

LICENSE AND SHARED USE AGREEMENT

by and between

AES WR Limited Partnership

and

AES ES Tait, LLC

Dated April 6, 2015

Rate Schedule FERC No. 1

Tariff Submitter: AES WR Limited Partnership
FERC Program: FPA Electric (Transmission Cost of Service and Market-Based Rates)
Tariff Title: Tariffs, Rate Schedules and Service Agreements
Tariff Record Proposed Effective Date: June 15, 2015
Tariff Record Title: AES WR Limited Partnership License Agreement (AES ES Tait)
Option Code: A

LICENSE AND SHARED USE AGREEMENT

This LICENSE AND SHARED USE AGREEMENT (this "License") is made, dated and effective as of April 6th, 2015 (the "Effective Date"), and amends, restates and replaces in its entirety the License and Shared Use Agreement dated October 28, 2014, between AES WR Limited Partnership, a Delaware limited partnership ("Owner"), and AES ES TAIT, LLC., a Delaware limited liability company ("AESES"). Owner and AESES are herein referred to together as the "Parties" and each as a "Party".

This License covers (i) certain real property (the "Licensed Property") consisting of approximately 11,000 square feet of real property located on a portion of the site of that certain electricity generating facility (the "Power Plant") owned and operated by Owner, and located in Cumberland, Maryland, which Licensed Property is more particularly described in Exhibit A attached hereto and incorporated herein, and (ii) certain existing equipment and facilities of the Power Plant (the "Shared Facilities") owned and operated by Owner, which Shared Facilities are more particularly described in Exhibit B attached hereto and incorporated herein, including an existing 138kV transmission tie-line (the "Interconnection Facilities"), certain metering equipment and other infrastructure related to the Interconnection Facilities (the "Interconnection Equipment") and certain additional equipment described in Exhibit B (the Interconnection Facilities, Interconnection Equipment and additional equipment described in Exhibit B referred to herein collectively as the "Equipment").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and AESES hereby agree as follows:

1. License; Quiet Enjoyment.

1.1 License; Prior Rights. Owner hereby grants to AESES a license (a) to use the Licensed Property in accordance with Section 2 together with a license for ingress to and egress from the Licensed Property over and across the balance of the Power Plant site by means of the existing roads and lanes thereon, and (b) to use the Shared Facilities in accordance with Section 2 and the allocations and limitation set forth in Exhibit B (the "Usage Rights"). The license granted to Lessee pursuant to this Section 1.1 shall be (x) exclusive as to the Licensed Property provided that Owner retains a right of ingress and egress across the Licensed Property, and (y) non-exclusive as to the Shared Facilities and shall not preclude Owner from accessing and using the Interconnection Facilities in a safe and lawful manner subject to Lessee's rights under this License.

SUBJECT AND SUBORDINATE TO any and all liens, encumbrances or other title deficiencies of record with respect to the Licensed Property and the Shared Facilities as of the Effective Date and any renewals, modifications, consolidations, replacements and extensions thereof (collectively, the "Existing Encumbrances"). The Parties acknowledge and agree that as of the Effective date the Existing Encumbrances consist of: 1) that certain Credit Line Deed of Trust, dated as of September 1, 1995, by and among AES WR Limited Partnership ("Grantor"), John R. Lukens and Harvey A. Siler, as Trustee, and Wilmington Trust Company, as Collateral Trustee and Beneficiary (the "Beneficiary"), as amended by that certain Amendment to Credit Line Deed of Trust and Security Agreement, dated _____, _____, between Grantor and Beneficiary, and that certain Second Amendment to Credit Line Deed of Trust, dated as of February 28, 2013, by and among Grantor, Ellen S. Cappellanti and Charles W. Loeb, Jr., as Trustee, and the Beneficiary, 2) that certain Indemnity Deed of Trust and Security Agreement, dated as of September 1, 1995, by and among AES WR Limited Partnership ("Grantor"), Steven A. Teitelbaum and Kay A. Hooker, as Trustees, and the Potomac Edison Company ("Beneficiary"), and 3) other encumbrances as stated on Owner's Title Insurance Policy of 10-17-92 by Chicago Title Insurance Company and updated with Owner's Title Insurance Policy Endorsement #1 by Chicago Title Insurance Company of February 28, 2013.

In addition to the other terms and conditions set forth in this Agreement, the License to use the Shared Facilities granted under Section 1.1(b) above is expressly FURTHER SUBJECT AND SUBORDINATE TO:

- (i) Owner's prior right to the use of the Shared Facilities as reasonably required for the operation of the Power Plant up to its maximum operational level consistent with its original design, including as may be required to maintain the full capacity factor of the Power Plant under the Electric Energy Purchase Agreement, dated as of January 15, 1988, as amended through Amendment No. 8 dated as of March 21, 1995, between Owner and The Potomac Edison Company or any successor or replacement power purchase agreements (the "Power Plant Priority Operation Level"); and
- (ii) The availability of the Shared Facilities for use by AESES for the operation of the ESB Project in a manner consistent with generally accepted industry practices, as such availability may be limited from time to time, including without limitation as a result of or in connection with any scheduled or unscheduled outages thereof.

In the event that any or all of the Shared Facilities are operating at a diminished capacity or capability (as measured from such capacity or capability as of the Effective Date hereunder), whether as a result of a casualty or any other reason whatsoever, then unless otherwise agreed by Owner in its sole discretion, AESES' right to use the Shared Facilities pursuant to its License hereunder shall be limited to such use that does not interfere with or adversely affect Owner's ability to use the Shared Facilities for its operation of the Power Plant up to the Power Plant Priority Operation Level; *provided, however*, that the foregoing shall not affect or undermine Owner's obligations hereunder to use its commercially reasonable efforts to operate and maintain the Shared Facilities in a manner consistent with generally accepted industry practices and all Applicable Laws in accordance with Section 10 hereof or to restore any casualty to the Shared Facilities in accordance with Section 10 hereof.

1.2 Quiet Enjoyment. During the Term, Owner hereby represents, warrants and covenants that AESES shall be entitled to the quiet enjoyment and use of its License rights hereunder without interruption, interference, disturbance or hindrance from Owner or any person claiming by, through or under Owner, subject to the Existing Encumbrances *provided* that AESES' use of the License shall not in any material respect adversely affect or interfere with Owner's on-going operation and maintenance of the Power Plant up to the Power Plant Priority Operation Level or any or all activities of Owner reasonably required in connection therewith, including without limitation any repair, replacement, relocation or removal of all or any portion of the Power Plant, unless otherwise specifically consented to by Owner (which consent shall not be unreasonably withheld). For the avoidance of doubt, AESES shall have no right, power or authority to encumber, lease or convey any rights in or to any part of or interest in the Licensed Property or the Shared Facilities. Owner shall protect and defend the right, title and interest of AESES hereunder from any other rights, interests, title and claims of or by Owner or any such other person or entity, other than and subject to the Existing Encumbrances.

