

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹)	Case No. 12-10202 (ALG)
Debtors.)	(Jointly Administered)
)	
)	

ORDER APPROVING RELEASE AND SETTLEMENT AGREEMENT ENTERED INTO BY SUEZ-DEGS OF ROCHESTER, LLC AND EASTMAN KODAK COMPANY

Upon the motion (the “**Motion**”)² of Eastman Kodak Company, on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”), for entry of an order (a) approving that certain Release and Settlement Agreement (the “**Settlement Agreement**,” a copy of which is attached hereto as Exhibit 1) entered into by SUEZ-DEGS and Kodak on September 25, 2012 and (b) authorizing the Debtors to take and perform such actions as may be necessary or appropriate to implement and effectuate the Settlement Agreement; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and it appearing that proper and adequate

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors’ corporate headquarters is: 343 State Street, Rochester, NY 14650.

² All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.



notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent provided for herein.
2. Pursuant to Bankruptcy Rule 9019, the Settlement Agreement and all transactions contemplated thereunder and all terms and conditions thereof are approved.
3. The Debtors are authorized to execute and deliver such documents, and take and perform any and all actions, necessary or appropriate to implement and effectuate the relief requested in the Motion and granted in connection with this Order, including, without limitation, to execute and deliver the Consent, the Substitute Guarantee and the Release.
4. The requirements set forth in rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York are satisfied.
5. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.
6. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

New York, New York
Date: October 18, 2012

s/Allan L. Gropper
Allan L. Gropper
United States Bankruptcy Judge

EXHIBIT 1

Settlement Agreement

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (hereinafter the “Settlement Agreement”) is entered into by SUEZ-DEGS of Rochester, LLC (“SUEZ-DEGS”), a Delaware limited liability company, and Eastman Kodak Company (“Eastman”), a New Jersey corporation, on September 25, 2012 (“Effective Date”). SUEZ-DEGS and Eastman together may be referred to as the “Parties” or individually as “Party” throughout this Settlement Agreement. Capitalized terms not defined herein shall have the meaning set forth in the EMSA Agreement, as defined below.

WHEREAS, SUEZ-DEGS and Eastman are parties to that certain Second Amended and Restated Energy Management and Services Agreement (the “EMSA Agreement”) dated as of April 1, 2007;

WHEREAS, Eastman claims that SUEZ-DEGS has failed to pay Excess Demurrage Charges accruing during the time period up to and including the Effective Date for which it claims SUEZ-DEGS is responsible, while SUEZ-DEGS disputes its responsibility for such Excess Demurrage Charges (the “Demurrage Dispute”);

WHEREAS, Eastman claims that it is entitled to an equitable adjustment to the Fixed Operator Fee for historical and future cost savings resulting from maintaining boiler number 41 in an idle state such that it is available for reactivation for service (“Idling”), while SUEZ-DEGS disputes the cost savings that have resulted from, and will result from, such Idling (the “Boiler Dispute”, and together with the Demurrage Dispute, collectively, the “Disputed Claims”);

WHEREAS, Eastman is subject to that certain bankruptcy court proceeding, and certain cases administered jointly therewith, entitled In re Eastman Kodak Company, Case No. 12-10202 (ALG), filed on January 19, 2012 (collectively, the “Bankruptcy Proceeding”) in the

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United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, SUEZ-DEGS has filed a Proof of Claim (subsequently assigned Claim Number 4654 by the claims agent appointed in the Bankruptcy Proceeding) with the Bankruptcy Court in connection with the Bankruptcy Proceeding seeking the payment of pre-bankruptcy receivables claimed to be owed by Eastman to SUEZ-DEGS in the amount of \$419,033.04 (the “Pre-petition Claim”);

WHEREAS, SUEZ Energy Solutions, Inc. and Duke Energy Generation Services Holding Company, Inc. (together, the “Members”), the members of SUEZ-DEGS, have entered into an Equity Purchase Agreement dated as of July 2, 2012 with DTE Energy Services, Inc. (“DTE”) and Duke Energy Generation Services, Inc. pursuant to which, among other things, the Members would transfer their equity interests in SUEZ-DEGS to DTE (the “Equity Transfer”) effective as of the closing of such Equity Transfer (the “Closing”);

WHEREAS, the Members seek (i) to obtain the written consent of Eastman to the Equity Transfer in the form attached hereto as Exhibit A (the “Consent”); (ii) to substitute DTE Energy Company (“DTE Parent”) as guarantor of Eastman on the form of Guarantee attached hereto as Exhibit B (the “Substitute Guarantee”); and (iii) to obtain a release of SUEZ Energy Cogeneration Corporation and Cinergy Corp. from that certain Guarantee (the “Existing Guarantee”) dated April 1, 2007 issued in favor of Eastman, with such release to be issued in the form attached hereto as Exhibit C (the “Release”); and

WHEREAS, the Parties have agreed to resolve any and all claims between them arising out of or relating to the Disputed Claims on the terms and subject to the conditions set forth herein;

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NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. RECITALS

The recitals stated above constitute and form an integral part of this Settlement Agreement and are incorporated by reference as if set forth herein in full.

