BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION

Joint Application of	)	
	)	
Trigen-Kansas City Energy Corp.	)	
	)	
and	)	Case No. _____
	)	
Thermal North America, Inc.	)	
	)	
For Grant of the Authority Necessary	)	
for the Transfer of Control, Sale of	)	
All Stock Currently Owned by	)	
Trigen Energy Corporation, Inc. to	)	
Thermal North America, Inc.	)	

JOINT APPLICATION

Trigen-Kansas City Energy Corp. ("Trigen KC") and Thermal North America, Inc. ("Thermal NA") (together, "Applicants"), through their undersigned counsel and, pursuant to §§ 386.250 and 393.190 R.S.Mo. 2000 and 4 CSR 240-3.420, hereby request that the Commission grant authority to permit Applicants to consummate a transaction through which Thermal NA will acquire all stock of Trigen KC.

Applicants respectfully request that the Commission approve this Application as expeditiously as possible in order to allow Applicants to consummate the proposed sale of stock as soon as possible.

In support of this Application, Applicants state as follows:

I. Description of Applicants

A. Trigen-KC Energy Corp.

1. Trigen-KC Energy Corp. (Trigen KC) is a corporation organized and existing under the laws of the State of Delaware with principal offices located at 1990 Post Oak Boulevard, Suite 1900, Houston, Texas 77056. Trigen KC is a wholly-owned subsidiary of Trigen Energy Corporation (Trigen Corp.). Trigen Corp., through its operating subsidiaries

similar to Trigen KC, is the operator of a number of steam heating systems throughout the United States similar to the one herein involved.

2. Trigen KC is authorized to provide steam heating service pursuant to certification granted by the Commission in Case No. HA-90-5, issued on December 29, 1989. Trigen KC has been duly authorized by the Secretary of the State of Missouri to transact business as a foreign entity. A copy of Trigen KC's Certificate of Good Standing from the Missouri Secretary of State is attached hereto as ***Appendix A***. Further information concerning Trigen KC's legal, technical, managerial and financial qualifications to provide service was submitted with its application for certification with the Commission and is, therefore, a matter of public record. Trigen KC respectfully requests that the Commission take official notice of that information and incorporate it herein by reference.

B. Thermal North America, Inc. ("Thermal NA")

3. Thermal NA is a Delaware holding company with principal offices located at 600 Atlantic Avenue, Boston, Massachusetts 02210. A copy of Thermal NA's articles of incorporation and a Certificate of Good Standing from the Delaware Secretary of State are attached respectively hereto as ***Appendices B and C***. Thermal NA will be a financially well-qualified, substantial thermal system holding company as described further below (*see also* Transaction Summary, ***Appendix J***).

II. Contact Information

4. Communication or inquiries concerning this Application may be directed to:

Paul S. DeFord
Lathrop & Gage L.C.
2345 Grand Boulevard, Suite 2800
Kansas City, MO 64108
(816) 292-2000 (Tel)
(816) 292-2001 (Fax)
pdeford@lathropgage.com

III. Description of the Transaction

6. Trigen Corp. and Thermal NA have entered into a Purchase and Sales Agreement whereby Thermal NA will acquire all of the stock of Trigen KC as well as specified other Trigen Corp. operating companies. A redacted copy of the Purchase and Sales Agreement is attached hereto as ***Appendix D***.[1]

7. The Transaction has been approved by the Boards of Directors of Trigen Corp. and Thermal NA. Copies of the verified board resolutions are marked respectively as ***Appendices E and F*** and incorporated herein by reference. Because the cash consideration that is being paid for the shares of stock pursuant to the Transaction is set forth in Appendices E and F, these appendices have been redacted so that the cash consideration is not identified. Non-redacted versions of ***Appendices E and F*** will be filed under seal upon entry of an appropriate protective order.

8. Attached hereto as ***Appendix G*** and incorporated by reference is a corporate organizational chart showing the business relationships and structures of the affiliates, subsidiaries and parent of Trigen KC and Trigen Corp., as pertains to Trigen KC and Trigen Corp. prior to completion of the Transaction.

9. Attached hereto respectively as ***Appendices H and I*** and incorporated by reference are a corporate organizational chart and a business structure diagram depicting operating relationships and structures of Thermal NA after completion of the Transaction.

10. The proposed stock sale will not directly affect the rates, terms and conditions under which Trigen KC customers receive service. Thus the transfer of control will appear seamless to Trigen KC's customers in terms of the services they receive.

---

[1] An unredacted copy of the Purchase & Sales Agreement will be filed under seal upon issuance of an appropriate protective order which is sought simultaneously with the filing of this Application.

11. Neither of the Applicants has pending or final judgments or decisions against it or its affiliates from any state or federal agency or court that involve customer services or rates. No annual report or assessment fees are overdue to the Commission from the Applicants. No impact is anticipated on the tax revenues of any political subdivision in which the Applicants are located.

IV. Public Interest Considerations

12. Thermal NA is well qualified to control Trigen KC and the other Trigen Corp. operating companies that are being acquired in the Transaction. Thermal NA will rely heavily on the experience of existing plant personnel and management, as well as the expertise that will be made available to Trigen KC through contracts with Johnson Controls, Inc. ("JCI"), a Fortune 100 Company, and ThermalSource, LLC ("ThermalSource"), a third party service provider. A summary of the Transaction (the "Transaction Summary") is attached to this Application as ***Appendix J*** and incorporated by reference. The qualifications of the Officers and Board of Directors of Thermal NA are summarized respectively at ***Appendices K and L*** hereto and incorporated herein by reference. Affiliated entities of Trigen KC shall follow the policies, practices and procedures as required by the Commission rule 4 CSR 240-80.015, Affiliate Transactions.

13. Under and subject to the terms of the Operations and Maintenance Agreement to be entered into by and between JCI and Trigen KC upon consummation of the Transaction, JCI will provide facility services (predominantly with current plant personnel who will be hired by JCI) to Trigen KC. The Operations and Maintenance Agreement is not attached to this Application because all details are not yet available.

14. As employees of JCI, the current Trigen KC personnel will benefit from the experience, training and technical expertise offered by JCI. JCI, which has been named to *Industry Week's* list of 100 Best Managed Companies for five consecutive years, is a Fortune 100 Company that specializes in facility services and has substantial experience providing steam and other power system services at various locations around the world. JCI is also the most experienced developer of energy conservation programs in the United States, as the company's corporate experience includes managing over 1.2 billion square feet of industrial and commercial space and providing power plant operation services for some of the world's largest industrial corporations.

15. ThermalSource is a service company whose employees are experienced in the development and operation of complex energy systems. Biographies of each of the managers and employees of ThermalSource who will have a significant role in implementing the Corporate Services Agreement are set forth as ***Appendix M*** and incorporated by reference. ThermalSource will provide legal, accounting, engineering, human resources and similar services to Trigen KC on a contract basis. In addition to the expertise already possessed by ThermalSource, members of Trigen KC's current management will be hired by ThermalSource and will continue to perform (albeit pursuant to a Corporate Services Agreement to be entered into by ThermalSource with Trigen KC, rather than as payroll employees of Tractebel North America Services, Inc.) the functions that they have been and will continue performing prior to the Transaction, subject to the overall direction and control of Trigen KC. The Corporate Services Agreement, and the records that will be maintained by Trigen KC in connection with that agreement, will be consistent with the requirements of 4 CSR 240-80.015. Certain of ThermalSource's officers and employees will be named by

the Trigen KC Board of Directors as officers and managers of Trigen KC (on a loaned employee basis), with the powers delegated to them by the Trigen KC Board of Directors and subject to Trigen KC's corporate charter.

16. Following completion of the Transaction, Thermal NA will be a financially well-qualified owner of the Acquired Entities. Marked as ***Appendix N*** and incorporated by reference is the *pro forma* balance sheet, as of the date of the Transaction, giving effect to the proposed transfer of the acquired steam systems to Thermal NA. Thermal NA, which itself will be a substantial thermal system holding company as described in the Transaction Summary, ***Appendix J***, is owned by entities related to a Twenty-Two Billion Dollar ($22,000,000,000) university endowment fund.

17. Thermal NA will have access to the investment capital necessary to assure adequate and reliable steam service at reasonable costs. The companies that are being acquired in the Transaction are a perfect match for the long-term objectives of Thermal NA and its need and desire to develop reliable investment returns. Upon consummation of the Transaction, Thermal NA will own the largest portfolio of district heating systems in the United States. Thermal NA's business plan is centered on the thermal heating district business. Trigen KC therefore is and will be of great importance to the holding company, ensuring that it will receive substantial management attention and necessary capital investment.

18. Additionally, through an Operations and Maintenance Agreement (as previously referenced) that will be entered into by Trigen KC with JCI, and through a Corporate Services Agreement that will be entered into by Trigen KC with ThermalSource, Thermal NA expects Trigen KC, after consummation of the Transaction, will be able to

introduce advanced facility management methods at the operating facilities (including a state-of-the-art maintenance management system), implement energy conservation programs to increase reliability and reduce fuel cost and benchmark facility operations against the leading steam providers in the world.

19. Furthermore, although many of the successful operating policies at Trigen KC will be adopted and maintained, Thermal NA expects Trigen KC, after consummation of the Transaction and after further consultation with customers and regulators, to focus on further stabilizing energy costs for Steam System customers by facilitating optimized fuel purchasing and utilization strategies, both on a system-wide basis and an individualized, customer-by-customer basis. Besides taking advantage of more sophisticated physical and financial futures products on a system-wide basis, in an effort to help Steam System customers achieve improved overall fuel cost stability, non-utility affiliates and/or third-party contractors of Trigen KC expect to be able to offer customers a range of service options tailored to their individual needs, risk aversion and financial capacity, including individualized energy conservation strategies and fuel cost hedging strategies. Any such initiatives that Thermal NA, its affiliates or its contractors undertake with respect to those services above and beyond the delivery of steam energy for space heating will be developed and implemented to be compliant with Commission tariffs, rules and regulations, including those rules governing affiliate transactions.

V. Request for Expedited Action

20. The parties have requested that the Commission act swiftly and expeditiously in reviewing the petition for approval of the change in control. Quick action is needed if these benefits to Trigen KC's customers and employees are to be realized. The Purchase and

Sale Agreement between Thermal NA and the current owner requires that the acquisition be completed by year-end, and there is a pressing need to create certainty for customers and employees.

21. The parties have been meeting with individual customers and are in the process of inviting all customers to informational meetings planned for July 8 and July 9. They have provided contact information for customers unable to make these meetings. (***See Appendix O***).

V. Conclusion

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application. Accordingly, Applicants respectfully request expedited treatment to permit Applicants to consummate the Transaction described herein as soon as possible.

Respectfully submitted,

LATHROP & GAGE, L.C.

Paul S. DeFord Mo. #29509
Suite 2800
2345 Grand Boulevard
Kansas City, MO 64108-2612
Telephone: (816) 292-2000
Facsimile: (816) 292-2001

Attorneys for Trigen-Kansas City Energy Corp. and Thermal North America, Inc.

Dated: June 28, 2004

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the foregoing pleading was sent via U.S. Mail or electronic transmittal on this 28th day of June, 2004, to:

Dana K. Joyce, Esq.
Office of General Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65102-0360

John B. Coffman, Esq.
Office of Public Counsel
Missouri Public Service Commission
PO Box 2230
Jefferson City, MO 65102-2230

Attorney

VERIFICATION

STATE OF Texas)
) ss.
COUNTY OF Harris)

I, Herman Schopman, hereby state that I am Vice President of Trigen Energy Corporation ("Trigen") and Vice President of Trigen-Kansas City Energy Corporation ("Trigen KC"); that I am authorized to make this verification on behalf of Trigen and Trigen-KC; and that the facts set forth in the foregoing Application are true and correct to the best of my knowledge, information and belief with respect to Trigen and Trigen KC.

Herman Schopman

Dated: June 21, 2004.

Subscribed and sworn to before me, a notary public in and for said county and state, this 21 day of June, 2004.

Notary Public in and for Said County and State

My Commission Expires:
December 8, 2004

WYKENA M. LIPSCOMB
MY COMMISSION EXPIRES
Dec. 8, 2004

CC 1305078v1

VERIFICATION

STATE OF Massachusetts)
) ss.
COUNTY OF Suffolk.)

I, Stuart D. Porter, hereby state that I am Vice President of Thermal North America, Inc. ("Thermal NA"); that I am authorized to make this verification on Thermal NA's behalf; and that the facts set forth in the foregoing Application are true and correct to the best of my knowledge, information and belief with respect to Thermal NA.

S D Porter VP
Stuart D. Porter

Dated: June 21st, 2004.

Subscribed and sworn to before me, a notary public in and for said county and state, this 21 day of June, 2004.

M. Katherine Hennessy Arnaud
Notary Public in and for Said County and State

My Commission Expires:

March 24, 2006.

CC 1305076v1

BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION

Joint Application of	)	
	)	
Trigen-Kansas City Energy Corp.	)	
	)	
and	)	Case No. _____
	)	
Thermal North America, Inc.	)	
	)	
For Grant of the Authority Necessary	)	
for the Transfer of Control, Sale of	)	
All Stock Currently Owned by	)	
Trigen Energy Corporation, Inc. to	)	
Thermal North America, Inc.	)	

JOINT APPLICATION

Part I

Appendix A

STATE OF MISSOURI

Matt Blunt
Secretary of State

CORPORATION DIVISION

CERTIFICATE OF GOOD STANDING

I, MATT BLUNT, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

TRIGEN-KANSAS CITY ENERGY CORPORATION

using in Missouri the name

TRIGEN-KANSAS CITY ENERGY CORPORATION
F00330383

a DELAWARE entity was created under the laws of this State on the 19th day of July, 1989, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 21st day of June, 2004

Matt Blunt

Secretary of State

Certification Number: 6800674-1 Reference: 411581
Verify this certificate online at http://www.sos.mo.gov/businessentity/verification

Appendix B

Delaware

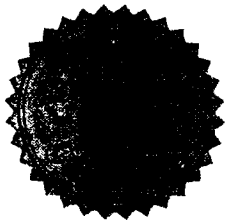
The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "THERMAL NORTH AMERICA, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE TWENTY-NINTH DAY OF MARCH, A.D. 2004, AT 2:35 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3783353 8100H

040420183

AUTHENTICATION: 3155605

DATE: 06-07-04

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:38 PM 03/29/2004
FILED 02:35 PM 03/29/2004
SRV 040229007 - 3783353 FILE

CERTIFICATE OF INCORPORATION

OF

THERMAL NORTH AMERICA, INC.

1. The name of this corporation is Thermal North America, Inc..

2. The registered office of this corporation in the State of Delaware is located at 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

3. The purpose of this corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

4. The total number of shares of stock that this corporation shall have authority to issue is 1,000 shares of Common Stock, $.01 par value per share. Each share of Common Stock shall be entitled to one vote.

5. The name and mailing address of the incorporator is: Megan Kelleher, 600 Atlantic Avenue, Boston, Massachusetts 02210.

6. Except as otherwise provided in the provisions establishing a class of stock, the number of authorized shares of any class or series of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the corporation entitled to vote irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

7. The election of directors need not be by written ballot unless the by-laws shall so require.

8. In furtherance and not in limitation of the power conferred upon the board of directors by law, the board of directors shall have power to make, adopt, alter, amend and repeal from time to time by-laws of this corporation, subject to the right of the stockholders entitled to vote with respect thereto to alter and repeal by-laws made by the board of directors.

9. A director of this corporation shall not be liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that exculpation from liability is not permitted under the General Corporation Law of the State of Delaware as in effect at the time such liability is determined. No amendment or repeal of this paragraph 9 shall apply to or have any effect on the liability or alleged liability of any director of the corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

10. This corporation shall, to the maximum extent permitted from time to time under the law of the State of Delaware, indemnify and upon request advance expenses to any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or claim, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was or has agreed to be a director or officer of this corporation or while a director or officer is or was serving at the request of this corporation as a director, officer, partner, trustee, employee or agent of any corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorney's fees and expenses), judgments, fines, penalties and amounts paid in settlement incurred (and not otherwise recovered) in connection with the investigation, preparation to defend or defense of such action, suit, proceeding or claim; provided, however, that the foregoing shall not require this corporation to indemnify or advance expenses to any person in connection with any action, suit, proceeding, claim or counterclaim initiated by or on behalf of such person. Such indemnification shall not be exclusive of other indemnification rights arising under any by-law, agreement, vote of directors or stockholders or otherwise and shall inure to the benefit of the heirs and legal representatives of such person. Any person seeking indemnification under this paragraph 10 shall be deemed to have met the standard of conduct required for such indemnification unless the contrary shall be established. Any repeal or modification of the foregoing provisions of this paragraph 10 shall not adversely affect any right or protection of a director or officer of this corporation with respect to any acts or omissions of such director or officer occurring prior to such repeal or modification.

11. The books of this corporation may (subject to any statutory requirements) be kept outside the State of Delaware as may be designated by the board of directors or in the by-laws of this corporation.

12. If at any time this corporation shall have a class of stock registered pursuant to the provisions of the Securities Exchange Act of 1934, for so long as such class is so registered, any action by the stockholders of such class must be taken at an annual or special meeting of stockholders and may not be taken by written consent.

THE UNDERSIGNED, the sole incorporator named above, hereby certifies that the facts stated above are true as of this 29th day of March, 2004.

Megan Kelleher
Incorporator

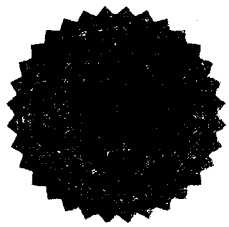
Appendix C

Delaware

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "THERMAL NORTH AMERICA, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE SEVENTH DAY OF JUNE, A.D. 2004.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE NOT BEEN ASSESSED TO DATE.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3783353 8300

040420183

AUTHENTICATION: 3155604

DATE: 06-07-04

Appendix D

EXECUTION COPY

PURCHASE AND SALE AGREEMENT

by and between

TRIGEN ENERGY CORPORATION,

as Seller,

and

THERMAL NORTH AMERICA, INC.,

as Buyer,

for the Purchase and Sale of Capital Stock of Certain First-Tier Corporate Subsidiaries of Seller

and

Seller's limited partnership interest in Trigen-Trenton Energy Company, LP

Dated April 30, 2004

LIST OF EXHIBITS AND SCHEDULES

EXHIBITS:

SCHEDULES:

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "*Agreement*"), dated as of April 30, 2004, is by and between Trigen Energy Corporation, a Delaware corporation ("*Seller*"), and Thermal North America, Inc., a Delaware Corporation ("*Buyer*"). Seller and Buyer are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

Recital

Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, (i) all of the issued and outstanding capital stock (collectively, the "*Shares*") of the First-Tier Corporate Subsidiaries (defined below), and (ii) Seller's limited partnership interest (the "*LP Interest*" and, together with the Shares, collectively the "*Interests*") in Trigen-Trenton Energy Company, LP, a New Jersey limited partnership ("*Trenton LP*"), upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

ARTICLE I
Certain Definitions

1.1 Certain Defined Terms. As used in this Agreement, the following terms have the respective meanings set forth below or set forth in the Sections referred to below:

"*Action*" means any action, suit, investigation, proceeding, hearing, condemnation, or audit by or before any Governmental Authority or any arbitration proceeding.

"*Adjusted Working Capital*" means an amount equal to (a) the Consolidated Working Capital Assets, minus (b) the Consolidated Working Capital Liabilities.

"*Affiliate*" means, as to the Person specified, any Person controlling, controlled by or under common control with such specified Person. The concept of control, controlling or controlled as used in the aforesaid context means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another, whether through the ownership of voting securities, by contract or otherwise. No Person shall be deemed an Affiliate of any Person by reason of the exercise or existence of rights, interests, or remedies under this Agreement.

"*Agreement*" is defined in the Preamble.

"*Ancillary Agreements*" means the Assignment of the LP Interest, the Service Mark License Agreement, and the Patent License.

"*Base Purchase Price*" means [redacted]

"*Baseline Adjusted Working Capital*" means [redacted]

"*Baseline Fuel Inventory*" means the quantities of fuel set forth in Schedule 1.1(b).

"*Baseline Non-Current Reserve Account Balance*" means [redacted]

"*Boston – CBA*" means the Labor Agreement dated December 6, 2002 between Trigen-Boston and IUOE – Boston.

"*Business*" with respect to any Company means the business and operations of such Company, if any, as conducted as of the date of this Agreement.

"*Business Day*" means any day except a Saturday, Sunday, Federal Reserve Bank holiday or a day on which banking institutions in Houston, Texas are authorized by law or other governmental action to close. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Central Time.

"*Buyer*" is defined in the Preamble.

"*Buyer Guaranty Support*" is defined in Section 6.19(c).

"*Buyer Environmental Cost Threshold*" is defined in Section 6.25(h)(ii).

"*Buyer Indemnified Parties*" is defined in Section 10.1(a).

"*Buyer LC Support*" is defined in Section 6.19(c).

"*Closing*" means the consummation of the transactions contemplated by Article 8.

"*Closing Date*" means (i) the day on which the conditions to Closing set forth in Article 7 and Article 8 are either satisfied or waived by the Party entitled to waive such conditions, if such day is a Business Day, or, if such day is not a Business Day, then the first Business Day thereafter, or (ii) such other Business Day as may be mutually agreed to by Buyer and Seller.

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*Companies*" means the First-Tier Corporate Subsidiaries, Trenton LP, the United Thermal Subsidiaries, Grays Ferry Cogeneration Partnership, a general partnership organized under the laws of the Commonwealth of Pennsylvania ("Grays Ferry"), Trigen-Inner Harbor East, LLC, a Maryland limited liability company ("Inner Harbor East"), Trigen-Oklahoma City Energy Corporation, a Delaware corporation ("Trigen-Oklahoma City"), Trigen-Tulsa Energy Corporation, a Delaware corporation ("Trigen-Tulsa"), Philadelphia Thermal Development Corporation, a Pennsylvania corporation ("Philadelphia Thermal Development"), and Baltimore Steam Company, a Maryland general partnership ("Baltimore Steam Company").

"*Company Group*" is defined in Section 2.7(a).

"*Confidentiality Agreement*" is defined in Section 4.3.

"*Consolidated*" means (i) with respect to the financial statement(s) of the Companies, the presentation of the results of operations and the financial position of the Companies essentially as if the Companies were a single company with one or more branches or divisions, and (ii) with respect to any financial item(s) of the Companies, the presentation of such item(s) essentially as if the Companies were a single company with one or more branches or divisions, in each case as determined in accordance with GAAP (whether or not the Companies would in fact be Consolidated under GAAP).

"*Consolidated Net Worth*" means the total of all assets properly appearing on the consolidated balance sheet of Buyer and its subsidiaries determined in accordance with GAAP less all liabilities of Buyer and its subsidiaries shown on such balance sheet.

"*Consolidated Working Capital Assets*" means the sum of cash and cash equivalents, marketable securities, accounts receivable, pre-paid expenses, inventory (other than Fuel Inventory), allowance for finance charges, and allowance for doubtful accounts and other current asset accounts, but excluding fuel inventory, deferred income taxes, and mark-to-market accruals, of the Companies on a Consolidated basis as of the Closing Date, determined using the same accounting principles, policies and methods as Seller used for the determination of Baseline Adjusted Working Capital with respect to such items; provided, however, that (i) the term "Consolidated Working Capital Assets" shall not include Non-Current Reserve Account Balances, and (ii) notwithstanding the principles of consolidation applied under GAAP, the relevant accounts of Grays Ferry, Inner Harbor East and Trenton LP shall be consolidated with the other Companies on a [redacted] proportional basis, respectively, in a manner consistent with Seller's determination of Baseline Adjusted Working Capital.

"*Consolidated Working Capital Liabilities*" means the sum of accounts payable, fuel and consumables payable, accrued expenses, short-term debt and other current liability accounts, but excluding accrued taxes, current portion of long-term debt, mark-to-market accruals, and intercompany payables, of the Companies on a Consolidated basis as of the Closing Date, determined using the same accounting principles, policies and methods as Seller used for the determination of Baseline Adjusted Working Capital with respect to such items; provided, however, that, notwithstanding the principles of consolidation applied under GAAP, the relevant accounts of Grays Ferry, Inner Harbor East and Trenton LP shall be consolidated with the other Companies on a [redacted] proportional basis, respectively, in a manner consistent with Seller's determination of Baseline Adjusted Working Capital.

"*Corporate Subsidiaries*" means the Companies, other than Baltimore Steam Company, Trenton LP, Grays Ferry and Inner Harbor East.

"*Corporate Subsidiaries' Shares*" is defined in Section 3.1(f).

"*Deductible Amount*" means [redacted]

"*Dispute*" is defined in Section 6.25(g).

"*Employee Transfer Addendum*" is defined in Section 3.1(p).

"*Environmental Defense Costs*" is defined in Section 6.25(h)(i).

"*Environmental Laws*" means all Laws, as existing as of the date of this Agreement, relating to (i) the release of any Hazardous Material, or for the protection of the air, water, land, flora, fauna or natural resources and (ii) the generation, handling, treatment, storage, disposal or transportation of Hazardous Material. "Environmental Laws" shall include the Clean Air Act, 42 U.S.C. §7401 et seq., the Resource Conservation Recovery Act, 42 U.S.C. §6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Safe Drinking Water Act, 42 U.S.C. §300f et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act and the Small Business Liability Relief and Brownfields Revitalization Act, 42 U.S.C. §9601 et seq.

"*Environmental Liabilities*" means any and all Losses relating to (a) conditions on or under the Facilities on or before the Closing Date, or (b) the operations of the Companies on or before the Closing Date (i) pursuant to any final and non-appealable order, directive, injunction, judgment or similar act (including settlements) by any Governmental Authority to the extent arising out of or relating to noncompliance with or liabilities under Environmental Laws (collectively, a "Government Environmental Order"), or (ii) pursuant to any written claim or cause of action by a Governmental Authority, or other third Person for personal injury, property damage, damage to natural resources, or remediation or response costs to the extent arising out of or relating to any noncompliance with, or any remedial obligation or liabilities under, any Environmental Laws (a "Third Person Environmental Claim"), or (iii) in connection with any noncompliance with or liabilities under Environmental Laws that is not within the scope of (i) or (ii) above ("Unasserted Environmental Liabilities").

"*Environmental Notice*" is defined in Section 6.25(f).

"*Environmental Permits*" is defined in Section 3.1(n)(iii).

"*Environmental Policy*" is defined in Section 6.26(a).

"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"*Estimated Adjusted Working Capital*" is defined in Section 2.4(a).

"*Estimated Fuel Inventory*" is defined in Section 2.4(a).

"*Estimated Fuel Inventory Adjustment*" means the monetary value of the amount by which Estimated Fuel Inventory exceeds, or is less than, the Baseline Fuel Inventory, such monetary value to be calculated as the sum of the products derived by multiplying, for each fuel type set forth in Schedule 1.1(b), the excess (a positive number) or the shortfall (a negative number), as the case may be, by the corresponding Estimated Market Price for such fuel type.

"*Estimated Market Price*" means, for each fuel type set forth on Schedule 1.1(b), the price published or reported in the Market Index on the date of estimation. For all fuel types except coal, if a particular Market Index is for any reason not published on the date of

estimation, then the most recent date of publication shall be used, provided, however, that if the Market Index has not been published within fourteen (14) days prior to the date of estimation, the Market Index will be deemed to have been discontinued, and Seller and Buyer shall mutually agree upon an alternate commercially reasonable estimate of the prevailing market price for such fuel type.

"*Estimated Purchase Price*" is defined in Section 2.4(a).

"*Estimated Non-Current Reserve Account Balance*" is defined in Section 2.4(a).

"*Estimated Non-Current Reserve Account Adjustment*" is defined in Section 2.4(a)(iii).

"*Estimated Working Capital Adjustment*" is defined in Section 2.4(a)(i).

"*Excluded Assets*" is defined in Section 6.12.

"*Existing Credit Support*" is defined in Section 6.19(a).

"*Facilities*" means the facilities identified on Exhibit A hereto and, to the extent not identified on Exhibit A, all chilled water, hot water, steam and/or electricity production and distribution facilities and tangible personal property, and all other fixtures and other improvements to the Real Property or otherwise used in connection with the operation of the Real Property or the distribution of chilled water, hot water, steam and/or electricity to any Company's customers that are owned, leased, licensed, maintained or operated by the Companies and, in each case, all other assets of the Companies related thereto.

"*FERC*" means the Federal Energy Regulatory Commission.

"*Financial Statements*" is defined in Section 3.1(g).

"*Fines or Penalties*" is defined in Section 6.25(b).

"*First-Tier Corporate Subsidiaries*" means Trenton Energy Corporation, a Delaware corporation ("Trenton Energy"), Trigen Building Services Corporation, a Delaware corporation ("Building Services"), Trigen-Kansas City Energy Corporation, a Delaware corporation ("Trigen-Kansas City"), Trigen-Maryland Steam Corporation, a Delaware corporation ("Trigen-Maryland Steam"), Trigen-Missouri Energy Corporation, a Delaware corporation ("Trigen-Missouri"), Trigen-Oklahoma Energy Corporation, a Delaware corporation ("Trigen-Oklahoma"), Trigen-Schuylkill Cogeneration, Inc., a Pennsylvania corporation ("Trigen-Schuylkill"), and United Thermal Corporation, a Delaware corporation ("United Thermal").

"*Forms*" is defined in Section 5.9(a).

"*Fuel Inventory*" shall mean the volumetric amount (in the case of liquid fuels) or weight (in the case of solid fuels) of all inventories of fuel, including without limitation, fuel oil, coal, natural gas and other fuels, of the Companies on a Consolidated basis as of the Closing Date, determined in accordance with the procedures set forth in Section 2.4 of this Agreement; provided, however, that, notwithstanding the principles of consolidation applied under GAAP,

the Fuel Inventory for Grays Ferry, Inner Harbor East and Trenton LP shall be consolidated with the other Companies on a [redacted] proportional basis, respectively, in a manner consistent with Seller's determination of Baseline Fuel Inventory.

"*GAAP*" means United States generally accepted accounting principles as in effect on the date of this Agreement consistently applied, except as set forth in Schedule 3.1(g).

"*Good Operating Practices*" means, with respect to the Facilities, the practices, methods, and acts generally engaged in or approved by a significant portion of the independent district heating and cooling and cogeneration industries in the United States for similarly situated facilities in the United States during a particular time period, or any of such practices, methods, and acts, which, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition, and taking into consideration the requirements of this Agreement, the Material Contracts and the other contracts and agreements affecting the operation of the Facilities. Good Operating Practices are not intended to be limited to the optimum practices, methods or acts, to the exclusion of all others, but rather to include a spectrum of possible practices, methods, or acts generally acceptable in the region where the Facilities are located during the relevant period in light of the circumstances.

"*Governmental Approvals*" means all consents, approvals, licenses, permits and authorizations of, and filings, recordings and regulations with, Governmental Authorities, including those required under the HSR Act necessary so that the consummation of the transactions contemplated hereby shall be in compliance with applicable Laws.

"*Governmental Authority*" means (i) the United States of America or any foreign government, (ii) any state, county, municipality, or other governmental subdivision whether within the United States of America or any foreign nation, and (iii) any court or any governmental department, commission, board, bureau, agency, or other instrumentality of the United States of America or of any foreign nation or of any state, county, municipality, or other governmental subdivision whether within the United States of America or any foreign nation.

"*GP Interest*" means the interest held by Trenton Energy in Trenton LP set forth on Schedule 3.1(e)(iii) hereto.

[redacted] is defined in Section 12.13.

"*Hazardous Materials*" means all pollutants, contaminants, chemicals or wastes that pose a risk to human health or air, land, water, flora, fauna or natural resources, or any other carcinogenic, mutagenic, ignitable, corrosive, reactive, toxic, petroleum based, infectious, hazardous substance or material (whether solid, liquid or gaseous) subject to regulation, control or remediation under any applicable Law.

"*HSR Act*" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the rules and regulations adopted pursuant thereto.

"*Indemnified Actions*" is defined in Section 10.1(b).

"*Indemnified Party*" is defined in Section 10.4.

"*Indemnifying Party*" is defined in Section 10.4.

"*Independent Auditors*" is defined in Section 2.4(c).

"*Interest Rate*" is defined in Section 2.4(b).

"*Interests*" is defined in the Preamble.

"*Investment Grade*" means a rating of at least BBB+ by S&P or Baa1 by Moody's.

"*IUOE – Boston*" means International Union of Operating Engineers Local 877.

"*IUOE Consents*" means collectively (i) the consent of IUOE – Boston to the assignment of the Boston CBA by Trigen – Boston to Operator (as defined in the Employee Transfer Addendum) and (ii) the consent of IUOE-Trenton to the assignment of the Trenton CBA by Trenton Energy to Operator.

"*IUOE Consents Deadline*" is defined in Section 11.1(a)(v).

"*IUOE – Trenton*" means International Union of Operating Engineers Local 68.

"*Knowledge*" means the actual knowledge, after reasonable investigation (including the inquiry by Seller's plant managers of employees who directly report to such managers), each of whom is listed on Exhibit B hereto, of (i) the current directors and officers of the specified Party and (ii) such other key employees of the Party or its Affiliates that are charged with responsibility for a particular function (such as tax or environmental), a list of all such officers, directors and key employees of each Party are attached as Exhibit B.

"*Law*" means any applicable statute, law (including common law), ordinance, regulation, rule, ruling, order, writ, injunction, decree, judgment, charge or other restriction or official act of or by any Governmental Authority.

"*Leases*" is defined in Section 3.1(s).

"*Lien*" means any lien, security interest, charge, claim, mortgage, deed of trust, option, warrant, purchase right, lease, or other encumbrance.

"*LLC Interest*" means the membership interest held by Building Services in Inner Harbor East pursuant to that certain Operating Agreement entered into on May 31, 1998, as amended.

"*Losses*" means any and all claims, liabilities, losses, causes of action, fines, penalties, litigation, lawsuits, administrative proceedings, administrative investigations, assessments, grievances, arbitrations, disputes, costs, and expenses, including reasonable attorneys' fees, court costs, reasonable amounts paid in settlement and other costs of suit, investigation, defense and enforcement.

"*LP Interest*" is defined in the Preamble.

"*MAE Adjustment*" is defined in Section 2.5.

"*Market Index*" means, for any fuel type, the reference to a published or otherwise documented commodity price index or other determinant set forth on Schedule 1.1(b).

"*Market Price*" means, for each fuel type, the price published or reported in the Market Index on the Closing Date for such fuel type. For all fuel types except coal, if a particular Market Index is, for any reason, not published on the Closing Date, then the most recent date of publication shall be used, provided, however, that if the Market Index has not been published within fourteen (14) days prior to the Closing Date, the Market Index will be deemed to have been discontinued, and Buyer and Seller shall in good faith decide upon an alternate market index, or alternatively, agree upon the Market Price.

"*Material Adverse Effect*" means, when used in connection with any Party, any change, effect, event, occurrence or state of facts that is or is reasonably likely to cause a Loss related to the business, assets, liabilities, financial condition or operations of the Companies or prevents, or could reasonably be likely to create a Loss by preventing a Party from performing any of its material obligations under the Material Contracts, which requires or results in, or would be reasonably likely to require or result in the identified expenditure or an identified Loss in excess of [redacted] for:

(i) any single change, effect, event, occurrence or state of facts; or

(ii) any cumulative group of changes, effects, events, occurrences, states of facts, or a Loss where each such change, effect, event, occurrence, state of fact or Loss individually requires an expenditure of not less than [redacted];

and provided, further, that Material Adverse Effect shall not include any such change, effect, event, occurrence or state of facts (individually or taken together) resulting from any change in economic, industry, or market conditions (whether general or regional in nature or limited to any area where any of the Facilities are located) or after Closing from any change in Law or regulatory policy. Any determination as to whether any condition or other matter has a Material Adverse Effect shall be made only after taking into account all effective insurance coverages (other than payments under self insurance programs) and effective indemnifications with respect to such condition or matter.

"*Material Casualty Loss*" is defined in Section 6.10.

"*Material Contracts*" means all of the agreements, contracts, licenses, leases or other legally binding arrangements in effect as of the Closing Date to which one or more of the Companies is a party, that:

(a) are set forth in Schedule 3.1(m); or

(b) the non-performance of which by any party thereto would be reasonably likely to result in a Material Adverse Effect.

"*Moody's*" means Moody's Investors Service, and its successors and assigns.

"*Non-Current Reserve Account Balance*" means, as of any time, the aggregate balances carried in the reserve accounts set forth on Schedule 1.1(a).

"*NSR Co-Benefits*" is defined in Section 6.25(d)(iii).

"*NSR Issues*" is defined in Section 6.25(d)(i).

"*Operating Records*" is defined in Section 8.2(xii).

"*Operator*" is defined in the Employee Transfer Addendum.

"*Ordinary Course of Business*" means an action taken by any Company if:

(a) such action is consistent with the past practices of such Company and is taken in the ordinary course of the normal day-to-day operations of such Company; and

(b) such action is not required to be authorized by any additional action of the board of directors, board of control or similar entity (or by any Person or group of Persons exercising similar authority) of such Company.

"*Partnership Interests*" means the partnership interests in Baltimore Steam held by Catalyst Steam as a general partner and by Trigen-Baltimore as a general partner pursuant to that certain Partnership Agreement, dated February 22, 1985 between Thermal Resources of Baltimore, Inc. and Catalyst Energy Development Corporation, (ii) the partnership interest in Trenton LP held by Trenton Energy as general partner and by Seller as limited partner pursuant to that certain Amended and Restated Agreement of Limited Partnership of Trenton District Energy Company, a New Jersey limited partnership, dated as of November 20, 1987, (iii) the partnership interest in Grays Ferry held by Trigen-Schuylkill as general partner pursuant to that certain Amended and Restated Partnership Agreement of Grays Ferry Cogeneration Partnership, dated as of March 1, 1996 and (iv) the limited liability company interest in Inner Harbor East held by Building Services pursuant to that certain Operating Agreement, dated May 31, 1998 among Building Services, Harbor East Limited Partnership and H&S Properties Development Corporation.

"*Party*" or "Parties" is defined in the Preamble.

"*Patent License*" is defined in Section 6.16.

"*Permits*" is defined in Section 3.1(u).

"*Permitted Liens*" means any of the following matters:

(a) all agreements, leases, instruments, documents, liens, encumbrances, which are described in any Schedule or Exhibit to this Agreement;

(b) any (i) undetermined or inchoate liens or charges constituting or securing the payment of expenses which were incurred incidental to the conduct of the Business or relating to

the Facilities or the operation, storage, transportation, shipment, handling, repair, construction, improvement or maintenance of or at the Facilities and (ii) materialman's, mechanics', repairman's, employees', contractors', operators', warehousemen's, barge or ship owner's and carriers' liens or other similar liens, security interests or charges for amounts arising in the Ordinary Course of Business incidental to the conduct of the Business or relating to the Facilities or the operation, storage, transportation, shipment, handling, repair, construction, improvement or maintenance of or at the Facilities, securing amounts the payment of which is not delinquent and that will be paid in the Ordinary Course of Business or, if delinquent, that are being contested in good faith with any Action to foreclose or attach any of the Interests on account thereof properly stayed;

(c) any liens for Taxes not yet delinquent or, if delinquent, that are being contested by Seller in good faith in the Ordinary Course of Business with any Action to foreclose or attach any of the assets on account thereof properly stayed;

(d) any liens or security interests created by Law or reserved in leases, rights-of-way or other real property interests for rental or for compliance with the terms of such leases, rights-of-way or other real property interests, provided payment of the debt secured is not delinquent or, if delinquent, is being contested in good faith in the Ordinary Course of Business with any Action to foreclose or attach any of the assets of the Companies on account thereof properly stayed; provided, that, the affected Party shall be responsible for, and shall promptly pay when due, all amounts finally determined to be owed that are the subject of such contest, other than amounts which are the obligation of the other Party under this Agreement;

(e) any titles or rights asserted by any Person to (i) tidelands, or lands comprising the shores or beds of navigable or perennial rivers and steams, lakes, bays or other bodies of water, (ii) lands beyond the line of the harbor or bulkhead lines as established or changed by any Governmental Authority, (iii) filled-in lands or artificial islands, (iv) statutory water rights, including riparian rights, and (v) the area extending from the line of mean low tide of any body of water to the line of vegetation, or the rights of access to that area or any easement along or across that area;

(f) all prior reservations of minerals in and under or that may be produced from any of the lands constituting part of the assets of the Companies, or on which any part of the assets of the Companies is located;

(g) all Liens (other than liens for borrowed money), charges, leases, easements, restrictive covenants, encumbrances, contracts, agreements, instruments, obligations, discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping of improvements, defects, irregularities and other matters affecting or encumbering title to the assets of the Companies which are not such as to unreasonably and materially interfere with or prevent any material operations conducted on or with respect to such assets by the Companies in the manner operated on the date of this Agreement;

(h) any defect that has been cured by the applicable statutes of limitations or statutes for prescription;

(i) the failure to locate on the ground a "blanket" or similar easement or right-of-way;

(j) rights reserved to or vested in any Governmental Authority to control or regulate any of the Companies or the assets of the Companies or the Business conducted at the Facilities and all Laws of such authorities, including any building or zoning ordinances and all Environmental Laws;

(k) any agreement, contract, lease, easement, instrument, lien, encumbrance, permit, amendment, extension or other matter entered into by a Party in accordance with the terms of this Agreement or in compliance with the approvals or directives of the other Party made pursuant to this Agreement;

(l) any Lien created by Buyer;

(m) any restriction or other limitation on sale or transfer of securities under applicable securities laws;

(n) all agreements and obligations relating to imbalances with respect to shipment, transportation, storage, refining or processing of any fuel oil, blendstocks, feedstocks and other raw materials, intermediate stocks or products;

(o) the terms and conditions of all contracts and agreements relating to the assets of the Companies which were entered into in connection with the Ordinary Course of Business, including, without limitation, product sales agreements, fuel oil purchase or sale contracts, natural gas purchase or sale contracts, tolling agreements, operating agreements, and maintenance contracts;

(p) all Post-Closing Consents; and

(q) any lien, charge, encumbrance, contract, agreement, instrument, obligation, defect, irregularity or other matter (i) that is shown on a survey or that is referenced or reflected in a title commitment, in each case supplied to Buyer prior to the date of this Agreement, or (ii) to the extent Buyer does not assert such matter as a title defect by written notice to Seller prior to the Closing pursuant to Section 4.2, that is referenced or reflected in any Title Policy obtained by Buyer.

"*Person*" means any Governmental Authority or any individual, firm, partnership, corporation, limited liability company, joint venture, trust, unincorporated organization or other entity or organization.

"*Physical Inventory*" is defined in Section 2.6.

"*Post-Closing Adjustment*" is defined in Section 2.4(b).