1.3 License Fee. In exchange for Owner's grant of this License, AESES shall pay Owner an annual payment of \$17,621 (the "License Fee") in advance, which shall be due and payable within five (5) days of the acceptance of this License for filing by the Federal Energy Regulatory Commission as a rate schedule under Section 205 of the Federal Power Act (the date of such acceptance the "Acceptance Date") and on each anniversary of the Acceptance Date during the Term. For the avoidance of doubt, Owner shall not provide any jurisdictional service under the Federal Power Act to AESES until the effective date of this License as a rate schedule under Section 205 of the Federal Power Act.

2. Purpose of License; Limited Use. This License is solely and exclusively for AESES (a) to use the Licensed Property to construct, own and operate on the Licensed Property an advanced energy storage

battery system with the design capability of providing 10MW of regulation service and other related ancillary services (the “ESB Project”), which ESB Project is described in greater detail in Exhibit C attached hereto and incorporated herein and (b) to use the Shared Facilities in the ordinary course of operation of the ESB Project consistent with generally accepted industry practices and in compliance with all applicable laws, rules and regulations of any governmental authority with jurisdiction over the matter (“Applicable Laws”), in each case together with any and all activities reasonably required in connection therewith, including, without limitation:

- (i) develop, construct, own, operate, maintain and repair the ESB Project on the Licensed Property;
- (ii) investigate conditions on the Licensed Property;
- (iii) interconnect the ESB Project via the Interconnection Facilities;
- (iv) construct, install, use, replace, relocate, repair, maintain and remove the ESB Project, and any related facilities and equipment of AESES on the Licensed Property.

(collectively, the “Project Activities”)

AS IS, WHERE IS. AESES hereby acknowledges and agrees that it is fully familiar with the condition of the Licensed Property, the Shared Facilities and the Power Plant, it has performed its own inspections of the Licensed Property and the Shared Facilities, and it accepts and Licenses the same hereunder “AS IS” and “WHERE IS” with any and all faults and deficiencies (whether known or unknown), including without limitation subject to all matters of record and physical attributes of the Licensed Property and the Shared Facilities. Except as otherwise expressly provided herein, Owner has made no representations of any nature whatsoever in connection with the condition or characteristics of the Licensed Property or the Shared Facilities or the suitability thereof for the ESB Project or otherwise, and Owner shall not be liable for any latent or patent defects with respect to all or any portion of the Licensed Property or the Shared Facilities.

4. Term; Early Termination.

4.1 Term. This License shall be for a term (“Initial Term”) commencing on the Effective Date and continuing until the fifteenth (15th) anniversary of the Acceptance Date. Subject to the termination rights set forth in Section 4.2, two “Extension Terms” of five (5) years shall be permitted if elected by AESES, which election shall be made by written notice provided by AESES to Owner at least 180 days prior to the end of the Initial Term (with respect to the first Extension Term) or 180 days prior to the end of the first Extension Term (with respect to the second Extension Term). If AESES fails to make such an election either for the first or second Extension Term, this License shall not terminate automatically, but shall remain in place on a year-to-year basis (“Roll-Over Period”) until the earlier to occur of (i) thirty (30) days after receipt of a termination notice from either Party to the other Party hereunder during any Rollover Period and (ii) the twenty-fifth (25th) anniversary of the Effective Date. As used herein, “Term” shall mean the Initial Term together with each Extension Term and Roll-Over Period.

4.2 Early Termination. AESES shall have the right to terminate this License as to the entire Licensed Property and Shared Facilities, but not in part, at any time, effective upon thirty (30) days’ written notice to Owner from AESES. Upon the effective date of any such early termination by AESES, AESES shall peaceably quit and surrender the Licensed Property to Owner in the manner required pursuant to Sections 6 and 14 and shall cease to have any rights to further use of the Licensed Property or

Shared Facilities hereunder. Upon such surrender of the Licensed Property, AESES shall be released and relieved of any obligation with respect to the License Fee that would otherwise have become payable hereunder after such termination date, but Owner shall be entitled to retain any and all license fees paid by AESES with respect to the unexpired portion of the year in which such termination of this License occurs.

5. Approved Contractors.

5.1 AESES Invitees. The rights granted hereunder may be extended by AESES to third parties (including, without limitation, employees, contractors, subcontractors, advisors, consultants, potential or actual financing parties and their agents) (each, an "AESES Invitee"); provided, that (a) the extension of such rights is reasonably related to and required for the Project Activities, (b) such rights are granted on terms and conditions that are no less restrictive than the terms and conditions set forth herein, and (c) such AESES Invitees are reasonably qualified to perform any Project Activities to be performed by such AESES Invitees in accordance with prudent industry practices and are licensed to the extent required by applicable law.

5.2 AESES Responsibility. AESES shall (a) cause each AESES Invitee to act in accordance with the terms and conditions set forth herein and (b) be responsible for any failure by any such AESES Invitee to act in accordance with such terms and conditions, and for any liability arising from the acts or omissions of such AESES Invitee, in each case, as if such failure, act or omission was of AESES. AESES' indemnification obligations set forth below shall apply with respect to any acts or omissions of the AESES Invitees

6. Ownership of ESB Project. Owner shall have no ownership or other interest in the ESB Project installed on the Licensed Property, and AESES shall own and may remove at any time any or all of the ESB Project and any other related facilities and equipment placed on the Licensed Property by AESES, regardless of the manner of installation or affixation of the ESB Project to the Licensed Property or any such other related facilities and equipment. The Parties agree and acknowledge that the ESB Project and related facilities and equipment constitute personal property and not real property. Further, it is the intention of the Parties that the separation of title to the Licensed Property from the title to the ECB Project is to remain so separated for the duration of the Term of this License.

7. Taxes and Impositions.

7.1 Property Taxes. AESES shall pay when due any property taxes levied or assessed by any governmental authority upon the ESB Project or other related facilities and equipment placed on the Licensed Property by AESES. AESES shall provide evidence of the payment of any taxes it is responsible for within five (5) days after the date such amounts were due and payable or promptly following Owner's request therefor. If Owner incurs any interest charges, penalty or loss of a discount due to AESES' failure to pay such property taxes when due, AESES shall reimburse Owner on demand for such charges, penalties and losses. AESES shall have the right, in its sole discretion, to contest by appropriate legal proceedings (which may be brought in the name(s) of Owner and/or AESES where appropriate or required), the legal validity or amount of any assessments or taxes the payment of which AESES is responsible for hereunder but shall pay such disputed taxes when due and thereafter seek reimbursement. Owner shall reasonably cooperate with AESES in such contest (including by joining in the signing of any protest, appeal or pleading that AESES may deem advisable to file), and AESES shall reimburse Owner for its reasonable out-of-pocket expenses incurred for such cooperation.