2. SUEZ-DEGS OBLIGATIONS

Subject to prior receipt of the Bankruptcy Approval Order (as defined below) and subject to the consummation of the Closing:

a. Simultaneously with the consummation of the Closing, SUEZ-DEGS shall deliver, or shall cause to be delivered, to Eastman cash in the amount of \$676,111 by wire transfer of immediately available funds to an account designated in writing (by electronic mail or otherwise) by Eastman, which amount represents \$176,111 being paid in partial resolution of the Demurrage Dispute and \$500,000 being paid in resolution of the Boiler Dispute, with the remainder of the Demurrage Dispute being resolved through the release of the Released Eastman Obligations (as defined below).

b. As soon as practicable following the Closing and in partial resolution of the Demurrage Dispute, SUEZ-DEGS shall file, or shall cause to be filed, in the Bankruptcy Court all necessary filings, which filings shall be in a form reasonably acceptable to Eastman, in connection with the release of the following obligations of Eastman (collectively, the “Released Eastman Obligations”): (i) all obligations represented by the Pre-petition Claim, and (ii) whether or not represented by the Pre-petition Claim, all payment obligations of Eastman (x) for any Fixed Operator Fees (including any adjustments thereto pursuant to Article XIII of the EMSA

Agreement, including any Performance Adjustments pursuant to Schedule 10 to the EMSA Agreement) accruing or arising in the ordinary course of business on or prior to January 19, 2012, or (y) accruing or arising on or prior to January 19, 2012 in connection with any Capital Project.

c. Simultaneously with the consummation of the Closing, SUEZ-DEGS shall deliver, or shall cause to be delivered, to Eastman a Substitute Guarantee executed by DTE Parent.

3. KODAK OBLIGATIONS

Subject to prior receipt of the Bankruptcy Approval Order:

a. As soon as practicable following the receipt of the Bankruptcy Approval Order, Eastman shall execute and deliver to counsel to SUEZ-DEGS the Consent, dated as of the date of execution thereof, to be held in escrow by such counsel until Closing and the payment to Eastman of all amounts payable to Eastman at Closing pursuant to this Settlement Agreement, at which time the Consent shall be released from escrow and be delivered by such counsel to SUEZ-DEGS without any further action by Eastman.

b. Subject to the consummation of the Closing, as soon as practicable following the receipt by Eastman of a fully executed Substitute Guarantee from DTE Parent, (i) Eastman shall execute and deliver to SUEZ-DEGS the Release and (ii) Eastman agrees that all references to “SUEZ Energy Cogeneration Corporation”, “Cinergy Corp.” or any “Guarantor” in the EMSA Agreement shall refer to DTE Parent and all references to the “Guarantee” in the EMSA Agreement shall refer to the Substitute Guarantee delivered by DTE Parent hereunder.

4. RELEASE BY EASTMAN

Effective as of, and conditioned upon the occurrence of, the Closing, except as otherwise provided in this Settlement Agreement, Eastman and its subsidiaries, predecessors, successors, and assigns, all related or affiliated corporations or other entities, and all such entities' respective past, present and future shareholders, directors, officers, members, managers, employees, attorneys, advisors, representatives and/or agents (each of them individually and in their official capacities) (collectively, the "Eastman Parties") hereby release and forever discharge SUEZ-DEGS and its members, subsidiaries, predecessors, successors, and assigns, all related or affiliated corporations or other entities and all such entities' respective past, present and future shareholders, directors, officers, members, managers, employees, attorneys, advisors, representatives and/or agents (each of them individually and in their official capacities) (collectively, the "SUEZ-DEGS Parties") from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation of any kind, whether known or unknown (collectively, "Claims"), and from all suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, trespasses, damages, judgments, executions, claims and demands whatsoever at law or in equity (collectively, "Obligations") which Eastman has had, now has or which it could, shall or may have for, upon or by reason of any manner, cause or thing whatsoever, whether equitable, legal, civil or criminal, related to or arising from (x) Excess Demurrage Charges accruing during the time period up to and including the Effective Date and (y) the Idling; provided, however, that the foregoing release by the Eastman Parties shall not prevent Eastman from seeking an equitable adjustment under and in accordance with the provisions of the EMSA Agreement in the event that boiler 41 is permanently decommissioned ("Decommissioning"), in which case

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any such equitable adjustment shall be based on the total cost savings from both the Idling and Decommissioning, but the Fixed Operator Fee shall be deemed to have already been reduced by an amount equal to \$100,000 per annum as a credit towards such adjustment, and Eastman shall be entitled to a further reduction only to the extent that such total cost savings per annum exceed such deemed reduction.