"*Post-Closing Consents*" means (i) any consent, approval or permit of, or filing with or notice to, any Governmental Authority, railroad company or public utility which has issued or granted any permit, license, right-of-way, lease or other authorizations permitting any lines or piping included in the assets of the Companies to cross or be placed on land owned or controlled

by such Governmental Authority, railroad company or public utility and (ii) any consent, approval or permit of, or filing with or notice to, any Governmental Authority or other third Person that is customarily obtained or made after Closing in connection with transactions similar in nature to the transactions contemplated hereby, in each case as set forth on Schedule 6.20.

"*Post-Closing Fuel Inventory Adjustment*" means the monetary value of the amount by which the Fuel Inventory as of the Closing Date exceeds, or is less than, the Estimated Fuel Inventory, such monetary value to be calculated as the sum of the products derived by multiplying, for each fuel type set forth on Schedule 1.1(b), the excess (a positive number) or the shortfall (a negative number), as the case may be, by the corresponding Market Price for such fuel type.

"*Post Closing Non-Current Reserve Account Adjustment*" means the Non-Current Reserve Account Balance as of the Closing Date minus the Estimated Non-Current Reserve Account Balance (which may be positive or negative).

"*Post-Closing Statement*" is defined in Section 2.4(b).

"*Post-Closing Working Capital Adjustment*" means Adjusted Working Capital minus Estimated Adjusted Working Capital (which may be positive or negative).

"*Prepayments*" means the license fees, tariffs, rentals, service fees, payments for utilities, or other similar obligations of the Companies of their Businesses or Facilities, paid by Seller, which under GAAP are attributable, in whole or in part, to the period after the Closing Date, in each case, which are set forth in Schedule 1.1(d).

"*Purchase Price*" is defined in Section 2.2.

"*Real Property*" is defined in Section 3.1(r).

"*Records*" means any and all of the books, records, contracts, agreements and files of the Companies existing on the Closing Date and all increases and additions thereto after the Closing Date, including computer records and electronic copies of such information (but excluding electronic mail and other computer based communications), whether maintained by Seller, the Companies, or Buyer or, in each case, its Affiliate.

"*Release*" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including without limitation, the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Materials.

"*Replacement Credit Support*" is defined in Section 6.19(a).

"*Schedules*" means Seller's disclosure schedules attached to this Agreement.

"*Section 338(h)(10) Election*" is defined in Section 5.9.

"*Securities Act*" is defined in Section 3.2(i).

"*Seller*" is defined in the Preamble.

"*Seller Indemnified Parties*" is defined in Section 10.2.

"*Service Mark License*" is defined in Section 6.14.

"*Shares*" is defined in the Preamble.

"*Seller Taxes*" is defined in Section 5.5.

"*S&P*" means Standard & Poor's Rating Group, a division of The McGraw-Hill Companies, Inc., and its successors and assigns.

"*Straddle Period*" is defined in Section 5.1(ii).

"*Tax*" or "*Taxes*" means any and all taxes, including any interest, penalties, or other additions to tax that may become payable in respect thereof, imposed by any federal, state, local, or foreign Governmental Authority, which taxes shall include, without limiting the generality of the foregoing, all income or profits taxes, payroll taxes, withholding taxes, unemployment insurance taxes, social security taxes, severance taxes, license charges, taxes on stock, sales and use taxes, ad valorem taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real and personal property taxes, stamp taxes, environmental taxes, transfer taxes, workers' compensation, and other obligations of the same or of a similar nature to any of the foregoing.

"*Tax Loss Event*" is defined in Section 5.1(i).

"*Tax Proceeding*" is defined in Section 5.6.

"*Tax Return*" means any and all returns, reports, declarations, statements, bills, schedules, claims for refund, or written information of or with respect to any Tax which is required to be supplied to, or has been supplied to, any federal, state, local or foreign taxing authority, including any schedule or attachment thereto, and including any amendment thereof.

"*Third Party Guaranty*" is defined in Section 6.19(c).

"*Title Notice*" is defined in Section 4.2.

"*Title Policy*" is defined in Section 4.2.

"*TNA*" means Tractebel North America, Inc., a Delaware corporation.

"*Transfer Taxes*" means all transfer Taxes (excluding Taxes measured by net income), including without limitation sales, use, excise (including excise Taxes on fuel and other taxable substances), stock, stamp, documentary, filing, recording, permit, license, authorization and similar Taxes, filing fees and similar charges.

"*Trenton – CBA*" means the Labor Agreement dated March 14, 2001 between Trenton Energy and IUOE – Trenton.

"*Trenton LP*" is defined in the Preamble.

"*Trigen Marks*" means the name "Trigen" and other trademarks, service marks, and trade names owned by Seller or any of its Affiliates, and the Trigen corporate logo.

"*United Thermal Subsidiaries*" means Catalyst Steam Corporation, a Delaware corporation ("Catalyst Steam"), Trigen-Baltimore Energy Corporation, a Maryland corporation ("Trigen-Baltimore"), Trigen-Boston Energy Corporation, a Delaware corporation ("Trigen-Boston"), Trigen-Philadelphia Energy Corporation, a Pennsylvania corporation ("Trigen-Philadelphia"), Philadelphia United Power Corporation, a Delaware corporation ("Philadelphia United Power"), Trigen-St. Louis Energy Corporation, a Delaware corporation ("Trigen-St. Louis") and United Thermal Development Corporation, a Delaware corporation ("United Thermal Development").

1.2 References, Gender, Number; Construction; Etc. All references in this Agreement to an "*Article*," "*Section*" or "*subsection*" shall be to an Article, Section, or subsection of this Agreement, unless the context requires otherwise. Unless the context otherwise requires, the words "*this Agreement*," "*hereof*," "*hereunder*," "*herein*," "*hereby*" or words of similar import shall refer to this Agreement as a whole and not to a particular Article, Section, subsection, clause or other subdivision hereof. Whenever the context requires, the words used herein shall include the masculine, feminine and neuter gender, and the singular and the plural. References to "the Companies" mean references to any one or more of the Companies.

ARTICLE II
Purchase and Sale

2.1 Purchase and Sale. On the terms and subject to the conditions of this Agreement, at the Closing, Seller shall sell and convey the Interests to Buyer, and Buyer shall purchase and receive the Interests from Seller, all in exchange for the Purchase Price as provided herein.

2.2 Purchase Price. The purchase price (the "Purchase Price") for the sale and conveyance of the Interests to Buyer shall be the sum of (i) the Estimated Purchase Price calculated pursuant to Section 2.4 below, (ii) the Post-Closing Working Capital Adjustment (which may be positive or negative) determined in accordance with Section 2.4(a)(i), (iii) the Post-Closing Fuel Inventory Adjustment (which may be positive or negative) determined in accordance with Section 2.4(a)(ii), (iv) the Post-Closing Non-Current Reserve Account Adjustment (which may be positive or negative) determined in accordance with Section 2.4(a)(iii), and (v) the amount of any Prepayments, less the MAE adjustment (if any) determined in accordance with Section 2.5.

2.3 Payment. At the Closing, Buyer shall pay (i) the Estimated Purchase Price calculated pursuant to Section 2.4 below less (ii) the MAE Adjustment (if any) determined in accordance with Section 2.5, by wire transfer of immediately available funds to a bank account designated by Seller. The bank account shall be designated in writing to Buyer not less than three Business Days before the Closing.

2.4 Determination of Estimated Purchase Price.

(a) At least seven (7) days prior to the anticipated Closing Date, Seller shall prepare and deliver to Buyer a statement that shall set forth Seller's good faith estimate of (1) Adjusted Working Capital as of the Closing Date ("Estimated Adjusted Working Capital"), (2) Fuel Inventory as of the Closing Date ("Estimated Fuel Inventory"), (3) the Non-Current Reserve Account Balance as of the Closing Date ("Estimated Non-Current Reserve Account Balance"), and (4) the estimated purchase price (the "Estimated Purchase Price") which shall be determined by:

(i) adjusting the Base Purchase Price by (A) if Estimated Adjusted Working Capital exceeds Baseline Adjusted Working Capital, increasing the Base Purchase Price by the amount by which Estimated Adjusted Working Capital exceeds Baseline Adjusted Working Capital, or (B) if Estimated Adjusted Working Capital is less than Baseline Adjusted Working Capital, decreasing the Base Purchase Price by the amount by which Estimated Adjusted Working Capital is less than Baseline Adjusted Working Capital (as applicable, the "Estimated Working Capital Adjustment"); then

(ii) adjusting the amount calculated pursuant to Section 2.4(a)(i) immediately above by adding the Estimated Fuel Inventory Adjustment, which may be a positive or a negative number; and then

(iii) adjusting the amount calculated in Section 2.4(a)(ii) immediately above by (A) if the Estimated Non-Current Reserve Account Balance exceeds the Baseline Non-Current Reserve Account Balance, increasing the amount calculated pursuant to Section 2.4(a)(ii) immediately above by the amount by which the Estimated Non-Current Reserve Account Balance exceeds the Baseline Non-Current Reserve Account Balance, or (B) if the Estimated Non-Current Reserve Account Balance is less than the Baseline Non-Current Reserve Account Balance, decreasing the amount calculated pursuant to Section 2.4(a)(ii) above by the amount by which the Estimated Non-Current Reserve Account Balance is less than the Baseline Non-Current Reserve Account Balance (as applicable, the "Estimated Non-Current Reserve Account Adjustment").

(b) Within one hundred twenty (120) days after the Closing, Buyer shall prepare and deliver to Seller a closing statement (the "Post-Closing Statement") setting forth a calculation of the Post-Closing Working Capital Adjustment, the Post-Closing Fuel Inventory Adjustment, the Post-Closing Non-Current Reserve Account Adjustment, any Prepayments, and the Purchase Price, together with appropriate supporting calculations and documentation. To the extent applicable, except as otherwise provided herein, the Post-Closing Working Capital Adjustment, the Post-Closing Fuel Inventory Adjustment and the Post-Closing Non-Current Reserve Account Adjustment shall be prepared using the same accounting principles, policies and methods as Seller used in its determination of Baseline Adjusted Working Capital, Baseline Fuel Inventory and Baseline Non-Current Reserve Account Balance, respectively. Seller shall provide Buyer such information as Buyer may reasonably request in connection with its preparation of the Post-Closing Statement. Notwithstanding any dispute as to the correctness of the Post-Closing Statement, (i) if the Purchase Price (as set forth on the Post-Closing Statement) exceeds the Estimated Purchase Price, then Buyer shall pay to Seller such excess and (ii) if the Estimated Purchase Price exceeds the Purchase Price (as set forth on the Post-Closing Statement), then Seller shall pay to Buyer such excess (in either case, the "Post-Closing Adjustment"). Such

payment shall be made within five (5) Business Days after Buyer's receipt of the Post-Closing Statement together with interest at the prime (or comparable) rate announced from time to time by Bank of America or its successor as its prime rate (the "Interest Rate") from the Closing Date to the date of payment of the Post-Closing Adjustment.

(c) Within thirty (30) days after delivery of the Post-Closing Statement by Buyer to Seller, Seller may object in writing to the amounts set forth in the Post-Closing Statement, stating in reasonable detail its objections thereto and providing its good-faith calculation of such amount(s). If Seller fails to deliver such notice within such time, Seller shall be deemed to have accepted Buyer's calculation and the Purchase Price set forth in the Post-Closing Statement delivered by Buyer shall be deemed the "Purchase Price". If Seller objects to any amounts set forth in the Post-Closing Statement, the Parties shall attempt to resolve such dispute by negotiation. If Buyer and Seller are unable to resolve such dispute within thirty (30) days of the date of delivery of Seller's objection in writing, then either Party may refer the dispute to Deloitte & Touche or another nationally recognized certified public accounting firm, mutually acceptable to Seller and Buyer (the "Independent Auditors"), which shall be employed as arbitrator hereunder to settle such dispute as soon as practicable. The Independent Auditors shall have access to all documents and facilities necessary to perform as arbitrator. The determination of the Independent Auditors shall be final and binding on the Parties and the Independent Auditors calculation of the purchase price shall be deemed the "Purchase Price". The fees and expenses of the Independent Auditors shall be the responsibility of Buyer or Seller, as the case may be, whose estimate of the Purchase Price shall have been furthest from the Purchase Price as determined by the Independent Auditors.

(d) Once any disputes pursuant to Section 2.4(c) have been agreed upon by the Parties or determined by the Independent Auditors pursuant to Section 2.4(c), then a final adjusting payment shall be paid to the Party entitled to receive the same pursuant to such agreement or determination by the other Party within two (2) Business Days, together with interest on such amount from the date on which the Post-Closing Adjustment was paid to the date of payment of such final adjusting payment.

2.5 MAE Adjustment. After execution of this Agreement and prior to the Closing, to the extent that Seller changes one or more representations or warranties or their Schedules as contemplated by Section 6.3 or Buyer discovers facts which would constitute a change in or breach of one or more representations or warranties or their Schedules or Buyer discovers that the Real Property is subject to one or more defects in title (other than Permitted Liens) and timely delivers a Title Notice with respect thereto, which individually or in the aggregate constitute Material Adverse Effects in excess of [redacted], the Purchase Price shall be adjusted downward on a dollar for dollar basis to reflect the entire net cumulative economic effect of such Material Adverse Effects (the "MAE Adjustment"). Buyer and Seller shall cooperate and use their good faith efforts to agree upon the MAE Adjustment on or prior to the Closing Date.

2.6 Determination of Fuel Inventory. Fuel Inventory as of the Closing Date shall be determined based on a physical inventory (the "Physical Inventory") conducted at the Facilities no more than ten (10) Business Days from the Closing Date (whether conducted prior to or following the Closing Date) and adjusted based on metered fuel consumption to arrive at the

Fuel Inventory as of the Closing Date. The Physical Inventory shall be conducted for each type of fuel in accordance with the measurement and other procedures specified in Schedule 2.6 and shall be conducted by Seller's in-house inspectors, provided that Buyer shall be provided with an opportunity to be present during the taking of such Physical Inventory. Adjustments to the Physical Inventory to determine the Fuel Inventory as of the Closing Date shall be made in accordance with the provisions for such adjustments also specified in Schedule 2.6.

2.7 Allocation of Purchase Price. The Parties agree as follows.

(a) The Base Purchase Price shall be allocated among the groups of Companies listed on Schedule 2.7 (each, a "Company Group") in accordance with Schedule 2.7.

(b) Upon both the agreement of a Post-Closing Statement and the determination of the Purchase Price, the amount allocated to each Company Group's assets shall equal the portion of the Base Purchase Price allocated to such Company Group on Schedule 2.7, as adjusted to take into account (x) such Company Group's share of the adjustments (which shall be determined on a item-by-item basis, but the net amount of which shall equal the difference between the Base Purchase Price and the Purchase Price) made to Base Purchase Price in order to arrive at the Purchase Price and (y) such Company's liabilities not otherwise taken into account in clause (x) of this Section 2.7(b). The amount allocated to each Company Group's assets pursuant to the previous sentence shall then be allocated on an entity-by-entity basis among the assets of the various legal entities that comprise such Company Group. The allocations pursuant to this Section 2.7(b) shall be made in a manner consistent with the Treasury Regulations promulgated under Section 338 of the Code. The Buyer and Seller shall in good faith cooperate to prepare the above-described allocations. If for any reason the Buyer and Seller cannot agree at least ninety (90) days prior to the date for filing their Forms 8883 on the allocations pursuant to this Section 2.7(b) for any Company that is a corporation, they shall submit their dispute to the Independent Auditors which shall prepare an allocation consistent with this Section 2.7(b). Any such allocation shall be binding on both parties. Buyer, Seller and the Companies shall file all Tax Returns (including amended returns and claims for refund) and information reports and shall prepare all financial statements in a manner consistent with the final allocations determined pursuant to this Section 2.7(b).

ARTICLE III
Representations and Warranties

3.1 Representations and Warranties of Seller. As of the date of this Agreement, Seller represents and warrants to Buyer as follows:

(a) Organization and Good Standing. Seller is a corporation duly incorporated, validly existing, and in good standing under the laws of the State of Delaware. Each of the Corporate Subsidiaries is a corporation duly incorporated, validly existing, and in good standing under the laws of the state set forth opposite its name on Schedule 3.1(a)(i), and is duly authorized to conduct business and is in good standing under the laws of the state(s) set forth opposite its name on Schedule 3.1(a)(ii). Trenton LP is a limited partnership duly organized, validly existing, and in good standing under the laws of the State of New Jersey. Inner Harbor East is a limited liability company duly organized, validly existing, and in good standing under

the laws of the State of Maryland. Each of Baltimore Steam Company and Grays Ferry constitute general partnerships formed pursuant to written agreement under the laws of the State of Maryland and the laws of the Commonwealth of Pennsylvania, respectively.

(b) Qualification of the Companies. Each of the Corporate Subsidiaries has the requisite corporate power to carry on their respective businesses as now being conducted and to own and use the properties presently owned and used by them. Each of the Companies other than the Corporate Subsidiaries has the requisite power under their respective constitutional documents to carry on their respective businesses as now being conducted. Each of the Companies is duly qualified to do business, and is in good standing, in each jurisdiction in which the respective property owned, leased, or operated by it or the nature of its respective business makes such qualification necessary, except where the failure to so qualify and be in good standing would not reasonably be expected to have a Material Adverse Effect.

(c) Authority. Seller has all requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and the Ancillary Agreements to which it is a party and the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite corporate action on the part of Seller.

(d) Enforceability. This Agreement and the Ancillary Agreements to which it is a party have been duly and validly executed and delivered by Seller and constitute valid and binding agreements of Seller enforceable against it in accordance with their terms, subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws of general application from time to time in effect that affect creditors' rights generally, (ii) general principles of equity, and (iii) the power of a court to deny enforcement of remedies generally based upon public policy.

(e) Record and Beneficial Ownership; Purchase Rights; Etc.

(i) Except as set forth on Schedule 3.1(e)(i), Seller (1) holds of record and owns beneficially the Interests free and clear of any Liens except for Permitted Liens, (2) is not a party to any option, warrant, purchase right, or other contract or commitment (other than this Agreement) that would require it to sell, transfer, or otherwise dispose of any of the Interests, and (3) is not a party to any voting trust, proxy, or other agreement or understanding with respect to the voting of any of the Interests;

(ii) Except as set forth in Schedule 3.1(e)(ii), United Thermal (1) holds of record and owns beneficially all of the issued and outstanding capital stock of the United Thermal Subsidiaries free and clear of any Liens except for Permitted Liens, (2) is not a party to any option, warrant, purchase right, or other contract or commitment that would require it to sell, transfer, or otherwise dispose of any of the capital stock of the United Thermal Subsidiaries, and (3) is not a party to any voting trust, proxy or other agreement or understanding with respect to the voting of any of the capital stock of the United Thermal Subsidiaries;

(iii) Except as set forth in Schedule 3.1(e)(iii), Trenton Energy (1) holds of record and owns beneficially the GP Interest set forth on Schedule 3.1(e)(iii) free and clear of any Liens except for Permitted Liens, (2) is not a party to any option, warrant, purchase right, or other contract or commitment that would require it to sell, transfer, or otherwise dispose of any of the GP Interest, and (3) is not a party to any voting trust, proxy or other agreement or understanding with respect to the voting of any of the GP Interest;

(iv) Except as set forth in Schedule 3.1(e)(iv), United Thermal Development (1) holds of record and owns beneficially all of the issued and outstanding capital stock of Philadelphia Thermal Development free and clear of any Liens except for Permitted Liens, (2) is not a party to any option, warrant, purchase right, or other contract or commitment that would require it to sell, transfer, or otherwise dispose of any of the capital stock of Philadelphia Thermal Development, and (3) is not a party to any voting trust, proxy or other agreement or understanding with respect to the voting of any of the capital stock of Philadelphia Thermal Development;

(v) Except as set forth in Schedule 3.1(e)(v), (1) Catalyst Steam and Trigen-Baltimore hold of record and own beneficially 51% and 49% of the Partnership Interest, respectively, in Baltimore Steam Company free and clear of any Liens except for Permitted Liens, (2) neither Catalyst Steam nor Trigen-Baltimore is a party to any option, warrant, purchase right, or other contract or commitment that would require Catalyst Steam or Trigen-Baltimore, respectively, to sell, transfer, or otherwise dispose of any of their respective Partnership Interests in Baltimore Steam, and (3) neither Catalyst Steam nor Trigen-Baltimore is a party to any voting trust, proxy or other agreement or understanding with respect to the voting of any of their respective Partnership Interest in Baltimore Steam Company;

(vi) Except as set forth in Schedule 3.1(e)(vi), Trigen-Schuylkill (1) holds of record and owns beneficially 50% of the Partnership Interest in Grays Ferry free and clear of any Liens except for Permitted Liens, (2) is not a party to any option, warrant, purchase right, or other contract or commitment that would require it to sell, transfer, or otherwise dispose of any of its partnership interest in Grays Ferry, and (3) is not a party to any voting trust, proxy or other agreement or understanding with respect to the voting of any of its Partnership Interest in Grays Ferry;

(vii) Except as set forth in Schedule 3.1(e)(vii), Trigen Building Services (1) holds of record and owns beneficially 60% of the LLC Interest in Inner Harbor East free and clear of any Liens except for Permitted Liens, (2) is not a party to any option, warrant, purchase right, or other contract or commitment that would require it to sell, transfer, or otherwise dispose of any of its LLC Interest in Inner Harbor East, and (3) is not a party to any voting trust, proxy or other agreement or understanding with respect to the voting of any of its LLC Interest in Inner Harbor East; and

(viii) Except as set forth in Schedule 3.1(e)(viii), Trigen-Oklahoma (1) holds of record and owns beneficially all of the issued and outstanding capital stock of Trigen-Oklahoma City and Trigen-Tulsa free and clear of any Liens except for Permitted Liens,

(2) is not a party to any option, warrant, purchase right, or other contract or commitment that would require it to sell, transfer, or otherwise dispose of any of the capital stock of Trigen-Oklahoma City or Trigen-Tulsa, and (3) is not a party to any voting trust, proxy or other agreement or understanding with respect to the voting of any of the capital stock of Trigen-Oklahoma City or Trigen-Tulsa.

(f) Capitalization. The shares of the Corporate Subsidiaries set forth opposite their names, respectively, on Schedule 3.1(f) constitute all of the issued and outstanding capital stock of the Corporate Subsidiaries (the "Corporate Subsidiaries' Shares"). All Corporate Subsidiaries' Shares have been duly authorized and are validly issued, fully paid, and nonassessable. None of the Companies has any obligation to contribute any additional amounts in respect of the LP Interest, the LLC Interest or the Partnership Interests in Baltimore Steam and Grays Ferry. All Corporate Subsidiaries' Shares, the Partnership Interests in Baltimore Steam and Grays Ferry, the LP Interest and the LLC Interest in Inner Harbor were not issued in violation of the preemptive rights of any Person and, to Seller's Knowledge, there have been no violations of federal or state securities laws with respect to the Interests, Corporate Subsidiaries' Shares, Partnership Interests or the LLC Interest. Except as set forth in Schedule 3.1(f), none of the Companies, Baltimore Steam, Grays Ferry, Trenton LP or Inner Harbor have outstanding with respect to their respective capital stock or other respective equity interests in such Companies, as applicable, any convertible security, call, preemptive right, option, warrant, purchase right, or other contract or commitment that would, directly or indirectly, require the Companies to sell, issue, convert, exchange or otherwise dilute or dispose of any their respective shares of capital stock or other equity interests, as applicable.

(g) Financial Statements. The financial statements attached as Schedule 3.1(g)(i) (the "Financial Statements") fairly present in all material respects the financial positions of the Companies on a Consolidated basis as of the respective dates thereof, and have been prepared in accordance with GAAP, subject, in the case of unaudited financial statements, to normal year-end adjustment. Except as disclosed on Schedule 3.1(g)(ii), to Seller's Knowledge none of the Companies has any liabilities which would be required to be reflected on a balance sheet prepared in accordance with GAAP, except for (1) liabilities reflected on the face of the Financial Statements (rather than in any note thereto), or (2) liabilities which have arisen after December 31, 2002 in the Ordinary Course of Business.

(h) No Violation or Breach. Except as set forth in Schedule 3.1(h)(i) and (ii), neither the execution and delivery by Seller of this Agreement or the Ancillary Agreements to which it is a party nor the performance by it of its obligations hereunder or thereunder will:

(i) violate any provision of the certificate or articles of incorporation, by-laws, articles of organization, operating agreement, partnership agreement or other similar governing documents of Seller or any of the Companies,

(ii) conflict with, constitute a default under, constitute an event that with notice, lapse of time or both, would constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel or require any notice under any agreement, indenture, contract lease, license or other instrument to which Seller or any of the Companies is a party or by which Seller or any of the

Companies is bound, other than such breaches or violations of agreements, indentures, contracts, leases, licenses, or other instruments that would not have a Material Adverse Effect, or

(iii) assuming (1) all the required filings have been made under the HSR Act and the waiting period under the HSR Act has expired or been terminated, and (2) the consents, filings and notices set forth in Schedule 3.1(i) have been obtained and given, violate any Law applicable to Seller or the Companies or the Facilities other than such violations that would not have a Material Adverse Effect.

(i) Consents. To Seller's Knowledge, no consent, approval, authorization or permission of, or filing with or notification to, any Person is required to be obtained or made by Seller in connection with the execution and delivery of this Agreement and the Ancillary Agreements to which it is a party by Seller or for or in connection with the consummation of the transactions and performance of the terms and conditions contemplated hereby and thereby by Seller, except for (i) consents, approvals, notifications, authorizations and other requirements under the HSR Act, (ii) Post-Closing Consents, (iii) the consents, filings, and notices set forth on Schedule 3.1(i) to be obtained prior to Closing, and (iv) consents, approvals, authorizations, permits, filings, or notices that, if not obtained or made, would not have a Material Adverse Effect.

(j) Actions. Except as set forth on Schedule 3.1(j), there is no Action pending or, to Seller's Knowledge, threatened against the Companies, except for Actions (whether pending or threatened) that would not have a Material Adverse Effect.

(k) Compliance With Laws. Except as set forth on Schedule 3.1(k), no uncured violation of any Law by the Companies or by Seller (which could reasonably be expected to relate to any of the Facilities or the Companies) exists, other than violations of Law that would not reasonably be expected to have a Material Adverse Effect. Seller is not making any representation or warranty in the preceding sentence with respect to any Environmental Law, any Tax Law, or any employee benefit plans or arrangements, and such matters are addressed in Sections 3.1(n), (o), and (p) and Section 6.11, respectively.

(l) Brokerage Fees and Commissions. Neither Seller nor any Affiliate of Seller has incurred any obligation or entered into any agreement for any investment banking, brokerage, or finder's fee or commission in respect of the transactions contemplated by this Agreement for which Buyer or the Companies could become liable or obligated. Seller has engaged Banc of America Securities LLC in connection with the transactions contemplated by this Agreement and agrees to be responsible for any and all fees that are due and payable pursuant to the terms of such engagement.

(m) Material Contracts. Schedule 3.1(m) sets forth a complete list of all Material Contracts for which any of the Companies is a party. Except as would not have a Material Adverse Effect, each such Material Contract is valid, binding, and enforceable against the Company or Companies set forth opposite such Material Contract on Schedule 3.1(m) and, to Seller's Knowledge, against each other party to each such Material Contract, in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization,

arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally, or by general equitable principles. Except as set forth on Schedule 3.1(m), to Seller's Knowledge, each Material Contract is in full force and effect on the date hereof and will continue to be valid, binding, enforceable and in full force and effect following consummation of the transactions contemplated hereby. The Companies are not in default under any Material Contract and, to Seller's Knowledge, no other party to a Material Contract is in default thereunder in each case that would result in a Material Adverse Effect. Seller has made available to Buyer a materially complete and correct copy of each Material Contract.

(n) Environmental Matters. This Section 3.1(n) shall constitute the sole representations of Seller with respect to environmental matters. Except as set forth in Schedule 3.1(n), or as would not have a Material Adverse Effect:

(i) To Seller's Knowledge, there is no uncured violation of any applicable Environmental Law by the Companies at the Facilities or any Release or threat of Release of any Hazardous Materials in, on, under or from the Facilities, that would result in any remediation obligations of the Companies under any applicable Environmental Law;

(ii) No Lien has been imposed on any Facility by any Governmental Authority in connection with any violation of or noncompliance with applicable Environmental Laws;

(iii) Seller and the Companies have all permits, licenses, and other authorizations ("Environmental Permits") required to own and operate each Facility in compliance with applicable Environmental Laws in accordance with past practice;

(iv) None of the Companies is (A) subject to any outstanding consent decree, compliance order, or administrative order, (B) in receipt of written notice under the citizen suit provision of any Environmental Law, (C) in receipt of any written request for information, notice, complaint, or claim with respect to any violation of any Environmental Law relating to any Facility, and (D) subject to, or to Seller's Knowledge, threatened with any governmental or citizen enforcement action under any Environmental Law with respect to any Facility;

(v) To Seller's Knowledge, Hazardous Materials generated by Seller have not been Released at any off-site property in a manner that would impose liability under any Environmental Law; and

(vi) To Seller's Knowledge, Seller has made available to the Buyer true, accurate and materially complete copies of all material environmental records, reports, notifications, certificates of need, permits, pending permit applications, correspondence, engineering studies, and environmental studies or assessments related to the Companies or the Facilities, in each case as amended and in effect.

(o) Tax Matters. With respect to the Companies, except as set forth in Schedule 3.1(o) or as would not have a Material Adverse Effect:

(i) all Tax Returns required to be filed by or with respect to the Companies have been or will be timely filed with the appropriate taxing authorities in all jurisdictions in which such Tax Returns are required to be filed;

(ii) such Tax Returns are or will be true and correct, and all Taxes, whether or not, shown on such Tax Returns as due and owing have been or will be timely paid;

(iii) none of the Companies has extended or waived, or had extended or waived on its behalf, the application of any statute of limitations of any jurisdiction regarding the assessment or collection of any Tax;

(iv) there are no audits, claims, assessments, levies, administrative proceedings, or lawsuits pending, or to Seller's Knowledge, threatened against or in respect of any of the Companies by any taxing authority;

(v) there are no Liens for Taxes (other than Permitted Liens) upon the assets of the Companies;

(vi) each of the Companies has withheld and paid (or had withheld and paid on its behalf) all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or any other third party;

(vii) none of the Companies is a party to any agreement, contract, arrangement or plan that has resulted or would result, separately or in the aggregate, in the payment of (A) any "excess parachute payment" within the meaning of section 280G of the Code (or any corresponding provision of state, local or foreign Tax law), or (B) any amount that would not be fully deductible as a result of section 162(m) of the Code (or any corresponding provision of state, local or foreign Tax law); and

(viii) none of the Companies will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any "*closing agreement*" as described in section 7121 of the Code (or any corresponding provision of state, local or foreign Tax law).

Notwithstanding anything in this Section 3.1(o) to the contrary, no representation or warranty is made with respect to the amount, availability, expiration, limitation, or reduction of any net operating losses or capital losses of the Companies.

(p) Employment Matters. The transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party shall not result in any termination, retention or severance pay obligations payable by Buyer or Buyer's Affiliate or the Companies to an employee working at the Facilities, except as provided in the Employee Transfer Addendum. The representations and warranties contained in the Employee Transfer Addendum attached hereto as Exhibit C (the "Employee Transfer Addendum") are incorporated herein for all purposes.

(q) No Subsidiaries. Except as set forth on Schedule 3.1(q), the Companies do not own or hold, directly or indirectly, any equity or other ownership interest in any corporations, limited liability companies, partnerships, joint ventures, or other entities.

(r) Real Property. To Seller's Knowledge, Schedule 3.1(r) lists all material real property owned in fee simple by the Companies (the "Real Property"). To Seller's Knowledge, the Real Property is owned free and clear of all Liens, except: (i) Permitted Liens, and (ii) such matters that could not reasonably be expected to result in a Material Adverse Effect.

(s) Leases. Schedule 3.1(s) lists, as of the date of this Agreement, (i) all material real property leases (the "Leases") to which any of the Companies is a party and of which any real property leased by any of the Companies is the subject other than real property leases for which the aggregate annual rent is less than One Hundred Thousand Dollars ($100,000) and (ii) all leases of personal property other than personal property leases for which the annual rent is less than One Hundred Thousand Dollars ($100,000). During the twelve (12) months prior to the date of this Agreement, none of the Companies have received any notice of default under any such lease that would reasonably be expected to result in a Material Adverse Effect. No event has occurred which, with notice or passage of time or both, would constitute a default under the Leases by any of the Companies, or to Seller's Knowledge, by any other party to the Leases, except for such defaults that would not reasonably be expected to result in a Material Adverse Effect.

(t) Title to Assets; Sufficiency of Assets; Condition to Assets. To Seller's Knowledge, except as described in Schedule 3.1(t), the Companies have good and valid title to their respective personal property, free and clear of all Liens other than Permitted Liens. Except as set forth on Schedule 3.1(t), the Companies currently have the right to use the personal properties and assets of the Companies, together with the Real Property, rights-of-way and leases, including but not limited to the property subject to the Leases, which are capable of operating in the manner necessary to fulfill the obligations under the Material Contracts of the Companies to their customers, except where the absence of such capability would not have a Material Adverse Effect. Subject to normal wear and tear, and except as would not be reasonably likely to have a Material Adverse Effect, the equipment used in or necessary for the operation of the Companies, taken as a whole, is maintained by Seller in a manner, and is in suitable condition to conduct, the Businesses as currently conducted.

(u) Permits. Except as set forth on Schedule 3.1(u), the Companies have all permits, franchises, approvals, licenses, or other authorizations ("Permits") of Governmental Authorities required to conduct their respective businesses as currently conducted, except for such Permits, the failure of which to obtain does not or would not reasonably be expected to have a Material Adverse Effect. To Seller's Knowledge, except as set forth on Schedule 3.1(u), each Permit is in full force and effect and the Companies are in compliance in all material respects with their respective obligations with respect thereto and the Permits will continue to be valid and in full force and effect on identical terms following the consummation of the transactions contemplated hereunder.

(v) Absence of Certain Changes. From December 31, 2002 to the date of this Agreement, except as set forth in Schedule 3.1(v), the Companies have not:

(i) suffered any adverse change in assets and properties, results of operation or financial condition which would constitute a Material Adverse Effect;

(ii) except for distributions of cash, declared, set aside for payment or paid any dividend or other distribution in respect of its capital stock;

(iii) except for distributions of cash or dispositions in the Ordinary Course of Business, sold, transferred or otherwise disposed of, any of its properties or assets having a book value in excess of, in the aggregate, One Hundred Thousand Dollars ($100,000);

(iv) materially changed its accounting methods, principles or practices, except such changes as were required by GAAP;

(v) taken any action outside the Ordinary Course of Business; or

(vi) entered into any contract or agreement to do any of the foregoing.

(w) Intellectual Property. The Companies own, or have licensed or otherwise possess sufficient legally enforceable rights to use, all patents, copyrights, trademarks, service marks, technology, know-how, computer software programs and applications, databases and tangible or intangible proprietary information or materials that are currently used by them in the Business of the Companies or operation of the Facilities. Except as set forth in Schedule 3.1(w), the conduct of the Business of the Companies as currently conducted does not, to Seller's Knowledge, infringe upon any registered U.S. patents, copyrights, trademarks, or similar intellectual property rights of any third parties.

(x) Regulatory Matters. Except as set forth on Schedule 3.1(x), neither Seller nor any of the Companies is subject to regulation as (i) a "public utility company," or "holding company," or as a "subsidiary company," "associate company," or an "affiliate" of any of the foregoing, under the Public Utility Holding Company Act of 1935, as amended, (ii) a "utility company" under the Federal Power Act, or (iii) a public utility company or public service company (or similar designation) by any state of the United States, any foreign country or any municipality or any political subdivision of the foregoing.

(y) Insolvency; Bankruptcy. Seller is solvent and there are no bankruptcy, insolvency, reorganization, receivership or other similar proceedings pending against Seller or any of the Companies or being contemplated by Seller or any of the Companies or, to Seller's Knowledge, threatened against any of them.

(z) Inter-Company Receivables. Schedule 3.1(z) sets forth the inter-company receivables of the Companies existing as of the date of this Agreement.

(aa) Related Party Agreements. Except as set forth on Schedule 3.1(aa), none of the Companies are party to or otherwise bound by any agreement with Seller or any Affiliate of Seller (other than any other Company).

(bb) Insurance. Schedule 3.1(bb) lists the policies of insurance maintained by Seller and the Companies together with the policy limits and deductibles applicable thereto. Seller (on

behalf of the Companies) and/or the Companies maintain policies of insurance in such amounts and with such deductibles of the type and in amounts it reasonably believes is customarily carried by Persons conducting businesses or owning assets similar to those of the Companies, which policies are in full force and effect. Each of Seller and the Companies has paid all premiums due and owing under such policies and has not received any written notice of cancellation of any such policies.

3.2 Representations and Warranties of Buyer. Buyer represents and warrants to Seller as follows:

(a) Organization and Good Standing. Buyer is a corporation duly incorporated, validly existing, and in good standing under the laws of the State of Delaware and has the requisite power to carry on its business as now being conducted.

(b) Authority. Buyer has all requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and the Ancillary Agreements to which it is a party and the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite corporate action on the part of Buyer.

(c) Enforceability. This Agreement and the Ancillary Agreements to which it is a party have been duly and validly executed and delivered by Buyer and constitute valid and binding agreements of Buyer enforceable against it in accordance with their terms, subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws of general application from time to time in effect that affect creditors' rights generally, (ii) general principles of equity, and (iii) the power of a court to deny enforcement of remedies generally based upon public policy.

(d) No Violation or Breach. Neither the execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which it is a party nor the performance by it of its obligations hereunder or thereunder will:

(i) violate any provision of the certificate of incorporation, bylaws or other similar governing documents of Buyer,

(ii) conflict with or constitute a default under any agreement, indenture or other instrument under which Buyer is bound, except for conflicts or defaults that would not have a material adverse effect on Buyer's ability to perform its obligations under this Agreement, or

(iii) violate any Law applicable to Buyer or the assets of Buyer, except for violations that would not have a material adverse effect on Buyer's ability to perform its obligations under this Agreement.

(e) Consents. To Buyer's Knowledge and except as set forth in Schedule 3.2(e), no consent, approval, authorization, or permit of, or filing with or notification to, any Person is required to be obtained or made by Buyer in connection with the execution and delivery of this

Agreement and the Ancillary Agreements to which it is a party by Buyer or for or in connection with the consummation of the transactions and performance of the terms and conditions contemplated hereby and thereby by Buyer, except for the requirements of the FERC and consents, approvals, notifications, authorizations and other requirements under the HSR Act.

(f) Actions. There is no Action pending, or to Buyer's Knowledge, threatened against Buyer, except for Actions that would not have a material adverse effect on Buyer's ability to perform its obligations under this Agreement or the Ancillary Agreements.

(g) Brokerage Fees and Commissions. Neither Buyer nor any Affiliate of Buyer has incurred any obligation or entered into any agreement for any investment banking, brokerage, or finder's fee or commission in respect of the transactions contemplated by this Agreement for which either Seller or any of the Companies could become liable or obligated.

(h) Buyer's Knowledge. Buyer has no knowledge of any fact that results or that would reasonably be expected to result in any representation or warranty of Seller in Section 3.1 being breached. If after the date of this Agreement, Buyer obtains knowledge of any fact that results in any representation or warranty of Seller in Section 3.1 being breached, Buyer shall immediately furnish to Seller written notice thereof. For purposes of this Section 3.2(h), Buyer's knowledge shall only include the actual knowledge of the individuals listed in Schedule 3.2(h).

(i) Characteristics of Buyer; No Distribution. Buyer's investors are experienced and knowledgeable investors in the United States power generation business or the independent district heating and cooling and cogeneration industries such that each is capable of evaluating the merits and risks of the prospective investment. Prior to entering into this Agreement, Buyer was advised by its counsel, accountants, financial advisors, and such other Persons it has deemed appropriate concerning this Agreement and has relied solely on Seller's representations and warranties expressly contained herein and an independent investigation and evaluation of, and appraisal and judgment with respect to, the Companies, the Facilities, and the revenue, price, and expense assumptions applicable thereto. Buyer hereby acknowledges that the Shares are not registered under the Securities Act of 1933, as amended (the "Securities Act"), or registered or qualified for sale under any state securities laws and cannot be resold without registration thereunder or exemption therefrom. Buyer is an "accredited investor," as such term is defined in Regulation D of the Securities Act and will acquire the Shares for its own account and not with a view to a sale or distribution thereof in violation of the Securities Act, and the rules and regulations thereunder, any applicable state blue sky laws or any other applicable securities laws. Buyer has sufficient knowledge and experience in financial and business matters to enable it to evaluate the risks of investment in the Shares and has the ability to bear the economic risk of this investment for an indefinite period of time.

(j) Insolvency; Bankruptcy. Buyer is solvent and there are no bankruptcy, insolvency, reorganization, receivership or other similar proceedings pending against Buyer or being contemplated by Buyer or, to its Knowledge, threatened against it.

ARTICLE IV

Access; Examination of Title to Real Property; Confidentiality

4.1 General Access. Promptly following the execution of this Agreement and until the Closing Date (or earlier termination of this Agreement), Seller shall permit (and with respect to the Companies, Seller shall cause the Companies to permit) Buyer and its representatives:

(i) to have reasonable access, at reasonable times and upon reasonable advance notice, in Seller's and the Companies' offices and in a manner so as not to interfere unduly with the business operations of Seller or any of the Companies, to the books, records, contracts, and documents of the Companies relating to the Business and Facilities insofar as the same may be disclosed without (a) violating any legal constraints or any legal obligation, (b) waiving any attorney/client, work product, or like privilege, (c) disclosing information about the activities of Seller or its Affiliates (other than the Companies) that is not related to the Companies or the operation of the Facilities or the Business, or (d) disclosing proprietary models of Seller or any of its Affiliates pertaining to energy project evaluation, energy or natural gas price curves or projections, or other economic predictive models; and

(ii) subject to any required consent of any third Person and upon reasonable advance notice to Seller, to conduct at reasonable times and at Buyer's sole risk, cost, and expense, in the presence of representatives of Seller, reasonable inspections of the Facilities, except that Buyer will not be entitled to conduct invasive testing, or sample or test surface waters, soil, groundwater, emissions or discharges with respect to the Facilities.

Buyer shall indemnify and hold harmless, release, and defend the Seller Indemnified Parties and the Companies from and against any and all Losses arising, in whole or in part, from the acts or omissions of the Buyer Indemnified Parties in connection with Buyer's inspection of the Facilities and other assets and records of Seller or the Companies, including claims for personal injuries, property damage, and reasonable attorneys' fees and expenses. Nothing in this Article 4 shall be construed to permit Buyer or its representatives to have access to any files, records, contracts, or documents of Seller or the Companies relating to this transaction, including any bids or offers received by Seller or the Companies for the sale of the Interests, it being agreed that all such bids or offers shall be the sole property of Seller.