7.2 Real Property Taxes and Impositions. (a) If, during the Term of this License, the Licensed Property shall not be separately assessed but shall be assessed as part of a larger tract of land (of

which the Licensed Property forms a part) owned by Owner, then real estate taxes and other impositions on such larger tract of land shall be apportioned between Owner and AESES in accordance with this Section 7.2. AESES' proportionate share of any such taxes and impositions shall be determined by multiplying the amount of such taxes and impositions by a fraction, the numerator of which shall be the value allocated to the Licensed Property, and the denominator of which shall be value allocated to all of the land included in such taxes and impositions. Before the calculation of each party's proportionate share of such taxes and impositions, the amount thereof shall be equitably reduced by the amount of any taxes and impositions attributable to improvements owned by AESES on the Licensed Property or by Owner located on the larger tract of land, including any improvements owned by Owner on the Licensed Property. AESES' proportionate share of such taxes and impositions so calculated shall then be equitably increased by the amount thereof attributable to those improvements owned by AESES. In addition, if any such taxes and impositions are attributable to the Shared Facilities, AESES shall also be responsible for the share of such taxes and impositions as determined pro rata based on the actual use of such Shared Facilities by each of Owner and AESES.

(b) With respect to any period when the Licensed Property shall not be separately assessed, Owner shall pay all taxes and impositions payable with respect to the land and improvements covered by such taxes and impositions (including those imposed with respect to the Licensed Property). Owner shall provide a copy of the bill for such taxes and impositions accompanied by a copy of the paid receipt from the applicable authority to AESES no later than thirty (30) days following the date said bill is due for payment without penalty. No later than thirty (30) days after Owner's delivery to AESES of a paid receipt or other evidence of payment of such bill, AESES shall reimburse Owner for its proportionate share of such taxes and assessments, computed in accordance with Section 7.2(a). In no event shall AESES be responsible for payment of any late charges or penalties resulting from the late or non-payment of said taxes and impositions by Owner.

(c) Owner may, at its election, at any time during the Term apply for a subdivision or separate assessment for the Licensed Property and, following such subdivision or other separate assessment, AESES shall be responsible for payment of taxes and impositions separately assessed for the Licensed Property and the improvements thereon owned by AESES.

7.3 Utilities. During the Term, AESES will pay all charges for public and private utilities, excises, levies, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time during the Term may be assessed, levied, confirmed, imposed upon or become a lien on the Licensed Property or the Power Plant as a result of or arising out of the installation and operation of the ESB Project or any related facilities and equipment on the Licensed Property installed or operated by AESES.

7.4 Tax Credits and Abatements. All tax credits, rebates, grants, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the ESB Project shall be the exclusive property of and solely for the account of AESES.

8. **Owner's Approval of ESB Project Design.** The installation and location of the ESB Project and any related facilities and equipment to be placed on the Licensed Property or the balance of the Power Plant site shall be subject to the prior written consent of Owner, which consent shall not be unreasonably withheld. Owner shall use commercially reasonable efforts to review any plans for the ESB Project and any such related facilities and equipment within thirty (30) days after submission by AESES of plans and specifications therefor. The ESB Project will at all times during the Term have its own metering point, if applicable, which will be installed and maintained by or on behalf of AESES at its own expense.

9. **AESES' Representations, Warranties, and Covenants.** AESES hereby represents, warrants, and covenants to Owner that:

9.1 **Owner's Activities.** AESES recognizes that Owner uses the Licensed Property and the Power Plant as an electric generating facility and ancillary uses in connection therewith, as well as for other activities reasonably related thereto ("Owner's Activities"). AESES' operation of the ESB Project shall not interfere with or disturb Owner's Activities at the Power Plant in any material respect, including without limitation those Owner's Activities required to implement and comply with Owner's rights and obligations under the Owner's Offtake Agreements. Upon completion of installation of the ESB Project and any related facilities and equipment of AESES on the Licensed Property, all property disturbed by AESES and not required to remain in such altered condition for the continuing operations of the ESB Project shall be restored to a condition that is substantially similar to its original condition and consistent with the continued use thereof for Owner's Activities. Such restoration shall include, if and as reasonably required, leveling, terracing, mulching and other reasonably necessary steps to prevent soil erosion.

The term "Offtake Agreements" means (i) that certain Electric Energy Purchase Agreement by and between AES WR Limited Partnership (as assignee of AES Warrior Run, Inc., formerly AES Cumberland, Inc.) as Seller and The Potomac Edison Company, as Buyer, dated as of January 15, 1988 as amended; and, (ii) that certain AES Warrior Run Project Operations Coordination Agreement by and between AES Warrior Run, Inc. and The Potomac Edison Company, dated as of January 17, 2000.

9.2 **Insurance.** (a) AESES shall, at its expense, maintain: (i) broad form comprehensive coverage policy of public liability insurance insuring AESES and Owner against loss or liability caused by AESES' occupation and use of the Licensed Property and the Shared Facilities under this License; (ii) workers compensation insurance; (iii) automobile liability insurance; (iv) excess liability insurance; (v) property insurance. All insurance shall include the coverages and corresponding amounts specified on Exhibit D attached hereto and incorporated herein. Certificates of such insurance shall be provided to Owner upon the Effective Date and thereafter within five (5) days after Owner's request therefor. On an annual basis, AESES shall deliver to Owner evidence of the renewal of such policy at time of renewal.

(b) Every insurance policy required hereunder shall name Owner, AESES and, if requested by Owner, any Owner's Mortgagee (hereinafter defined) and any offtake agreement counterparty, as additional insureds, in each case as their respective interests may appear. In addition, every insurance policy shall contain an express agreement by the insurer that it will not cancel such policy for non-payment of premium without at least ten (10) days' prior written notice to Owner (as well as any Owner's Mortgagee, if applicable), shall expressly waive any right of recovery of the insurer against Owner and shall provide that any loss thereunder shall be payable notwithstanding any act or negligence of AESES or Owner. Should AESES fail to comply with its obligations under this Section 9.2, Owner at its option, may upon ten (10) business days' notice to AESES of its intention to do so, procure such insurance, and any reasonable sums expended by Owner to procure such insurance shall be payable as additional license fees hereunder and shall be reimbursed by AESES upon written demand therefor by Owner.