5. RELEASE BY SUEZ-DEGS

Effective as of, and conditioned upon the occurrence of, the Closing, except as otherwise provided in this Settlement Agreement, SUEZ-DEGS and the other SUEZ-DEGS Parties hereby release and forever discharge each of the Eastman Parties from any and all Claims and from all Obligations which SUEZ-DEGS has had, now has or which it could, shall or may have for, upon or by reason of any manner, cause or thing whatsoever, whether equitable, legal, civil or criminal, related to or arising from the Released Eastman Obligations.

6. EXISTING AGREEMENTS UNAFFECTED

Except as, and only to the extent, specifically provided herein, this Settlement Agreement does not modify, amend or otherwise affect the existing written and executed agreements between the Parties or their respective parents, members, subsidiaries, predecessors or affiliated corporations or other entities. Nothing in this Settlement Agreement, any payment made by the Parties pursuant hereto, or any transaction contemplated hereby is intended or shall be deemed to: (a) be an approval or assumption of any agreement, contract or lease (including, without limitation, the EMSA Agreement) between the Parties pursuant to Section 365 of the Bankruptcy Code or a determination that any such any agreement, contract or lease (including, without limitation, the EMSA Agreement) is executory or unexpired; or (b) except as, and only to the extent provided herein, impair, prejudice, waive or otherwise affect any rights, claims,

counterclaims and defenses of Eastman and its bankruptcy estate with respect to the EMSA Agreement or otherwise in connection with the Bankruptcy Proceeding or under the Bankruptcy Code (including, without limitation, any rights relating to assumption and/or rejection of the EMSA Agreement).

7. NO ADMISSION OF LIABILITY

The Parties acknowledge that this Settlement Agreement is a compromise of the Disputed Claims and that the execution of this Settlement Agreement is not to be construed as an admission of liability on the part of any of the Parties hereto. The Parties expressly deny any liability with respect to the Disputed Claims, and have resolved this dispute merely to avoid litigation with respect to such Disputed Claims.

7. COVENANT NOT TO SUE

Effective as of, and conditioned upon the occurrence of, the Closing, under no circumstances whatsoever shall Eastman sue or file any lawsuit or otherwise assert any claim against any SUEZ-DEGS Party with respect to the claims released in this Settlement Agreement, except such claim or lawsuit as may be necessary to enforce the terms and conditions of this Settlement Agreement or as otherwise stated herein. Effective as of, and conditioned upon the occurrence of, the Closing, under no circumstances whatsoever shall SUEZ-DEGS sue or file any lawsuit or otherwise assert any claim against any Eastman Party with respect to the claims released in this Settlement Agreement, except such claim or lawsuit as may be necessary to enforce the terms and conditions of this Settlement Agreement or as otherwise stated herein. It is expressly understood and agreed that the aforesaid is material inducement to the Parties to enter into this Settlement Agreement.

8. FILINGS WITH RESPECT TO THE BANKRUPTCY PROCEEDING;
TERMINATION

This Settlement Agreement is conditioned upon the Bankruptcy Court's approval of this Settlement Agreement. The Parties shall use their commercially reasonable efforts to obtain an order of the Bankruptcy Court providing such approval in a form reasonably acceptable to the Parties (the "Bankruptcy Approval Order") on or before October 19, 2012 on such notice and after such hearing as the Bankruptcy Court may require. If (a) the Bankruptcy Court enters an order denying approval of this Settlement Agreement with prejudice, (b) the Bankruptcy Approval Order is not entered on or before October 31, 2012 unless SUEZ-DEGS agrees to extend such date, or (c) the Closing has not occurred on or before December 31, 2012 unless Eastman agrees to extend such date, this Settlement Agreement shall be null and void, the Parties shall revert to their pre-Settlement Agreement positions without any prejudice whatsoever from having entered into this Settlement Agreement, and neither of the Parties shall thereafter be bound by this Settlement Agreement or any of its terms (including any of the recitals stated above).

9. REPRESENTATIONS AND WARRANTIES

Subject only to the receipt of the Bankruptcy Approval Order, each Party represents and warrants to the other Party that (a) the execution, delivery and performance of this Settlement Agreement has been validly authorized by such Party, and no other corporate, limited partnership or limited liability company action, as applicable, of such Party is necessary to authorize the execution, delivery and performance of this Settlement Agreement; (b) this Settlement Agreement has been duly and validly executed and delivered by such Party; (c) this Settlement Agreement constitutes such Party's legal, valid and binding obligation, enforceable

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against it in accordance with its terms; and (d) neither the execution and delivery by such Party of, nor its performance under, this Settlement Agreement will conflict with, result in a breach of any provision of, constitute a default (with or without notice or lapse of time or both) under, or require a consent or waiver under, any agreement, instrument or other contract, arrangement, understanding, or commitment, whether written or oral, to which such Party is a party or by which it or its assets are bound.

