

Equipment Rental Agreement

THIS EQUIPMENT RENTAL AGREEMENT (the "**Agreement**") is made _____, 20____, by and between JCL ENERGY, LLC (the "**Lessor**"), a Pennsylvania limited liability company with its principal place of business located at _____, and _____ (the "**Lessee**"), with its principal place of business located at _____.

In consideration of the mutual covenants and promises contained in this Agreement, and with the intent to be legally bound, the parties agree as follows:

1. **Lease of Equipment.** The Lessor leases to the Lessee and the Lessee rents from the Lessor the equipment and other property identified on the "**Equipment Schedule**" on Exhibit A, which is attached to and made a part of this Agreement. The term "**Equipment**" shall include all equipment and other property described in the Equipment Schedule and all general intangibles, software and goods relating to, arising from or embedded in any of the foregoing, all supporting obligations of all of the foregoing, and all cash and noncash proceeds and products (including without limitation insurance proceeds) of all of the foregoing, and all additions and accessions thereto, substitutions therefor and replacements thereof, in each case whether now existing or hereafter acquired or arising and wherever located.
2. **Agreement Term and Rent.** The Agreement shall commence on the date of first delivery of part or all of the Equipment to Lessee and shall continue for a period of _____ [Years/Months] (the "**Agreement Term**"). The Lessee shall make _____ (____) payments of _____ Dollars (\$_____) to Lessor (the "**Rent**"). Rent payments shall be due on the first day of each month, with the first payment due on _____ [Insert First Payment Date]. The Rent shall be due whether or not the Lessee has received notice of a payment due. It is hereby mutually agreed that notwithstanding anything to the contrary herein contained, the Equipment is leased for the rental for the entire Agreement Term, payable at the time of making of this Agreement and that the provisions herein contained for the payment in installments are for the convenience of Lessee only and that upon default in payment of installments as herein allowed beyond the applicable notice period set forth in this Agreement, then the whole of the payments hereby reserved for the whole of said term and then remaining unpaid shall at once become due and payable without any notice or demand.
3. **Lease Transaction.** It is expressly understood and agreed that all of the Equipment shall be and remain personal property notwithstanding the manner in which it may be attached or affixed to realty, and the Lessee shall do all acts and enter into all agreements necessary to ensure that the Equipment remains personal property. The Lessee hereby indemnifies the Lessor for all loss, cost, damage and expense (including fees and expenses of legal counsel) related to or arising out of any claim that the Equipment constitutes a fixture or a part of the realty in or upon which it is located. The Lessee acknowledges and represents to the Lessor and agrees that:
 - (a) It has selected the Equipment based on its inspection and own judgment and expressly disclaims any reliance upon prior statements made by the Lessor;
 - (b) The Equipment is of a size, design, capacity and manufacture selected by the Lessee;
 - (c) The Lessor is not a manufacturer of equipment of this kind;
 - (d) The Lessee leases the Equipment AS IS;
 - (e) THE LESSOR HAS NOT MADE ANY EXPRESS OR IMPLIED WARRANTIES, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION OR WARRANTY OR COVENANT WITH RESPECT TO THE FITNESS, MERCHANTABILITY, DESIGN, CONDITION, QUALITY, DURABILITY, CAPACITY, CONFORMITY OR SUITABILITY OF THE EQUIPMENT FOR THE PURPOSES AND USES OF THE LESSEE, OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESSLY CONTAINED IN THIS AGREEMENT. The Lessor agrees, unless a Default has occurred hereunder and is continuing, that the Lessor will permit the Lessee to enforce in the Lessee's own name and at the Lessee's sole expense, any manufacturer's warranty or agreement in respect to any Equipment (to the extent that such warranty or agreement is assignable); and
 - (f) THE LESSOR SHALL NOT BE LIABLE FOR (I) ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT, ITS OPERATION, OR THE INSTALLATION, USE MAINTENANCE, HANDLING, OR STORAGE THEREOF, OR BECAUSE IT IS OR BECOMES UNSUITABLE OR UNSERVICEABLE, OR FOR ANY INTERRUPTION OF

SERVICE OR LOSS OF USE THEREOF, OR (II) ANY LOSS OF BUSINESS OR PROFITS OF THE LESSEE OR (III) ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT).