9.3 Indemnity. (a) AESES shall indemnify and hold harmless Owner and its affiliates and their respective directors, officers, managers, employees, agents, representatives and successors and assigns (the "Owner Indemnified Parties") from and against any and all losses, liabilities, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses, including without limitation reasonable engineers' and attorneys' fees and disbursements (including without limitation in connection with any investigations or discovery requests), (collectively, "Claims") that may be imposed upon, incurred by or asserted against any Owner Indemnified Party or its assets (including without limitation Owner's interest in the Licensed Property, the Shared Facilities or the Power Plant) by reason of or in connection with any of the following:

- (i) any negligent or tortious act or failure to act on the part of AESES or any of its agents, contractors, employees, representatives or invitees, including without limitation in connection with the installation, operation, maintenance, repair, replacement or removal of the Licensed Property, the ESB Project or any related facilities and equipment placed on the Licensed Property by AESES;
- (ii) any violation by AESES of any covenants, restrictions, easements, agreements or conditions contained in any document or instrument of record affecting the Licensed Property; and
- (iii) (A) any violations of or noncompliance with any obligations under Environmental Laws (hereinafter defined), (B) the generation, manufacture, production, use, storage, transportation, disposal, discharge, release, or threatened release of any Hazardous Materials (hereinafter defined) on, under, at or from the Licensed Property; (C) any personal injury (including wrongful death) or property damage (real or personal, including, without limitation, damage to natural resources) arising out of or related to such Hazardous Materials; and (D) any lawsuit brought or threatened, settlement reached, or government order or directive relating to Environmental Laws including, without limitation, those relating to Hazardous Materials, in any such case under this clause (iii) to the extent caused or contributed to by any acts or omissions of AESES or its directors, officers, agents, employees, contractors and invitees.

Provided, however, that the foregoing indemnification shall not apply to the extent that such Claims are caused by the gross negligence or willful misconduct of Owner or any of its agents, contractors, employees, representatives or invitees (other than AESES or any of its agents, contractors, employees, representatives or invitees). The amount owing to the Owner Indemnified Party from AESES in respect of any Claims covered by this indemnification obligation will be the amount of such Owner Indemnified Party's damages, losses and expenses net of any insurance or other recovery actually received by or on behalf of such party.

For purposes of this License, the term "Environmental Laws" shall mean all applicable federal, state and local statutes, laws, ordinances, codes, rules, regulations, consent decrees, administrative orders, concessions, grants, franchises, licenses or license conditions, permits or permit conditions, injunctions, judgments and any other legally enforceable requirements, in each case, of any governmental authority relating to, regulating or imposing liability or mandatory standards of conduct concerning public health, safety or the environment or natural resources, as have been, are now, or may at any time hereafter be in effect; and the term "Hazardous Materials" shall mean any contaminant, pollutant, material, substance or waste that is (x) listed, classified or regulated as a "hazardous waste" or "hazardous substance" pursuant to any applicable Environmental Law, (y) any petroleum product or by-product, friable asbestos, radioactive materials, urea formaldehyde insulation or polychlorinated biphenyls or (z) is classified or

regulated as toxic or hazardous (or words of similar meaning and regulatory effect) pursuant to an Environmental Law or for which liability can be imposed pursuant to an Environmental Law.

(b) In case any claim or any action, administrative or legal proceeding or investigation is brought against any Owner Indemnified Party as to which the indemnification provided for under this Section 9.3 may apply, upon notice thereof from Owner or any other affected Owner Indemnified Party, AESES shall, at its own expense, assume the defense thereof with counsel designated by it and reasonably satisfactory to the Owner Indemnified Party; *provided*, that if the defendants in any such action include both AESES and one or more Owner Indemnified Parties and the Owner Indemnified Party(ies) shall have reasonably concluded that there may be legal defenses available to it which are different from, additional to, or inconsistent with, those available to AESES, the Owner Indemnified Party(ies) shall have the right to select separate counsel to participate in the defense of such action on behalf of such indemnified Party, at AESES' expense. Should an Owner Indemnified Party be entitled to indemnification under this Section 9.3, and AESES fails to assume the defense of such claim, the Owner Indemnified Party shall have the right (but not the obligation) to, at the expense of AESES, contest (or, with the prior written consent of AESES, settle) such claim, *provided* that no such contest need be made and settlement or full payment of any such claim may be made without consent of AESES (with AESES remaining obligated to indemnify the Owner Indemnified Party under this Section 9.3) if, in the written opinion of the Owner Indemnified Party's counsel, such claim is meritorious.

(c) The indemnification contained in this Section 9.3 shall survive the expiration or earlier termination of this License.

9.4 Compliance with Laws and Owner Site Rules.

(a) AESES, at its expense, shall comply with all laws, ordinances, statutes, orders, and regulations of any governmental agency applicable to the ESB Project and the Licensed Property, including, without limitation, all applicable permits, governmental approvals and Environmental Laws. AESES shall have the right, at its expense, to contest by appropriate legal proceedings, the validity or applicability to the Licensed Property and/or the ESB Project of any law, ordinance, statute, order, regulation, property assessment, or the like now or hereafter made or issued by any governmental agency, *provided* that (i) Owner is given written notice of any proposed contest prior to the commencement thereof and Owner does not object to such contest in writing within ten (10) days after its receipt of such notice, (ii) such contest could not subject Owner to any civil or criminal liability or create any lien on the Licensed Property or the Power Plant, (iii) Owner will not incur any costs in connection with such contest, and (iv) either AESES shall comply with such law, ordinance, statute, order, regulation, property assessment or other requirement during the pendency of such contest, or such proceedings shall serve to stay or suspend enforcement under any such law, ordinance, statute, order, regulation, property assessment or other requirement so contested by AESES.

(b) AESES, at its expense, shall comply with all safety rules and policies of Owner (as communicated by Owner to AESES from time to time) with respect to its activities on the Licensed Property and its ingress and egress on or across the balance of the Power Plant site; *provided*, that any such rules, policies or requirements that have not been disclosed to AESES as of the Effective Date (i) shall not have a material adverse effect on the value of the rights granted hereunder (including the ability of AESES to use such rights for the purposes contemplated hereunder), and (ii) shall not become effective hereunder until AESES shall have been given a reasonable period of time (as reasonably determined by Owner) after such additional rule, policy or requirement is disclosed to implement compliance therewith, *except* that the restrictions set forth in clauses (i) and (ii) of this proviso shall not be applicable if and to the extent that such additional rule, policy or requirement is required, in Owner's reasonable

determination, (x) as a result of a change in Applicable Law or generally accepted industry practices or (y) to address an imminent risk of damage to Owner's property or injury to Person(s).