4.2 Examination of Title to Real Property. Promptly following the execution of this Agreement and until the Closing Date (or the earlier termination of this Agreement), Buyer shall complete its examination of title to the Real Property. Examination of title, including title search, preparation of abstract of title, title binder, survey and title policy, if any, shall be at Buyer's option and sole cost and expense. Such examination of title to the Real Property shall show that Seller has good and valid title to the Real Property, except for Permitted Liens. In the event such review indicates any defects in title (other than Permitted Liens) that would reasonably be expected to have a Material Adverse Effect on the value of the Real Property as used in the Business, Buyer may notify Seller in writing not later than the Closing Date of such defects (other than Permitted Liens) and request Seller to cure same ("Title Notice"). In the event that such defects are not remedied by Seller prior to or on the Closing Date, then Seller and

Buyer shall consummate the transactions contemplated by this Agreement at Closing on the Closing Date, the provisions of Section 2.5 shall apply, and such defects in title shall be waived as a condition precedent to Closing only.

At Buyer's option, Buyer may obtain one or more owner's title policies (the "Title Policy") covering the real property owned by the Companies. Seller shall not be obligated to furnish the Title Policy to Buyer and it shall not be a requirement of or condition to the Closing that Buyer obtain or be able to obtain the Title Policy or that Buyer have or be able to have the survey exception in the Title Policy modified in any manner or that any other special endorsements be made to the Title Policy, including any endorsement regarding restrictive covenants, provided that Seller will cooperate reasonably and in good faith with the Buyer and the title insurance company selected by Buyer to reasonably facilitate Buyer's efforts to obtain the Title Policy, any endorsements thereto, and any surveys. All costs of any Title Policy shall be borne by Buyer.

4.3 Confidential Information. Buyer shall maintain, and shall cause its officers, directors, agents, employees, representatives, consultants, and advisors to maintain, the confidentiality of all information made available to them under this Agreement, in accordance with the terms and conditions, and undertaking the same obligations as ThermalSource, LLC thereunder, in that certain confidentiality agreement dated August 7, 2003 (the "Confidentiality Agreement"), between Seller and ThermalSource, LLC which is attached hereto as Exhibit D, the terms of which are incorporated herein by reference and made a part of this Agreement.

4.4 No Other Contact, Prior to the Closing Date. Buyer shall not contact or correspond with any customer, employee, or other Person associated with the Businesses of the Companies without the prior written consent of Seller, which consent shall not be unreasonably withheld.

ARTICLE V
Tax Matters

5.1 Tax Returns and Pre-Closing Taxes. Any Tax Return to be prepared pursuant to the provisions of this Section 5.1 shall be prepared in a manner consistent with practices followed in prior years with respect to similar Tax Returns, except for changes required by Law or changes in fact. Buyer shall not file an amended Tax Return for any period ending on or prior to the Closing Date without the consent of Seller, which consent may be withheld in Seller's reasonable discretion. The following provisions shall govern the allocation of responsibility as between Buyer and Seller for certain Tax matters following the Closing Date:

(i) Tax Periods Ending on or Before the Closing Date. Seller shall prepare or cause to be prepared and timely file or cause to be timely filed all Tax Returns, including (without limitation) the Tax Returns on which the results from the Section 338(h)(10) Election are reported, of or including the Companies for all periods ending on or prior to the Closing Date regardless of when they are to be filed, provided that, without the prior written consent of the Buyer, Seller shall not file or amend any Tax Returns of or including any Company that is inconsistent with positions historically taken in respect of the Company on Tax Returns of or including such Company or otherwise take a position, except to the extent required by Law (including in an audit or judicial proceeding), if

such Tax Return or position could materially increase the Tax liability of Buyer or of any Company for any taxable period (or portion of any Straddle Period) beginning after the Closing Date, materially decrease any Tax attribute of any Company existing on the Closing Date or otherwise materially adversely affect Buyer or any Company for any such period (each such material increase, decrease or effect, a "Tax Loss Event"). Seller shall timely pay the Taxes of or attributable to each Company with respect to all periods ending on or prior to the Closing Date.

(ii) Tax Periods Beginning Before and Ending After the Closing Date. Buyer shall prepare or cause to be prepared and file or cause to be filed all Tax Returns of or including any Company for Tax periods which begin on or before the Closing Date and end after the Closing Date ("Straddle Periods"). Buyer shall permit Seller to review and comment on each such Tax Return described in the preceding sentence prior to filing and will make such revisions (consistent with Law and past practice) to such Tax Returns as are reasonably requested by Seller to the extent such revisions influence any Tax liability of Seller, or obligation of Seller to reimburse Buyer for Taxes. Seller shall reimburse Buyer within fifteen (15) days after payment by Buyer or a Company or Companies for Seller's share of Straddle Period Taxes (as determined under this Section 5.1 and Section 5.5). All determinations necessary to give effect to the foregoing allocations shall be made in a manner consistent with prior practice of the relevant Company or Companies.

5.2 Access to Information. After the Closing Date, Seller shall grant to Buyer (or its designees) access at all reasonable times to all of the information, books, and records relating to the Companies within the possession of Seller (including work papers and correspondence with taxing authorities), and shall afford Buyer (or its designees) the right (at Buyer's expense) to take extracts therefrom and to make copies thereof, to the extent reasonably necessary to permit Buyer (or its designees) to prepare Tax Returns and to conduct negotiations with taxing authorities. After the Closing Date, Buyer shall grant or cause the Companies to grant to Seller (or its designees) access at all reasonable times to all of the information, books and records relating to the Companies within the possession of Buyer or the Companies (including work papers and correspondence with taxing authorities), and shall afford Seller (or its designees) the right (at Seller's expense) to take extracts therefrom and to make copies thereof, to the extent reasonably necessary to permit Seller (or its designees) to prepare Tax Returns and to conduct negotiations with taxing authorities.

5.3 Transfer Taxes. [redacted]

5.4 Tax Sharing Agreements. Except as set forth on Schedule 5.4, on or before the Closing Date, Seller and the Companies shall ensure that no Tax indemnity agreement, Tax allocation agreement, or Tax sharing agreement with respect to any of the Companies is in force or effect as to the Companies in respect of any taxable period and that there shall be no liability of the Companies after the Closing Date under any such agreement.

5.5 Tax Indemnity. Notwithstanding any other provisions of this Agreement, Sections 5.5 and 5.6 shall apply to indemnifications by Seller to Buyer for, and shall be the sole

remedy of Buyer in respect of, the Losses described in the following sentence. Seller agrees to indemnify and hold harmless Buyer Indemnified Parties from and against any and all Losses that Buyer Indemnified Parties may suffer for any Taxes; (A) of or attributable to the Companies with respect to any taxable period or portion thereof ending on or before the Closing Date and to the portion of any Straddle Period through the end of the Closing Date, including all Taxes owed as a result of the deemed sale of assets arising from the Section 338(h)(10) Election (and any related deemed liquidation under Section 332 of the Code) and resulting from any Company ceasing to be affiliated with the affiliated group of corporations of which Seller is a member; (B) of any member (other than a Company) of any affiliated, consolidated, combined or unitary group of which any Company (or any predecessor thereof) was a member at any time on or prior to the Closing Date (whether a Company is liable for such Taxes by operation of Treasury Regulation Section 1.1502-6 or any similar provision of state, local or foreign law); and (C) of any Person for which any Company may be liable by contract, as a transferor or successor or otherwise, to the extent such Taxes relate to an event or transaction or liability arising on or before the Closing Date (such Taxes described in (A), (B) and (C) the "Seller Taxes", provided, however, Seller Taxes shall not include Transfer Taxes, the responsibility for which shall be determined in accordance with Section 5.3.) In the case of any Straddle Period, the Taxes therefor shall be allocated (x) in the case of Taxes based on or measured by income or receipts, based on an interim closing of the books as of the end of the Closing Date and (y) in all other cases ratably on a daily basis. All payments made by Seller pursuant to the indemnification obligations under this Agreement shall be treated as adjustments to the Purchase Price for Tax purposes, unless otherwise required by applicable Law.

5.6 Tax Indemnity Claims. If Buyer receives notice of commencement of any audit, examination or other proceeding with respect to Taxes ("Tax Proceeding") for which Seller is or may be liable pursuant to this Agreement or a claim for Taxes is made against Buyer, and if Buyer intends to seek indemnity with respect thereto under Section 5.5, Buyer shall furnish written notice to Seller within fifteen (15) days of the receipt of any notice of such a Tax Proceeding. The failure of Buyer to notify Seller within such time period shall not affect the indemnity obligations of Seller hereunder except to the extent Seller was disadvantaged by such delay in delivery of notice of such claim. Seller shall have thirty (30) days after receipt of such notice to undertake, conduct, and control (through counsel of its own choosing and at its own expense) the settlement or defense thereof, and Buyer shall cooperate with it in connection therewith. Seller shall permit Buyer to participate in such settlement or defense through counsel chosen by Buyer (but the fees and expenses of such counsel shall be paid by Buyer). Notwithstanding the foregoing, Seller shall not without Buyer's consent, not to be unreasonably withheld, settle or otherwise resolve any issue that could result in a Tax Loss Event; provided, however, that if Buyer unreasonably withholds such consent, Seller shall not be liable for and will be relieved of any indemnity obligations relating to such issue. So long as Seller, at Seller's cost and expense, (i) has undertaken the defense of, and assumed full responsibility for all indemnified Losses with respect to, any such claim, (ii) is reasonably contesting such claim in good faith, by appropriate proceedings, and (iii) has taken such action (including the posting of a bond, deposit, or other security) as may be necessary to prevent any action to foreclose a lien against or attachment of the property of Buyer for payment of such claim, Buyer shall not pay or settle any such claim. Notwithstanding compliance by Seller with the preceding sentence, Buyer shall have the right to pay or settle any such claim, but in such event it shall waive any right to indemnity by Seller for such claim. If within thirty (30) days after the receipt of Buyer's notice

of a claim of indemnity hereunder, Seller does not notify Buyer that it elects (at Seller's cost and expense) to undertake the defense thereof and assume full responsibility for all indemnified Losses with respect thereto, or gives such notice and thereafter fails to contest such claim in good faith or to prevent action to foreclose a lien against or attachment of Buyer's property as contemplated above, Buyer shall have the right to contest, settle, or compromise such claim and Buyer shall not thereby waive any right to indemnity for such claim under this Agreement.

5.7 Tax Refunds. Refunds of Taxes paid or payable with respect to Taxes of or attributable to the Companies shall be promptly paid as follows (or to the extent payable but not paid due to offset against other Taxes shall be promptly paid by the Party receiving the benefit of the offset as follows): (i) to Seller if attributable to Taxes with respect to any Tax year or portion thereof ending on or before the Closing Date (or for any Tax year beginning before and ending after the Closing Date to the extent allocable (determined in a manner consistent with Section 5.1 and Section 5.5) to the portion of such period beginning on or before and ending on the Closing Date); and (ii) to Buyer if attributable to Taxes with respect to any Tax year beginning before and ending after the Closing Date to the extent allocable (determined in a manner consistent with Section 5.1 and Section 5.5) to the portion of such period beginning and ending after the Closing Date. Without limiting the generality of the foregoing, this Section 5.7 will apply to any sales tax rebates and credits or reductions in real or personal property Taxes attributable to a retroactive reduction in assessment rate and assessment base.

5.8 Further Conduct. Without the prior written consent of Buyer, not to be unreasonably withheld, none of Seller nor any Company (or any Affiliate thereof) shall make or change any election, change an annual accounting period, adopt or change any accounting method, file any amended Tax Return, enter into any closing agreement, settle any Tax claim or assessment relating to any Company, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to any Company, or take any other similar action relating to the filing of any Tax Return or the payment of any Tax, if such election, adoption, change, amendment, agreement, settlement, surrender, consent or other action could result in a Tax Loss Event.

5.9 Section 338(h)(10) Election. Seller and Buyer shall join in making an election under Code Section 338(h)(10) (and any corresponding elections under state, local or foreign tax law) with respect to the purchase and sale of the stock of each Company that is a corporation (a "Section 338(h)(10) Election").

(a) Filing of Section 338(h)(10) Election. For purposes of executing the Section 338(h)(10) Election, on or prior to the Closing Date, Buyer and Seller (and/or other entities as necessary) jointly shall prepare and execute five copies (three for Buyer and two for Seller) of each required IRS Form 8023 and all such Forms, schedules and attachments as are necessary or required to be filed therewith pursuant to applicable Treasury Regulations and shall perform such other acts as are necessary to make or perfect this Section 338(h)(10) Election (other than filing as discussed below), provided that IRS Forms 8883 will not be completed on or prior to the Closing Date. The Forms relating to the Section 338(h)(10) Election for federal, state and local Tax purposes (other than IRS Forms 8883 and any comparable state and local forms) hereinafter shall be referred to as the "Forms". Buyer and Seller agree that the Forms shall be filed with the appropriate tax authorities not earlier than sixty (60) days before the latest date for the filing

thereof. Buyer and Seller agree to consult and resolve in good faith any disputes regarding the contents of the Forms prior to their filing.

(b) Allocation. For purposes of making the Section 338(h)(10) Election, Buyer and Seller shall allocate the Purchase Price in accordance with Section 2.7 of this Agreement. Each of Buyer and Seller shall timely file Form 8883 (and all corresponding state and local forms). Neither Party shall file any Tax Return (including IRS Forms 8883 and any comparable state and local forms), or take a position with any tax authority, that is inconsistent with Section 2.7 without the written consent of the other party. Buyer and Seller agree to cooperate in good faith in an effort to resolve any dispute concerning the appropriate Allocation.

5.10 Section 754 Election. If requested in writing to do so by Buyer, to the extent permitted by Law, Seller will: (i) to the extent permitted without the consent or approval of another Person, cause each of Baltimore Steam Company, Grays Ferry, Trenton LP and Inner Harbor East to make an election pursuant to Section 754 of the Code for the taxable year of such partnership or limited liability company in which the transactions contemplated by this Agreement occur; and (ii) use its reasonable best efforts to obtain any required consent or approval of another Person in connection with any Section 754 election that cannot be made without such consent or approval, provided, however, that Seller shall have no obligation to incur any expense or other cost that is not reimbursed by Buyer in excess of Five Thousand Dollars ($5,000), or to enter into any other agreement or make any commitment in its efforts to obtain such required consent or approval.

ARTICLE VI
Covenants of Seller and Buyer

6.1 Conduct of Business Pending Closing. Subject to the requirements and constraints of applicable operating agreements and other existing agreements, from the date of this Agreement through the Closing Date, except as disclosed in Schedule 6.1(a) or as otherwise permitted by this Agreement (including Sections 6.2 and 6.12) or consented to or approved in writing by Buyer (which consent or approval shall not be unreasonably withheld, conditioned, or delayed), Seller covenants and agrees that:

(a) Changes in Business. Seller shall not take, and shall cause the Companies not to take, any affirmative action, or fail to take any reasonable action within their reasonable control, which action or omission is outside of the Ordinary Course of Business, or as a result of which any of the changes, items, actions or events set forth in Section 3.1(v), shall occur; provided, however, that if, immediately prior to the Closing, any of the Companies has cash in excess of its working capital needs, then any such Companies may distribute such excess cash to Seller prior to the Closing. Between the date of this Agreement and the Closing Date, Seller shall make, or cause the Companies to make, the payments set forth on Schedule 6.1(a) hereto that are scheduled to be paid prior to the Closing Date and the Prepayments.

(b) Liens. Except as set forth on Schedule 6.1(b), Seller shall not, and will cause the Companies not to, grant any Liens on any assets of any of the Companies, other than Permitted Liens.

(c) Operation of Facilities. Seller shall:

(i) cause the Facilities to be maintained and operated in the Ordinary Course of Business (including the repair or replacement of damaged or destroyed items of equipment or other personal property to the extent necessary to conduct the Business in accordance with past practice) and in accordance with Good Operating Practices, maintain insurance now in force with respect to the Facilities, and pay or cause to be paid all costs and expenses in connection therewith promptly when due; and

(ii) cause the Companies to use their commercially reasonable efforts to maintain their relationships with employees of any Affiliate of Seller assigned to the Business, suppliers, customers, and others having material business relationships relating to the Companies, the Facilities or the Business so that such relationships will be preserved for Buyer on and after the Closing Date.

6.2 Qualifications on Conduct. Seller and the Companies may take (or not take, as the case may be) any of the actions described in Section 6.1 above if reasonably necessary in accordance with Good Operating Practices under emergency circumstances (or if required or prohibited pursuant to Law). Seller shall notify Buyer of the occurrence of such circumstances as soon thereafter as practicable.

6.3 Supplement to Schedules. Seller shall, from time to time prior to the Closing by written notice to Buyer, supplement or amend the Schedules to this Agreement to correct, update or revise any representation or warranty of Seller in Section 3.1 in accordance with the standards for satisfaction of the Buyer's closing condition in Section 7.2(a) and any such supplement or amendment shall be effective for purposes of determining whether indemnification is available to Buyer in accordance with Section 10.1 of this Agreement.

6.4 Public Announcements. Prior to the Closing Date, without the prior written approval of the other Party, no Party will issue, or permit any agent or Affiliate of such Party to issue, any press releases or otherwise make, or cause any agent or Affiliate of such Party to make, any public statements with respect to this Agreement and the transactions contemplated hereby, except when such release or statement is deemed in good faith by the releasing Party to be required by Law or under the applicable rules and regulations of a stock exchange or market on which the securities of the releasing Party or any of its Affiliates are listed. In each case to which such exception applies, the releasing Party will use its reasonable efforts to provide a copy of such release or statement to the other Party and incorporate any reasonable changes that are suggested by the non-releasing Party prior to releasing or making the statement. The Parties will confer with each other regarding their initial public announcement for the transactions contemplated herein. Notwithstanding anything to the contrary in this Agreement, Seller and its Affiliates shall not use the name [redacted] in any press release or public statement with respect to this Agreement or the transactions contemplated hereby, except with the express written consent of [redacted]

6.5 Actions by Parties. Each Party agrees to use commercially reasonable efforts to satisfy the conditions to Closing set forth in Article 7.

6.6 Further Assurances.

(i) From time to time after the Closing Date, each of Buyer and Seller shall execute and deliver or cause its respective Affiliates (including the Companies) to execute and deliver such further instruments, and take (or cause its respective Affiliates, including the Companies, to take) such other action, as may be reasonably necessary to carry out the purposes and intents of this Agreement and the Ancillary Agreements. Seller will not take any action that is designed or intended to have the effect of discouraging any lessor, licensor, supplier, distributor or customer of the Companies, other Person with whom the Companies has a relationship from maintaining the same relationship with the Companies after the Closing Date as it maintained prior to the Closing Date.

(ii) For a twelve (12) month period following Closing and subject to the confidentiality provisions of Section 4.3, each Party agrees to cooperate in good faith to provide the other Party with such information relating to the transactions contemplated by this Agreement and the Ancillary Agreements known by such Party's employees that the other Party may reasonably request pertaining to the Companies or the Facilities.

(iii) Seller will use commercially reasonable efforts to refer all customer inquiries received in writing relating to the business of the Companies to the Buyer or the Companies, as appropriate, from and after the Closing Date.

6.7 Records. Buyer agrees to maintain, or cause the Companies to maintain, the Records in existence on the Closing Date until the fifth anniversary of the Closing Date (or for such longer period of time as Seller shall advise Buyer is necessary to have Records available with respect to open years for Tax audit purposes), or if any of the Records pertain to any claim or dispute pending on the fifth anniversary of the Closing Date, Buyer shall maintain any of the Records designated by Seller until such claim or dispute is finally resolved and the time for all appeals has been exhausted. After the Closing Date, Buyer shall provide or cause the Companies to provide Seller and its representatives during normal business hours and upon reasonable notice reasonable access to and the right to copy the Records, at Seller's cost and expense, for the purposes of:

(i) preparing and delivering the Post Closing Statement, any accounting statement provided for under this Agreement and calculating, adjusting, prorating, and otherwise settling the charges and credits provided for in this Agreement;

(ii) complying with any Law affecting Seller's ownership of the Companies or the Facilities prior to the Closing Date;

(iii) preparing any audit of the books and records of any third party relating to the Interests or the Facilities prior to the Closing Date, or responding to any audit prepared by such third parties;

(iv) preparing Tax Returns;

(v) responding to or disputing any Tax audit; or

(vi) asserting, defending, or otherwise dealing with any claim or dispute under this Agreement or with respect to the Companies or any of their respective Facilities.

Additionally, Buyer shall not, and shall not permit any of the Companies to, after the Closing Date, waive the attorney/client, work product, or like privilege of Seller, its Affiliates, or any of the Companies with respect to any of the Records existing as of the Closing Date, without Seller's prior written consent.

6.8 Regulatory and Other Authorizations and Consents.

(a) Filings. Each Party shall use all commercially reasonable efforts to obtain all authorizations, consents, orders, and approvals of, and to give all notices to and make all filings with, all Governmental Authorities (including those pertaining to the Governmental Approvals) and third parties that may be or become necessary for its execution and delivery of, and the performance of its obligations under, this Agreement and will cooperate fully with the other Party in promptly seeking to obtain all such authorizations, consents, orders, and approvals, giving such notices, and making such filings. To the extent required by the HSR Act, each Party shall (i) file or cause to be filed, as promptly as practicable but in no event later than fifteen (15) Business Days after the execution and delivery of this Agreement, with the Federal Trade Commission and the United States Department of Justice, all reports and other documents required to be filed by such Party under the HSR Act concerning the transactions contemplated hereby and (ii) promptly comply with or cause to be complied with any requests by the Federal Trade Commission or the United States Department of Justice for additional information concerning such transactions, in each case so that the initial 30 day waiting period applicable to this Agreement and the transactions contemplated hereby under the HSR Act shall expire as soon as practicable after the execution and delivery of this Agreement. Each Party shall request, and cooperate with the other Party in requesting, early termination of any applicable waiting period under the HSR Act. Seller and Buyer shall each be responsible for one-half of the filing fees incurred by the Parties in connection with the initial filings required by the HSR Act.

(b) Additional Undertakings of Buyer. Without limiting the generality of Buyer's undertakings pursuant to Section 6.8(a), Buyer shall:

(i) take promptly any or all of the following actions to the extent necessary to eliminate any concerns on the part of any Governmental Authority regarding the legality under any Law of Buyer's acquisition of the Interests: entering into negotiations, providing information, making proposals, entering into and performing agreements or submitting to judicial or administrative orders, holding separate (through the establishment of a trust or otherwise) particular assets or categories of assets, or businesses, of the Companies or Buyer, or agreeing to dispose of one or more assets or properties (whether owned by Buyer or the Companies) whether before or after the Closing; provided, however, that nothing in this Agreement shall require Buyer, or the Companies to dispose of or sell assets or properties, hold separate particular assets or categories of assets, or businesses, or agree to dispose of or hold separate one or more assets or properties or to take any other action that could have a material adverse impact on Buyer or the Companies, except that Buyer or the Companies shall, if required, agree to dispose of or sell assets or properties with an aggregate fair market value of

[redacted] or less and agree to such reasonable undertakings necessary to consummate such dispositions or sales as a condition to eliminate a Governmental Authority's concerns regarding the legality under any Law of Buyer's acquisition of the Interests;

(ii) use commercially reasonable efforts (including taking the steps contemplated by Section 6.8(b)(i)) to prevent the entry in a judicial or administrative proceeding brought under any Law by any Governmental Authority or any other party for a permanent or preliminary injunction or other order that would make consummation of the transactions contemplated by this Agreement unlawful or that would prevent or delay such consummation; and

(iii) take promptly, in the event that such an injunction or order has been issued in such a proceeding, any and all reasonable steps, including the appeal thereof, the posting of a bond or the steps contemplated by Section 6.8(b)(i), necessary to vacate, modify, or suspend such injunction or order so as to permit such consummation on a schedule as close as possible to that contemplated by this Agreement.

(c) Third Party Consents. Buyer shall use commercially reasonable efforts to assist Seller in obtaining any consents of third parties and Governmental Authorities necessary or advisable in connection with the transactions contemplated by this Agreement and the Ancillary Agreements, including providing to such third parties and Governmental Authorities such financial statements and other publicly available financial information with respect to Buyer and its parent company as such third parties or Governmental Authorities may reasonably request, provided that such third party consents are on terms not materially less favorable than the terms in effect with respect to Seller or the Companies prior to the Closing Date.

6.9 Fees and Expenses. Except as otherwise expressly provided in this Agreement, Seller and Buyer shall pay their own fees and expenses, including fees and expenses of counsel, financial advisors, and accountants, incurred in connection with this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby. Seller shall pay all fees and expenses, including fees and expenses of counsel, financial advisors, and accountants, incurred by the Companies in connection with this Agreement and the Ancillary Agreements and the transactions contemplated hereby.

6.10 Casualty Loss. Notwithstanding anything to the contrary in this Agreement other than the representations of Seller contained in Section 3.1(t), in the event of substantial damage by fire or other casualty to any of the Facilities prior to Closing that reasonably could be expected to require expenditures of [redacted] of the Base Purchase Price or more to repair or replace (a "Material Casualty Loss"), this Agreement shall remain in full force and effect, no MAE Adjustment pursuant to Section 2.5 shall be made with respect to such Material Casualty Loss and no failure of a condition to Closing shall be deemed to exist by virtue of such event, if, in any such event, Seller, at its option and in its sole discretion, (i) promptly commences to repair or replace the equipment or other materials damaged at the affected Facility and completes such repair or replacement work on or before the Closing Date, or (ii) agrees in writing to indemnify Buyer and the Companies from all Losses that may be incurred by Buyer and the Companies as a result of such Material Casualty Loss. Notwithstanding anything to the contrary in this Agreement, in the event of any damage by fire or other casualty to the Facilities

prior to Closing not amounting to a Material Casualty Loss, this Agreement shall remain in full force and effect, and no failure of a condition to Closing shall be deemed to exist by virtue of such event.

6.11 Employment Matters. All covenants involving employees and employee benefits shall be governed by the terms of the Employee Transfer Addendum.

6.12 Excluded Assets. Notwithstanding Article 8 hereof, the transactions contemplated by this Agreement exclude, and prior to the Closing Date, Seller may cause the Companies to transfer to Seller or any of its Affiliates (other than the Companies) the following (the "Excluded Assets"):

(a) the assets listed or described on Schedule 6.12;

(b) all insurance policies and rights under any insurance policies in respect to any and all claims made under such policies whether such claims are asserted before or after the Closing Date and all rights to any proceeds payable under any such policy; and

(c) the Trigen Marks.

Seller's representations and warranties in Article 3 shall not apply to any of the items described in clause (a) of the preceding sentence.

6.13 Use of Trigen Marks. Trigen Marks will appear on some of the assets of the Companies, including on signage at the Facilities and elsewhere, and on supplies, equipment, materials, stationery, brochures, advertising materials, vehicles, manuals, and similar items of the Companies. Except as provided in the Service Mark License attached hereto as Exhibit E, Buyer acknowledges and agrees that it obtains no right, title, interest, license, or any other right whatsoever to use the Trigen Marks.

6.14 Service Mark License. At Closing, Buyer and Seller shall enter into the Service Mark License in the form attached hereto as Exhibit E (the "Service Mark License").

6.15 Change of Name of Certain Companies. As soon as practicable after the expiration or termination of the Service Mark License, and in any event within thirty (30) days after such date, Buyer agrees to cause each of the Companies with the word "Trigen" contained within its name, to change its name so as not to contain or reference "Trigen" or any of the Trigen Marks.

6.16 Patent License. At Closing, Buyer and Seller shall enter into the Patent License in the form attached hereto as Exhibit F (the "Patent License").

6.17 Insurance. Buyer acknowledges and agrees that, effective upon the Closing, the insurance policies of Seller related to the Companies shall be terminated or modified to exclude coverage of the Companies by Seller, and, as a result, Buyer shall be obligated at or before Closing to obtain at its sole cost and expense replacement insurance, including insurance required by any third party to be maintained by the Companies. Buyer further acknowledges and agrees that Buyer may need to provide to certain Governmental Authorities and third parties

evidence of such replacement or substitute insurance coverage for the continued operations of the Business following the Closing. Notwithstanding Section 6.12(b), if any claims are made or Losses occur prior to the Closing Date that relate to the Business and such claims, or the claims associated with such Losses, may be made against any of the policies listed on Schedule 3.1(bb) and retained by Seller or its Affiliates under Section 6.12 or under policies otherwise retained by Seller or its Affiliates after the Closing (other than self-insurance programs maintained by Seller or any of its Affiliates), then Seller shall use reasonable commercial efforts so that the Companies can file, notice, and otherwise continue to pursue such claims and recover proceeds under the terms of such policies. Buyer shall reimburse Seller and its Affiliates for any Losses or other costs incurred by Seller or its Affiliates (including by way of any reduction in, or Loss of, available insurance to cover other insurable Losses or associated expenses of Seller or its Affiliates) arising out of the Companies pursuing such claims under such policies.

6.18 Securities Law Covenant. Buyer shall not transfer or otherwise dispose of any of the Interests, or any interest therein, in such manner as to cause Seller or any of its Affiliates to be in violation of the registration requirements of the Securities Act, or applicable federal or state securities or blue sky Laws.

6.19 Release of Guarantees, Etc.

(a) Buyer acknowledges that Seller and its Affiliates have guaranteed certain obligations (whether of performance or payment) of, and obtained letters of credit and/or surety bonds for, certain of the Companies as set forth on Schedule 6.19 (the "Existing Credit Support"). Buyer shall use its best efforts to provide replacement or substitute guarantees, letters of credit and/or surety bonds, as applicable, for all Existing Credit Support (the "Replacement Credit Support") and to cause the release of Seller and its Affiliates from all such Existing Credit Support and from any reimbursement obligations arising with respect to the Existing Credit Support; provided, that Buyer shall not be required to provide Replacement Credit Support on terms materially less favorable than the Existing Credit Support.

(b) From and after the Closing Date, if Seller or any of its Affiliates shall incur any Loss or liability with respect to any Existing Credit Support, then Buyer shall promptly indemnify Seller or any such Affiliate, as the case may be, with respect to all such Losses or liability.

(c) If prior to Closing Buyer is not successful in causing the release of Seller and its Affiliates from all Existing Credit Support and from any reimbursement obligations arising with respect to the Existing Credit Support or does not provide Replacement Credit Support with respect to each Existing Credit Support, then Buyer shall, for so long as any such Existing Credit Support remains outstanding, pay for and provide Seller or its Affiliates at Closing with an irrevocable letter of credit from a bank reasonably acceptable to Seller for each outstanding Existing Credit Support in the amount set forth in Schedule 6.19 (the "Buyer LC Support"), which may be drawn upon by Seller or its Affiliates if any claim is made against, or Loss incurred by, Seller or its Affiliates under such Existing Credit Support; provided, however, solely with respect to Existing Credit Support that is in the form of an unsecured guaranty of Seller relating to an agreement between a Company and a third party ("Third Party Guaranty"), Buyer may, at Buyer's option, in lieu of providing Buyer LC Support with respect to such a Third Party

Guaranty, execute and deliver at Closing a guarantee in a form mutually acceptable to Buyer and Seller from an Affiliate of Buyer whose long term senior unsecured indebtedness is rated at least Investment Grade in favor of Seller guarantying the full, prompt and complete payment and performance of Buyer's indemnity obligations set forth in Section 6.19(b) ("Buyer Guaranty Support") with respect to such Third Party Guaranty.

6.20 Post-Closing Consents. Buyer will use its commercially reasonable best efforts to, as soon as practicable after Closing, obtain all approvals, consents and permits, give all notices, and make all filings required to comply with all required Post-Closing Consents; provided, however, that in no case shall the Buyer be required to replace such obligations on terms that are materially less favorable than the terms that were in effect with respect to Seller or the Companies prior to the Closing Date.

6.21 Storage Tanks. As soon as practicable after Closing, Buyer agrees to update, in accordance with applicable law, all above-ground and underground storage tank registrations for storage tanks located at the Facilities, including without limitation any that may be affixed to the tanks, and to remove Seller's name and information therefrom (and any reference to "Trigen"), and submit same to each applicable Governmental Authority in accordance with all applicable Laws.

6.22 Condemnation. If, after the date of this Agreement and prior to the Closing, any part of the assets of the Companies shall be taken in condemnation or under the right of eminent domain or if proceedings for such purposes shall be pending or threatened, this Agreement shall remain in full force and effect notwithstanding any such taking or proceeding or the threat thereof, and the Purchase Price shall not be reduced as a result thereof. To the extent condemnation awards or other payments are not committed, used or applied by Seller prior to the Closing Date to restore or replace such taken assets, Seller shall at the Closing (i) to the extent Seller has a right to receive any condemnation proceeds, awards or payments in respect of such taken assets, assign to Buyer Seller's right to receive such condemnation proceeds, awards or payments owed to Seller by reason of such taking, less any reasonable costs and expenses incurred by Seller in collecting same or in connection with such proceedings or the threat thereof, and (ii) pay to Buyer all condemnation proceeds, awards or payments theretofore paid to Seller by reason of such taking, less any reasonable costs and expenses incurred by Seller in collecting same or in connection with such proceedings or the threat thereof. Notwithstanding anything to the contrary contained in this Section 6.22, the provisions of this Section 6.22 shall not limit the representations of Seller contained in Section 3.1(u).

6.23 Exclusivity. From the date of this Agreement until the Closing, Seller will not (and Seller will not permit (i) the Companies, or (ii) any of their respective representatives to) directly or indirectly solicit, initiate, or encourage the submission of any proposal or offer from any Person relating to, or enter into or consummate any transaction relating to, the acquisition of the Interests or any merger, recapitalization, share exchange, sale of substantial assets (other than sales of inventory in the Ordinary Course of Business) or any similar transaction or alternative to the transactions contemplated hereunder. Seller will not vote in favor of any such acquisition structured as a merger, consolidation, share exchange or otherwise. Seller will notify the Buyer promptly if any Person makes any written proposal, offer, inquiry or contact with respect to any of the foregoing (whether solicited or unsolicited).

6.24 Confidentiality Post-Closing. Seller hereby agrees with Buyer that Seller and its employees, agents and representatives will not, and that Seller will cause its Affiliates not to, on or for a period of two (2) years after the Closing Date, without the prior written consent of the Buyer, disclose or use, any confidential or proprietary information involving or relating to the Companies; provided, however, that the information subject to the foregoing provisions of this sentence will not include any information generally available to, or known by, the public (other than as a result of disclosure in violation hereof); and provided, further, that the provisions of this Section 6.24 will not prohibit any retention of copies of records or disclosure (i) required by any applicable Law so long as reasonable prior notice is given of such disclosure and a reasonable opportunity is afforded to contest the same or (ii) made in connection with the enforcement of any right or remedy relating to this Agreement or the transactions contemplated hereunder.

6.25 Environmental Obligations.

(a) Prior to or after Closing, at its sole cost and expense, Seller shall complete the work identified on Schedule 6.25 and shall be responsible for the item identified on Schedule 6.25(A). Seller shall not be responsible for the item identified on Schedule 6.25(A) if such item is discovered as a result of any environmental sampling or testing of media in, on or under the Kansas City, Missouri facility or adjacent property by Buyer, any Affiliate of Buyer or anyone under their control that is not required by Environmental Laws or a Governmental Authority.

(b) After Closing, at its sole cost and expense, Seller shall promptly (i) defend any claims alleged, asserted or imposed by any Governmental Authority to the extent such claims solely allege fines or penalties for the operation of the Facilities or the Companies prior to the Closing Date for alleged noncompliance with Environmental Laws, and (ii) pay when due any fines or penalties resulting from any final and non-appealable order, judgment or similar act (including settlements) to the extent imposed by any Governmental Authority for the operation of the Facilities or the Companies prior to the Closing Date for alleged noncompliance with Environmental Laws ("Fines or Penalties").

(c) For any Environmental Liabilities that are not identified in Sections 6.25(a) or 6.25(b) or are not NSR Issues covered in Section 6.25(d) the Parties agree as follows:

(i) Buyer shall be responsible for [redacted] of the Environmental Defense Costs (as defined in Section 6.25(h)(i) below) arising out of any Environmental Liability that could not reasonably be expected to result in Fines or Penalties until the Buyer Environmental Cost Threshold (as defined in Section 6.25(h)(ii) below) is exhausted;

(ii) Buyer and Seller shall each be responsible for [redacted] of the Environmental Defense Costs arising out of any Environmental Liability that could reasonably be expected to result in Fines or Penalties until the Buyer Environmental Cost Threshold is exhausted;

(iii) After the Buyer Environmental Cost Threshold is exhausted, Buyer shall be responsible for [redacted] and Seller shall be responsible for [redacted]

[redacted] of all Environmental Defense Costs and any other Environmental Liabilities, except for Fines and Penalties;

(iv) Buyer shall be responsible for [redacted] of all Losses other than Fines or Penalties or Environmental Defense Costs until the Buyer Environmental Cost Threshold is exhausted;

(v) Seller shall be responsible for [redacted] of all Fines or Penalties arising out of any Environmental Liability;

(vi) Seller's obligations under this Section 6.25(c) shall be limited to matters for which Seller receives from Buyer an Environmental Notice (in accordance with Section 6.25(f)) on or prior to the date that is thirty-six (36) months after the date of Closing;

(vii) In the event Buyer notifies a Governmental Authority of an Unasserted Environmental Liability for which it has no obligation to self report under any Environmental Laws, Seller shall have no obligation to pay for any Fines or Penalties with respect to such Unasserted Environmental Liability, but Seller shall pay for any other Environmental Liability as apportioned in accordance with this Section 6.25(c); provided, however, this Section 6.25(c)(vii) shall not apply to any NSR Issue; and

(viii) Buyer shall not be entitled to reimbursement from Seller of any audit, assessment, investigation, sampling or testing costs or expenses (including, without limitation, attorneys', consultant's or experts' fees) incurred by Buyer in identifying or attempting to identify any Unasserted Environmental Liabilities pursuant to this Section 6.25 and such costs and expenses shall not be treated as Environmental Liabilities hereunder.

(d) The following shall apply to NSR Issues:

(i) For any Environmental Liabilities concerning alleged violations under Parts C or D of Title I of the Federal Clean Air Act or any state counterpart ("NSR Issues"), the Parties agree as follows:

(A) Seller shall be responsible for [redacted] of the Fines or Penalties;

(B) Buyer and Seller shall each be responsible for [redacted] of the Environmental Defense Costs;

(C) Buyer shall be responsible for [redacted] of all Environmental Liabilities other than Fines or Penalties or Environmental Defense Costs until the Buyer Environmental Cost Threshold is exhausted;

(D) After the Buyer Environmental Cost Threshold is exhausted, Buyer and Seller shall each be responsible for [redacted] of all Environmental Liabilities, except for Fines or Penalties; and

(E) Environmental Liabilities for NSR Issues shall not include ongoing operation and maintenance costs or expenses associated with pollution control equipment and Buyer shall be responsible for [redacted] of such costs and expenses.

(ii) Seller's obligations under this Section 6.25 with respect to NSR Issues shall be limited to matters for which Buyer receives and delivers to Seller a written notice of violation, or a civil, judicial or administrative complaint or order or similar written formal allegation of noncompliance from a Governmental Authority on or prior to the date that is forty-eight (48) months after the Closing Date.

(iii) Seller's liability with respect to any Environmental Liabilities related to any NSR Issues shall be further limited as follows: Buyer and Seller shall in good faith attempt to agree to quantify the benefits to Buyer for air pollution control equipment or other emission reduction provisions that result from resolution of any NSR Issue that also satisfy all or part of Buyer's obligations to make similar emission reductions under any rule or regulation promulgated by any Governmental Authority, or any other Law, order, directive or similar action issued by any Governmental Authority on or prior to the later of (1) the date that is forty-eight (48) months after the Closing Date (for any NSR Issue); or (2) the date that final costs or expenses for any Environmental Liabilities with respect to NSR Issues are incurred by Buyer (for Environmental Liabilities associated with the specific NSR Issue for which payment was made) ("NSR Co-Benefits"). In the event the Parties cannot agree on the amount of the NSR Co-Benefits, then the NSR Co-Benefits shall be determined in accordance with the Disputes provision in Section 6.25(g). The Environmental Liabilities with respect to NSR Issues shall be reduced by the NSR Co-Benefits amount determined as provided herein prior to the apportionment pursuant to Section 6.25(d)(i) hereof.

(iv) Buyer recognizes and agrees that Seller's past activities with respect to the operation and maintenance of its Facilities are of a confidential nature. This Section 6.25(d)(iv) shall not prohibit Buyer, in any good faith applications for new or modified air emission permits or in response to written inquiries from any Governmental Authority, from including such facts about the Companies' past activities as are reasonably necessary and appropriate to disclose in order to secure such permits or to respond to such inquires from Governmental Authorities. Otherwise, Buyer covenants that it will not disclose any information about Seller's past activities with respect to the operation or maintenance of the Facilities to any Governmental Authority without the prior written consent of Seller, and Seller's obligations under Section 6.25 shall not apply with respect to any NSR Issues for which Buyer has failed to comply with this covenant. If Seller withholds consent or fails to respond, within seven (7) days of written request from Buyer delivered in accordance with Section 12.5, Buyer may initiate the Dispute mechanism pursuant to Section 6.25(g) and if the arbitrator finds consent to have been wrongfully withheld, Buyer may disclose the information. Seller's decision to withhold consent shall be upheld if there is a good faith basis in Law or fact that the information is not required to be disclosed by Law. Buyer shall provide a copy of this condition to all persons who work on or could be expected to work on air permitting issues related to the Facilities, or otherwise interact with Governmental Authorities on air emissions issues

related to the Facilities, including any outside consultants used to secure air emissions permits.

(e) Procedure:

(i) Seller shall control the course of conduct for all matters within the scope of Sections 6.25(a) or (b), and Buyer shall control the course of conduct for all other matters under this Section 6.25.

(ii) Buyer shall give prompt written notice to Seller of any potential Environmental Liability including any investigation, information request, claim, allegation or similar act of a Governmental Authority or third party.

(iii) For all matters addressed under this Section 6.25, the Parties will cooperate to minimize costs. Nothing in this Agreement shall require actions beyond those that minimize Environmental Liabilities while achieving the standard of compliance as required by a Government Environmental Order, applicable Environmental Laws, or the terms of any applicable real property lease to which any of the companies is a party to the extent such lease terms were in effect on the Closing Date.

(iv) The Parties shall keep each other reasonably apprised of the status of all matters addressed under Section 6.25. The Parties agree to provide each other with an opportunity to review and comment in advance on all work plans, investigations and other environmental remediation activities, and agree to incorporate all reasonable comments from each other. The Parties agree to give each other prompt written notice of, and allow representatives from the other party to participate in any phone call or meeting with any Governmental Authority at which any matter addressed under this Section 6.25 is to be discussed or addressed in any manner. Seller's participation in any matters within the scope of this Section 6.25 shall be at its sole cost and expense, including, without limitation, attorneys', experts' or consultants' fees. Buyer's participation in matters within the scope of Section 6.25(a) or (b) shall be at its sole cost and expense and shall not be treated as Environmental Liabilities pursuant to this Section 6.25, including, without limitation, attorneys', experts' or consultants' fees.

