (c) it has reviewed all financial information contained in the Application for Payment and it is true, correct and complete; (d) no Liens or Claims (other than as listed in that certification) have been filed or commenced in connection with the Work, and (e) no Excusable Event Basis (other than as listed in that certification) has occurred since the previous Application for Payment;
- (ii) a detailed description of the Work performed during the period as to which the Application for Payment relates; photographic and other documentation of the status and completion of the Work; reasonable documentation demonstrating achievement of milestones and otherwise demonstrating the earned value of the Work; for any Work performed by Contractor for which under this Agreement Adjustments to the Contract Price and/or Major Contract Milestones are to be made but Contractor and Owner have not agreed to both a lump sum Contract Price Adjustment and a fixed Major Contract Milestone Adjustment, Contractor shall submit to Owner a detailed breakdown in a form reasonably acceptable to Owner substantiating the (a) Amount of such Adjustments with respect to the applicable Work performed (or eliminated) during the Month and (b) any amount due with respect thereto;
- (iii) duly executed partial or final lien waivers, as appropriate, in the forms set forth in **Exhibit F-5** from Contractor and from all Major Subcontractors that are to receive payment. The final Application for Payment must be accompanied by final and full waivers of Claims and Liens from Contractor and, to the extent not previously provided, Major Subcontractors entitled to receive payment in connection with the performance of the Work, each in the forms set forth in **Exhibit F-5**;
- (iv) a copy of the status report pursuant to **Section 4.23.1** for the Month covered by the Application for Payment;
- (v) a copy of all invoices pursuant to which Contractor has paid Sales Taxes for which it seeks reimbursement; and
- (vi) such other information, documents, and other materials: (a) reasonably requested by Owner or required by this Agreement or (b) as may be required by the laws or customs of the jurisdiction in which the Job Site is located in order to protect the owners of the Generating Station Site from Liens or Liabilities.

**8.7 Accrual Notification.** For Owner's accounting purposes only, by 12:00 PM (Louisville, Kentucky time) on the last Business Day of each Month Contractor shall e-mail Owner (i) a list of all Work (e.g., milestones) that has or will be completed that Month for which Contractor will be entitled to submit an Application for Payment the next Month and the amounts that will

become due with respect thereto and (ii) such other information that Owner may reasonably request. The email shall be sent to:

[REDACTED]

with a copy to:

[REDACTED]

**8.8 Withholding to Protect Owner from Loss.** Owner may, without prejudice to other rights of Owner hereunder, withhold payment on an Application for Payment or any other amount due to Contractor or a portion thereof (or use or draw upon the Contract Security) to the extent such payment is disputed by Owner or because of:

- (i) Contractor's failure to carry out the Work in accordance with this Agreement or any material breach of this Agreement;
- (ii) other amounts due to Owner from Contractor, including liquidated damages then due and owing;
- (iii) the existence of any Defect not yet corrected by Contractor whether or not payment for such Work pursuant to **Section 8.5** has been previously made. Contractor may include such amounts withheld in the next regular Application for Payment made after correction or completion of such Work;
- (iv) an amount equal to [REDACTED] of the cost for a Third Party to complete outstanding Punch List Items. Amounts withheld for completion of Punch List Items may be included by Contractor in the Application for Payment immediately following satisfactory completion of such Punch List Items; or
- (v) Liens filed or Claims commenced by any Person that has performed a portion of the Work unless Contractor has furnished an acceptable bond in an amount equal to [REDACTED] of the amount of such Lien or Claim to protect Owner against such Liens and/or Claims; or
- (vi) the failure of Contractor to properly maintain the Performance Securities (see **Section 8.12.1**).

*[Handwritten signature]*

**8.9 Final Payment.**

8.9.1 Reconciliation. As a condition of final payment hereunder with respect to each Subproject, Contractor shall have submitted a statement summarizing and reconciling with respect to each Subproject all previous Applications for Payment, payments by Owner, and Change Orders, adjustments on account of Excusable Events, and the status of Contract Security. Subject to the provisions of this Agreement, within thirty (30) Days of the receipt of such statement, Owner shall pay Contractor all remaining amounts due with respect to that Subproject. Notwithstanding anything to the contrary contained herein, the final payment will not become due and payable until: (i) a Certificate of Final Completion has been executed by Owner; (ii) Owner has received all Subcontractor warranties, Operating and Maintenance Manuals, electrical drawings and schematic diagrams, Design Documents, performance testing data, As-Built Drawings and such other items as are required by this Agreement; (iii) all certificates of occupancy, Permits, or other approvals required of Contractor have been submitted to Owner; and (iv) the conditions of **Section 8.9.2** and **8.9.3** have been properly completed. The making of final payment constitutes a waiver by Contractor of all Claims against Owner (and its property, including the Facility) with respect to the Subproject not previously made in writing by Contractor. Owner shall make final payment to Contractor within thirty (30) Days after the date that all of the preceding matters have been completed or have otherwise occurred.

8.9.2 Release. As a condition of final payment for each Subproject, Contractor shall submit to Owner a general release and an affidavit, in form and substance satisfactory to Owner, that releases all Claims of Contractor under the Agreement and represents that all indebtedness connected with the Work for which Owner or its property might in any way be responsible has been paid, waived or otherwise satisfied; but if any such indebtedness has not been satisfied, Contractor may satisfy this obligation if it furnishes a bond reasonably satisfactory to Owner to indemnify Owner against any such item of responsibility or obligation.

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

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

**8.11 Payment of Subcontractors.** Contractor shall promptly pay each Subcontractor when due the amount to which such Subcontractor is entitled. Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its sub-



subcontractors on the same basis. Owner has no obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by Applicable Law, in which event Contractor shall immediately reimburse Owner therefor, with interest thereon at the Agreed Rate. Owner shall also be entitled to exercise its rights under **Section 5.4** or **Section 8.12.1** on account thereof. Upon reasonable prior notice, Owner reserves the right to make payments due hereunder directly to Subcontractors from and after such time as Contractor (i) fails to make any payment to a Subcontractor that is properly due or (ii) upon Owner's request, fails to provide adequate assurances that Contractor's financial condition is sufficient to continue to pay such amounts as and when they become due without financial risk to Owner. The amount of any such payment made by Owner directly to Subcontractors shall be reimbursed by Contractor or, at Owner's option, it may be credited against any payments otherwise due from Owner to Contractor or deducted from the Contract Security.

[REDACTED]

[REDACTED]

**8.13 Release of Contract Security.** Upon the occurrence of each Performance Security Threshold, Contractor may request by written notice that the Performance Securities (and/or the applicable cash Contract Security) be reduced to the then Performance Security Required Amount. Each such notice must also certify that the Contract Security Release Conditions have been met. Within ten (10) Days following Contractor's request, Owner shall determine whether the Contract Security Release Conditions have been met, and if so, approve such request. Upon approval, Owner will promptly effect the applicable reduction (e.g., by providing an appropriate letter of credit reduction certificate, exchanging for an Acceptable Letter of credit of a lower amount, etc.) on the Contract Security designated in Contractor's written notice ; provided, that with respect to the occurrence of the Performance Security Threshold after all of the other Performance Security Thresholds have occurred, the applicable reduction shall be the return of all remaining Contract Security.

**8.14 Overpayment** Any overpayment by Owner to Contractor shall be deemed to be a mistake of fact and promptly repaid to Owner upon demand within five (5) Days.

**8.15 Tax and Accounting Information.** Contractor shall provide tax and accounting information for each Subproject reasonably requested by Owner with respect to the Work and Equipment, including information required for submission to Governmental Authorities, cost breakdowns of the Contract Price in accordance with **Exhibit W**, and the other systems of accounts provided by Owner.

## ARTICLE 9

### EXCUSABLE EVENTS AND OWNER-INITIATED CHANGES

#### 9.1 Excusable Events.

9.1.1 Notice. This **Section 9.1** sets forth the terms and conditions for Contractor to obtain relief with respect to impacts caused by an Excusable Event. Contractor shall give notice ("**Excusable Event Notice**") to Owner not more than five (5) Days after the occurrence of any Excusable Event Basis for which it may be entitled to seek relief. The Excusable Event Notice must be given by Contractor before proceeding to execute any additional Work occasioned by the Excusable Event, except as provided in **Section 9.1.3**. Contractor will not be entitled to reimbursement or other recovery for any additional Work related to the Excusable Event Basis performed prior to the receipt by Owner of the applicable Excusable Event Notice except as provided in **Section 9.1.3**. The Excusable Event Notice will, to the extent practicable include the following analyses: (i) the specific nature of the occurrence and detail of the efforts Contractor has made or is going to make to overcome or remove the Excusable Event Basis and to minimize the potential adverse impact resulting from such Excusable Event Basis; (ii) the specific reasons why Contractor believes it is entitled to any Adjustment; and (iii) an initial assessment of the Adjustments to which Contractor may be entitled by reason of such Excusable Event Basis. Within fifteen (15) Days after the occurrence of any Excusable Event Basis for which it may be entitled to seek relief, Contractor shall provide Owner with a full impact analysis detailing the impact of the occurrence, its recovery plan and a detailed estimate of any applicable

Adjustments. If it is not reasonably possible to provide a full impact analysis (including establishing the basis for and the amount of any Adjustment) within such fifteen (15) Day period, Contractor shall provide all information reasonably possible and will have up to but not exceeding thirty (30) additional Days to submit its full impact analysis. Any impact not described with particularity within the periods set forth above is waived. Strict compliance with this **Section 9.1** is a condition precedent to the establishment of an Excusable Event. Subject to **Section 9.1.2**, Contractor will be entitled to an Adjustment to the extent that such Excusable Event Basis constitutes an Excusable Event; **provided, however,** that Contractor shall not be entitled to any increase to the Contract Price with respect to any loss or damage to the Work for which Contractor bears the risk of loss pursuant to **Section 22.3** (except for any uninsured delay impact costs). Failure by Contractor to timely give the required Excusable Event Notice and full impact analysis will preclude Contractor's right to invoke the protection of this **Article 9**. If within a reasonable time after an Excusable Event Basis has caused Contractor to suspend or delay performance of the Work, Contractor has failed to take such action as Contractor could lawfully and reasonably initiate to remove or relieve either the Excusable Event Basis, or its direct or indirect effects, Owner may, in its sole discretion and after notice to Contractor, at Contractor's expense, initiate such reasonable measures as will be designed to remove or relieve such Excusable Event Basis, or its direct or indirect effects, and thereafter require Contractor to resume full or partial performance of the Work. If, pursuant to **Article 10**, Owner and Contractor agree to a lump sum, fixed schedule (or any other determination of) the applicable Adjustments for an Excusable Event, such Adjustments shall be set forth in a Change Order signed by the Parties.

9.1.2 Rights Limited. The rights and remedies set forth in this **Section 9.1** and **Article 10** constitute Contractor's sole and exclusive rights and remedies in the event of an occurrence of an Excusable Event, and Contractor hereby waives all other rights and remedies at law and/or in equity that it might otherwise have against Owner on account of an Excusable Event Basis. Notwithstanding anything to the contrary herein, with respect to any Excusable Event that is an event of Force Majeure, Contractor will not be entitled to (and the applicable Adjustments shall not include):

[REDACTED]

9.1.3 Emergencies. Contractor shall take reasonable actions to prevent, mitigate and otherwise minimize actual or imminently threatened damage, injury and loss to individuals or property during the performance of the Work. If, emergency conditions arise and damage, injury and loss to individuals or properties occurs or is imminently threatened, Contractor will not be barred from obtaining relief pursuant to this **Section 9.1** if such reasonable actions were necessary prior to providing the Excusable Event Notice to Owner; **provided**, that Contractor thereafter complies with the requirements of **Section 9.1.1** and Owner is notified of such emergency as soon as possible.

## 9.2 Owner-Initiated Changes

9.2.1 Further Refinement, Corrections, and Detailing. It is understood and agreed that the Design of the Facility will be subject to further refinement, correction and detailing by the Parties from time to time. Contractor will be entitled to an Adjustment (and Owner shall be required to issue a Change Order) for such refinement, correction, or detailing, but only to the extent that such refinement, correction, or detailing is not minor or reasonably inferred to be a required or necessary part of the Work under this Agreement.

9.2.2 Changes. Owner may, from time to time, without invalidating this Agreement, order by written notice given to Contractor (a "**Change Order**") changes in the Work (including additions to or deletions of portions of the Work and changes in the quality of, function of, execution of, time for, or sequence of, all or any portion of the Work) ("**Changes**"). If any such Change causes an increase or decrease in the cost of, or timing required to provide, the Work, an Adjustment shall be made.

9.2.3 Change Determination Requests. Owner may by notification in writing to Contractor initiate the process to determine the applicable Adjustment for Changes that Owner is contemplating ordering (a "**Change Determination Request**"). Each Change Determination Request will be accompanied by a description of the contemplated Changes. By issuing a Change Determination Request, Owner does not obligate itself to order the described Changes, regardless of whether the Parties reach an agreement as to the applicable Adjustments. Owner may issue a Change Order regardless of whether Owner has previously issued a Change Determination Request for some or all of the applicable Changes or whether, having issued a Change Determination Request, the Parties have agreed to any or all of the applicable Adjustments.

9.2.4 Change Order Documentation. Contractor shall not perform any Change until a Change Order has been issued therefor. All Change Orders shall be in the form of **Exhibit F-3** or such other form that states explicitly and prominently that it constitutes a Change Order under this Agreement. Each Change Order shall be effective on the date when signed on behalf of the Owner and given to Contractor pursuant to **Section 25.5**. Contractor will countersign one copy or counterpart of the Change Order and return it to Owner on receipt. Upon the effectiveness of a Change Order, the Work shall be changed as stated therein and Contractor shall perform the Work as so changed in accordance with and subject to all of the terms of this Agreement. If the Parties have not agreed to the applicable Adjustments, the Change Order shall not state any Adjustments and the Adjustments shall be determined thereafter pursuant to the Adjustments Methodology.

Once the Parties have agreed to the Adjustments, the Change Order shall be amended to state such Adjustments and Contractor and Owner shall both sign and deliver such amendment to each other. Unless a Change Order explicitly provides to the contrary, the signature and delivery by Contractor and Owner of a Change Order (either the original version or a subsequently amended one) that states any Adjustments shall constitute the legal and binding agreement among them that such stated Adjustments are the sole and exclusive Adjustments and consideration to which any of them are entitled in connection with the Changes described therein. Contractor may not suspend, in whole or in part, performance of the Work with respect to any Dispute over Adjustments or Change Orders or the review and negotiation of any Adjustments unless directed to do so by Owner. If there is a Dispute of whether any item is in or out of the scope of Work required of Contractor under this Agreement, Owner may issue a Change Order requiring Contractor to perform such item as part of the Work and Contractor shall (without waiving any rights or remedies with respect to such Change or Dispute) proceed with such Work. If it is determined that such item was not within the scope of the Work, Contractor will be entitled to an Adjustment therefor as set forth in this **Section 9.2**.

## ARTICLE 10

### ADJUSTMENT METHODOLOGY

**10.1 Determination of Adjustments.** The determination of all Adjustments with respect to Change Orders, Change Determination Requests, and Excusable Events shall be made in accordance with the methodology (“**Adjustment Methodology**”) set forth in this **Article 10**.

**10.2 Procedure for Determining Adjustment.** It is the expectation that most Contract Price Adjustments will be determined on a lump sum fixed schedule adjustment basis, provided, that at Owner’s sole option exercised in its sole discretion, Owner may designate certain Contract Price Adjustment to be determined on an open-book time and materials basis, calculated in accordance with **Section 10.3**, with the Adjustments to Major Contract Milestones to be determined based on information developed as the Work proceeds. Except to the extent Owner and Contractor mutually agree otherwise, (a) within fifteen (15) Days after receipt of a Change Determination Request or a Change Order for which Adjustments are not yet agreed and (b) by the due date of the full impact analysis required pursuant to **Section 9.1.1** for an Excusable Event Basis, Contractor shall provide Owner for its review and approval, with a written detailed analysis (the “**Contractor Response**”) setting forth all Adjustments Contractor believes are required under this Agreement with respect to the applicable Changes and Excusable Events, including with respect to Contract Price, Major Contract Milestones, and other applicable provisions of this Agreement. The Contractor Response shall include, among other things, an itemization or estimate (which estimate shall be prepared in a manner and at rates in accordance with **Section 10.3**) of: (i) total job hours increased or decreased (detailed as to each subdivision of each of home office, field staff and field craft labor) and associated labor rates and/ multipliers or markups; (ii) estimated quantities, qualities (as required) and direct costs of Equipment; (iii) estimates of Subcontractor charges and any bids received from Subcontractors and potential Subcontractors contacted by Contractor in connection with the Contractor Response; (iv) all other direct costs associated with the performance of the Work, including travel and living, reproduction, printing, consultants, Subcontractors, costs of Contractor-owned equipment;

(v) reasonable contingencies for the foregoing items appropriate and customary for the degree of uncertainty in the estimate; (vi) the impact, if any, on the Major Contract Milestones, and (vii) any other information Owner may reasonably require to determine the appropriate Adjustments. Owner shall, within fifteen (15) Days after receipt of the Contractor Response, notify Contractor as to whether it agrees or disagrees with such the Adjustments set forth in the Contractor Response or has insufficient information to do so. Contractor and Owner will then cooperate (i) to get Owner any information it reasonably require and (ii) to use their respective good faith efforts to negotiate and agree on the applicable Adjustments (including a lump sum, fixed-price Contract Price Adjustment and a fixed schedule Adjustment). Such negotiations shall be on a completely open-book basis.

**10.3 Basis for Adjustments.** Except to the extent otherwise provided in **Articles 9**, all Contract Price and schedule Adjustments shall be determined by utilizing the methodologies, factors, multipliers, analytics, and other criteria included in the Basis of Bid; provided, that no contingency will be allowed in such Adjustment in any case where the Contract Price Adjustment is not on a lump sum basis. To the extent that the Basis of Bid is not directly applicable to the situation for which an Adjustment (or portion thereof) is being determined or the application of the Basis of Bid yields an inequitable result, the applicable criteria in the Basis of Bid shall be equitably adjusted for that situation. To the extent that for a particular situation the Basis of Bid is not reasonably susceptible to such an equitable adjustment, the applicable Contract Price Adjustment shall be determined in accordance with **Exhibit R**. To the extent that an Adjustment is with respect to a change (including increase, decrease, elimination, replacement, or any other change) to Work performed or expected to be performed by a Subcontractor that is an Affiliate of Contractor, the Adjustment shall be determined as if the Contractor is performing such Work directly (i.e., as if the Affiliate was part of the Contractor and not a separate Subcontractor). All Adjustments of the Major Milestone Dates shall be determined by the reasonable impact of the applicable Change Order or Excusable Event to the Project Schedule on the critical path. Neither Owner nor Contractor shall be entitled to any Adjustment based on its respective time or cost of analyzing, negotiating, or otherwise determining any Adjustments. Contractor shall not be entitled to any recovery for (and there shall be no Contract Price, schedule, or other Adjustment for) any increased adverse impact resulting from (i) unreasonable delays in implementing a Change Order or in overcoming or removing an Excusable Event Basis or (ii) Contractor failing to take all reasonable steps to minimize the potential impact resulting from such Excusable Event Basis or Change Order.

**10.4 Non-Lump Sum Fixed Schedule Adjustments.** Unless and until Contractor and Owner execute a Change Order setting forth a Lump Sum Adjustment and a fixed schedule Adjustment for a Change Order or Excusable Event: (i) Contractor shall submit daily records to Owner by the next Business Day for all craft personnel who performed Work with respect to such Change Order or Excusable Events detailing the hours involved in such Work and the type of Work so performed, (ii) Contractor shall submit weekly records to Owner by the first Day of the succeeding week for all other personnel who performed Work with respect to such Change Order or Excusable Events detailing the hours involved in such Work and the type of Work so performed, (iii) Contractor shall submit Monthly records to Owner along with its Application for Payment for that Month detailing all other costs incurred with respect to such Change Order or Excusable Events, (iv) Contractor shall submit Monthly records to Owner along with its Application for Payment for that Month detailing all schedule impacts (including to Major

Contract Milestones with respect to such Change Order or Excusable Events), and (v) Contractor shall, in accordance with the procedures set forth in **Article 8**, include in its Applications for Payment any undisputed portion of Contractor's proposed Adjustment in the Contract Price for Changes that have then been performed by Contractor. Strict Compliance with this **Section 10.4** is a condition precedent for the Contractor's entitlement to the applicable Adjustment.

## ARTICLE 11

### TEST AND INSPECTIONS

**11.1 Testing.** Contractor shall conduct, arrange, or obtain (at its sole expense) all inspections and tests, including the Performance Guarantee Tests, required to be performed (i) to meet its obligations under this Agreement and (ii) that are necessary for the proper execution and completion of the Work (including all certification testing and associated reports required by Applicable Law or applicable Codes that must be conducted by a qualified independent party). Contractor shall provide for or arrange for all testing personnel (excluding operating personnel to be provided by Owner in accordance with **Section 5.9**). **Section 4.2** requires Contractor to maintain qualified personnel on the Job Site at certain times (including testing) to supervise Owner's operators regarding operation and maintenance of the Subproject. At such time as hot commissioning has been completed and Contractor believes that the Subproject is ready for the performance of the Performance Guarantee Tests, Contractor shall so notify Owner in writing. Within five (5) Days thereafter, Owner will notify Contractor whether it concurs with Contractor's belief. As soon as practicable after delivery of Owner's notification of concurrence, but in no event earlier than ten (10) Days thereafter, Contractor shall conduct the Performance Guarantee Tests for that Subproject on no less than five (5) Days advance notice of the time and date of the commencement. Performance Guarantee Tests shall be scheduled with due regard for minimizing the operating expenses of and maximizing revenues to be derived from operation of the Units during such tests. The Performance Guarantee Tests must be conducted: (i) in the presence of Owner, (ii) utilizing the personnel provided by Owner, acting under the direct technical supervision and control of Contractor (iii) when all Equipment and Systems are operating as designed (without auxiliary, standby or temporary equipment or machinery, unless otherwise approved in writing by Owner) in its usual mode of operation (using a normal complement of operating personnel) within the manufacturers' specifications, recommendations and warranty requirements, and without over-stressing or over-pressurizing any Systems; (iv) when the Subproject is operating in full automatic mode without the need for any manual intervention; (v) when commencing performance testing is consistent with Prudent Utility Practices; and (vi) pursuant to **Exhibit G** and the Performance Guarantee Test Procedures and in strict accordance with Project Requirements, including 401 KAR Chapter 59. A draft of the proposed Performance Guarantee Test Procedures shall be prepared by Contractor and delivered to Owner not less than one hundred twenty (120) Days prior to the Scheduled Mechanical Completion Date of the Subproject. Owner shall review such draft and provide written comments to Contractor within thirty (30) Days of receipt of the draft Performance Guarantee Test Procedures. Contractor and Owner shall cooperate and diligently work to complete an agreed final version of the Performance Guarantee Test Procedures in accordance with **Exhibit G** no later than thirty (30) Days prior to the Scheduled Mechanical Completion Date of the Subproject. If all of the criteria for passage of a Performance Guarantee Test in accordance with **Exhibit G** fail to be met, Contractor shall immediately correct and/or remedy the Defects

and other conditions that caused such failure in accordance with **Section 12.1**. Upon completion of such corrective and/or remedial actions, Contractor shall re-perform the Performance Guarantee Test upon not less than twenty four (24) Hours prior written notice to Owner. The foregoing procedures shall be repeated until all of the criteria for passage of a Performance Guarantee Test in accordance with **Exhibit G** are met, but Contractor's obligation to repeat such Performance Guarantee Tests shall in no way excuse Contractor from timely achievement of the Guaranteed Commercial Operation Date and Guaranteed Final Completion Date. The results of all inspections and tests shall be provided to Owner together with gross and reduced data and other information reasonably requested by Owner. The Performance Guarantee Tests shall be conducted in accordance with this **Section 11.1** and **Exhibit G** for the purpose of demonstrating the achievement of Commercial Operation and Final Completion, as the case may be.

**11.2 Witnessing Tests and Inspection.** Contractor shall perform all inspection, pre-Performance Guarantee Testing, expediting, quality surveillances, and traffic services as necessary for the performance of the Work. Contractor's responsibilities under this **Section 11.2** include inspecting and testing the Work in progress, (including Equipment) both on and off the Job Site at intervals appropriate to the stage of construction, fabrication, or shipment as is customarily inspected or tested in accordance with Professional Standards, including inspecting Work in progress as necessary to ensure that such Work is proceeding in accordance with this Agreement and the Major Contract Milestones. All Third Party inspections, tests, or approvals must be performed by qualified organizations acceptable to Owner. If Applicable Law requires any Work to specifically be inspected, tested, or approved, Contractor shall assume full responsibility therefor and furnish to Owner the required certificates of inspection, testing, or approval. Not later than one hundred twenty (120) Days prior to the first expected delivery of Equipment to the Generating Station Site, Contractor will supply to Owner a quality surveillance plan for all Equipment that will be inspected by Contractor. A chart, accompanying each Monthly progress report delivered by Contractor shall specify the date, time, and location of Hold Points and other factory tests, inspections, and witness points of which Contractor is then aware and intends to witness with respect to Equipment or other work to be provided or performed by Subcontractors in the sixty (60) Day period following the Month in which each such progress report is delivered to Owner. If and when Contractor obtains new information about such Hold Points and other factory tests, inspections, or witness points or other Hold Points, factory tests, inspections, or witness points that was not available to it when the Monthly status report was delivered, it will promptly advise Owner and update such information as necessary to allow Owner a reasonable opportunity to attend such event. Contractor shall give reasonable notice of changes to such dates, times, and locations to allow Owner to make arrangements to attend, it being understood that tests, inspections, or witness points to be performed outside the United States will require additional notice. Owner and its invitees have the right, but not the obligation, to attend any inspections, tests, or approvals of the Work. In no event shall Contractor's obligation to provide notice regarding certain tests, inspections, or approvals or Owner's and its designees' right to attend tests, inspections, or approvals limit, delay, or modify Contractor's obligation to perform all tests, inspections, or obtain approvals required by this Agreement. Successful completion of factory or other off-Job Site tests is a precondition to shipment of such Equipment to the Job Site or other Contractor storage facility, unless otherwise agreed by Owner. Contractor shall thereafter implement such plan and re-perform and demonstrate that such test has been passed. Should Contractor fail to give proper notice under this **Section 11.2**, at Owner's option, Contractor shall re-perform or re-inspect any



such test or inspection as to which Contractor failed to give proper notice if Owner (i) have reviewed the test or inspection results (which are to be provided to Owner within seven (7) Days of such failure or as soon thereafter as test results are available to Contractor) and (ii) have given notice to Contractor questioning the validity, accuracy, or completeness thereof. Attendance by Owner at any such test or inspection despite the lack of proper notice will waive Owner's right to cause Contractor to so retest or re-inspect for failure to give proper notice.

**11.3 Defects during Performance Guarantee Tests.** Without limiting the requirements of **Section 6.6**, after completion of any Performance Guarantee Test or any retest, Owner and Contractor shall consult concerning the results of such test and Owner shall advise Contractor in writing of any Defects that it has discovered or observed during the performance thereof. If Contractor is notified of such Defects or adjustments, Contractor shall immediately commence and promptly: (i) complete corrective measures to rectify such Defects and any other Defects of which it is aware (including, replacement of any Defective parts) and (ii) make any necessary adjustments, in each case, at Contractor's sole cost and expense. As soon as reasonably practicable but in no event more than twenty-four (24) Hours after the completion of such Performance Guarantee Tests (or as soon thereafter as such reports are first available to Contractor) following the applicable test or inspection, Contractor shall forward to Owner copies of all test or inspection results together with such other information Owner reasonably requires in relation thereto.

**11.4 Retests.** Prior to any retest of a Subproject, Contractor shall give reasonable notice advising Owner that all Defects have been corrected and all necessary adjustments have been made. Such notice must identify the date upon which the Subproject will be ready for such retesting. Within five (5) Days, Owner shall review the adjustments or corrections made by Contractor and will determine whether a retest is yet warranted. Following a favorable determination by Owner, Contractor shall promptly re-perform the retest. **Section 11.3** shall apply to all retests.

## ARTICLE 12

### CORRECTION OF WORK

**12.1 Correction of Work.** Prior to the Commercial Operation for each Subproject, Contractor shall, at the earliest practical opportunity, correct, repair, or replace any portion of the Work that is Defective without regard to the stage of completion of the Work or the time or manner of discovery of the Defect. If other portions of the Work are adversely affected by or are damaged by such Defective Work, Contractor shall, at no additional cost or expense to Owner and at the earliest practical opportunity, correct, repair or replace such affected or damaged Work. Contractor shall bear all costs of correcting such Defective Work, including additional testing and inspections and compensation for any Design or engineering services and expenses made necessary thereby.

**12.2 Urgent Repairs.** If by reason of any accident, failure, or event occurring to, in, or in connection with the Work or any part thereof either during the execution of the Work or during any period of warranty hereunder, any remedial or other work or repair is in the opinion of Owner urgently necessary and Contractor is unable or unwilling at once to do such work or

repair, Owner may, with its own forces or other contractors, do such work or repair. If the work or repair so done is Work which Contractor was liable to do at its own expense under this Agreement, all costs and expenses incurred by Owner in so doing as a result of such event shall be paid by Contractor to Owner on demand. Owner, as soon after the occurrence of any such emergency as may be reasonably practicable, shall notify Contractor thereof in writing.

**12.3 Damage to Existing Facilities.** To the extent that Contractor or Subcontractors cause any physical damage or loss to any equipment, structure, or portion of the Work (including Work performed during the Warranty Period) as to which care, custody, and control and risk of loss (without regard to passage of title) has passed to Owner or to the Existing Facilities (but not Work for which care, custody, and control and risk of loss has not yet passed to Owner), Contractor shall be liable for making payment to Owner for the cost to repair, correct, or replace such loss or damage, not to exceed [REDACTED] per occurrence, and upon such payment Owner otherwise releases Contractor from liability for such physical damage to or loss of any equipment, structure, or portion of the Work as to which care, custody, and control and risk of loss has passed to Owner or to the Existing Facilities (but not Work for which care, custody, and control and risk of loss has not yet passed to Owner). Payments to be made by Contractor under this **Section 12.3** shall be made to Owner within fifteen (15) Business Days of Owner's demand therefor.