9.5 Maintenance and Repair of Licensed Property and ESB Project. AESES shall, at its expense, cause the Licensed Property, the ESB Project and any other related facilities and equipment placed on the Licensed Property by AESES to be operated, maintained and managed in a safe and lawful manner in accordance with generally accepted and prudent industry standards, and with the exercise of reasonable judgment, skill, diligence, foresight and care that is generally accepted within industry with respect to assets of a type similar to the ESB Project and shall make all necessary repairs thereto. AESES acknowledges and agrees that Owner has no responsibility for the repair, replacement or maintenance of the Licensed Property, the ESB Project and any other related facilities and equipment placed on the Licensed Property by AESES or any part thereof and Owner shall not furnish any services or facilities to the Licensed Property other than the right to use of the Shared Facilities hereunder, unless otherwise specifically agreed to in writing by Owner. In the event that AESES' use of the Shared Facilities hereunder were to damage or otherwise impair such facilities, AESES shall be responsible for reimbursing Owner for the costs reasonably incurred by Owner in repairing or replacing such Shared Facilities to remedy such damage or impairment, net of any insurance proceeds received by Owner in respect thereof. All scheduling and other services associated with the input and/or output of the energy and ancillary services to or from the ESB Project will be handled by AESES or a third party retained by AESES to act in this capacity on its behalf, and Owner shall have no responsibilities with respect to such activities.

9.6 Not Used.

9.7 Liens. AESES shall keep the Licensed Property and the Power Plant and all parts thereof free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies, or equipment furnished to, the Licensed Property in connection with AESES' use of the Licensed Property pursuant to this License; *provided, however*, that if AESES wishes to contest any such lien, AESES shall, within thirty (30) days after it receives notice of the filing of such lien, remove such lien from the Licensed Property and Power Plant by surety bond or otherwise, pursuant to applicable law. Nothing in this License shall be deemed or construed in any way as constituting the consent or request of Owner, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance by AESES of any work, labor or services or the furnishing to AESES of any materials for any specific change, alteration or repair to or of the Licensed Property or installation of the ESB Project or any other related facilities or equipment or any part thereof, nor as giving AESES any right, power or authority to contract for or permit the performance of any work, labor or services or the furnishing of any materials that would give rise to any vendor's, mechanic's, laborer's, materialman's or other lien, encumbrance or charge against the Licensed Property, the Power Plant or any part thereof. Owner shall have the right at all reasonable times to post and keep posted on the Licensed Property any notices that may be required by law for the protection of Owner and the Licensed Property from such liens.

9.8 Hazardous Materials. AESES shall not cause or permit the Licensed Property or the ESB Project to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Environmental Laws. AESES shall, as required by and in accordance with all applicable Environmental Laws, clean up and remediate any release of Hazardous Materials onto the Licensed Property and/or the balance of the Power Plant site caused by any intentional or unintentional act or omission on the part of AESES or any other person acting at the direction of or on behalf of AESES at any time during the Term. AESES shall conduct and complete all investigations, studies, samplings, and testing, and all remedial removal, and other actions necessary to clean up and remove all Hazardous Materials (which shall be AESES'

responsibility pursuant to the preceding sentence), on, from, or affecting the Licensed Property in accordance with all applicable Environmental Laws and the orders and directives of all federal, state, and local governmental authorities. Owner shall have the right to inspect the Licensed Property for the purpose of ensuring AESES' compliance under this Section 9.8.

9.9 Buried Cables. If AESES is to bury any cables, pipes or other underground facilities on the Licensed Property, such facilities shall be installed at such locations and depths and in accordance with such work plans and schedules as Owner shall have approved (which approval shall not be unreasonably withheld). Within thirty (30) days after the completion of the ESB Project, AESES shall provide Owner a map with locations of all cables, pipes and other underground facilities buried by AESES on the Licensed Property.

9.10 Brokers. AESES warrants and represents to Owner that AESES has not dealt with any broker, consultant, finder or like agent who or which might be entitled to a commission in connection with this License or the ESB Project.

9.11 AESES' Authority. AESES has the unrestricted right and authority to execute this License. Each person signing this License on behalf of AESES is authorized to do so. When signed by AESES, this License constitutes a valid and binding agreement enforceable against AESES in accordance with its terms.

10. Owner's Representations, Warranties, and Covenants. Owner hereby represents, warrants, and covenants to AESES that:

10.1 Owner's Authority. Owner is the fee owner of the Licensed Property and has the right and authority to execute this License and to grant to AESES the rights granted hereunder. Each person signing this License on behalf of Owner is authorized to do so. When signed by Owner, this License constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

10.2 AESES' Activities. Owner recognizes that AESES intends to use the Licensed Property for purposes of the Project Activities. Owner shall use commercially reasonable efforts to operate and maintain the Power Plant and to conduct its other Owner's Activities in such a manner as to not interfere with or disturb AESES' Activities at the Licensed Property in any material respect.

10.3 Insurance. (a) Owner shall, at its expense, maintain: (i) broad form comprehensive coverage policy of public liability insurance insuring AESES and Owner against loss or liability caused by Owner's occupation and use of the Power Plant site, the Power Plant and the Shared Facilities; (ii) workers compensation insurance; (iii) automobile liability insurance; (iv) excess liability insurance; (v) property insurance. All insurance shall include the coverages and corresponding amounts specified on Exhibit D attached hereto and incorporated herein. Certificates of such insurance shall be provided to AESES upon the Effective Date and thereafter within five (5) days after AESES' request therefor. On an annual basis, owner shall deliver to AESES evidence of the renewal of such policy at time of renewal.

b) Every insurance policy required hereunder: (i) shall name AESES as an additional insured; (ii) shall contain an express agreement by the insurer that it will not cancel such policy for non-payment of premium without at least ten (10) days' prior written notice to AESES ; (iii) shall expressly waive any right of recovery of the insurer against AESES; (iv) and shall provide that any loss thereunder shall be payable notwithstanding any act or negligence of AESES or Owner.

10.4 Indemnity. (a) Owner shall indemnify and hold harmless AESES and its affiliates and their respective directors, officers, managers, employees, agents, representatives and successors and

assigns (the “AESES Indemnified Parties”) from and against any and all Claims that may be imposed upon, incurred by or asserted against any AESES Indemnified Party or its assets (including without limitation AESES’ interest in the ESB Project) by reason of or in connection with any of the following:

- (i) any negligent or tortious act or failure to act on the part of Owner or any of its agents, contractors, employees, representatives or invitees, including without limitation in connection with the operation, maintenance, repair or replacement of the Power Plant; and
- (ii) (A) any violations of or noncompliance with any obligations under Environmental Laws, (B) the generation, manufacture, production, use, storage, transportation, disposal, discharge, release, or threatened release of any Hazardous Materials on, under, at or from the balance of the Power Plant site (other than the Licensed Property); (C) any personal injury (including wrongful death) or property damage (real or personal, including, without limitation, damage to natural resources) arising out of or related to such Hazardous Materials; and (D) any lawsuit brought or threatened, settlement reached, or government order or directive relating to Environmental Laws including, without limitation, those relating to Hazardous Materials, in any such case under this clause (ii) to the extent caused or contributed to by any acts or omissions of Owner or its directors, officers, agents, employees, contractors and invitees (other than AESES or its directors, officers, agents, employees, contractors and invitees).