(v) For all matters relating to Environmental Liabilities not within the scope of Sections 6.25(a) or (b), Buyer shall provide to Seller Buyer's proposed strategy for resolution of such matter(s). Within seven (7) Business Days, Seller shall either (A) approve such strategy in writing, or (B) to the extent that Seller believes that such proposed strategy does not comply with the terms of this Agreement, invoke the Dispute provision of Section 6.25(g).

(vi) Buyer shall not settle or compromise any matters within the scope of this Section 6.25 without Seller's consent.

(vii) Buyer shall allow Seller and Seller's employees, consultants and representatives reasonable access to the Facilities as necessary for Seller to fulfill its obligations set forth on this Schedule 6.25. Seller shall give Buyer reasonable advance notice prior to accessing any Facility, but in no event less than forty-eight (48) hours

without Buyer's waiver of such requirement. [Seller and Seller's employees, consultants and representatives shall not unreasonably interfere with Buyer's operation of the Facilities; provided, however, Buyer agrees that fulfillment of certain obligations of Seller such as installation of equipment may require a temporary shut down of equipment at a Facility and this shall not be deemed an unreasonable interference [the scheduling of which shall be coordinated with Buyer]. Seller and Seller's employees, consultants and representatives shall maintain reasonable and customary insurance coverage and amounts during the performance of the Schedule 6.25 work at any Facility. Seller shall indemnify and hold harmless Buyer from and against any costs and expenses (not including indirect, incidental, consequential or special damages) arising out of or resulting from the negligence or willful misconduct of Seller or Seller's employees, consultants and representatives in accessing any Facility to perform the Schedule 6.25 work. [Seller shall restore the property to substantially the same condition following performance of the Schedule 6.25 work.]

(f) Environmental Notice. Notwithstanding any information provided pursuant to Section 6.25(e), upon (but not prior to) (A) receipt of a Government Environmental Order or a Third Person Environmental Claim, or (B) either (x) the agreement of the Parties concerning the course of action to be undertaken pursuant to Section 6.25(e)(v), or (y) Buyer's or Seller's formal institution of the Dispute provisions of Section 6.25(g), Buyer shall provide Seller with a formal written notice ("Environmental Notice") titled as such, and specifying in reasonable detail, to the extent known, the nature of the Environmental Liabilities and the estimated amount to remediate the condition giving rise to the Environmental Liabilities, to the extent it is then quantifiable (which estimate shall not be conclusive of the final amount of any Environmental Liabilities). The failure of Buyer to provide an Environmental Notice shall not affect the obligations of Seller hereunder except to the extent that Seller was substantially disadvantaged by such delay in delivery of the Environmental Notice, provided such notice is given within the applicable period specified in Sections 6.25(c) or (d).

(g) Environmental Dispute Resolution. Matters which the Parties have agreed will be resolved pursuant to this provision (each, a "Dispute"), shall be resolved as follows:

(i) Upon written notice from either Party invoking these procedures, the Parties shall either (x) agree upon the selection of a single arbitrator (the "Single Arbitrator"), or (y) each choose an arbitrator, who shall then jointly identify a final arbitrator (the "Final Arbitrator"). The Single Arbitrator or Final Arbitrator shall have, to the extent practicable, substantial experience in the technology, business or legal issues which are the subject of, or implicated in, the Dispute.

(ii) The Parties agree that time is of the essence in resolving any Dispute. The Parties shall agree upon the Single Arbitrator within fourteen (14) days of the initiation of Dispute Resolution. If the Parties are unable to agree upon the selection of a Single Arbitrator within such time frame, then they shall each choose an arbitrator within fourteen (14) days of the initiation of Dispute Resolution, and those arbitrators shall have five (5) days to jointly identify the Final Arbitrator. Within five (5) days of the selection of the Single Arbitrator or Final Arbitrator, the Parties shall mutually agree upon the process to be followed for each Dispute, or if the Parties are unable to agree, then the Single Arbitrator or Final Arbitrator shall determine

the procedures to be followed. The Parties agree that the procedures shall be established taking into consideration the nature, scope and extent of the Dispute, any regulatory or other timing issues, and the Parties' interest in mitigating Losses. The Dispute Resolution process (including a final decision from the Single Arbitrator or Final Arbitrator) shall be completed within six (6) weeks of the date that the Dispute Resolution process is initiated, unless (A) the Parties mutually agree to extend such time period or (B) the Single or Final Arbitrator grants a reasonable extension of such time period upon the request of either Party.

(iii) The Parties shall follow the procedures established by the Single Arbitrator or Final Arbitrator.

(iv) The Parties agree that the final determination of a Dispute by the Single Arbitrator or Final Arbitrator shall be binding upon the Parties.

(v) Notwithstanding the provisions of this Section 6.25(g), Buyer shall have the right to take actions necessary to continue the operation of its business, and to the extent Buyer takes such actions, it shall not waive any rights under this Agreement.

(vi) Buyer and Seller shall each be responsible for fifty percent (50%) of the costs and expenses of the Single Arbitrator or Final Arbitrator. Buyer and Seller shall each be responsible for one hundred percent (100%) of their respective costs and expenses to arbitrate any Environmental Disputes, and Buyer's costs and expenses incurred in any such arbitration shall not be treated as Environmental Liabilities pursuant to Section 6.25, including, without limitation, attorneys', experts' or consultants' fees.

(h) The following terms as used herein shall have the following meanings:

(i) "Environmental Defense Costs" shall mean all (A) court and arbitration costs, and (B) attorneys', experts' and consultants' fees and any other reasonable expenses customarily incurred in the defense, investigation or assessment of any Environmental Liabilities. All Environmental Defense Costs are within the definition of Environmental Liabilities, except to the extent any costs, fees or expenses that would otherwise qualify as Environmental Defense Costs are specifically excluded from being treated as Environmental Liabilities in this Section 6.25.

(ii) "Buyer Environmental Cost Threshold" shall mean [redacted] in the aggregate expended by Buyer pursuant to this Section 6.25 for Environmental Liabilities.

6.26 Environmental Insurance.

(a) On or prior to Closing, Buyer shall purchase an environmental pollution liability insurance policy substantially in the form attached hereto as Exhibit I (the "Environmental Policy").

(b) At or before Closing, Buyer shall be responsible for payment of the premium for the Environmental Policy and Seller shall reimburse Buyer the cost of the premium in excess of [redacted]. Buyer shall be responsible for payment of any costs with respect to any claim under the Environmental Policy including any that are attributable to the self-insured retention or

deductible; provided, however, to the extent such costs are within the definition of Environmental Liabilities and are not otherwise excluded from being treated as Environmental Liabilities in Section 6.25, such costs will be included in the determination of whether Buyer's expenditures have exhausted the Buyer Environmental Cost Threshold and are otherwise subject to the deductible, limitation and sharing arrangements of Section 6.25.

(c) Buyer agrees to timely take all reasonable actions necessary to pursue all claims covered by the Environmental Policy and Seller's obligation to provide indemnity with respect to Losses covered by the Environmental Policy, if any, shall be conditioned on the Buyer taking all such actions to pursue a claim under the Environmental Policy prior to seeking indemnification under this Agreement.

6.27 Transition Services. As promptly as possible, and in any case within thirty (30) days after the date of this Agreement, Buyer shall send Seller written notification regarding which transition services Buyer would like to have provided by Seller, or an Affiliate of Seller, after the Closing Date and the approximate period(s) of time for which such transition services are desired. Buyer and Seller agree to cooperate and negotiate to arrive upon mutually acceptable terms and conditions pursuant to which Seller, or an Affiliate of Seller, will provide such services to Buyer and to incorporate such terms and conditions into one or more transition services agreements to be executed and delivered by the respective parties thereto at Closing; provided, however, that nothing herein shall obligate Buyer to purchase (or Seller, to provide) any such services if Buyer and Seller are unable to agree upon mutually acceptable terms and conditions for the provision thereof and; provided, further, that the Parties' inability to agree upon mutually acceptable terms and conditions for the provision of any such services shall not relieve any Party of its obligations to consummate the transactions otherwise contemplated by this Agreement.

6.28 Financial Resources. From and after the Closing, Buyer will have sufficient funds and lines of credit available to it to permit Buyer to perform all of its obligations under this Agreement and the agreements entered into in connection herewith on a timely basis, including but not limited to Buyer's indemnification obligations under Section 10.2. After the Closing and until the sixth anniversary thereof, Buyer shall at all times maintain a Consolidated Net Worth equal to no less than [redacted].

6.29 IUOE Consents. The Parties shall keep each other reasonably apprised of the status of all matters addressed relating to the IUOE Consents. The Parties agree to use commercially reasonable efforts to cooperate with each other to facilitate the receipt of the IUOE Consents on or before the IUOE Consents Deadline. Buyer agrees that Buyer and Operator shall only seek the IUOE Consents on terms that are no less favorable to IUOE – Boston and IUOE – Trenton than the terms outlined in Schedule 6.29. The Parties agree to give each other prompt written notice of, and allow representatives from the other Party to participate in any phone call or meeting with the Operator or any representative or members of IUOE – Boston or IUOE – Trenton at which the IUOE Consents are to be discussed or addressed in any manner.

6.30 Stock Records. In the period prior to the Closing Date, Seller shall use commercially reasonable efforts to update all stock records of the Companies to correctly reflect record ownership of such Companies.

ARTICLE VII
Closing Conditions

7.1 Seller's Closing Conditions. The obligation of Seller to proceed with the Closing contemplated hereby is subject, at the option of Seller, to the satisfaction on or prior to the Closing Date of all of the following conditions:

(a) Representations, Warranties, and Covenants. The representations and warranties of Buyer contained in Section 3.2 of this Agreement shall be true and correct in all material respects (other than representations and warranties that are already qualified by materiality, which shall be true and correct in all respects) on and as of the Closing Date (except for those representations and warranties that are made as of a specific date or only with respect to a specific period of time, which shall be true and correct, or true and correct in all material respects, as applicable, only as of such date or with respect to such time period), and the covenants and agreements of Buyer to be performed on or before the Closing Date shall have been duly performed in all material respects in accordance with this Agreement.

(b) Closing Documents. On or prior to the Closing Date, Buyer shall have delivered all agreements, instruments, and documents required to be delivered by Buyer under Section 8.3.

(c) No Action. On the Closing Date, no Action (excluding any such matter initiated by Seller or any of its Affiliates) shall be pending or threatened before any Governmental Authority of competent jurisdiction seeking to enjoin or restrain the consummation of the Closing or to recover substantial damages from Seller or any Affiliate of Seller resulting therefrom.

(d) Waiting Period. The waiting period under the HSR Act applicable to the consummation of the transactions contemplated by this Agreement shall have expired or been terminated or the Parties shall have otherwise complied with the HSR Act.

(e) Governmental Approvals. The Governmental Approvals required for the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements shall have been obtained, except those where the failure to obtain which would not have a Material Adverse Effect.

(f) Third Party Consents. Any consent of any third party necessary for the consummation of the transactions contemplated by this Agreement shall have been obtained by Seller or Buyer on or prior to the Closing Date, except those where the failure to obtain which would not have a Material Adverse Effect.

(g) Replacement Assurances. Seller shall have received from Buyer replacement or substitute letters of credit, bonds, and other surety obligations for those set forth on Schedule 6.19 and Buyer, in form and substance reasonably acceptable to Seller, shall have caused the release as of the Closing Date of Seller and its Affiliates (other than the Companies) from all obligations relating to any such letters of credit, bonds or other surety obligations and any liabilities related thereto.

(h) Purchase Price. Buyer shall have delivered on or prior to the Closing Date the Estimated Purchase Price to Seller by wire transfer in immediately available funds.

(i) MAE Adjustment. On or prior to the Closing Date, the Parties shall have agreed on the MAE Adjustment, if any, in accordance with Section 2.5 and the MAE Adjustment is not greater than or equal to [redacted]

7.2 Buyer's Closing Conditions. The obligation of Buyer to proceed with the Closing contemplated hereby is subject, at the option of Buyer, to the satisfaction on or prior to the Closing Date of all of the following conditions:

(a) Representations, Warranties, and Covenants. The representations and warranties of Seller in Section 3.1 of this Agreement shall be true and correct in all material respects (other than representations and warranties that are already qualified by materiality, which shall be true and correct in all respects) on and as of the Closing Date (except for those representations and warranties that are made as of a specific date or only with respect to a specific period of time, which shall be true and correct, or true and correct in all material respects, as applicable, only as of such date or with respect to such time period), and the covenants and agreements of Seller to be performed on or before the Closing Date shall have been duly performed in all material respects through Closing in accordance with this Agreement.

(b) Closing Documents. On or prior to the Closing Date, Seller shall have delivered all agreements, instruments, and documents required to be delivered by Seller pursuant to Section 8.2.

(c) No Action. On the Closing Date, no Action (excluding any such matter initiated by Buyer or any of its Affiliates) shall be pending or threatened before any court or governmental agency or body of competent jurisdiction seeking to enjoin or restrain the consummation of the Closing or recover substantial damages from Buyer or any Affiliate of Buyer resulting therefrom.

(d) Waiting Period. The waiting period under the HSR Act applicable to the consummation of the transactions contemplated by this Agreement shall have expired or been terminated or the Parties shall have otherwise complied with the HSR Act.

(e) Third Party Consents. Any consent of any third party necessary for the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements shall have been obtained by Seller or Buyer on or prior to the Closing Date on terms not materially less favorable to the Buyer or the Companies than the terms that were in effect with respect to the Seller or the Companies prior to the Closing.

(f) Governmental Approvals. The Governmental Approvals required for the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements shall have been obtained on terms not materially less favorable to Buyer or the Companies than the terms that were in effect with respect to Seller or the Companies prior to Closing.

(g) MAE Adjustment. On or prior to the Closing Date, the Parties shall have agreed on the MAE Adjustment, if any, in accordance with Section 2.5 and the MAE Adjustment is not greater than or equal to [redacted]

(h) IUOE Consents. On or prior to the Closing Date, Buyer shall have received the IUOE Consents.

ARTICLE VIII
Closing

8.1 Closing. The Closing shall be held on the Closing Date at 10:00 a.m., Eastern prevailing time, at the offices of McGuireWoods LLP at 7 St. Paul Street, Suite 1000, Baltimore, Maryland 21202, or at such other time or place as Seller and Buyer may otherwise agree in writing. Closing shall be deemed to have occurred, and shall be effective, at 12:00 a.m. Eastern prevailing time, on the Closing Date.

8.2 Seller's Closing Obligations. At the Closing, Seller shall deliver, or cause to be delivered, to Buyer the following:

(i) (1) with respect to the Interests other than the LP Interest, duly endorsed stock certificates evidencing such Interests or stock certificates evidencing such Interests with duly executed stock powers attached thereto; and (2) with respect to the LP Interest, a written Assignment of LP Interest in a form mutually acceptable to Buyer and Seller;

(ii) (A) original minute books for each of the Companies, (B) the articles or certificate of incorporation or organization, certificate of partnership, certificate of formation or similar formation document of each of Seller, TNA and each of the Companies for which such filings are required or have been made, certified as of a date not earlier than fifteen (15) business days prior to the Closing Date by the appropriate Governmental Authority of the state of such entity's organization; (C) the bylaws, operating agreement, partnership agreement or other similar applicable governing document, not included in clause (B) above, of each of Seller, TNA and each of the Companies, certified as of the Closing Date by the Secretary or Assistant Secretary or other competent officer of such entity; (D) such evidence of record ownership as is described on Schedule 8.2(ii) for each of the Companies other than the First-Tier Subsidiaries; and (E) a certificate of good standing with respect to Seller, TNA and each of the Companies for which a certificate of good standing could be obtained if such Company were in good standing, dated as of a date not earlier than fifteen (15) business days prior to the Closing Date, from the appropriate Governmental Authority of each state in which the such entity is organized or is qualified, registered or licensed to do business as a foreign entity;

(iii) a certificate of an authorized officer and the general counsel of Seller to the effect that each of the conditions specified in Sections 7.1(a) and 7.1(c) is satisfied in all respects;

(iv) a certificate of incumbency, dated as of the Closing Date, as to the officers and other personnel of Seller executing this Agreement, the Ancillary Agreements and any other certificate, instrument or document to be delivered at Closing;

(v) a certified copy of corporate and stockholder resolutions of (A) Seller authorizing the execution and delivery of this Agreement and the Ancillary Agreements to which Seller is a party and the consummation of the transactions contemplated hereby and thereby; and (B) TNA authorizing the execution and delivery of the Guaranty and the consummation of the transactions contemplated thereby;

(vi) a fully executed Service Mark License in the form of Exhibit E and the fully executed Patent License in the form of Exhibit F as provided herein;

(vii) a non-foreign affidavit as described in Section 1445(b)(2) of the Code and the Treasury Regulations thereunder;

(viii) the resignations of the members of the board of directors and all officers of the Companies;

(ix) written copies of each consent, filing and notice listed on Schedule 3.1(i);

(x) a letter from ENSR substantially in the form of Exhibit G or otherwise in form and substance reasonably satisfactory to Buyer, stating that Buyer is entitled to rely on the Phase I and Compliance Audit reports prepared by ENSR for the Facilities and the Companies, dated August 2003;

(xi) (A) all books and records of the Companies held by Seller and any of its Affiliates (other than the Companies), including registers, books of account, agreements, written or electronic data or information, books, operating records, operating, safety and maintenance manuals, engineering and design plans, blueprints and as-built plans, specifications, drawings, reports, procedures, facility compliance plans, test records and results, other records and filings made with regulatory agencies regarding operations at the Facilities, environmental procedures and similar records necessary for the operation of the Facilities, to the extent in Seller's possession or readily available (collectively the "Operating Records"), and (B) all personnel files relating to the employees, to the extent in Seller's possession and including files pertaining to (1) skill and development training and resumes, (2) seniority histories, (3) salary and benefit information, (4) Occupational Safety and Health Act medical reports, (5) medical records and restriction forms, (6) performance evaluation, and (7) disciplinary records (collectively, the "Employee Records"); provided, however, that Seller shall be permitted to retain copies, or originals to the extent it provides Buyer with copies of the same, of all Operating Records and Employee Records;

(xii) the results of (A) a judgment lien and docket search for each of the Companies from a nationally recognized search firm; and (B) a UCC, fixture, federal lien and state tax lien search for each of the Companies from a nationally recognized search firm, in each case as of a date not earlier than fifteen (15) business days prior to the Closing Date; and

(xiii) any other documents or instruments requested by Buyer necessary to consummate the transactions contemplated by this Agreement and the Ancillary Agreements.

8.3 Buyer's Closing Obligations. At Closing, Buyer shall deliver, or cause to be delivered, to Seller the following:

(i) the Estimated Purchase Price to Seller in immediately available funds to the bank account as provided in Section 2.3;

(ii) to the extent not transferred to Seller prior to Closing, a bill of sale in a form mutually acceptable to Buyer and Seller transferring the Excluded Assets to Seller at Closing;

(iii) a certificate of an authorized officer and general counsel to the effect that each of the conditions specified in Sections 7.2(a) and 7.2(c) is satisfied in all respects;

(iv) a certificate of incumbency, dated as of the Closing Date, as to the officers and other personnel of Buyer executing this Agreement, the Ancillary Agreements and any other certificate, instrument or document to be delivered at Closing;

(v) a certified copy of corporate resolutions authorizing the execution and delivery of this Agreement and the Ancillary Agreements to which Buyer is a party and the consummation of the transactions contemplated hereby and thereby;

(vi) the fully executed Service Mark License in the form of Exhibit E and the fully executed Patent License in the form of Exhibit F as provided herein; and

(vii) any other documents or instruments requested by Seller necessary to consummate the transactions contemplated by this Agreement and the Ancillary Agreements.

ARTICLE IX
Limitations

9.1 Buyer's Review.

(a) No Reliance. Buyer has reviewed and had access to all documents, records and information that it has desired to review in connection with its decision to enter into this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. Buyer has not relied upon any representation, warranty, statement, advice, document, projection, or other information of any type provided by Seller, the Companies, their Affiliates, or any of their representatives, except for those expressly set forth in this Agreement. In deciding to enter into this Agreement and the Ancillary Agreements, and to consummate the transactions contemplated hereby and thereby, Buyer has relied solely upon its own knowledge, investigation, and analysis (and that of its representatives) and not on any disclosure or representation made by, or any duty to disclose on the part of, Seller, the Companies, their

Affiliates, or any of their representatives, other than the representations and warranties of Seller expressly set forth herein.

(b) Limited Duties. Any and all duties and obligations which either Party may have to the other with respect to or in connection with the Companies, this Agreement, or the transactions contemplated hereby are limited expressly to those set forth in this Agreement.

9.2 Disclaimer of Warranties.

(a) Information. EXCEPT AS PROVIDED IN SECTION 3.1, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, AT COMMON LAW, STATUTORY OR OTHERWISE, WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION, RECORDS, AND DATA NOW, HERETOFORE, OR HEREAFTER MADE AVAILABLE TO BUYER IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY DESCRIPTION OF THE COMPANIES OR THE FACILITIES, REVENUE, PRICE AND EXPENSE ASSUMPTIONS, ELECTRICITY, STEAM, CHILLED WATER OR OTHER DEMAND FORECASTS, OR ENVIRONMENTAL INFORMATION, OR ANY OTHER INFORMATION FURNISHED TO BUYER BY SELLER OR ANY AFFILIATE OF SELLER OR ANY DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, AGENT, OR ADVISOR THEREOF).

(b) Facilities. NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY IN ANY OTHER PROVISION OF THIS AGREEMENT, IT IS THE EXPLICIT INTENT OF EACH PARTY THAT SELLER AND ITS AFFILIATES ARE NOT MAKING ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS, IMPLIED, AT COMMON LAW, STATUTORY OR OTHERWISE, EXCEPT FOR THE REPRESENTATIONS OR WARRANTIES GIVEN IN THIS AGREEMENT, AND IT IS UNDERSTOOD THAT BUYER, WITH SUCH EXCEPTIONS, TAKES THE INTERESTS, THE FACILITIES, AND ANY OTHER ASSETS OF THE COMPANIES "AS IS" AND "WHERE IS" AND BUYER RELEASES SELLER FROM ANY AND ALL CLAIMS AND CAUSES OF ACTION AGAINST SELLER UNDER ANY ENVIRONMENTAL LAW, INCLUDING WITHOUT LIMITATION THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT, 42 U.S.C. SECTION 9601 ET SEQ. WITHOUT LIMITING THE GENERALITY OF THE IMMEDIATELY PRECEDING SENTENCE, EXCEPT AS EXPRESSLY PROVIDED IN SECTION 3.1 OF THIS AGREEMENT, SELLER HEREBY EXPRESSLY DISCLAIMS AND NEGATES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT COMMON LAW, STATUTORY, OR OTHERWISE, RELATING TO (I) THE INTERESTS, THE COMPANIES, THE CONDITION OF THE FACILITIES AND OTHER ASSETS OF THE COMPANIES (INCLUDING ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, OR THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIALS IN OR ON, OR DISPOSED OR DISCHARGED FROM, THE FACILITIES AND OTHER ASSETS OF ANY OF THE COMPANIES) OR (II) ANY INFRINGEMENT BY SELLER, ANY OF THE COMPANIES, OR ANY OF THEIR RESPECTIVE AFFILIATES OF ANY PATENT OR PROPRIETARY RIGHT OF ANY THIRD PARTY. BUYER HAS AGREED NOT TO RELY ON ANY REPRESENTATION MADE BY SELLER, THE

COMPANIES, THEIR AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, COUNSEL, AGENTS OR ADVISORS WITH RESPECT TO THE CONDITION, QUALITY, OR STATE OF THE FACILITIES EXCEPT FOR THOSE IN THIS AGREEMENT, BUT RATHER, AS A SIGNIFICANT FACTOR IN SETTING THE AMOUNT OF CONSIDERATION GIVEN TO SELLER FOR THIS PURCHASE AND SALE, HAS AGREED TO RELY SOLELY AND EXCLUSIVELY UPON ITS OWN EVALUATION OF THE COMPANIES AND THE FACILITIES, EXCEPT AS PROVIDED HEREIN. THE PROVISIONS CONTAINED IN THIS AGREEMENT ARE THE RESULT OF EXTENSIVE NEGOTIATIONS BETWEEN BUYER AND SELLER AND NO OTHER ASSURANCES, REPRESENTATIONS OR WARRANTIES ABOUT THE QUALITY, CONDITION, OR STATE OF THE COMPANIES OR THE FACILITIES WERE MADE BY SELLER IN THE INDUCEMENT THEREOF, EXCEPT AS PROVIDED IN SECTION 3.1 HEREOF.

9.3 Waiver of Damages. NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY IN THIS AGREEMENT, SELLER AND BUYER AGREE THAT THE RECOVERY BY EITHER PARTY OF ANY DAMAGES SUFFERED OR INCURRED BY IT AS A RESULT OF ANY BREACH BY THE OTHER PARTY OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE ACTUAL DAMAGES SUFFERED OR INCURRED BY THE NON-BREACHING PARTY AS A RESULT OF THE BREACH BY THE BREACHING PARTY OF ITS OBLIGATIONS HEREUNDER AND IN NO EVENT SHALL THE BREACHING PARTY BE LIABLE TO THE NON-BREACHING PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES OR LOST OR DELAYED GENERATION) SUFFERED OR INCURRED BY THE NON-BREACHING PARTY AS A RESULT OF THE BREACH BY THE BREACHING PARTY OF ANY OF ITS OBLIGATIONS HEREUNDER.

ARTICLE X
Indemnification

10.1 Indemnification by Seller.

(a) From and after the Closing, subject to the other terms and limitations in this Agreement, Seller shall indemnify, defend, reimburse, and hold harmless Buyer and its Affiliates, and its and their directors, officers, partners, employees, consultants, agents, representatives, advisors, successors, and assigns (collectively, the "Buyer Indemnified Parties") from and against any and all Losses (except for Losses relating to Environmental Liabilities) asserted against or incurred by any of the Buyer Indemnified Parties (i) for any breach of Seller's representations or warranties made in this Agreement, (ii) for any breach of the covenants or obligations of Seller and its Affiliates under this Agreement, or (iii) arising in connection with the Excluded Assets described on Schedule 6.12.

(b) Indemnification for Certain Actions: Seller shall indemnify, defend, reimburse, and hold harmless the Buyer Indemnified Parties from and against any and all Losses asserted against or incurred by any of the Buyer Indemnified Parties to the extent arising out of or relating to the Actions set forth on Schedule 3.1(j), if any (collectively, the "Indemnified Actions"), including claims for personal injuries, property damage, and reasonable attorneys' fees and

expenses. Seller hereby undertakes to conduct, control and/or settle, in its sole discretion, any and all Indemnified Actions, and Buyer agrees and acknowledges that Seller shall have the exclusive right to conduct, control and/or settle, in Seller's sole discretion, any and all Indemnified Actions, and neither Buyer nor any Buyer Indemnified Party may take any action with respect thereto or participate in the defense of any Indemnified Action, except with the prior written consent of Seller; provided that Seller shall not, without the written consent of Buyer (which consent shall not be unreasonably withheld or delayed), settle, compromise or offer to settle or compromise any Indemnified Action unless the terms of such settlement provide for no admission of liability, fault or violation of Law or contract and no relief other than payments of monetary damages that are not paid by Buyer or any of its Affiliates. Buyer shall, with respect to any Indemnified Action, cooperate in the investigation, defense and settlement of such Indemnified Actions, and otherwise take any other actions in connection therewith as Seller may reasonably request, including: (i) promptly providing Seller and its counsel with copies of all filings, notices, pleadings, correspondence, offers, letters and any other materials or information received by Buyer related to, arising out of or in connection with the Indemnified Actions; (ii) providing Seller access to any books, records, documents, data, information or Business Employees and such other information as Seller may reasonably request in order to permit Seller to undertake, conduct and control (through counsel of its own choosing) the settlement or defense of the Indemnified Actions; (iii) making all persons who are employees, consultants or Affiliates of any of the Buyer Indemnified Parties available, at Seller's reasonable request, in connection with the investigation of the Indemnified Actions and to respond to discovery requests, attend depositions and appear at trial or hearing to testify as a fact witness, and for such other purposes as Seller may reasonably request; (iv) cooperating with the reasonable requests of any insurance company representatives in connection with the investigation of any Indemnified Actions; and (v) executing any and all powers of attorney and other documents and instruments necessary to permit Seller (through counsel of its own choosing) with respect to representation concerning any Indemnified Actions to defend or settle any Indemnified Action(s) in the name of and on behalf of any and all of the Companies, including the signing of pleadings, stipulations, consent orders and other court or arbitral filings and any settlement agreement (provided that the Buyer Indemnified Parties are indemnified hereunder in respect of any awards or payments required to be made by Buyer Indemnified Parties thereunder). The Buyer Indemnified Parties hereby irrevocably waive and consent to any conflict of interest inherent in (i) counsel of Seller's choosing representing the Buyer Indemnified Parties, or any of them, in respect of the Indemnified Actions, and (ii) counsel of Seller's choosing simultaneously representing one or more Seller Indemnified Parties and one or more Buyer Indemnified Parties in respect of the Indemnified Actions. Buyer acknowledges that Seller agreed to provide the indemnification and other rights afforded the Buyer Indemnified Parties under this Section 10.1(b) on the basis of such waiver and consent and that Seller is excused from providing such indemnity and other rights in the event and to the extent that any Buyer Indemnified Party asserts that any such waiver and consent is not valid, effective or binding on any Buyer Indemnified Party. If Buyer fails to comply with the requirements of this Section 10.1(b) with respect to any Indemnified Action, neither Buyer nor any Buyer Indemnified Party shall be entitled to the indemnification and other rights afforded hereunder with respect to such Indemnified Action.

10.2 Indemnification By Buyer. From and after the Closing, subject to the other terms and limitations in this Agreement, Buyer and the Companies shall indemnify, defend, reimburse, and hold harmless Seller and its Affiliates, and its and their directors, officers, partners,

employees, consultants, agents, representatives, advisors, successors, and assigns (collectively, the "Seller Indemnified Parties") from and against any and all Losses asserted against or incurred by any of the Seller Indemnified Parties (i) for any breach of Buyer's representations or warranties made in this Agreement, or (ii) for any breach of the covenants or obligations of Buyer and its Affiliates under this Agreement, or (iii) that relate to or arise out of the Business or the ownership, operation, or maintenance of any of the Facilities or that otherwise relate to or arise out of the Companies or any of them (whether relating to periods of time prior to or after the Closing Date) to the extent such Losses were known or should reasonably have been known and were not properly asserted by Buyer (or any Buyer Indemnified Party) under the provisions of Section 5.5 or Section 10.1 (subject to the limitations in this Agreement) by the date specified in Section 10.5 or (iv) that relate to or arise out of Buyer's obligations under Section 3 of the Employee Transfer Addendum. Buyer acknowledges that the Losses described in clause (iii) of the preceding sentence shall be retained by and transferred with the Companies and shall continue to be the responsibility of the Companies and Buyer.

10.3 Limitations on Indemnity. None of the Indemnified Parties shall be entitled to assert any right to indemnification under Section 10.1 and Section 10.2 unless (i) any single Loss exceeds [redacted] and (ii) the aggregate amount of all such Losses actually suffered by such Indemnified Parties exceeds the Deductible Amount, and then only to the extent such Losses exceed, in the aggregate, the Deductible Amount. Anything in this Agreement to the contrary notwithstanding, in no event shall either Seller or Buyer ever be required to indemnify any Indemnified Parties for Losses pursuant to Section 10.1 or Section 10.2 or any of the other provisions of this Agreement, or pay any other amount in connection with or with respect to this Agreement or the transactions contemplated by this Agreement, in any amount exceeding, in the aggregate, [redacted], provided, however, that any claim for indemnification against (x) Seller with respect to any breach of any representation or warranty contained in Sections 3.1(a) (Organization and Good Standing), 3.1(c) (Authority), 3.1(d) (Enforceability), 3.1(e) (Record and Beneficial Ownership; Purchase Rights, Etc.), 3.1(l) (Brokerage Fees and Commissions), 3.1(o) (Tax Matters), Section 13 of the Employee Transfer Addendum, any claim for indemnification against Seller pursuant to Section 5.5, Section 10.1(b) or Section 10.1(a)(iii) or (y) against Buyer with respect any breach of any representation or warranty contained in Sections 3.2(a) (Organization and Good Standing), 3.2(b) (Authority), 3.2(c) (Enforceability), 3.2(g) (Brokerage Fees and Commissions), Section 6.19, Section 12.12[redacted], Section 3 of the Employee Transfer Addendum or the covenants in Section 6.25(a) shall not be subject to the foregoing limitations set forth in this Section 10.3 and provided further that any claim against Seller for indemnification with respect to the covenants in Sections 6.25(b), (c) and (d) shall be subject to the foregoing total limitation on payment hereunder of [redacted] and shall not be subject to the limitations set forth in Sections 10.3(i) or (ii) above.

Notwithstanding anything to the contrary herein, no Indemnified Party shall be entitled to indemnification under this Article 10 for Losses caused by the fraud or criminal misconduct of such Indemnified Party or its Affiliates.

10.4 Third Party Claims. If a claim by a third party is made against a Seller Indemnified Party or a Buyer Indemnified Party (each, an "Indemnified Party"), and if such Indemnified Party intends to seek indemnity with respect thereto under this Article 10, such

Indemnified Party shall promptly furnish written notice to the other Party (the "Indemnifying Party") of such claim. The failure of the Indemnified Party to deliver prompt written notice of a claim shall not affect the indemnity obligations of the Indemnifying Party hereunder except to the extent the Indemnifying Party was substantially disadvantaged by such delay in delivery notice of such claim. The Indemnifying Party shall have thirty (30) days after receipt of such notice to undertake, conduct, and control (through counsel of its own choosing, reasonably satisfactory to the Indemnified Party, and at its own expense) the settlement or defense thereof, and the Indemnified Party shall cooperate with it in connection therewith. The Indemnifying Party shall permit the Indemnified Party to participate in such settlement or defense through counsel chosen by such Indemnified Party (but the fees and expenses of such counsel shall be borne by such Indemnified Party). So long as the Indemnifying Party, at the Indemnifying Party's cost and expense, (i) has undertaken the defense of, and assumed full responsibility for all indemnified liabilities with respect to, such claim, (ii) is actively and diligently contesting such claim in good faith, by appropriate proceedings, and (iii) has taken such action (including the posting of a bond, deposit, or other security) as may be necessary to prevent any action to foreclose a lien against or attachment of the property of the Indemnified Party for payment of such claim, the Indemnified Party shall not pay or settle any such claim. Notwithstanding compliance by the Indemnifying Party with the preceding sentence, the Indemnified Party shall have the right to pay or settle any such claim, but in such event it shall waive any right to indemnity by the Indemnifying Party for such claim. If within thirty (30) days after the receipt of the Indemnified Party's notice of a claim of indemnity hereunder, the Indemnifying Party does not notify the Indemnified Party that it elects (at the Indemnifying Party's cost and expense) to undertake the defense thereof and assume full responsibility for all indemnified liabilities with respect thereto, or gives such notice and thereafter fails to contest such claim in good faith or to prevent action to foreclose a lien against or attachment of the Indemnified Party's property as contemplated above, the Indemnified Party shall have the right to contest, settle, or compromise such claim and the Indemnified Party shall not thereby waive any right to indemnity for such claim under this Agreement. This Section shall not apply to the indemnity provided in Section 5.5, which shall instead be governed by Section 5.6.

10.5 Survival and Time Limitation. The terms and provisions of this Agreement shall survive the Closing of the transactions contemplated hereunder. Notwithstanding the foregoing, after Closing, any assertion by any Indemnified Party that an Indemnifying Party is liable to such Indemnified Party for indemnification under the terms of this Agreement or otherwise in connection with the transactions contemplated in this Agreement must be made in writing and must be given to such Indemnifying Party (or not at all) on or prior to the date that is [redacted] after the Closing Date, except for indemnification for matters addressed in:

(a) Sections 5.5 (Tax Indemnity), 3.1(l) (Brokerage Fees and Commissions), 3.1(o) (Tax Matters) and Section 13 of the Employee Transfer Addendum, which must be made in writing and must be given to Indemnifying Party (or not at all) on or prior to the date that is [redacted] after the date on which the applicable statute of limitations expires with respect to the matters covered thereby;

(b) Sections 3.1(a) (Organization and Good Standing), 3.1(c) (Authority), 3.1(d) (Enforceability), 3.1(e) (Record and Beneficial Ownership; Purchase Rights, Etc.), 3.2(a) (Organization and Good Standing), 3.2(b) (Authority), and Section 3.2(c) (Enforceability) which

must be made in writing and must be given to Indemnifying Party (or not at all) on or prior to the date that is [redacted] after the Closing Date;

(c) Sections 6.25(b) and (c), which must be made in writing and must be given to Indemnifying Party (or not at all) on or prior to the date that is [redacted] after the Closing Date;

(d) Section 6.25(d) (NSR Issues) which must be made in writing and must be given to Indemnifying Party (or not at all) on or prior to the date that is [redacted] after the Closing Date;

(e) Section 6.25(a) which must be made in writing and must be given to the Indemnifying Party (or not at all) for an item listed on Schedule 6.25 on or prior to [redacted]; and

(f) Sections 6.19, 10.1(b) and 10.1(a)(iii) which shall survive [redacted]

10.6 Further Indemnity Limitations. The amount of any Loss shall be reduced (i) to the extent any Indemnified Party receives any insurance proceeds with respect to such Loss (which shall not include payments pursuant to self insurance programs), net of the present value of any increase in insurance premiums to be paid by the Indemnified Party as a result of such Loss and all costs and expenses incurred by the Indemnified Party in recovering such proceeds from its insurers, (ii) to take into account any net Tax benefit realized or to be realized as a result of the recognition of the Loss, and (iii) to take into account any payment actually received by an Indemnified Party with respect to a Loss.

10.7 Sole and Exclusive Remedy. FROM AND AFTER THE CLOSING, THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE 10 (WHICH PROVISIONS SHALL APPLY TO THE INDEMNIFICATION OBLIGATIONS OF THE PARTIES UNDER ARTICLE 4, ARTICLE 6 TO THE EXTENT NOT INCONSISTENT WITH THE EXPRESS TERMS THEREOF), SECTION 6.19(B) AND ARTICLE 5 SHALL BE THE SOLE AND EXCLUSIVE RIGHT AND REMEDY OF EACH PARTY (INCLUDING THE SELLER INDEMNIFIED PARTIES AND THE BUYER INDEMNIFIED PARTIES) (I) FOR ANY BREACH OF THE OTHER PARTY'S REPRESENTATIONS, WARRANTIES, COVENANTS, OR AGREEMENTS CONTAINED IN THIS AGREEMENT OR (II) OTHERWISE WITH RESPECT TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, IN EACH CASE OTHER THAN FOR FRAUD OR CRIMINAL CONDUCT. FROM AND AFTER CLOSING, NO PARTY (INCLUDING THE SELLER INDEMNIFIED PARTIES AND THE BUYER INDEMNIFIED PARTIES) WILL HAVE ANY OTHER REMEDY (STATUTORY, EQUITABLE, COMMON LAW OR OTHERWISE) AGAINST ANY OTHER PARTY WITH RESPECT TO SUCH MATTERS, AND ALL SUCH OTHER REMEDIES ARE HEREBY WAIVED.

10.8 Compliance with Express Negligence Rule. ALL RELEASES, DISCLAIMERS AND LIMITATIONS ON LIABILITY SHALL APPLY EVEN IN THE EVENT OF THE SOLE, JOINT, AND/OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, OR FAULT OF THE PARTY WHOSE LIABILITY IS RELEASED, DISCLAIMED OR LIMITED.

10.9 Set-Off Outside the Agreement. Neither Party may set-off any right or obligation not arising under this Agreement against any right or obligation arising under this Agreement.

ARTICLE XI
Termination and Remedies

11.1 Termination.

(a) Termination of Agreement. This Agreement and the transactions contemplated hereby may be terminated at any time prior to the Closing:

(i) by the mutual consent of Seller and Buyer; or

(ii) if the Closing has not occurred by [redacted], or such later date as is mutually agreed upon by Buyer and Seller, then by Seller if any condition specified in Section 7.1 has not been satisfied or waived by Seller on or before such close of business, provided that the failure to consummate the transactions contemplated hereby on or before such date did not result from the failure by Seller to fulfill any undertaking or commitment provided for herein on the part of Seller that is required to be fulfilled on or prior to Closing; or

(iii) if the Closing has not occurred by [redacted], or such later date as is mutually agreed upon by Buyer and Seller, then by Buyer if any condition specified in Section 7.2 has not been satisfied or waived by Buyer on or before such close of business, provided that the failure to consummate the transactions contemplated hereby on or before such date did not result from the failure by Buyer to fulfill any undertaking or commitment provided for herein on the part of Buyer that is required to be fulfilled on or prior to Closing; or

(iv) by Seller if the IUOE Consents are not obtained (or such condition to Closing is not waived in writing by Buyer) by the end of the Business Day (5:00 p.m., EDT) [redacted] from the date hereof or such later date as is mutually agreed upon by Buyer and Seller (the "IUOE Consents Deadline").

(b) Effect of Termination. In the event of termination of this Agreement by Seller or Buyer pursuant to Section 11.1(a), written notice thereof shall promptly be given by the terminating Party to the other Party, and this Agreement shall thereupon terminate. Following any such termination, Buyer shall continue to be bound by its obligations set forth in Sections 4.1 and 4.3, and the provisions of Sections 6.8(c) and 12.3 shall survive such termination. If this Agreement is terminated as provided herein, all filings, applications and other submissions made to any Governmental Authority shall, to the extent practicable, be withdrawn from the Governmental Authority to which they were made. Solely in the event of termination of this Agreement pursuant to Section 11.1(a)(iv), Seller shall not consummate the sale of all or substantially all of the Companies to a third party within ninety (90) days of the effective date of such termination and such obligation shall survive such termination.

11.2 Remedies.

(a) Seller's Remedies. Notwithstanding anything herein to the contrary, upon the failure by Buyer to fulfill any undertaking or commitment provided for herein on the part of Buyer that is required to be fulfilled on or prior to the Closing Date, Seller, at its sole option, may (i) enforce specific performance of this Agreement or (ii) pursue any rights or remedies available at law or in equity.

(b) Buyer's Remedies. Notwithstanding anything herein provided to the contrary, upon failure of Seller to fulfill any undertaking or commitment provided for herein on the part of Seller that is required to be fulfilled on or prior to the Closing Date, Buyer, at its sole option, may (i) enforce specific performance of this Agreement or (ii) pursue any rights or remedies available at law or in equity.

(c) Election of Remedies. If either Party elects to pursue singularly any remedy available to it under this Section 11.2, then such Party may at any time thereafter cease pursuing that remedy and elect to pursue any other remedy available to it under this Section 11.2.