4. **Preserving Equipment.** The Lessee shall, at its expense, take all actions necessary to maintain and repair the Equipment to keep it in as good operating condition as it was when it first became subject to the Agreement, ordinary wear and tear resulting from proper use excepted. The Lessee shall, at its expense, promptly replace all parts of any item of Equipment that become worn out, lost, stolen, destroyed or unfit for use with replacement parts free of any encumbrance (and title thereto shall vest in the Lessor immediately upon installation).

5. **Loss and Damage.** The Lessee shall bear the entire risk of loss and damage to the Equipment from any and every cause. No loss or damage to the Equipment or any part thereof shall impair any obligation of the Lessee under this Agreement which shall continue in full force and effect. The Lessee shall give written notice to the Lessor within five (5) days of any event of loss or damage of any kind to the Equipment. The Lessee, at the option of the Lessor, shall (i) place the same in good repair, condition and working order to the satisfaction of the Lessor; or (ii) replace the same with like Equipment in good repair, condition and working order to the satisfaction of the Lessor.

6. **Insurance and Taxes.** For the duration of the Agreement Term, the Lessee agrees to maintain all risk physical damage coverage on said Equipment naming the Lessor as Lender loss payee. Also, for the Agreement Term, and/or any extension thereof, the Lessee agrees to maintain general liability insurance to include the Lessee's complete operations, which shall name the Lessor as an additional insured. The proceeds of such insurance, at the option of the Lessor, shall be applied (i) toward the replacement, restoration, or repair of the Equipment; or (ii) toward payment of the Lessee's obligations hereunder. The Lessee hereby appoints the Lessor as the Lessee's attorney in fact to make claim for, receive payment of, and execute and endorse all documents, checks, or drafts for loss or damage under any said insurance policy. The Lessee shall keep the Equipment free and clear of all levies, liens, and encumbrances and shall pay all license fees, registration fees, assessments, charges, and taxes which may now or hereafter be imposed on the ownership, leasing, renting, sale, possession, or use of the Equipment, excluding, however, all taxes on or measured by the Lessor's income.

7. **No Assignment.** Neither this Agreement nor Lessee's rights hereunder are assignable except with Lessor's prior, written consent. In addition, Lessee shall not sublease, hire out or otherwise transfer or part with possession, control or custody of any Equipment without the prior written consent of the Lessor.

8. **Ownership.** No title or right in the Equipment shall pass to the Lessee except the rights herein expressly granted. Plates or other markings will be affixed to or placed on the Equipment by the Lessor at the Lessee's expense, indicating that the Lessor is the true owner thereof and the Lessee will not remove, obstruct or deface the same. Upon the termination of the Agreement Term, and/or any extension thereof, the Lessee will immediately return such Equipment to the Lessor in as good condition as received less normal wear and tear. All replacements, equipment, repairs or accessories made to or placed in or on the Equipment shall become a component part thereof and title thereto shall be immediately vested in the Lessor and shall be included under the terms hereof.

9. **Indemnity and Advances by the Lessor.** The Lessee shall indemnify the Lessor against, and shall hold the Lessor harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees arising out of, connected with, or resulting from the Equipment, including, without limitation, the manufacture, selection, delivery, possession, use, operation or return of the Equipment. All advances made by the Lessor to preserve the Equipment or to pay insurance premiums for insurance thereon or to discharge and pay any taxes, assessments, fees, penalties, liens or encumbrances thereon shall be added to the unpaid balance of Rent due hereunder and shall be repayable by the Lessee to the Lessor immediately together with interest thereon at the rate of ten (10%) percent per annum until paid.