Provided, however, that the foregoing indemnification shall not apply to the extent that such Claims are caused by the gross negligence or willful misconduct of AESES or any of its agents, contractors, employees, representatives or invitees. The amount owing to the AESES Indemnified Party from Owner in respect of any Claims covered by this indemnification obligation will be the amount of such AESES Indemnified Party’s damages, losses and expenses net of any insurance or other recovery actually received by or on behalf of such party.

(b) In case any claim or any action, administrative or legal proceeding or investigation is brought against any AESES Indemnified Party as to which the indemnification provided for under this Section 10.4 may apply, upon notice thereof from AESES or any other affected AESES Indemnified Party, Owner shall, at its own expense, assume the defense thereof with counsel designated by it and reasonably satisfactory to the AESES Indemnified Party; *provided*, that if the defendants in any such action include both Owner and one or more AESES Indemnified Parties and the AESES Indemnified Party(ies) shall have reasonably concluded that there may be legal defenses available to it which are different from, additional to, or inconsistent with, those available to Owner, the AESES Indemnified Party(ies) shall have the right to select separate counsel to participate in the defense of such action on behalf of such indemnified Party, at Owner’s expense. Should a AESES Indemnified Party be entitled to indemnification under this Section 11.4, and Owner fails to assume the defense of such claim, the AESES Indemnified Party shall have the right (but not the obligation) to, at the expense of Owner, contest (or, with the prior written consent of Owner, settle) such claim, *provided* that no such contest need be made and settlement or full payment of any such claim may be made without consent of Owner (with Owner remaining obligated to indemnify the AESES Indemnified Party under this Section 11.4) if, in the written opinion of the AESES Indemnified Party’s counsel, such claim is meritorious.

(c) The indemnification contained in this Section 10.4 shall survive the expiration or earlier termination of this License.

10.5 Liens. Owner shall keep the ESB Project and all parts thereof free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies, or equipment furnished

to, the balance of the Power Plant site in connection with Owner's operation and maintenance of the Power Plant and its other Owner's Activities; *provided, however*, that (a) the foregoing shall not apply to any Existing Encumbrance if and to the extent such encumbrance is deemed to affix to the ESB Project, notwithstanding Parties' express agreement and intent that this License does not grant AESES any real property interest in respect of the Licensed Property and that the ESB Project is not intended to constitute real property but rather consists of removable personal property of AESES, and (b) if Owner wishes to contest any such lien, Owner shall, within thirty (30) days after it receives notice of the filing of such lien, remove such lien from the ESB Project by surety bond or otherwise, pursuant to applicable law.

10.6 Requirements of Governmental Agencies. Owner shall use commercially reasonable efforts to cooperate with AESES, at no out-of-pocket expense to Owner, in obtaining any land use permits, building permits, environmental impact reviews or any other approvals required for the construction, installation, replacement, maintenance, operation or removal of the ESB Project or any other related facilities or equipment placed on the Licensed Property by AESES, including execution of applications for such approvals.

10.7 Maintenance and Repair of Shared Facilities.

(a) Owner shall, at its expense, use commercially reasonable efforts to cause the Shared Facilities Licensed Property to be operated, maintained and managed in a safe and lawful manner in accordance with generally accepted and prudent industry standards, and with the exercise of reasonable judgment, skill, diligence, foresight and care that is generally accepted within industry with respect to assets of a type similar to the Shared Facilities and to cause all necessary repairs thereto to be made. In the event that AESES' use of the Shared Facilities hereunder causes or contributes to any damage or impairment of such facilities, Owner shall have the right to require AESES to bear all costs (or, if Owner's use of the Shared Facilities was also a cause or contributing factor in such damage or impairment, were to damage or otherwise impair such facilities, to bear such portion of such costs as equitably reflects AESES' share of the responsibility for such damage or impairment, as reasonably determined by Owner) reasonably incurred by Owner in repairing or replacing such Shared Facilities to remedy such damage or impairment, net of any insurance proceeds received by Owner in respect thereof.

(b) Owner shall not contract with any third party for their use of any of the Shared Facilities, or substantially modify its Power Plant in such a manner as to materially increase its use of the Shared Facilities above the Plant Priority Operation Level, in either case in a manner which could reasonably be expected to have a material adverse effect on AESES' use or enjoyment of the Shared Facilities under this License, without the consent of AESES (not to be unreasonably withheld).

(c) Owner shall use its good faith efforts to cooperate and coordinate with AESES with respect to the scheduling of maintenance outages of the Shared Facilities, *provided* that Owner shall not be required to act in a manner that is not consistent with generally accepted and prudent industry practices or that would adversely affect its operation of the Power Plant or its performance under contractual commitments, in each case as determined by Owner in good faith.

(d) Notwithstanding anything in this License to the contrary, Owner shall have the right (but not the obligation) to disconnect the ESB Project from the Shared Facilities without any liability to AESES at any time and for such duration that Owner, in its good faith judgment, determines is required under generally accepted or prudent industry practices in order to avoid or mitigate the risk of imminent damage to property (including without limitation the Shared Facilities) or injury or death to persons.

11. Condemnation of Licensed Property.

(a) In the event of any condemnation or eminent domain proceeding with respect to the Licensed Property, any award, payment or compensation to which the Parties may be or become entitled by reason of such condemnation or eminent domain proceeding shall be apportioned between Owner and AESES *pro rata* in proportion to the fair market sales value of (i) the portion of the Licensed Property condemned, as considered vacant and unimproved and subject to this License, and (ii) the portion of the ESB Project that is located on the portion of the Licensed Property condemned and, if only a portion of the Licensed Property has been condemned, that cannot feasibly and economically be re-located to such other non-condemned portion of the Licensed Property, minus the resale or salvage value of the ESB Project following its removal from the Licensed Property by AESES; *provided, however*, that for the avoidance of doubt the foregoing (x) shall not apply to any awards, payments or compensation to which Owner may be or become entitled with respect to its interests in and to the balance of the Power Plant site (other than the Licensed Property) and the Power Plant, and (y) is subject and subordinate to any prior claims in and to any such awards, payments or compensation arising under the Existing Encumbrances.

(b) If there is a permanent taking of all or substantially all of the Licensed Property, then AESES shall have the right to terminate this License on written notice to Owner and the license fees due hereunder for such current year shall be prorated reflecting such termination date.

(c) If during the Term there is a temporary taking or a taking of an immaterial part of the Licensed Property, then this License shall remain in full, force and effect but the license fees payable hereunder shall be equitably prorated.