ARTICLE XII
Other Provisions

12.1 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

12.2 Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, ENFORCED, AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, WITHOUT REGARD TO CONFLICTS OF LAWS RULES THAT REQUIRE OR PERMIT THE APPLICATIONS OF THE LAWS OF ANOTHER JURISDICTION.

12.3 Consent to Jurisdiction. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT OR IN ANY DOCUMENT DELIVERED HEREUNDER OR IN CONNECTION HEREWITH, THE PARTIES HEREBY CONSENT TO THE NON-EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITUATED IN NEW YORK, NEW YORK, AND WAIVE ANY OBJECTIONS BASED ON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS, WITH REGARD TO ANY DISPUTE, CONTROVERSY, CLAIM, OR ISSUE, WHETHER PROCEDURAL (SUCH AS STATUTE OF LIMITATIONS) OR SUBSTANTIVE (SUCH AS PERFORMANCE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH, TERMINATION OR VALIDITY HEREOF, OR ANY DOCUMENT DELIVERED HEREUNDER OR IN CONNECTION HEREWITH, OR ANY TRANSACTION ARISING FROM OR CONNECTED TO ANY OF THE FOREGOING. THE PARTIES WAIVE PERSONAL SERVICE OF ANY AND ALL PROCESS, AND CONSENT TO ALL SUCH SERVICE OF PROCESS MADE BY MAIL OR BY MESSENGER DIRECTED TO THE ADDRESS SPECIFIED IN SECTION 12.5. NOTHING HEREIN SHALL AFFECT THE PARTIES' RIGHTS TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW.

12.4 Entire Agreement. This Agreement (including the Confidentiality Agreement) and the Schedules, Addendum and Exhibits hereto and the Ancillary Agreements contain the entire agreement between the Parties with respect to the subject matter hereof and there are no agreements, understandings, representations, or warranties between the Parties other than those set forth or referred to herein and therein.

12.5 Notices. All notices hereunder shall be sufficiently given for all purposes hereunder if in writing and delivered personally, sent by documented overnight delivery service or, to the extent receipt is confirmed, by United States Mail, or telecopy to the appropriate address or number as set forth below. Notices to Seller shall be addressed as follows:

Notices to Seller shall be addressed to:

Trigen Energy Corporation
1990 Post Oak Boulevard, Suite 1900
Houston, Texas 77056
Attention: General Counsel
Telecopy No.: (713) 636-1858

with copies to:

Joseph G. Tirone, Esq.
McGuireWoods, LLP
7 St. Paul Street, Suite 1000
Baltimore, Maryland 21202
Telecopy No.: (410) 659-4559

or at such other address and to the attention of such other Person as Seller may designate by written notice to Buyer.

Notices to Buyer shall be addressed to:

Thermal North America, Inc.
c/o [redacted]
600 Atlantic Avenue
Boston, MA 02210
Attention: Michael S. Pradko
Telecopy No.: (617) 878-6968

with copies to:

Allen W. Williams, Esq.
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
Telecopy No.: (414) 297-4900

or at such other address and to the attention of such other Person as Buyer may designate by written notice to Seller.

Notices to [redacted] shall be addressed to:

[redacted]
600 Atlantic Avenue
Boston, MA 02210
Attention: Michael S. Pradko
Telecopy No.: (617) 878-6968

with copies to:

Allen W. Williams, Esq.
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
Telecopy No.: (414) 297-4900

or at such other address and to the attention of such other Person as [redacted] may designate by written notice to Seller.

Notice given by overnight delivery or mail shall be effective upon actual receipt. Notice given by telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if not received during the recipient's normal business hours.

12.6 Successors and Assigns. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned or transferred by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Any assignment in contravention of the foregoing sentence shall be null and void and without legal effect on the rights and obligations of the Parties hereunder. Notwithstanding the foregoing, but subject to all applicable Laws, (i) Buyer or its permitted assignee may assign, transfer, pledge or otherwise dispose of (as security) all of its rights and interests hereunder to a trustee, lending institution or other party for purposes of leasing, financing or refinancing the Companies, Facilities, Real Property or any other assets acquired hereunder, and (ii) upon written notice to Seller, Buyer or its permitted assignee may assign, transfer, pledge or otherwise dispose of all of its rights and obligations hereunder to one or more Affiliates of Buyer so long as such Affiliates make the representations and warranties set forth in Section 3.2 and otherwise agree to fulfill Buyer's obligations hereunder in writing, in which case such assignment shall relieve or discharge Buyer in full from any of its obligations hereunder. Each Party agrees, at the assigning Party's expense, to execute and deliver such documents as may be reasonably necessary to accomplish any such assignment, transfer, pledge or other disposition of rights and interests hereunder so long as the non-assigning Party's rights under this Agreement are not thereby materially altered, amended, diminished or otherwise impaired.

12.7 Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by both Parties and, in the case of modifications or amendments prior to the Closing Date, [redacted] Any Party may, only by an instrument in writing, waive compliance by the other Party with any term or provision of this Agreement on the part of such other Party to be performed or complied with. The waiver by a Party of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

12.8 Schedules and Exhibits. All Schedules and Exhibits hereto that are referred to herein are hereby made a part hereof and incorporated herein by such reference. Each Schedule to this Agreement shall be deemed to include and incorporate all disclosures made on the other Schedules to this Agreement to the extent such disclosure would be reasonably understood to apply to the information called for by such other Schedule. Certain information set forth in the Schedules is included solely for informational purposes, is not an admission of liability with respect to the matters covered by the information, and may not be required to be disclosed pursuant to this Agreement. The specification of any dollar amount in the representations and warranties contained in this Agreement or the inclusion of any specific item in the Schedules is not intended to imply that such amounts (or higher or lower amounts) are or are not material, and no Party shall use the fact of the setting of such amounts or the fact of the inclusion of any such item in the Schedules in any dispute or controversy between the Parties as to whether any obligation, item, or matter not described herein or included in a Schedule is or is not material for purposes of this Agreement.

12.9 Interpretation and Rules of Construction. This Agreement shall not be construed against either Party, and no consideration shall be given or presumption made, on the basis of who drafted this Agreement or any particular provision hereof or who supplied the form of Agreement. In construing this Agreement:

(i) examples shall not be construed to limit, expressly or by implication, the matter they illustrate;

(ii) the word "includes" and its derivatives means "includes, but is not limited to" and corresponding derivative expressions;

(iii) a defined term has its defined meaning throughout this Agreement and each Exhibit and Schedule to this Agreement, regardless of whether it appears before or after the place where it is defined;

(iv) each Exhibit, Addendum and Schedule to this Agreement is a part of this Agreement, but if there is any conflict or inconsistency between the main body of this Agreement and any Exhibit, Addendum or Schedule, the provisions of the main body of this Agreement shall prevail; and

(v) the headings and titles herein are for convenience only and shall have no significance in the interpretation hereof.

12.10 Agreement for the Parties' Benefit Only. Except as specified in Sections 4.1 and 6.17 and Article 10, which are also intended to benefit and to be enforceable by the Seller

Indemnified Parties and the Buyer Indemnified Parties, this Agreement is not intended to confer upon any Person not a party hereto any rights or remedies hereunder, and no Person, other than the Parties or the Seller Indemnified Parties or the Buyer Indemnified Parties, is entitled to rely on any representation, warranty, covenant, or agreement contained herein.

12.11 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any adverse manner to a Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

12.12 Time of Essence. Time is of the essence in this Agreement. If the date specified in this Agreement for giving any notice or taking any action is not a Business Day (or if the period during which any notice is required to be given or any action taken expires on a date that is not a Business Day), then the date for giving such notice or taking such action (and the expiration date of such period during which notice is required to be given or action taken) shall be the next day which is a Business Day.

12.13 [redacted]

[redacted]

12.14 Delivery by Facsimile. This Agreement, the Ancillary Agreements, and each other agreement or instrument entered into in connection herewith or therewith or contemplated hereby or thereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine in accordance with Section 12.5, will be treated in all manner and respects as an original agreement or instrument and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument will raise the use of a facsimile machine to deliver a signature or

the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been signed by or on behalf of each of the Parties as of the day first above written.

Seller:

TRIGEN ENERGY CORPORATION

By:

Name: _____

Title: _____

Buyer:

THERMAL NORTH AMERICA, INC.

By: _____
Name: Michael S. Pradko
Title: Secretary

By: _____
Name: Stuart Porter
Title: Vice President

For purposes of Sections 12.1, 12.2, 12.5, 12.6, 12.7, 12.13 and 12.14 only:

[redacted]

IN WITNESS WHEREOF, this Agreement has been signed by or on behalf of each of the Parties as of the day first above written.

Seller:

TRIGEN ENERGY CORPORATION

By: _____
Name: Herman Schopman
Title: Vice President

Buyer:

THERMAL NORTH AMERICA, INC.

By: _____
Name: Michael S. Pradko
Title: Secretary

By: _____
Name: Stuart Porter
Title: Vice President

For purposes of Sections 12.1, 12.2, 12.5, 12.6, 12.7, 12.13 and 12.14 only:

[redacted]

IN WITNESS WHEREOF, this Agreement has been signed by or on behalf of each of the Parties as of the day first above written.

Seller:

TRIGEN ENERGY CORPORATION

By: _____ 4/30/04
Name: Herman Schopman
Title: Vice President

Buyer:

THERMAL NORTH AMERICA, INC.

By: _____
Name: Michael S. Pradko
Title: Secretary

By: _____
Name: Stuart Porter
Title: Vice President

For purposes of Sections 12.1, 12.2, 12.5, 12.6, 12.7, 12.13 and 12.14 only:

[redacted]

GUARANTY OF TRACTEBEL NORTH AMERICA, INC.

This Guaranty, dated as of April 30, 2004, is made by Tractebel North America, Inc., a Delaware corporation (the "Guarantor"), for the benefit of Thermal North America, Inc., a Delaware corporation (the "Buyer").

WHEREAS, Trigen Energy Corporation (the "Seller"), a Delaware corporation and an affiliate of Guarantor, and the Buyer have entered into a Purchase and Sale Agreement dated as of the date hereof (the "PSA"), as well as ancillary agreements to which Seller is a party as identified in the PSA (collectively with the PSA, the "Agreements"). Capitalized terms used in this Guaranty, but not defined herein shall have the same meaning as ascribed to them in the PSA.

WHEREAS, the execution and performance by the Buyer of the PSA and the transactions contemplated thereby will benefit Guarantor. Without this Guaranty, the Buyer has informed Guarantor that it would not execute and deliver the PSA or consummate the transactions contemplated thereby. Therefore, in consideration of the execution and delivery by the Buyer of the PSA and consummation of the transactions contemplated thereby, Guarantor has agreed to execute and deliver this Guaranty.

NOW, THEREFORE, in consideration of, and as an inducement for, the Buyer entering into the Agreements, the Guarantor hereby covenants and agrees as follows:

1. Guaranty.

The Guarantor hereby unconditionally and absolutely guarantees to the Buyer to cause the performance of, and the full, prompt and complete payment of, all of Seller's obligations in accordance with the terms of the Agreements (the "Obligations"); provided, however, the maximum aggregate liability of the Guarantor to the Buyer under this Guaranty shall not exceed the amount of [redacted]

The Guarantor's liability hereunder shall be and is specifically limited to the performance and payments expressly required to be made in accordance with the Agreements, and payments required pursuant to Section 10 hereof, if any.

2. Nature of Guaranty.

The Guarantor hereby agrees that its obligations hereunder shall be irrevocable and unconditional irrespective of (i) the absence of any arbitration, court or other proceedings to enforce the Agreements, (ii) any waiver or consent by the Buyer concerning any provisions of the Agreements, or (iii) the rendering of any judgment against the Seller or any action to enforce the same.

This Guaranty is one of payment and not of collection. This Guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any payment

guaranteed hereunder, in whole or in part, is rescinded or must otherwise be returned by the Buyer upon the insolvency, bankruptcy or reorganization of the Seller or otherwise, all as though such payment had not been made.

3. **Waivers.**

Without limiting the rights of Guarantor pursuant to Section 7 hereof, the Guarantor unconditionally and irrevocably waives each and every defense which, under principles of guarantee or suretyship law, would otherwise operate to impair or diminish its liability under this Guaranty. The Guarantor hereby expressly waives notice of acceptance of this Guaranty; notice of any obligation to which this Guaranty may apply or of any security therefor; diligence; presentment; protest; notice of protest, acceleration, and dishonor; filing of claims with a court in the event of insolvency or bankruptcy of the Seller; all demands whatsoever, except as noted in Section 1 hereof; any right to require a proceeding first against the Seller.

4. **Termination.**

This Guaranty shall remain in full force and effect until the earlier of: (a) the [redacted] anniversary of the Closing Date, provided that this Guaranty shall remain in full force and effect thereafter as to any claims under Article X of the PSA for which Buyer has delivered notice to Seller in accordance with Article X of the PSA prior to the [redacted] anniversary of the Closing Date, and (b) performance and payment in full to the Buyer of the Obligations.

5. **Notices.**

All notices and other communications about this Guaranty must be in writing, must be given by facsimile, hand delivery or overnight courier service and must be addressed or directed to the respective parties as set forth below, or as otherwise directed by written notice from the parties, from time to time:

If to the Guarantor, to:

Tractebel North America, Inc.
1990 Post Oak Boulevard, Suite 1500
Houston, Texas 77056
Attention: General Counsel
Telecopy No.: (713) 599-2859

with a copy to:

Joseph G. Tirone, Esq.
McGuireWoods LLP
7 St. Paul Street, Suite 1000

Baltimore, Maryland 21202
Telecopy No.: (410) 659-4559

If to the Buyer, to:

Thermal North America, Inc.
[redacted]
600 Atlantic Avenue
Boston, MA 02210
Attention: Michael S. Pradko
Telecopy No.: (617) 878-69689

with copies to:

Allen W. Williams, Esq.
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
Telecopy No.: (414) 297-4900

Notices are effective when actually received by the party to which they are given, as evidenced by facsimile transmission report, written acknowledgment or affidavit of hand delivery or courier receipt.

6. **Representations and Warranties.**

The Guarantor represents and warrants to the Buyer as of the date hereof that:

a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to be performed;

b) The execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;

c) All consents, authorizations, approvals, registrations and declarations required for the due execution, delivery and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance;

d) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles; and

e) it has reviewed and approved copies of the Agreement and is fully informed of the remedies the Buyer may pursue, with or without notice to Seller or any other person, in the event of default of the Obligations.

7. **Setoffs and Counterclaims.**

Notwithstanding any provision hereof to the contrary and without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which the Seller is or may be entitled arising from or out of the Agreements, except for defenses arising out of bankruptcy, insolvency, dissolution or liquidation of the Seller.

8. **Subrogation.**

The Guarantor will not exercise any rights that it may acquire by way of subrogation until all Obligations shall have been performed and paid in full. Subject to the foregoing, upon the performance and full payment of the Obligations, the Guarantor shall be subrogated to the rights of the Buyer against the Seller, and the Buyer agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

9. **Assignment.**

This Guaranty is binding upon and inures to the benefit of the permitted successors and assigns of Guarantor and the Buyer. The Buyer (and any of the Buyer's permitted assignees) may not assign this Guaranty without obtaining the prior written consent of Guarantor (which consent shall not be unreasonably withheld), and any attempt to make any such assignment without such consent will be null and void. Notwithstanding the foregoing, but subject to all applicable laws, (i) the Buyer or its permitted assignee may assign, transfer, pledge or otherwise dispose of (as security) all of its rights and interests hereunder to a trustee, lending institution or other party for purposes of leasing, financing or refinancing the Companies, Facilities, Real Property or any other assets acquired under the PSA, and (ii) upon written notice to Guarantor, the Buyer or its permitted assignee may assign, transfer, pledge or otherwise dispose of all of its rights hereunder to one or more affiliates of the Buyer. Guarantor may not assign this Guaranty without the prior written consent of the Buyer, provided that (a) any assignment by Guarantor is conditioned on the assignee's agreement in writing to assume all of the Guarantor's

Obligations hereunder; and (b) any assignment by Guarantor effected in accordance with this Section 8 shall relieve Guarantor of its Obligations and liabilities under this Guaranty.

10. Fees.

Guarantor agrees to pay all reasonable costs and expenses (including, but not limited to, court costs and reasonable attorneys' fees) paid or incurred by the Buyer in a successful attempt to collect or enforce performance of any of the Obligations, or in the successful enforcement of its rights under this Guaranty.

11. Amendments.

No term or provision of this Guaranty shall be amended, modified, altered, waived, or supplemented except in a writing signed by the Guarantor and the Buyer.

12. Bankruptcy; Post-Petition Interest.

a) The Obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization or liquidation of Seller or by any defense which Seller may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. The Buyer is not obligated to file any claim relating to the Obligations if Seller becomes subject to a bankruptcy, reorganization, or similar proceeding and the failure of the Buyer to so file will not affect Guarantor's Obligations under this Guaranty.

b) Guarantor acknowledges and agrees that any interest on any portion of the Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) will be included in the Obligations because it is the intention of Guarantor and the Buyer that the Obligations should be determined without regard to any rule of law or order that may relieve Seller of any portion of the Obligations.

13. Miscellaneous.

This Guaranty shall be governed by, and construed in accordance with, the laws of the State of New York.

This Guaranty is the entire and only agreement between the Guarantor and the Buyer with respect to the guarantee of amounts payable by the Seller to the Buyer and of obligations to be performed arising out of the Agreements. All representations, warranties,

agreements, or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its corporate name by its duly authorized representative as of the date first above written.

TRACTEBEL NORTH AMERICA, INC.

By: William P. Utt RD

Name: WILLIAM P. UTT

Title: PRESIDENT & CEO

Exhibit A

FACILITIES

Entity	Assets
[redacted]	

Entity	Assets
[redacted]	
Trigen-Kansas City Energy Corporation	Approximately 6.5 miles of steam piping. Grand Avenue Station @ 115 Grand Blvd., Kansas City, MO 64106.
[redacted]	

Exhibit B

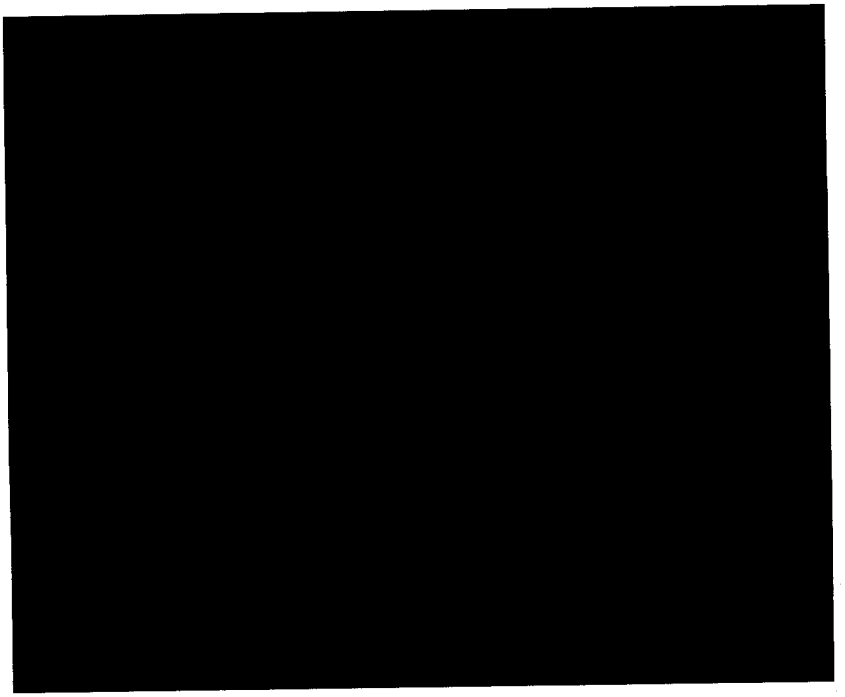
SELLER'S KNOWLEDGEABLE OFFICERS, DIRECTORS AND KEY EMPLOYEES

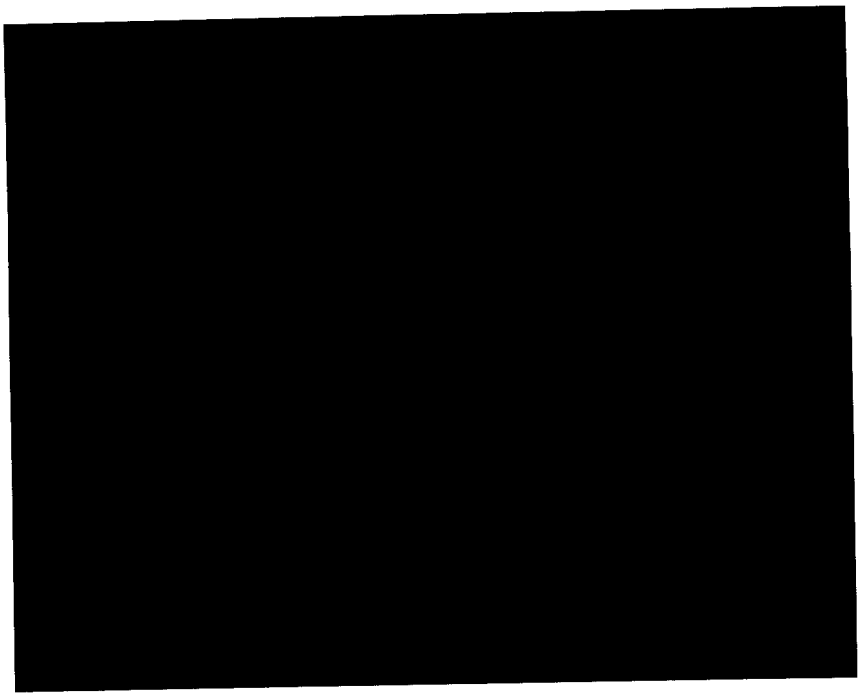
Directors & Officers of the DHCS ("D&O"):

- Werner E. Schattner
- Timothy R. Dunne
- Rachel W. Kilpatrick
- Herman Schopman
- Steven R. Gavin
- Kevin Redmond

Trigen-Kansas City Energy Corporation

- Brian Kirk

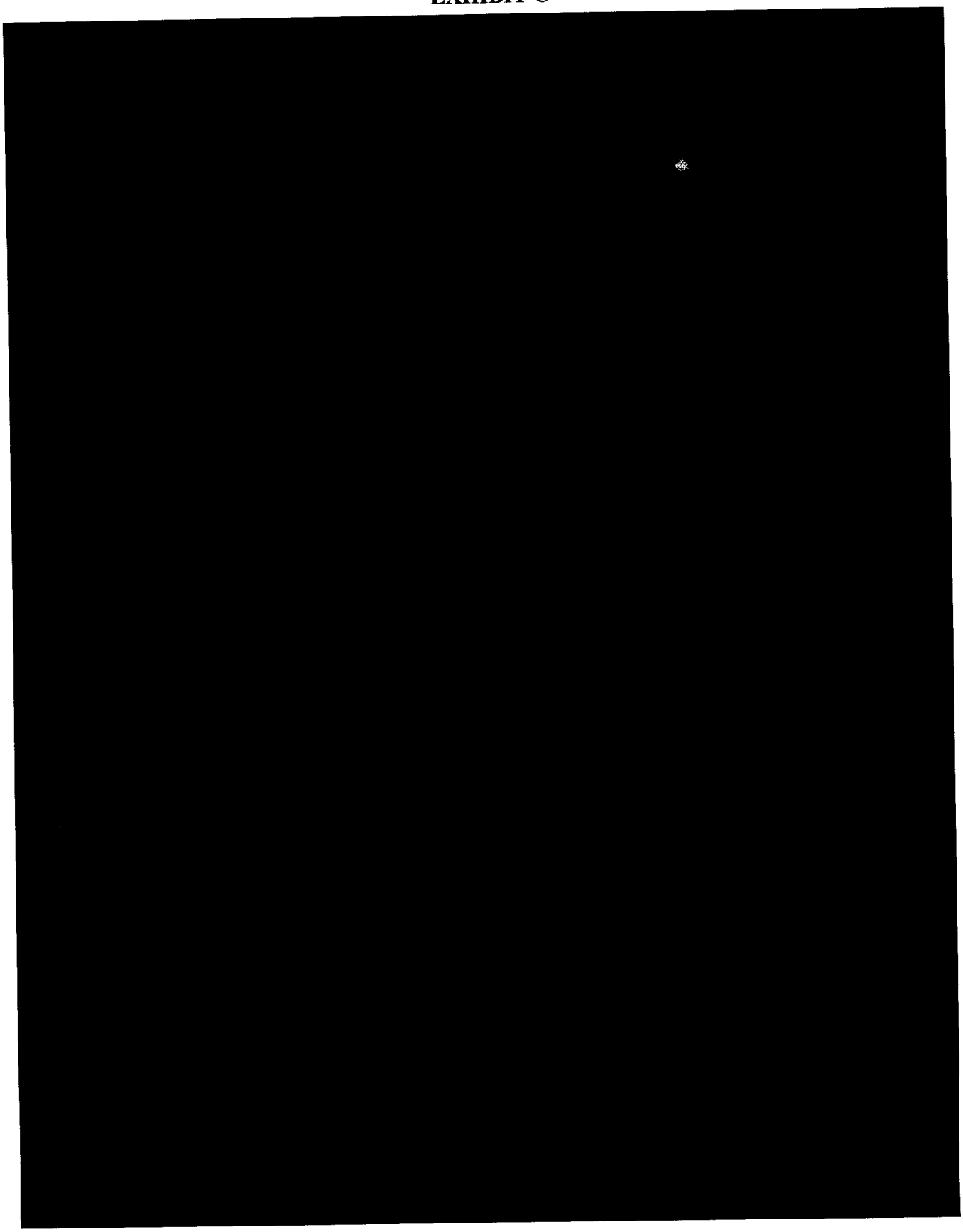


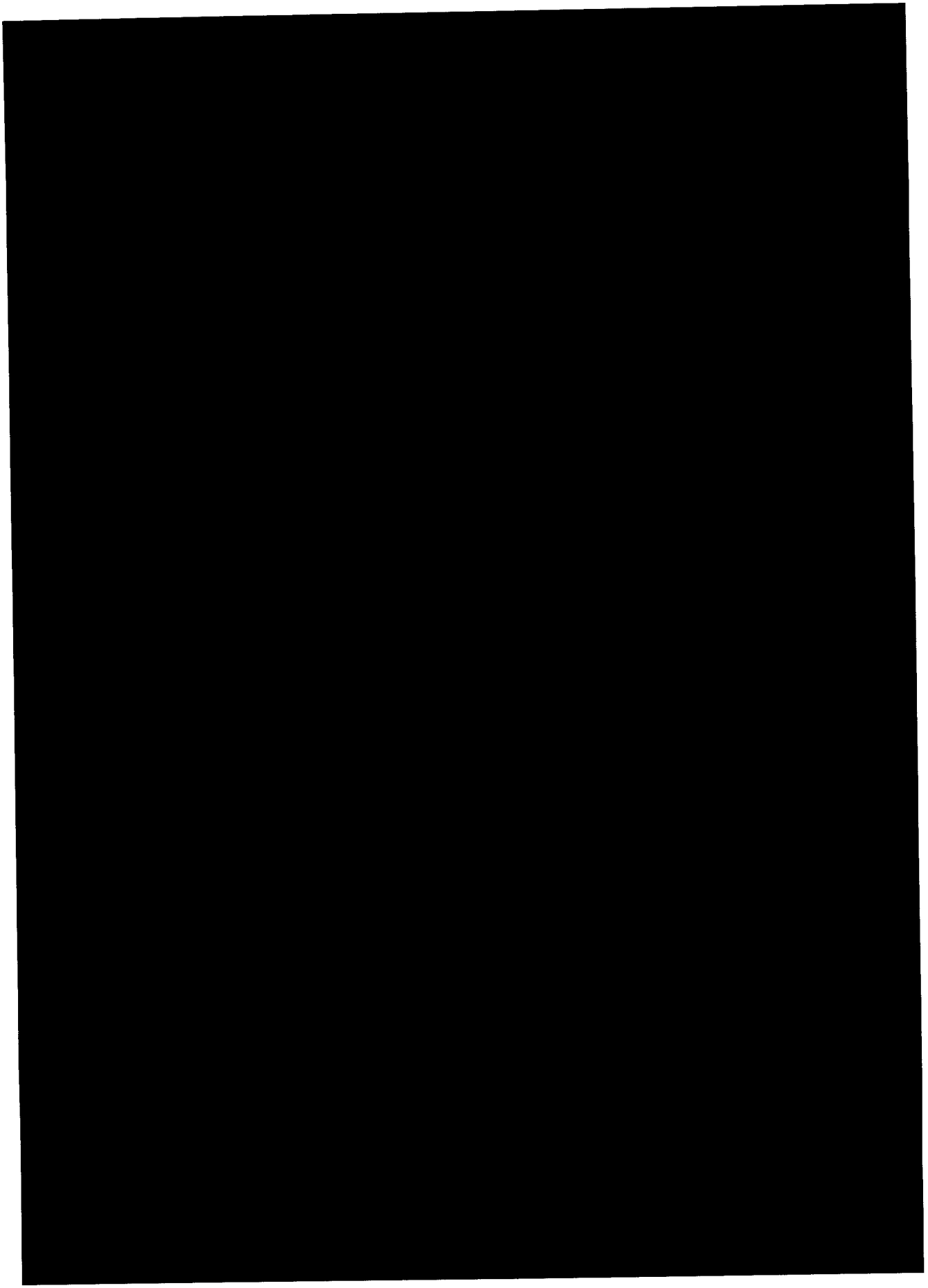


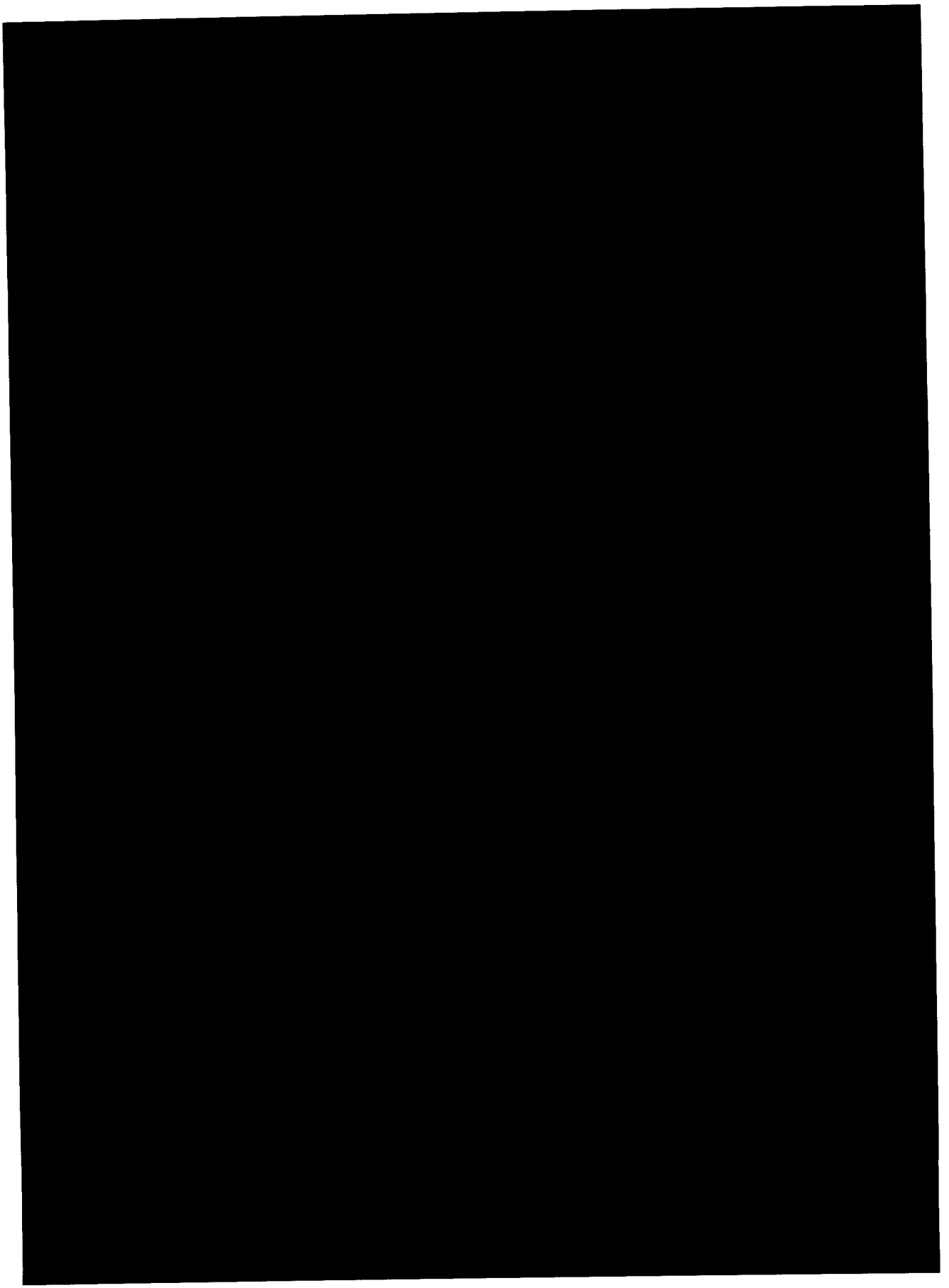
Trigen Energy Corp.

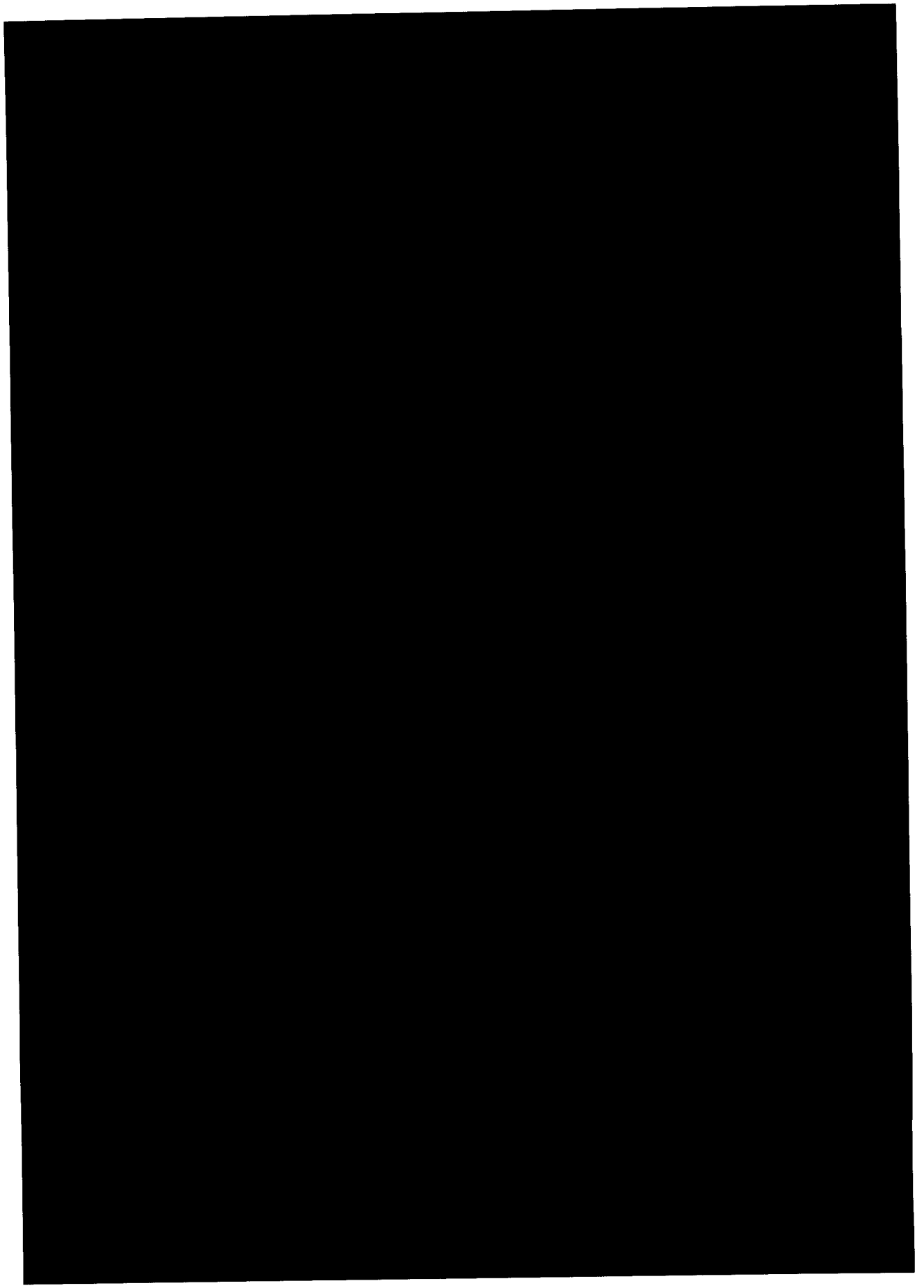
- William P. Utt
- Paul J. Cavicchi
- Richard L. Grant
- Guy Janssen
- Henri Meyers
- Eric Heggeseth
- Geert Peeters
- Klaudia Brace
- Mark Barry
- Michael Thompson

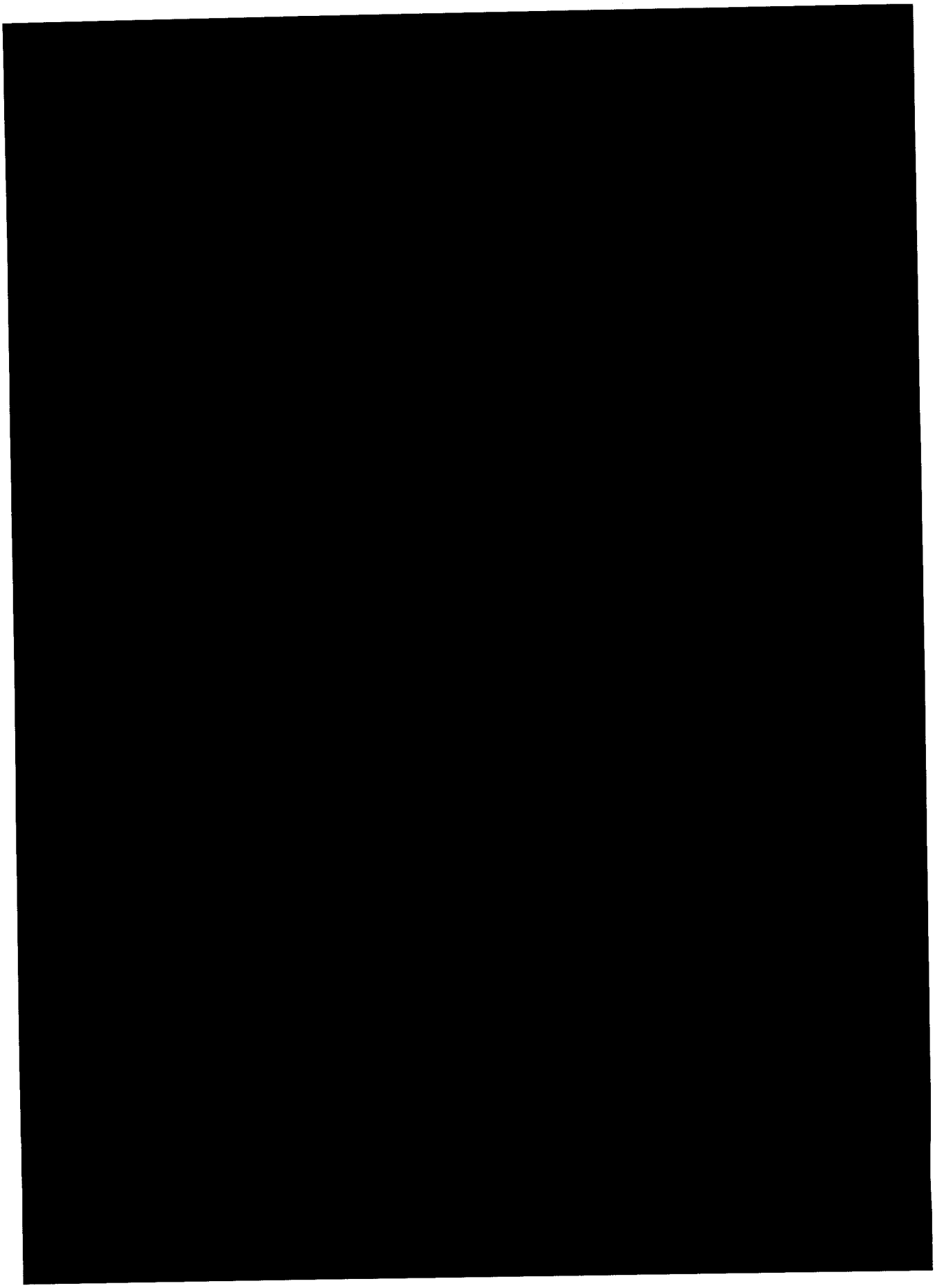
EXHIBIT C

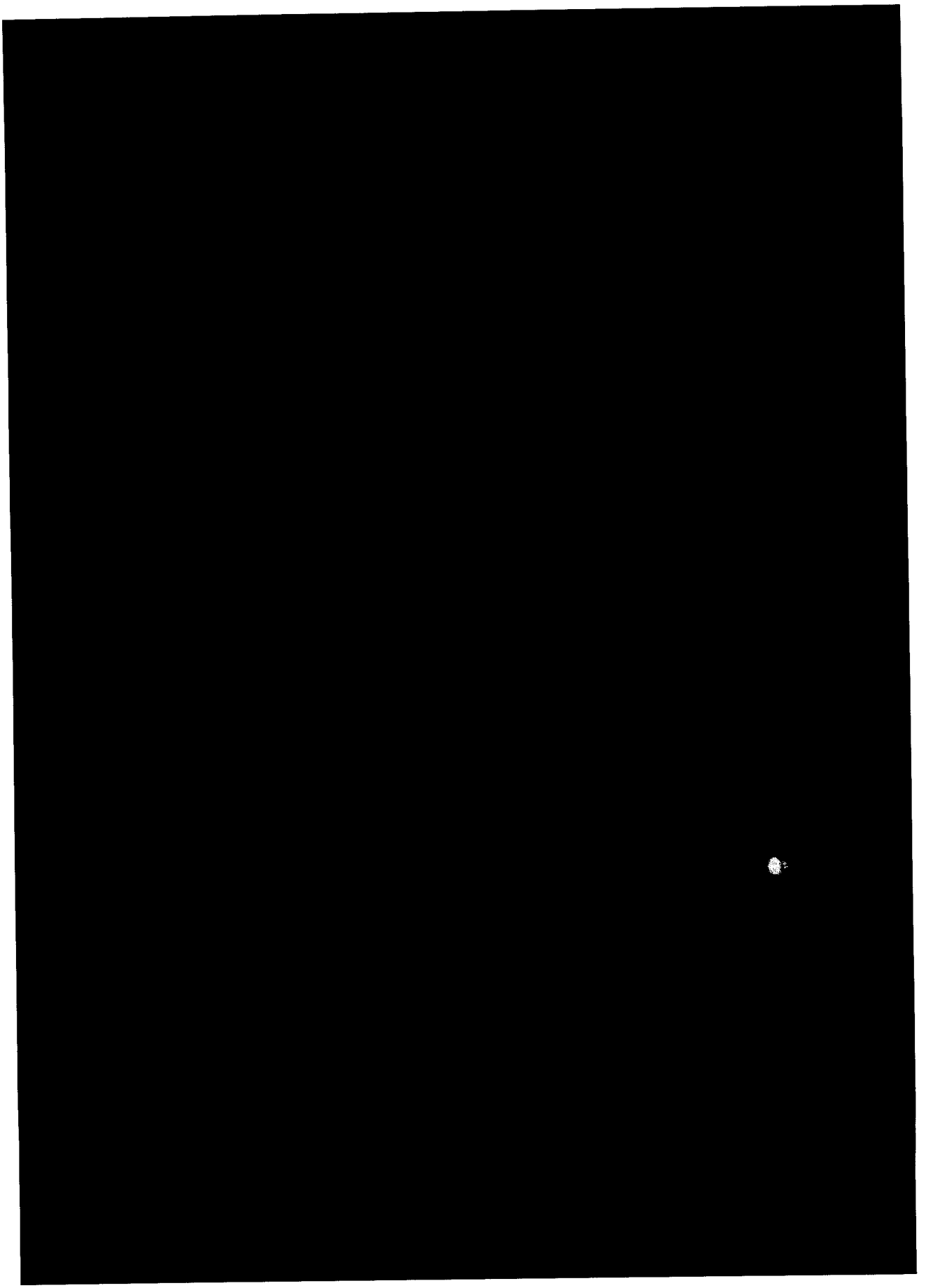


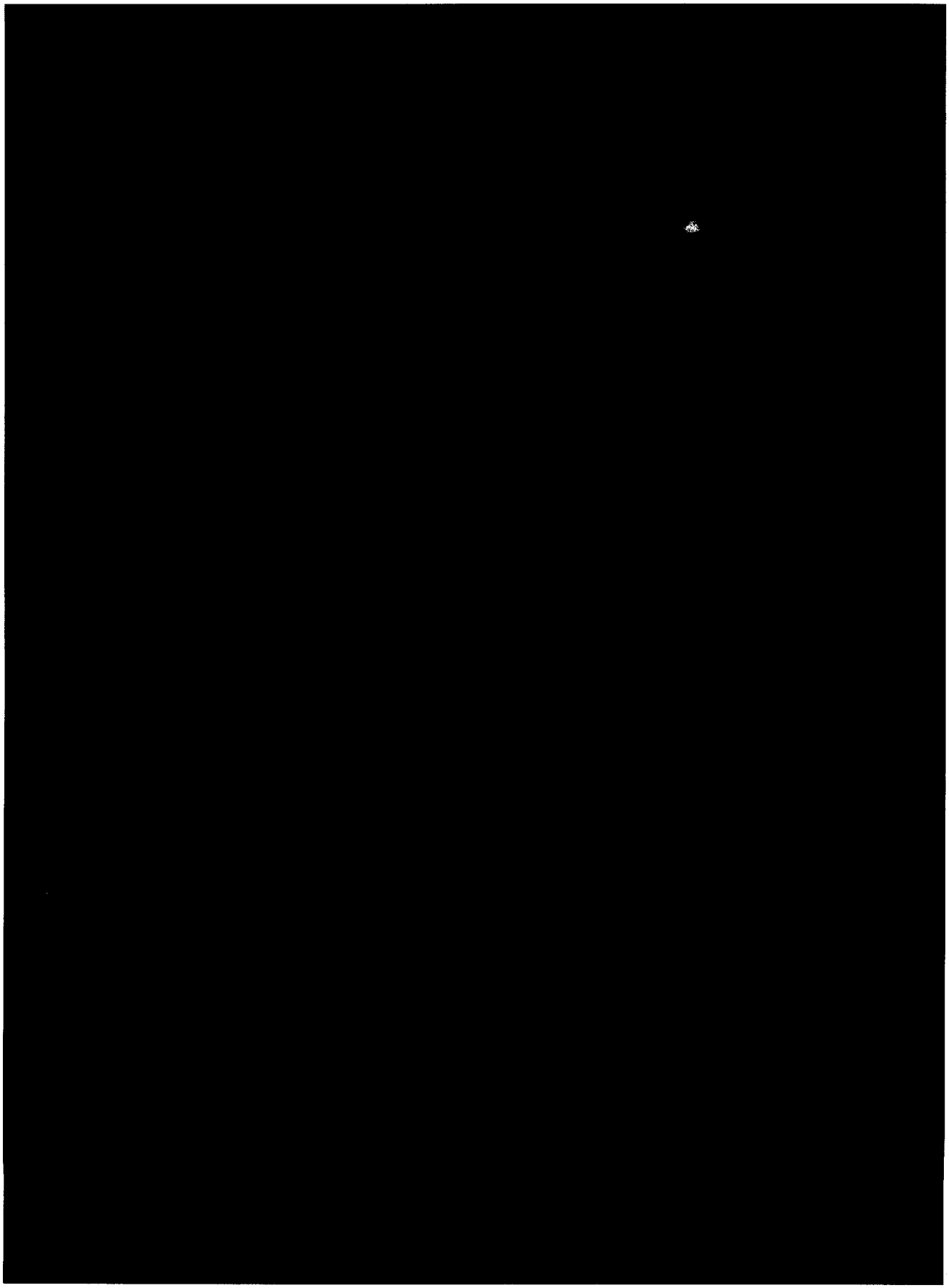












DHCS Divestiture Employee Roster

Information as of April 20, 2004

Location	Last Name	First Name	Job Title	Hire Date	Hrly/ Salary	FT/PT	Union Code
[redacted]							