**ARTICLE 13**

**WARRANTY**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*for  
[signature]*

[REDACTED]

[REDACTED]

**ARTICLE 14**

**PROTECTION OF PERSONS AND PROPERTY**

**14.1 Safety Programs.** Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of this Agreement, including a fitness for duty policy and other appropriate precautions and programs for areas in and around the Generating Station Site. Prior to the earlier of one hundred twenty (120) Days after the Effective Date and thirty (30) Days prior to mobilization to the Generating Station Site, Contractor shall prepare and deliver to Owner a plan to ensure proper health, safety, and environmentally sound practices are employed and enforced in the performance of the Work. At a minimum, such plan shall require Contractor to comply, and cause all Subcontractors to comply, with (i) those rules, regulations and procedures set forth in **Exhibit H**; (ii) Project Requirements; and (iii) applicable rules or requirements of Owner's unions on the Generating Station Site. The efficacy or implementation of such plan shall not relieve Contractor of its obligations under this Agreement. If Owner becomes aware of any Work, or the performance of any Work, that it reasonably believes constitutes a threat to the health or safety of persons, property, or the environment, then, without limiting any other rights of Owner hereunder, Owner may (but will not be obligated to) immediately suspend the performance of the Work and thereafter promptly advise Contractor of the cause therefor. Such suspension may be maintained until such cause is removed. All costs related to such suspension and any other adverse impact on Contractor or the Work attributable thereto shall be the responsibility of Contractor and no relief under this Agreement shall be provided. Owner, in its reasonable opinion, may exclude from the Generating Station Site any individual whose conduct it believes is prejudicial to safety, health, protection of persons, property, or the environment, or is found or suspected to be in violation or in disregard of the requirements of this **Article 14**, this Agreement, or Applicable Law.

**14.2 Applicable Law.** Contractor shall give notices and comply with Applicable Law bearing on the safety of Persons, property and the environment or their protection from damage, injury or loss, including all standards of the United States Occupational Safety & Health Administration applicable to the Work.

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

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

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

**14.5 Security.** Contractor shall take all precautions and measures as may be necessary to secure the Job Site and other portions of the Generating Station Site on which Work is being performed at all hours, including evenings, holidays and non-work hours and other portions of the Generating Station Site when Work is being performed on such portion. Contractor is not entitled to rely on security provided by Owner. Contractor shall coordinate its Job Site security functions with Owner's security functions so as not to detract from, or impose upon, Owner's security measures at the Generating Station Site. Contractor shall erect, maintain, or undertake, as required by existing conditions and the performance of this Agreement, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying Owner and users of adjacent sites and utilities. Such precautions may include the provision of security guards and/or fencing.

**14.6 Dangerous Materials.** When use or storage of dangerous materials or equipment or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such activities only under the supervision of properly qualified personnel. Explosives shall not be used anywhere on the Job Site or the Generating Station Site, without the prior written consent of Owner.

**14.7 Safety Personnel.** Contractor shall assign at least one full-time Job Site safety officer who shall be responsible for introducing, administering, and monitoring procedures to promote safe working conditions on the Job Site (and other areas of the Generating Station Site where Work is to be performed) and compliance with Applicable Law. Contractor shall provide an appropriate medical facility at the Job Site.

**14.8 Loading.** Contractor must not load or permit any part of the Work, the Job Site or other portions of the Generating Station Site to be loaded so as to endanger the safety of Persons or property.

**14.9 Notices to Owner.** Contractor shall immediately (and in each case, but in no event later than a period of time equal to one-half the amount of time Owner has to report any incident to a Governmental Authority) notify an individual on the Emergency Notification List by telephone or in person of any and all potential lost time accidents, recordable injuries (as defined under OSHA), and any property damage arising out of or in connection with the Work. Contractor shall provide Owner with a written report, giving of full details and statements of any witnesses within twenty-four (24) Hours of the occurrence of the event. In addition, if death, serious bodily injury or substantial damage occurs, Contractor shall report the accident immediately by telephone or messenger to Owner.

**14.10 Code of Business Conduct.** Contractor hereby acknowledges receipt of the LG&E and KU Services Company Contractor Code of Business Conduct and agrees to comply therewith as it may be amended from time to time.

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

**14.12 Drug and Alcohol.** No individual will perform any of the Work while under the influence of any illegal or controlled substance or alcohol. No alcohol may be consumed four (4) Hours prior to any individual's performance of the Work or at any time during the workday. An individual will be deemed under the influence of alcohol if such individual is found to have a blood alcohol level of .02 percent or greater. In addition to the requirements of the drug and/or alcohol testing program set forth in **Exhibit H**, Contractor shall: (i) institute a random drug and/or alcohol testing program covering all individuals that will perform any of the Work; (ii) promptly, upon the written request of Owner, perform drug and/or alcohol tests on all individuals that will perform any of the Work; and (iii) perform drug and/or alcohol tests on any individual that will perform any of the Work under either of the following circumstances: (a) where the individual's performance either contributed to an accident or dangerous condition or cannot be completely discounted as a contributing factor to an accident or dangerous condition which involves actual or undue risk or off-site medical treatment of any individual or property damage or (b) where Owner determines in its sole discretion that there is reasonable cause to believe such individual may be using drugs or alcohol or may otherwise be unfit for duty. Individuals tested in accordance with **clause (a)** or **(b)** above will not be permitted to perform any Work until the test results are established. Contractor shall be solely responsible for administering and conducting drug and alcohol testing, as set forth herein, at Contractor's sole

expense. As applicable and in addition to any other requirements under this Agreement, Contractor shall develop and strictly comply with any and all alcohol and/or drug testing requirements required by Applicable Law. Notwithstanding anything to the contrary herein, if the rules and regulations of Owner pertaining to the Generating Station Site are at any time more stringent than the requirements of this Agreement, Contractor will comply and cause Subcontractors to comply with such more stringent rules and regulations.

## ARTICLE 15

### SEPARATE CONTRACTORS AND ACTIVITIES BY OWNER

**15.1 Separate Work.** Owner reserves the right to perform either with its own forces or through other contractors and subcontractors construction, maintenance, repair, and other operations or other work related to the Facility, the Units, the Yard Systems, or any other construction or other work at the Job Site and the Generating Station Site.

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

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

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

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



ARTICLE 16  
INTELLECTUAL PROPERTY

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*for JST*

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*[Handwritten signature]*

## ARTICLE 17

## REPRESENTATIONS AND WARRANTIES

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

- (i) it is able to furnish the tools, Equipment, Consumables and Construction Aids, labor, supervision and demolition, Design and construction services required to complete the Work and perform its obligations hereunder, and has sufficient experience and competence to do so;
- (ii) it is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;
- (iii) it is authorized to do business in the Commonwealth of Kentucky and is properly licensed by all Governmental Authorities having jurisdiction over it, the Work, or the Facility;
- (iv) Contractor is well acquainted with the Generating Station Site, including the general and local conditions, as well as other conditions that may influence the performance of the Work, including the requirements of Applicable Law, the other construction activities that will be performed on the Generating Station Site during performance of the Work, the condition of Existing Facilities on the Generating Station Site that will be utilized, integrated into, interconnected with or modified in the performance of the Work and building standards and trade practices affecting the Work;
- (v) no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending against or, to the knowledge of Contractor, threatened against or affecting Contractor or any of its properties, rights, revenues assets or the Work (a) which could reasonably be expected to have a material adverse effect on the properties, business, prospects, operations or financial condition of Contractor or (b) which could reasonably be expected to have a material adverse effect on the ability of Contractor to perform its obligations under this Agreement;
- (vi) this Agreement has been duly authorized, executed, and delivered by it and constitutes the legal, valid, and binding agreement of Contractor, enforceable against Contractor in accordance with its terms; and
- (vii) the Parent Guarantee will be duly authorized, executed and delivered by Guarantor and will constitute the legal, valid and binding agreement of Guarantor, enforceable against Guarantor in accordance with its terms.

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

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

## ARTICLE 18

### CONFIDENTIAL INFORMATION

**18.1 Confidential Information.** Each Party has a proprietary interest in certain information that will be disclosed (either directly or through its engineer or others on its behalf) pursuant to this Agreement. Each Party shall keep in confidence any such information it receives that in good faith the disclosing Party believes is proprietary and which: (i) is specifically designated in writing as being "confidential" or (ii) is disclosed orally, visually or by way of consigned items, and is orally identified as "confidential" at the time of disclosure, which oral identification is confirmed in writing within ten (10) Business Days ("**Confidential Information**"). Each Party agrees not to disclose the other Party's Confidential Information without the prior written permission of the other Party or use any such information for other than the purpose for which it is supplied, except as provided herein. Information relating to commercial terms of this Agreement shall also be treated as "Confidential Information;" **provided, however**, such restriction is intended only to prevent disclosure of the Contract Price, Performance Guarantees, outage schedules, limits of liability, liquidated damage amounts, warranty provisions, intellectual property provisions, wage rates and unit rates, and information obtained by Contractor subject to NERC Requirements, and is not intended to restrict Owner from use of the form of agreement. Each Party agrees that the other Party may disclose any Confidential Information to its (and its Affiliates') officers, directors, employees, counsel, engineers, consultants, representatives and to such other persons or entities, including the Financing Parties and their Affiliates and potential Affiliates, as may be necessary to perform its obligations under this Agreement or any document related to the Facility or the Financing thereof to which it is a Party; **provided**, that it is responsible for requiring any Third Party to whom it

wishes to disclose to comply with the terms of this **Section 18.1**. The provisions of this **Article 18** shall not apply:

- (a) to information which the receiving Party can substantiate:
- (1) was in the possession of the receiving Party at the time it was initially furnished, without a breach of this provision;
  - (2) is or becomes part of the public domain without a breach of this provision by the receiving Party;
  - (3) is received from a Third Party who is, to the knowledge of the receiving Party, under no limitation or restriction regarding disclosure; or
  - (4) is independently developed by or for the receiving party and not obtained, in whole or in part, from Confidential Information received from the disclosing party.

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

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

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

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

**18.3 Third Party Proprietary Information.** Contractor also agrees to enter into confidentiality agreements with Third Parties at Owner's request and to keep in force confidentiality agreements concerning Third Parties' proprietary information, which agreements

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

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

## ARTICLE 19

### HAZARDOUS SUBSTANCES

#### 19.1 Hazardous Substances.

19.1.1 Encountering Hazardous Substances. In order to give the Owner an opportunity to discover and, as appropriate remediate, any Pre-Existing Hazardous Substances, Contractor shall give Owner at least thirty (30) Days and no more than sixty (60) Days advance written notice before it commences disturbing any areas of the Job Site it has not previously disturbed. If, in the course of performance of the Work, Contractor either spills, leaks, or releases (including threatened releases) Hazardous Substances into the environment or encounters Hazardous Substances (or a substance it reasonably believes is a Hazardous Substance) on the Job Site except as contemplated by **Section 19.1.3**, or any other portion of the Generating Station Site on which Work occurs, in such quantities or at such levels that may require investigation or remediation pursuant to Applicable Law, Contractor shall immediately suspend the Work in the area affected (except as provided below) and immediately orally report the condition to an individual on the Emergency Notification List and to the Owner Representative followed as soon as reasonably possible by a written notice to the Owner Representative. In any such event, the obligations and duties of the Parties are as follows:

- (i) Owner may direct Contractor to take appropriate immediate mitigating action;
- (ii) to the extent such condition involves: (a) a Hazardous Substance brought to or generated on or under the Job Site or the Generating Station Site by Contractor or Subcontractors or any Person for whom either may be responsible; (b) a Hazardous Substance contained in or packed with Equipment; (c) a spill, leak, release, or threatened release caused by Contractor or a Subcontractor or any Person for whom either may be responsible of a Hazardous Substance that is properly contained and labeled (or other adequate warning is given of its existence); (d) a Contractor responsibility as provided in **Section 19.1.3**; or (e) the exacerbation of a Pre-Existing Hazardous Substance caused by the Culpable Conduct of Contractor, Subcontractors or any Person for whom either may be

responsible, then any investigation, response, removal, cleanup, or other remedial action required (1) to restore the status quo ante and/or (2) by Applicable Law or any Governmental Authorities (collectively, "**Environmental Action**") shall be performed by Contractor.

- (iii) if the condition does not involve a Hazardous Substance in such quantities and/or at such levels that may require investigation or remediation pursuant to Applicable Law, Contractor shall, promptly after receiving written notice from Owner authorizing Contractor to recommence activities in the subject area, resume the portion of the Work that had been suspended;
- (iv) if such condition involves a Pre-Existing Hazardous Substance then, except to the extent provided in **clause (ii)** above, any Environmental Action shall be performed by Owner at its expense. Contractor shall handle, remove, dispose of or remediate, as applicable, Contractor Hazardous Substances in compliance with Applicable Law; and
- (v) except as otherwise required by Applicable Law, any Environmental Action, notification and other communication with Third Parties, including Governmental Authorities, and reports and documentation related to such Environmental Action shall be undertaken by Owner.

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

19.1.3 Contractor Obligations. Contractor shall not generate, dispose, bring, transport, or store (and shall prohibit Subcontractors from generating, disposing, bringing, transporting, or storing) Hazardous Substances to or on the Job Site or the Generating Station Site, and shall not utilize (and shall prevent Subcontractors from utilizing) any construction materials or equipment (whether or not totally enclosed) containing asbestos, polychlorinated biphenyls, benzene, lead or urea formaldehyde; **provided, however**, that Contractor (and Subcontractors) may use and store (if properly containerized, labeled and stored) in quantities reasonably necessary to perform the Work the following, but only in accordance with Applicable Law: gasoline, diesel fuel, fuel oil(s), gravel(s), lube oil(s),



greases, sealant(s), combustible gases, form oil(s), solvent(s), adhesives, and all other materials, that are normally used or consumed in accordance with Professional Standards in or during construction or testing of similar facilities, equipment, and systems. Contractor shall not bring or store any other Hazardous Substances to the Generating Station Site without the specific prior written authorization from Owner. Contractor shall provide Owner with Safety Data Sheets in English, (“SDSs”) properly completed covering any Hazardous Substance brought to the Generating Station Site and furnished by Contractor (or Subcontractors). Contractor shall maintain on the Job Site, at all times, complete records and inventories, including MSDSs of materials described in this **Section 19.1.3** that are being used by it or Subcontractors, or any Persons for whose actions it or any Subcontractor is responsible on the Generating Station Site. Contractor shall be responsible for the management, prompt removal, cleanup and off-site disposal of Hazardous Substances brought to or generated at the Generating Station Site by Contractor, any Subcontractor or any Person for whose actions Contractor or any Subcontractor is responsible, including Hazardous Substances contained or packed in Equipment. In this regard, Contractor shall comply, and shall cause Subcontractors to comply, with all Applicable Law and the Hazardous Substances Management Plan. Contractor shall have ownership of, and title to, all contaminated media encountered or created in performing its obligations under **Section 19.1.1(ii)** and this **Section 19.1.3**, and shall have sole responsibility in responding to such conditions including complying with reporting obligations, providing for access restrictions and warnings, manifesting and any other obligations under Applicable Law.

**19.1.4 Reporting.** Owner shall determine whether reporting is required under Applicable Law and shall initiate the reporting of conditions on the Job Site if required. Unless Owner provides written authorization, Contractor acknowledges and agrees that it shall not report, or cause any other Person to report, any information regarding environmental conditions to any Governmental Authority, except as required by Applicable Law. Contractor shall use its best efforts to afford Owner an opportunity to present all objections and defenses Owner or Contractor may have prior to the making of such report by Contractor. Contractor retains its obligation to report to Owner any conditions created by activities of Contractor, Subcontractors, or other Persons whose actions Contractor or any Subcontractor is responsible in the course of activities pursuant to this Agreement. Contractor shall be responsible for emergency notification to Owner, in accordance with **Sections 19.1.1** and **4.16**, as well as additional immediate and follow-up reporting with respect to any discharge, spill or release of a Hazardous Substance into the environment at the Job Site or the Generating Station Site that occurs after the Effective Date arising out of performance of the Work.

**19.1.5 Hazardous Substances Identified by Contractor.** Contractor acknowledges that the process of integrating the Facility into each of the Units and Yard Systems requires the identification and remediation of asbestos, lead paint, and possibly other Hazardous Substances from Unit and Yard System structures that will be affected by the Work. Remediation of such Hazardous Substances will be the responsibility of Owner, but will be subject to the conditions set forth in this **Article 19**. Contractor shall perform such inspections of each of the Units and Yard Systems as necessary prior to commencing any

Work to integrate any portions of the Facility into the Unit (and/or Yard Systems) or their structures. Contractor shall identify each specific area where Hazardous Substances (i) are or may be present; (ii) would be disturbed by performance of the Work involved in integrating the Facility into each of the Units and Yard Systems; and (iii) that need to be remediated. Contractor shall carefully outline each specific area where remediation is to occur with brightly-colored spray paint. Contractor shall confine the marking of areas to the minimum area necessary to allow the Work to safely proceed. Such marking must clearly and distinctly identify and define the precise areas to be remediated. Contractor shall give Owner reasonable advance notice that it will be marking such areas and shall deliver a written notice to Owner when it has finished marking and is ready for Owner to commence remediation. Owner will have no less than thirty (30) Days to complete such remediation. Upon completion of such remediation, Owner will notify Contractor that it may proceed with the planned Work for such areas. If, during the course of its Work in such areas, Contractor discovers additional areas where Hazardous Substances require remediation that it did not mark as required hereunder, Contractor shall mark such areas as provided in this **Section 19.1.5** and provide written notice to Owner to remediate Hazardous Substances in such areas. Owner will use commercially reasonable efforts to remediate such additional areas as soon as possible but in any case within a reasonable period of time. The cost of all such remediations will be borne by Owner; **provided, however**, if Owner is requested by Contractor to: (a) accelerate any remediation work to be performed by Owner under this **Section 19.1.5** or (b) remediate additional areas that Contractor did not mark at the time it marked other areas within the same general vicinity, Contractor shall be responsible for any incremental costs incurred on account of such acceleration or having to remobilize a Third Party contractor to perform such additional remediation. Notwithstanding anything in this Agreement to the contrary, Contractor is not entitled to any Adjustment of this Agreement, by Change Order or otherwise, on account of Hazardous Substances (all of which constitute Pre-Existing Hazardous Substances) identified or required to be identified by Contractor in accordance with this **Section 19.1.5**.

19.1.6 Labeling. Contractor and Subcontractors shall properly store, label and dispose of Hazardous Substances brought to, or generated at, the Generating Station Site by Contractor or Subcontractors, and others for whom they are responsible, and shall train their respective employees in the safe usage and handling of Hazardous Substances, including any training that is required either by the Hazardous Substances Management Plan or Applicable Law.

## ARTICLE 20

### INDEMNIFICATION



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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*g*  
*sdL*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*[Handwritten signature]*

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

9  
JDL

[REDACTED]

**ARTICLE 21**

**INSURANCE**

[REDACTED]

**ARTICLE 22**

**TITLE AND RISK OF LOSS**

**22.1 Transfer of Title.** Transfer of title to the Work (or any portion thereof, including Equipment and Design) will pass to Owner upon the earliest of: shipment to the Job Site; delivery to Owner or the Job Site; incorporation into the Work or the Unit; upon payment of the amount properly due under an Application for Payment covering such Work (less any amount withheld by Owner in accordance with the terms of this Agreement); or identification of the items of Equipment to be provided under the Agreement to Owner; **provided**, that Contractor shall cause title to be transferred to Owner at shipment of the Work to Owner or the Job Site to the extent that Owner reasonably requests. The transfer of title does not relieve Contractor of its obligation to provide and pay for all transportation and storage in connection with the Work. Contractor shall transfer title to Owner to the Work, including Equipment, free and clear of all Liens, except for those Liens that have been created by Owner. Passage of title will not affect the allocation of risk of loss. Title to documents, submittals, reports, Design Documents (whether hard copy, electronic or other medium) shall pass to Owner on the earlier of receipt or access to such Information.

**22.2 Title Warranty.** Contractor warrants that upon passage of title to the Work in accordance with **Section 22.1**, Owner will have good and indefeasible title to such Work, free and clear of Liens (other than Liens created by Owner) or other defects in title. If any Work is replaced under **Article 12, 13, or 16**, Owner's title shall vest in the replacement Work upon the earliest of payment therefor, its arrival at the Job Site or incorporation into the Work or the Existing Facilities. In the event of any nonconformity with this warranty, Contractor, at its own expense, upon written notice of such failure, shall indemnify and hold Owner harmless from the consequences of and defend the title to such Work and, if necessary, shall promptly replace such Work and any other affected portion of the Work, and such obligation shall survive the expiration, cancellation or termination of this Agreement.

**22.3 Risk of Loss.** Notwithstanding anything else to the contrary herein, except as otherwise provided herein, care, custody and control of each Subproject and the risk of loss or damage to that Subproject will pass to Owner upon achievement of Commercial Operation for

that Subproject, and Owner hereby releases Contractor from bearing such risk with respect to such Work after such date. For Work performed or provided with respect to a Subproject from and after Commercial Operation of that Subproject, risk of loss shall pass to Owner as such Work is, completed. Contractor shall replace, repair, or reconstruct the Work, including Equipment intended for the use of or necessary to the completion of the Work and furnished by Contractor or Subcontractors or any other Person that is lost, damaged, or destroyed prior to transfer of care, custody, and control and risk of loss of such Work to Owner. Contractor shall be responsible to assure safe delivery of all Equipment, Consumables, Construction Aids, and other items to the Job Site.

**22.4 Contractor Tools.** Risk of loss or damage to the equipment, tools, and Construction Aids of Contractor, its employees or Subcontractors and their employees will at all times remain with Contractor, Subcontractors and their respective employees. Contractor hereby releases Owner and will require all Subcontractors to release Owner from and against any Liabilities for loss or damage in respect thereof. If any loss or casualty to such equipment, tools, or Construction Aids occurs, the loss as a consequence thereof will not be the responsibility of Owner hereunder. Contractor or Subcontractors must adequately insure Construction Aids brought to the Generating Station Site or the Job Site against loss and casualty.

## ARTICLE 23

### DISPUTE RESOLUTION

**23.1 Resolution.** If either Party believes a Dispute cannot be resolved by the Parties' Authorized Representatives, that Party may, by notice to the other escalate the Dispute to a Senior Officer from each Party for resolution by mutual agreement between the Senior Officers. Any agreed determination by the Senior Officers shall be final and binding upon the Parties. However, if the Senior Officers do not arrive at a mutual decision as to the Dispute within thirty (30) Days (or such longer time as the Parties agree) after notice is given seeking escalation, either Party may pursue any other available remedy at law or in equity in accordance with **Section 25.1**. For purposes of this Agreement, the term "**Senior Officer**" means the chief executive officer, president or any senior or executive vice president of a Party; provided, that Senior Officer cannot have been actively involved in discussions with the other Party regarding the Dispute prior to the escalation.

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

## ARTICLE 24

### TERMINATION

#### 24.1 Termination for Convenience.

24.1.1 Termination. Owner may terminate this Agreement, in whole or in part, without cause upon written notice to Contractor, specifying the extent to which this

Agreement is terminated and the date on which such termination is to be effective. If this Agreement is so terminated, Contractor shall cease performance of the Work (or the terminated portion thereof) on the date specified in such notice. Upon such termination, Contractor and Subcontractors shall place no further subcontracts, including lease and rental agreements, or purchase orders, for Equipment, Consumables, facilities, or services, including craft labor, except as may be necessary for completion of the portion of the Work not terminated by Owner. Upon request by Owner, Contractor shall promptly provide Owner a listing of all Subcontracts which pertain to the performance of the terminated Work, and shall furnish Owner with complete copies thereof. Contractor shall, at Owner's request, preserve and protect the Equipment and Consumables purchased for or committed to the terminated Work (whether completed or in progress and whether or not delivered to the Job Site or on order), the facilities on the Job Site, and Work in progress and completed Work (whether at the Job Site or at other locations), pending Owner's instructions. With respect to the terminated Work, Contractor shall promptly make every reasonable effort to mitigate the amount of Owner's liability upon termination, including cancelling associated Subcontracts upon terms satisfactory to Owner and taking such other action with respect to same as may be directed by Owner. If this Agreement is so terminated, Contractor, as its sole and exclusive remedy hereunder, shall be entitled to an amount equal to: (i) the amounts set forth in **Exhibit C** for milestones properly completed by Contractor; (ii) with respect to any partially completed milestone, amounts determined by multiplying the percentage of properly completed Work with respect to such milestone by the respective value of such milestone as set forth in **Exhibit C**; (iii) reimbursement for: (a) all cancellation charges necessarily incurred by Contractor in relation to Subcontractors; (b) an amount equal to other reasonable termination related actual costs necessarily incurred by Contractor; and (c) any reasonably incurred actual costs of Job Site demobilization, less: (1) amounts previously paid to Contractor with respect to the Work, (2) the sale or salvage value of Equipment and Consumables purchased for the Work and sold or retained by Contractor, and (3) amounts properly withheld under this Agreement. Notwithstanding the foregoing, in no event shall the amount required to be paid to Contractor hereunder as a consequence of termination together with amounts that Owner has previously paid to Contractor under this Agreement exceed the amount shown on the termination payment schedule as set forth in **Exhibit B** corresponding to the date of termination. Contractor shall calculate amounts due pursuant to this **Section 24.1**, and shall submit an Application for Payment in accordance with **Article 8**, which amounts are subject to audit and confirmation by Owner on a completely open-book basis.

24.1.2 Assumption. Notwithstanding anything to the contrary herein, upon a termination under this **Article 24**, Owner, in lieu of the payment of any Subcontractor's cancellation charge pursuant to **Section 24.1.1**, may, upon request, assume all of Contractor's obligations under such Subcontract. Contractor shall promptly provide Owner with a copy of Subcontract(s) requested by Owner and an estoppel certificate stating all known unsatisfied Liabilities under such Subcontracts. Thereafter, upon Owner's request, Contractor shall assign all of its right, title and interest in any such Subcontract to Owner. Such assignments shall be in form and substance satisfactory to, and at no additional cost to, Owner. Such agreements shall be in full force and effect upon such assignment. Contractor covenants that a provision substantially similar to this



**Section 24.1.2** shall be inserted in each agreement with Subcontractors to preserve the rights of Owner under this **Section 24.1.2**.

24.1.3 Mitigation. Contractor shall use its reasonable best efforts to minimize the amount of any payment due to Contractor from Owner in accordance with **Section 24.1.1**.

## **24.2 Termination by Owner for Cause.**

24.2.1 Default by Contractor. The occurrence of any one or more of the following, and, with respect to **clauses (ii), (iv), or (vi)**, the continuation of the same for thirty (30) Days after Contractor's receipt of written notice thereof from Owner, will constitute a default by Contractor under this Agreement (a "**Contractor Default**"); **provided**, that with respect to **clauses (ii), (iv), or (vi)**, if such Contractor Default cannot reasonably be cured within such thirty (30) Day period, such cure period shall extend for a total of sixty (60) Days, so long as Contractor continuously and diligently pursues a cure throughout such period:

- (i) Contractor or Guarantor experiences an Insolvency Event;
- (ii) the material breach of any representation or warranty made by Contractor herein;
- (iii) Contractor attempts to assign, convey or transfer this Agreement or any interest or right herein without Owner's prior written consent, except as otherwise permitted by this Agreement;
- (iv) Contractor fails to materially observe or perform any other covenant, agreement, obligation, duty or provision of this Agreement;
- (v) the interest of Contractor in this Agreement passes to any Person otherwise than as permitted herein;
- (vi) Contractor fails to make prompt payment to Subcontractors of amounts due for labor, Equipment, Consumables, or Construction Aids;
- (vii) Contractor disregards laws or ordinances or the lawful requirements of any competent authority or the instructions of Owner consistent with this Agreement;
- (viii) Contractor abandons the Work or fails, neglects, refuses or is unable at any time during the course of the Work to provide ample Equipment, Consumables, or Construction Aids, or labor to perform Work in accordance with the Major Contract Milestones or to provide a recovery plan to satisfaction of Owner, including failure to successfully complete the Performance Guarantee Tests;
- (ix) Contractor fails to comply with **Article 21** (Insurance) or the Parent Guarantee, for any reason, ceases to be valid or enforceable in any way, the

Guarantor experiences an Insolvency Event, or Guarantor fails to perform any material covenant or obligation in the Parent Guarantee;

- (x) Contractor fails to achieve Commercial Operation for a Subproject within one hundred fifty (150) Days of the Guaranteed Commercial Operation Date for that Subproject; or
- (xi) Contractor fails to achieve Final Completion for a Subproject on or before the Guaranteed Final Completion Date for that Subproject.

24.2.2 Owner's Remedies. Upon the occurrence of a Contractor Default, Owner may, without prejudice to any other right or remedy Owner may have: (i) terminate this Agreement; (ii) take possession of the Job Site and of all materials, equipment, tools, machinery and Information owned or held by Contractor for purposes of completing the Work; (iii) finish the Work and complete performance of other unperformed obligations by whatever method Owner may deem reasonable and expedient under the circumstances; and (iv) use or draw upon the Contract Security and/or withhold amounts due to Contractor. If the unpaid balance of the Contract Price exceeds Owner's cost of finishing the Work and completing performance of other unperformed obligations, then Contractor will be paid for all Work properly performed by Contractor to the date of termination (which amount will in no event exceed the difference between the unpaid portion of the Contract Price and Owner's cost of completing the Work and other obligations). However, if the cost of finishing the Work (including the cost of arranging for completion of the Work on comparable terms and conditions, including damages and remedies, and performing such Work on an accelerated basis to preserve as nearly as possible adherence to the Major Contract Milestones) and performing Contractor's other obligations under this Agreement exceeds the unpaid balance of the Contract Price, Contractor shall immediately pay the difference to Owner on demand upon receipt of periodic invoices from Owner. Owner will be entitled to withhold further payments to Contractor until the Work and other obligations have been completed and a determination that Contractor is entitled to further payments. Any amounts not paid hereunder when due will bear interest at the Agreed Rate. Owner may in its discretion employ such other Persons to finish the Work by whatever method or means as Owner in its sole discretion may deem expeditious; **provided**, that the balance of Work and obligations will be completed utilizing reasonable methods of construction management and construction consistent with the Major Contract Milestones. If this Agreement is terminated pursuant to this **Section 24.2.2** and is later determined or adjudged that no Contractor Default had occurred, such termination shall be deemed to be a termination pursuant to **Section 24.1.1**.

### 24.3 Termination by Contractor for Cause.

24.3.1 Default by Owner. The occurrence of any one or more of the following matters, and, with respect to **clauses (ii)** or **(iii)**, the continuation of the same for thirty (30) Days after Owner's receipt of written notice thereof from Contractor, will constitute a default by Owner under this Agreement (an "**Owner Default**"); **provided**, that with respect to **clauses (ii)** or **(iii)**, if such Owner's Default cannot reasonably be cured within such

thirty (30) Day period, such cure period shall extend for a total of sixty (60) Days, so long as Owner continuously and diligently pursues a cure throughout such period:

- (i) Owner experiences an Insolvency Event;
- (ii) the breach of any material representation or warranty made by Owner herein; and
- (iii) Owner fails to observe or perform any material covenant, agreement, obligation, duty or provision of this Agreement, including timely payment, but excluding any such failure that is compensable pursuant to **Section 9.1** hereof.