10. **Default.** The occurrence of any of the following shall constitute a "Default" hereunder:

(a) The Lessor fails to receive all or any portion of any Rent or other payment on or before the date such sum becomes due and payable; or

(b) Any representation or warranty made in the Agreement, or in any report, certificate, financial statement, or other statement furnished to the Lessor pursuant to the provisions of this Agreement, proves to have been false or misleading in any material respect as of the date on which the same was made; or

(c) The Lessee fails or refuses to duly observe or perform any other covenant, condition, or agreement made by it in this Agreement or under any other agreement between the Lessor and the Lessee and such failure or refusal continues without remedy for a period of fifteen (15) days after written notice thereof to the Lessee; or

(i) The Lessee assigns any part of this Agreement or any of its interest in the Equipment in violation of the terms and conditions of Section 7 hereof, or

(ii) An attachment or other lien against the Equipment resulting from any the Lessee action, failure to act or responsibility is issued or entered and remains undischarged or unbonded for ten (10) days; or

(iii) Bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation, or other similar proceedings are instituted by or against the Lessee or all or any part of its property under the Bankruptcy Code or any dissolution, liquidation or other law of the United States or of any state or other competent jurisdiction and, if against the Lessee, it consents thereto or fails to cause the same to be dismissed within thirty (30) days; or

(iv) The Lessee becomes insolvent or makes an assignment for the benefit of creditors or consents to the appointment of a trustee or receiver or either shall be appointed for the Lessee or for a substantial part of its property without its consent.

11. **Remedies.** If a Default occurs under this Agreement, the Lessor may give the Lessee notice of the Default and, upon the giving of such notice or at any time thereafter, do any or all of the following (as the Lessor in its sole discretion elects):

(a) Proceed by appropriate court action or actions to enforce performance by the Lessee of the applicable covenants and terms of this Agreement or to recover damages for the breach thereof;

(b) Take possession of any or all of the Equipment without prejudice to any other remedy or claim herein referred and for such purpose, the Lessor may enter the premises where the Equipment is located without liability for doing so;

(c) Hold, sell, lease, or otherwise dispose of, any or all of the Equipment, in any manner the Lessor (in its sole discretion) elects;

(d) Receive, as liquidated damages and not as a penalty, from the Lessee upon demand for any or all Equipment the following amounts which the Lessee shall be obligated to pay:

(i) any unpaid Rent which is past due;

(ii) all unpaid Rent due and to become due on or before the termination of the Agreement period, discounted at the rate originally financed by the Lessor to present value;

(iii) all costs and expenses (including attorney's fees and expenses) incurred in searching for, taking, removing, keeping, storing repairing, and restoring the Equipment;

(iv) all other amounts then owing by the Lessee hereunder; and

(v) all costs and expenses (including, without limitation, legal fees and expenses) incurred by the Lessor as a result of a Default, termination of this Agreement, or the exercise by the Lessor of its remedies under this Section;

(vi) By notice to the Lessee, declare this Agreement (for any or all Equipment) terminated without prejudice to the Lessor's rights in respect of all obligations set forth in this Section and any other obligations under this Agreement then accrued and remaining unsatisfied; and

(vii) Avail itself of any other remedy or remedies provided for by the Uniform Commercial Code or any statute or otherwise available by law, in equity, or in bankruptcy or insolvency proceedings.

The remedies set forth in this Section are not intended to be exclusive, and each shall be cumulative. The amounts to be paid to the Lessor under clause 11(d) of this Section shall be increased by interest compounded annually at the lesser of the maximum rate permitted by law

or ten (10%) percent, to the date of receipt by the Lessor of the Rent payable under said clause, from the respective due dates of such amounts or (with respect to costs, expenses, and losses for which the Lessor is entitled to payment or reimbursement under said clause) from the respective dates incurred by the Lessor. Any amounts received by the Lessor as the result of its sale, less the residual value of the Equipment originally presumed by the Lessor, or lease during the original term hereof, or other disposition of the Equipment under Section 11(c) shall be paid or applied as follows: first, to any remaining obligation of the Lessee under Section 11(d); second, to reimburse the Lessee for the payments made pursuant to part Section 11(d)(ii); third, to reimburse the Lessee for any interest paid pursuant to the immediately preceding paragraph; and fourth, to the Lessor, any remaining balance.