The Parties each represent and warrant that:

- a. They have read this Settlement Agreement and have been advised by counsel of their choosing as to its legal effect;
- b. They understand that by executing this Settlement Agreement, they voluntarily forego the right to have a court or arbitrator determine questions of liability and damages as to any claim or potential claim released in this Settlement Agreement;
- c. They have not assigned, transferred or granted or purported to assign or transfer or grant any of the claims, demands or cause of action released in this Settlement Agreement, including, without limitation, the Pre-petition Claim;
- d. To the extent any settlement negotiations or agreements have been made before the execution of this Settlement Agreement, these negotiations and agreements are merged into this Settlement Agreement which now represents in full the only Settlement Agreement between the Parties relating to this settlement and release;
and
- e. No representation, promise or inducement whatsoever not contained herein has been made by any one party to another, and this Settlement Agreement is

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executed without reliance upon any statement or representation by any other Party, including their counsel.

10. GOVERNING LAW

This Settlement Agreement shall be governed in all respects by the laws of the State of New York (without reference to principles of choice of law other than Section 5-1401 of the New York General Obligations Law). The Parties agree that any action to enforce the terms of this Settlement Agreement will be brought in a state or federal court in the State of New York.

11. SEVERABILITY

Any provision of this Settlement Agreement that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In the event any such provision of this Settlement Agreement is so held invalid, the Parties promptly shall renegotiate in good faith new provisions to restore this Settlement Agreement as near as possible to its original intent and effect. To the extent permitted by Applicable Law, the Parties hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

12. WAIVER

No waiver of any provision of this Settlement Agreement shall be valid unless it is in writing and signed by the Party against whom the waiver is sought to be enforced. No valid waiver of any provision of this Settlement Agreement shall be deemed a waiver of any other provision contained herein.

13. MODIFICATION

No change, addition or modification of this Settlement Agreement shall be binding unless it is in writing and signed by the Parties.

14. EXECUTION OF THIS AGREEMENT

This Settlement Agreement may be executed in one or more duplicate original counterparts and by facsimile, with the same force and effect as if all the signatures were set forth upon a single original instrument.

15. ATTORNEYS FEES AND DIRECT COSTS

If any legal action or other proceeding is brought to enforce or interpret this Settlement Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and other reasonable direct costs incurred in such action or proceeding, in addition to any other relief to which such Party may be entitled. The Parties shall bear their own attorneys' fees and costs with respect to the execution and delivery of this Settlement Agreement and the entry of the Bankruptcy Approval Order.

16. DRAFTING

Each of the Parties has participated in and jointly consented to the drafting of this Settlement Agreement, and any claimed ambiguity shall not be construed for or against either of the Parties on account of such drafting.

17. BINDING NATURE

This Settlement Agreement and all of its terms shall be binding upon and shall inure to the benefit of the Parties and each of their respective permitted successors and assigns and all persons and entities claiming by or through the Parties.

(Signature page follows)

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IN WITNESS WHEREOF, the undersigned have made and entered into this Settlement Agreement as of the day and year stated below, effective as of the Effective Date.

SUEZ-DEGS of Rochester, LLC

Date: September 25, 2012

By: Jason M. Allen
Name: JASON M. ALLEN
Title: VICE PRESIDENT

Eastman Kodak Company

Date: September 25, 2012

By: _____
Name: _____
Title: _____

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IN WITNESS WHEREOF, the undersigned have made and entered into this Settlement Agreement as of the day and year stated below, effective as of the Effective Date.

SUEZ-DEGS of Rochester, LLC

Date: September 25, 2012

By: _____

Name: _____

Title: _____

Date: September 25, 2012

~~Eastman Kodak Company~~

By:  _____

Name: Brad Kruchten

Title: Senior Vice President

EXHIBIT A

FORM OF CONSENT

CONSENT TO CHANGE IN CONTROL

Reference is made to that certain Second Amended and Restated Energy Management and Services Agreement (the "Agreement") dated April 1, 2007 between Eastman Kodak Company ("Eastman") and SUEZ-DEGS of Rochester, LLC (the "Company"). Pursuant to the terms of the Release and Settlement Agreement (the "Settlement Agreement") between the Company and Eastman dated September __, 2012, we are providing this Consent to Change in Control as evidence and acknowledgement of Eastman's consent to the acquisition (the "Acquisition") by DTE Energy Services, Inc. ("DTE") of the equity interests of the Company held by Duke Energy Generation Services Holding Company, Inc. and Suez Energy Solutions, Inc.

Eastman Kodak Company

By: _____

Name:

Title:

EXHIBIT B

FORM OF SUBSTITUTE GUARANTEE

GUARANTEE

This Guarantee (this "Guarantee") is given as of [_____], 2012, by DTE Energy Company, a Michigan corporation, whose principal place of business is One Energy Plaza, Detroit, MI 48226 (the "Guarantor"), and its successors and assigns, to Eastman Kodak Company, a New Jersey corporation ("Owner"). This Guarantee supersedes and replaces in its entirety that certain Guarantee issued to Owner by Suez Energy Cogeneration Corporation and Cinergy Corp., dated as of April 1, 2007.