**24.3.2 Contractor's Remedies.** During the continuance of an Owner's Default, but subject to **Section 23.2**, Contractor may suspend its performance of the Work or, if the suspension continues for fifteen (15) Days, terminate this Agreement. If this Agreement is so terminated by Contractor for an Owner Default, Contractor, as its sole and exclusive remedy hereunder, shall be entitled to receive an amount calculated in accordance with **Section 24.1**.

**24.4 Suspension of the Work.** Owner may, without cause, order Contractor to suspend the Work or extend the Major Contract Milestones in whole or in part for such period of time as Owner may determine. Any such suspension or extension will commence as soon as reasonably possible, but no later than the second (2nd) Day after Contractor's receipt of written notice thereof from Owner. Such suspension or extension shall continue for the period specified in Owner's notice to Contractor, as amended by Owner from time to time. Contractor will resume any suspended Work within three (3) Days of Owner's written notice directing the same. Without limiting Owner's rights under **Section 24.1**, should a suspension of the entire Work which is ordered by Owner pursuant to this **Section 24.4** (but excluding any suspension caused by a Force Majeure) continue for three hundred sixty (360) or more consecutive Days, either Party may thereafter terminate this Agreement by written notice to the other Party and the rights and remedies of Contractor will be the same as those which are expressed in **Section 24.1** hereof in the event of termination for convenience by Owner. In the case of any suspension of the entire Work under this **Section 24.4**, except to the extent an acceleration of the Work is authorized by Owner, the Major Contract Milestones will be extended by a period equal to the suspension period, and adjusted by Owner, in consultation with Contractor, to account for same. In the case of any suspension or extension of a portion of the Work under this **Section 24.4**, the Major Contract Milestones shall be extended only to the extent the suspension or extension can be shown to affect the critical path. This analysis will be based on the most current Project Schedule in effect on the Day of suspension and take into account the critical path for completing the entire Work and the non-critical path activities suspended or extended. Owner shall pay Contractor in accordance with the terms of payment set forth in this Agreement upon receipt of an Application for Payment for the Work completed prior to the time of any suspension and, during the period of suspension, for the direct reasonable costs that result from Contractor's compliance with the suspension notice. Owner shall pay Contractor the direct reasonable costs associated with the restart of suspended Work under this **Section 24.4** and shall resume payments to Contractor in accordance with the terms of payment under this Agreement thirty (30) Days after the restart of

the Work. It is a precondition to all Claims by Contractor for extension or compensation under this **Section 24.4**, that the same be made within thirty (30) Days after the suspension period has ended, or said Claim is forever barred.

## ARTICLE 25

### MISCELLANEOUS PROVISIONS

**25.1 Governing Law.** This Agreement is governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky without reference to the conflict of laws rules thereof. Each of the Parties hereby agrees that any legal proceedings that may arise under or related to this Agreement shall be brought in the United States District Court for the Western District of Kentucky, located in Louisville (and if such court does not have jurisdiction over a matter at controversy between the Parties, any state court located in Louisville, Kentucky). Accordingly, each of the Parties hereby submits to the jurisdiction of the United States District Court for the Western District of Kentucky, located in Louisville (and if such court does not have jurisdiction over a matter at controversy between the Parties, any state court located in Louisville, Kentucky) for purposes of all legal proceedings that may arise under this Agreement. Each of the Parties irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may have or hereafter have to the personal jurisdiction of such court or the laying of the venue of any such proceeding brought in such a court and any Claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Each of the Parties to this Agreement hereby consents to process being served in any such proceeding by the mailing of a copy thereof by certified mail, postage prepaid, to its address specified in **Section 25.5** (as it may be changed or provided herein). EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT AND/OR ANY OF THE TRANSACTION AGREEMENTS OR ANY OTHER DOCUMENTS ENTERED INTO IN CONNECTION THEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OF THE PARTIES THERETO.

**25.2 Entire Agreement.** Notwithstanding any agreement that either Owner or their respective Affiliates have with Contractor or any of its Affiliates to the contrary, this Agreement represents the entire agreement between Owner and Contractor with respect to the subject matter hereof, and shall supersede all prior negotiations, binding documents, representations or other agreements, whether written or oral. This Agreement may be amended or modified only by a written instrument signed by Owner and Contractor as appropriate. Contractor and/or one or more of its Affiliates may now, may have in the past and/or may in the future be a party to a general agreement with Owner and/or one or more of its Affiliates for the purpose of setting forth certain default terms that are intended to form part of most contracts between them. Contractor and Owner hereby acknowledge and explicitly agree that neither such general agreement nor any such default terms shall apply with respect to this Agreement.

**25.3 Successors and Assigns.** Contractor may not assign, convey, or transfer this Agreement, or any part thereof, without Owner's prior written consent. This Agreement is binding upon, and inures to the benefit of, the successors and permitted assigns of the Parties.

The Owner may assign, novate or declare any trust of the whole or any part of its interest in this Agreement and any benefit, interest, right or cause of action arising under this Agreement to an Affiliate or to a Third Party with comparable technical and financial abilities.

**25.4 Contractual Relationship.** Nothing contained in this Agreement may be construed as creating a contractual relationship of any kind: (i) between Owner and any Subcontractor (except as provided in **Section 3.6**, **Section 13.4**, and **Section 24.1.2** hereof) or (ii) between any Persons other than Owner and Contractor. Contractor is an independent contractor and all of its agents and employees shall be subject solely to the control, supervision, and authority of Contractor. Owner and Contractor disclaim any intention to create a partnership or joint venture. Contractor may not act for or have any power or authority to assume any obligation or responsibility on behalf of Owner.

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

If to Owner:

[Redacted address for Owner]

With required copies to:

[Redacted address for required copies]

[Redacted address for required copies]

*[Handwritten initials]*

and;

If to Owner and the notice pertains to indemnification, settlement of Claims, default, termination, Dispute resolution or an Excusable Event Basis and associated documentation under **Section 9.1** with a Claim value greater than [REDACTED] [REDACTED] or an impact on the Major Contract Milestones of greater than five (5) Days, Contractor shall also provide mandatory copies of Notice to:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

If to Contractor:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

With required copies to:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Addresses for a Party may be changed by that Party effective upon receipt of notice of such address change by the other Parties.

**25.6 Rights Cumulative.** Except as otherwise expressly provided or limited in this Agreement: (i) rights and remedies available to Owner or Contractor as set forth in this Agreement are cumulative with and in addition to, and not in limitation of, any other rights or remedies available to such Parties at law or in equity and (ii) any specific right or remedy conferred upon or reserved to Owner or Contractor in any provision of this Agreement will not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

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

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

**25.9 Agreed Rate.** All amounts that become due hereunder but remain unpaid will bear interest at an annual (365 or 366 Days, as appropriate) rate equal to the lesser of: [REDACTED]

**25.10 Financing Cooperation.** Contractor shall provide such reasonable assistance and cooperation to Owner as may be necessary for Owner to secure Financing for the Facility, including developing and providing information regarding the Work reasonably available to Contractor; making presentations to potential Financing Parties, their consultants and representatives; and responding to any questions or requirements asked or imposed by any Financing Parties. Contractor hereby consents to the collateral assignment of this Agreement to the Financing Parties. Contractor also agrees to enter into a consent to collateral assignment with the Financing Parties regarding this Agreement, which consent will contain such provisions as are typically provided to the Financing Parties, including giving the Financing Parties financial information of Contractor reasonably satisfactory to Financing Parties, copies of certain notices delivered to Owner hereunder, and affording the Financing Parties an independent right

*Handwritten initials/signature*

to cure any Owner's Defaults hereunder. Contractor shall also provide customary legal opinions, which may be required to be from outside counsel, as required by the Financing Parties.

**25.11 Audit.** Contractor shall maintain (and shall cause Subcontractors to maintain): (i) the Basis of Bid, (ii) complete and accurate financial books and records to allow compliance with **Section 8.2** and **Section 20.4**, or which relate to any cost-based (*i.e.*, Work not covered by lump-sum prices) components of the Work billed under this Agreement or relating to the quantity of units billed under any unit pricing agreed to by the Parties and amounts in respect of a payment made pursuant to **Section 24.1**; and (iii) complete and accurate books and records relating to Contractor's obligations with respect to Hazardous Substances, health and safety, environmental management, emergency response, testing and inspection of Equipment, quality control (including non-conformance reports and disposition reports), violations of Applicable Law, NERC Requirements, Performance Guarantee Tests, and the requirements of **Sections 25.22** and **25.23** (all the foregoing hereinafter referred to as "**Records**") for a minimum of five (5) years following Final Completion of the last Subproject to achieve Final Completion. All such Records must be open to inspection and subject to audit and reproduction during normal working hours by Owner or its respective authorized representatives. For the purpose of evaluating or verifying actual or claimed costs, Owner and its respective authorized representatives will have access to Records at any time, including any time after final payment by Owner to Contractor pursuant to this Agreement. Owner and its respective authorized representatives shall have access, during normal working hours, to all necessary Contractor facilities. Contractor shall provide adequate and appropriate work space to conduct audits pursuant to this **Section 25.11**. Owner shall give Contractor reasonable notice of the date and time it or any of its agents intend to commence any audit. If the audit should disclose an overbilling, Contractor will pay for the cost of the audit and the amount of such overbilling within thirty (30) Days of receipt of Owner's invoice. The rights of Owner set forth in this **Section 25.11** shall survive the termination or expiration of this Agreement. Owner's right to audit under this **Section 25.11** does not include the right to audit the initial make-up or components of any agreed multipliers, rates, mark-ups, or fixed percentages, but does include the right to audit subsequent changes to such multipliers, rates, and mark-ups. Owner's rights under this **Section 25.11** include the right to audit the application of such multipliers, rates, mark-ups, or fixed percentages.

**25.12 Survival.** Articles 7, 13, 16, 17, 18, 19, 20, 23 and 25 and Sections 4.39, 8.9.2, and 22.2 of this Agreement and all other Articles and Sections thereunder providing for indemnification, or limitation of or protection against liability of either Party, will survive the termination, cancellation or expiration of this Agreement.

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

**25.14 Parent Guarantee.** Owner's obligation to make any payment to Contractor hereunder is subject to the ongoing enforceability of the Parent Guarantee. Contractor covenants that the Parent Guarantee will remain in full force and effect to and until the obligations of Contractor under this Agreement have been fulfilled.



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

**25.16 Severability.** If any provision of this Agreement, or the application thereof to any Person or circumstance, is to any extent held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is specifically held invalid or unenforceable, will not be affected thereby, and each and every remaining provision of this Agreement will be valid and binding to the fullest extent permitted by Applicable Law; **provided, however,** the Parties agree to negotiate in good faith and shall reform this Agreement to the fullest extent permitted by Applicable Law to as closely as possible resemble the original intent and allocation of risks and benefits.

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

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

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

**25.20 Consultants.** At its option, Owner or the Financing Parties may retain the services of others, including engineers and financial consultants, to assist Owner and Financing Parties in monitoring the conduct of the Work by Contractor. All rights of access and protection, including Contractor's obligation to indemnify, defend and hold harmless Owner and Financing Parties, will be afforded equally to any of their agents and consultants.

**25.21 Equal Employment Opportunity.** To the extent applicable, Contractor shall comply with all of the following provisions, which are incorporated herein by reference: (i) Equal Opportunity regulations set forth in 41 CFR § 60-1.4(a) and (c), prohibiting employment discrimination against any employee or applicant because of race, color, religion, sex, or national origin; (ii) Vietnam Era Veterans Readjustment Assistance Act regulations set forth in 41 CFR Part 60-300 relating to the employment and advancement of disabled veterans and Vietnam era veterans; (iii) Rehabilitation Act regulations set forth in 41 CFR §60-741 relating to the employment and advancement of qualified disabled employees and applicants for employment; (iv) the clause known as "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" set forth in 15 USC § 637(d)(3); and (v) the subcontracting plan requirement set forth in 15 USC § 637(d). Without limiting the foregoing, Contractor and its subcontractors shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations

prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

**25.22 Supported Business Enterprises and Local Contractors.** Owner has a “**Supplier Diversity Policy**” to provide the maximum opportunity for Supported Business Enterprises and Local Contractors to participate as subcontractors for goods and services. As such, every attempt should be made by Contractor to include Supported Business Enterprises and Local Contractors on subcontract bid lists for the Work. To the extent practicable, this requirement shall be passed down to Subcontractors. Contractor shall provide a supplier diversity program for the Work. Elements of such a program shall at a minimum include: (i) a goal setting process for identifying opportunities for involvement in the Work by Supported Business Enterprises (of each type) and Local Contractors; (ii) an outreach process to identify and attract possible Supported Business Enterprises (of each type) and Local Contractors business interest in the Work, including working with local organizations such as Kentuckiana Minority Business Council; (iii) a pre-qualification process to assess the suitability of interested Supported Business Enterprises (of each type) and Local Contractors; (iv) a bidding process inclusive of suitable Supported Business Enterprises (of each type) and Local Contractors on subcontract bid lists; and (v) a monitoring process to provide statistical reporting on opportunities and utilization. Contractor shall report to Owner with respect to its compliance with this **Section 25.22** in accordance with **Exhibit F-9**.

### **25.23 Local Involvement; Reporting.**

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

25.23.2 Local Content. Contractor shall make a diligent good faith effort to include, to the maximum practical extent while otherwise meeting the requirements of this Agreement, qualified contractors on subcontract bid lists for portions of the Work that are to be subcontracted by Contractor or Subcontractors in the order of priority in which geographic areas are listed in the definition of Local Contractors.

25.23.3 Reporting. Each Month commencing on the Effective Date, Contractor shall provide a written report substantially in the form set forth in **Exhibit F-9**, detailing statistical data relating to its workforce and those of Subcontractors, including information relating to Local Hires, Supported Business Enterprises (of each type) and Local Contractors, and spend on Supported Business Enterprises (of each type) and Local Contractors. Contractor will not be obligated to provide confidential individual employee information under this **Section 25.23.3**.

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

**LOUISVILLE GAS AND ELECTRIC COMPANY**

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

[REDACTED]

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

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

[REDACTED]

*[Handwritten signature]*



**Louisville Gas & Electric Company**  
**CONTRACT No. 878504**

**Cane Run Generating Station Ash Pond Closure and Landfill Cap**

This "Contract" is a Statement of Work within the meaning of the General Services Agreement (the "GSA") dated December 27, 2011, between (i) **LG&E and KU Services Company**, a Kentucky corporation, and (ii) [REDACTED], a Kentucky Corporation ("**Contractor**"), whose address is [REDACTED]. This Contract is entered into, effective as of **April 1, 2013** (the "**SOW Effective Date**"), between (i) Louisville Gas and Electric Company, an affiliate of LG&E and KU Services Company ("**LG&E**", "**Company**" or "**Owner**"), whose address is 820 West Broadway, Louisville, KY 40202 and (ii) **Contractor**. Capitalized terms used but not defined in this Statement of Work shall have the meanings assigned them in the GSA. The parties hereto agree as follows:

1.0 **GENERAL**

1.1 Contractor shall perform the following: Cane Run Generating Station Ash Pond Closure and Landfill Cap and Cane Run Generating Station Ash Pond and Landfill Maintenance as more specifically described in Articles 2.0 and 3.0 hereof (hereinafter referred to as the "Work") and Company shall compensate the Contractor for the Work, under all the terms and conditions hereof.

1.2 The Cane Run Generating Station, Ash Pond and Landfill are located in South West Jefferson County, Kentucky. The Station, Ash Pond and Landfill may be accessed from Cane Run Road.

1.3 [REDACTED]

1.4 [REDACTED]. The result of the early retirement allows LG&E to utilize existing facilities (ash pond cap, existing landfill, and the Mechanically Stabilized Earth wall) to store the Coal Combustion Residuals ("CCR") generated through retirement of the coal-fired units. Construction of the Cane Run Ash Pond Closure and Landfill Cap project supports CCR management through shutdown of the coal fired units.

1.5 [REDACTED] The Cane Run Ash Pond Closure and Landfill Cap project will allow the Company to close the existing ash pond and landfill while providing additional CCR storage capacity through beneficial reuse of

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the CCR produced to bring the ash pond and landfill to near final closure height. The Cane Run Ash Pond Closure and Landfill Cap project, along with the modified interior Mechanically Stabilized Earth (MSE) wall project in the existing landfill will provide enough storage capacity for the remaining life of the coal fired units.

2.0 DESCRIPTION OF WORK

- 2.1 Except as otherwise expressly provided herein, Contractor shall supply all labor, supervision, materials, equipment, fuel, tools, and warehousing, and shall pay all expenses, necessary or appropriate in the performance of the Work.
- 2.2 No materials containing asbestos shall be supplied or used in the performance of Work.
- 2.3 Without limitation, Contractor shall meet all requirements set forth in the Lead Construction Standard 29 CFR 1926.62.
- 2.4 The Work includes transport, excavation, hauling and placement of CCR material, dust control, erosion control, embankment construction, grading and drainage improvements in the Ash Pond, Landfill, and the Mechanically Stabilized Earth (MSE) wall. The Work also includes Landfill Operations and Maintenance. Contractor shall perform the "Work" in accordance with the Specifications and Drawings included and referenced herein. The Work includes General Site Requirements, Ash Pond Cap Phases I – IV, Closure (re-grading) of the South End of the Existing Landfill, Relocation of Existing Soil Stockpile, and placement of structural CCR (behind MSE wall) as set forth below.

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

2.4.1 General Requirements

2.4.1.1 Excavation:

Contractor shall excavate CCR to the designated depths, and the shaping and finishing of all excavation to the required lines and grades as shown in Drawings CR0-C-01111 thru CR0-C-01114. During excavation satisfactory materials shall be segregated for utilization in the backfill of standing water or shaping of the Phase I work defined in drawing CRO-C-01111-Phase 1-plan view. Satisfactory materials are defined in Technical Specifications Division 2-Site Work-Section 02400. Reference Technical Specifications Division 2-Site Work-Section 02200-Excavation.

2.4.1.2 Placement:

Contractor shall place CCR material in an approved and legal manner, per Technical Specification for Cane Run Generating Station Ash Pond Closure dated [REDACTED] [REDACTED]. If any CCR material is dumped in unauthorized areas or outside designated limits, the Contractor shall remove the material and restore the area to the condition of the adjacent undisturbed areas. CCR shall be placed within the designated limits.

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## 2.4.1.3 Embankment:

Seeding and mulching of vegetative cover shall be considered incidental to construction of Zone I or Zone II embankment placement and included in the price for Zone I or Zone II embankment as noted in Section 02400 of the Specifications.

## 2.4.1.4 Dust Control:

Contractor shall perform Dust Control as a component of Ash Pond Cap (Phase I-IV), Closure (re-grading) of South End of Existing Landfill, Relocation of Existing Soil Stockpile, Placement of Structural CCR (behind MSE wall), and Landfill Operations and Maintenance with the respective Unit Rates for such Work, during Normal Work Schedule. Normal Work Schedule shall be defined as any such time during which the Contractor is performing the aforementioned portions of Work. Dust Control required by Company at any time other than performance of the aforementioned portions of Work shall be compensated on an hourly rated basis in accordance with Commercial Schedules A & B.

Contractor shall perform dust control as specified in Technical Specifications Division 2 –Site Work-Section 02507 Dust Control.

2.4.1.4.1 Contractor shall perform Dust Control in Work Limits-Base Scope and Work Limits- Supplemental Dust Control as designated in drawing SK-1.

2.4.1.4.2 For all Dust Control within the Work, Contractor understands and acknowledges that controlling dust is of critical importance. In that regard, Contractor shall perform the Work (i) in compliance with all applicable laws (including, without limitation, Federal, state and local statutes, ordinances, regulations, etc.) and with the Company's dust control plan(s) (as filed with the Air Pollution Control District of Metro Louisville, Kentucky or other applicable agency) and air permit(s) as such plans and permits are in effect, modified, amended, supplemented, or otherwise modified from time to time (ii) in a manner such that no visible dust will leave the areas in which Work is performed (either while the Work is being performed or thereafter), and (iii) in compliance with Technical Specifications Division 2 – Site Work-Section 02507 – Dust Control-3.4.2. The foregoing requirements are cumulative and compliance with one of the requirements shall not relieve Contractor of its obligation to comply with all of the other requirements. If Contractor believes any of the requirements are in conflict (i.e., it cannot comply with one requirement without violating another), Contractor shall immediately notify Company and thereafter comply with Company's directives on complying with the requirements. Without in any way limiting Company's other remedies available for any breach of Contractor's obligations under this paragraph (or any other provision of this Contract), Contractor shall indemnify and hold Company harmless from any and all damage, loss, claim, expense, demand, suit, notice of violation, liability, penalty, fine, or forfeiture of every kind or nature, including but not limited to the attorney costs (e.g., salary and burden for in-house attorneys and fees for outside counsel) and expenses and other costs and expenses of defending against the foregoing and payment of any settlement or

judgment therefor, by reason of any breach or alleged breach of Contractor's obligations under this paragraph.

Dust control shall include (mandatory) sprinkling, tire wash station maintenance, hydromulch and chemical treatment. Refer to Division 2 – Site Work-Section 02507 – Dust Control-3.2 Sprinkling. Refer to Division 2 – Site Work-Section 02507 – Dust Control-3.3 Chemical Treatment. --

2.4.1.5 Erosion Control:

Contractor shall perform erosion control as specified in Technical Specifications Division 1 – General Requirements-Section 01430 – Environmental Protection-1.7-Erosion Control.

2.4.1.6 Quality Control:

Contractor shall perform Quality Control (QC) Services as specified in Technical Specification Section 01010 – 3. All Work shall be in accordance with the Construction Quality Control (QC) Plan attached as Construction Quality Control Plan for Cane Run Ash Pond Closure Beneficial Reuse Plan dated December 14, 2012. Failure to provide the required timely submittals of documentation may result in termination of the contract as determined by the Company.

2.4.2 Ash Pond Cap - Phase I – The Work set forth in this Phase I shall be in accordance with Drawing CR0-C-01111. The Work in Phase I shall include but not be limited to:

- 2.4.2.1 Contractor shall construct perimeter berm Zone I to include locating borrow source and transporting borrow source to site.
- 2.4.2.2 Contractor shall construct CCR embankment in Zone III to include;
  - 2.4.2.2.1 excavation of CCR from ash pond,
  - 2.4.2.2.2 placement of CCR (including poz-o-tec) into Zone III placement area,
  - 2.4.2.2.3 loading, hauling, placement and compaction of CCR from 4/5 SPP or 6 SPP to the Zone III placement area, and
  - 2.4.2.2.4 loading, hauling, placement and compaction of CCR from CCR stockpile in ash pond to the Zone III placement area
- 2.4.2.3 Contractor shall construct road 1 and road 2.
- 2.4.2.4 Contractor shall furnish and install Pipe 1.
- 2.4.2.5 Contractor shall furnish and install headwalls.
- 2.4.2.6 Contractor shall install and maintain erosion control to include;
  - 2.4.2.6.1 silt fence, and
  - 2.4.2.6.2 turbidity curtain.
- 2.4.2.7 Contractor shall furnish, install and operate dust control measures to include:
  - 2.4.2.7.1 sprinkling,
  - 2.4.2.7.2 tire wash station (including maintenance thereof),
  - 2.4.2.7.3 hydromulch, and
  - 2.4.2.7.4 chemical treatment.
- 2.4.2.8 Contractor shall relocate sluice lines.
- 2.4.2.9 Contractor shall extend five (5) existing piezometers.

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2.4.2.10 Contractor shall perform Quality Control (QC) Services in accordance with the Construction Quality Control Plan.

2.4.3 Ash Pond Cap - Phase II - The Work set forth in this Phase II shall be in accordance with Drawing CR0-C-01112. The Work in Phase II shall include but not be limited to:

2.4.3.1 Contractor shall construct CCR embankment in Zone III to include;

2.4.3.1.1 excavation of CCR from ash pond,

2.4.3.1.2 placement of CCR (including poz-o-tec) into Zone III placement area,

2.4.3.1.3 loading, hauling, placement and compaction of CCR from 4/5 SPP or 6 SPP to the Zone III placement area.

2.4.3.2 Contractor shall construct ditch 3 and ditch 4, including subgrade preparation, lining materials, and maintenance.

2.4.3.3 Contractor shall install and maintain rock silt check erosion control.

2.4.3.4 Contractor shall install riprap. Riprap shall consist of quarry stone meeting the requirements of Section 703 of the Kentucky Transportation Cabinet (KYTC) "Standard Specifications for Road and Bridge Construction" latest edition. Riprap shall conform to Drawing CR0-C-01135.

2.4.3.5 Contractor shall furnish, install and operate dust control measures to include;

2.4.3.5.1 sprinkling,

2.4.3.5.2 tire wash station (including maintenance thereof),

2.4.3.5.3 hydromulch, and

2.4.3.5.4 chemical treatment.

2.4.3.6 Contractor shall extend five (5) existing piezometers.

2.4.3.7 Contractor shall perform Quality Control (QC) Services in accordance with the Construction Quality Control Plan.

2.4.4 Ash Pond Cap - Phase III - The Work set forth in this Phase III shall be in accordance with Drawing CR0-C-01113. The Work in Phase III shall include but not be limited to:

2.4.4.1 Contractor shall construct CCR embankment in Zone III to include;

2.4.4.1.1 excavation of CCR from ash pond,

2.4.4.1.2 placement of CCR (including poz-o-tec) into Zone III placement area,

2.4.4.1.3 loading, hauling, placement and compaction of CCR from 4/5 SPP or 6 SPP to the Zone III placement area.

2.4.4.2 Contractor shall construct ditch 5 and ditch 6, including subgrade preparation, lining materials, and maintenance.

2.4.4.3 Contractor shall furnish and install Pipe 2

2.4.4.4 Contractor shall furnish and install headwalls.

2.4.4.5 Contractor shall install and maintain erosion control to include;

2.4.4.5.1 rock silt checks, and

2.4.4.5.2 relocate turbidity curtain.

2.4.4.6 Contractor shall furnish, install and operate dust control measures to include;

2.4.4.6.1 sprinkling,



- 2.4.4.6.2 fire wash station (including maintenance thereof),
  - 2.4.4.6.3 hydromulch, and
  - 2.4.4.6.4 chemical treatment.
- 2.4.4.7 Contractor shall perform Quality Control (QC) Services in accordance with the Construction Quality Control Plan.
- 2.4.5 Pond Cap - Phase IV - The Work set forth in this Phase IV shall be in accordance with Drawing CR0-C-01114. The Work in Phase IV shall include but not be limited to:
  - 2.4.5.1 Contractor shall construct temporary soil cover in Zone II to include hauling and spreading offsite borrow.
  - 2.4.5.2 Contractor shall install revegetation (preparing the seedbed, adding soil amendments, and seeding areas disturbed during construction) on the ten (10) acre borrow area. Refer to Technical Specifications Division 2 – Site Work Section 02936 – Revegetation
  - 2.4.5.3 Contractor shall install and maintain rock silt check erosion control.
  - 2.4.5.4 Contractor shall perform Quality Control (QC) Services in accordance with the Construction Quality Control Plan.
- 2.4.6 Closure (re-grading) of the South End of the Existing Landfill in accordance with drawings. Company shall provide drawings within 30 Calendar days of effective date of Contract.
  - 2.4.6.1 Contractor shall load, haul, place and compact CCR from 4/5 SPP to the south end of the existing landfill.
  - 2.4.6.2 Contractor shall regrade existing contours within the south end of the existing landfill.
  - 2.4.6.3 Contractor shall perform excavation, loading, hauling from Ash Pond South Storage Basin, placement, and compaction to Existing Landfill South End or Ash Pond Cap, to meet Kentucky Pollution Discharge Elimination System (KPDES) discharge limits and to prove adequate storage capacity for sluicing CCR material for ongoing unit operation.
- 2.4.7 Relocation of Existing Soil Stockpile in accordance with drawings. Company shall provide drawings within 30 Calendar days of effective date of Contract.
  - 2.4.7.1 Contractor shall perform excavation of existing soil stockpile and shall place the excavated soil on the Cane Run Road visual berm, as designated in drawings.
- 2.4.8 Placement of Structural CCR (behind MSE wall)
  - 2.4.8.1 Contractor shall load, haul, place, and compact structural CCR direct to MSE wall. Structural CCR must comply with the existing MSE Wall Construction Contract and Contractor specification as set forth therein. Structural CCR shall be placed in MSE wall not to exceed original design elevation.
- 2.4.9 Landfill Operations and Maintenance (CCR Placement)

- 2.4.9.1 Contractor shall load, haul, place, and compact nonstructural CCR from 4/5 SPP.
- 2.4.9.2 Contractor shall load, haul, place, and compact nonstructural CCR from 6 SPP.
- 2.4.9.3 Contractor shall perform Landfill Operations in accordance with the Landfill Management Technical Specifications (Exhibit 17).
- 2.4.9.4 Contractor shall prepare existing by-product subgrade to receive by-product daily landfill maintenance.
- 2.4.9.5 Contractor shall maintain drainage elements and structures.
- 2.4.9.6 Contractor shall perform monthly maintenance to include, but not be limited to;
  - 2.4.9.6.1 maintenance of all haul roads and maintenance of existing vegetative cover,
  - 2.4.9.6.2 landfill mowing (3 times per year),
  - 2.4.9.6.3 road grading,
  - 2.4.9.6.4 silt fence maintenance and replacement,
  - 2.4.9.6.5 ditch cleaning for landfill and cemetery,
  - 2.4.9.6.6 ditch cleaning for SPP 6,
  - 2.4.9.6.7 longreach excavator miscellaneous cleaning eight (8) weeks each year (weeks to be designated by Company),
  - 2.4.9.6.8 lime grit maintenance,
  - 2.4.9.6.9 bobcat labor as designated by Company, and
  - 2.4.9.6.10 all other maintenance items will be as directed by Company.
- 2.4.10 Maintenance of the construction access road is incidental to the Work.

2 SPECIFICATIONS, EXHIBITS AND DRAWINGS

All Work shall be performed in strict accordance with the following specifications, exhibits and drawings which are incorporated herein by reference.