Schedule C-1: Business Employees

Location	Last Name	First Name	Job Title	Hire Date	Hrly/ Salary	FT/PT	Union Code
[redacted]							

Schedule C-1: Business Employees

Location	Last Name	First Name	Job Title	Hire Date	Hrly/ Salary	FT/PT	Union Code
[redacted]							

Schedule C-1: Business Employees

Location	Last Name	First Name	Job Title	Hire Date	Hrly/ Salary	FT/PT	Union Code
[redacted]							

Schedule C-1: Business Employees

Location	Last Name	First Name	Job Title	Hire Date	Hrly/ Salary	FT/PT	Union Code
[redacted]							

Schedule C-1: Business Employees

Location	Last Name	First Name	Job Title	Hire Date	Hrly/ Salary	FT/PT	Union Code
[redacted]							

Schedule C-2(i)

Business Functions Provided by Employees and/or Contractors of Seller or Seller's Affiliates

1. General management
   a. Setting and implementation of corporate policies and procedures
   b. Centralized reporting and supervision of field operations
2. Business control
   a. Cost accounting and reporting
   b. Accounts payable and receivable
3. Finance
   a. Treasury functions
   b. Cash management
   c. Working capital
   d. Capital structure, including loans
4. Legal
   a. Corporate secretarial (books and records)
   b. Contract review
   c. Litigation support
5. Human resources
   a. HR support and recordkeeping
   b. Benefits administration
   c. Payroll
6. Engineering
   a. Technical support
   b. Environmental compliance and permitting support
   c. Management of large construction contracts
7. Other
   a. Information technology with respect to telephone service and e-mail
   b. Insurance program management and administration

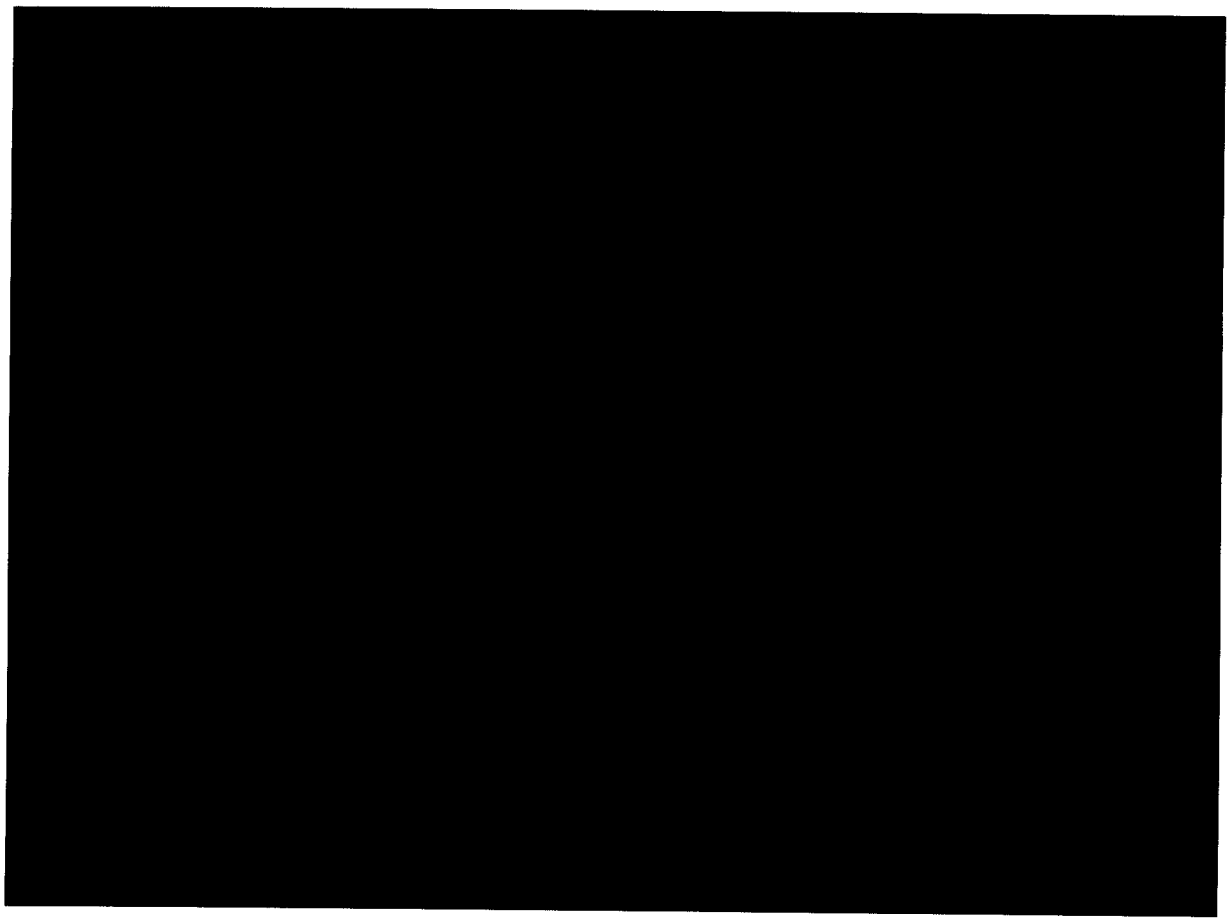
Schedule C-2(ii)

Plant Managers

1. Charles L. Abbott
2. Alan Murphy
3. Brian Kirk
4. Ken R. Stone
5. Sam Kumar
6. Kevin Brown
7. Dan Dennis
8. Mike Smedley

Schedule C-2(iii)

Stay On Agreements and Collective Bargaining Agreements



Schedule C-13

Employee Pension Benefit Plans subject to Code Section 412 or ERISA Section 302

None.

Schedule C-14

Employee Benefit Plans Matters

None.

Schedule C-15

Collective Bargaining Agreements and Other Labor Matters

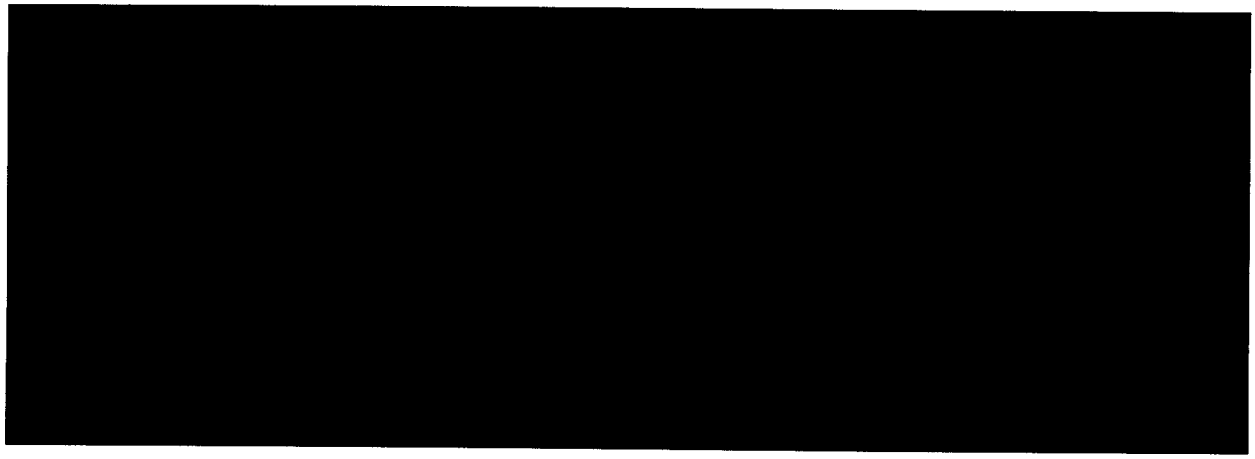


Exhibit D

CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AND NON-USE AGREEMENT

This Confidentiality and Non-Use Agreement (this "Agreement") is entered into as of the 7th day of August, 2003, by and between Trigen Energy Corporation, a Delaware corporation with its principal executive offices at 1177 West Loop South, Suite 900, Houston, Texas 77027 ("Trigen" or "Disclosing Party") and ThermalSource, LLC a Wisconsin limited liability corporation, with its principal executive offices at 828 North Broadway Street, Suite 302, Milwaukee, Wisconsin 53202 ("Receiving Party"). The parties hereto are sometimes referred to collectively herein as the "Parties" and individually as a "Party."

RECITALS

A. Whereas, Trigen is contemplating causing the divestiture by Trigen and/or various Trigen subsidiaries of their respective ownership interests in nine (9) district heating and cooling systems and related facilities in various locations in the U.S. (the "DHCS") and Receiving Party has expressed an interest in exploring a transaction concerning a prospective acquisition by Receiving Party of one or more of the DHCS (the "Proposed Transaction");

B. Whereas, in order to evaluate Receiving Party's interest in completing the Proposed Transaction, Disclosing Party will provide Receiving Party with certain non-public, confidential or proprietary information;

C. Whereas, Trigen is willing to disclose and Receiving Party is willing to receive such information exclusively for such purpose and in accordance with the terms hereof;

NOW, THEREFORE, Trigen and Receiving Party do hereby mutually agree as follows:

1. Definitions.

   a. "Confidential Information" shall mean all confidential or proprietary information or data, whether oral or written, recorded or in electronic format or in any other media whatsoever (including without limitation research, developmental, engineering, manufacturing, technical, marketing, sales, financial, operating, performance, cost, business and process information or data,

know-how, customer lists and customer information, computer programming and other software and software techniques) provided to the Receiving Party or its Representatives by the Disclosing Party (and/or any entities affiliated with the Disclosing Party) or its or their Representatives in connection with the Proposed Transaction (whether provided prior to or after the date of this Agreement). Without limiting the foregoing, all information or data contained in any data room (including, without limitation, any virtual data room) created with respect to the Proposed Transaction, shall be deemed to be Confidential Information for all purpose.

b. "Person" shall be broadly interpreted to include, without limitation, any corporation, company, partnership, other entity or individual.

c. "Representatives" shall mean as to any Person, its directors, officers, employees, agents and advisors (including, without limitation, financial advisors, attorneys, consultants and accountants).

2. Confidentiality and Non-Use. In consideration of the Disclosing Party providing the Confidential Information, the Receiving Party agrees as follows:

a. The Receiving Party shall hold confidential and not disclose to any Person, without the prior written consent of the Disclosing Party, all Confidential Information and any information about the Proposed Transaction, or the terms or conditions or any other facts relating thereto, including, without limitation, the fact that discussions are taking place with respect thereto or the status thereof, or the fact that Confidential Information has been made available to the Receiving Party or its Representatives; provided, however, that the Receiving Party may disclose such Confidential Information to its Representatives who are actively and directly participating in its evaluation of the Proposed Transaction or who otherwise need to know the Confidential Information for the purpose of evaluating the Proposed Transaction;

b. The Receiving Party shall cause all its Representatives to observe the terms of this Agreement and shall be responsible for any breach of the terms of this Agreement by it or its Representatives; and

c. Within five (5) business days after receipt of such request by the Disclosing Party, the Receiving Party shall:

(i) return to the Disclosing Party all Confidential Information delivered by the Disclosing Party or its Representatives; no copies, extracts or other reproduction shall be retained by the Receiving Party or its Representatives; and

(ii) destroy all copies of analyses, compilations, studies, or other documents, records or data prepared by the Receiving Party or its Representatives which contain, otherwise reflect, or are generated from the Confidential Information; and

(iii) provide certification from an authorized officer of the Receiving Party to the Disclosing Party that such Confidential Information has, in fact, been returned and all copies destroyed as provided herein.

3. Sole Purpose. In addition to the foregoing, the Receiving Party will not (nor will it permit its Representatives to) use the Confidential Information other than in connection with the Proposed Transaction. Without limiting the foregoing, Receiving Party acknowledges and agrees that it shall not use any Confidential Information in connection with or for the purposes of marketing to any DHCS customer or in connection with any solicitation of any DHCS customer or the pricing of its or its affiliates' goods or services. For a period of one (1) year from the date hereof, Receiving Party shall not employ, or engage as an independent contractor, or solicit for employment or engagement as an independent contractor, any person who is a DHCS or Disclosing Party employee or independent contractor, or who was, immediately prior to the date hereof, a DHCS or Disclosing Party employee or independent contractor.

4. No Press Releases. Neither Party shall issue any press release concerning the Proposed Transaction without the prior written consent of the other Party.

5. Exceptions to the Confidentiality and Non-Use Obligations. The obligations imposed by Section 2 hereof shall not apply, or shall cease to apply, to any Confidential Information if or when, but only to the extent that, such Confidential Information:

a. was known to the Receiving Party prior to the receipt of the Confidential Information, as evidenced by its written records; or

b. was, or becomes through no breach of the Receiving Party's obligations hereunder, known to the public; or

c. becomes known to the Receiving Party from sources, other than the Disclosing Party or its Representatives, not under any confidentiality obligation to Disclosing Party; or

d. is independently developed by the Receiving Party without reference to or use of the Confidential Information, as evidenced by the written records of the Receiving Party; or

e. has been authorized in writing by the Disclosing Party to be disclosed; and

f. it shall not be a breach of the confidentiality obligations hereof for a Receiving Party to disclose Confidential Information where, but only to the extent that, such disclosure is required by law or applicable legal process of a court of competent jurisdiction, provided in such case the Receiving Party shall (i) provide the Disclosing Party with a reasonable opportunity to protect such Confidential Information, (ii) give the earliest notice possible to the Disclosing Party that such disclosure is or may be required and (iii) cooperate in protecting such confidential or proprietary nature of the Confidential Information which must so be disclosed.

Each Party hereto specifically agrees that in the event part of the Confidential Information falls within one or more of the above exceptions, such exception (or exceptions) shall apply solely to that item of Confidential Information; however, even in such an event each Party agrees to keep secret and confidential the fact that it obtained such Confidential Information from the Disclosing Party and/or its designee(s). Confidential Information supplied pursuant to this Agreement shall not be deemed to be in the pubic domain or in the possession of the Receiving Party merely because it is embraced by general, non-specific disclosures in the public domain or general, non-specific information about the DHCS that is in the prior possession of the Receiving Party.

6. No Further Agreements Hereunder. Neither Trigen nor Receiving Party nor any parent, subsidiary or affiliate of either Party, shall be under any

obligation to enter into any further agreements with the other signatory hereto or its parents, subsidiaries or affiliates of any nature whatsoever as a result of this Agreement. Each Party hereto reserves the right, in its sole discretion, to decline and make, to retract or to reject at any time any proposal which has not yet become legally binding by execution of a written agreement between the Parties with respect thereto or with respect to any further agreements or business arrangements with the other Party hereto, its parents, subsidiaries or affiliates and to terminate all further discussions and negotiations.

7. No Representations and Warranties. The Disclosing Party and its Representatives are not making any representations or warranties, express or implied, of any kind to the Receiving Party with respect to the Confidential Information, including without limitation with respect to the accuracy or completeness thereof. Only those representations or warranties that are made in a definitive written agreement when, as, and if executed, and subject to such limitations and restrictions as may be specified in such definitive written agreement shall have any legal effect.

8. Termination; Duration of Obligations. Unless sooner terminated by mutual written agreement of the Parties hereto, this Agreement and the obligations hereunder shall terminate three (3) years from the date hereof.

9. Entire Agreement. This Agreement represents the entire understanding and agreement of the Parties and supersedes all prior or contemporaneous communications, agreements and understandings between the Parties relating to the subject matter hereof.

10. Waivers; Amendments; Assignment; Counterparts. This Agreement may not be modified, amended or waived except by a written instrument duly executed by both Parties. No failure or delay by either Party in exercising any right, power or privilege hereunder 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 right, power or privilege hereunder. This Agreement may not be assigned by either Party without the prior written consent of the other and shall be binding on, and inure to the benefit of, the respective successors of the Parties thereto. This Agreement may be signed in two or more counterpart originals, each of which shall constitute an original document.

11. Tax Shelter Disclosure Regulation. Notwithstanding anything to the contrary, each party to this Agreement (and each employee, representative, or other agent of each party to this Agreement for so long as they remain an employee, representative or agent) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement (the "Transactions") and all

materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment or tax structure; provided, however that such disclosure may not be made (a) until the earlier of (i) the date of the public announcement of discussions relating to the Transactions, (ii) the date of the public announcement of the Transactions, or (iii) the date of the execution of the agreement to enter into the Transactions (with or without conditions) and (b) to the extent required to be kept confidential to comply with any applicable securities laws. Each party shall have the unlimited ability to consult with any tax advisor (including a tax advisor independent from all other entities involved in the transaction) regarding the tax treatment or tax structure of the Transactions.

12. Governing Law, Consent to Jurisdiction and Disputes. This Agreement is made subject to, and shall be governed by and construed in accordance with the substantive laws of the State of Texas, without regard to the conflict-of-laws principles or rules of the State of Texas. ANY AND ALL DISPUTES, ACTIONS, SUITS AND OTHER PROCEEDINGS BROUGHT UNDER OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN A FEDERAL OR STATE COURT LOCATED WITHIN THE STATE OF TEXAS, AND EACH PARTY HEREBY SUBMITS TO THE PERSONAL JURISDICTION OF SUCH COURTS. In the event of any litigation hereunder, the substantially prevailing Party shall be entitled to costs and reasonable attorneys' fees. THE PARTIES HEREBY WAIVE THEIR RIGHT TO TRIAL BY JURY.

13. Remedies. Without prejudice to the rights and remedies otherwise available to either Party, each Party shall be entitled to seek equitable relief by way of injunction or otherwise if the Receiving Party or any of its Representatives breach or indicate they will breach any of the provisions of this Agreement and the Receiving Party shall not plead in defense thereto that there would be an adequate remedy at law. In no event shall either Party hereto be liable to the other for any special, incidental, consequential, or punitive damages, whether arising in tort, contract, indemnity, strict liability or otherwise, without the requirement of posting a bond.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its respective, fully authorized representatives as of the date first written above.

TRIGEN ENERGY CORPORATION	**THERMALSOURCE**
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

Exhibit E

SERVICE MARK LICENSE

THIS SERVICE MARK LICENSE (this "License") dated as of _____, 2004 (the "Effective Date") is by and between Trigen Energy Corporation, a Delaware corporation, ("Licensor"), and Thermal North America, Inc., a Delaware ("Licensee"). Each of Licensor and Licensee are sometimes referred to herein as a "party" and collectively as the "parties".

Recitals

Licensor and Licensee are parties to a purchase and sale agreement dated as of April 30, 2004 (the "Purchase and Sale Agreement"), pursuant to which Licensor is selling and conveying to Licensee, and Licensee is purchasing and receiving from Licensor, the Interests as defined in the Purchase and Sale Agreement, such Interests including the "DHCS Business" as hereinafter defined. Any capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase and Sale Agreement.

Licensor owns the service marks set forth in Schedule 1 to this License, which is attached hereto and hereby incorporated by reference (the "Marks"). Licensor is willing to grant Licensee an exclusive license to use the Marks within limited geographic areas on the following terms and conditions, exclusively in connection with the DHCS Business.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
TERM OF LICENSE

The term of this License shall be ten (10) years beginning on the Effective Date (the "Term"). This License will automatically terminate without further action on behalf of either party upon the expiration of the Term.

ARTICLE II
GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions set forth below, Licensor hereby grants Licensee the exclusive, non-transferable, royalty-free right and license to use the Marks in connection with the DHCS Business within the "Geographic Areas" designated on Schedule 2 to this License, which is attached hereto and hereby incorporated by reference. Licensee may not use the Marks in connection with any goods

or services or with any advertising or promotional materials not exclusively associated with the DHCS Business. The license granted herein shall automatically terminate upon the expiration or termination of this License without further action on the part of either party.

For the purpose of this License, the term "DHCS Business" shall mean the independent district heating and cooling business and, with respect to Philadelphia, Pennsylvania, Trenton, New Jersey and St. Louis, Missouri, also the independent power cogeneration industry, in each case related and limited to:

(i) existing plants and distribution piping loops;

(ii) new, and expansions of existing, plant(s) and distribution piping loop(s), provided that in each case such expansion(s) and new plant(s) and loop(s) serve multiple district heating and/or cooling customers and, in the case of expansions of existing plant(s) or new plant(s), the majority of the energy generated by the expansion(s) or new plant(s) serves multiple customers' thermal (heating and cooling) loads; and

(iii) leased boiler or chilling equipment located in customer facilities which are connected to the distribution piping loop(s) referred to in (i) and (ii) above.

The term "existing" shall mean in existence as of the Effective Date and included in the transaction contemplated by the Purchase and Sale Agreement, and the term "multiple" shall mean not less than five (5). For the avoidance of doubt, by way of illustration only, the term "DHCS Business" shall not include any CHP facility (other than existing plant(s)) if the majority of the energy generated by such facility does not serve multiple customers' thermal (heating and cooling) loads within the Geographic Areas.

2.2 Quality Control. Licensee agrees that all services sold by Licensee under the Marks shall be rendered in a first rate, professional manner. Licensee acknowledges and agrees that Licensor has the right to and will monitor the quality of Licensee's services. Upon written request from Licensor, Licensee shall provide to Licensor a reasonable written description of the services rendered by Licensee and the manner in which the Marks are used in connection with such services so that Licensor may monitor the quality of such services and otherwise protect and maintain its rights in the Marks.

2.3 Licensor's Right to Approve Use of the Marks. Licensee may not change the form of the Marks or use the Marks in any manner that would reflect adversely upon Licensor. Upon written request from Licensor, Licensee shall provide reasonable samples of materials used or intended for use by Licensee that incorporate the Marks, so that Licensor may monitor Licensee's use of the Marks. Licensor reserves the right to disapprove such materials if Licensor determines that the Marks are improperly used therein. Licensor shall have the discretion to determine the propriety of any use of the Marks. If Licensee continues to use the Marks in an improper or objectionable manner

after receiving written notice from Licensor that such usage constitutes improper usage, Licensor may terminate this License upon thirty (30) days written notice to Licensee.

2.4 Notices. Licensee agrees that where reasonable and practicable, any use of the Marks shall be accompanied by the symbol ® if the Mark so used is federally registered or the symbol ^{SM} if the Mark so used is not federally registered.

ARTICLE III
OWNERSHIP OF MARKS

3.1 Ownership. Licensor represents and warrants that it owns all right, title and interest in and to the Marks and that it has the right to grant the license conveyed herein. Licensee shall not impugn, challenge or assist in any challenge to the validity of the Marks, any registrations thereof or the ownership thereof. Licensor shall be solely responsible for taking such actions as it deems appropriate to obtain and maintain trademark, service mark or copyright registration for its Marks. All uses of or references to the Marks shall inure to the benefit of the Licensor, and all rights with respect to the Marks not specifically granted in this License shall be and are hereby reserved to the Licensor, including the right to use the Marks in connection with businesses other than the DHCS Business.

3.2 Enforcement. In the event the Marks are infringed, Licensor shall, within a reasonable time after notice thereof, make attempts to resolve the problem, and has the right, but not the obligation, to commence and prosecute at Licensor's expense, all legal proceedings necessary to reasonably protect the Marks and stop such infringement, and shall be entitled to retain all recoveries had therein. In the event that Licensor does not commence and prosecute an infringer within a reasonable period of time, Licensee shall have the right but not the obligation to commence and prosecute at Licensee's expense, all legal proceedings necessary to reasonably protect the Mark and stop such infringement. Licensor agrees to make all reasonable efforts to assist Licensee therewith, including being joined as a party to such a suit and providing such evidence and/or expert assistance as Licensor may have within its control. In the event such a suit by Licensee results in an assessment of damages against the infringer, Licensor shall have the right to receive damages in the amount of any direct costs incurred by Licensor in connection with its participation and assistance in such prosecution.

3.3 Disclaimer of Warranties. Other than the express warranties set forth herein, the Marks are licensed hereunder "as is" without any warranties, express or implied. Without limitation of this disclaimer, Licensor specifically does not warrant that use of the Marks will enable Licensee to obtain increased revenues from the rendering of DHCS Business or that use of the Marks will not cause any loss, damage, or injury.

3.4 Indemnification by Licensee. Licensee agrees to be solely responsible for, and to defend, indemnify, and hold Licensor harmless against any and all claims, actions, suits, liabilities, demands, expenses (including reasonable attorneys' fees), losses, costs,

or damages asserted against or incurred by Licensor arising out of or in connection with (i) the use of the Marks by Licensee; (ii) the rendering of services by Licensee; or (iii) any breach of Licensee's obligations hereunder.

3.5 Limitation of Liability. **NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY IN THIS LICENSE, LICENSOR AND LICENSEE AGREE THAT THE RECOVERY BY EITHER PARTY OF ANY DAMAGES SUFFERED OR INCURRED BY IT AS A RESULT OF ANY BREACH BY THE OTHER PARTY OF ANY OF ITS OBLIGATIONS UNDER THIS LICENSE SHALL BE LIMITED TO THE ACTUAL DAMAGES SUFFERED OR INCURRED BY THE NON-BREACHING PARTY AS A RESULT OF THE BREACH BY THE BREACHING PARTY OF ITS OBLIGATIONS HEREUNDER AND IN NO EVENT SHALL THE BREACHING PARTY BE LIABLE TO THE NON-BREACHING PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES OR LOST OR DELAYED GENERATION) SUFFERED OR INCURRED BY THE NON-BREACHING PARTY AS A RESULT OF THE BREACH BY THE BREACHING PARTY OF ANY OF ITS OBLIGATIONS HEREUNDER.**

ARTICLE IV
TERMINATION AND REMEDIES

4.1 Events of Default. Any breach by Licensee of any term or provision under this License or the Purchase and Sale Agreement, which continues for a period of thirty (30) days after notice thereof by Licensor to Licensee; shall constitute an Event of Default.

4.2 Termination Upon an Event of Default. Without limitation of other remedies available to Licensor at law or equity, upon the occurrence of an Event of Default, Licensor may, at its option, terminate this License.

4.3 Discontinuation of Use. Upon the expiration or termination of this License, all rights and licenses granted to Licensee hereunder shall automatically and immediately terminate. Following the expiration or termination of this License, Licensee shall immediately discontinue all uses of the Marks and any words confusingly similar thereto. Specifically, Licensee shall (i) cease using the Marks or any words confusingly similar thereto in connection with its business activities, or the advertising and promotion thereof; and (ii) shall within a reasonable period of time eradicate the Marks from all of its assets, including but not limited to physical assets, but with the exception of manhole covers and other physical assets (a) that are not substantially in the public view and (b) with respect to which the obligation to remove the Marks would be unduly burdensome.

4.4 Injunctive Relief. The parties to this License acknowledge and agree that damages may be insufficient to compensate Licensor in the event that any of the terms or provisions of this License are breached. Therefore, in the event of such a breach of this License that constitutes a violation of Licensor's rights under trademark law or that otherwise causes harm to the reputation of Licensor, Licensor may seek injunctive relief and specific performance of the terms hereof, and Licensor shall not be required to show

any actual damage, or post a bond or other security to obtain such relief, and Licensor shall be entitled to recover reasonable costs and attorneys' fees incurred in bringing suit to obtain such relief. The remedies set forth in this provision are cumulative and not exclusive, and do not act as a limitation upon the other remedies available to Licensor at law or equity, including, without limitation, the collection of damages.

ARTICLE V
GENERAL PROVISIONS

5.1 Notices. All notices, demands, and requests under this License shall be in writing and shall be delivered to the following addresses, or to such other address as a party may designate by notice hereunder: (i) by hand; (ii) by private courier; (iii) by expedited delivery service; or (iv) by facsimile.

If to Licensor:

Trigen Energy Corporation
1990 Post Oak Boulevard, Suite 1500
Houston, Texas 77056
Attention: General Counsel
Facsimile: (713) 599-2859

If to Licensee:

Thermal North America, Inc.
[redacted]
600 Atlantic Avenue
Boston MA 02210
Attention: Michael S. Pradko
Fax # 617 878 6989

Notices shall be deemed communicated on the day they are sent, unless the sender receives notice that delivery was not effectuated.

5.2 Governing Law. **THIS LICENSE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, ENFORCED, AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, WITHOUT REGARD TO CONFLICTS OF LAWS RULES THAT REQUIRE OR PERMIT THE APPLICATIONS OF THE LAWS OF ANOTHER JURISDICTION.** The parties agree that any action, suit or proceeding based upon any matter, claim or controversy arising hereunder or related hereto shall be brought exclusively in the federal or state courts in the State of New York. The parties consent to the jurisdiction of such courts, and waive any objections to the jurisdiction or venue of such courts.

5.3 Successors and Assigns. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned or transferred by either Party without

the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Any assignment in contravention of the foregoing sentence shall be null and void and without legal effect on the rights and obligations of the Parties hereunder. Notwithstanding the foregoing, but subject to all applicable Laws, (i) Licensee or its permitted assignee may assign, transfer, pledge or otherwise dispose of (as security) all of its rights and interests hereunder to a trustee, lending institution or other party for purposes of leasing, financing or refinancing the Companies, Facilities, Real Property or any other assets acquired hereunder, and (ii) upon written notice to Licensor, Licensee or its permitted assignee may assign, transfer, pledge or otherwise dispose of all of its rights and obligations hereunder to one or more affiliates of Licensee so long as such affiliates make the representations and warranties set forth herein and otherwise agree to fulfill Licensee's obligations hereunder in writing, in which case such assignment shall relieve or discharge Licensee in full from any of its obligations hereunder. Each party agrees, at the assigning party's expense, to execute and deliver such documents as may be reasonably necessary to accomplish any such assignment, transfer, pledge or other disposition of rights and interests hereunder so long as the non-assigning party's rights under this License are not thereby materially altered, amended, diminished or otherwise impaired.

5.4 No Waiver. The failure of either party to insist upon strict performance of any of the terms or provisions of this License, or the exercise of any option, right or remedy contained herein, shall not be construed as a waiver of any future application of such term, provision, option, right or remedy, and such term, provision, option, right or remedy shall continue and remain in full force and effect.

5.5 Entire Agreement. The terms and provisions of this License constitute the entire agreement between the parties with respect to the Licensee's use of the Marks supersede all previous communications, negotiations, proposals, representations, conditions or agreements, whether written or oral, relating thereto. This License may not be modified or amended except in a writing signed by a duly authorized officer or representative of each party.

5.6 Severability. If any term or provision of this License is declared void or unenforceable in a particular situation, by any judicial or administrative authority, this declaration shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation.

* * * * * * * * * * *

IN WITNESS WHEREOF, the parties have caused this License to be executed by their duly authorized officers as of the date first written above.

TRIGEN ENERGY CORPORATION INC.	THERMAL NORTH AMERICA,
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

SCHEDULE 1 TO SERVICE MARK LICENSE

Licensed Marks

U.S. Registration No. 1, 847,891

SCHEDULE 2 TO SERVICE MARK LICENSE

Geographic Areas

The term "Geographic Areas" means the greater metropolitan areas of the following cities:

Baltimore, MD

Boston, MA

Kansas City, MO

Oklahoma City, OK

Philadelphia, PA

St. Louis, MO

Trenton, NJ

Tulsa, OK

Exhibit F

PATENT LICENSE

THIS PATENT LICENSE (this "License"), dated as of _____, 2004 (the "Effective Date"), is by and between Trigen Energy Corporation, a Delaware corporation, ("Licensor"), and Thermal North America, Inc., a Delaware corporation ("Licensee"). Each of Licensor and Licensee are sometimes referred to herein as a "party" and collectively as the "parties".

Recitals

Licensor and Licensee are parties to a purchase and sale agreement dated as of April 30, 2004 (the "Purchase and Sale Agreement"), pursuant to which Licensor is selling and conveying to Licensee, and Licensee is purchasing and receiving from Licensor, the Interests (as defined in the Purchase and Sale Agreement), such Interests including the "DHCS Business" as hereinafter defined. Licensor owns U.S. Patent No. 5,391,925 entitled "Prime Mover Driven Compressor/Chiller With Motor on Common Shaft for Large Cooling Systems" (the "Licensed Patent"). Licensor is willing to grant Licensee a license to the Licensed Patent on the following terms and conditions. Any capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase and Sale Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
TERM OF LICENSE

The term of this License shall be the term of the Licensed Patent (the "Term"). This License shall automatically terminate upon the expiration of the Term.

ARTICLE II
GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions set forth below, Licensor hereby grants Licensee the exclusive, non-transferable (except as set forth in Section 5.3, below), non-sublicensable, royalty-free right and license under the Licensed Patent to use, repair, maintain and replace, and otherwise fully exploit, in accordance with the description contained in the Licensed Patent, those certain trigeneration machines existing on the date hereof and included in the transaction contemplated by the Purchase and Sale Agreement (the "Existing Machines"), exclusively in connection with the DHCS Business in the greater metropolitan area of Tulsa, Oklahoma and Oklahoma City, Oklahoma; provided, however, that such use, repair, maintenance or replacement

shall not result in the number of trigeneration machines in Licensee's control exceeding the number of Existing Machines. Licensee may not use the Licensed Patent in connection with any goods or services, or with any advertising or promotional materials, not exclusively associated with the DHCS Business in Tulsa, Oklahoma or Oklahoma City, Oklahoma. The license granted herein shall automatically terminate upon the expiration or termination of this License without further action on the part of either party.

2.2 Definition of DHCS Business. For the purpose of this License, the term "DHCS Business" shall mean the operation of the plant(s) and distribution piping loop(s) served by the Existing Machines as of the date of this License and located in Tulsa, Oklahoma and Oklahoma City, Oklahoma, in connection with the district heating and cooling business and the cogeneration business.

ARTICLE III
OWNERSHIP OF PATENT

3.1 Ownership. Licensor represents and warrants that it owns all right, title and interest in and to the Licensed Patent and that it has the right to grant the license conveyed herein. Licensor shall be solely responsible for taking such actions as it deems appropriate to obtain and maintain the Licensed Patent, including payment of U.S. Patent and Trademark Office maintenance fees. All rights with respect to the Licensed Patent not specifically granted in this License shall be and are hereby reserved to the Licensor, including the right to use the Licensed Patent in connection with businesses other than the DHCS Business.

3.2 Enforcement. Licensor in its own name, or jointly with Licensee if required by law, will bring and will diligently prosecute such suits for infringement of the Licensed Patent as may be reasonably necessary to prevent infringers from materially injuring the business of Licensee under the Licensed Patent and/or as reasonably requested by Licensee in writing. Licensee shall provide reasonable assistance to Licensor in Licensor's efforts under this provision, including providing such evidence and/or expert testimony as Licensee may have within its control. Notwithstanding this provision, Licensor shall not be obligated to bring more than one such suit at a time.

3.3 Disclaimer of Warranties. Other than the express warranties set forth herein, the Licensed Patent is licensed hereunder "as is" without any warranties, express or implied. Specifically, nothing in this License shall be construed as:

a. a warranty or representation by Licensor that use of the Licensed Patent will enable Licensee to obtain increased revenues from the rendering of DHCS Business; or

b. a warranty or representation by Licensor that use of the Licensed Patent will not cause any loss, damage, or injury; or

c. a warranty or representation by Licensor as to the validity or scope of the Licensed Patent; or

d. a warranty or representation that anything made, used, sold, or otherwise disposed of under any license granted in this License is or will be free from infringement of patents of third parties; or

e. granting by implication, estoppel, or otherwise, any licenses or rights under patents of Licensor other than the Licensed Patent, regardless of whether such other patents are dominant of or subordinate to any Licensed Patent.

3.4 Indemnification by Licensee. Licensee agrees to be solely responsible for, and to defend, indemnify, and hold Licensor harmless against any and all claims, actions, suits, liabilities, demands, expenses (including reasonable attorneys' fees), losses, costs, or damages asserted against or incurred by Licensor arising out of or in connection with (i) the use of the Licensed Patent by Licensee, (ii) the rendering of services by Licensee; or (iii) any breach of Licensee's obligations hereunder.

3.5 Limitation of Liability. **NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY IN THIS LICENSE, LICENSOR AND LICENSEE AGREE THAT THE RECOVERY BY EITHER PARTY OF ANY DAMAGES SUFFERED OR INCURRED BY IT AS A RESULT OF ANY BREACH BY THE OTHER PARTY OF ANY OF ITS OBLIGATIONS UNDER THIS LICENSE SHALL BE LIMITED TO THE ACTUAL DAMAGES SUFFERED OR INCURRED BY THE NON-BREACHING PARTY AS A RESULT OF THE BREACH BY THE BREACHING PARTY OF ITS OBLIGATIONS HEREUNDER AND IN NO EVENT SHALL THE BREACHING PARTY BE LIABLE TO THE NON-BREACHING PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES OR LOST OR DELAYED GENERATION) SUFFERED OR INCURRED BY THE NON-BREACHING PARTY AS A RESULT OF THE BREACH BY THE BREACHING PARTY OF ANY OF ITS OBLIGATIONS HEREUNDER.**

ARTICLE IV
TERMINATION AND REMEDIES

4.1 Events of Default. Any breach by Licensee of any term or provision under this License or the Purchase and Sale Agreement, which continues for a period of thirty (30) days after notice thereof by Licensor to Licensee; shall constitute an Event of Default.

4.2 Termination Upon an Event of Default. Without limitation of other remedies available to Licensor at law or equity, upon the occurrence of an Event of Default, Licensor may, at its option, terminate this License.