12. Assignments and Sublicenses. AESES shall not (either voluntarily or by operation of law) assign this License or its interest under this License or sublicense any part of the Licensed Property, or pledge, mortgage or otherwise encumber this License or any interest herein or permit the Licensed Property to be occupied by anyone other than AESES (any such assignment, sublicensing, pledge, mortgage, encumbrance, occupation or transfer is hereinafter referred to as a "Transfer"), without the prior written consent of Owner (in its sole discretion). For purposes of this License, the term "Transfer" shall also include the dissolution, merger, consolidation, division, liquidation or other reorganization of AESES, or within a twelve month period: (i) the sale or other transfer of 50% or more of the voting securities, ownership interests or membership interests of AESES or (ii) the sale, mortgage, hypothecation or pledge of 50% or more of AESES' net assets. Notwithstanding the foregoing, AESES may assign its interest in this License or sublicense the Licensed Property to any entity which The AES Corporation directly or indirectly owns not less than 50% of the voting securities, ownership interests or membership interests thereof. No assignment or sublicense shall release or relieve AESES or any permitted assignee or sublicensee of its obligations under this License.

Owner shall not transfer or assign the Licensed Property without requiring that the purchaser also take assignment of Owner's interest pursuant to this License.

Any purported Transfer in violation of this Section 12 shall be null and void.

13. Events of Default; Remedies; Etc.

13.1 Events of Default. An "Event of Default" by the applicable Party shall be deemed to have occurred if:

- i. Such Party shall default in making the payment of any sums payable by it hereunder, and such failure shall continue for fifteen (15) days after the same shall become due and payable; or
- ii. Such Party shall default in the performance of or compliance with any of the other covenants, agreements, terms or conditions of this License to be performed by or complied with by it hereunder, and such default continues for thirty (30) days after such Party receives written notice thereof from the other Party; *provided, however*, that if the nature of the default is such that it cannot be cured within such thirty (30) day period, no Event of Default shall exist in respect of such default if the defaulting Party commences the curing of the default within such thirty (30) day period and thereafter diligently prosecutes the same to completion, *provided* that such default is cured no later than ninety (90) days after the defaulting Party's receipt of such default notice from the other Party;
- iii. Such Party shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, composition, readjustment or similar relief under any present or future bankruptcy or other applicable law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, or liquidator of itself or of all or any substantial part of its properties or of all or any part of the Licensed Property; or
- iv. any representation or warranty given by the defaulting Party hereunder proves to have been false or incorrect in any material respect on the date as of which such representation or warranty is made unless the condition or event giving rise to such false or incorrect representation or warranty has been cured within thirty (30) days after such defaulting Party acquires knowledge or receives written notice thereof.

13.2 Remedies. Upon the occurrence and during the continuance of any Event of Default by a Party hereunder, the non-defaulting Party will be entitled to pursue any or all of the following remedies, in addition to any other remedy it may have available to it hereunder or at law or in equity:

- i. obtain monetary damages against the defaulting Party in the amount of any loss, damage or injury suffered by the non-defaulting Party as a result of such default,
- ii. obtain injunctive relief against the performance of any act or occurrence by the defaulting Party constituting a breach of this License or any covenant or agreement required to be performed by the defaulting Party,
- iii. obtain specific performance by the defaulting Party of any covenant or agreement required to be performed under this License by the defaulting Party,
- iv. pay or perform any obligations of the defaulting Party that have not been paid or performed as required hereunder, and to obtain immediate reimbursement from the defaulting Party for the actual, reasonable and verifiable out-of-pocket costs of such payment or performance, or
- v. terminate this License by written notice to the defaulting Party, in which event AESSES shall promptly perform its removal and restoration obligations under Section 14 below and surrender possession of the Licensed Property to Owner.

13.3 Exclusion of Consequential Damages. Notwithstanding any other provision of this License, neither Party shall in any event be liable to the other Party or its affiliates and their respective directors, officers, managers, employees, agents, representatives and successors and assigns for claims for lost profits, consequential, incidental, punitive, exemplary, special or indirect damages of any kind, whenever arising and from any cause whatsoever, whether arising in tort, contract, warranty, strict liability or by operation of law or otherwise; *provided*, that if either Party is held liable to an unaffiliated third party for any such damages and the Party held liable for such damages is entitled to indemnification therefor from the other Party hereunder, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, such damages notwithstanding this Section 13.3.

13.4 Remedies Cumulative. No right or remedy conferred upon or reserved to a Party hereunder shall be exclusive of any other right or remedy, and any right and remedy shall be cumulative and in addition to every other right or remedy given hereunder or now or hereafter existing at law or in equity. The failure of a Party to insist at any time upon the strict performance of any covenant or agreement or to exercise any right, power or remedy contained in this License shall not be construed as a waiver or relinquishment thereof for the future.

13.5 Estoppel Certificates, Etc. Either Party, at the request of the other Party, shall execute such estoppel certificates as such other Party may reasonably request, including without limitation that no default then exists under this License, if such be the case.

14. Surrender of Possession; Removal and Restoration.

14.1 Surrender of Possession. If this License is terminated as provided herein or by operation of law, AESES shall peaceably quit and surrender the Licensed Property to Owner, and Owner may, without further notice, enter upon, re-enter, possess and repossess the same by summary proceedings, ejectment or other legal proceeding, and again have, repossess and enjoy the same as if this License had not been made. Upon any such termination, neither AESES nor any person claiming by, through or under AESES (whether by virtue of law or an order of any court or otherwise) shall be entitled to possession or to remain in possession of the Licensed Property, but shall forthwith quit and surrender the Licensed Property; *provided*, that AESES and its agents and contractors shall continue to have the right to access the Licensed Property solely for purposes of conducting its removal and restoration obligations under Section 14.2 hereof if and as reasonably required, and in each case with AESES' obligations under this License continuing to remain in full force and effect with respect to its activities on the Licensed Property and during ingress and egress over the balance of the Power Plant site to and from the Licensed Property, until such time as such removal and restoration is completed or Owner exercises its rights under Section 15.3 hereof to perform such removal and restoration itself or to assume ownership of the remaining portions of the ESB Project as more fully set forth therein.

14.2 Removal and Restoration. (a) Upon any termination or expiration of this License, Owner shall have the right (but not the obligation) to require that AESES, at AESES' sole expense and risk, promptly;

- (i) remove all above-ground portions of the ESB Project from the Licensed Property and all of any other related equipment or facilities of AESES on the balance of the Power Plant site in a manner which minimizes injury to the land, and restore the soil surface as close as reasonably practicable to its original condition as of the Effective Date, and shall fully restore the Licensed Property to a condition substantially similar to the condition that existed prior to the installation of the ESB Project on the Licensed Property; and

- (ii) if and to the extent any below-ground portions of the ESB Project (including, without limitation, concrete footings, foundations, or buried cables, pipes or other facilities) have or can reasonably be expected to have a material adverse affect on the value of the Licensed Property (in the reasonable opinion of Owner), remove all such below-ground portions of the ESB Project in a manner that minimizes injury to the land, and (whether or not all below-ground portions of the ESB Project are required to have been removed from the Licensed Property) restore the soil surface of the entire Licensed Property as close as reasonably practicable to its original condition as of the Effective Date;

in each case in accordance with generally accepted industry practices and all Applicable Laws; and without damaging, interfering with or otherwise adversely affecting the Power Plant or Owner's operation thereof in any material respect, except if and to the extent expressly agreed to by Owner (which agreement shall not be unreasonably withheld).