WHEREAS, Duke Energy Generation Services Holding Company, Inc. ("DEGS Holdco") and SUEZ Energy Solutions, Inc. ("IPR-GDF SUEZ ES") currently own all of the limited liability company interests of SUEZ-DEGS of Rochester, LLC (formerly known as Trigen-Cinergy Solutions of Rochester, LLC), a Delaware limited liability company ("Energy Manager");

WHEREAS, DTE Energy Services, Inc., a Michigan corporation and indirect wholly-owned subsidiary of Guarantor ("DTE ES"), has entered into that certain Equity Purchase Agreement, dated as of July 2, 2012 (the "Equity Purchase Agreement"), among DEGS Holdco, Duke Energy Generation Services, Inc., IPR-GDF SUEZ ES and DTE ES;

WHEREAS, pursuant to the Equity Purchase Agreement, upon the occurrence of the "Closing" relating to "Rochester" (each as defined in the Equity Purchase Agreement) under the Equity Purchase Agreement (the "EPA Closing"), DTE ES will purchase from DEGS Holdco and IPR-GDF SUEZ ES all of the limited liability company interests of Energy Manager;

WHEREAS, Owner and Energy Manager have entered into that certain Second Amended and Restated Energy Management Services Agreement, dated as of April 1, 2007, for the management, operation, and maintenance of Owner's topping-cycle cogeneration facility located at Kodak Park in Rochester, New York (as the same may be further amended, modified or supplemented from time to time in accordance with its terms, the "Agreement");

WHEREAS, Guarantor intends for this Guarantee to satisfy the condition under the Agreement that DEGS Holdco and IPR-GDF SUEZ ES guarantee the performance of Energy Manager's obligations to Owner under the Agreement; and

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Agreement and Exhibit A thereto, including the rules of interpretation contained therein.

NOW, THEREFORE, in connection with the foregoing, and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, Guarantor agrees as follows:

1. Guarantee. Guarantor does hereby absolutely, unconditionally and irrevocably Guarantee to Owner, as primary obligor and not merely as a surety, the due and punctual performance by Energy Manager of all obligations to be performed by Energy Manager under the Agreement, all as and when required to be performed under the Agreement, in all respects strictly in accordance

with the terms, conditions and limitations contained in the Agreement (the “Obligations”). This Guarantee is a continuing guaranty of the performance of the Obligations and is in no way conditioned upon any requirement that Owner first attempt to enforce any of the Obligations against Energy Manager or any other guarantor of the Obligations, or any other Person, or resort to any other means of obtaining performance of any of the Obligations; provided, however, that (i) Guarantor shall not be liable to provide performance hereunder until the fifth (5th) Business Day after Notice to Energy Manager that performance may be sought under this Guarantee and (ii) any failure or delay in giving such Notice shall have no effect on the liability of Guarantor hereunder other than to change the date on which performance is due hereunder from Guarantor. This Guarantee is an absolute guaranty of performance and not a guaranty of collection. Notwithstanding the aggregate amount of the Obligations at any time or from time to time payable by Energy Manager to Owner (including the value of any performance), the liability of Guarantor to Owner hereunder shall not exceed Eleven Million U.S. Dollars (U.S. \$11,000,000) in the aggregate outstanding at any one time (the “Guarantee Limit”).

2. Guarantee Absolute. This Guarantee shall continue in full force and effect until Energy Manager or Guarantor shall have performed or discharged all of the Obligations in full. Further, this Guarantee shall remain in full force and effect without regard to, and shall not be affected or impaired by, any of the following:

- (a) any invalidity, irregularity or unenforceability in whole or in part of this Guarantee or the Agreement;
- (b) the existence of any claim, setoff, defense or other right which either Guarantor or Energy Manager may have against Owner or any other Person;
- (c) any partial or total release or discharge (whether by operation of law or otherwise) of Energy Manager, Guarantor, or any other Person from its obligations under the Agreement, except for any release or discharge based on payment or performance in full or pursuant to assignment as permitted in Section 14 below;
- (d) the occurrence or continuance of any event of bankruptcy, reorganization or insolvency with respect to Energy Manager, Guarantor, or any other Person, or the dissolution, liquidation or winding up of Energy Manager, Guarantor or any other Person;
- (e) any amendment, supplement, reformation or other modification of the Agreement;
- (f) the exercise, non-exercise or delay in exercising, by Owner or any other Person of any of their rights and remedies under this Guarantee or the Agreement;
- (g) any assignment or other transfer of this Guarantee by Owner, or any assignment or other transfer of the Agreement in whole or in part;
- (h) any sale, transfer or other disposition by Guarantor of any direct or indirect interest it may have in Energy Manager, subject to the assignment rights provided for in Section 14 of this Guarantee;

- (i) the absence of any notice to, or knowledge by, Guarantor of the existence or occurrence of any of the matters or events set forth in the foregoing clauses; or
- (j) any other event, occurrence or circumstance that might otherwise constitute or give rise to a defense to performance by a surety or a guarantor.