4.3 Discontinuation of Use. Upon the termination of this License, all rights and licenses granted to Licensee hereunder shall automatically and immediately

terminate. Following the termination of this License, Licensee shall immediately discontinue all uses of the Licensed Patent and Existing Machines. Specifically, Licensee shall (i) cease using the Licensed Patent and Existing Machines in connection with its business activities, or the advertising and promotion thereof; and (ii) shall eradicate the Licensed Patent and Existing Machines from all of its assets, including but not limited to physical assets.

4.4 Injunctive Relief. The parties to this License acknowledge and agree that damages may be insufficient to compensate Licensor in the event that any of the terms or provisions of this License are breached. Therefore, in the event of such a breach of this License, Licensor may seek injunctive relief and specific performance of the terms hereof, and Licensor shall not be required to show any actual damage, or post a bond or other security to obtain such relief, and Licensor shall be entitled to recover reasonable costs and attorneys' fees incurred in bringing suit to obtain such relief. The remedies set forth in this provision are cumulative and not exclusive, and do not act as a limitation upon the other remedies available to Licensor at law or equity, including, without limitation, the collection of damages.

ARTICLE V
GENERAL PROVISIONS

5.1 Notices. All notices, demands, and requests under this License shall be in writing and shall be delivered to the following addresses, or to such other address as a party may designate by notice hereunder: (i) by hand; (ii) by private courier; (iii) by expedited delivery service; or (iv) by facsimile.

If to Licensor:

Trigen Energy Corporation
1990 Post Oak Blvd., Suite 1500
Houston, Texas 77056
Attention: General Counsel
Facsimile: (713) 599-2859

If to Licensee:

Thermal N.A.
[redacted]
600 Atlantic Avenue
Boston MA 02210
Attention: Michael S. Pradko
Fax # 617 878 6989

Notices shall be deemed communicated on the day they are sent, unless the sender receives notice that delivery was not effectuated.

5.2 Governing Law. **THIS LICENSE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE**

GOVERNED BY, ENFORCED, AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, WITHOUT REGARD TO CONFLICTS OF LAWS RULES THAT REQUIRE OR PERMIT THE APPLICATIONS OF THE LAWS OF ANOTHER JURISDICTION. The parties agree that any action, suit or proceeding based upon any matter, claim or controversy arising hereunder or related hereto shall be brought exclusively in the federal or state courts in the State of New York. The parties consent to the jurisdiction of such courts, and waive any objections to the jurisdiction or venue of such courts.

5.3 Successors and Assigns. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned or transferred by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed provided, however, that the Licensee may assign and transfer the grant of rights under this License as part of the sale or transfer of the Existing Machines to any third party. Any assignment in contravention of the foregoing sentence shall be null and void and without legal effect on the rights and obligations of the Parties hereunder. Notwithstanding the foregoing, but subject to all applicable Laws, (i) Licensee or its permitted assignee may assign, transfer, pledge or otherwise dispose of (as security) all of its rights and interests hereunder to a trustee, lending institution or other party for purposes of leasing, financing or refinancing the Companies, Facilities, Real Property or any other assets acquired hereunder, and (ii) upon written notice to Licensor, Licensee or its permitted assignee may assign, transfer, pledge or otherwise dispose of all of its rights and obligations hereunder to one or more affiliates of Licensee so long as such affiliates make the representations and warranties set forth herein and otherwise agree to fulfill Licensee's obligations hereunder in writing, in which case such assignment shall relieve or discharge Licensee in full from any of its obligations hereunder. Each party agrees, at the assigning party's expense, to execute and deliver such documents as may be reasonably necessary to accomplish any such assignment, transfer, pledge or other disposition of rights and interests hereunder so long as the non-assigning party's rights under this License are not thereby materially altered, amended, diminished or otherwise impaired.

5.4 No Waiver. The failure of either party to insist upon strict performance of any of the terms or provisions of this License, or the exercise of any option, right or remedy contained herein, shall not be construed as a waiver of any future application of such term, provision, option, right or remedy, and such term, provision, option, right or remedy shall continue and remain in full force and effect.

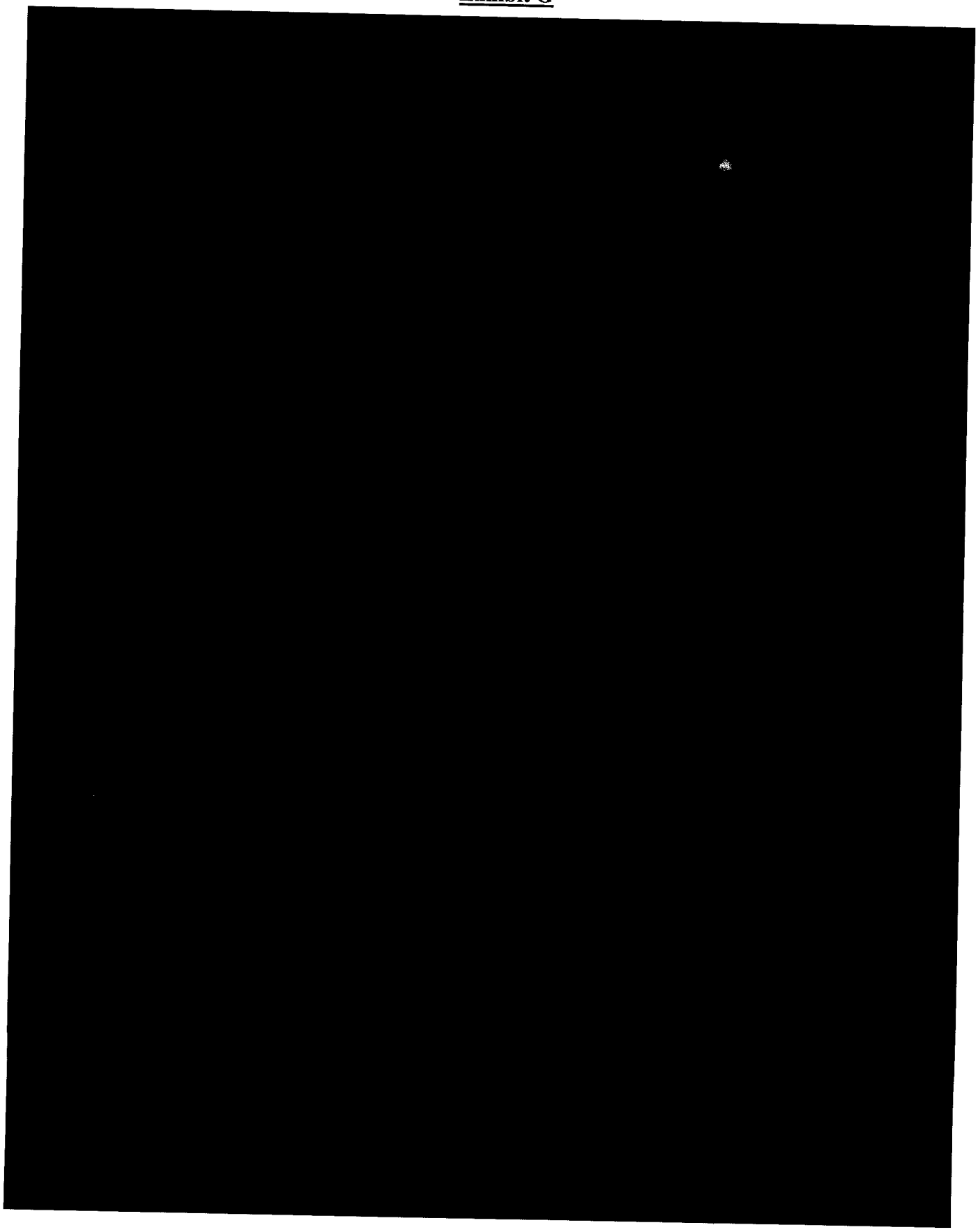
5.5 Entire Agreement. The terms and provisions of this License constitute the entire agreement between the parties with respect to the Licensee's use of the Licensed Patent and Existing Machines and supersede all previous communications, negotiations, proposals, representations, conditions or agreements, whether written or oral, relating thereto. This License may not be modified or amended except in a writing signed by a duly authorized officer or representative of each party.

5.6 Severability. If any term or provision of this License is declared void or unenforceable in a particular situation, by any judicial or administrative authority, this declaration shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation.

IN WITNESS WHEREOF, the parties have caused this License to be executed by their duly authorized officers as of the date first written above.

TRIGEN ENERGY CORPORATION	THERMAL NORTH MERICA,INC.
By: _____	By: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____

Exhibit G



[redacted]

Very truly yours,

Signed: _____

Title:_____

ENSR Corporation

ACCEPTED:

Signature:_____

Name:_____

Title:_____

Company:_____

Date:_____

Exhibit I

ENVIRONMENTAL POLICY

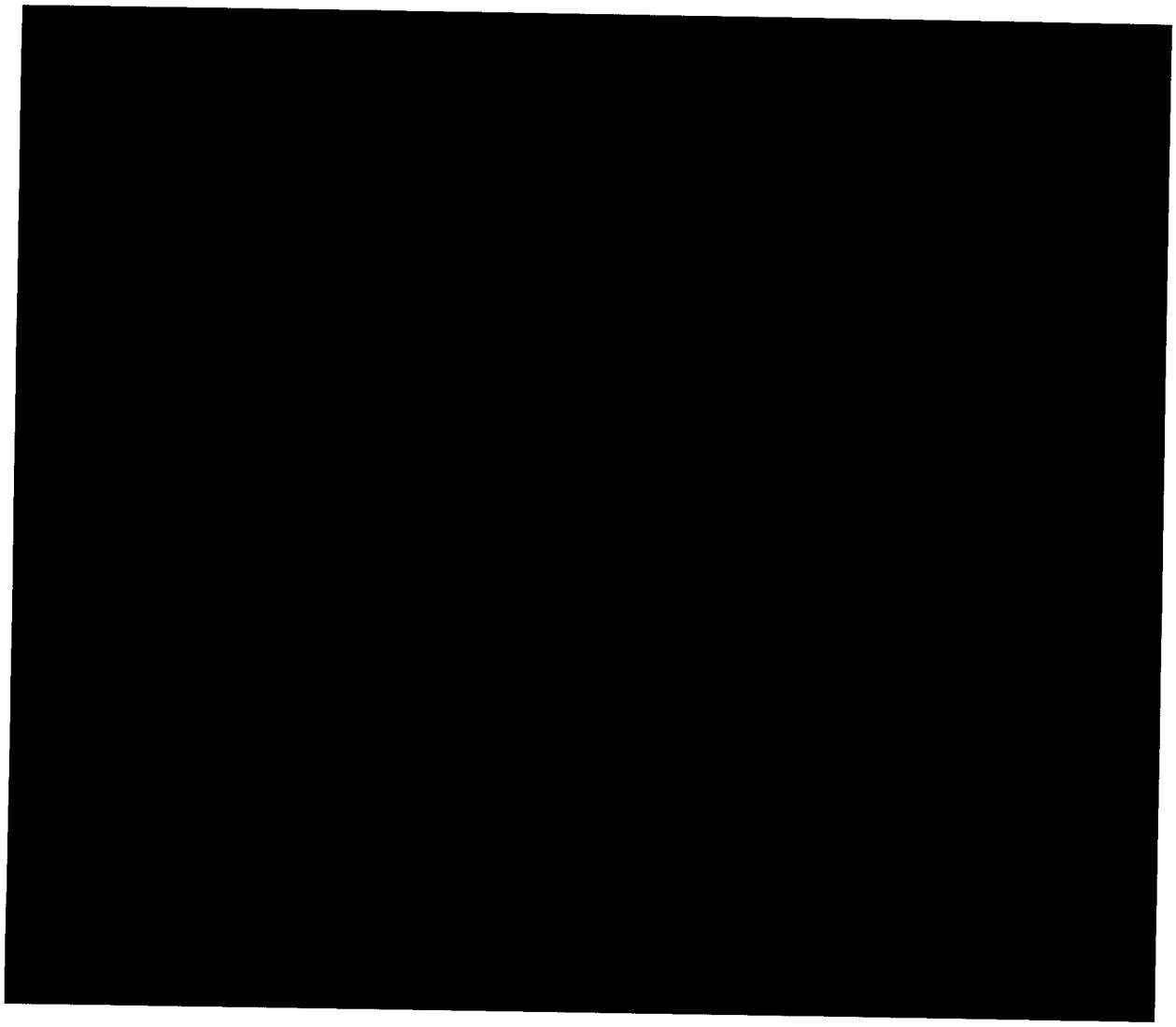
The Parties' mutual understanding with respect to terms of the Environmental Policy is as follows:

1) Buyer and Seller shall work jointly to seek to modify the terms of the Environmental Policy as described in the Indication provided by AIG Environmental to Marsh USA, dated April 29, 2004, in order to conform such Environmental Policy to the Parties' expectations as described by the Agreement and herein.

2) The Environmental Policy shall be selected from the Schedule II Premium Options on the indication dated April 29, 2004. Such Policy shall be for at least a [redacted] term, with an SIR of no more than [redacted], and a coverage section aggregate limit of no less than [redacted]

3) The net cost to Buyer, following the purchase of the Environmental Policy by Buyer and reimbursement by Seller, shall be [redacted] of the premium for a policy having a coverage section aggregate limit of [redacted] and SIR of [redacted] The premium for a policy that fits this description is [redacted] and is identified as Option #9 in the Indication. An example follows:

[redacted]



AIG Environmental®
A Division of American International Companies®

675 BERING DRIVE
SUITE 600
HOUSTON, TEXAS 77057
Tel: 713-268-8726
Fax: 713-268-8766
CHRISTI.GAY@AIG.COM

April 29, 2004

Jerry Jones
MARSH USA, INC.
1000 MAIN ST SUITE 3000
HOUSTON, TX 77002

Phone: 713-276-8768
Fax: 713-276-8766
Email: Jerry.d.Jones@marsh.com

RE: THERMAL NORTH AMERICA, INC.

TBD
TBD, XX 77057

POLLUTION LEGAL LIABILITY SELECT (PLL Select®)

Dear Jerry:

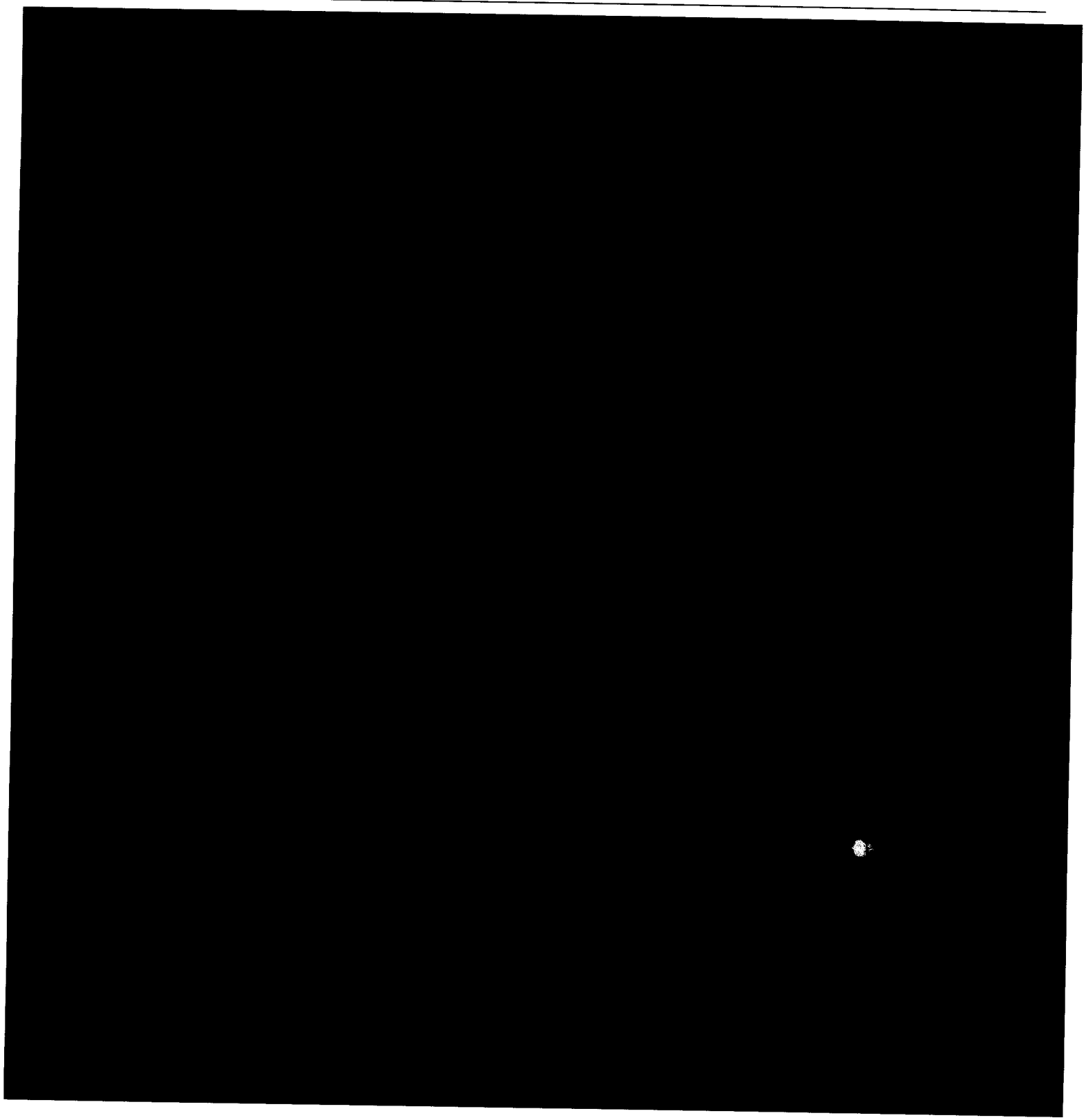
We are pleased to offer the following **PLL Select** premium indication for the above-captioned account for the location(s) listed below in Section IV. Coverage is offered using the AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO., Form #76391 (07/00). *Coverage will only be offered for those coverage sections listed below in Section II.*

SECTION I - Coverages:

1. The following Coverage Sections can be offered:

Coverage A-	**ON-SITE CLEAN-UP OF PRE-EXISTING CONDITIONS**
Coverage B-	**ON-SITE CLEAN-UP OF NEW CONDITIONS**
Coverage C-	**THIRD-PARTY CLAIMS FOR ON-SITE BODILY INJURY AND PROPERTY DAMAGE**
Coverage D-	**THIRD-PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM PRE-EXISTING CONDITIONS**
Coverage E-	**THIRD-PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM NEW CONDITIONS**
Coverage F-	**THIRD-PARTY CLAIMS FOR OFF-SITE BODILY INJURY AND PROPERTY DAMAGE**
Coverage G-	**THIRD-PARTY CLAIMS FOR ON-SITE BODILY INJURY, PROPERTY DAMAGE OR CLEAN-UP COSTS - NON-OWNED LOCATIONS**
Coverage H-	**THIRD-PARTY CLAIMS FOR OFF-SITE BODILY INJURY, PROPERTY DAMAGE OR CLEAN-UP COSTS - NON-OWNED LOCATIONS**
Coverage I-	**POLLUTION CONDITIONS RESULTING FROM TRANSPORTED CARGO**
Coverage J-	**BUSINESS INTERRUPTION COVERAGE - ACTUAL LOSS OR RENTAL VALUE**

SECTION II - Premium Options for Coverages, Limits, Deductibles and Terms:



The Premium amount(s) stated above does not include the premium for Terrorism Risk Insurance Act Coverage. Please see the attached Disclosure Statement regarding Terrorism Risk Insurance Act Coverage and the premium for such coverage. In the event that you choose to purchase Terrorism Risk Insurance Act Coverage along with one of the options above, the total premium shall be the premium shown above for the option chosen plus the Terrorism Risk Insurance Act Coverage premium shown on the attached Disclosure Statement for that option.

* As per Section **V. LIMITS OF COVERAGE; DEDUCTIBLE**, Paragraph **D. Maximum for all Business Interruption.**

For multi-year policies, the limit of liability stated in the chart above is shared over the policy term indicated. The limit of liability is not an annual limit of liability and is therefore not reinstated each year within the policy term.

SECTION III - Additional Policy Information:

Policy Period:	From: April 1, 2004 To: TBD
Retroactive Date:	None
Continuity Date:	Policy Inception Date

Additional Information:

All manuscript endorsements listed in Section V are subject to final legal approval.

SECTION IV - Insured Property(s):

See attached Schedule of **Insured Properties**

SECTION V - Policy Form Modifications:

The AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO., Form #76391 (07/00) Form will be modified as follows:

- Notice of Loss/Notice of Claim, Form#CI1141 (09/00)
- War Exclusion Endorsement, Form#79098 (12/01)
- Terrorism Excl W/Cert Acts Exception Purchased End, Form#81270 (12/02)
- Multiple Coverages Aggregate Limit Endorsement, Form#83260 (11/03)
- AISLIC PLS Dec, Form#75321 (07/00)
- SIR Layer (Maintenance), Form#72323 (07/00)
  Opt 5-9, 4x SIR chosen, then 250K Maintenance
- Schedule of Insured Contracts, Form#72320 (07/00)
  PSA between Thermal North and Trigen
- Joint Defense Endorse, Form#74672 (07/00)
- Named Insured Endt, Form#78791 (09/01)
  NI's TBD based on final PSA & binding instructions
- Self-Insured Retention Endorse, Form#72319 (07/00)
  If Option 1-4 is chosen
- Arbitration Deletion Endt, Form#78779 (09/01)
- Coverage A Governmental Claims Only, Form#MNSCPT (04/04)
- Legal Defense and Expense Endt, Form#MNSCPT (04/04)
- Schedule of USTs, Form#MNSCPT (04/04)

- Definition Pollution Conditions and Microbial Matt, Form#MNSCPT (04/04)
- Notice of Pollution Conditions, Claims, Form#MNSCPT (04/04)
- Rights of Access and Inspection, Form#MNSCPT (04/04)
- [redacted]
- Subrogation Endorsement, Form#MNSCPT (04/04)
- Voluntary Investigation Exclusion, Form#MNSCPT (04/04)
- Disclosed Document Endorsement, Form#MNSCPT (04/04)
- [redacted]
- Definition of Claim Endorsement, Form#MNSCPT (04/04)
- Definition of Bodily Injury, Form#MNSCPT (04/04)
- Access to Information, Form#MNSCPT (04/04)
- Action Against Company, Form#MNSCPT (04/04)
- 100% Minimum Earned Premium, Form#MNSCPT (04/04)

SECTION VI - Services:

American International Group, Inc. (AIG) is the largest U.S.-based international insurance organization and has successfully serviced clients in the pollution legal liability marketplace for a longer, continuous period than any other insurance company.

Member Companies of AIG hold the highest financial ratings from the industry's principal insurance rating agencies.

As an integral part of our **PLL Select** program, we offer engineering, claims, and emergency response services:

- Value Added Engineering: Our underwriting teams include dedicated engineers in each local AIG office. Through this group of professionals, who has experience in both the public and private sectors, AIG Environmental is able to offer loss control services that complement and enhance the policyholders environmental insurance program. Such services may include prospective risk surveys, application assistance, loss control information, regulatory insight, and value-added risk improvement services.

- Claim Services: All environmental claims are handled centrally by a dedicated environmental unit due to the often complex nature of environmental incidents. The unit is staffed by trained professionals with specialized experience in environmental claims and includes individuals with backgrounds in insurance, law, finance, and environmental engineering. Claims are handled from initial investigation of liability to negotiation and settlement with government agencies and third parties.

- Emergency Response Service: To assist **PLL Select** policyholders in the event of an environmental incident, we have established a 24 hour hotline supported by a nationwide network of emergency and secondary response companies. The program, Pollution Incident and Environmental Response (PIER II), includes a national program manager, advisory council, engineering support teams, and post-incident oversight and management. At policy issuance, we will provide a PIER II welcome package that includes rolodex cards and brightly colored stickers to be posted in prominent locations at the insured property(s).

SECTION VII - Subject To:

The above indication is subject to the receipt and satisfactory review and acceptance of the following, prior to binding:

- The original Signed American International Companies Pollution Legal Liability Application including all applicable attachments.
- Receipt and review of the Named Insured's Financial Statements, including the notes sections from the past two fiscal years.
- [redacted]
- Receipt of copy of final executed Purchase and Sale Agreement

NOTICE: PLEASE READ CAREFULLY THE ATTACHED POLICYHOLDER DISCLOSURE STATEMENT UNDER TERRORISM RISK ACT OF 2002. AN OFFICER OF THE INSURED MUST COMPLETE, SIGN AND RETURN SUCH DISCLOSURE STATEMENT TO THE UNDERWRITER PRIOR TO BINDING, IF CERTIFIED ACTS OF TERRORISM COVERAGE UNDER TERRORISM RISK INSURANCE ACT OF 2002 IS REJECTED BY THE INSURED. IF SUCH COVERAGE IS ACCEPTED BY THE INSURED, THE BROKER MUST ADVISE THE COMPANY IN WRITING PRIOR TO BINDING.

The policy will be issued by AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO., which is a member company of American International Group, Inc. If coverage is bound, the premium must be remitted to AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO. within 30 days of the effective date of the policy, or within 15 days of billing, whichever is later.

Please provide a copy of your surplus lines license. It is your responsibility to follow applicable state surplus lines laws and, in particular, to see that the appropriate premium tax (and stamping office fee, if applicable) is collected and paid.

This premium indication is valid for 30 days from the date on this letter. Please notice that these conditions are not necessarily in compliance with conditions requested in your submission. We will not be obligated to provide coverage not addressed in this indication even though they may have been requested in your submission.

We appreciate the opportunity to present the above proposal to you for your client. Should you have any comments, questions, or specific items to be clarified, please feel free to contact me. AIG Environmental strives to offer you the most innovative and responsive solutions to your clients' environmental liability concerns.

Sincerely,

CHRISTI SELPH
SR. UNDEWRITING SPECIALIST

SECTION IV - SCHEDULE OF INSURED PROPERTIES

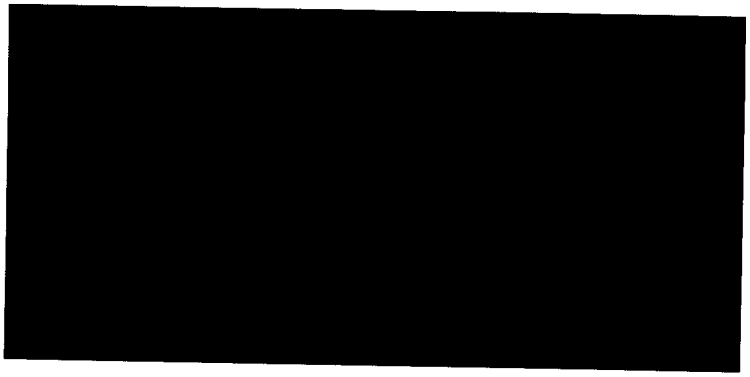
[redacted]

- Kansas City DHCS
  115 Grand Avenue
  Kansas City, MO 64105

[redacted]

- Schuykill Plant
  2600 Christian Street
  Philadelphia, PA
- DESS Facility
  3000 Peltz Avenue
  Philadelphia, PA
- Edison Plant
  908 Sansom Street
  Philadelphia, PA

[redacted]



AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY

POLLUTION LEGAL LIABILITY SELECT® POLICY

MANY OF THE COVERAGES CONTAIN CLAIMS-MADE-AND-REPORTED REQUIREMENTS. PLEASE READ CAREFULLY. ADDITIONALLY, THIS POLICY HAS CERTAIN PROVISIONS AND REQUIREMENTS UNIQUE TO IT AND MAY BE DIFFERENT FROM OTHER POLICIES THE INSURED MAY HAVE PURCHASED. DEFINED TERMS, OTHER THAN HEADINGS, APPEAR IN BOLD FACE TYPE.

NOTICE: THE DESCRIPTIONS IN ANY HEADINGS OR SUB-HEADINGS OF THIS POLICY ARE INSERTED SOLELY FOR CONVENIENCE AND DO NOT CONSTITUTE ANY PART OF THE TERMS OR CONDITIONS HEREOF.

In consideration of the payment of the premium, in reliance upon the statements in the Declarations and the Application annexed hereto and made a part hereof, and pursuant to all of the terms of this Policy, the Company agrees with the **Named Insured** as follows:

I. INSURING AGREEMENTS

1. COVERAGES:

THE FOLLOWING COVERAGES ARE IN EFFECT ONLY IF SCHEDULED IN THE DECLARATIONS.

COVERAGE A - ON-SITE CLEAN-UP OF PRE-EXISTING CONDITIONS

1. To pay on behalf of the **Insured**, **Clean-Up Costs** resulting from **Pollution Conditions** on or under the **Insured Property** that commenced prior to the **Continuity Date**, if such **Pollution Conditions** are discovered by the **Insured** during the **Policy Period**, provided:

   (a) The discovery of such **Pollution Conditions** is reported to the Company in writing as soon as possible after discovery by the **Insured** and in any event during the **Policy Period** in accordance with Section III. of the Policy.

   Discovery of **Pollution Conditions** happens when a **Responsible Insured** becomes aware of **Pollution Conditions**.

   (b) Where required, such **Pollution Conditions** have been reported to the appropriate governmental agency in substantial compliance with applicable **Environmental Laws** in effect as of the date of discovery.

2. To pay on behalf of the **Insured**, **Loss** that the **Insured** is legally obligated to pay as a result of **Claims** for **Clean-Up Costs** resulting from **Pollution Conditions** on or under the **Insured Property** that commenced prior to the **Continuity Date**, provided such **Claims** are first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable.

COVERAGE B - ON-SITE CLEAN-UP OF NEW CONDITIONS

1. To pay on behalf of the **Insured**, **Clean-Up Costs** resulting from **Pollution Conditions** on or under the **Insured Property** that commenced on or after the **Continuity Date**, if such **Pollution Conditions** are discovered by the **Insured** during the **Policy Period**, provided:

   (a) The discovery of such **Pollution Conditions** is reported to the Company in writing as soon as possible after discovery by the **Insured** and in any event during the **Policy Period** in accordance with Section III. of the Policy.

   Discovery of **Pollution Conditions** happens when a **Responsible Insured** becomes aware of **Pollution Conditions**.

   (b) Where required, such **Pollution Conditions** have been reported to the appropriate governmental agency in substantial compliance with applicable **Environmental Laws** in effect as of the date of discovery.

2. To pay on behalf of the **Insured**, **Loss** that the **Insured** is legally obligated to pay as a result of **Claims** for **Clean-Up Costs** resulting from **Pollution Conditions** on or under the **Insured Property** that commenced on or after the **Continuity Date**, provided such **Claims** are first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable.

COVERAGE C - THIRD - PARTY CLAIMS FOR ON-SITE BODILY INJURY AND PROPERTY DAMAGE

To pay on behalf of the **Insured**, **Loss** that the **Insured** becomes legally obligated to pay as a result of **Claims** for **Bodily Injury** or **Property Damage** resulting from **Pollution Conditions** on or under the **Insured Property**, if such **Bodily Injury** or **Property Damage** takes place while the person injured or property damaged is on the **Insured Property**, provided such **Claims** are first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable.

COVERAGE D - THIRD - PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM PRE-EXISTING CONDITIONS

To pay on behalf of the **Insured**, **Loss** that the **Insured** becomes legally obligated to pay as a result of **Claims** for **Clean-Up Costs** resulting from **Pollution Conditions**, beyond the boundaries of the **Insured Property**, that commenced prior to the **Continuity Date**, and migrated from the **Insured Property**, provided such **Claims** are first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable.

COVERAGE E - THIRD - PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM NEW CONDITIONS

To pay on behalf of the **Insured**, **Loss** that the **Insured** becomes legally obligated to pay as a result of **Claims** for **Clean-Up Costs** resulting from **Pollution Conditions**, beyond the boundaries of the **Insured Property**, that commenced on or after the **Continuity Date**, and migrated from the **Insured Property**, provided such **Claims** are first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable.

COVERAGE F - THIRD - PARTY CLAIMS FOR OFF-SITE BODILY INJURY AND PROPERTY DAMAGE

To pay on behalf of the **Insured**, **Loss** that the **Insured** becomes legally obligated to pay as a result of **Claims** for **Bodily Injury** or **Property Damage** resulting from **Pollution Conditions**, beyond the boundaries of the **Insured Property**, that migrated from the **Insured Property**, provided such **Claims** are first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable.

COVERAGE G - THIRD - PARTY CLAIMS FOR ON-SITE BODILY INJURY, PROPERTY DAMAGE OR CLEAN-UP COSTS - NON-OWNED LOCATIONS

To pay on behalf of the **Insured**, **Loss** that the **Insured** becomes legally obligated to pay as a result of **Claims** for **Bodily Injury** or **Property Damage** of parties other than the owners, operators or contractors of the **Non-Owned Location**, or their employees, or **Clean-Up Costs** resulting from **Pollution Conditions** on or under the **Non-Owned Location**, provided such **Claims** are first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable.

COVERAGE H - THIRD - PARTY CLAIMS FOR OFF-SITE BODILY INJURY, PROPERTY DAMAGE OR CLEAN-UP COSTS - NON-OWNED LOCATIONS

To pay on behalf of the **Insured**, **Loss** that the **Insured** becomes legally obligated to pay as a result of **Claims** for **Bodily Injury**, **Property Damage** or **Clean-Up Costs** resulting from **Pollution Conditions**, beyond the boundaries of the **Non-Owned Location**, that migrated from the **Non-Owned Location**, provided such **Claims** are first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable.

COVERAGE I - POLLUTION CONDITIONS RESULTING FROM TRANSPORTED CARGO

To pay on behalf of the **Insured**, **Loss** that the **Insured** becomes legally obligated to pay as a result of **Claims** for **Bodily Injury**, **Property Damage** or **Clean-Up Costs** resulting from **Pollution Conditions** caused by **Transported Cargo**, provided such **Claims** are first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable. This coverage shall not be utilized to evidence financial responsibility of any **Insured** under any federal, state, provincial or local law.

COVERAGE J - BUSINESS INTERRUPTION COVERAGE - ACTUAL LOSS OR RENTAL VALUE (ONLY AVAILABLE IF COVERAGE A, COVERAGE B OR BOTH COVERAGES A AND B ARE PURCHASED)

To pay the **Insured's Actual Loss** or loss of **Rental Value**, and **Extra Expense** to the extent it reduces **Actual Loss** or loss of **Rental Value** otherwise payable under this coverage section, resulting from an **Interruption** caused directly by **Pollution Conditions** on or under the **Insured Property**. If the **Interruption** is caused by such **Pollution Conditions** and any other cause, the Company shall pay only for that portion of **Actual Loss** or loss of **Rental Value**, and **Extra Expense** resulting from an **Interruption** caused solely and directly by such **Pollution Conditions**.

1. Such **Pollution Conditions** must:

   (a) (i) commence prior to the **Continuity Date**, if the **Named Insured** has purchased Coverage A, under this Policy; or

   (ii) commence on or after the **Continuity Date**, if the **Named Insured** has purchased Coverage B, under this Policy; and

   (b) be first discovered by the **Insured** during the **Policy Period**. Discovery of **Pollution Conditions** happens when a **Responsible Insured** becomes aware of **Pollution Conditions.**

2. An **Interruption** must be reported to the Company, no later than thirty (30) days after its commencement. The **Insured** shall, as soon as practicable, resume normal operation of the business and dispense with **Extra Expense.**

3. In determining **Actual Loss** or loss of **Rental Value**, the Report/Worksheet annexed to this Policy and made a part of it shall be utilized. If the **Insured** could reduce the **Actual Loss** or loss of **Rental Value**, or **Extra Expense** resulting from an **Interruption**:

   (a) by complete or partial resumption of operations; or

   (b) by making use of other property at the **Insured Property**, or elsewhere,

   such reductions shall be taken into account in arriving at **Actual Loss** or loss of **Rental Value** or **Extra Expense.**

2. LEGAL EXPENSE AND DEFENSE

The Company shall have the right and the duty to defend any **Claims** covered under Coverages A through I provided the **Named Insured** has purchased such Coverage. The Company's duty to defend or continue defending any such **Claim**, and to pay any **Loss**, shall cease once the applicable limit of liability, as described in Section V. LIMITS OF COVERAGE; DEDUCTIBLE has been exhausted. Defense costs, charges and expenses are included in **Loss** and reduce the applicable limit of liability, as described in Section V., and are included within the Deductible amount for the Coverage Section that applies and is shown in Item 3 of the Declarations.

The Company will present any settlement offers to the **Insured**, and if the **Insured** refuses to consent to any settlement within the limits of liability of this Policy recommended by the Company and acceptable to the claimant, the Company's duty to defend the **Insured** shall then cease and the **Insured** shall thereafter negotiate or defend such **Claim** independently of the Company and the Company's liability shall not exceed the amount, less the Deductible or any outstanding Deductible balance, for which the **Claim** could have been settled if such recommendation was consented to.

3. INDEPENDENT COUNSEL

In the event the **Insured** is entitled by law to select independent counsel to defend the **Insured** at the Company's expense, the attorney fees and all other litigation expenses the Company must pay to that counsel are limited to the rates the Company would actually pay to counsel that the Company retains in the ordinary course of business in the defense of similar **Claims** in the community where the **Claim** arose or is being defended.

Additionally, the Company may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency, including experience in defending **Claims** similar to the one pending against the **Insured**, and to require such counsel to have errors and omissions insurance coverage. As respects any such counsel, the **Insured** agrees that counsel will timely respond to the Company's request for information regarding the **Claim**. The **Insured** may at any time, by its signed consent, freely and fully waive its right to select independent counsel.

II. EXCLUSIONS

1. COMMON EXCLUSIONS - APPLICABLE TO ALL COVERAGES

This Policy does not apply to **Clean-Up Costs**, **Claims**, **Loss**, **Actual Loss**, **Extra Expense**, or loss of **Rental**

Value:

A. **CRIMINAL FINES, PENALTIES, AND ASSESSMENTS:**

Due to any criminal fines, penalties or assessments.

B. **CONTRACTUAL LIABILITY:**

Arising from liability of others assumed by the **Insured** under any contract or agreement, unless the liability of the **Insured** would have attached in the absence of such contract or agreement or the contract or agreement is an **Insured Contract.**

C. **TRANSPORTATION:**

Except with respect to Coverage I, arising out of **Pollution Conditions** that result from the maintenance, use, operation, loading or unloading of any conveyance beyond the boundaries of the **Insured Property.**

D. **INTENTIONAL NONCOMPLIANCE:**

Arising from **Pollution Conditions** based upon or attributable to any **Responsible Insured's** intentional, willful or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.

E. **INTERNAL EXPENSES:**

For costs, charges or expenses incurred by the **Insured** for goods supplied or services performed by the staff or salaried employees of the **Insured**, or its parent, subsidiary or affiliate, except if in response to an emergency or pursuant to **Environmental Laws** that require immediate remediation of **Pollution Conditions**, or unless such costs, charges or expenses are incurred with the prior written approval of the Company in its sole discretion.

F. **INSURED vs. INSURED:**

By any **Insured** against any other person or entity who is also an **Insured** under this Policy. This exclusion does not apply to **Claims** initiated by third parties or **Claims** that arise out of an indemnification given by one **Named Insured** to another **Named Insured** in an **Insured Contract.**

G. **ASBESTOS AND LEAD:**

Solely with respect to Coverages A, B, D, E, G, H and J, arising from asbestos or any asbestos-containing materials or lead-based paint installed or applied in, on or to any building or other structure. This exclusion does not apply to **Clean-Up Costs** for the remediation of soil and groundwater.

H. **EMPLOYER LIABILITY:**

Arising from **Bodily Injury** to an **Insured** or its parent, subsidiary or affiliate arising out of and in the course of employment by the **Insured** or its parent, subsidiary or affiliate. This exclusion applies whether the **Insured** may be liable as an employer or in any other capacity and to any obligation to share damages with or repay third parties who must pay damages because of the injury.

I. **PRIOR KNOWLEDGE/NON-DISCLOSURE:**

Arising from **Pollution Conditions** existing prior to the **Inception Date** and known by a **Responsible Insured** and not disclosed in the application for this Policy, or any previous policy for which this Policy is a renewal thereof.

J. **IDENTIFIED UNDERGROUND STORAGE TANK:**

Arising from **Pollution Conditions** resulting from an **Underground Storage Tank** whose existence is known by a **Responsible Insured** as of the **Inception Date** and which is located on the **Insured Property** unless such **Underground Storage Tank** is scheduled on the Policy by endorsement.

2. **COVERAGE I EXCLUSIONS**

The following exclusions apply to Coverage I.

This Policy does not apply to **Loss:**

A. PROPERTY DAMAGE TO CONVEYANCES:

For **Property Damage** to any conveyance utilized during the **Transportation** of **Transported Cargo**. This exclusion does not apply to **Claims** made by third-party carriers of the **Insured** for such **Property Damage** arising from the **Insured's** negligence.

B. POLLUTION CONDITIONS PRIOR OR SUBSEQUENT TO TRANSPORTATION OF CARGO:

Arising from **Pollution Conditions:**

1. That commence prior to the **Transportation** of **Transported Cargo**; or

2. That commence after **Transported Cargo** reaches its final destination, or while **Transported Cargo** is in storage off-loaded from the conveyance that was transporting it.

C. THIRD-PARTY CARRIER CLAIMS:

Made by a third-party carrier, its agents or employees, for **Bodily Injury**, **Property Damage** or **Clean-Up Costs**, whether or not the **Bodily Injury**, **Property Damage** or **Clean-Up Costs** were directly incurred by such third-party carrier. This exclusion does not apply to **Claims** arising from the **Insured's** negligence.

III. NOTICE REQUIREMENTS AND CLAIM PROVISIONS

The **Insured** shall provide the Company with notice of **Pollution Conditions**, **Claims** or an **Interruption** as follows:

A. NOTICE OF POLLUTION CONDITIONS, CLAIMS AND AN INTERRUPTION

1. In the event of **Pollution Conditions** or **Claims** under Coverages A through I, or an **Interruption** under Coverage J, the **Insured** shall give written notice to:

   Manager, Pollution Insurance Products Unit
   AIG Technical Services, Inc.
   Environmental Claims Department
   80 Pine Street, Sixth Floor
   New York, New York 10005
   Fax: (212) 344-2761

   or other address(es) as substituted by the Company in writing.

2. The **Insured** shall give written notice of **Pollution Conditions** as soon as possible. Notice under all coverages shall include, at a minimum, information sufficient to identify the **Named Insured**, the **Insured Property**, the names of persons with knowledge of the **Pollution Conditions** and all known and reasonably obtainable information regarding the time, place, cause, nature of and other circumstances of the **Pollution Conditions.**

3. The **Insured** shall give notice of **Claims** as soon as possible, but in any event during the **Policy Period** or during the **Extended Reporting Period**, if applicable. The **Insured** shall furnish information at the request of the Company. When a **Claim** has been made, the **Insured** shall forward the following to the Company as soon as possible:

   (a) All reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the claimant(s) and available witnesses.