(b) Restoration of the Licensed Property under this Section 14.2 shall include, if and as reasonably required, leveling, terracing, mulching and other reasonably necessary steps to prevent soil erosion. Concrete and other debris shall be hauled away and disposed of in a lawful manner.

14.3 Owner Right to Remove and/or Assume Ownership of Non-Removed AESES Property. If AESES fails to remove any portions of the ESB Project from the Licensed Property or any other related equipment or facilities of AESES from the balance of the Power Plant site in a prompt manner as required hereunder, and in any event no later than 180 days following the termination or expiration of this License, Owner shall have the right (but not the obligation), in its sole discretion, to:

- (i) remove any or all of such remaining items from the Licensed Property or the balance of the Power Plant site, as the case may be, in which case AESES shall reimburse Owner on demand for any and all costs of removal and restoration reasonably incurred by Owner; and/or
- (ii) elect to assume ownership of all or any portion of the ESB Project or such other related equipment or facilities of AESES that have not been so removed by AESES, in which case AESES shall execute and deliver such documentation as Owner may reasonably request to reflect Owner's ownership thereof free and clear of AESES or any person claiming by, through or under AESES.

15. **Holding Over.** Any holding over by AESES after expiration of the Term shall be construed as a license from month to month until terminated by Owner, subject to all the conditions of this License and, in addition to any other remedies available to Owner, license fees hereunder shall be 200% of the annual license fees effective as of the last year of the Term expired. Nothing herein shall be construed as a consent by Owner to the occupancy or possession by AESES of the Licensed Property beyond the expiration of the Term.

16. **Sums Past Due.** In the event any amount payable by a Party to the other hereunder is not paid to such other Party in full on or before the date such payment is due hereunder, such late payment shall bear and accrue interest at the lesser of (i) a per annum rate of interest equal to the "prime rate" as published in the Wall Street Journal (or successor) from time to time plus 5%, or (ii) the maximum non-usurious rate of interest permitted by applicable law from the date such payment was originally due until the date on which such payment is made to such Party.

17. **Miscellaneous.**

17.1 **Successors and Assigns.** The License shall inure to the benefit of and be binding upon Owner and AESES and each of their respective permitted transferees, successors and assigns.

17.2 **Notices.** All notices or other communications required or permitted by this License, shall be in writing and shall be deemed given when personally delivered to Owner or AESES or in lieu of such personal service, on the date received or rejected if sent by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Owner:	If to AESES:
AES WR Limited Partnership	AES ES TAIT, LLC
11600 Mexico Farms Road Southeast	4300 Wilson Boulevard
Cumberland, MD	Arlington, VA 22203
Attn: Legal Department	Attn: General Counsel
Telephone: 301-777-0055	Telephone: 703-522-1315
Facsimile: 301-777-8772	Facsimile: 703-528-4510
E-mail: Plant Manager	E-mail: paul.freedman@aes.com

Any party may change its address for purposes of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

17.3 **Entire Agreement; Amendments.** This License constitutes the entire agreement between Owner and AESES respecting its subject matter. Any agreement, understanding or representation respecting the Licensed Property, this License, or any other matter referenced herein not expressly set forth in this License or a subsequent writing signed by both parties is null and void. This License shall not be modified or amended except in a writing signed by both parties. No purported modifications or amendments, including without limitation any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either party.

17.4 **Legal Matters.** This License shall be governed by and interpreted in accordance with the laws of the State of Maryland. If the parties are unable to resolve amicably any dispute arising out of or in connection with this License, they agree that such dispute shall be resolved in the state courts located in Allegany County, Maryland. The parties agree that any rule of construction to the effect that

ambiguities are to be resolved in favor of either party shall not be employed in the interpretation of this License and is hereby waived.

17.5 Waiver of Trial By Jury. Owner and AESES hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other on any matter whatsoever arising out of or in any way connected with this License, the relationship of Owner and AESES and AESES' use or occupancy of the Licensed Property or any other claim. It is further mutually agreed that if Owner commences any proceedings for non-payment of license fees, AESES will not interpose, and does hereby waive the right to interpose, any counterclaim of whatever nature or description in such proceeding.

17.6 Partial Invalidity. Should any provision of this License be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this License, the Parties agree that in no event shall the Term of this License be longer than the longest period permitted by Applicable Law.

17.7 Counterparts. This License may be executed in any number of counterparts and by the respective parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

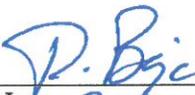
17.8 Disclaimer of Partnership. Owner is not and does not in any way or for any purpose by virtue of this License become a partner or agent of AESES in the conduct of its business or otherwise or a joint venturer, co-employer or member of a joint enterprise with AESES. As licensee under this License, AESES does not in any way or for any purpose become a partner of or agent for Owner in the conduct of its business or otherwise or a joint venturer, co-employer or member of a joint enterprise with Owner. It is understood and agreed that no provision of this License shall be deemed to create any relationship between Owner and AESES other than a relationship of licensor and licensee.

18. Initial Cut-Over for Physical Interconnection and Coordination with PJM. The Parties acknowledge that in order to complete the interconnection process and allow the ESB Project to be placed into commercial operation, the Interconnection Facilities and Owner's Power Plant will need to be temporarily removed from service, The work required to interconnect the ESB Project will be performed during a scheduled maintenance outage of the Owner's Power Plant and Owner shall advise AESES of such scheduled outages upon request from AESES. The outage duration necessary to interconnect the ESB Project shall not be for a longer period than the duration of the scheduled maintenance activities of the Owner. If Owner incurs any costs or expenses directly as a result of activities to interconnect the ESB Project, AESES shall reimburse Owner for such costs and expenses.

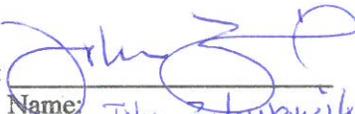
[Signature page immediately follows]

IN WITNESS WHEREOF, Owner and AESES, acting through their duly authorized representatives, have executed this License with the intent that it be effective as of the Effective Date, and certify that they have read, understand and agree to the terms and conditions of this License.

AES WR LIMITED PARTNERSHIP,
a Delaware limited partnership

By: 
Name: PETER BASIC
Title: PRESIDENT

AES ES TAIT, LLC,
a Delaware limited liability company

By: 
Name: John Zaturaniuk
Title: Vice President