12. **Further Assurances and Severability.** Upon the request of the Lessor, the Lessee shall at any time and from time to time after the execution and delivery of the Agreement execute and deliver such further documents (including but not limited to opinions of counsel, acknowledgments of assignment, waivers, certificate, and UCC1 financing statements) and do such further acts as the Lessor may reasonably request in order to fully effect the purposes of the Agreement, and any assignment hereof. The Lessee hereby appoints the Lessor, with full power of substitution, as its agent and attorney-in-fact, which appointment is irrevocable and coupled with an interest, to execute any financing statements in the Lessee's name and to perform all other acts which the Lessor deems appropriate and necessary to perfect the Lessor's interest in the Equipment. If any provision of this Agreement is prohibited by, or is unlawful or unenforceable under any applicable law of any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof, provided, however, that any such prohibition in any jurisdiction shall not invalidate such provision in any other jurisdiction; provided, further, that where the provisions of any such applicable law may be waived, they hereby are waived by the Lessee to the full extent permitted by law to the end that this Agreement shall be deemed to be valid and binding agreement in accordance with its terms.

13. **Miscellaneous and Quiet Enjoyment.** This Agreement shall be binding upon the parties, their heirs, legal representatives, successors and assigns. The Lessee hereby acknowledges that its rights in and to the Equipment are expressly subject and subordinate to the rights of the Lessor and any other party in interest. Notwithstanding the foregoing, the Lessor represents and warrants that, provided there has been no Events of Default by the Lessee hereunder, neither the Lessor nor any party claiming under or through the Lessor or its assignee shall interfere with the Lessee's right to quietly use, possess, and enjoy the Equipment during the Agreement Term, and/or any extension thereof.

14. **Survival; Entire Agreement; Modification.** All representations, warranties, indemnities and covenants of the Lessee contained in this Agreement or other related document shall continue in full force and effect notwithstanding the full payment of all amounts due on the expiration or termination of this Agreement. This Agreement (including any supplements, addenda and riders) contains the entire agreement between the Lessor and the Lessee with respect to the Equipment and any prior agreements, oral or written, with respect to such Equipment are hereby superseded. Any modification or waiver of the provisions of this Agreement shall not be effective unless the same is in writing and signed by both parties. In the event any conflict exists between the terms of this Agreement and any provisions contained in any Schedule, the provisions of the Schedule shall govern with respect to the Equipment described therein.

15. **THE LESSEE'S WAIVER.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LESSEE HEREBY WAIVES ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON THE LESSEE BY LAW, INCLUDING, BUT NOT LIMITED TO, THE LESSEE'S RIGHT TO: (I) CANCEL OR TERMINATE THIS AGREEMENT, (II) REJECT THE EQUIPMENT, (III) REVOKE ACCEPTANCE OF THE EQUIPMENT, (IV) RECOVER DAMAGES FROM THE LESSOR FOR ANY BREACH OF WARRANTY, (V) RECOVER ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, (VI) SPECIFIC PERFORMANCE, REPLEVIN, DETINUE, SEQUESTRATION, CLAIM AND DELIVERY OR THE LIKE FOR ANY EQUIPMENT IDENTIFIED IN THIS AGREEMENT AND (VII) JURY TRIAL IN ANY ACTION ARISING IN CONNECTION WITH THIS AGREEMENT OR THE EQUIPMENT TO THE EXTENT PERMITTED BY APPLICABLE LAW. ANY ACTION BY THE LESSEE AGAINST THE LESSOR FOR ANY DEFAULT BY THE LESSOR UNDER THIS AGREEMENT SHALL BE COMMENCED WITHIN ONE (1) YEAR AFTER ANY SUCH ALLEGED CAUSE OF ACTION ACCRUES.

16. **Governing Law.** This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania without regard for its conflict of laws rules. All claims, disputes or causes of action relating to or arising out of this Agreement shall be brought, heard and resolved solely and exclusively by and in a federal or state court situated in Mercer County, Pennsylvania. Lessor and Lessee each agrees to submit to the jurisdiction of such courts and that the same shall be proper for all purposes of this Agreement.

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[Signature pages follow]



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by duly authorized representatives as of the day and year first above written.

LESSOR

JCL ENERGY, LLC

BY:

Printed Name: _____

Title: _____

LESSEE

BY:

Printed Name: _____

Title: _____

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