   (b) All demands, summonses, notices or other process or papers filed with a court of law, administrative agency or an investigative body.

   (c) Other information in the possession of the **Insured** or its hired experts which the Company reasonably deems necessary.

B. NOTICE OF POSSIBLE CLAIM

1. If during the **Policy Period**, the **Insured** first becomes aware of a **Possible Claim**, the **Insured** may

provide written notice to the Company during the **Policy Period** containing all the information required under Paragraph 2. below. Any **Possible Claim** which subsequently becomes a **Claim** made against the **Insured** and reported to the Company within five (5) years after the end of the **Policy Period** of this Policy or any continuous, uninterrupted renewal thereof, shall be deemed to have been first made and reported during the **Policy Period** of this Policy. Such **Claim** shall be subject to the terms, conditions and limits of coverage of the policy under which the **Possible Claim** was reported.

2. It is a condition precedent to the coverage afforded by this Section III. B that written notice under Paragraph 1. above contain all of the following information: (a) the cause of the **Pollution Conditions**; (b) the **Insured Property** or other location where the **Pollution Conditions** took place; (c) the **Bodily Injury**, **Property Damage** or **Clean-Up Costs** which has resulted or may result from such **Pollution Conditions**; (d) the **Insured(s)** which may be subject to the **Claim** and any potential claimant(s); (e) all engineering information available on the **Pollution Conditions** and any other information that the Company deems reasonably necessary; and (f) the circumstances by which and the date the **Insured** first became aware of the **Possible Claim**.

IV. RIGHTS OF THE COMPANY AND DUTIES OF THE INSURED IN THE EVENT OF POLLUTION CONDITIONS

A. The Company's Rights

The Company shall have the right but not the duty to clean up or mitigate **Pollution Conditions** upon receiving notice as provided in Section III. of this Policy. Any sums expended in taking such action by the Company will be deemed incurred or expended by the **Insured** and shall be applied against the limits of coverage and deductible under this Policy.

B. Duties of the Insured

The **Named Insured** shall have the duty to clean up **Pollution Conditions** to the extent required by **Environmental Laws**, by retaining competent professional(s) or contractor(s) mutually acceptable to the Company and the **Named Insured**. The Company shall have the right but not the duty to review and approve all aspects of any such clean-up. The **Named Insured** shall notify the Company of actions and measures taken pursuant to this paragraph.

V. LIMITS OF COVERAGE; DEDUCTIBLE

Regardless of the number of **Claims**, claimants, **Pollution Conditions** or **Insureds** under this Policy, the following limits of liability apply:

A. Policy Aggregate Limit

The Company's total liability for all **Loss**, under Coverages A through I, and all **Actual Loss**, loss of **Rental Value** and **Extra Expense** under Coverage J, shall not exceed the "Policy Aggregate" stated in Item 4 of the Declarations. The Company's internal expenses do not erode the limit of liability available for any **Loss**.

B. Each Incident Limit - Coverages A Through I

1. Subject to Paragraph V.A. above, the most the Company will pay for all **Loss** under each Coverage in Coverages A through I arising from the same, related or continuous **Pollution Conditions** is the "Each Incident" limit of coverage for that particular coverage stated in Item 3 of the Declarations.

2. If the **Insured** first discovers **Pollution Conditions** during the **Policy Period** and reports them to the Company in accordance with Section III., all continuous or related **Pollution Conditions** reported to the Company under a subsequent Pollution Legal Liability Policy issued by the Company or its affiliate providing substantially the same coverage as this Policy shall be deemed to have been first discovered and reported during the **Policy Period**.

3. If a **Claim** for **Bodily Injury**, **Property Damage**, or **Clean-Up Costs** is first made against the **Insured** and reported to the Company during the **Policy Period**, all **Claims** for **Bodily Injury**, **Property Damage** or **Clean-Up Costs**, arising from the same, continuous or related **Pollution Conditions** that are first made against the **Insured** and reported under a subsequent Pollution Legal Liability Policy issued by the Company or its affiliate providing substantially the same coverage as this Policy, shall be deemed to have been first made and reported during the **Policy Period**. Coverage under this Policy for such **Claims** shall not apply, however, unless at the time such **Claims** are first made and reported, the **Insured** has maintained with the Company or its affiliate Pollution Legal Liability coverage substantially the same as this coverage on a continuous, uninterrupted basis since the first such **Claim** was made against the **Insured** and reported to

the Company.

C. Coverage Section Aggregate Limit

Subject to Paragraph V. A. above, the Company's total liability for all **Loss** under each Coverage in Coverages A through I, shall not exceed the "Coverage Section Aggregate" limit of coverage for that particular coverage stated in Item 3 of the Declarations.

D. Maximum for All Business Interruption

Subject to Paragraph V. A. above, the maximum amount for which the Company is liable for all **Actual Loss** or loss of **Rental Value**, and **Extra Expense** under Coverage J is 80% of the lesser of:

1. The **Actual Loss** and **Extra Expense**, or loss of **Rental Value** and **Extra Expense**, whichever is applicable, incurred during the number of days of interruption of business stated in Item 3 of the Declarations; and

2. The amount stated in Item 3 of the Declarations.

It is a condition of Coverage J that the remaining 20% of such amount be borne by the **Insured** at its own risk and remain uninsured.

E. Multiple Coverages

Subject to Paragraph V. A. above, if the same, related or continuous **Pollution Conditions** result in coverage under more than one Coverage under Coverages A through J, every applicable "Each Incident," "Coverage Section Aggregate," and "Maximum for All Business Interruption" limit of coverage among such coverage sections shall apply to the **Clean-Up Costs**, **Loss**, **Actual Loss** and **Extra Expense**, or loss of **Rental Value** and **Extra Expense**, whichever is applicable, resulting from such **Pollution Conditions**.

F. Deductible

1. Coverages A through I

Subject to Paragraphs V. A. through V.E. above, this Policy is to pay covered **Loss** in excess of the Deductible amount stated in Item 3 of the Declarations for the applicable coverage, up to but not exceeding the applicable "Each Incident" limit of coverage.

If the same, related or continuous **Pollution Conditions** result in coverage under more than one coverage section in Coverages A through I, only the highest Deductible amount stated in Item 3 of the Declarations among all the coverage sections applicable to the **Loss** will apply.

The **Insured** shall promptly reimburse the Company for advancing any element of **Loss** falling within the Deductible.

2. Coverage J

Subject to Paragraphs V.A. through V.E. above, this Policy is to pay the **Actual Loss** or loss of **Rental Value**, and **Extra Expense** under Coverage J in excess of the **Actual Loss** or loss of **Rental Value**, and **Extra Expense** sustained during the first seven (7) days of an **Interruption** during the **Period of Restoration**. The seven (7) day period applies to all **Actual Loss**, or loss of **Rental Value**, and **Extra Expense** arising from the same, related or continuous **Pollution Conditions**.

VI. CONDITIONS

A. Assignment - This Policy may be assigned with the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Assignment of interest under this Policy shall not bind the Company until its consent is endorsed thereon.

B. Subrogation - In the event of any payment under this Policy, the Company shall be subrogated to all the **Insured's** rights of recovery therefor against any person or organization and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights including without limitation, assignment of the **Insured's** rights against any person or organization who caused **Pollution Conditions** on account of which the Company made any payment under this Policy. The **Insured** shall do nothing to prejudice the Company's rights under this paragraph subsequent to **Loss**. Any recovery as a result of subrogation proceedings arising out of the payment of **Loss** covered under this Policy shall accrue first to

the **Insured** to the extent of any payments in excess of the limit of coverage; then to the Company to the extent of its payment under the Policy; and then to the **Insured** to the extent of its Deductible. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery.

C. **Cooperation** - The **Insured** shall cooperate with the Company and offer all reasonable assistance in the investigation and defense of **Claims** under the applicable Coverages purchased. The Company may require that the **Insured** submit to examination under oath, and attend hearings, depositions and trials. In the course of investigation or defense, the Company may require written statements or the **Insured's** attendance at meetings with the Company. The **Insured** must assist the Company in effecting settlement, securing and providing evidence and obtaining the attendance of witnesses.

D. **Changes** - Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any rights under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.

E. **Voluntary Payments** - No **Insured** shall voluntarily enter into any settlement, or make any payment or assume any obligation unless in response to an emergency or pursuant to **Environmental Laws** that require immediate remediation of **Pollution Conditions**, without the Company's consent which shall not be unreasonably withheld, except at the **Insured's** own cost.

F. **Concealment or Fraud** - This entire Policy shall be void if, whether before or after **Clean-Up Costs** are incurred or a **Claim** is first made, the **Named Insured** has willfully concealed or misrepresented any fact or circumstance material to the granting of coverage under this Policy, the description of the **Insured Property**, or the interest of the **Insured** therein.

G. **Cancellation** - This Policy may be cancelled by the **Named Insured** by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This Policy may be cancelled by the Company only for the reasons stated below by mailing to the **Named Insured** at the address shown in the Policy, written notice stating when not less than 60 days (10 days for nonpayment of premium) thereafter such cancellation shall be effective. Proof of mailing of such notice shall be sufficient proof of notice.

1. Material misrepresentation by the **Insured**;
2. The **Insured's** failure to comply with the material terms, conditions or contractual obligations under this Policy, including failure to pay any premium or Deductible when due;
3. A change in operations at an **Insured Property** during the **Policy Period** that materially increases a risk covered under this Policy.

The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice either by the **Named Insured** or by the Company shall be equivalent to mailing. If the **Named Insured** cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro-rata. Premium adjustment may be either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

H. **Other Insurance** - Where other insurance may be available for **Loss, Actual Loss** or loss of **Rental Value,** and **Extra Expense** covered under this Policy, the **Insured** shall promptly upon request of the Company provide the Company with copies of all such policies. If other valid and collectible insurance is available to the **Insured** for **Loss Actual Loss** or loss of **Rental Value,** and **Extra Expense** covered by this Policy, the Company's obligations are limited as follows:

1. This insurance is primary, and the Company's obligations are not affected unless any of the other insurance is also primary. In that case, the Company will share with all such other insurance by the method described in Paragraph 2. below.
2. If all of the other insurance permits contribution by equal shares, the Company will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, the Company will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

I. **Right of Access and Inspection** - To the extent the **Insured** has such rights, any of the Company's authorized representatives shall have the right and opportunity but not the obligation to interview persons employed by the **Insured** and to inspect at any reasonable time, during the **Policy Period** or thereafter, the **Insured Property**. Neither the Company nor its representatives shall assume any responsibility or duty to the **Insured** or to any other party, person or entity, by reason of such right or inspection. Neither the Company's right to make inspections, sample and monitor, nor the actual undertaking thereof nor any report thereon shall constitute an undertaking on behalf of the **Insured** or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practices or are in compliance with any law, rule or regulation. The **Named Insured** agrees to provide appropriate personnel to assist the Company's representatives during any inspection.

J. **Access to Information** - The **Named Insured** agrees to provide the Company with access to any information developed or discovered by the **Insured** concerning **Loss** covered under this Policy, whether or not deemed by the **Insured** to be relevant to such **Loss** and to provide the Company access to interview any **Insured** and review any documents of the **Insured**.

K. **Representations** - By acceptance of this Policy, the **Named Insured** agrees that the statements in the Declarations, the Application and the Report/Worksheet are their agreements and representations, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the **Insured** and the Company or any of its agents relating to this insurance.

L. **Action Against Company** - No third-party action shall lie against the Company, unless as a condition precedent thereto there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by the Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the Company be impleaded by the **Insured** or his legal representative. Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Company of any of its obligations hereunder.

M. **Arbitration** - It is hereby understood and agreed that all disputes or differences that may arise under or in connection with this Policy, whether arising before or after termination of this Policy, including any determination of the amount of Loss, may be submitted to the American Arbitration Association under and in accordance with its then prevailing commercial arbitration rules. The arbitrators shall be chosen in the manner and within the time frames provided by such rules. If permitted under such rules, the arbitrators shall be three disinterested individuals having knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute.

Any party may commence such arbitration proceeding and the arbitration shall be conducted in the **Insured's** state of domicile. The arbitrators shall give due consideration to the general principles of the law of the **Insured's** state of domicile in the construction and interpretation of the provisions of this Policy; provided, however, that the terms, conditions, provisions and exclusions of this Policy are to be construed in an evenhanded fashion as between the parties. Where the language of this Policy is alleged to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant terms, conditions, provisions or exclusions of the Policy (without regard to the authorship of the language, the doctrine of reasonable expectation of the parties and without any presumption or arbitrary interpretation or construction in favor of either party or parties, and in accordance with the intent of the parties).

The written decision of the arbitrators shall set forth its reasoning, shall be provided simultaneously to both parties and shall be binding on them. The arbitrators' award shall not include attorney fees or other costs. Judgment on the award may be entered in any court of competent jurisdiction. Each party shall bear equally the expenses of the arbitration.

N. **Service Of Suit** - Subject to Paragraph M. above, it is agreed that in the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, American International Specialty Lines Insurance Company, 70 Pine Street, New York, New York 10270, or his

or her representative, and that in any suit instituted against the Company upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner, Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

O. **Acknowledgment of Shared Limits** - By acceptance of this Policy, the **Named Insureds** understand, agree and acknowledge that the Policy contains a Policy Aggregate Limit that is applicable to, and will be shared by, all **Named Insureds** and all other **Insureds** who are or may become insured hereunder. In view of the operation and nature of this shared Policy Aggregate Limit, the **Named Insureds** and all other **Insureds** understand and agree that prior to filing a **Claim** under the Policy, the Policy Aggregate Limit may be exhausted or reduced by prior payments for other **Claims** under the Policy.

P. **Separation of Insureds** - It is hereby agreed that except with respect to the Limit of Liability, Section II. F. (Insured vs. Insured exclusion), and any rights and duties specifically assigned to the first **Named Insured**, this insurance applies: 1. As if each **Named Insured** were the only **Named Insured**; and 2. Separately to each **Named Insured** against who a **Claim** is made. Misrepresentation, concealment, breach of a term or condition, or violation of any duty under this Policy by one **Named Insured** shall not prejudice the interest of coverage for another **Named Insured** under this Policy. Provided, however, that this Condition shall not apply to any **Named Insured** who is a parent, subsidiary or affiliate of the first **Named Insured**.

VII. EXTENDED REPORTING PERIOD FOR CLAIMS - COVERAGES A THROUGH I

The **Named Insured** shall be entitled to an Automatic **Extended Reporting Period**, and (with certain exceptions as described in Paragraph B. of this Section) be entitled to purchase an Optional **Extended Reporting Period** for Coverages A through I collectively, upon termination of coverage as defined in Paragraph B.3. of this Section. Neither the Automatic nor the Optional **Extended Reporting Period** shall reinstate or increase any of the limits of liability of this Policy.

A. Automatic Extended Reporting Period

Provided that the **Named Insured** has not purchased any other insurance to replace this insurance and which applies to a **Claim** otherwise covered hereunder, the **Named Insured** shall have the right to the following: a period of sixty (60) days following the effective date of such termination of coverage in which to provide written notice to the Company of **Claims** first made and reported within the Automatic **Extended Reporting Period**.

A **Claim** first made and reported within the Automatic **Extended Reporting Period** will be deemed to have been made on the last day of the **Policy Period**, provided that the **Claim** arises from **Pollution Conditions** that commenced before the end of the **Policy Period** and is otherwise covered by this Policy. No part of the Automatic **Extended Reporting Period** shall apply if the **Optional Extended Reporting Period** is purchased.

B. Optional Extended Reporting Period

The **Named Insured** shall be entitled to purchase an Optional **Extended Reporting Period** upon termination of coverage as defined herein (except in the event of nonpayment of premium), as follows:

1. A **Claim** first made and reported within the Optional **Extended Reporting Period**, if purchased in accordance with the provisions contained in Paragraph 2. below, will be deemed to have been made on the last day of the **Policy Period**, provided that the **Claim** arises from **Pollution Conditions** that commenced before the end of the **Policy Period** and is otherwise covered by this Policy.

2. The Company shall issue an endorsement providing an Optional **Extended Reporting Period** of up to forty (40) months from termination of coverage hereunder for all **Insured Properties** and **Non-Owned Locations**, if applicable, or any specific **Insured Property** or **Non-Owned Location**, provided that the **Named Insured**:

   (a) makes a written request for such endorsement which the Company receives within thirty (30) days after termination of coverage as defined herein; and

(b) pays the additional premium when due. If that additional premium is paid when due, the **Extended Reporting Period** may not be cancelled, provided that all other terms and conditions of the Policy are met.

3. Termination of coverage occurs at the time of cancellation or nonrenewal of this Policy by the **Named Insured** or by the Company, or at the time of the Company's deletion of a location which previously was an **Insured Property** or **Non-Owned Location**.

4. The Optional **Extended Reporting Period** is available to the **Named Insured** for not more than 200% of the full Policy premium stated in the Declarations.

VIII. DEFINITIONS

A. **Actual Loss** means the:

1. Net income (net profit or loss before income taxes) the **Insured** would have earned or incurred had there been no **Interruption**; and

2. Continuing normal operating expenses incurred, including **Ordinary Payroll Expense**.

B. **Bodily Injury** means physical injury, or sickness, disease, mental anguish or emotional distress, sustained by any person, including death resulting therefrom.

C. **Claim** means a written demand received by the **Insured** seeking a remedy or alleging liability or responsibility on the part of the **Insured** for **Loss** under Coverages A through I. For purposes of this Policy, a **Claim** does not include a **Possible Claim** that was reported under a prior policy but which has become a **Claim** during the **Policy Period** of this Policy as described in Section III. B.

D. **Clean-Up Costs** means reasonable and necessary expenses, including legal expenses incurred with the Company's written consent which consent shall not be unreasonably withheld or delayed, for the investigation, removal, remediation including associated monitoring, or disposal of soil, surfacewater, groundwater or other contamination:

1. To the extent required by **Environmental Laws**; or

2. That have been actually incurred by the government or any political subdivision of the United States of America or any state thereof or Canada or any province thereof, or by third parties.

Clean-Up Costs also include **Restoration Costs**.

E. **Continuity Date** means the date stated in Item 8 of the Declarations.

F. **Environmental Laws** means any federal, state, provincial or local laws (including, but not limited to, statutes, rules, regulations, ordinances, guidance documents, and governmental, judicial or administrative orders and directives) that are applicable to **Pollution Conditions**.

G. **Extended Reporting Period** means either the automatic additional period of time or the optional additional period of time, whichever is applicable, in which to report **Claims** following termination of coverage, as described in Section VII. of this Policy.

H. **Extra Expense** means necessary expenses the **Insured** incurs during the **Period of Restoration**:

1. That would not have been incurred if there had not been an **Interruption**; and

2. That avoid or minimize an **Interruption**,

but only to the extent such expenses reduce **Actual Loss** or loss of **Rental Value**, whichever is applicable, otherwise covered under this Policy.

Extra Expense will be reduced by any salvage value of property obtained for temporary use during the **Period of Restoration** that remains after the resumption of normal operations.

I. **Inception Date** means the first date set forth in Item 2 of the Declarations.

J. **Insured** means the **Named Insured**, and any past or present director, officer, partner or employee thereof,

including a temporary or leased employee, while acting within the scope of his or her duties as such.

K. **Insured Contract** means a contract or agreement submitted to and approved by the Company, and listed on an Endorsement to this Policy.

L. **Insured Property** means each of the locations identified in Item 5 of the Declarations.

M. **Interruption** means the necessary suspension of the **Insured's** business operations at an **Insured Property** during the **Period of Restoration**.

N. **Loss** means, under the applicable Coverages:

1. Monetary awards or settlements of compensatory damages; where allowable by law, punitive, exemplary, or multiple damages; and civil fines, penalties, or assessments for **Bodily Injury** or **Property Damage**;

2. Costs, charges and expenses incurred in the defense, investigation or adjustment of **Claims** for such compensatory damages or punitive, exemplary or multiple damages, and civil fines, penalties or assessments, or for **Clean-Up Costs**; or

3. **Clean-Up Costs**.

O. **Named Insured** means the person or entity named in Item 1 of the Declarations acting on behalf of all other **Insureds**, if any, for the payment or return of any premium, payment of any deductible, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or nonrenewal, and the exercise of the rights provided in the **Extended Reporting Period** clause.

P. **Natural Resource Damage** means physical injury to or destruction of, including the resulting loss of value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)), any state or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

Q. **Non-Owned Location** means a site that is not owned or operated by the **Named Insured**, and that is identified in a Non-Owned Covered Locations Schedule attached to and made a part of this Policy by endorsement.

R. **Ordinary Payroll Expense** means the entire payroll expense for all employees of the **Insured**, except officers, executives, department managers and employees under contract.

S. **Period of Restoration** means the length of time as would be required with the exercise of due diligence and dispatch to restore the **Insured Property** to a condition that allows the resumption of normal business operations, commencing with the date operations are interrupted by **Pollution Conditions** and not limited by the date of expiration of the **Policy Period**. The **Period of Restoration** does not include any time caused by the interference by employees or other persons with restoring the property, or with the resumption or continuation of operations.

T. **Policy Period** means the period set forth in Item 2 of the Declarations, or any shorter period arising as a result of:

1. Cancellation of this Policy; or

2. With respect to particular **Insured Property(s)** or **Non-Owned Location(s)** designated in the Declarations, the deletion of such location(s) from this Policy by the Company at the **Named Insured's** written request, but solely with respect to that **Insured Property** or **Non-Owned Location**.

U. **Pollution Conditions** means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered.

V. **Possible Claim** means **Pollution Conditions** that commenced on or after the **Inception Date** that the **Insured**

reasonably expects may result in a **Claim.**

W. **Property Damage** means:

1. Except with respect to Coverage C, physical injury to or destruction of tangible property of parties other than the **Insured**, including the resulting loss of use and diminution in value thereof;

2. Loss of use, but not diminution in value, of tangible property of parties other than the **Insured** that has not been physically injured or destroyed;

3. Solely with respect to Coverage C, physical injury to or destruction of tangible property of parties other than the **Insured**, including the resulting loss of use thereof; and

4. **Natural Resource Damage.**

Property Damage does not include **Clean-Up Costs.**

X. **Rental Value** means the:

1. Total anticipated rental income from tenant occupancy of the **Insured Property** as furnished and equipped by the **Insured**;

2. Amount of all charges that are the legal obligation of the tenant(s) pursuant to a lease and that would otherwise be the **Insured's** obligations; and

3. Fair rental value of any portion of the **Insured Property** that is occupied by the **Insured** during the **Period of Restoration**, less any rental income the **Insured** could earn:

   (a) by complete or partial rental of the **Insured Property**, or

   (b) by making use of other property on the **Insured Property** or elsewhere.

Y. **Responsible Insured** means the manager or supervisor of the **Named Insured** responsible for environmental affairs, control or compliance, or any manager of the **Insured Property,** or any officer, director or partner of the **Named Insured.**

Z. **Restoration Costs** means reasonable and necessary costs incurred by the **Insured** with the Company's written consent, which consent shall not be unreasonably withheld or delayed, to repair, replace or restore real or personal property to substantially the same condition it was in prior to being damaged during work performed in the course of incurring **Clean-Up Costs.** However, such **Restoration Costs** shall not exceed the net present value of such property prior to incurring **Clean-Up Costs. Restoration Costs** do not include costs associated with improvements or betterments.

AA. **Transportation** means the movement of **Transported Cargo** by a conveyance, from the place where it is accepted by a carrier until it is moved:

1. To the place where the carrier finally delivers it; or

2. In the case of waste, to a waste disposal facility to which the carrier delivers it.

Transportation includes the carrier's loading or unloading of **Transported Cargo** onto or from a conveyance provided that the loading or unloading is performed by or on behalf of the **Named Insured.**

BB. **Transported Cargo** means goods, products, or waste transported for delivery by a carrier properly licensed to transport such goods, products, or waste.

CC. **Underground Storage Tank** means any tank that has at least ten (10) percent of its volume below ground in existence at the **Inception Date**, or installed thereafter, including associated underground piping connected to the tank.

IN WITNESS WHEREOF, the Company has caused this Policy to be signed by its president and secretary and signed on the Declarations page by a duly authorized representative or countersigned in states where applicable.

76391 (7/00)
CI0866

Secretary

President

76391 (7/00)
CI0866

ENDORSEMENT NO.

This endorsement, effective 12:01AM,

Forms a part of Policy No:

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

VOLUNTARY ENVIRONMENTAL INVESTIGATION EXCLUSION ENDORSEMENT

It is hereby agreed that the following exclusions are added to Section **II. EXCLUSIONS, 1. COMMON EXCLUSIONS APPLICABLE TO ALL COVERAGES:**

VOLUNTARY ENVIRONMENTAL INVESTIGATION:

Arising out of **Pollution Conditions** including their degradation by-products or additives which are discovered as a result of any voluntary environmental investigation including, but not limited to intrusive investigations, excavation or testing or sampling of any media on any portion of the **Insured Property** that is not required by **Environmental Laws.** This exclusion does not apply ordinary and routine maintenance or capital improvements.

ENDORSEMENT NO.

This endorsement, effective 12:01 AM:

Forms a part of policy no.:

SPECIMEN

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

100% MINIMUM EARNED PREMIUM ENDORSEMENT

1. It is hereby agreed that the following minimum earned premium applies:

   Inception Date Minimum Premium Earned 100 %

2. It is hereby agreed that Section **VI. CONDITIONS**, Paragraph **G., Cancellation** is deleted in its entirety and replaced with the following:

   G. Cancellation - This Policy may be cancelled by the **Named Insured** by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This Policy may be cancelled by the Company only for the reasons stated below by mailing to the **Named Insured** at the address shown in the Policy, written notice stating when not less than 60 days (10 days for nonpayment of premium) thereafter such cancellation shall be effective Proof of mailing of such notice shall be sufficient proof of notice. If during the sixty (60) day (10 days for nonpayment of premium) notice period referenced in this Paragraph, the **Insured** is able to cure the reasons for cancellation of this Policy, to the satisfaction of the Company, at its sole discretion, cancellation will be rescinded and coverage under this Policy shall remain in force.

   1. Material misrepresentation by a **Responsible Insured**

   2. The **Insured's** failure to comply with the material terms, conditions or contractual obligations under this Policy, including failure to pay any premium or Deductible when due;

   3. A change in operations at an **Insured Property** during the **Policy Period** that materially increases a risk covered under this Policy. For purposes of determining whether a change in operations materially increases the risk, any change in operations at the **Insured Property** that are different from an Intended Use scheduled below will be considered material.

      Intended Use: Cogeneration Facility or those uses disclosed in the application process

   Cancellation will only be applicable to that **Insured Property** whose use has materially changed. In such an event, an endorsement will be issued removed such **Insured Property**.

The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice either by the **Named Insured** or by the Company shall be equivalent to mailing. If the **Named Insured** cancels, no return premium will be calculated and the premium shall be 100% earned at the **Inception Date**. If the Company cancels, earned premium shall be computed on a pro rata basis. Premium adjustment may be either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

All other terms, conditions and exclusions remain the same.

Authorized Representative
or countersignature (where required by law)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM:

Forms a part of policy no.:

SPECIMEN

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF POLLUTION CONDITIONS, CLAIMS AND AN INTERRUPTION ENDORSEMENT

It is hereby agreed that Section **III. NOTICE REQUIREMENTS AND CLAIM PROVISIONS** is deleted in its entirety and replaced with the following:

The **Insured** shall provide the Company with notice of **Pollution Conditions, Claims** or an **Interruption** as follows:

A. NOTICE OF POLLUTION CONDITIONS, CLAIMS AND AN INTERRUPTION

1. In the event of **Pollution Conditions** or **Claims** under Coverages A through I, or an **Interruption** under Coverage J, the **Insured** shall give written notice to:

   Manager, Pollution Insurance Products Unit
   AIG Technical Services, Inc.
   Environmental Claims Department
   80 Pine Street, Sixth Floor
   New York, New York 10005
   Fax: (212) 344-2761

   or other address(es) as substituted by the Company in writing.

2. The **Insured** shall give written notice of **Pollution Conditions** as soon as possible. Notice under all coverages shall include, at a minimum, information sufficient to identify the **Named Insured**, the **Insured Property**, the names of persons with knowledge of the **Pollution Conditions** and all known and reasonably obtainable information regarding the time, place, cause, nature of and other circumstances of the **Pollution Conditions**.

3. The **Insured** shall give notice of **Claims** as soon as possible, but in any event during the **Policy Period** or during the **Extended Reporting Period**, if applicable. The **Insured** shall furnish information at the request of the Company. When a **Claim** has been made, the **Insured** shall forward the following to the Company as soon as possible:

   (a) All reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the claimant(s) and available witnesses.

   (b) All demands, summonses, notices or other process or papers filed with a court of law, administrative agency or an investigative body.

   (c) Other information in the possession of the **Insured** or its hired experts which the Company reasonably deems necessary.

4. Notwithstanding the above, it is agreed that the **Insured's** delay in providing notice of such **Pollution Conditions** or **Claims** shall not void coverage if the Company has not been prejudiced by such delay to report such **Pollution Conditions** or **Claims**, but in any event the **Insured** must report to the Company during the **Policy Period** or during the **Extended Reporting Period**, if applicable.

All other terms, conditions and exclusions remain the same.

Authorized Representative
or countersignature (where required by law)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM:

Forms a part of policy no.:

SPECIMEN

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

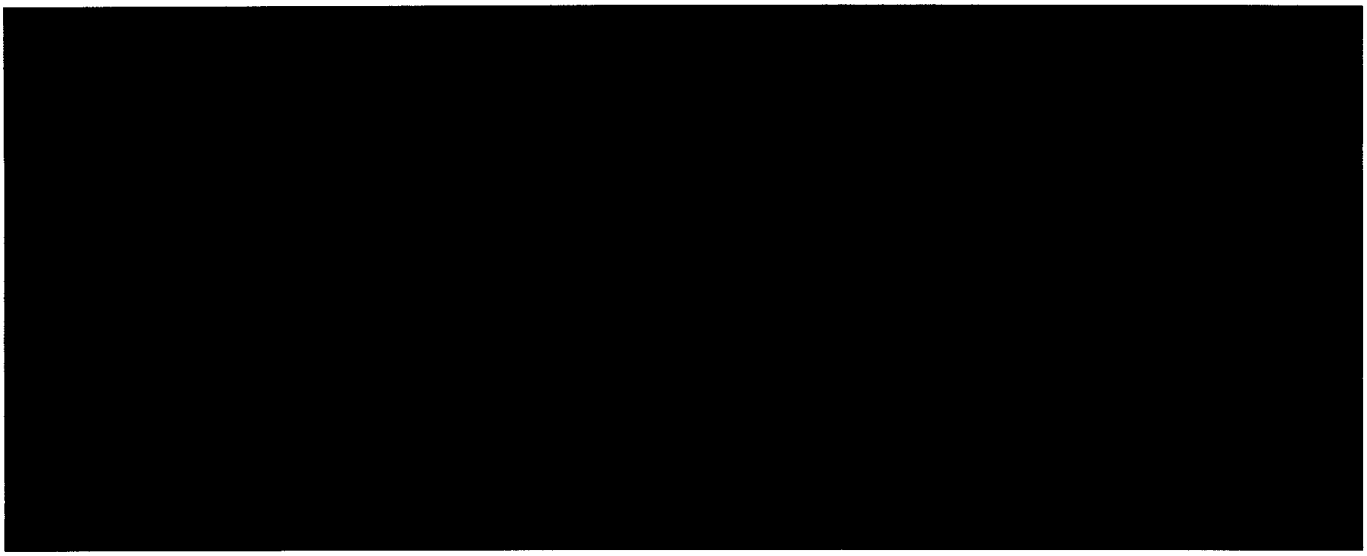
SCHEDULE OF UNDERGROUND STORAGE TANKS

It is hereby agreed that the **Underground Storage Tank(s)** listed below and located at or under the **Insured Property(s)** are covered subject to the applicable coverages and all of the other terms and conditions of the Policy.

It is also hereby agreed that, with respect to all coverages scheduled under this Policy, any **Pollution Conditions** arising from the **Underground Storage Tank(s)** listed below must commence prior to the **Inception Date.**

Underground Storage Tank

Location	Type	Tank No.	Product	Capacity	Age
[redacted]					



It is further agreed that this Policy will not provide coverage for any **Underground Storage Tank(s)** other than those listed above unless specifically scheduled in the Policy by endorsement.

All other terms, conditions and exclusions remain the same.

Authorized Representative
or countersignature (where required by law)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM:

Forms a part of policy no.:

SPECIMEN

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEFINITION OF POLLUTION CONDITIONS AND MICROBIAL MATTER EXCLUSION ENDORSEMENT

It is hereby agreed as follows:

1. Section **VIII., DEFINITIONS**, Paragraph **U.** is deleted in its entirety and replaced with the following:

U. Pollution Conditions means the actual or alleged discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater and surface water, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered. **Pollution Conditions** include degradation by-products. **Pollution Conditions** shall not include **Microbial Matter.**

The following is added to Section **VIII., DEFINITIONS**, as Paragraph **DD., Microbial Matter.**

DD. Microbial Matter means fungi, bacterial or viral matter which reproduces through the release of spores or the splitting of cells or other means, including but not limited to, mold, mildew and viruses, whether or not such **Microbial Matter** is living.

All other terms, conditions and exclusions remain the same.

Authorized Representative
or countersignature (where required by law)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM:

Forms a part of policy no.:

SPECIMEN

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SUBROGATION ENDORSEMENT

It is hereby agreed that Section **VI. CONDITIONS**, Paragraph **B. Subrogation** is deleted in its entirety and replaced with the following:

B. Subrogation - In the event of any payment under this Policy, the Company shall be subrogated to all the **Insured's** rights of recovery therefor against any person or organization and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights including without limitation, assignment of the **Insured's** rights against any person or organization who caused **Pollution Conditions** on account of which the Company made any payment under this Policy. The **Insured** shall do nothing to prejudice the Company's rights under this paragraph subsequent to **Loss**. Any recovery as a result of subrogation proceedings arising out of the payment of **Loss** covered under this Policy shall accrue first to the **Insured** to the extent of any payments in excess of the limit of coverage; then to the Company to the extent of its payment under the Policy; and then to the **Insured** to the extent of its Deductible. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery. Notwithstanding anything to the contrary in this Policy, the Company shall not subrogate against any **Insured** under this Policy.

All other terms, conditions and exclusions remain the same.

Authorized Representative
or countersignature (where required by law)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM:

Forms a part of policy no.:

SPECIMEN

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

RIGHTS OF ACCESS AND INSPECTION ENDORSEMENT

It is hereby agreed that Section **VI. CONDITIONS**, Paragraph **I. Rights of Access and Inspection.** is deleted in its entirety and replaced with the following:

I. **Right of Access and Inspection** - Upon providing the **Insured** at least forty-eight (48) hours notice, and to the extent the **Insured** has such rights, any of the Company's authorized representatives shall have the right and opportunity but not the obligation to interview persons employed by the **Insured** and to inspect at any reasonable time, during the **Policy Period** or thereafter, the **Insured Property**. Neither the Company nor its representatives shall assume any responsibility or duty to the **Insured** or to any other party, person or entity, by reason of such right or inspection. Neither the Company's right to make inspections, sample and monitor, nor the actual undertaking thereof nor any report thereon shall constitute an undertaking on behalf of the **Insured** or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practices or are in compliance with any law, rule or regulation. The **Named Insured** agrees to provide appropriate personnel to assist the Company's representatives during any inspection.

All other terms, conditions and exclusions remain the same.

Authorized Representative
or countersignature (where required by law)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM:

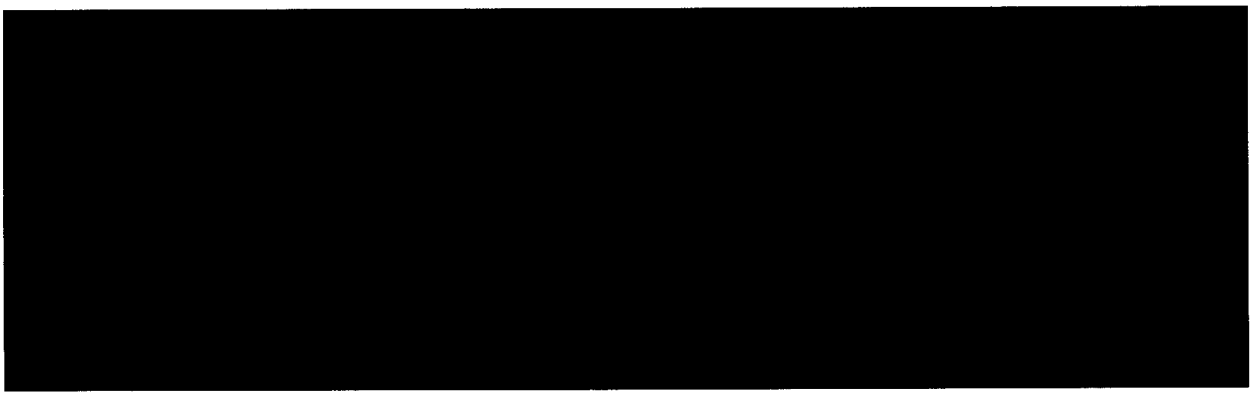
Forms a part of policy no.:

SPECIMEN

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.



All other terms, conditions and exclusions remain the same.

Authorized Representative
or countersignature (where required by law)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM:

Forms a part of policy no.:

SPECIMEN

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ACTION AGAINST COMPANY ENDORSEMENT

It is hereby agreed that Section **VI. CONDITIONS**, Paragraph **L. Action Against Company** is deleted in its entirety and replaced with the following:

L. Action Against Company - No third-party action shall lie against the Company, unless as a condition precedent thereto there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by the Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the Company be impleaded by the **Insured** or his legal representative. Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Company of any of its obligations hereunder.

The above paragraph does nothing to limit the **Insured's** rights to bring action against the Company.

All other terms, conditions and exclusions remain the same.

Authorized Representative
or countersignature (where required by law)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM:

Forms a part of policy no.:

SPECIMEN

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LEGAL DEFENSE AND EXPENSE ENDORSEMENT

It is hereby agreed that Section **I. INSURING AGREEMENTS, 2. LEGAL DEFENSE AND EXPENSE**, is deleted in its entirety and replaced with the following:

2. LEGAL EXPENSE AND DEFENSE

The Company shall have the right and the duty to defend any **Claims** covered under Coverages A through I provided the **Named Insured** has purchased such Coverage. The Company's duty to defend or continue defending any such **Claim**, and to pay any **Loss**, shall cease once the applicable limit of liability, as described in Section V. Limits of Coverage; Deductible has been exhausted. Defense costs, charges and expenses other than the Company's un-allocated internal expenses, are included in **Loss** and reduce the applicable limit of liability, as described in Section V., and are included within the Deductible amount for the Coverage Section that applies and is shown in Item 3 of the Declarations.

The Company will present any settlement offers to the **Insured**, and if the **Insured** refuses to consent to any settlement within the limits of liability of this Policy recommended by the Company and acceptable to the claimant, the Company's duty to defend the **Insured** shall then cease and the **Insured** shall thereafter negotiate or defend such **Claim** independently of the Company and the Company's liability shall not exceed the amount, less the Deductible or any outstanding Deductible balance, for which the **Claim** could have been settled if such recommendation was consented to.

All other terms, conditions and exclusions remain the same.

Authorized Representative
or countersignature (where required by law)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM:

Forms a part of policy no.:

SPECIMEN

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ACCESS TO INFORMATION ENDORSEMENT

It is hereby agreed that Section **VI. CONDITIONS**, Paragraph **J. Access to Information** is deleted in its entirety and replaced with the following:

J. Access to Information - The **Named Insured** agrees to provide the Company with access to any non-privileged information developed or discovered by the **Insured** concerning **Loss** covered under this Policy, whether or not deemed by the **Insured** to be relevant to such **Loss** and to provide the Company access to interview any **Insured** and review any non-privileged documents of the **Insured.**

All other terms, conditions and exclusions remain the same.

Authorized Representative
or countersignature (where required by law)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM:

Forms a part of policy no.:

SPECIMEN

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEFINITION OF BODILY INJURY ENDORSEMENT

It is hereby agreed that Section **VIII. DEFINITIONS**, Paragraph **B. Bodily Injury** is deleted in its entirety and replaced with the following:

B. Bodily Injury means sickness, disease, physical injury, mental anguish or emotional distress, sustained by any person, including death resulting therefrom.

All other terms, conditions and exclusions remain the same.

Authorized Representative
or countersignature (where required by law)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM:

Forms a part of policy no.:

SPECIMEN

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERAGES C AND F - PRE-EXISTING CONDITIONS ONLY ENDORSEMENT

It is hereby agreed that Section **I., INSURING AGREEMENTS, 1. COVERAGES C** and **F** are deleted in their entirety and replaced with the following:

COVERAGE C- THIRD-PARTY CLAIMS FOR ON-SITE BODILY INJURY AND PROPERTY DAMAGE RESULTING FROM PRE-EXISTING CONDITIONS

To pay on behalf of the **Insured, Loss** that the **Insured** becomes legally obligated to pay as a result of **Claims** for **Bodily Injury** or **Property Damage** resulting from **Pollution Conditions** on, at, in or under the **Insured Property** that commenced prior to the **Continuity Date** shown below, if such **Bodily Injury** or **Property Damage** takes place while the person injured or property damaged is on the **Insured Property**, provided such **Claims** are first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable.

For purposes of coverage provided by this Endorsement, the following **Continuity Date** applies to Coverage C:

Continuity Date: Policy Inception

COVERAGE F - THIRD-PARTY CLAIMS FOR OFF-SITE BODILY INJURY AND PROPERTY DAMAGE RESULTING FROM PRE-EXISTING CONDITIONS

To pay on behalf of the **Insured, Loss** that the **Insured** becomes legally obligated to pay as a result of **Claims** for **Bodily Injury** or **Property Damage** resulting from **Pollution Conditions**, beyond the boundaries of the **Insured Property,** that commenced prior to the **Continuity Date** shown below, and migrated from the **Insured Property,** provided such **Claims** are first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable.

For purposes of coverage provided by this Endorsement, the following **Continuity Date** applies to Coverage F:

Continuity Date: Policy Inception

All other terms, conditions and exclusions remain the same.

Authorized Representative
or countersignature (where required by law)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM:

Forms a part of policy no.:

SPECIMEN

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEFINITION OF CLAIM ENDORSEMENT

It is hereby agreed that Section **VIII. DEFINITIONS**, Paragraph **C. Claim** is deleted in its entirety and replaced with the following:

C. **Claim** means a written demand, order, notice or assertion of a legal right received by the **Insured** seeking a remedy or alleging liability or responsibility on the part of the **Insured** for **Loss** under Coverages A through I. For purposes of this Policy, a **Claim** does not include a **Possible Claim** that was reported under a prior policy but which has become a **Claim** during the **Policy Period** of this Policy as described in Section III. B.

All other terms, conditions and exclusions remain the same.

Authorized Representative
or countersignature (where required by law)