3. Waivers by Guarantor. In addition to waiving any defenses to which clauses (a) through (j) of Section 2 may refer, Guarantor hereby unconditionally and irrevocably waives, as a condition precedent to the performance of its obligations hereunder, (a) notice of acceptance hereof, (b) notice of any action taken or omitted to be taken by Owner in reliance hereon, (c) any requirement that Owner be diligent or prompt in making demands hereunder or giving notice to Guarantor of any default by Energy Manager, (d) any requirement that Owner exhaust any right, power or remedy or proceed against Energy Manager under the Agreement, or any other agreement or instrument referred to therein, or against any other Person under any other guarantee of, or otherwise in respect of, any of the Obligations, and (e) any claim or defense that Owner shall have impaired any right of Guarantor against Energy Manager or any other Person, by way of reimbursement, subrogation or otherwise, provided that the foregoing waivers shall not apply to the notice requirement contained in the proviso to Section 1. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

- (i) at any time or from time to time, without notice to Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;
- (ii) any of the acts mentioned in any of the provisions of the Agreement or any other agreement or instrument referred to therein shall be done or omitted; or
- (iii) any of the Obligations shall be modified, supplemented or amended in any respect in accordance with the terms of the Agreement with or without notice to Guarantor. In addition, Guarantor expressly authorizes Owner, without notice, demand or consideration and without affecting Guarantor's liability hereunder, from time to time, to (a) amend, change, release or cancel any of the provisions of the Agreement, by further agreement between Owner and Energy Manager at any time, or by operation of law, or otherwise, without the consent of or notice to Guarantor, or (b) release any other Person liable for the Obligations.

4. Bankruptcy; Reinstatement. Guarantor shall not commence or join with any other party in commencing any bankruptcy, reorganization or insolvency proceedings of or against Energy Manager. Guarantor understands and acknowledges that by virtue of this Guarantee, Guarantor specifically has assumed any and all risks of a bankruptcy or reorganization case or similar proceeding with respect to Energy Manager. Notwithstanding any modification, discharge or extension of the Obligations or any amendment, modification, stay or cure of Owner's rights which may occur in any bankruptcy or reorganization case or proceeding concerning Energy Manager, whether permanent or temporary, and whether or not assented to by Owner, Guarantor shall be obligated hereunder to perform all Obligations and all other obligations under this Guarantee.

5. Subrogation. Guarantor hereby agrees that until the performance and satisfaction in full of all Obligations and the expiration and termination of all Obligations, it shall not exercise any right or remedy arising by reason of the performance of any of its obligations under this Guarantee, whether by reimbursement, subrogation or otherwise, against Energy Manager or any other guarantor of any of the Obligations, or any security for any of the Obligations.

6. Representations and Warranties. Guarantor represents and warrants as follows:

(a) Due Organization. Guarantor is a corporation duly organized and validly existing under the laws of the state of its formation.

(b) Power and Authority. Guarantor has full corporate power, authority and legal right to enter into this Guarantee and to perform its obligations hereunder.

(c) Due Authorization. This Guarantee has been duly authorized, executed and delivered by Guarantor.

(d) Enforceability. This Guarantee constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights generally and except as enforceability may be limited by general principles of equity (whether considered in a suit at law or in equity).

(e) No Conflicts. The execution and delivery by Guarantor of this Guarantee and the performance by Guarantor of its obligations hereunder will not (i) violate the provisions of Guarantor's certificate of incorporation or bylaws; (ii) violate the provisions of any Applicable Law; or (iii) result in a breach of or constitute a default under any agreement to which Guarantor is a party or by which it or its assets or property are bound.

(f) No Proceedings. There is no action, suit or proceeding at law or in equity or by or before any Governmental Authority now pending or, to the best knowledge of Guarantor, threatened against Guarantor which reasonably could be expected to have a material adverse effect on Guarantor's ability to perform its obligations under this Guarantee.

(g) Ownership. Upon the occurrence of the EPA Closing, Guarantor will own, directly or indirectly, legal and beneficial ownership (free and clear of any Lien) of one hundred percent (100%) of the ownership interests in Energy Manager.

7. Affirmative Covenant.

Interest in Energy Manager. From and after the EPA Closing, Guarantor, or any successors or assigns thereof permitted under this Guarantee, shall maintain, directly or indirectly, legal and beneficial ownership (free and clear of any Lien) of one hundred percent (100%) of the ownership interests in Energy Manager.

8. Independent and Separate Obligations. The obligations of Guarantor hereunder are independent of the Obligations or the obligations of Energy Manager and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Guarantor

whether or not any other such obligations exist, whether or not Guarantor is the alter ego of Energy Manager, and whether or not Energy Manager is joined therein or a separate action or actions are brought against Energy Manager. Anything contained herein to the contrary notwithstanding, the performance obligations of Guarantor hereunder with respect to the Obligations includes the obligation to make any and all payments required to be made by Energy Manager pursuant to the provisions of the Agreement.