3.1 SPECIFICATIONS

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

3.2 EXHIBITS

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

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[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

4 TEMPORARY FACILITIES AND UTILITIES

4.1 FURNISHED BY CONTRACTOR

Except as otherwise expressly set forth in this Contract, Contractor shall supply, install, properly maintain and remove all temporary facilities and utilities necessary for performance of the Work, including but not limited to:

- 4.1.1 All temporary buildings
- 4.1.2 All sanitary facilities, including janitorial services
- 4.1.3 First-aid facilities
- 4.1.4 Fuels and lubricants
- 4.1.5 Transportation facilities on and off site
- 4.1.6 Communication facilities
- 4.1.7 Compressed air and gases
- 4.1.8 Maintenance of Contractor's lay down, storage and work areas and roads within such areas
- 4.1.9 Rigging, scaffolding and all equipment for erection
- 4.1.10 All cranes and other necessary equipment for lifting and moving equipment
- 4.1.11 All tools
- 4.1.12 All standard expendable or consumable construction items and supplies including welding material and tools
- 4.1.13 Containers, ice, cups for drinking water
- 4.1.14 Cost of unloading, loading and storing all materials, equipment and supplies
- 4.1.15 Electrical power for small tools, etc., required in the actual work areas
- 4.1.16 Dumpsters and waste disposal
- 4.1.17 All resources to wash vehicles, tires, and wheels each time vehicles leave Cane Run property

The foregoing buildings and facilities, move-in and move-out dates and locations on job sites shall be subject to and in accordance with the review and approval of LG&E.

4.2 FURNISHED BY COMPANY

Company shall supply or cause to be supplied the following temporary facilities and utilities to Contractor without cost to Contractor before or in connection with performance of the Work:

- 4.5.1 Temporary power for office facilities
- 4.5.2 Potable water
- 4.5.3 Parking areas
- 4.5.4 Laydown areas

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5.0 TERM AND TERMINATION

5.1 This Contract shall become effective on the Effective Date. The Company has certain termination rights as set forth in the GSA and thus Company makes no promise or guarantee as to the amount of Work to be performed under this Contract. This Contract does not convey an exclusive right to the Contractor to perform Work of the type or nature set forth in this Contract.

5.2 [REDACTED]

6.0 PERFORMANCE SCHEDULE

[REDACTED]

7.0 CONTRACTOR DRUG AND ALCOHOL TESTING

7.1 **Drug and Alcohol.** No individual will perform any of the Work while under the influence of any illegal or controlled substance or alcohol. No alcohol may be consumed four (4) hours prior to any individual's performance of the Work or anytime during the workday. An individual will be deemed under the influence of alcohol if a level of .02 percent blood alcohol or greater is found.

7.2 **Plant Outage, Plant Project, or Major Construction Work:** The work under this Contract is considered "Plant Outage, Plant Project, or Major Construction Work". In accordance with the revised LG&E AND KU SERVICES COMPANY Contractor / Subcontractor Safety Policy effective 12-11-12, all contractor employees working on-site for "Plant Outage, Plant Project, or Major Construction Work" shall be required to complete a negative drug and alcohol pre-test within seven (7) days before reporting to work on-site. The Contractor shall complete random drug and alcohol testing on ten percent (10%) of their on-site workforce assigned to this work site within thirty (30) days of the start of Work and shall test ten percent (10%) subsequently on an on-going monthly basis for the duration of their on-site "project" work assignment. LG&E AND KU SERVICES COMPANY Corporate Health and Safety will be auditing Contractor compliance with these requirements. Testing costs are the responsibility of the Contractor.

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8.0 SPECIFIC REPORTING REQUIREMENTS

Contractor shall promptly submit the schedules and reports set forth below:

- 8.1 Contract Activities Daily Report as specified in Exhibit No. 3.
- 8.2 A detailed weekly schedule of day-to-day operations showing planned labor.
- 8.3 A report every other week showing scheduled progress versus actual progress, giving details of how the Work will be completed in relation to the schedule.
- 8.4 Major-construction equipment schedule correlated to Work schedule.
- 8.5 Daily major-construction equipment report.
- 8.6 Daily labor reports by crafts.
- 8.7 Daily labor alert report if Contractor's available manpower is not sufficient to meet the schedule for performance of the Work.
- 8.8 Schedule for the procurement and receipt of materials, equipment and subcontract service by Contractor and a monthly status report of all such materials and equipment.
- 8.9 Monthly report log of truck counts, including truck identifier, rated capacity, SPP hauled from and location in the landfill where the material was placed.

9.0 COMPENSATION

9.1 [REDACTED]

*AR  
CP*







[REDACTED]

[REDACTED]

[REDACTED]

*CP*

[REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

10.0 CONTRACTUAL NOTICES

See the Article titled "Notices" in the GSA for provisions governing contractual notices. In addition, a copy of all notices to LG&E AND KU COMPANY shall be sent to:

*AKR  
CP*

10.1 LG&E's address:

[REDACTED]

10.2 Contractor's Address:

[REDACTED]

**11.0 Order of precedence**

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

**12.0 ENTIRE AGREEMENT**

This Contract, including all specifications, exhibits and drawings listed in this Contract and the GSA, constitutes the entire agreement between the parties relating to the Work and supersedes all prior or contemporaneous oral or written agreements, negotiations, understandings and statements pertaining to the Work or this Contract.

The parties hereto have executed this Contract on the dates written below, but it is effective as of the date first written above.

Louisiana [REDACTED]

BY: [REDACTED]

NAME (Print): [REDACTED]

TITLE: [REDACTED]

DATE: [REDACTED]

*Handwritten initials and signature*

[REDACTED]

BY: [REDACTED]

NAME (Print): [REDACTED]

TITLE: [REDACTED]

DATE: [REDACTED]

-END-

*Q2K  
CP*

**\$200,000,000**

**TERM LOAN CREDIT AGREEMENT**

**dated as of October 26, 2017**

**among**

**LOUISVILLE GAS AND ELECTRIC COMPANY,  
as the Borrower,**

**THE LENDERS FROM TIME TO TIME PARTY HERETO**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Administrative Agent**

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**Appendices:**

Appendix A - Commitments

**Exhibits:**

- Exhibit A-1 - Form of Notice of Borrowing
- Exhibit A-2 - Form of Notice of Conversion/Continuation
- Exhibit B - Form of Note
- Exhibit C - Form of Assignment and Assumption Agreement
- Exhibit D - Forms of Opinion of Counsel for the Borrower

**TERM LOAN CREDIT AGREEMENT** (this “Agreement”) dated as of October 26, 2017 is entered into among LOUISVILLE GAS AND ELECTRIC COMPANY, a Kentucky corporation (the “Borrower”), the LENDERS party hereto from time to time and U.S. BANK NATIONAL ASSOCIATION, as the Administrative Agent. The parties hereto agree as follows:

## RECITALS

The Borrower has requested that the Lenders provide a term loan facility for the purposes set forth herein, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of their mutual covenants and agreements hereinafter set forth and intending to be legally bound hereby, the parties hereto covenant and agree as follows:

## ARTICLE I DEFINITIONS

Section 1.01 Definitions. All capitalized terms used in this Agreement or in any Appendix, Schedule or Exhibit hereto which are not otherwise defined herein or therein shall have the respective meanings set forth below.

“Adjusted London Interbank Offered Rate” means, for any Interest Period, a rate per annum equal to the quotient obtained (rounded upward, if necessary, to the nearest 1/100th of 1%) by dividing (i) the London Interbank Offered Rate for such Interest Period by (ii) 1.00 minus the Euro-Dollar Reserve Percentage.

“Administrative Agent” means U.S. Bank, in its capacity as administrative agent for the Lenders hereunder and under the other Loan Documents, and its successor or successors in such capacity.

“Administrative Questionnaire” means, with respect to each Lender, an administrative questionnaire in the form provided by the Administrative Agent and submitted to the Administrative Agent (with a copy to the Borrower) duly completed by such Lender.

“Affiliate” means, with respect to any Person, any other Person who is directly or indirectly controlling, controlled by or under common control with such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled Person, whether through the ownership of stock or its equivalent, by contract or otherwise. In no event shall the Administrative Agent or any Lender be deemed to be an Affiliate of the Borrower or any of its Subsidiaries.

“Agreement” has the meaning set forth in the introductory paragraph hereto, as this Agreement may be amended, restated, supplemented or modified from time to time.

“Applicable Lending Office” means, with respect to any Lender, (i) in the case of its Base Rate Loans, its Base Rate Lending Office and (ii) in the case of its Euro-Dollar Loans, its Euro-Dollar Lending Office.

“Applicable Percentage” means, for purposes of calculating the applicable interest rate for any day for (i) any Base Rate Loans, 0.00% or (ii) any Euro-Dollar Loans, 0.50%.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Asset Sale” means any sale of any assets, including by way of the sale by the Borrower or any of its Subsidiaries of equity interests in such Subsidiaries.

“Assignee” has the meaning set forth in Section 9.06(c).

“Assignment and Assumption Agreement” means an Assignment and Assumption Agreement, substantially in the form of attached Exhibit C, under which an interest of a Lender hereunder is transferred to an Eligible Assignee pursuant to Section 9.06(c).

“Availability Period” means the period from and including the Effective Date to but excluding the Termination Date.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as amended, or any successor statute.

“Base Rate” means for any day, a rate per annum equal to the highest of (i) the Prime Rate for such day, (ii) the sum of 1/2 of 1% plus the Federal Funds Rate for such day and (iii) except during any period of time during which a notice delivered to the Borrower under Section 2.14 or Section 2.15 shall remain in effect, the London Interbank Offered Rate plus 1%.

“Base Rate Borrowing” means a Borrowing comprised of Base Rate Loans.

“Base Rate Lending Office” means, as to each Lender, its office located at its address set forth in its Administrative Questionnaire (or identified in its Administrative Questionnaire as its Base Rate Lending Office) or such other office as such Lender may hereafter designate as its Base Rate Lending Office by notice to the Borrower and the Administrative Agent.

“Base Rate Loan” means a Loan in respect of which interest is computed on the basis of the Base Rate.

“Borrower’s Rating” means the senior secured long-term debt rating of the Borrower from S&P or Moody’s.

“Borrower” has the meaning set forth in the introductory paragraph hereto.

“Borrowing” means a borrowing consisting of Loans of a single Type made by the Lenders on a single date and, in the case of a Euro-Dollar Borrowing, having a single Interest Period pursuant to Section 2.01.

“Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized by law to close; provided that when used with respect to any borrowing of, payment or prepayment of principal of or interest on, or the Interest Period for, a Euro-

Dollar Loan, or a notice by the Borrower with respect to any such borrowing payment, prepayment or Interest Period, the term “Business Day” shall also mean that such day is a London Business Day.

“Capital Lease” means any lease of property which, in accordance with GAAP, should be capitalized on the lessee’s balance sheet.

“Capital Lease Obligations” means, with respect to any Person, all obligations of such Person as lessee under Capital Leases, in each case taken at the amount thereof accounted for as liabilities in accordance with GAAP.

“Change of Control” means (i) the acquisition by any Person, or two or more Persons acting in concert, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended) of 25% or more of the outstanding shares of voting stock of PPL Corporation or its successors or (ii) the failure at any time of PPL Corporation or its successors to own, directly or indirectly, 80% or more of the outstanding shares of the Voting Stock in the Borrower.

“Commitment” means, with respect to any Lender, the commitment of such Lender to (i) make Loans under this Agreement as set forth in Appendix A and as such Commitment may be reduced from time to time pursuant to Section 2.08 or Section 9.06(c) or increased from time to time pursuant to Section 9.06(c).

“Commitment Ratio” means, with respect to any Lender, the percentage equivalent of the ratio which such Lender’s Commitment bears to the aggregate amount of all Commitments.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise or branch profits or similar taxes, duties, levies, impost, deductions, charges, and withholdings and all liabilities with respect thereto.

“Consolidated Capitalization” means the sum of, without duplication, (A) the Consolidated Debt (without giving effect to clause (b) of the definition of “Consolidated Debt”) and (B) the consolidated shareowners’ equity (determined in accordance with GAAP) of the common, preference and preferred shareowners of the Borrower and minority interests recorded on the Borrower’s consolidated financial statements (excluding from shareowners’ equity (i) the effect of all unrealized gains and losses reported under Financial Accounting Standards Board Accounting Standards Codification Topic 815 in connection with (x) forward contracts, futures contracts, options contracts or other derivatives or hedging agreements for the future delivery of electricity, capacity, fuel or other commodities and (y) Interest Rate Protection Agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements and (ii) the balance of accumulated other comprehensive income/loss of the Borrower on any date of determination solely with respect to the effect of any pension and other post-retirement benefit liability adjustment recorded in accordance with GAAP), except that for purposes of calculating Consolidated Capitalization of the Borrower, Consolidated Debt of the Borrower shall exclude Non-Recourse Debt and Consolidated Capitalization of the Borrower shall exclude that portion of shareowners’ equity attributable to assets securing Non-Recourse Debt.

“Consolidated Debt” means the consolidated Debt of the Borrower and its Consolidated Subsidiaries (determined in accordance with GAAP), except that for purposes of this definition (a) Consolidated Debt shall exclude Non-Recourse Debt of the Borrower and its Consolidated Subsidiaries, and (b) Consolidated Debt shall exclude (i) Hybrid Securities of the Borrower and its Consolidated Subsidiaries in an aggregate amount as shall not exceed 15% of Consolidated Capitalization

and (ii) Equity-Linked Securities in an aggregate amount as shall not exceed 15% of Consolidated Capitalization.

“Consolidated Subsidiary” means with respect to any Person at any date any Subsidiary of such Person or other entity the accounts of which would be consolidated with those of such Person in its consolidated financial statements if such statements were prepared as of such date in accordance with GAAP.

“Continuing Lender” means with respect to any event described in Section 2.08(b), a Lender which is not a Retiring Lender, and “Continuing Lenders” means any two or more of such Continuing Lenders.

“Corporation” means a corporation, association, company, joint stock company, limited liability company, partnership or business trust.

“Debt” of any Person means, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (iii) all Guarantees by such Person of Debt of others, (iv) all Capital Lease Obligations and Synthetic Leases of such Person, (v) all obligations of such Person in respect of Interest Rate Protection Agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements (the amount of any such obligation to be the net amount that would be payable upon the acceleration, termination or liquidation thereof), but only to the extent that such net obligations exceed \$75,000,000 in the aggregate and (vi) all obligations of such Person as an account party in respect of letters of credit and bankers’ acceptances; provided, however, that “Debt” of such Person does not include (a) obligations of such Person under any installment sale, conditional sale or title retention agreement or any other agreement relating to obligations for the deferred purchase price of property or services, (b) obligations under agreements relating to the purchase and sale of any commodity, including any power sale or purchase agreements, any commodity hedge or derivative (regardless of whether any such transaction is a “financial” or physical transaction), (c) any trade obligations or other obligations of such Person incurred in the ordinary course of business or (d) obligations of such Person under any lease agreement (including any lease intended as security) that is not a Capital Lease or a Synthetic Lease.

“Debtor Relief Laws” means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“Default” means any condition or event which constitutes an Event of Default or which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“Defaulting Lender” means at any time any Lender with respect to which a Lender Default is in effect at such time, including any Lender subject to a Bail-In Action. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more clauses of the definition of “Lender Default” shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to cure as expressly contemplated in the definition of “Lender Default”) upon delivery of written notice of such determination to the Borrower and each Lender.

“Delayed Draw Commitment Fee” has the meaning set forth in Section 2.07(a).

“Delayed Draw Commitment Fee Rate” shall mean a rate per annum equal to 0.10%.

“Dollars” and the sign “\$” means lawful money of the United States of America.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the date on which the Administrative Agent determines that the conditions specified in or pursuant to Section 4.01 have been satisfied.

“Eligible Assignee” means (i) a Lender; (ii) a commercial bank organized under the laws of the United States and having a combined capital and surplus of at least \$100,000,000; (iii) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country and having a combined capital and surplus of at least \$100,000,000; provided, that such bank is acting through a branch or agency located and licensed in the United States; (iv) an Affiliate of a Lender that is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933, as amended) or (v) an Approved Fund; provided, that, in each case (a) upon and following the occurrence of an Event of Default, an Eligible Assignee shall mean any Person other than the Borrower or any of its Affiliates and (b) notwithstanding the foregoing, “Eligible Assignee” shall not include the Borrower or any of its Affiliates.

“Environmental Laws” means any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses or other written governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or Hazardous Substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or Hazardous Substances or wastes.

“Environmental Liabilities” means all liabilities (including anticipated compliance costs) in connection with or relating to the business, assets, presently or previously owned, leased or operated property, activities (including, without limitation, off-site disposal) or operations of the Borrower or any of its Subsidiaries which arise under Environmental Laws or relate to Hazardous Substances.

“Equity-Linked Securities” means any securities of the Borrower or any of its Subsidiaries which are convertible into, or exchangeable for, equity securities of the Borrower, such Subsidiary or PPL Corporation, including any securities issued by any of such Persons which are pledged to secure any obligation of any holder to purchase equity securities of the Borrower, any of its Subsidiaries or PPL Corporation.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute.

“ERISA Group” means the Borrower and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Borrower, are treated as a single employer under Section 414(b) or (c) of the Internal Revenue Code.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Euro-Dollar Borrowing” means a Borrowing comprised of Euro-Dollar Loans.

“Euro-Dollar Lending Office” means, as to each Lender, its office, branch or Affiliate located at its address set forth in its Administrative Questionnaire (or identified in its Administrative Questionnaire as its Euro-Dollar Lending Office) or such other office, branch or Affiliate of such Lender as it may hereafter designate as its Euro-Dollar Lending Office by notice to the Borrower and the Administrative Agent.

“Euro-Dollar Loan” means a Loan in respect of which interest is computed on the basis of the Adjusted London Interbank Offered Rate pursuant to the applicable Notice of Borrowing or Notice of Conversion/Continuation.

“Euro-Dollar Reserve Percentage” of any Lender for the Interest Period of any LIBOR Rate Loan means the reserve percentage applicable to such Lender during such Interest Period (or if more than one such percentage shall be so applicable, the daily average of such percentages for those days in such Interest Period during which any such percentage shall be so applicable) under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any emergency, supplemental or other marginal reserve requirement) then applicable to such Lender with respect to liabilities or assets consisting of or including “Eurocurrency Liabilities” (as defined in Regulation D). The Adjusted London Interbank Offered Rate shall be adjusted automatically on and as of the effective date of any change in the Euro-Dollar Reserve Percentage.

“Event of Default” has the meaning set forth in Section 7.01.

“FATCA” means Sections 1471 through 1474 of the Internal Revenue Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b) of the Internal Revenue Code.

“Federal Funds Rate” means for any day the rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to the nearest 1/100th of 1%) charged by U.S. Bank on such day on such transactions as determined by the Administrative Agent; provided, further, that if any such rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“FERC” means the Federal Energy Regulatory Commission.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its activities.

“GAAP” means United States generally accepted accounting principles applied on a consistent basis.

“Governmental Authority” means any federal, state or local government, authority, agency, central bank, quasi-governmental authority, court or other body or entity, and any arbitrator with authority to bind a party at law.

“Group of Loans” means at any time a group of Loans consisting of (i) all Loans which are Base Rate Loans at such time or (ii) all Loans which are Euro-Dollar Loans of the same Type having the same Interest Period at such time; provided, that, if a Loan of any particular Lender is converted to or made as a Base Rate Loan pursuant to Sections 2.15 or 2.18, such Loan shall be included in the same Group or Groups of Loans from time to time as it would have been in if it had not been so converted or made.

“Guarantee” of or by any Person means any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or to purchase (or to advance or supply funds for the purchase of) any security for payment of such Debt, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Debt of the payment of such Debt or (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Debt; provided, however, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Hazardous Substances” means any toxic, caustic or otherwise hazardous substance, including petroleum, its derivatives, by-products and other hydrocarbons, or any substance having any constituent elements displaying any of the foregoing characteristics.

“Hybrid Securities” means any trust preferred securities, or deferrable interest subordinated debt with a maturity of at least 20 years issued by the Borrower, or any business trusts, limited liability companies, limited partnerships (or similar entities) (i) all of the common equity, general partner or similar interests of which are owned (either directly or indirectly through one or more Wholly Owned Subsidiaries) at all times by the Borrower or any of its Subsidiaries, (ii) that have been formed for the purpose of issuing hybrid preferred securities and (iii) substantially all the assets of which consist of (A) subordinated debt of the Borrower or a Subsidiary of the Borrower, as the case may be, and (B) payments made from time to time on the subordinated debt.

“Indemnitee” has the meaning set forth in Section 9.03(b).

“Interest Period” means with respect to each Euro-Dollar Loan, a period commencing on the date of borrowing specified in the applicable Notice of Borrowing or on the date specified in the applicable Notice of Conversion/Continuation and ending one, two, three or six months thereafter, as the Borrower may elect in the applicable notice; provided, that:



(i) any Interest Period which would otherwise end on a day which is not a Business Day shall, subject to clause (iii) below, be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period which begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (iii) below, end on the last Business Day of a calendar month; and

(iii) no Interest Period shall end after the Maturity Date.

“Interest Rate Protection Agreements” means any agreement providing for an interest rate swap, cap or collar, or any other financial agreement designed to protect against fluctuations in interest rates.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, or any successor statute.

“Lender” means each bank or other lending institution listed in Appendix A as having a Commitment, each Eligible Assignee that becomes a Lender pursuant to Section 9.06(c) and their respective successors.

“Lender Default” means (i) the failure (which has not been cured) of any Lender to (a) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (b) pay to the Administrative Agent or any Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, or (ii) a Lender having notified the Borrower and the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), or (iii) the failure, within three Business Days after written request by the Administrative Agent or the Borrower, of a Lender to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that a Lender Default in effect pursuant to this clause (iii) shall be cured upon receipt of such written confirmation by the Administrative Agent and the Borrower) or (iv) a Lender has, or has a direct or indirect parent company that has, (a) become the subject of a proceeding under any Debtor Relief Law, or (b) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (v) the Lender becomes the subject of a Bail-in Action; provided that a Lender Default shall not exist solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

“Lien” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance intended to confer or having the effect of conferring upon a creditor a preferential interest.

“Loan” means a Base Rate Loan or a Euro-Dollar Loan (made on either the Effective Date or the Post-Effective Date Loan Date), and “Loans” means any combination of the foregoing.

“Loan Documents” means this Agreement and the Notes.

“London Business Day” means a day on which commercial banks are open for international business (including dealings in Dollar deposits) in London.

“London Interbank Offered Rate” means:

(i) for any Euro-Dollar Loan for any Interest Period, the interest rate for deposits in Dollars for a period of time comparable to such Interest Period which appears on Reuters Screen LIBOR01 (or any applicable successor page) at approximately 11:00 A.M. (London time) two Business Days before the first day of such Interest Period; provided, however, that if more than one such rate is specified on Reuters Screen LIBOR01 (or any applicable successor page), the applicable rate shall be the arithmetic mean of all such rates (rounded upwards, if necessary, to the nearest 1/100 of 1%). If for any reason such rate is not available on Reuters Screen LIBOR01 (or any applicable successor page), the term “London Interbank Offered Rate” means for any Interest Period, the arithmetic mean of the rate per annum at which deposits in Dollars are offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 A.M. (London time) two Business Days before the first day of such Interest Period in an amount approximately equal to the principal amount of the Euro-Dollar Loan of U.S. Bank to which such Interest Period is to apply and for a period of time comparable to such Interest Period. To the extent that a comparable or successor rate is chosen by the Administrative Agent in connection with any rate set forth in this clause (i), such comparable or successor rate shall be applied in a manner consistent with market practice.

(ii) for any interest rate calculation with respect to a Base Rate Loan, the interest rate for deposits in Dollars for a period equal to one month (commencing on the date of determination of such interest rate) which appears on Reuters Screen LIBOR01 (or any applicable successor page) at approximately 11:00 A.M. (London time) on such date of determination (provided that if such day is not a Business Day for which a London Interbank Offered Rate is quoted, the next preceding Business Day for which a London Interbank Offered Rate is quoted); provided, however, that if more than one such rate is specified on Reuters Screen LIBOR01 (or any applicable successor page), the applicable rate shall be the arithmetic mean of all such rates (rounded upwards, if necessary, to the nearest 1/100 of 1%). If for any reason such rate is not available on Reuters Screen LIBOR01 (or any applicable successor page), the term “London Interbank Offered Rate” means for any applicable one-month interest period, the arithmetic mean of the rate per annum at which deposits in Dollars are offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 A.M. (London time) on such date of determination (provided that if such day is not a Business Day for which a London Interbank Offered Rate is quoted, the next preceding Business Day for which a London Interbank Offered Rate is quoted) in an amount approximately equal to the principal amount of the Base Rate Loan of U.S. Bank. To the extent that a comparable or successor rate is chosen by the Administrative Agent in connection with any rate set forth in this clause (ii), such comparable or successor rate shall be applied in a manner consistent with market practice.

Notwithstanding the foregoing, if the London Interbank Offered Rate determined in accordance with the foregoing shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Margin Stock” means “margin stock” as such term is defined in Regulation U.

“Material Adverse Effect” means (i) any material adverse effect upon the business, assets, financial condition or operations of the Borrower or the Borrower and its Subsidiaries, taken as a whole; (ii) a material adverse effect on the ability of the Borrower to perform its obligations under this Agreement, the Notes or the other Loan Documents or (iii) a material adverse effect on the validity or enforceability of this Agreement, the Notes or any of the other Loan Documents.

“Material Debt” means Debt (other than the Notes) of the Borrower in a principal or face amount exceeding \$50,000,000.

“Material Plan” means at any time a Plan or Plans having aggregate Unfunded Liabilities in excess of \$50,000,000. For the avoidance of doubt, where any two or more Plans, which individually do not have Unfunded Liabilities in excess of \$50,000,000, but collectively have aggregate Unfunded Liabilities in excess of \$50,000,000, all references to Material Plan shall be deemed to apply to such Plans as a group.

“Maturity Date” means the date that is one year and 364 days after the Effective Date or, if such date is not a Business Day, the next preceding Business Day.

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, and its successors or, absent any such successor, such nationally recognized statistical rating organization as the Borrower and the Administrative Agent may select.

“Multiemployer Plan” means at any time an employee pension benefit plan within the meaning of Section 4001(a)(3) of ERISA to which any member of the ERISA Group is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions.

“New Lender” means with respect to any event described in Section 2.08(b), an Eligible Assignee which becomes a Lender hereunder as a result of such event, and “New Lenders” means any two or more of such New Lenders.

“Non-Defaulting Lender” means each Lender other than a Defaulting Lender, and “Non-Defaulting Lenders” means any two or more of such Lenders.

“Non-Recourse Debt” means Debt that is nonrecourse to the Borrower or any asset of the Borrower.

“Non-U.S. Lender” has the meaning set forth in Section 2.17(e).

“Note” means a promissory note, substantially in the form of Exhibit B hereto, issued at the request of a Lender evidencing the obligation of the Borrower to repay outstanding Loans.

“Notice of Borrowing” has the meaning set forth in Section 2.03.

“Notice of Conversion/Continuation” has the meaning set forth in Section 2.06(d)(ii).

“Obligations” means:

(i) all principal of and interest (including, without limitation, any interest which accrues after the commencement of any case, proceeding or other action relating to the

bankruptcy, insolvency or reorganization of the Borrower, whether or not allowed or allowable as a claim in any such proceeding) on any Loan under, or any Note issued pursuant to, this Agreement or any other Loan Document;

(ii) all other amounts now or hereafter payable by the Borrower and all other obligations or liabilities now existing or hereafter arising or incurred (including, without limitation, any amounts which accrue after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of the Borrower, whether or not allowed or allowable as a claim in any such proceeding) on the part of the Borrower pursuant to this Agreement or any other Loan Document;

(iii) all expenses of the Administrative Agent as to which the Administrative Agent shall have a right to reimbursement under Section 9.03(a) hereof or under any other similar provision of any other Loan Document;

(iv) all amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement under Section 9.03 hereof or under any other similar provision of any other Loan Document; and

(v) in the case of each of clauses (i) through (iv) above, together with all renewals, modifications, consolidations or extensions thereof.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“Other Connection Taxes” means, with respect to the Administrative Agent or any Lender, taxes, duties, levies, impost, deductions, charges, and withholdings and all liabilities with respect thereto imposed as a result of a present or former connection between such Person and the jurisdiction imposing such tax (other than connections arising from such Person having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” has the meaning set forth in Section 2.17(b).

“Outstandings” means at any time, with respect to any Lender, the sum of the aggregate principal amount of such Lender’s outstanding Loans.

“Participant” has the meaning set forth in Section 9.06(b).

“Participant Register” has the meaning set forth in Section 9.06(b).

“Patriot Act” has the meaning set forth in Section 9.13.

“PBGC” means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

“Permitted Business” with respect to any Person means a business that is the same or similar to the business of the Borrower or any Subsidiary as of the Effective Date, or any business reasonably related thereto.

“Person” means an individual, a corporation, a partnership, an association, a limited liability company, a trust or an unincorporated association or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Plan” means at any time an employee pension benefit plan (including a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Internal Revenue Code and either (i) is maintained, or contributed to, by any member of the ERISA Group for employees of any member of the ERISA Group or (ii) has at any time within the preceding five years been maintained, or contributed to, by any Person which was at such time a member of the ERISA Group for employees of any Person which was at such time a member of the ERISA Group.

“Post-Effective Date Loan Date” means the date, if any, after the Effective Date and during the Availability Period on which the Lenders make the Post-Effective Date Loan.

“Post-Effective Date Loan” means the Loan, if any, made after the Effective Date pursuant to Section 2.01.

“Post-Effective Date Loan Sublimit” means \$100,000,000.00.

“Prime Rate” means the rate of interest publicly announced by U.S. Bank from time to time as its Prime Rate.

“Public Reporting Company” means a company subject to the periodic reporting requirements of the Securities and Exchange Act of 1934, as amended.

“Quarterly Date” means the last Business Day of each of March, June, September and December.

“Rating Agency” means S&P or Moody’s, and “Rating Agencies” means both of them.

“Register” has the meaning set forth in Section 9.06(e).

“Regulation U” means Regulation U of the Board of Governors of the Federal Reserve System, as amended, or any successor regulation.

“Regulation X” means Regulation X of the Board of Governors of the Federal Reserve System, as amended, or any successor regulation.

“Replacement Date” has the meaning set forth in Section 2.08(b).

“Replacement Lender” has the meaning set forth in Section 2.08(b).

“Required Lenders” means at any time Non-Defaulting Lenders having at least 51% of the aggregate amount of the Commitments of all Non-Defaulting Lenders or, if the Commitments shall have been terminated, having at least 51% of the aggregate amount of the Outstandings of the Non-Defaulting Lenders at such time.

“Responsible Officer” means, as to any Person, the chief executive officer, president, chief financial officer, vice president, controller, treasurer or assistant treasurer of such Person or any other officer of such Person reasonably acceptable to the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Person shall be conclusively presumed to have

been authorized by all necessary corporate, partnership and/or other action on the part of such Person and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Person.

“Retiring Lender” means a Lender that ceases to be a Lender hereunder pursuant to the operation of Section 2.08(b).