9. Set-off; Costs. Any and all payments made hereunder shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, or any set-off or counterclaim.

10. Full Recourse. The obligations of Guarantor set forth herein constitute the full recourse obligations of Guarantor enforceable against Guarantor to the full extent of all the assets and properties of Guarantor.

11. Indemnification. Guarantor agrees to indemnify and hold harmless Owner from and against any and all loss, liability and expense (including reasonable fees and disbursements of counsel to Owner) which may be sustained or incurred by or on behalf of Owner in enforcing any obligations of Guarantor hereunder.

12. Amendments; Waivers; Etc. Neither this instrument nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by Owner and Guarantor. No delay or failure by Owner to exercise any remedy against Energy Manager or Guarantor will be construed as a waiver of that right or remedy. No failure on the part of Owner to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder against Guarantor preclude any exercise of such right against or further exercise thereof against Guarantor, or the exercise of any other right against Guarantor. The remedies herein provided are cumulative and not exclusive of any remedies provided by any Applicable Law.

13. Severability. In the event that the provisions of this Guarantee should be claimed or held to be inconsistent with any other instrument evidencing or securing the Obligations, the terms of this Guarantee shall remain fully valid and effective. If any one or more of the provisions of this Guarantee should be determined to be illegal or unenforceable, all other provisions shall remain effective.

14. Assignment.

(a) Assignment by Guarantor. Guarantor shall not have the right to assign any of its rights or obligations under this Guarantee without the prior written consent of Owner, which consent may be withheld, conditioned or delayed by Owner in its sole discretion, except that: Guarantor may make such an assignment without obtaining the consent of Owner if (a) in conjunction with the assignment by Energy Manager of all of its rights and obligations under the Agreement, to the extent permitted in the Agreement, and provided that the assignee of Guarantor's obligations hereunder continues to satisfy the requirements of Section 7 hereof and has an investment grade rating by Standard and Poor's ("S&P") or Moody's Investor Services, Inc. ("Moody's") which is no less than

BBB- by S&P or Baa2 by Moody's, (b) in conjunction with Guarantor's merger into, consolidation with, or sale of all or substantially all of its assets to, another entity, provided that the assignee of Guarantor's obligations hereunder continues to satisfy the requirements of Section 7 hereof and has an investment grade rating by S&P or Moody's which is no less than BBB- by S&P or Baa2 by Moody's, or (c) Energy Manager ceases to be a person or entity controlled by, controlling or under common control with Guarantor, provided that the assignee of Guarantor's obligations hereunder continues to satisfy the requirements of Section 7 hereof and has an investment grade rating by S&P or Moody's which is not less than BBB- by S&P or Baa2 by Moody's; provided that, in the case of any assignment of this Guarantee by Guarantor, that Guarantor's obligations hereunder must be expressly assumed in writing, in a form reasonably acceptable to Owner; and provided further that such assumption shall be deemed to release Guarantor from all of its obligations under this Guarantee automatically and without further action by Guarantor or Owner.

(b) Assignment by Owner. Owner may, at any time and from time to time, assign, in whole or in part, the rights of Owner hereunder to any Person to whom Owner may assign all or any of its rights or obligations under the Agreement, whereupon such assignee shall succeed to the rights of Owner hereunder to the extent so assigned.

(c) Successors and Assigns. Subject to Section 14(a) hereof, this instrument shall be binding upon Guarantor and its respective successors and permitted assigns and shall inure to the benefit of Owner and its successors and permitted assigns.

15. Term of Guarantee. This Guarantee shall remain in full force and effect until the earlier of: (i) such time as the Agreement has been terminated in accordance with its terms and all the Obligations have been discharged; and (ii) December 31, 2019; provided however, Guarantor will remain liable hereunder for Obligations that were outstanding prior to December 31, 2019 but the performance of which may occur after such date.

16. Address for Notices. All notices and other communications provided for hereunder shall be given in accordance with the notice requirements of the Agreement, and if to Guarantor, at the address specified below the space for its execution of this Guarantee.

17. JURISDICTION.

(a) SERVICE OF PROCESS. GUARANTOR IRREVOCABLY CONSENTS TO THE SERVICE OF ANY PROCESS, PLEADING, NOTICE OR OTHER PAPERS BY THE MAILING OF COPIES THEREOF BY REGISTERED, CERTIFIED OR FIRST CLASS MAIL, POSTAGE PREPAID, TO GUARANTOR AT ITS ADDRESS SPECIFIED BELOW THE SPACE FOR ITS EXECUTION OF THIS GUARANTEE OR BY ANY OTHER METHOD PROVIDED OR PERMITTED UNDER NEW YORK LAW.