“S&P” means Standard & Poor’s Ratings Group, a division of S&P Global Inc., a New York corporation, and its successors or, absent any such successor, such nationally recognized statistical rating organization as the Borrower and the Administrative Agent may select.

“Sanctioned Country” means a country, region or territory that is, or whose government is, the subject of comprehensive territorial Sanctions (currently, Crimea, Cuba, Iran, North Korea, and Syria).

“Sanctioned Person” means a Person that is, or is owned or controlled by Persons that are, (i) the subject of any Sanctions, or (ii) located, organized or resident in a Sanctioned Country.

“Sanctions” means sanctions administered or enforced by OFAC, the U.S. State Department, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or any other applicable sanctions authority.

“SEC” means the Securities and Exchange Commission.

“Subsidiary” means any Corporation, a majority of the outstanding Voting Stock of which is owned, directly or indirectly, by the Borrower or one or more other Subsidiaries of the Borrower.

“Synthetic Lease” means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an operating lease in accordance with GAAP.

“Taxes” has the meaning set forth in Section 2.17(a).

“Termination Date” means the earliest to occur of (i) the Post-Effective Date Loan Date (after giving effect to the Post-Effective Date Loan, if any, on such date), (ii) 11:59 p.m. (New York City time) on the date that is 180 days after the Effective Date and (iii) the date upon which all Commitments shall have been terminated in their entirety in accordance with this Agreement.

“Type”, when used in respect of any Loan or Borrowing, shall refer to the rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined.

“Unfunded Liabilities” means, with respect to any Plan at any time, the amount (if any) by which (i) the value of all benefit liabilities under such Plan, determined on a plan termination basis using the assumptions prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds (ii) the fair market value of all Plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions), all determined as of the then most recent valuation date for such Plan, but only to the extent that such excess represents a potential liability of a member of the ERISA Group to the PBGC or any other Person under Title IV of ERISA.

“United States” means the United States of America, including the States and the District of Columbia, but excluding its territories and possessions.

“U.S. Bank” means U.S. Bank National Association, and its successors.

“Voting Stock” means stock (or other interests) of a Corporation having ordinary voting power for the election of directors, managers or trustees thereof, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

“Wholly Owned Subsidiary” means, with respect to any Person at any date, any Subsidiary of such Person all of the Voting Stock of which (except directors’ qualifying shares) is at the time directly or indirectly owned by such Person.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

## **ARTICLE II**

### **THE CREDITS**

Section 2.01 The Loans. Each Lender severally agrees, on the terms and conditions set forth in this Agreement, to make Loans denominated in Dollars to the Borrower pursuant to this Section 2.01 in an aggregate amount not to exceed such Lender’s Commitment. The Loans shall be available in up to two drawings, one drawing on the Effective Date and one drawing on a date during the Availability Period in an amount that shall not exceed the Post-Effective Date Loan Sublimit. The amount of each Loan shall be specified by the Borrower in accordance with Section 2.03. Each Borrowing shall be in an aggregate principal amount of \$10,000,000 or any larger integral multiple of \$1,000,000 (except that any such Borrowing may be in the aggregate amount of the unused Commitments) and shall be made from the several Lenders ratably in proportion to their respective Commitments. Loans borrowed under this Section 2.01 and paid or prepaid may not be reborrowed. The Commitment shall be automatically reduced upon each drawing of Loans in an amount equal to the principal amount drawn.

Section 2.02 [Reserved].

Section 2.03 Notice of Borrowings. The Borrower shall give the Administrative Agent notice (substantially in the form of Exhibit A-1 hereto (a “Notice of Borrowing”)) not later than (a) 11:30 A.M. (New York City time) on the date of each Base Rate Borrowing and (b) 12:00 Noon (New York City time) on the third Business Day before each Euro-Dollar Borrowing, specifying:

- (i) the date of such Borrowing, which shall be a Business Day;
- (ii) the aggregate amount of such Borrowing;
- (iii) the initial Type of the Loans comprising such Borrowing;
- (iv) in the case of a Euro-Dollar Borrowing, the duration of the initial Interest Period applicable thereto, subject to the provisions of the definition of Interest Period; and
- (v) the account or accounts in which the proceeds of the Borrowing should be credited.

Notwithstanding the foregoing, no more than six (6) Groups of Euro-Dollar Loans shall be outstanding at any one time, and any Loans which would exceed such limitation shall be made as Base Rate Loans.

Section 2.04 Notice to Lenders; Funding of Loans.

(a) Notice to Lenders. Upon receipt of a Notice of Borrowing, the Administrative Agent shall promptly notify each Lender of such Lender's ratable share (if any) of the Borrowing referred to in the Notice of Borrowing, and such Notice of Borrowing shall not thereafter be revocable by the Borrower.

(b) Funding of Loans. Not later than (a) 1:00 P.M. (New York City time) on the date of each Base Rate Borrowing and (b) 12:00 Noon (New York City time) on the date of each Euro-Dollar Borrowing, each Lender shall make available its ratable share of such Borrowing, in Federal or other funds immediately available in New York City, to the Administrative Agent at its address referred to in Section 9.01. Unless the Administrative Agent determines that any applicable condition specified in Article IV has not been satisfied, the Administrative Agent shall apply any funds so received in respect of a Borrowing available to the Borrower at the Administrative Agent's address not later than (a) 3:00 P.M. (New York City time) on the date of each Base Rate Borrowing and (b) 2:00 P.M. (New York City time) on the date of each Euro-Dollar Borrowing.

(c) Funding By the Administrative Agent in Anticipation of Amounts Due from the Lenders. Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing (except in the case of a Base Rate Borrowing, in which case prior to the time of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available to the Administrative Agent on the date of such Borrowing in accordance with subsection (b) of this Section, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such share available to the Administrative Agent, such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount, together with interest thereon for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (i) a rate per annum equal to the higher of the Federal Funds Rate and the interest rate applicable thereto pursuant to Section 2.06, in the case of the Borrower, and (ii) the Federal Funds Rate, in the case of such Lender. Any payment by the Borrower hereunder shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make its share of a Borrowing available to the Administrative Agent. If such Lender shall repay to the Administrative Agent such corresponding amount, such amount so repaid shall constitute such Lender's Loan included in such Borrowing for purposes of this Agreement.

(d) Obligations of Lenders Several. The failure of any Lender to make a Loan required to be made by it as part of any Borrowing hereunder shall not relieve any other Lender of its obligation, if any, hereunder to make any Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on such date of Borrowing.

Section 2.05 Noteless Agreement; Evidence of Indebtedness.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Administrative Agent shall also maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Type thereof and the Interest Period with respect thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the



Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(c) The entries maintained in the accounts maintained pursuant to subsections (a) and (b) above shall be prima facie evidence of the existence and amounts of the Obligations therein recorded; provided, however, that the failure of the Administrative Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Obligations in accordance with their terms.

(d) Any Lender may request that its Loans be evidenced by a Note. In such event, the Borrower shall prepare, execute and deliver to such Lender a Note payable to such Lender (or, if required by such Lender, to such Lender and its registered assigns). Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after any assignment pursuant to Section 9.06(c)) be represented by one or more Notes payable to such Lender or any assignee pursuant to Section 9.06(c), except to the extent that any such Lender or assignee subsequently returns any such Note for cancellation and requests that such Loans once again be evidenced as described in subsections (a) and (b) above.

Section 2.06 Interest Rates.

(a) Interest Rate Options. The Loans shall, at the option of the Borrower and except as otherwise provided herein, be incurred and maintained as, or converted into, one or more Base Rate Loans or Euro-Dollar Loans.

(b) Base Rate Loans. Each Loan which is made as, or converted into, a Base Rate Loan shall bear interest on the outstanding principal amount thereof, for each day from the date such Loan is made as, or converted into, a Base Rate Loan until it becomes due or is converted into a Loan of any other Type, at a rate per annum equal to the sum of the Base Rate for such day plus the Applicable Percentage for Base Rate Loans for such day. Such interest shall, in each case, be payable quarterly in arrears on each Quarterly Date and on the Maturity Date and, with respect to the principal amount of any Base Rate Loan converted to a Euro-Dollar Loan, on the date such Base Rate Loan is so converted. Any overdue principal of or interest on any Base Rate Loan shall bear interest, payable on demand, for each day until paid at a rate per annum equal to the sum of 2% plus the rate otherwise applicable to Base Rate Loans for such day.

(c) Euro-Dollar Loans. Each Euro-Dollar Loan shall bear interest on the outstanding principal amount thereof, for each day during the Interest Period applicable thereto, at a rate per annum equal to the sum of the Adjusted London Interbank Offered Rate for such Interest Period plus the Applicable Percentage for Euro-Dollar Loans for such day. Such interest shall be payable for each Interest Period on the last day thereof and, if such Interest Period is longer than three months, at intervals of three months after the first day thereof. Any overdue principal of or interest on any Euro-Dollar Loan shall bear interest, payable on demand, for each day until paid at a rate per annum equal to the sum of 2% plus the sum of (A) the Adjusted London Interbank Offered Rate applicable to such Loan at the date such payment was due plus (B) the Applicable Percentage for Euro-Dollar Loans for such day (or, if the circumstance described in Section 2.14 shall exist, at a rate per annum equal to the sum of 2% plus the rate applicable to Base Rate Loans for such day).

(d) Method of Electing Interest Rates.

(i) Subject to Section 2.06(a), the Loans included in each Borrowing shall bear interest initially at the type of rate specified by the Borrower in the applicable Notice of Borrowing. Thereafter, with respect to each Group of Loans, the Borrower shall have the option

(A) to convert all or any part of (y) so long as no Default is in existence on the date of conversion, outstanding Base Rate Loans to Euro-Dollar Loans and (z) outstanding Euro-Dollar Loans to Base Rate Loans; provided, in each case, that the amount so converted shall be equal to \$10,000,000 or any larger integral multiple of \$1,000,000, or (B) upon the expiration of any Interest Period applicable to outstanding Euro-Dollar Loans, so long as no Default is in existence on the date of continuation, to continue all or any portion of such Loans, equal to \$10,000,000 and any larger integral multiple of \$1,000,000 in excess of that amount as Euro-Dollar Loans. The Interest Period of any Base Rate Loan converted to a Euro-Dollar Loan pursuant to clause (A) above shall commence on the date of such conversion. The succeeding Interest Period of any Euro-Dollar Loan continued pursuant to clause (B) above shall commence on the last day of the Interest Period of the Loan so continued. Euro-Dollar Loans may only be converted on the last day of the then current Interest Period applicable thereto or on the date required pursuant to Section 2.18.

(ii) The Borrower shall deliver a written notice of each such conversion or continuation (a "Notice of Conversion/Continuation") to the Administrative Agent no later than (A) 12:00 Noon (New York City time) at least three (3) Business Days before the effective date of the proposed conversion to, or continuation of, a Euro-Dollar Loan and (B) 11:30 A.M. (New York City time) on the day of a conversion to a Base Rate Loan. A written Notice of Conversion/Continuation shall be substantially in the form of Exhibit A-2 attached hereto and shall specify: (A) the Group of Loans (or portion thereof) to which such notice applies, (B) the proposed conversion/continuation date (which shall be a Business Day), (C) the aggregate amount of the Loans being converted/continued, (D) an election between the Base Rate and the Adjusted London Interbank Offered Rate and (E) in the case of a conversion to, or a continuation of, Euro-Dollar Loans, the requested Interest Period. Upon receipt of a Notice of Conversion/Continuation, the Administrative Agent shall give each Lender prompt notice of the contents thereof and such Lender's pro rata share of all conversions and continuations requested therein. If no timely Notice of Conversion/Continuation is delivered by the Borrower as to any Euro-Dollar Loan, and such Loan is not repaid by the Borrower at the end of the applicable Interest Period, such Loan shall be converted automatically to a Base Rate Loan on the last day of the then applicable Interest Period.

(e) Determination and Notice of Interest Rates. The Administrative Agent shall determine each interest rate applicable to the Loans hereunder. The Administrative Agent shall give prompt notice to the Borrower and the participating Lenders of each rate of interest so determined, and its determination thereof shall be conclusive in the absence of manifest error. Any notice with respect to Euro-Dollar Loans shall, without the necessity of the Administrative Agent so stating in such notice, be subject to adjustments in the Applicable Percentage applicable to such Loans after the beginning of the Interest Period applicable thereto. When during an Interest Period any event occurs that causes an adjustment in the Applicable Percentage applicable to Loans to which such Interest Period is applicable, the Administrative Agent shall give prompt notice to the Borrower and the Lenders of such event and the adjusted rate of interest so determined for such Loans, and its determination thereof shall be conclusive in the absence of manifest error.

#### Section 2.07 Fees.

(a) Delayed Draw Loan Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of each Lender a fee (the "Delayed Draw Commitment Fee") for each day at a rate per annum equal to the Delayed Draw Commitment Fee Rate for such day. The Delayed Draw Commitment Fee shall accrue from and including the Effective Date to but excluding the last day of the

Availability Period on the amount by which such Lender's Commitment exceeds the sum of its Outstandings on such day.

(b) Payments. Except as otherwise provided in this Section 2.07, accrued fees under this Section 2.07 in respect of Loans shall be payable quarterly in arrears on each Quarterly Date, on the last day of the Availability Period and , if later, on the date the Loans shall be repaid in their entirety. Fees paid hereunder shall not be refundable under any circumstances.

Section 2.08 Adjustments of Commitments.

(a) Optional Termination or Reductions of Commitments (Pro-Rata). The Borrower may, upon at least three Business Days' prior written notice to the Administrative Agent, permanently (i) terminate the Commitments, if there are no Outstandings at such time or (ii) ratably reduce from time to time by a minimum amount of \$10,000,000 or any larger integral multiple of \$5,000,000, the aggregate amount of the Commitments in excess of the aggregate Outstandings. Upon receipt of any such notice, the Administrative Agent shall promptly notify the Lenders. If the Commitments are terminated in their entirety, all accrued fees shall be payable on the effective date of such termination.

(b) Replacement of Lenders; Optional Termination of Commitments (Non-Pro-Rata). If (i) any Lender has demanded compensation or indemnification pursuant to Sections 2.14, 2.15, 2.16 or 2.17, (ii) the obligation of any Lender to make Euro-Dollar Loans has been suspended pursuant to Section 2.15 or (iii) any Lender is a Defaulting Lender (each such Lender described in clauses (i), (ii) or (iii) being a "Retiring Lender"), the Borrower shall have the right, if no Default then exists, to replace such Lender with one or more Eligible Assignees (which may be one or more of the Continuing Lenders) (each a "Replacement Lender" and, collectively, the "Replacement Lenders") reasonably acceptable to the Administrative Agent. The replacement of a Retiring Lender pursuant to this Section 2.08(b) shall be effective on the tenth Business Day (the "Replacement Date") following the date of notice given by the Borrower of such replacement to the Retiring Lender and each Continuing Lender through the Administrative Agent, subject to the satisfaction of the following conditions:

(i) the Replacement Lender shall have satisfied the conditions to assignment and assumption set forth in Section 9.06(c) (with all fees payable pursuant to Section 9.06(c) to be paid by the Borrower) and, in connection therewith, the Replacement Lender(s) shall pay to the Retiring Lender an amount equal in the aggregate to the sum of (x) the principal of, and all accrued but unpaid interest on, all outstanding Loans of the Retiring Lender, (y) all unpaid drawings that have been funded by (and not reimbursed to) the Retiring Lender under Section 3.10, together with all accrued but unpaid interest with respect thereto and (z) all accrued but unpaid fees owing to the Retiring Lender pursuant to Section 2.07; and

(ii) the Borrower shall have paid to the Administrative Agent for the account of the Retiring Lender an amount equal to all obligations owing to the Retiring Lender by the Borrower pursuant to this Agreement and the other Loan Documents (other than those obligations of the Borrower referred to in clause (i) above).

On the Replacement Date, each Replacement Lender that is a New Lender shall become a Lender hereunder and shall succeed to the obligations of the Retiring Lender to the extent of the Commitment of the Retiring Lender assumed by such Replacement Lender, and the Retiring Lender shall cease to constitute a Lender hereunder; provided, that the provisions of Sections 2.12, 2.16, 2.17 and 9.03 of this Agreement shall continue to inure to the benefit of a Retiring Lender with respect to any Loans made or any other actions taken by such Retiring Lender while it was a Lender.

In lieu of the foregoing, subject to Section 2.08(e), upon express written consent of Continuing Lenders holding more than 50% of the aggregate amount of the Commitments of the Continuing Lenders, the Borrower shall have the right to permanently terminate the Commitment of a Retiring Lender in full. Upon payment by the Borrower to the Administrative Agent for the account of the Retiring Lender of an amount equal to the sum of (i) the aggregate principal amount of all Loans owed to the Retiring Lender and (ii) all accrued interest, fees and other amounts owing to the Retiring Lender hereunder, including, without limitation, all amounts payable by the Borrower to the Retiring Lender under Sections 2.12, 2.16, 2.17 or 9.03, such Retiring Lender shall cease to constitute a Lender hereunder; provided, that the provisions of Sections 2.12, 2.16, 2.17 and 9.03 of this Agreement shall inure to the benefit of a Retiring Lender with respect to any Loans made or any other actions taken by such Retiring Lender while it was a Lender.

(c) Optional Termination of Defaulting Lender Commitment (Non-Pro-Rata). At any time a Lender is a Defaulting Lender, subject to Section 2.08(e), the Borrower may terminate in full the Commitment of such Defaulting Lender by giving notice to such Defaulting Lender and the Administrative Agent, provided, that, (i) at the time of such termination, (A) no Default has occurred and is continuing (or alternatively, the Required Lenders shall consent to such termination) and (B) either (x) no Loans are outstanding or (y) the aggregate Outstandings of such Defaulting Lender in respect of Loans is zero; (ii) concurrently with such termination, the aggregate Commitments shall be reduced by the Commitment of the Defaulting Lender; and (iii) concurrently with any subsequent payment of interest or fees to the Lenders with respect to any period before the termination of a Defaulting Lender's Commitment, the Borrower shall pay to such Defaulting Lender its ratable share (based on its Commitment Ratio before giving effect to such termination) of such interest or fees, as applicable. The termination of a Defaulting Lender's Commitment pursuant to this Section 2.08(c) shall not be deemed to be a waiver of any right that the Borrower, Administrative Agent or any Lender may have against such Defaulting Lender.

(d) Termination Date. The Commitments shall terminate on the Termination Date.

(e) Redetermination of Commitment Ratios. On the date of termination of the Commitment of a Retiring Lender or Defaulting Lender pursuant to Section 2.08(b) or (c), the Commitment Ratios of the Continuing Lenders shall be redetermined after giving effect thereto, and the participations of the Continuing Lenders in and obligations of the Continuing Lenders in respect of any then outstanding Loans shall thereafter be based upon such redetermined Commitment Ratios. The right of the Borrower to effect such a termination pursuant to Section 2.08(b) or (c) is conditioned on there being sufficient unused availability in the Commitments of the Continuing Lenders such that the aggregate Outstandings will not exceed the aggregate Commitments after giving effect to such termination and redetermination.

Section 2.09 Repayment of Loans. The Loans shall mature on the Maturity Date and the Borrower shall repay to the Administrative Agent, for the ratable account of the Lenders on the Maturity Date, the aggregate principal amount of all Loans made to the Borrower outstanding on such date (together with accrued interest thereon and fees in respect thereof and all other amounts owed with respect to the Obligations hereunder).

Section 2.10 Optional Prepayments and Repayments.

(a) Prepayments of Loans. Subject to Section 2.12, the Borrower may (i) upon at least one (1) Business Day's notice to the Administrative Agent, prepay any Base Rate Borrowing or (ii) upon at least three (3) Business Days' notice to the Administrative Agent, prepay any Euro-Dollar Borrowing, in each case in whole at any time, or from time to time in part in amounts aggregating \$10,000,000 or any larger integral multiple of \$1,000,000, by paying the principal amount to be prepaid together with accrued

interest thereon to the date of prepayment. Each such optional prepayment shall be applied to prepay ratably the Loans of the several Lenders included in such Borrowing.

(b) Notice to Lenders. Upon receipt of a notice of prepayment pursuant to Section 2.10(a), the Administrative Agent shall promptly notify each Lender of the contents thereof and of such Lender's ratable share (if any) of such prepayment, and such notice shall not thereafter be revocable by the Borrower.

Section 2.11 General Provisions as to Payments.

(a) Payments by the Borrower. The Borrower shall make each payment of principal of and interest on the Loans and fees hereunder not later than 12:00 Noon (New York City time) on the date when due, without set-off, counterclaim or other deduction, in Federal or other funds immediately available in New York City, to the Administrative Agent at its address referred to in Section 9.01. The Administrative Agent will promptly distribute to each Lender its ratable share of each such payment received by the Administrative Agent for the account of the Lenders. Whenever any payment of principal of or interest on the Base Rate Loans or of fees shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day. Whenever any payment of principal of or interest on the Euro-Dollar Loans shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case the date for payment thereof shall be the next preceding Business Day. If the date for any payment of principal is extended by operation of law or otherwise, interest thereon shall be payable for such extended time.

(b) Distributions by the Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Lenders hereunder that the Borrower will not make such payment in full, the Administrative Agent may assume that the Borrower has made such payment in full to the Administrative Agent on such date, and the Administrative Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent that the Borrower shall not have so made such payment, each Lender shall repay to the Administrative Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Administrative Agent, at the Federal Funds Rate.

Section 2.12 Funding Losses. If the Borrower makes any payment of principal with respect to any Euro-Dollar Loan pursuant to the terms and provisions of this Agreement (any conversion of a Euro-Dollar Loan to a Base Rate Loan pursuant to Section 2.18 being treated as a payment of such Euro-Dollar Loan on the date of conversion for purposes of this Section 2.12) on any day other than the last day of the Interest Period applicable thereto, or the last day of an applicable period fixed pursuant to Section 2.06(c), or if the Borrower fails to borrow, convert or prepay any Euro-Dollar Loan after notice has been given in accordance with the provisions of this Agreement, or in the event of payment in respect of any Euro-Dollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.08(b), the Borrower shall reimburse each Lender within fifteen (15) days after demand for any resulting loss or expense incurred by it (and by an existing Participant in the related Loan), including, without limitation, any loss incurred in obtaining, liquidating or employing deposits from third parties, but excluding loss of margin for the period after any such payment or failure to borrow or prepay; provided, that such Lender shall have delivered to the Borrower a certificate as to the amount of such loss or expense, which certificate shall be conclusive in the absence of manifest error.

Section 2.13 Computation of Interest and Fees. Interest on Loans based on the Prime Rate hereunder shall be computed on the basis of a year of 365 days (or 366 days in a leap year) and paid for the actual number of days elapsed. All other interest and fees shall be computed on the basis of a year of 360 days and paid for the actual number of days elapsed (including the first day but excluding the last day).

Section 2.14 Basis for Determining Interest Rate Inadequate, Unfair or Unavailable. If on or prior to the first day of any Interest Period for any Euro-Dollar Loan: (a) Lenders having 50% or more of the aggregate amount of the Commitments advise the Administrative Agent that the Adjusted London Interbank Offered Rate as determined by the Administrative Agent, will not adequately and fairly reflect the cost to such Lenders of funding their Euro-Dollar Loans for such Interest Period; or (b) the Administrative Agent shall determine that no reasonable means exist for determining the Adjusted London Interbank Offered Rate, the Administrative Agent shall forthwith give notice thereof to the Borrower and the Lenders, whereupon, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such suspension no longer exist, (i) the obligations of the Lenders to make Euro-Dollar Loans, or to convert outstanding Loans into Euro-Dollar Loans shall be suspended; and (ii) each outstanding Euro-Dollar Loan shall be converted into a Base Rate Loan on the last day of the current Interest Period applicable thereto. Unless the Borrower notifies the Administrative Agent at least two (2) Business Days before the date of (or, if at the time the Borrower receives such notice the day is the date of, or the date immediately preceding, the date of such Euro-Dollar Borrowing, by 10:00 A.M. (New York City time) on the date of) any Euro-Dollar Borrowing for which a Notice of Borrowing has previously been given that it elects not to borrow on such date, such Borrowing shall instead be made as a Base Rate Borrowing.

Section 2.15 Illegality. If, on or after the date of this Agreement, the adoption of any applicable law, rule or regulation, or any change in any applicable law, rule or regulation, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its Euro-Dollar Lending Office) with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency shall make it unlawful or impossible for any Lender (or its Euro-Dollar Lending Office) to make, maintain or fund its Euro-Dollar Loans and such Lender shall so notify the Administrative Agent, the Administrative Agent shall forthwith give notice thereof to the other Lenders and the Borrower, whereupon until such Lender notifies the Borrower and the Administrative Agent that the circumstances giving rise to such suspension no longer exist, the obligation of such Lender to make Euro-Dollar Loans, or to convert outstanding Loans into Euro-Dollar Loans, shall be suspended. Before giving any notice to the Administrative Agent pursuant to this Section, such Lender shall designate a different Euro-Dollar Lending Office if such designation will avoid the need for giving such notice and will not, in the judgment of such Lender, be otherwise disadvantageous to such Lender. If such notice is given, each Euro-Dollar Loan of such Lender then outstanding shall be converted to a Base Rate Loan either (a) on the last day of the then current Interest Period applicable to such Euro-Dollar Loan if such Lender may lawfully continue to maintain and fund such Loan to such day or (b) immediately if such Lender shall determine that it may not lawfully continue to maintain and fund such Loan to such day.

Section 2.16 Increased Cost and Reduced Return.

(a) Increased Costs. If after the Effective Date, the adoption of any applicable law, rule or regulation, or any change in any applicable law, rule or regulation, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its Applicable Lending Office) with any request or directive (whether or not having the force of law) of any such authority,

central bank or comparable agency shall (i) impose, modify or deem applicable any reserve (including, without limitation, any such requirement imposed by the Board of Governors of the Federal Reserve System), special deposit, insurance assessment or similar requirement against Loans participated in by, assets of, deposits with or for the account of or credit extended by, any Lender (or its Applicable Lending Office), (ii) subject any Lender to any tax of any kind whatsoever with respect to this Agreement, any participation in any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (other than (A) Taxes, (B) Other Taxes, (C) the imposition of, or any change in the rate of, any taxes described in clause (i)(a) and clauses (ii) through (iv) of the definition of Taxes in Section 2.17(a), (D) Connection Income Taxes, and (E) Taxes attributable to a Lender's failure to comply with Section 2.17(e)) or (iii) impose on any Lender (or its Applicable Lending Office) or on the United States market for certificates of deposit or the London interbank market any other condition affecting its Euro-Dollar Loans, Notes, obligation to make Euro-Dollar Loans and the result of any of the foregoing is to increase the cost to such Lender (or its Applicable Lending Office) of making or maintaining any Euro-Dollar Loan or to reduce the amount of any sum received or receivable by such Lender (or its Applicable Lending Office) under this Agreement or under its Notes with respect thereto, then, within fifteen (15) days after demand by such Lender (with a copy to the Administrative Agent), the Borrower shall pay to such Lender such additional amount or amounts, as determined by such Lender in good faith, as will compensate such Lender for such increased cost or reduction, solely to the extent that any such additional amounts were incurred by the Lender within ninety (90) days of such demand.

(b) Capital Adequacy. If any Lender shall have determined that, after the Effective Date, the adoption of any applicable law, rule or regulation regarding capital adequacy or liquidity, or any change in any such law, rule or regulation, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on capital of such Lender (or any Person controlling such Lender) as a consequence of such Lender's obligations hereunder to a level below that which such Lender (or any Person controlling such Lender) could have achieved but for such adoption, change, request or directive (taking into consideration its policies with respect to capital adequacy), then from time to time, within fifteen (15) days after demand by such Lender (with a copy to the Administrative Agent), the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender (or any Person controlling such Lender) for such reduction, solely to the extent that any such additional amounts were incurred by the Lender within ninety (90) days of such demand.

(c) Notices. Each Lender will promptly notify the Borrower and the Administrative Agent of any event of which it has knowledge, occurring after the Effective Date, that will entitle such Lender to compensation pursuant to this Section and will designate a different Applicable Lending Office if such designation will avoid the need for, or reduce the amount of, such compensation and will not, in the judgment of such Lender, be otherwise disadvantageous to such Lender. A certificate of any Lender claiming compensation under this Section and setting forth in reasonable detail the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of manifest error. In determining such amount, such Lender may use any reasonable averaging and attribution methods.

(d) Notwithstanding anything to the contrary herein, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in law" under this Article II regardless of the date enacted, adopted or issued.

Section 2.17 Taxes.

(a) Payments Net of Certain Taxes. Any and all payments made by the Borrower to or for the account of any Lender or the Administrative Agent hereunder or under any other Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, charges and withholdings and all liabilities with respect thereto, excluding: (i) taxes imposed on or measured by the net income (including branch profits or similar taxes) of, and franchise or similar taxes imposed on, the Administrative Agent or any Lender (a) by the jurisdiction (or subdivision thereof) under the laws of which such Lender or the Administrative Agent is organized or in which its principal office is located or, in the case of each Lender, in which its Applicable Lending Office is located or (b) that are Other Connection Taxes, (ii) in the case of each Lender, any United States withholding tax imposed on such payments, but only to the extent that such Lender is subject to United States withholding tax at the time such Lender first becomes a party to this Agreement or changes its Applicable Lending Office, (iii) any backup withholding tax imposed by the United States (or any state or locality thereof) on a Lender or Administrative Agent, and (iv) any taxes imposed by FATCA (all such nonexcluded taxes, duties, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Borrower shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder or under any other Loan Document to any Lender or the Administrative Agent, (i) the sum payable shall be increased as necessary so that after making all such required deductions (including deductions applicable to additional sums payable under this Section 2.17(a)) such Lender or the Administrative Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions, (iii) the Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law and (iv) the Borrower shall furnish to the Administrative Agent, for delivery to such Lender, the original or a certified copy of a receipt evidencing payment thereof.

(b) Other Taxes. In addition, the Borrower agrees to pay any and all present or future stamp or court or documentary taxes and any other excise or property taxes, or similar charges or levies, which arise from any payment made pursuant to this Agreement, any Note or any other Loan Document or from the execution, delivery, performance, registration or enforcement of, or otherwise with respect to, this Agreement, any Note or any other Loan Document (collectively, "Other Taxes").

(c) Indemnification. The Borrower agrees to indemnify each Lender and the Administrative Agent for the full amount of Taxes and Other Taxes (including, without limitation, any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 2.17(c)), whether or not correctly or legally asserted, paid by such Lender or the Administrative Agent (as the case may be) and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto as certified in good faith to the Borrower by each Lender or the Administrative Agent seeking indemnification pursuant to this Section 2.17(c). This indemnification shall be paid within 15 days after such Lender or the Administrative Agent (as the case may be) makes demand therefor.

(d) Refunds or Credits. If a Lender or the Administrative Agent receives a refund, credit or other reduction from a taxation authority for any Taxes or Other Taxes for which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.17, it shall within fifteen (15) days from the date of such receipt pay over the amount of such refund, credit or other reduction to the Borrower (but only to the extent of indemnity payments made or additional amounts paid by the Borrower under this Section 2.17 with respect to the Taxes or Other Taxes giving rise to such refund, credit or other reduction), net of all reasonable out-of-pocket expenses of such Lender or the Administrative Agent (as the case may be) and without interest (other than interest paid by the relevant taxation authority with respect to such refund, credit or other reduction); provided, however,



that the Borrower agrees to repay, upon the request of such Lender or the Administrative Agent (as the case may be), the amount paid over to the Borrower (plus penalties, interest or other charges) to such Lender or the Administrative Agent in the event such Lender or the Administrative Agent is required to repay such refund or credit to such taxation authority.

(e) Tax Forms and Certificates. On or before the date it becomes a party to this Agreement, from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent, and at any time it changes its Applicable Lending Office: (i) each Lender that is a “United States person” within the meaning of Section 7701(a)(30) of the Internal Revenue Code shall deliver to the Borrower and the Administrative Agent two (2) properly completed and duly executed copies of Internal Revenue Service Form W-9, or any successor form prescribed by the Internal Revenue Service, or such other documentation or information prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent, as the case may be, certifying that such Lender is a United States person and is entitled to an exemption from United States backup withholding tax or information reporting requirements; and (ii) each Lender that is not a “United States person” within the meaning of Section 7701(a)(30) of the Internal Revenue Code (a “Non-U.S. Lender”) shall deliver to the Borrower and the Administrative Agent: (A) two (2) properly completed and duly executed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, or any successor form prescribed by the Internal Revenue Service, (x) certifying that such Non-U.S. Lender is entitled to the benefits under an income tax treaty to which the United States is a party which exempts the Non-U.S. Lender from United States withholding tax or reduces the rate of withholding tax on payments of interest for the account of such Non-U.S. Lender and (y) with respect to any other applicable payments under or entered into in connection with any Loan Document, establishing an exemption from, or reduction of, United States withholding tax pursuant to the “business profits” or “other income” article of such tax treaty; (B) two (2) properly completed and duly executed copies of Internal Revenue Service Form W-8ECI, or any successor form prescribed by the Internal Revenue Service, certifying that the income receivable pursuant to this Agreement and the other Loan Documents is effectively connected with the conduct of a trade or business in the United States; (C) in the case of a Non-U.S. Lender claiming the benefit of the exemption for portfolio interest under Section 871(h) or 881(c) of the Internal Revenue Code, two (2) properly completed and duly executed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, or any successor form prescribed by the Internal Revenue Service, together with a certificate to the effect that (x) such Non-U.S. Lender is not (1) a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (2) a “10-percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code, or (3) a “controlled foreign corporation” that is described in Section 881(c)(3)(C) of the Internal Revenue Code and is related to the Borrower within the meaning of Section 864(d)(4) of the Internal Revenue Code and (y) the interest payments in question are not effectively connected with a U.S. trade or business conducted by such Non-U.S. Lender; or (D) to the extent the Non-U.S. Lender is not the beneficial owner, two (2) properly completed and duly executed copies of Internal Revenue Service Form W-8IMY, or any successor form prescribed by the Internal Revenue Service, accompanied by an Internal Revenue Service Form W-8ECI, W-8BEN, W-8BEN-E, W-9, and/or other certification documents from each beneficial owner, as applicable. If a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding tax imposed by FATCA if such Lender fails to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely

for purposes of this clause (e), “FATCA” shall include any amendments made to FATCA after the date of this Agreement. In addition, each Lender agrees that from time to time after the Effective Date, when a lapse in time or change in circumstances renders the previous certification obsolete or inaccurate in any material respect, it will deliver to the Borrower and the Administrative Agent two new accurate and complete signed originals of Internal Revenue Service Form W-9, W-8BEN, W-8BEN-E, W-8ECI or W-8IMY or FATCA-related documentation described above, or successor forms, as the case may be, and such other forms as may be required in order to confirm or establish the entitlement of such Lender to a continued exemption from or reduction in United States withholding tax with respect to payments under this Agreement and any other Loan Document, or it shall immediately notify the Borrower and the Administrative Agent of its inability to deliver any such form or certificate.

(f) Exclusions. The Borrower shall not be required to indemnify any Non-U.S. Lender, or to pay any additional amount to any Non-U.S. Lender, pursuant to Section 2.17(a), (b) or (c) in respect of Taxes or Other Taxes to the extent that the obligation to indemnify or pay such additional amounts would not have arisen but for the failure of such Non-U.S. Lender to comply with the provisions of subsection (e) above.

(g) Mitigation. If the Borrower is required to pay additional amounts to or for the account of any Lender pursuant to this Section 2.17, then such Lender will use reasonable efforts (which shall include efforts to rebook the Loans held by such Lender to a new Applicable Lending Office, or through another branch or affiliate of such Lender) to change the jurisdiction of its Applicable Lending Office if, in the good faith judgment of such Lender, such efforts (i) will eliminate or, if it is not possible to eliminate, reduce to the greatest extent possible any such additional payment which may thereafter accrue and (ii) is not otherwise disadvantageous, in the sole determination of such Lender, to such Lender. Any Lender claiming any indemnity payment or additional amounts payable pursuant to this Section shall use reasonable efforts (consistent with legal and regulatory restrictions) to deliver to Borrower any certificate or document reasonably requested in writing by the Borrower or to change the jurisdiction of its Applicable Lending Office if the making of such a filing or change would avoid the need for or reduce the amount of any such indemnity payment or additional amounts that may thereafter accrue and would not, in the sole determination of such Lender, be otherwise disadvantageous to such Lender.

(h) Confidentiality. Nothing contained in this Section shall require any Lender or the Administrative Agent to make available any of its tax returns (or any other information that it deems to be confidential or proprietary).

Section 2.18 Base Rate Loans Substituted for Affected Euro-Dollar Loans. If (a) the obligation of any Lender to make or maintain, or to convert outstanding Loans to, Euro-Dollar Loans has been suspended pursuant to Section 2.15 or (b) any Lender has demanded compensation under Section 2.16(a) with respect to its Euro-Dollar Loans and, in any such case, the Borrower shall, by at least four Business Days’ prior notice to such Lender through the Administrative Agent, have elected that the provisions of this Section shall apply to such Lender, then, unless and until such Lender notifies the Borrower that the circumstances giving rise to such suspension or demand for compensation no longer apply:

(i) all Loans which would otherwise be made by such Lender as (or continued as or converted into) Euro-Dollar Loans shall instead be Base Rate Loans (on which interest and principal shall be payable contemporaneously with the related Euro-Dollar Loans of the other Lenders); and

(ii) after each of its Euro-Dollar Loans has been repaid, all payments of principal that would otherwise be applied to repay such Loans shall instead be applied to repay its Base Rate Loans.

If such Lender notifies the Borrower that the circumstances giving rise to such notice no longer apply, the principal amount of each such Base Rate Loan shall be converted into a Euro-Dollar Loan on the first day of the next succeeding Interest Period applicable to the related Euro-Dollar Loans of the other Lenders.

Section 2.19 [Reserved].

Section 2.20 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then such Defaulting Lender will not be entitled to any fees accruing during such period pursuant to Section 2.07(a).

**ARTICLE III**  
**[RESERVED]**

**ARTICLE IV**  
**CONDITIONS**

Section 4.01 Conditions to Effective Date. The obligation of each Lender to make a Loan on the occasion of the first Borrowing hereunder is subject to the satisfaction of the following conditions:

(a) This Agreement. The Administrative Agent shall have received counterparts hereof signed by each of the parties hereto (or, in the case of any party as to which an executed counterpart shall not have been received, receipt by the Administrative Agent in form satisfactory to it of telegraphic, telex, facsimile or other written confirmation from such party of execution of a counterpart hereof by such party) to be held in escrow and to be delivered to the Borrower upon satisfaction of the other conditions set forth in this Section 4.01.

(b) Notes. On or prior to the Effective Date, the Administrative Agent shall have received a duly executed Note for the account of each Lender requesting delivery of a Note pursuant to Section 2.05.

(c) Officers' Certificate. The Administrative Agent shall have received a certificate dated the Effective Date signed on behalf of the Borrower by a Responsible Officer of the Borrower certifying that (A) on the Effective Date and after giving effect to the Loans being made on the Effective Date, no Default shall have occurred and be continuing and (B) the representations and warranties of the Borrower contained in the Loan Documents are true and correct on and as of the Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they were true and correct as of such earlier date.

(d) Proceedings. On the Effective Date, the Administrative Agent shall have received (i) a certificate of the Secretary of State of the Commonwealth of Kentucky, dated as of a recent date, as to the good standing of the Borrower and (ii) a certificate of the Secretary or an Assistant Secretary of the Borrower dated the Effective Date and certifying (A) that attached thereto are true, correct and complete copies of (x) the Borrower's articles of incorporation certified by the Secretary of State of the Commonwealth of Kentucky and (y) the bylaws of the Borrower, (B) as to the absence of dissolution or liquidation proceedings by or against the Borrower, (C) that attached thereto is a true, correct and complete copy of resolutions adopted by the board of directors of the Borrower authorizing the execution, delivery and performance of the Loan Documents to which the Borrower is a party and each other document delivered in connection herewith or therewith and that such resolutions have not been amended

and are in full force and effect on the date of such certificate and (D) as to the incumbency and specimen signatures of each officer of the Borrower executing the Loan Documents to which the Borrower is a party or any other document delivered in connection herewith or therewith.

(e) Opinions of Counsel. On the Effective Date, the Administrative Agent shall have received opinions from (i) Pillsbury Winthrop Shaw Pittman LLP, counsel to the Borrower, and (ii) the Vice President and Deputy General Counsel, Legal and Environmental Affairs and Corporate Secretary of the Borrower, addressed to the Administrative Agent and each Lender, dated the Effective Date, substantially in the form of Exhibit D hereto.

(f) Consents. All necessary governmental (domestic or foreign), regulatory and third party approvals, including, without limitation, the order(s) of the FERC, authorizing borrowings hereunder in connection with the transactions contemplated by this Agreement and the other Loan Documents shall have been obtained and remain in full force and effect, in each case without any action being taken by any competent authority which could restrain or prevent such transaction or impose, in the reasonable judgment of the Administrative Agent, materially adverse conditions upon the consummation of such transactions.

(g) Payment of Fees. All costs, fees and expenses due to the Administrative Agent and the Lenders accrued through the Effective Date shall have been paid in full.

(h) Counsel Fees. The Administrative Agent shall have received full payment from the Borrower of the fees and expenses of Davis Polk & Wardwell LLP described in Section 9.03 which are billed through the Effective Date and which have been invoiced one Business Day prior to the Effective Date.

(i) Know Your Customer. The Administrative Agent and each Lender shall have received all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including, without limitation, the Patriot Act, as has been reasonably requested in writing.

(j) Notice of Borrowing. Receipt by the Administrative Agent of a Notice of Borrowing as required by Section 2.03.

Section 4.02 Conditions to Borrowings. The obligation of any Lender to make any Loan on any date on or after the Effective Date (including the Post-Effective Date Loan on the Post-Effective Date Loan Date) is subject to the satisfaction of the following conditions:

- (a) the Effective Date shall have occurred;
- (b) receipt by the Administrative Agent of a Notice of Borrowing as required by Section 2.03;
- (c) the fact that, immediately before and after giving effect to such Borrowing, no Default shall have occurred and be continuing; and
- (d) the fact that the representations and warranties of the Borrower contained in this Agreement and the other Loan Documents shall be true and correct on and as of the date of such Borrowing, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they were true and correct as of such earlier date and except for the representations in

Section 5.04(c), Section 5.05 and Section 5.13, which shall be deemed only to relate to the matters referred to therein on and as of the Effective Date.

Each Borrowing under this Agreement shall be deemed to be a representation and warranty by the Borrower on the date of such Borrowing as to the facts specified in clauses (c) and (d) of this Section.

## ARTICLE V REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants on the Effective Date and the Post-Effective Date Loan Date that:

Section 5.01 Status. The Borrower is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky and has the corporate authority to make and perform this Agreement and each other Loan Document to which it is a party.

Section 5.02 Authority; No Conflict. The execution, delivery and performance by the Borrower of this Agreement and each other Loan Document to which it is a party have been duly authorized by all necessary corporate action and do not violate (i) any provision of law or regulation, or any decree, order, writ or judgment, (ii) any provision of its articles of incorporation or bylaws, or (iii) result in the breach of or constitute a default under any indenture or other agreement or instrument to which the Borrower is a party.

Section 5.03 Legality; Etc. This Agreement and each other Loan Document (other than the Notes) to which the Borrower is a party constitute the legal, valid and binding obligations of the Borrower, and the Notes, when executed and delivered in accordance with this Agreement, will constitute legal, valid and binding obligations of the Borrower, in each case enforceable against the Borrower in accordance with their terms except to the extent limited by (a) bankruptcy, insolvency, fraudulent conveyance or reorganization laws or by other similar laws relating to or affecting the enforceability of creditors' rights generally and by general equitable principles which may limit the right to obtain equitable remedies regardless of whether enforcement is considered in a proceeding of law or equity or (b) any applicable public policy on enforceability of provisions relating to contribution and indemnification.

Section 5.04 Financial Condition.

(a) Audited Financial Statements. The consolidated balance sheet of the Borrower and its Consolidated Subsidiaries as of December 31, 2016 and the related consolidated statements of income and cash flows for the fiscal year then ended, reported on by Deloitte & Touche LLP, copies of which have been delivered to each of the Administrative Agent and the Lenders, fairly present, in conformity with GAAP, the consolidated financial position of the Borrower and its Consolidated Subsidiaries as of such date and their consolidated results of operations and cash flows for such fiscal year.

(b) Interim Financial Statements. The unaudited consolidated balance sheet of the Borrower and its Consolidated Subsidiaries as of June 30, 2017 and the related unaudited consolidated statements of income and cash flows for the six months then ended fairly present, in conformity with GAAP applied on a basis consistent with the financial statements referred to in subsection (a) of this Section, the consolidated financial position of the Borrower and its Consolidated Subsidiaries as of such date and their consolidated results of operations and cash flows for such six-month period (subject to normal year-end audit adjustments).

(c) Material Adverse Change. Since December 31, 2016, there has been no change in the business, assets, financial condition or operations of the Borrower and its Consolidated Subsidiaries, considered as a whole, that would materially and adversely affect the Borrower's ability to perform any of its obligations under this Agreement, the Notes or the other Loan Documents.

Section 5.05 Litigation. Except as disclosed in or contemplated by the Borrower's Annual Report on Form 10-K for the year ended December 31, 2016, or in any subsequent report of the Borrower filed with the SEC on a Form 10-K, 10-Q or 8-K Report, or otherwise furnished in writing to the Administrative Agent and each Lender, no litigation, arbitration or administrative proceeding against the Borrower is pending or, to the Borrower's knowledge, threatened, which would reasonably be expected to materially and adversely affect the ability of the Borrower to perform any of its obligations under this Agreement, the Notes or the other Loan Documents. There is no litigation, arbitration or administrative proceeding pending or, to the knowledge of the Borrower, threatened which questions the validity of this Agreement or the other Loan Documents to which it is a party.

Section 5.06 No Violation. No part of the proceeds of the borrowings by hereunder will be used, directly or indirectly by the Borrower for the purpose of purchasing or carrying any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, or for any other purpose which violates, or which conflicts with, the provisions of Regulation U or Regulation X of said Board of Governors. The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any such "margin stock".

Section 5.07 ERISA. Each member of the ERISA Group has fulfilled its obligations under the minimum funding standards of ERISA and the Internal Revenue Code with respect to each Material Plan and is in compliance in all material respects with the presently applicable provisions of ERISA and the Internal Revenue Code with respect to each Material Plan. No member of the ERISA Group has (i) sought a waiver of the minimum funding standard under Section 412 of the Internal Revenue Code in respect of any Material Plan, (ii) failed to make any contribution or payment to any Material Plan, or made any amendment to any Material Plan, which has resulted or could result in the imposition of a Lien or the posting of a bond or other security under ERISA or the Internal Revenue Code or (iii) incurred any material liability under Title IV of ERISA other than a liability to the PBGC for premiums under Section 4007 of ERISA.

Section 5.08 Governmental Approvals. No authorization, consent or approval from any Governmental Authority is required for the execution, delivery and performance by the Borrower of this Agreement, the Notes and the other Loan Documents to which it is a party and except such authorizations, consents and approvals, including, without limitation, the approval of the FERC, as shall have been obtained prior to the Effective Date and shall be in full force and effect.

Section 5.09 Investment Company Act. The Borrower is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or required to register as an investment company under such Act.

Section 5.10 Tax Returns and Payments. The Borrower has filed or caused to be filed all Federal, state, local and foreign income tax returns required to have been filed by it and has paid or caused to be paid all income taxes shown to be due on such returns except income taxes that are being contested in good faith by appropriate proceedings and for which the Borrower shall have set aside on its books appropriate reserves with respect thereto in accordance with GAAP or that would not reasonably be expected to have a Material Adverse Effect.

Section 5.11 Compliance with Laws.

(a) To the knowledge of the Borrower, the Borrower is in compliance with all applicable laws, regulations and orders of any Governmental Authority, domestic or foreign, in respect of the conduct of its business and the ownership of its property (including, without limitation, compliance with all applicable ERISA and Environmental Laws and the requirements of any permits issued under such Environmental Laws), except to the extent (i) such compliance is being contested in good faith by appropriate proceedings or (ii) non-compliance would not reasonably be expected to materially and adversely affect its ability to perform any of its obligations under this Agreement, the Notes or any other Loan Document to which it is a party.

Section 5.12 No Default. No Default has occurred and is continuing.

Section 5.13 Environmental Matters.

(a) Except (x) as disclosed in or contemplated by the Borrower's Annual Report on Form 10-K for the year ended December 31, 2016, or in any subsequent report of the Borrower filed with the SEC on a Form 10-K, 10-Q or 8-K Report, or otherwise furnished in writing to the Administrative Agent and each Lender, or (y) to the extent that the liabilities of the Borrower and its Subsidiaries, taken as a whole, that relate to or could reasonably be expected to result from the matters referred to in clauses (i) through (iii) below of this Section 5.13(a), inclusive, would not reasonably be expected to result in a Material Adverse Effect:

(i) no notice, notification, citation, summons, complaint or order has been received by the Borrower or any of its Subsidiaries, no penalty has been assessed nor is any investigation or review pending or, to the Borrower's or any of its Subsidiaries' knowledge, threatened by any governmental or other entity with respect to any (A) alleged violation by or liability of the Borrower or any of its Subsidiaries of or under any Environmental Law, (B) alleged failure by the Borrower or any of its Subsidiaries to have any environmental permit, certificate, license, approval, registration or authorization required in connection with the conduct of its business or (C) generation, storage, treatment, disposal, transportation or release of Hazardous Substances;

(ii) to the Borrower's or any of its Subsidiaries' knowledge, no Hazardous Substance has been released (and no written notification of such release has been filed) (whether or not in a reportable or threshold planning quantity) at, on or under any property now or previously owned, leased or operated by the Borrower or any of its Subsidiaries; and

(iii) no property now or previously owned, leased or operated by the Borrower or any of its Subsidiaries or, to the Borrower's or any of its Subsidiaries' knowledge, any property to which the Borrower or any of its Subsidiaries has, directly or indirectly, transported or arranged for the transportation of any Hazardous Substances, is listed or, to the Borrower's or any of its Subsidiaries' knowledge, proposed for listing, on the National Priorities List promulgated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), on CERCLIS (as defined in CERCLA) or on any similar federal, state or foreign list of sites requiring investigation or clean-up.

(b) Except as disclosed in or contemplated by the Borrower's Annual Report on Form 10-K for the year ended December 31, 2016, or in any subsequent report of the Borrower filed with the SEC on a Form 10-K, 10-Q or 8-K Report, or otherwise furnished in writing to the Administrative Agent and each Lender, to the Borrower's or any of its Subsidiaries' knowledge, there are no Environmental Liabilities that have resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) For purposes of this Section 5.13, the terms “the Borrower” and “Subsidiary” shall include any business or business entity (including a corporation) which is a predecessor, in whole or in part, of the Borrower or any of its Subsidiaries from the time such business or business entity became a Subsidiary of PPL Corporation, a Pennsylvania corporation.

Section 5.14 OFAC. None of the Borrower, any Subsidiary of the Borrower, nor, to the knowledge of the Borrower, any director, officer, or Affiliate of the Borrower or any of its Subsidiaries: (i) is a Sanctioned Person, (ii) has more than 10% of its assets in Sanctioned Persons or in Sanctioned Countries, or (iii) derives more than 10% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Countries. The proceeds of any Loan will not be used, directly or indirectly, to fund any activities or business of or with any Sanctioned Person, or in any Sanctioned Country.

Section 5.15 Anti-Corruption. None of the Borrower or any of its Subsidiaries nor, to the knowledge of the Borrower, any director, officer, agent, employee or other person acting on behalf of the Borrower or any of its Subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “FCPA”) or any other applicable anti-corruption law; and the Borrower have instituted and maintain policies and procedures designed to ensure continued compliance therewith. No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity in violation of the FCPA or any other applicable anti-corruption law.

## **ARTICLE VI** **COVENANTS**

The Borrower agrees that so long as any Lender has any Commitment hereunder or any amount payable hereunder or under any Note or other Loan Document remains unpaid:

Section 6.01 Information. The Borrower will deliver or cause to be delivered to each of the Lenders (it being understood that the posting of the information required in clauses (a), (b) and (f) of this Section 6.01 on the Borrower’s website or PPL Corporation’s website (<http://www.pplweb.com>) or making such information available on IntraLinks, SyndTrak (or similar service) shall be deemed to be effective delivery to the Lenders):

(a) Annual Financial Statements. Promptly when available and in any event within ten (10) days after the date such information is required to be delivered to the SEC (or, if the Borrower is not a Public Reporting Company, within one hundred and five (105) days after the end of each fiscal year of the Borrower), a consolidated balance sheet of the Borrower and its Consolidated Subsidiaries as of the end of such fiscal year and the related consolidated statements of income and cash flows for such fiscal year and accompanied by an opinion thereon by independent public accountants of recognized national standing, which opinion shall state that such consolidated financial statements present fairly the consolidated financial position of the Borrower and its Consolidated Subsidiaries as of the date of such financial statements and the results of their operations for the period covered by such financial statements in conformity with GAAP applied on a consistent basis.

(b) Quarterly Financial Statements. Promptly when available and in any event within ten (10) days after the date such information is required to be delivered to the SEC (or, if the Borrower is not a Public Reporting Company, within sixty (60) days after the end of each quarterly fiscal period in each fiscal year of the Borrower (other than the last quarterly fiscal period of the Borrower)), a consolidated



balance sheet of the Borrower and its Consolidated Subsidiaries as of the end of such quarter and the related consolidated statements of income and cash flows for such fiscal quarter, all certified (subject to normal year-end audit adjustments) as to fairness of presentation, GAAP and consistency by any vice president, the treasurer or the controller of the Borrower.

(c) Officer's Certificate. Simultaneously with the delivery of each set of financial statements referred to in subsections (a) and (b) above, a certificate of the chief accounting officer or controller of the Borrower, (i) setting forth in reasonable detail the calculations required to establish compliance with the requirements of Section 6.09 on the date of such financial statements and (ii) stating whether there exists on the date of such certificate any Default and, if any Default then exists, setting forth the details thereof and the action which the Borrower is taking or proposes to take with respect thereto.

(d) Default. Forthwith upon acquiring knowledge of the occurrence of any (i) Default or (ii) Event of Default, in either case a certificate of a Responsible Officer of the Borrower setting forth the details thereof and the action which the Borrower is taking or proposes to take with respect thereto.

(e) Change in Borrower's Ratings. Promptly, upon the chief executive officer, the president, any vice president or any senior financial officer of the Borrower obtaining knowledge of any change in a Borrower's Rating, a notice of such Borrower's Rating in effect after giving effect to such change.

(f) Securities Laws Filing. To the extent the Borrower is a Public Reporting Company, promptly when available and in any event within ten (10) days after the date such information is required to be delivered to the SEC, a copy of any Form 10-K Report to the SEC and a copy of any Form 10-Q Report to the SEC, and promptly upon the filing thereof, any other filings with the SEC.

(g) ERISA Matters. If and when any member of the ERISA Group: (i) gives or is required to give notice to the PBGC of any "reportable event" (as defined in Section 4043 of ERISA) with respect to any Material Plan which might constitute grounds for a termination of such Plan under Title IV of ERISA, or knows that the plan administrator of any Material Plan has given or is required to give notice of any such reportable event, a copy of the notice of such reportable event given or required to be given to the PBGC; (ii) receives, with respect to any Material Plan that is a Multiemployer Plan, notice of any complete or partial withdrawal liability under Title IV of ERISA, or notice that any Multiemployer Plan is in reorganization, is insolvent or has been terminated, a copy of such notice; (iii) receives notice from the PBGC under Title IV of ERISA of an intent to terminate, impose material liability (other than for premiums under Section 4007 of ERISA) in respect of, or appoint a trustee to administer any Material Plan, a copy of such notice; (iv) applies for a waiver of the minimum funding standard under Section 412 of the Internal Revenue Code with respect to a Material Plan, a copy of such application; (v) gives notice of intent to terminate any Plan under Section 4041(c) of ERISA, a copy of such notice and other information filed with the PBGC; (vi) gives notice of withdrawal from any Plan pursuant to Section 4063 of ERISA, a copy of such notice; or (vii) fails to make any payment or contribution to any Plan or makes any amendment to any Plan which has resulted or could result in the imposition of a Lien or the posting of a bond or other security, a copy of such notice, and in each case a certificate of the chief accounting officer or controller of the Borrower setting forth details as to such occurrence and action, if any, which the Borrower or applicable member of the ERISA Group is required or proposes to take.

(h) Other Information. From time to time such additional financial or other information regarding the financial condition, results of operations, properties, assets or business of the Borrower or any of its Subsidiaries as any Lender may reasonably request.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively,

“Borrower Materials”) by posting the Borrower Materials on IntraLinks, SyndTrak or another similar electronic system (the “Platform”) and (b) certain of the Lenders may be “public-side” Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a “Public Lender”). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information (as defined below), they shall be treated as set forth in Section 9.12); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor;” and (z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting (subject to Section 9.12) on a portion of the Platform not designated “Public Investor.” “Information” means all information received from the Borrower or any of its Subsidiaries relating to the Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any of its Subsidiaries; provided that, in the case of information received from the Borrower or any of its Subsidiaries after the Effective Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 6.02 Maintenance of Property; Insurance.

(a) Maintenance of Properties. The Borrower will keep all property useful and necessary in its businesses in good working order and condition, subject to ordinary wear and tear, unless the Borrower determines in good faith that the continued maintenance of any of such properties is no longer economically desirable and so long as the failure to so maintain such properties would not reasonably be expected to have a Material Adverse Effect.

(b) Insurance. The Borrower will maintain, or cause to be maintained, insurance with financially sound (determined in the reasonable judgment of the Borrower) and responsible companies in such amounts (and with such risk retentions) and against such risks as is usually carried by owners of similar businesses and properties in the same general areas in which the Borrower operates.

Section 6.03 Conduct of Business and Maintenance of Existence. The Borrower will (a) continue to engage in businesses of the same general type as now conducted by the Borrower and its Subsidiaries and businesses related thereto or arising out of such businesses, except to the extent that the failure to maintain any existing business would not have a Material Adverse Effect and (b) except as otherwise permitted in Section 6.07, preserve, renew and keep in full force and effect, and will cause each of its Subsidiaries to preserve, renew and keep in full force and effect, their respective corporate (or other entity) existence and their respective rights, privileges and franchises necessary or material to the normal conduct of business, except, in each case, where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 6.04 Compliance with Laws, Etc. The Borrower will comply with all applicable laws, regulations and orders of any Governmental Authority, domestic or foreign, in respect of the conduct of

its business and the ownership of its property (including, without limitation, compliance with all applicable ERISA and Environmental Laws and the requirements of any permits issued under such Environmental Laws), except to the extent (a) such compliance is being contested in good faith by appropriate proceedings or (b) noncompliance could not reasonably be expected to have a Material Adverse Effect.

Section 6.05 Books and Records. The Borrower (a) will keep, and, will cause each of its Subsidiaries to keep, proper books of record and account in conformity with GAAP and (b) will permit representatives of the Administrative Agent and each of the Lenders to visit and inspect any of their respective properties, to examine and make copies from any of their respective books and records and to discuss their respective affairs, finances and accounts with their officers, any employees and independent public accountants, all at such reasonable times and as often as may reasonably be desired; provided, that, the rights created in this Section 6.05 to “visit”, “inspect”, “discuss” and copy shall not extend to, or shall be limited to the extent regarding, any matters which the Borrower deems, in good faith, to be confidential or subject to legal or regulatory restrictions on access, unless the Administrative Agent and any such Lender agree in writing to keep such matters confidential or appropriately qualifies for such legal or regulatory access.

Section 6.06 Use of Proceeds. The proceeds of the Loans made under this Agreement will be used by the Borrower for general corporate purposes of the Borrower and its Subsidiaries, including for working capital purposes and for making investments in or loans to Subsidiaries. No such use of the proceeds for general corporate purposes will be, directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of buying or carrying any Margin Stock within the meaning of Regulation U. The proceeds of any Loan will not be used, directly or indirectly, to fund any activities or business of or with any Sanctioned Person, or in any Sanctioned Country.

Section 6.07 Merger or Consolidation. The Borrower will not merge with or into or consolidate with or into any other corporation or entity, unless (a) immediately after giving effect thereto, no event shall occur and be continuing which constitutes a Default, (b) the surviving or resulting Person, as the case may be, assumes and agrees in writing to pay and perform all of the obligations of the Borrower under this Agreement, (c) substantially all of the consolidated assets and consolidated revenues of the surviving or resulting Person, as the case may be, are anticipated to come from the utility or energy businesses and (d) the senior long-term debt ratings from both Rating Agencies of the surviving or resulting Person, as the case may be, immediately following the merger or consolidation is equal to or greater than the senior long-term debt ratings from both Rating Agencies of the Borrower immediately preceding the announcement of such consolidation or merger.

Section 6.08 Asset Sales. Except for the sale of assets required to be sold to conform with governmental requirements, the Borrower shall not consummate any Asset Sale, if the aggregate net book value of all such Asset Sales consummated during the four calendar quarters immediately preceding any date of determination would exceed 25% of the total assets of the Borrower and its Consolidated Subsidiaries as of the beginning of the Borrower’s most recently ended full fiscal quarter; provided, however, that any such Asset Sale will be disregarded for purposes of the 25% limitation specified above: (a) if any such Asset Sale is in the ordinary course of business of the Borrower; (b) if the assets subject to any such Asset Sale are worn out or are no longer useful or necessary in connection with the operation of the businesses of the Borrower; (c) if the assets subject to any such Asset Sale are being transferred to a Wholly Owned Subsidiary of the Borrower; (d) if the proceeds from any such Asset Sale (i) are, within twelve (12) months of such Asset Sale, invested or reinvested by the Borrower in a Permitted Business, (ii) are used by the Borrower to repay Debt of the Borrower, or (iii) are retained by the Borrower; or (e) if, prior to any such Asset Sale, both Rating Agencies confirm the then-current Borrower’s Ratings after giving effect to any such Asset Sale.

Section 6.09 Consolidated Debt to Consolidated Capitalization Ratio. The ratio of Consolidated Debt of the Borrower to Consolidated Capitalization of the Borrower shall not exceed 70%, measured as of the end of each fiscal quarter.

**ARTICLE VII**  
**DEFAULTS**

Section 7.01 Events of Default. If one or more of the following events (each an “Event of Default”) shall have occurred and be continuing:

- (a) the Borrower shall fail to pay when due any principal on any Loans; or
- (b) the Borrower shall fail to pay when due any interest on the Loans, any fee or any other amount payable hereunder or under any other Loan Document for five (5) days following the date such payment becomes due hereunder; or
- (c) the Borrower shall fail to observe or perform any covenant or agreement contained in Sections 6.05(b), 6.06, 6.07, 6.08 or 6.09; or
- (d) the Borrower shall fail to observe or perform any covenant or agreement contained in Section 6.01(d)(i) for 30 days after any such failure or in Section 6.01(d)(ii) for ten (10) days after any such failure; or
- (e) the Borrower shall fail to observe or perform any covenant or agreement contained in this Agreement or any other Loan Document (other than those covered by clauses (a), (b), (c) or (d) above) for thirty (30) days after written notice thereof has been given to the defaulting party by the Administrative Agent, or at the request of the Required Lenders; or
- (f) any representation, warranty or certification made by the Borrower in this Agreement or any other Loan Document or in any certificate, financial statement or other document delivered pursuant hereto or thereto shall prove to have been incorrect in any material respect when made or deemed made; or
- (g) the Borrower shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Material Debt beyond any period of grace provided with respect thereto, or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Material Debt beyond any period of grace provided with respect thereto if the effect of any failure referred to in this clause (ii) is to cause, or to permit the holder or holders of such Debt or a trustee on its or their behalf to cause, such Debt to become due prior to its stated maturity; or
- (h) the Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay, or shall admit in writing its inability to pay, its debts as they become due, or shall take any corporate action to authorize any of the foregoing; or

(i) an involuntary case or other proceeding shall be commenced against the Borrower seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days; or an order for relief shall be entered against the Borrower under the Bankruptcy Code; or

(j) any member of the ERISA Group shall fail to pay when due an amount or amounts aggregating in excess of \$50,000,000 which it shall have become liable to pay under Title IV of ERISA; or notice of intent to terminate a Material Plan shall be filed under Title IV of ERISA by any member of the ERISA Group, any plan administrator or any combination of the foregoing; or the PBGC shall institute proceedings under Title IV of ERISA to terminate, to impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or to cause a trustee to be appointed to administer any Material Plan; or a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that any Material Plan must be terminated; or there shall occur a complete or partial withdrawal from, or default, within the meaning of Section 4219(c)(5) of ERISA, with respect to, one or more Multiemployer Plans which could reasonably be expected to cause one or more members of the ERISA Group to incur a current payment obligation in excess of \$50,000,000; or

(k) the Borrower shall fail within sixty (60) days to pay, bond or otherwise discharge any judgment or order for the payment of money in excess of \$20,000,000, entered against the Borrower that is not stayed on appeal or otherwise being appropriately contested in good faith; or

(l) a Change of Control shall have occurred;

then, and in every such event, while such event is continuing, the Administrative Agent may (A) if requested by the Required Lenders, by notice to the Borrower terminate the Commitments, and the Commitments shall thereupon terminate, and (B) if requested by the Lenders holding more than 50% of the sum of the aggregate outstanding principal amount of the Loans at such time, by notice to the Borrower declare the Loans (together with accrued interest and accrued and unpaid fees thereon and all other amounts due hereunder) to be, and the Loans shall thereupon become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; provided, that, in the case of any Default or any Event of Default specified in Section 7.01(h) or 7.01(i) above with respect to the Borrower, without any notice to the Borrower or any other act by the Administrative Agent or any Lender, the Commitments shall thereupon terminate and the Loans (together with accrued interest and accrued and unpaid fees thereon and all other amounts due hereunder) shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

## ARTICLE VIII THE ADMINISTRATIVE AGENT

Section 8.01 Appointment and Authorization. Each Lender hereby irrevocably designates and appoints the Administrative Agent to act as specified herein and in the other Loan Documents and to take such actions on its behalf under the provisions of this Agreement and the other Loan Documents and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. The Administrative Agent agrees to act as such upon the express conditions contained in this Article VIII. Notwithstanding any provision to the contrary elsewhere in this Agreement or in any other

Loan Document, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against the Administrative Agent. The provisions of this Article VIII are solely for the benefit of the Administrative Agent and Lenders, and no other Person shall have any rights as a third party beneficiary of any of the provisions hereof. For the sake of clarity, the Lenders hereby agree that no agent other than the Administrative Agent shall have, in such capacity, any duties or powers with respect to this Agreement or the other Loan Documents.

Section 8.02 Individual Capacity. The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Borrower and its Affiliates as though the Administrative Agent were not an agent. With respect to the Loans made by it and all obligations owing to it, the Administrative Agent shall have the same rights and powers under this Agreement as any Lender and may exercise the same as though it were not an agent, and the terms “Required Lenders”, “Lender” and “Lenders” shall include the Administrative Agent in its individual capacity.

Section 8.03 Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents or attorneys-in-fact. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care except to the extent otherwise required by Section 8.07.

Section 8.04 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, teletype or other electronic facsimile transmission, telex, telegram, cable, teletype, electronic transmission by modem, computer disk or any other message, statement, order or other writing or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Borrower), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders, or all of the Lenders, if applicable, as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders or all of the Lenders, if applicable, and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

Section 8.05 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default hereunder unless the Administrative Agent has received notice from a Lender or the Borrower referring to this Agreement, describing such Default and stating that such notice is a “notice of default”. If the Administrative Agent receives such a notice, the Administrative Agent shall give prompt notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default as shall be reasonably directed by the Required Lenders; provided, that, unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interests of the Lenders.

Section 8.06 Non-Reliance on the Administrative Agent and Other Lenders. Each Lender expressly acknowledges that none of the Administrative Agent or officer, director, employee, agent, attorney-in-fact or affiliate of the Administrative Agent has made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of the Borrower, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender acknowledges to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, assets, operations, property, financial and other condition, prospects and creditworthiness of the Borrower and made its own decision to make its Loans hereunder and to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement, and to make such investigation as it deems necessary to inform itself as to the business, assets, operations, property, financial and other condition, prospects and creditworthiness of the Borrower. The Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, assets, property, financial and other condition, prospects or creditworthiness of the Borrower which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

Section 8.07 Exculpatory Provisions. The Administrative Agent shall not, and no officers, directors, employees, agents, attorneys-in-fact or affiliates of the Administrative Agent, shall (i) be liable for any action lawfully taken or omitted to be taken by it under or in connection with this Agreement or any other Loan Document (except for its own gross negligence, willful misconduct or bad faith) or (ii) be responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by the Borrower or any of its officers contained in this Agreement, in any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for any failure of the Borrower or any of its officers to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of the Borrower. The Administrative Agent shall not be responsible to any Lender for the effectiveness, genuineness, validity, enforceability, collectability or sufficiency of this Agreement or any other Loan Document or for any representations, warranties, recitals or statements made by any other Person herein or therein or made by any other Person in any written or oral statement or in any financial or other statements, instruments, reports, certificates or any other documents in connection herewith or therewith furnished or made by the Administrative Agent to the Lenders or by or on behalf of the Borrower to the Administrative Agent or any Lender or be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or therein or as to the use of the proceeds of the Loans or of the existence or possible existence of any Default.

Section 8.08 Indemnification. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under Sections 9.03(a), (b) or (c) to be paid by it to the Administrative Agent (or any sub-agent thereof), the Lenders severally agree to indemnify the Administrative Agent, in its capacity as such, and hold the Administrative Agent, in its capacity as such, harmless ratably according to their respective Commitments from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs and reasonable expenses or disbursements of any kind whatsoever which may at any time (including, without limitation, at any time following the full payment of the obligations of the Borrower hereunder) be imposed on, incurred by or asserted against the Administrative Agent, in its capacity as such, in any way relating to or arising out of

this Agreement or any other Loan Document, or any documents contemplated hereby or referred to herein or the transactions contemplated hereby or any action taken or omitted to be taken by the Administrative Agent under or in connection with any of the foregoing, but only to the extent that any of the foregoing is not paid by the Borrower; provided, that no Lender shall be liable to the Administrative Agent for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs or expenses or disbursements resulting from the gross negligence, willful misconduct or bad faith of the Administrative Agent. If any indemnity furnished to the Administrative Agent for any purpose shall, in the reasonable opinion of the Administrative Agent, be insufficient or become impaired, the Administrative Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished. The agreement in this Section 8.08 shall survive the payment of all Loans, fees and other obligations of the Borrower arising hereunder.

Section 8.09 Resignation; Successors. The Administrative Agent may resign as Administrative Agent upon twenty (20) days' notice to the Lenders. Upon the resignation of the Administrative Agent, the Required Lenders shall have the right to appoint from among the Lenders a successor to the Administrative Agent, subject to prior approval by the Borrower (so long as no Event of Default exists) (such approval not to be unreasonably withheld), whereupon such successor Administrative Agent shall succeed to and become vested with all the rights, powers and duties of the retiring Administrative Agent, and the term "Administrative Agent" shall include such successor Administrative Agent effective upon its appointment, and the retiring Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any other Loan Document. If no successor shall have been appointed by the Required Lenders and approved by the Borrower and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may at its election give notice to the Lenders and the Borrower of the immediate effectiveness of its resignation and such resignation shall thereupon become effective and the Lenders collectively shall perform all of the duties of the Administrative Agent hereunder and under the other Loan Documents until such time, if any, as the Required Lenders appoint a successor agent as provided for above. After the retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article VIII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement or any other Loan Document

## **ARTICLE IX**

### **MISCELLANEOUS**

Section 9.01 Notices. Except as otherwise expressly provided herein, all notices and other communications hereunder shall be in writing (for purposes hereof, the term "writing" shall include information in electronic format such as electronic mail and internet web pages) or by telephone subsequently confirmed in writing; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article in electronic format. Any notice shall have been duly given and shall be effective if delivered by hand delivery or sent via electronic mail, teletype, recognized overnight courier service or certified or registered mail, return receipt requested, or posting on an internet web page, and shall be presumed to be received by a party hereto (i) on the date of delivery if delivered by hand or sent by electronic mail, posting on an internet web page, or teletype (provided, however, that if any notice or other communication sent by electronic mail, posting on an internet webpage or teletype is received by a recipient after such recipient's normal business hours, such notice or other communication shall be deemed received upon the opening of such recipient's next Business Day), (ii) on the Business Day following the day on which the same has been delivered prepaid (or on an invoice basis) to a reputable national overnight air courier service or (iii) on the third Business Day following the day on which the



same is sent by certified or registered mail, postage prepaid, in each case to the respective parties at the address or telecopy numbers, in the case of the Borrower and the Administrative Agent, set forth below, and, in the case of the Lenders, set forth on signature pages hereto, or at such other address as such party may specify by written notice to the other parties hereto:

if to the Borrower:

Louisville Gas and Electric Company  
220 West Main Street  
Louisville, Kentucky 40202  
Attention: Treasurer  
Telephone: 502-627-4956  
Facsimile: 502-627-4742

with a copy to:

Louisville Gas and Electric Company  
220 West Main Street  
Louisville, Kentucky 40202  
Attention: Vice President and Deputy General Counsel,  
Legal and Environmental Affairs  
and Corporate Secretary  
Telephone: 502-627-2501  
Facsimile: 502-627-3367

with a copy to:

PPL Services Corporation  
Two North Ninth Street (GENTW4)  
Allentown, Pennsylvania 18101-1179  
Attention: Frederick C. Paine, Esq.  
Telephone: 610-774-7445  
Facsimile: 610-774-6726

with a copy to:

PPL Services Corporation  
Two North Ninth Street (GENTW14)  
Allentown, Pennsylvania 18101-1179  
Attention: Assistant Treasurer  
Telephone: 610-774-4182  
Facsimile: 610-774-5235

if to the Administrative Agent:

U.S. Bank National Association  
461 Fifth Avenue, 6th Floor  
New York, NY 10017  
Attention: Maria Distefano  
Telephone: 917-326-3944

Facsimile: 917-256-2890  
Email: maria.distefano@usbank.com

with a copy to:

U.S. Bank National Association  
461 Fifth Avenue, 7th Floor  
New York, NY 10017  
Attention: James O'Shaughnessy  
Telephone: 917-326-3924  
Facsimile: 646-935-4533  
Email: james.oshaughnessy@usbank.com

with a copy to:

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attention: Jason Kyrwood  
Telephone: 212-450-4653  
Facsimile: 212-450-5425

Section 9.02 No Waivers; Non-Exclusive Remedies. No failure by the Administrative Agent or any Lender to exercise, no course of dealing with respect to, and no delay in exercising any right, power or privilege hereunder or under any Note or other Loan Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided herein and in the other Loan Documents shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 9.03 Expenses; Indemnification.

(a) Expenses. The Borrower shall pay (i) all out-of-pocket expenses of the Administrative Agent, including legal fees and disbursements of Davis Polk & Wardwell LLP and any other local counsel retained by the Administrative Agent, in its reasonable discretion, in connection with the preparation, execution, delivery and administration of the Loan Documents, any waiver or consent thereunder or any amendment thereof or any Default or alleged Default thereunder and (ii) all reasonable out-of-pocket expenses incurred by the Administrative Agent and each Lender, including (without duplication) the fees and disbursements of outside counsel, in connection with any restructuring, workout, collection, bankruptcy, insolvency and other enforcement proceedings in connection with the enforcement and protection of its rights; provided, that the Borrower shall not be liable for any legal fees or disbursements of any counsel for the Administrative Agent and the Lenders other than Davis Polk & Wardwell LLP associated with the preparation, execution and delivery of this Agreement and the closing documents contemplated hereby.

(b) Indemnity in Respect of Loan Documents. The Borrower agrees to indemnify the Administrative Agent and each Lender, their respective Affiliates and the respective directors, officers, trustees, agents, employees, trustees and advisors of the foregoing (each an "Indemnitee") and hold each Indemnitee harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs and expenses or disbursements of any kind whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and any civil penalties or fines assessed by OFAC), which may at any time (including, without limitation, at any time following the payment of the

obligations of the Borrower hereunder) be imposed on, incurred by or asserted against such Indemnitee in connection with any investigative, administrative or judicial proceeding (whether or not such Indemnitee shall be designated a party thereto) brought or threatened (by any third party, by the Borrower or any Subsidiary of the Borrower) in any way relating to or arising out of this Agreement, any other Loan Document or any documents contemplated hereby or referred to herein or any actual or proposed use of proceeds of Loans hereunder; provided, that no Indemnitee shall have the right to be indemnified hereunder for such Indemnitee's own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment or order.

(c) Indemnity in Respect of Environmental Liabilities. The Borrower agrees to indemnify each Indemnitee and hold each Indemnitee harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs and expenses or disbursements of any kind whatsoever (including, without limitation, reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and reasonable fees and disbursements of counsel) which may at any time (including, without limitation, at any time following the payment of the obligations of the Borrower hereunder) be imposed on, incurred by or asserted against such Indemnitee in respect of or in connection with any actual or alleged presence or release of Hazardous Substances on or from any property now or previously owned or operated by the Borrower or any of its Subsidiaries or any predecessor of the Borrower or any of its Subsidiaries or any and all Environmental Liabilities. Without limiting the generality of the foregoing, the Borrower hereby waives all rights of contribution or any other rights of recovery with respect to liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs and expenses and disbursements in respect of or in connection with Environmental Liabilities that it might have by statute or otherwise against any Indemnitee.

(d) Waiver of Damages. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby; provided that nothing in this Section 9.03(d) shall relieve any Lender from its obligations under Section 9.12.

Section 9.04 Sharing of Set-Offs. Each Lender agrees that if it shall, by exercising any right of set-off or counterclaim or otherwise, receive payment of a proportion of the aggregate amount of principal and interest due with respect to any Loan made or Note held by it which is greater than the proportion received by any other Lender in respect of the aggregate amount of principal and interest due with respect to any Loan or any Note made or held by such other Lender, except as otherwise expressly contemplated by this Agreement, the Lender receiving such proportionately greater payment shall purchase such participations in the Loan made or Notes held by the other Lenders, and such other adjustments shall be made, in each case as may be required so that all such payments of principal and interest with respect to the Loan made or Notes held by the Lenders shall be shared by the Lenders pro rata; provided, that nothing in this Section shall impair the right of any Lender to exercise any right of set-off or counterclaim it may have for payment of indebtedness of the Borrower other than its indebtedness hereunder.

Section 9.05 Amendments and Waivers. Any provision of this Agreement or the Notes may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by the Borrower and the Required Lenders (and, if the rights or duties of the Administrative Agent are affected

thereby, by the Administrative Agent); provided, that no such amendment or waiver shall, (a) unless signed by each Lender adversely affected thereby, (i) extend or increase the Commitment of any Lender or subject any Lender to any additional obligation (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or of mandatory reductions in the Commitments shall not constitute an increase of the Commitment of any Lender, and that an increase in the available portion of any Commitment of any Lender as in effect at any time shall not constitute an increase in such Commitment), (ii) reduce the principal of or rate of interest on any Loan (except in connection with a waiver of applicability of any post-default increase in interest rates), (iii) postpone the date fixed for any payment of interest on any Loan or any interest thereon or any fees hereunder or for any scheduled reduction or termination of any Commitment, (iv) postpone or change the date fixed for any scheduled payment of principal of any Loan, (v) change any provision hereof in a manner that would alter the pro rata funding of Loans required by Section 2.04(b), the pro rata sharing of payments required by Sections 2.11(a) or 9.04 or the pro rata reduction of Commitments required by Section 2.08(a) or (vi) change the currency in which Loans are to be made or payment under the Loan Documents is to be made, or add additional borrowers or (b) unless signed by each Lender, change the definition of Required Lender or this Section 9.05 or Section 9.06(a).

Section 9.06    Successors and Assigns.

(a)    Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Borrower may not assign or otherwise transfer any of its rights under this Agreement without the prior written consent of all of the Lenders, except to the extent any such assignment results from the consummation of a merger or consolidation permitted pursuant to Section 6.07 of this Agreement.

(b)    Participations. Any Lender may at any time grant to one or more banks or other financial institutions or special purpose funding vehicle (each a "Participant") participating interests in its Commitments and/or any or all of its Loans. In the event of any such grant by a Lender of a participating interest to a Participant, whether or not upon notice to the Borrower and the Administrative Agent, such Lender shall remain responsible for the performance of its obligations hereunder, and the Borrower and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which any Lender may grant such a participating interest shall provide that such Lender shall retain the sole right and responsibility to enforce the obligations of the Borrower hereunder including, without limitation, the right to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such participation agreement may provide that such Lender will not agree to any modification, amendment or waiver of this Agreement which would (i) extend the Termination Date, reduce the rate or extend the time of payment of principal, interest or fees on any Loan in which such Participant is participating (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the Participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or of a mandatory reduction in the Commitments shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any Participant if the Participant's participation is not increased as a result thereof) or (ii) allow the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement, without the consent of the Participant, except to the extent any such assignment results from the consummation of a merger or consolidation permitted pursuant to Section 6.07 of this Agreement. The Borrower agrees that each Participant shall, to the extent provided in its participation agreement, be entitled to the benefits of Article II with respect to its participating interest to the same extent as if it were a Lender, subject to the same limitations, and in no case shall any Participant be entitled to receive any amount payable pursuant to Article II that is greater than the amount the Lender granting such Participant's participating interest

would have been entitled to receive had such Lender not sold such participating interest. An assignment or other transfer which is not permitted by subsection (c) or (d) below shall be given effect for purposes of this Agreement only to the extent of a participating interest granted in accordance with this subsection (b). Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register (solely for tax purposes) on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person except to the extent that such disclosure is necessary to establish that such interest in the Loan or other obligation under the Loan Documents is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(c) Assignments Generally. Any Lender may at any time assign to one or more Eligible Assignees (each, an "Assignee") all, or a proportionate part (equivalent to an initial amount of not less than \$5,000,000 or any larger integral multiple of \$1,000,000), of its rights and obligations under this Agreement and the Notes with respect to its Loans and, if still in existence, its Commitment, and such Assignee shall assume such rights and obligations, pursuant to an Assignment and Assumption Agreement in substantially the form of Exhibit C attached hereto executed by such Assignee and such transferor, with (and subject to) the consent of the Borrower, which shall not be unreasonably withheld or delayed, and the Administrative Agent, which consent shall not be unreasonably withheld or delayed; provided, that if an Assignee is an Approved Fund or Affiliate of such transferor Lender or was a Lender immediately prior to such assignment, no such consent of the Borrower or the Administrative Agent shall be required; provided, further, that if at the time of such assignment a Default or an Event of Default has occurred and is continuing, no such consent of the Borrower shall be required; provided, further, that the provisions of Sections 2.12, 2.16, 2.17 and 9.03 of this Agreement shall inure to the benefit of a transferor with respect to any Loans made or any other actions taken by such transferor while it was a Lender. Upon execution and delivery of such instrument and payment by such Assignee to such transferor of an amount equal to the purchase price agreed between such transferor and such Assignee, such Assignee shall be a Lender party to this Agreement and shall have all the rights and obligations of a Lender with a Commitment, if any, as set forth in such instrument of assumption, and the transferor shall be released from its obligations hereunder to a corresponding extent, and no further consent or action by any party shall be required. Upon the consummation of any assignment pursuant to this subsection (c), the transferor, the Administrative Agent and the Borrower shall make appropriate arrangements so that, if required, a new Note is issued to the Assignee. In connection with any such assignment, the transferor shall pay to the Administrative Agent an administrative fee for processing such assignment in the amount of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such administrative fee in the case of any assignment. Each Assignee shall, on or before the effective date of such assignment, deliver to the Borrower and the Administrative Agent certification as to exemption from deduction or withholding of any United States Taxes in accordance with Section 2.17(e).

(d) Assignments to Federal Reserve Banks. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement and its Note to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central banking authority; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Register. The Borrower hereby designates the Administrative Agent to serve as the Borrower's agent, solely for purposes of this Section 9.06(e), to (i) maintain a register (the "Register") on

which the Administrative Agent will record the Commitments from time to time of each Lender, the principal amount (and stated interest) of the Loans made by each Lender (and any Notes evidencing the same) and each repayment in respect of the principal amount of the Loans of each Lender and to (ii) retain a copy of each Assignment and Assumption Agreement delivered to the Administrative Agent pursuant to this Section. Failure to make any such recordation, or any error in such recordation, shall not affect the Borrower's obligation in respect of such Loans. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, the Administrative Agent and the other Lenders shall treat each Person in whose name a Loan and the Note evidencing the same is registered as the owner thereof for all purposes of this Agreement, notwithstanding notice or any provision herein to the contrary. With respect to any Lender, the assignment or other transfer of the Commitments of such Lender and the rights to the principal of, and interest on, any Loan made and any Note issued pursuant to this Agreement shall not be effective until such assignment or other transfer is recorded on the Register and, except to the extent provided in this Section 9.06(e), otherwise complies with Section 9.06, and prior to such recordation all amounts owing to the transferring Lender with respect to such Commitments, Loans and Notes shall remain owing to the transferring Lender. The registration of assignment or other transfer of all or part of any Commitments, Loans and Notes for a Lender shall be recorded by the Administrative Agent on the Register only upon the acceptance by the Administrative Agent of a properly executed and delivered Assignment and Assumption Agreement and payment of the administrative fee referred to in Section 9.06(c). The Register shall be available for inspection by the Borrower at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or substantive change to the Loan Documents is pending, any Lender wishing to consult with other Lenders in connection therewith may request and receive from the Administrative Agent a copy of the Register. The Borrower may not replace any Lender pursuant to Section 2.08(b), unless, with respect to any Notes held by such Lender, the requirements of Section 9.06(c) and this Section 9.06(e) have been satisfied.

Section 9.07 Governing Law; Submission to Jurisdiction. This Agreement and each Note shall be governed by and construed in accordance with the internal laws (without regarding to the conflict of laws provisions) of the State of New York, but giving effect to federal laws applicable to national banks. The Borrower hereby submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York State court sitting in New York City, borough of Manhattan, for purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. The Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such court and any claim that any such proceeding brought in any such court has been brought in an inconvenient forum.

Section 9.08 Counterparts; Integration; Effectiveness. This Agreement shall become effective on the Effective Date. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. On and after the Effective Date, this Agreement and the other Loan Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof and thereof.

Section 9.09 Generally Accepted Accounting Principles. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP as in effect from time to time, applied on a basis consistent (except for changes concurred in by the Borrower's independent public accountants) with the audited consolidated financial statements of the Borrower and its Consolidated Subsidiaries most recently delivered to the Lenders; provided, that, if the Borrower notifies the Administrative Agent that the Borrower wishes to amend any covenant in

Article VI to eliminate the effect of any change in GAAP on the operation of such covenant (or if the Administrative Agent notifies the Borrower that the Required Lenders wish to amend Article VI for such purpose), then the Borrower's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrower and the Required Lenders.

Section 9.10 Usage. The following rules of construction and usage shall be applicable to this Agreement and to any instrument or agreement that is governed by or referred to in this Agreement.

(a) All terms defined in this Agreement shall have the defined meanings when used in any instrument governed hereby or referred to herein and in any certificate or other document made or delivered pursuant hereto or thereto unless otherwise defined therein.

(b) The words "hereof", "herein", "hereunder" and words of similar import when used in this Agreement or in any instrument or agreement governed here shall be construed to refer to this Agreement or such instrument or agreement, as applicable, in its entirety and not to any particular provision or subdivision hereof or thereof.

(c) References in this Agreement to "Article", "Section", "Exhibit", "Schedule" or another subdivision or attachment shall be construed to refer to an article, section or other subdivision of, or an exhibit, schedule or other attachment to, this Agreement unless the context otherwise requires; references in any instrument or agreement governed by or referred to in this Agreement to "Article", "Section", "Exhibit", "Schedule" or another subdivision or attachment shall be construed to refer to an article, section or other subdivision of, or an exhibit, schedule or other attachment to, such instrument or agreement unless the context otherwise requires.

(d) The definitions contained in this Agreement shall apply equally to the singular and plural forms of such terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The word "will" shall be construed to have the same meaning as the word "shall". The term "including" shall be construed to have the same meaning as the phrase "including without limitation".

(e) Unless the context otherwise requires, any definition of or reference to any agreement, instrument, statute or document contained in this Agreement or in any agreement or instrument that is governed by or referred to in this Agreement shall be construed (i) as referring to such agreement, instrument, statute or document as the same may be amended, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth in this Agreement or in any agreement or instrument governed by or referred to in this Agreement), including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and (ii) to include (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein. Any reference to any Person shall be construed to include such Person's successors and permitted assigns.

(f) Unless the context otherwise requires, whenever any statement is qualified by "to the best knowledge of" or "known to" (or a similar phrase) any Person that is not a natural person, it is intended to indicate that the senior management of such Person has conducted a commercially reasonable inquiry and investigation prior to making such statement and no member of the senior management of such Person (including managers, in the case of limited liability companies, and general partners, in the case of partnerships) has current actual knowledge of the inaccuracy of such statement.

(g) Unless otherwise specified, all references herein to times of day shall constitute references to New York City time.

Section 9.11 WAIVER OF JURY TRIAL. THE BORROWER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 9.12 Confidentiality. Each Lender agrees to hold all non-public information obtained pursuant to the requirements of this Agreement in accordance with its customary procedure for handling confidential information of this nature and in accordance with safe and sound banking practices; provided, that nothing herein shall prevent any Lender from disclosing such information (i) to any other Lender or to the Administrative Agent, (ii) to any other Person if reasonably incidental to the administration of the Loans, (iii) upon the order of any court or administrative agency, (iv) to the extent requested by, or required to be disclosed to, any rating agency or regulatory agency or similar authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (v) which had been publicly disclosed other than as a result of a disclosure by the Administrative Agent or any Lender prohibited by this Agreement, (vi) in connection with any litigation to which the Administrative Agent, any Lender or any of their respective Subsidiaries or Affiliates may be party, (vii) to the extent necessary in connection with the exercise of any remedy hereunder, (viii) to such Lender's or the Administrative Agent's Affiliates and their respective directors, officers, employees, service providers and agents including legal counsel and independent auditors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential), (ix) with the consent of the Borrower, (x) to Gold Sheets and other similar bank trade publications, such information to consist solely of deal terms and other information customarily found in such publications and (xi) subject to provisions substantially similar to those contained in this Section, to any actual or proposed Participant or Assignee or to any actual or prospective counterparty (or its advisors) to any securitization, swap or derivative transaction relating to the Borrower's Obligations hereunder. Notwithstanding the foregoing, the Administrative Agent, any Lender or Davis Polk & Wardwell LLP may circulate promotional materials and place advertisements in financial and other newspapers and periodicals or on a home page or similar place for dissemination of information on the Internet or worldwide web, in each case, after the closing of the transactions contemplated by this Agreement in the form of a "tombstone" or other release limited to describing the names of the Borrower or its Affiliates, or any of them, and the amount, type and closing date of such transactions, all at their sole expense.

Section 9.13 USA PATRIOT Act Notice. Each Lender that is subject to the Patriot Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub.L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Patriot Act.

Section 9.14 No Fiduciary Duty. The Administrative Agent, each Lender and their respective Affiliates (collectively, solely for purposes of this paragraph, the "Lender Parties"), may have economic interests that conflict with those of the Borrower, its Affiliates and/or their respective stockholders (collectively, solely for purposes of this paragraph, the "Borrower Parties"). The Borrower agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty (other than any implied duty of good faith) between any Lender Party, on the one hand, and any Borrower Party, on the other. The Lender Parties acknowledge



and agree that (a) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lender Parties, on the one hand, and the Borrower, on the other and (b) in connection therewith and with the process leading thereto, (i) no Lender Party has assumed an advisory or fiduciary responsibility in favor of any Borrower Party with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender Party has advised, is currently advising or will advise any Borrower Party on other matters) or any other obligation to any Borrower Party except the obligations expressly set forth in the Loan Documents and (ii) each Lender Party is acting solely as principal and not as the agent or fiduciary of any Borrower Party. The Borrower acknowledges and agrees that the Borrower has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. The Borrower agrees that it will not claim that any Lender Party has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to any Borrower Party, in connection with such transaction or the process leading thereto.

Section 9.15 Acknowledgment and Consent to Bail-in of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 9.16 Survival. Sections 2.12, 2.16, 2.17 and 9.03 shall survive the Termination Date for the benefit of the Administrative Agent and each Lender, as applicable.

Section 9.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated

and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment, shall have been received by such Lender.

Section 9.18 Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 9.19 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 9.20 Document Imaging. The Borrower hereby acknowledges the receipt of a copy of this Agreement and all other Loan Documents. The Administrative Agent may, on behalf of the Borrower, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the Loan Documents. The Administrative Agent may store the electronic image of this Agreement and the Loan Documents in their electronic form and then destroy the paper original as part of the Administrative Agent's normal business practices, with the electronic image deemed to be an original.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

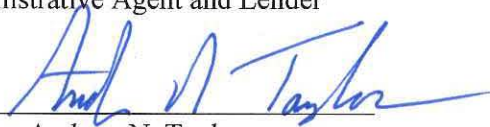
LOUISVILLE GAS AND ELECTRIC COMPANY,  
as Borrower

By: 

Name: Daniel K. Arbough

Title: Treasurer

U.S. BANK NATIONAL ASSOCIATION,  
as Administrative Agent and Lender

By:   
Name: Andrew N. Taylor  
Title: Senior Vice President

*Appendix A*

**COMMITMENTS**

<b>Lender</b>	<b>Commitment</b>
U.S. Bank National Association	\$200,000,000.00
<b>Total</b>	<b>\$200,000,000.00</b>

*Capital Expenditures*

The table below shows the Registrants' current capital expenditure projections for the years 2018 through 2022. Expenditures for the domestic regulated utilities are expected to be recovered through rates, pending regulatory approval.

	<u>Total</u>	<u>Projected</u>				
		<u>2018 (a)</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
<b>LG&amp;E</b>						
Generating facilities	\$ 408	\$ 127	\$ 108	\$ 35	\$ 94	\$ 44
Distribution facilities	1,084	223	265	233	210	153
Transmission facilities	161	27	36	36	40	22
Environmental	335	176	83	38	22	16
Other	182	38	37	40	43	24
Total Capital Expenditures	<u>\$ 2,170</u>	<u>\$ 591</u>	<u>\$ 529</u>	<u>\$ 382</u>	<u>\$ 409</u>	<u>\$ 259</u>

(a) The 2018 total excludes amounts included in accounts payable as of December 31, 2017

LOUISVILLE GAS AND ELECTRIC  
FINANCIAL EXHIBIT  
(807 KAR 5:001 SEC. 18(2)(a) and SEC. 12)

August 31, 2018

(1) Amount and kinds of stock authorized.

75,000,000 shares of Common Stock, without par value  
6,750,000 shares of Cumulative Preferred Stock, without par value -- authorized, but unissued  
1,720,000 shares of Preferred Stock, \$25 par value -- authorized, but unissued

(2) Amount and kinds of stock issued and outstanding.

Common Stock:

21,294,223 shares issued and outstanding, without par value, recorded at \$425,170,424.

(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets otherwise.

None

(4) Brief description of each mortgage on property of applicant, giving date of execution name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured thereby, and the amount of the indebtedness actually secured, together with any sinking fund provisions.

Date of Execution: As of October 1, 2010 (Supplemental Indentures were executed on October 15, 2010, November 1, 2010, November 1, 2013, September 1, 2015, September 1, 2016, and May 15, 2017.)

Mortgagor: Kentucky Utilities Company

Trustee: The Bank of New York Mellon

Amount of Authorized Debt: One quintillion dollars

Amount of Debt Secured: \$1,624,200,000

Sinking Fund Provisions: None

Pledged Assets: Substantially all assets of Kentucky Utilities located in Kentucky

- (5) Amount of bonds authorized, and amount issued giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with the amount of interest paid thereon during the last fiscal year.

Secured by first mortgage lien on substantially all assets in Kentucky.

Louisville Gas and Electric

Date of Issue	Date of Maturity	Rate of Interest	Principal Amount		Interest Expense Year Ended December 31, 2017
			Authorized	Outstanding at December 31, 2017	
Pollution Control Bonds					
09/15/16	09/01/44	Variable	\$ 125,000,000	\$ 125,000,000	\$ 1,131,737
09/11/01	09/01/27	Variable	10,104,000	-	163,377
03/06/02	09/01/26	Variable	22,500,000	22,500,000	217,221
03/06/02	09/01/26	1.05%	27,500,000	27,500,000	288,750
03/22/02	11/01/27	1.35%	35,000,000	35,000,000	472,500
03/22/02	11/01/27	1.35%	35,000,000	35,000,000	472,500
11/20/03	10/01/33	1.50%	128,000,000	128,000,000	1,969,067
04/13/05	02/01/35	2.20%	40,000,000	40,000,000	880,000
04/26/07	06/01/33	3.75%	60,000,000	60,000,000	2,822,833
04/26/07	06/01/33	1.25%	35,200,000	35,200,000	491,333
04/26/07	06/01/33	1.25%	31,000,000	31,000,000	374,583
Interest Rate Swaps					5,988,726
			<u>\$ 549,304,000</u>	<u>\$ 539,200,000</u>	<u>\$ 15,272,627</u>
First Mortgage Bonds					
09/28/15	10/12/25	3.300%	\$ 300,000,000	\$ 300,000,000	11,305,380
11/16/10	11/15/40	5.125%	285,000,000	285,000,000	14,606,250
11/14/13	11/15/43	4.650%	250,000,000	250,000,000	10,191,296
09/28/15	10/01/45	4.375%	250,000,000	250,000,000	11,923,556
			<u>\$ 1,085,000,000</u>	<u>\$ 1,085,000,000</u>	<u>\$ 48,026,482</u>

- (6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest in whose favor, together with amount of interest paid thereon during the last 12-month period.

Commercial Paper					
Date of Issue	Date of Maturity	Rate of Interest	Principal Amount		Interest Expense Year Ended August 31, 2018
			Authorized	Outstanding at August 31, 2018	
Various	Various	1.98%	\$ 350,000,000	\$ 143,960,659	\$ 2,716,477



US Bank Term Loan					
<u>Date of Issue</u>	<u>Date of Maturity</u>	<u>Rate of Interest</u>	<u>Principal Amount</u>		<u>Interest Expense</u>
			<u>Authorized</u>	<u>Outstanding at August 31, 2018</u>	<u>Year Ended August</u>
10/26/2017	10/25/2019	2.23%	\$ 100,000,000	\$ 100,000,000	\$ 1,918,750
1/11/2018	10/25/2019	2.35%	\$ 100,000,000	\$ 100,000,000	\$ 1,521,667

- (7) Other indebtedness, giving same by classes and describing security, if any with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.

None, other than current and accrued liabilities.

- (8) Rate and amount of dividends paid during the five previous fiscal years, and amount of capital stock on which dividends were paid.

Dividends on Common Stock, without par value (not based on rate per share)

2013	\$ 99,000,000
2014	\$112,000,000
2015	\$119,000,000
2016	\$128,000,000
2017	\$192,000,000

The amount of total proprietary capital on which dividends were paid as of Dec. 31st

2013	\$1,570,218,973
2014	\$1,783,850,924
2015	\$1,940,270,497
2016	\$2,086,499,985
2017	<u>\$2,138,595,752</u>

- (9) Detailed Income Statement, Balance Sheet and Statement of Retained Earnings

Monthly Financial and Operating Reports are filed each month with the Kentucky Public Service Commission. Attached are detailed Statements of Income, Balance Sheets and Retained Earnings for the Company for the period ending August 31, 2018.

**Louisville Gas and Electric Company**  
**Comparative Statement of Income**  
**August 31, 2018**

	Year Ended Current Month
	This Year Amount
Electric Operating Revenues.....	\$ 1,166,313,677.30
Gas Operating Revenues.....	326,856,406.51
	1,493,170,083.81
Fuel for Electric Generation.....	304,602,252.31
Power Purchased.....	56,936,930.62
Gas Supply Expenses.....	134,010,587.20
Other Operation Expenses.....	248,957,586.13
Maintenance.....	108,266,211.13
Depreciation.....	174,635,103.93
Amortization Expense.....	17,712,652.67
Regulatory Debits.....	461,823.62
Taxes	
Federal Income.....	(1,872,421.25)
State Income.....	5,013,517.08
Deferred Federal Income - Net.....	76,945,220.09
Deferred State Income - Net.....	11,505,190.61
Property and Other.....	44,448,473.97
Investment Tax Credit.....	8,291.00
Amortization of Investment Tax Credit.....	(1,125,083.00)
Loss (Gain) from Disposition of Allowances.....	(33,264.51)
	1,180,473,071.60
Net Operating Income.....	312,697,012.21
Other Income Less Deductions.....	(2,582,057.83)
	310,114,954.38
Interest on Long-Term Debt.....	66,749,384.42
Amortization of Debt Expense - Net.....	3,140,816.86
Other Interest Expenses.....	3,953,156.67
	73,843,357.95
Net Income.....	\$ 236,271,596.43

**Louisville Gas and Electric Company**  
**Comparative Balance Sheets as of August 31, 2018 and 2017**

Assets	This Year	Last Year	Liabilities and Proprietary Capital	This Year	Last Year
<b>Utility Plant</b>			<b>Proprietary Capital</b>		
Utility Plant at Original Cost.....	\$ 7,425,310,320.73	\$ 6,974,318,367.49	Common Stock.....	\$ 425,170,424.09	\$ 425,170,424.09
Less: Reserves for Depreciation and Amortization.....	<u>2,209,847,253.85</u>	<u>2,124,188,347.01</u>	Less: Common Stock Expense.....	835,888.64	835,888.64
<b>Total.....</b>	<b><u>5,215,463,066.88</u></b>	<b><u>4,850,130,020.48</u></b>	Paid-In Capital.....	561,081,499.00	488,081,499.00
<b>Investments</b>			Other Comprehensive Income.....	-	-
Ohio Valley Electric Corporation.....	594,286.00	594,286.00	Retained Earnings.....	<u>1,281,611,909.78</u>	<u>1,168,340,313.35</u>
Nonutility Property - Less Reserve.....	616,214.14	567,536.62	<b>Total Proprietary Capital.....</b>	<b><u>2,267,027,944.23</u></b>	<b><u>2,080,756,347.80</u></b>
Special Funds.....	<u>1,944,547.68</u>	<u>1,966,126.26</u>	Other Long-Term Debt.....	<u>1,820,113,855.76</u>	<u>1,630,034,866.51</u>
<b>Total.....</b>	<b><u>3,155,047.82</u></b>	<b><u>3,127,948.88</u></b>	<b>Total Long-Term Debt.....</b>	<b><u>1,820,113,855.76</u></b>	<b><u>1,630,034,866.51</u></b>
<b>Current and Accrued Assets</b>			<b>Total Capitalization.....</b>	<b><u>4,087,141,799.99</u></b>	<b><u>3,710,791,214.31</u></b>
Cash.....	5,084,938.78	4,820,296.62	<b>Current and Accrued Liabilities</b>		
Temporary Cash Investments.....	6,294,304.63	681,339.05	Notes Payable to Associated Companies.....	-	30,013,000.00
Accounts Receivable - Less Reserve.....	181,802,037.12	190,501,048.16	Notes Payable.....	143,960,658.89	146,969,341.67
Accounts Receivable from Associated Companies.....	21,485,390.59	22,160,529.06	Accounts Payable.....	162,430,504.36	174,458,449.03
Materials and Supplies - At Average Cost			Accounts Payable to Associated Companies.....	20,621,614.43	18,288,230.19
Fuel.....	33,464,761.95	47,256,798.75	Customer Deposits.....	28,549,975.32	27,048,447.57
Plant Materials and Operating Supplies.....	37,918,777.51	36,037,572.43	Taxes Accrued.....	43,744,140.49	50,774,797.15
Stores Expense.....	7,634,154.20	7,565,686.98	Dividends Declared.....	-	28,000,000.00
Gas Stored Underground.....	33,125,639.31	32,371,226.77	Interest Accrued.....	19,742,941.50	19,070,474.82
Emission Allowances.....	144.10	148.47	Miscellaneous Current and Accrued Liabilities.....	<u>39,179,397.78</u>	<u>50,221,972.28</u>
Prepayments.....	<u>18,693,904.39</u>	<u>17,913,231.58</u>	<b>Total.....</b>	<b><u>458,229,232.77</u></b>	<b><u>544,844,712.71</u></b>
<b>Total.....</b>	<b><u>345,504,052.58</u></b>	<b><u>359,307,877.87</u></b>	<b>Deferred Credits and Other</b>		
<b>Deferred Debits and Other</b>			Accumulated Deferred Income Taxes.....	884,201,985.88	1,271,486,196.62
Unamortized Debt Expense.....	13,841,732.88	14,569,579.23	Investment Tax Credit.....	34,500,198.65	35,616,990.65
Unamortized Loss on Bonds.....	14,881,722.84	15,690,398.45	Regulatory Liabilities.....	623,417,167.67	81,960,760.71
Accumulated Deferred Income Taxes.....	302,999,060.15	238,496,853.04	Customer Advances for Construction.....	13,386,403.70	12,584,852.04
Deferred Regulatory Assets.....	406,224,211.99	460,081,510.42	Asset Retirement Obligations.....	123,634,001.05	160,649,891.91
Other Deferred Debits.....	<u>12,414,450.72</u>	<u>9,950,157.57</u>	Other Deferred Credits.....	17,554,595.17	4,294,376.17
<b>Total.....</b>	<b><u>750,361,178.58</u></b>	<b><u>738,788,498.71</u></b>	Miscellaneous Long-Term Liabilities.....	2,989,687.96	3,869,120.45
<b>Total Assets.....</b>			Accum Provision for Pension & Postretirement Benefits.....	<u>69,428,273.02</u>	<u>125,256,230.37</u>
	<b><u>\$ 6,314,483,345.86</u></b>	<b><u>\$ 5,951,354,345.94</u></b>	<b>Total.....</b>	<b><u>1,769,112,313.10</u></b>	<b><u>1,695,718,418.92</u></b>
			<b>Total Liabilities and Stockholders' Equity.....</b>	<b><u>\$ 6,314,483,345.86</u></b>	<b><u>\$ 5,951,354,345.94</u></b>

**Louisville Gas and Electric Company**  
**Analysis of Retained Earnings**  
**August 31, 2018**

	<u>Year to Date</u>
	<u>This Year</u>
Balance at Beginning of Period.....	\$ 1,196,179,717.20
Add:	
Net Income for Period.....	166,432,192.58
Deduct:	
Adjustment to Retained Earnings.....	-
Common Dividends	
Common Stock Without Par Value.....	<u>81,000,000.00</u>
Balance at End of Period.....	<u><u>\$ 1,281,611,909.78</u></u>

**ACTION OF THE BOARD OF DIRECTORS  
OF  
LOUISVILLE GAS AND ELECTRIC COMPANY  
TAKEN BY WRITTEN CONSENT  
IN LIEU OF A SPECIAL MEETING**

**September 7, 2018**

Pursuant to the provisions of Section 271B.8-210 of the Kentucky Business Corporation Act, the Board of Directors of Louisville Gas and Electric Company, a Kentucky corporation (the "Company"), hereby adopts the following resolutions by unanimous written consent in lieu of a special meeting and consent to the actions contemplated thereby:

**ISSUANCE OF FIRST MORTGAGE BONDS**

**WHEREAS**, the Board of Directors of the Company has determined that it is desirable and in the best interests of the Company to issue up to \$600,000,000 aggregate principal amount of long-term debt by the end of 2019 in the form of first mortgage bonds for general corporate purposes, including construction and other capital expenditures, operational funding requirements, and repayment, refunding or refinancing of short- or long-term debt at maturity or otherwise.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Directors of the Company as follows:

- (a) That the Company be and it hereby is authorized to issue and sell, by the end of 2019, up to \$600,000,000 aggregate principal amount of long-term debt in the form of first mortgage bonds (any of such bonds, the "Debt Securities") in one or more series and in one or more underwritten public offerings, negotiated sales, or private placement transactions (such offerings, sales and transactions collectively referred to herein as the "Offering"), the net proceeds of such Debt Securities to be used for general corporate purposes, including construction and other capital expenditures, operational funding requirements, and repayment, refunding or refinancing of short- or long-term debt at maturity or otherwise.
- (b) That the Company be, and it hereby is, authorized to issue and offer for sale the Debt Securities through or to one or more underwriters, selling or placement agents, or other purchasers pursuant to an underwriting, purchase or similar agreement, on and subject to such terms and conditions as may be approved by the Authorized Officers (as defined below), provided that the interest rate on such Debt Securities shall not exceed 6.5% per annum.
- (c) That the Chairman of the Board, Chief Executive Officer and President, the Chief Operating Officer, the Chief Financial Officer, the General Counsel, Chief Compliance Officer and Corporate Secretary, the Treasurer, and the Controller of the Company (each, an "Authorized Officer" and, collectively, the "Authorized Officers") are, and each of them hereby is, authorized by and on behalf of the Company, to negotiate, enter into, execute and deliver

one or more supplemental indentures, company orders and/or officer's certificates (the "Supplemental Indentures") pursuant to the Company's Indenture dated October 1, 2010 to The Bank of New York Mellon, as trustee (such Indenture, as heretofore supplemented and as to be further supplemented and amended by any such instrument the "Indenture") relating to the creation and issuance of, and establishing the designation, form, characteristics and terms of the Debt Securities, in such form or forms and having such terms as the Authorized Officers executing the same shall approve, and to perform all of the agreements and obligations of the Company under the Supplemental Indentures and Indenture and to consummate the transactions contemplated thereby; and that each Authorized Officer be, and hereby is, authorized to execute and deliver such other agreements, certificates and documents and to take such other actions in connection with the execution and delivery of any Supplemental Indenture or other instrument pursuant to the Indenture as such Authorized Officers deem necessary, advisable or appropriate; with such changes therein, additions thereto or omissions therefrom, as any Authorized Officer executing, acknowledging or delivering the same shall approve, such Authorized Officer's execution, acknowledgement and/or delivery thereof to be conclusive evidence of such approval.

- (d) That the Authorized Officers are, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Company, to execute, acknowledge and deliver new securities representing the Debt Securities in substantially such form and containing such terms and conditions as such Authorized Officer shall approve, with such changes therein, additions thereto or omissions therefrom as such Authorized Officer executing, acknowledging or delivering the same shall approve, such Authorized Officer's execution, acknowledgement and delivery thereof to be conclusive evidence of such approval.
- (e) That the Authorized Officers are, and each of them hereby is, authorized, empowered and directed to fix and approve the terms and conditions on which the Debt Securities are to be issued and authenticated and the final terms of the Supplemental Indentures or any other instrument pursuant to the Indenture, including, without limitation, the rights of the holders thereof, the interest rate or rates, the maturity date or dates, the sinking fund, redemption or repurchase provisions and prices, the purchase price or prices and discounts thereto, the offering date and terms and all other matters relating thereto, and to take all such other actions as any Authorized Officer deems necessary, advisable or appropriate to consummate the transactions contemplated by the Supplemental Indentures.
- (f) That a facsimile of the corporate seal of the Company may be imprinted on the Supplemental Indentures and/or Debt Securities, which facsimile is hereby acknowledged to be the corporate seal of the Company for the purposes of sealing the Debt Securities.
- (g) That the Authorized Officers are, and each of them hereby is, authorized to execute and deliver on behalf of the Company, whether before or after

issuance of the Debt Securities (i) one or more interest rate lock or swap agreements or similar agreements with one or more underwriters, banks or other financial institutions or other counter-parties, including affiliated entities, providing for the hedging of the interest rates or overall borrowing costs on such securities and (ii) any other agreement, document or instrument that may be necessary or appropriate in connection with any such transaction.

- (h) That The Bank of New York Mellon is hereby appointed to act as the initial paying agent and security registrar for the Debt Securities described herein in accordance with the provisions of the Indenture; provided that any Authorized Officer may take all actions necessary or desirable, on behalf of the Company, to provide for any additional or different paying agent or security registrar for any Debt Securities, if such Authorized Officer deems such provision to be desirable, such Authorized Officer's determination to be conclusively evidenced by his execution of documentation effecting such appointment or change.
- (i) That, in connection with the issuance and sale of the Debt Securities, the Authorized Officers are, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Company to:
  - (i) prepare, or cause to be prepared, one or more prospectuses, offering memoranda or other appropriate disclosure documents (including all exhibits, annexes and other documents relating thereto) in connection with such issuance and sale of the Debt Securities, including any supplement(s) or amendment(s) thereto (the "Offering Memorandum");
  - (ii) execute, as such Authorized Officers or Authorized Officer deem(s) necessary, advisable or appropriate, any and all, agreements, documents and instruments in connection with such issuance and sale; and
  - (iii) take all such other actions as such Authorized Officers or Authorized Officer deem(s) necessary, advisable or appropriate in order to effect the issuance and sale of the Debt Securities, such Authorized Officer's authority and determination to execute such documents and instruments and to take such actions being conclusively evidenced by such execution or action, as the case may be.
- (j) That the Authorized Officers are, and each of them hereby is, authorized and directed, for and on behalf of the Company, to fix and approve the terms of an underwriting, purchase or similar agreement relating to the issuance and sale of the Debt Securities to one or more underwriters, selling or placement agents or other purchasers thereof (the "Purchase Agreement") to be entered into by and among the Company and such underwriters, agents or purchasers as may agree to become parties thereto, and the Authorized Officers be, and each of them hereby is, authorized to execute and deliver the same, in such form or with such changes therein, additions thereto or omissions therefrom as such Authorized Officers may approve, such execution and delivery by any such Authorized Officer to be conclusive evidence of such authorization and approval.

- (k) That the Authorized Officers are, and each of them hereby is, authorized to execute and file such instruments, make all such payments, and do such other acts and things as, in the opinion of any Authorized Officer, may be necessary or desirable in order to comply with the rules and regulations promulgated under the Securities Act of 1933, as amended; and to qualify the Company or any Debt Securities under the securities or "Blue Sky" laws of such states of the United States and other jurisdictions as may be necessary or desirable, and to take further necessary action for said purposes.
- (l) That the Authorized Officers of the Company are, and each of them hereby is, authorized and empowered to execute and file, or cause to be filed, on behalf of the Company, such applications, petitions or notices (including amendments or supplements thereto) with the Public Service Commission of the Commonwealth of Kentucky and any other federal, state, or local commission, court, agency or body having jurisdiction as may be required to obtain any approvals, consents, orders or rulings as such officers or counsel for the Company may deem to be necessary or desirable in connection with the transactions contemplated hereby, as may be required by law or as may be deemed to be proper or appropriate in their judgment or in the judgment of counsel for the Company in connection with the foregoing.
- (m) That the Authorized Officers of the Company are, and each of them is, hereby authorized and empowered, in the name and behalf of the Company, to execute and deliver such agreements and other documents relating to electronic deposit and delivery, cash management, information services and such other matters as they shall deem necessary or desirable to otherwise facilitate the offering, issuance, sale and delivery of the Debt Securities and receive and apply the proceeds therefrom.
- (n) That the Authorized Officers or any other officer of the Company are, and each of them hereby is, authorized in the name and on behalf of the Company and under its corporate seal or otherwise, to take or cause to be taken all such further actions and to execute and deliver or cause to be executed and delivered all such further instruments, agreements, certificates and other documents in connection with the Offering as such persons may deem necessary, advisable or appropriate in connection with the transactions contemplated thereby and hereby, and to incur all such fees and expenses as shall be necessary, advisable or appropriate in their judgment in order to carry into effect the purpose and intent of any and all of the foregoing resolutions.
- (o) That any acts of the officers of this Company, which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts in the name and on behalf of this Company.



- (p) That the Authorized Officers are, and each of them hereby is, authorized and directed to take any and all further action to see that the intent of the above resolutions is carried forth.

**EXTENSION OF TERMINATION DATE  
OF REVOLVING CREDIT FACILITY**

**WHEREAS**, the Company is borrower under a \$500 million Amended and Restated Revolving Credit Agreement with Wells Fargo Bank, National Association, as administrative agent, and the lenders party thereto, which credit agreement is currently scheduled to expire on January 26, 2023, subject to the ability to extend the facility at the Company's request and subject to consent of the lenders; and

**WHEREAS**, the Company desires to extend the term of the facility pursuant to the existing credit agreement, subject to the consent of the lenders; and

**WHEREAS**, the Board of Directors has determined that it is in the Company's best interests to amend and/or restate or take such action with respect to the existing credit agreement so as to effect one or more extensions of the term of the facility, and to retain the ability to renew or further extend the term of any such credit agreement from time to time in accordance with its terms, provided, however, that the combined aggregate permitted borrowings or extensions of credit under such existing and additional credit agreements shall not exceed \$500 million in aggregate principal amount and the term of such existing and additional credit agreements shall not terminate later than the earlier of (a) five years from the effective date of each extension or (b) December 31, 2025.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Directors of the Company as follows:

- (a) That the Chairman of the Board, Chief Executive Officer and President, the Chief Operating Officer, the Chief Financial Officer, the General Counsel, Chief Compliance Officer and Corporate Secretary, the Treasurer, and the Controller of the Company (each, an "Authorized Officer" and, collectively, the "Authorized Officers") be, and each of them hereby is, authorized and empowered to negotiate, execute and enter into, on behalf of the Company, (i) one or more amendments or modifications to, or replacements of, the Company's existing Amended and Restated Revolving Credit Agreement, dated as of July 28, 2014, as amended, among the Company, the lenders party thereto and Wells Fargo Bank, National Association, as administrative agent, so as to effect one or more extensions of the term thereof to terminate not later than the earlier of (a) five years from the effective date of each extension or (b) December 31, 2025; or (ii) additional credit agreements having similar terms thereto with existing or new lender banks and financial institutions (any such amended, modified, replacement or additional credit agreement, as it may be further amended as contemplated hereunder, a "Credit Agreement"); and (iii) any further amendments thereto (including

any renewals or extensions of the term thereof, or reestablishment of such arrangement, upon substantially the same basic or more favorable terms), in each case in such forms and having such terms as the Authorized Officer shall approve, together with such other agreements, instruments, notices, certificates and documents, or amendments to the foregoing, on such terms and conditions as the Authorized Officer executing such documents deems appropriate, with such Authorized Officer's execution of a definitive agreement to conclusively evidence such Authorized Officer's approval and the approval of this Board of Directors, provided, however, that the combined aggregate permitted borrowings or extensions of credit under all such Credit Agreements shall not exceed \$500 million in aggregate principal amount and the final term of any such Credit Agreement shall not terminate later than December 31, 2025.

- (b) That the Authorized Officers be, and each of them hereby is, authorized by and on behalf of the Company to enter into borrowings and extensions of credit under such Credit Agreements and: (i) request advances (including issuance of letters of credit) under any Credit Agreement; (ii) delegate to any other officers or employees of the Company, either acting individually or jointly, authority to request advances (including issuances of letters of credit) under a Credit Agreement; and (iii) execute and deliver any other agreements, instruments and documents and take any and all other action as contemplated by any Credit Agreement or as such officer may deem necessary or desirable in connection with the making of advances (including issuances of letters of credit) on account of the Company pursuant to such Credit Agreement.
- (c) That the Authorized Officers be, and each of them hereby is, authorized and directed to cause the preparation of, to approve, or consent to, and execute and deliver the necessary documents, instruments, agreements or certificates necessary to effect the extension of the term of a Credit Agreement and enter into any Credit Agreement or amendments thereto as described above.
- (d) That the Authorized Officers and any other officer of the Company be, and each of them hereby is, authorized in the name and on behalf of the Company and under its corporate seal or otherwise, to take or cause to be taken all such further actions and to execute and deliver or cause to be executed and delivered all such further documents, instruments, agreements and certificates (including without limitation, instruments authorizing or consenting to any amendment, modification or waiver to any of the agreements referred to in these resolutions) as such persons may deem necessary, advisable or appropriate in connection with the transactions contemplated thereby and hereby, and to incur all such fees and expenses as shall be necessary, advisable or appropriate in their judgment in order to carry into effect the purpose and intent of any and all of the foregoing resolutions.
- (e) That the Authorized Officers of the Company be, and each of them hereby is, authorized and empowered to execute and file, or cause to be

filed, on behalf of the Company, such applications, petitions or notices (including amendments or supplements thereto) with the Public Service Commission of the Commonwealth of Kentucky, and any other federal, state, or local commission, court, agency or body having jurisdiction as may be required to obtain any approvals, consents, orders or rulings as such officers or counsel for the Company may deem to be necessary or desirable in connection with the transactions contemplated hereby, as may be required by law or as may be deemed to be proper or appropriate in their judgment or in the judgment of counsel for the Company in connection with the foregoing.

- (f) That any and all actions heretofore taken by the officers of the Company within the terms of the foregoing resolutions as such officers or counsel for the Company deemed to be necessary or desirable in connection with the transactions contemplated hereby, be and the same are hereby in all respects approved, ratified and confirmed.

This unanimous written consent may be executed in two or more counterparts, all of which taken together shall be deemed one and the same instrument.

**WITNESS** the signatures of the undersigned, who are all of the directors of Louisville Gas and Electric Company as of the date first written above.



\_\_\_\_\_  
Lonnie E. Bellar



\_\_\_\_\_  
Kent W. Blake

\_\_\_\_\_  
Vincent Sorgi

\_\_\_\_\_  
William H. Spence

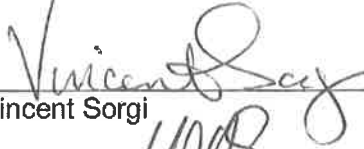


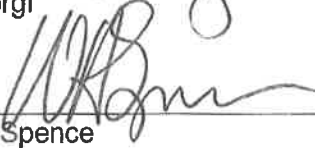
\_\_\_\_\_  
Paul W. Thompson

**WITNESS** the signatures of the undersigned, who are all of the directors of Louisville Gas and Electric Company as of the date first written above.

\_\_\_\_\_  
Lonnie E. Bellar

\_\_\_\_\_  
Kent W. Blake

  
\_\_\_\_\_  
Vincent Sorgi

  
\_\_\_\_\_  
William H. Spence

\_\_\_\_\_  
Paul W. Thompson