(b) NON-EXCLUSIVE JURISDICTION. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ARTICLE XXII OF THE AGREEMENT, EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY: (I) AGREES THAT ANY

SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF THIS GUARANTEE SHALL BE BROUGHT IN THE UNITED STATES FEDERAL DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK OR, IF SUCH FEDERAL COURT DOES NOT HAVE JURISDICTION OR WILL NOT ACCEPT JURISDICTION, OR CANNOT EXERCISE JURISDICTION OVER ALL OF THE NECESSARY PARTIES, IN THE COMMERCIAL PART OF THE NEW YORK STATE SUPREME COURT IN MONROE COUNTY, NEW YORK, EXCEPT THAT (X) AN ACTION TO ENFORCE AN INTERIM OR FINAL ARBITRAL AWARD AND (Y) ANY SUIT, ACTION OR LEGAL PROCEEDING WHICH SUCH MONROE COUNTY COURT DOES NOT HAVE JURISDICTION OR WILL NOT ACCEPT JURISDICTION OR CANNOT EXERCISE JURISDICTION OVER ALL OF THE NECESSARY PARTIES, MAY BE BROUGHT IN ANY COURT HAVING JURISDICTION; (II) CONSENTS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION, OR PROCEEDING; AND (III) WAIVES ANY OBJECTION WHICH SUCH PARTY MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION, OR PROCEEDING IN ANY SUCH COURT.

18. GOVERNING LAW. THIS GUARANTEE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CHOICE OF LAW (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

19. WAIVER OF JURY TRIAL. GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS GUARANTEE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER ORAL OR WRITTEN), OR ACTION OF GUARANTOR, ENERGY MANAGER, OR OWNER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR OWNER TO ENTER INTO THE AGREEMENT.

20. Entire Agreement. This Guarantee contains the complete agreement of Guarantor and Owner with respect to the matters contained herein and supersedes all other negotiations or agreements, whether written or oral, between or among Guarantor and Owner with respect to the subject matter hereof.

21. Section Headings. Section headings contained herein are for convenience of reference only and shall not be considered in the interpretation or enforcement of the provisions hereof.

22. Security. Guarantor may substitute alternative security for this Guarantee if and only if it obtains the prior written approval of Owner, which approval may be granted or withheld in the sole discretion of Owner.

23. Counterparts. This Guarantee may be executed and delivered in multiple originals or using counterpart signature pages. All such multiple originals shall constitute but one and the same document.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Guarantor has duly executed and delivered this Guarantee effective as of the date first written above.

GUARANTOR

DTE Energy Company

By: _____

Name:

Title:

Address:

DTE Energy Company

One Energy Plaza

Detroit, MI 48226

Attention: David R. Murphy - Assistant Treasurer

Facsimile: 313-235-9470

With a copy to:

DTE Energy Services, Inc.

414 South Main Street

Suite 600

Ann Arbor, MI 48104

Attention: President

Telephone: 734-302-4834

Facsimile: 734-302-5326

and

DTE Energy Services, Inc.

414 South Main Street

Suite 600

Ann Arbor, MI 48104

Attention: General Counsel

Telephone: 734-302-4894

Facsimile: 734-302-8245

EXHIBIT C

FORM OF RELEASE

ACKNOWLEDGMENT OF RECEIPT AND RELEASE

[_____], 2012

Cinergy Corp.
c/o Duke Energy Generation Services Holding Company, Inc.
550 South Tryon Street
Charlotte, NC 28202
Attention: Managing Director, Mergers & Acquisitions
Mail Code: DEC41C
Telephone: (980) 373-3564
Facsimile: (980) 373-6034

Suez Energy Cogeneration Corporation
c/o Suez Energy Solutions, Inc.
1990 Post Oak Boulevard
Suite 1900
Houston, TX 77056
Attn: Director, Business Development
Telephone: (713) 636-1399
Facsimile: (713) 636-1859

DTE Energy Company
414 South Main Street
Suite 600
Ann Arbor, MI 48104
Attention: President
Telephone: 734-302-4834
Facsimile: 734-302-5326

Ladies and Gentlemen:

We refer to that certain Second Amended and Restated Energy Management Services Agreement, dated as of April 1, 2007 (the "Agreement"), between SUEZ-DEGS of Rochester, LLC (formerly known as Trigen-Cinergy Solutions of Rochester, LLC) and Eastman Kodak Company ("Kodak").

Kodak hereby acknowledges its receipt as of the date hereof of the Guarantee, dated as of [_____], 2012, by DTE Energy Company in favor of Kodak in connection with the Agreement.

Kodak hereby acknowledges and agrees that (i) each "Guarantor", as defined in the Existing Guaranty (as defined below), is hereby released and discharged from all of its obligations under that certain Guarantee, dated April 1, 2007, by SUEZ Energy Cogeneration Corporation and Cinergy Corp. in favor of Kodak in connection with the Agreement (the "Existing Guaranty"); and (ii) as of the date hereof, the Existing Guaranty is hereby terminated and shall be of no further force and effect.

Sincerely,

EASTMAN KODAK COMPANY

By: _____

Name:

Title: