

**CONFIRMATION**

Date: May 16, 2017

**Seller:**Arch Coal Sales Company, Inc. Individually  
and as agent for Thunder Basin Coal Company, LLC.**Buyer:**Louisville Gas and Electric Company and  
Kentucky Utilities Company (collectively and  
individually as the context requires, in each  
case subject to Section 10.9 of the Terms and  
Conditions)1 CityPlace Drive, Suite 300  
St. Louis, MO 63141220 West Main Street  
Louisville, KY 40202

Attn: Kathy Brown

Attn: Delbert Billiter

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Ref. #: MO# 5451

Ref. #: J18008

This Confirmation ("Confirmation") sets forth the binding agreement entered into between the Parties on the date hereof set out below as to a transaction (this "Transaction") regarding the sale/purchase of Coal under the following terms:

**Trade Date:** May 16, 2017

**Commodity:** Crushed coal, containing no synthetic fuels, free from any extraneous materials, with no intermediate sizes added or removed and otherwise meeting the specifications of this Confirmation.

**Term:** January 1, 2018 through December 31, 2019

**Contract Quantity:** 2018: 450,000 Tons  
2019: 600,000 Tons

**Contract Price:** 2018: \$12.00  
2019: \$12.65

**Source:** Black Thunder Complex located on the joint BNSF/UP line in the Southern Powder River Basin capable of loading 12,000 - 15,000 ton Unit Trains

**Delivery Point:** FOB Rail Car at the Source

**BTU Quality Adjustment:** Per the Terms and Conditions

**SO<sub>2</sub> Quality Adjustment:** None

Specifications:	Standard/Basis	Per Shipment Rejection Limit
Btu/Lb.	8,850	<8,600
SO <sub>2</sub> (lbs./MMBtu)	0.80	>1.20
Ash (%)	5.50	>7.00
Moisture (%)	27.00	>30.00
Sodium (%)	1.20	N/A

**Nomination Period:** Monthly

**Sampling & Analysis:** Per the Terms and Conditions

**Weights:** Per the Terms and Conditions

**Billing & Payment:** Per the Terms and Conditions

**QVA:** Not Applicable

**Third Party Impositions :** Third Party Imposition Maximum shall be \$0.50 per net ton  
Third Party Imposition Threshold shall be \$0.05 per net ton

**Buyer's Customer:** Not Applicable

**Notices:** All notices, invoices and confirmations to the location listed on this Confirmation.

**Other:** Seller's Guarantor, Arch Coal, Inc. shall provide a guarantee in form agreeable to the Parties, concurrent with the execution of this Confirmation.

**Other Changes to the Terms and Conditions** **Section 2.1 Duration.** Add: "The Term of this Contract will automatically be extended to include the Make-Up Period as referenced in Article 3.8."

**Section 3.1 Obligation for Purchase and Sale of Coal.** Insert the following at the end of the last sentence: "For the year 2018, the Parties acknowledge that shipments will begin on or about April 1, 2018."

**Section 3.3 (a) Rail Deliveries.** Insert the following at the end of the last sentence: "Seller will make reasonable efforts to load trains within four (4) hours after arrival at Loading Point. Any demurrage incurred by Buyer after four (4) hours from the time when Buyer's first car is actually or constructively placed shall be the responsibility of Seller. Demurrage rate is \$600 per hour or fraction of an hour. Railcars shall be loaded to maximum rated capacity not to exceed 285,000 pounds gross weight on rail."

**Section 3.3 (c) Additives.** Insert the following after the first sentence: "If requested by Buyer, Seller shall make Commercially Reasonable Efforts to treat (or have treated) any railcars specified by Buyer with a side release agent approved by Buyer."

**Section 3.5 Substitute Coal.** Delete the first sentence and replace with the following: "Seller may, subject to the consent of Buyer, which may not be unreasonably withheld, by giving prior written notice, have the right but not the obligation, to provide the Coal from any alternate Source Seller may select." and in the third sentence replace the word "comparable" with "equivalent".

**Section 3.6 Taxes, Third Party Impositions and Other Liabilities.**

- In the sixth line insert "at or" after the word "levied" and in the tenth line delete the words "at or".
- Beginning in the fifteenth line delete the clause "Seller shall notify Buyer and shall submit to Buyer in writing, an analysis" and insert the following in its place: "either Party may notify the other Party and shall submit to such other Party in writing, including reasonable supporting documentation, an analysis (stating the new development, its specific legal basis, effective date, and actual or anticipated financial impact)".
- In the 19<sup>th</sup> line after the period, insert the following: "Either Party shall notify the other Party of any disagreement of the claimed adjustment within a reasonable time of receipt of notice thereof, taking into account any requests for additional information relating thereto. A Third Party Imposition adjustment shall only be made hereunder if the price adjustment is allocated evenly to all coal produced by Seller, including all coal that is produced from the Source, so that Buyer is allocated only its proportionate share of such Third Party Imposition, and the Contract Price shall likewise be decreased for any savings resulting from any Third Party Imposition. There shall be no change to the Contract Price based on reductions or loss of production or production capacity as a result of a Third Party Imposition. By way of

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example, and not of limitation, a Third Party Imposition that requires the purchase of special or additional equipment shall be prorated over the number of years of useful life of the equipment and over the total tons in any year during the useful life of the equipment. In such a case, the change in the Contract Price would not exceed the per-ton prorated cost of the equipment. After review and agreement by the Parties on the nature and cost impact of the Third Party Imposition,"

- Delete the last two sentences and replace with the following: "Costs of current or future implementation based on the MINER Act and the Diesel Rule as of the Trade Date are included in the Contract Price. Costs and expenses incurred by Seller due to changes in the MINER Act and the Diesel Rule after the Trade Date shall be considered Third Party Impositions."

**Section 3.8 (a) Rescheduling.** Shall be deleted in its entirety and replace with the following:

"Section 3.8 (a) Rescheduling and Make-Up. The Parties shall make Commercially Reasonable Efforts to reschedule a shipment to a future load date during the Term. If the Parties mutually agree in writing, the Affected Party may schedule deliveries or receipts, as the case may be, pursuant to such terms as the Parties agree in order to discharge some or all of the obligation to pay damages. In the absence such agreement, the make-up and damages provisions of this Article shall apply.

If Seller or Buyer fails to supply to or to take delivery of (as applicable) the entire Contract Quantity scheduled for the Term for any reason other than Force Majeure Event, then the Affected Party, may, at its sole option and without any obligation to do so, elect to make up such undelivered or unreceived quantities ("Make-Up Tons") by having the Non-Performing Party deliver or take delivery of the Make-Up Tons during the three months immediately following the calendar year in which such Make-Up Tons should have been delivered (the "Make-Up Period"). If necessary, the Term of this Contract will be automatically extended to include the Make-Up Period. Prior to making such election, the Affected Party may request from the Non-Performing Party adequate assurances, satisfactory to Affected Party, that the Non-Performing Party is capable of delivering or receiving, and will deliver or receive the Make-Up Tons during the Make-Up Period. In the event the Affected Party makes the election to deliver or receive Make-Up Tons, the Non-Performing Party shall deliver or receive the Make-Up Tons during the Make-Up Period pursuant to a new, mutually-agreed delivery schedule incorporating the delivery of the additional Make-Up Tons."

**Section 3.8 (b) Liquidated Damages.**

- In (i) and (ii) delete "for the relevant delivery month" and replace with "at the end of the Make-Up Period".
- In (d) add the following after the last sentence: "This provision is not intended to create a unilateral or absolute right of excuse from performance hereunder. It is solely intended to provide a measure of damages for good faith inability to meet the performance obligations herein. This provision shall not be construed to create any partial or total buyout rights hereunder."

**Section 5.1 Quality Adjustments.** In the second sentence, insert the following before the period "and the price paid by Buyer for the coal delivered hereunder will be adjusted by these Quality Adjustment(s) Formula(s)."

**Section 5.2 Buyer's Rejection Rights.**

- In the first sentence, delete "using Commercially Reasonable Efforts"
- After the first sentence insert the following: "At Buyer's option, tonnages of accepted non-conforming shipments may or may not be included in the satisfaction of the Contract Quantity under this Contract."
- In the tenth line delete "penalty adjustment" and replace with "Quality Adjustment(s) Formula(s)".

**Section 5.3 Suspension Rights.** In the 21<sup>st</sup> line after the word "Term" insert "including any Make-Up Period,".

**Section 6.1 Billing and Payment (b).** In the fourth line delete "five (5) days" and replace with "five (5) Business Days" and in the last line delete "original due date" with "date of resolution"

**Section 6.2 Audit.** In the fifth line delete "to verify the accuracy of" and replace with "in connection with analyzing" and delete the fifth sentence.

**Section 7.1 Effect of Force Majeure Event.**

- In the fourth line delete the word "full" and replace it with "reasonable".
- In the tenth line delete "all reasonable dispatch" and replace it with "Commercially Reasonable Efforts".

- Delete the third sentence and replace it with: "For the avoidance of doubt, delays, interruptions or failures in railroad transportation, railcar transloading, barge transportation, and unloading, storage and utilization at the plant, meeting the requirements of the first sentence of this Article 7.1 shall qualify as events of Force Majeure."
- The last sentence is revised to read: "In the event of a Force Majeure, delivery of the affected quantity of Coal may be made up pursuant to Section 3.8(a) at the sole discretion of the non-affected Party."

**Section 7.3 Pro Rationing.** In the first and third lines after the word "all" insert "or any portion".

**Section 7.3 Pro Rationing.** Insert the following at the end of the last sentence: "Provided that such later Transactions and Agreements are in place as of or before the Trade Date hereof."

**Section 8.1(h) Material Adverse Change.** Deleted and replaced with "Intentionally left blank"

**Section 8.3 Early Termination Payment.**

- In the sixth line delete "five (5) days" and replace with "five (5) Business Days."
- In the 16<sup>th</sup> line after the word "manner" insert "and no combination of an Early Termination payment and any other rights or remedies shall entitle a Party to double-recovery of similar or related damages hereunder".
- In the last sentence capitalize the three words: gains, losses and costs.

**Section 8.4 Expenses.** Insert the following to the beginning of the first sentence: "Following a court final decision regarding an Event of Default,".

**Section 10.1 Successors and Assigns; Assignment.** Add the following after the last sentence of the paragraph: "In the event of subsection (a) hereunder, Seller hereby acknowledges and agrees that any payments by Buyer to a financing party hereunder shall be for Seller's benefit and shall satisfy Buyer's payment obligations hereunder. The Parties acknowledge that Buyer's performance of its obligations in this Contract may be performed by one or more agents, including without limitation LG&E and KU Services Company."

**Section 10.4 Confidentiality.** Delete the entire section and replace with the following: "The Parties shall maintain the confidentiality of this Contract and shall not disclose its terms to a third party (other than a Party's and its Affiliates' employees, lenders, counsel, accountants, lessors, landowners or prospective permitted purchasers, directly or indirectly, of a Party or all or substantially all of a Party's assets or of any rights under this Contract, in each case who have agreed to keep such terms confidential) without the prior written consent of the other Party. Notwithstanding the foregoing, this Contract may be disclosed when required by law, regulation or court order, provided that the Party disclosing this Contract will furnish only that portion of this Contract that is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded this Contract. Further notwithstanding the foregoing, either Party may disclose to Relevant Third Parties those portions of this Contract related to operational requirements for transportation services hereunder, including without limitation car loading and train length requirements. The term "Relevant Third Parties" shall mean any third parties involved in the transportation of Coal that is supplied hereunder. In the event of a breach of this Article 10.4 (i) all monetary damages are limited to actual direct damages, and (ii) a breach of this Article 10.4 shall not give rise to a right to suspend or terminate this Contract. For the avoidance of doubt, nothing in this Article 10.4 shall be deemed to require that Buyer obtain consent from Seller prior to disclosing this Contract to the Kentucky Public Service Commission (the "PSC") as required under Kentucky Law, and Seller acknowledges that: (i) current PSC practices do not provide the ability for Buyer to obtain confidential treatment of the Contract and (ii) when so disclosed, current PSC practices may result in all or part of the Contract being made public."

**Section 10.7 Counterparts; Severability; Survival.** The last sentence is revised to read: "All indemnity and audit rights shall survive the termination of this Contract in full for a period of two (2) years."

**Insert new Section: 10.9 Several Liability.** The Seller acknowledges that, while there will be no effect on the Contract Quantity set forth in Confirmation, LG&E and KU will allocate the quantity of coal to be purchased and received hereunder between themselves and that such allocation may change from time to time, at the sole discretion of LG&E and KU. Therefore, the term "Buyer" as used herein shall mean: (a) with respect to any particular Shipment actually received by either LG&E or KU, the party who actually received such shipment; and (b) as may be determined by LG&E and KU, in their sole discretion with respect to any time or circumstance under this Contract that the party or parties constituting "Buyer" is not determined pursuant to clause (a) immediately above (including, without limitation, matters

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Involving exercise of rights or remedies by Buyer or enforcing obligations, duties and liability against Buyer by Seller not involving Shipments or prior to receipt of Shipments), the party or parties (and in such percentage allocation, if applicable). Seller agrees that the liability of each of LG&E and KU shall at all times be several and not joint. Each of LG&E and KU shall have the obligations, duties and liability of a Buyer hereunder only to the extent (and in the percentage, if applicable) that each such entity is determined to be a "Buyer" pursuant to this paragraph. Also LG&E and KU each shall have the rights and remedies of a Buyer hereunder only to the extent (and in the percentage, if applicable) that each of them is determined to be a "Buyer" pursuant to this paragraph. In the event the determination of the "Buyer" pursuant to this paragraph is found contrary to law or unenforceable by any court of law, or cannot be reasonably made with respect to any particular circumstance for any reason, the rights, remedies, obligations, duties and liabilities of Buyer shall be allocated to each of LG&E and KU, severally and not jointly, 50% to each entity.

**Definitions:**

**"Contract Price"**: add ", as specified in the Confirmation" to the end of the definition.

**"Costs"**: delete "terminating any hedges or other risk management contracts and/or".

**"Material Adverse Change"**: Delete and replace with "Intentionally not used."

**"Performance Assurance"** reads "means reasonable collateral in the form of either cash or Letters of Credit, not to exceed, in the aggregate, two months' estimated payments hereunder."

**"Quantity Variation Adjustment"** or **"QVA"**: Delete and replace with "Intentionally not used."

**"Transportation Specifications"**: delete "shall be no more restrictive than typical agreements for transport of Coal on rail lines, highways, vessels or Barges transporting Coal to or from Delivery Point(s) for third parties or to and from other delivery points in the vicinity of the Delivery Point".

This agreement is subject to the attached Arch Coal Sales Company, Inc. Terms and Conditions\_Rail\_v3.1 ("Terms and Conditions") that are hereby incorporated into and made part of this Confirmation (the Confirmation and the Terms and Conditions are referred to as the "Contract") as essential Terms and Conditions hereof and which are in lieu of and replace any and all terms and conditions set forth in any documents issued by Buyer, including, without limitation, any purchase orders and any specifications. In the event of a conflict between the Terms and Conditions attached and specific provisions set forth above, the specific provisions will control. These terms of sale are accepted by Buyer, if not otherwise accepted, by Buyer's purchase or taking delivery of the product from Seller.

**Seller :**

Arch Coal Sales Company, Inc. Individually  
and as agent for Thunder Basin Coal Company,  
LLC

By: [Signature]  
Name: John F. [Signature]  
Title: PRESIDENT  
Date: JUNE 26, 2017

**Buyer :**

Louisville Gas and Electric Company

By: [Signature] *APR ETL*  
Name: David S. Sicular  
Title: VP Energy Supply & Analytics  
Date: 7-14-17

Kentucky Utilities Company

By: [Signature] *APR ETL*  
Name: David S. Sicular  
Title: VP Energy Supply & Analytics  
Date: 7-14-17

# Arch Coal Sales Company, Inc. Terms and Conditions\_Rail\_v3.1

## Article 1: Contract

**1.1. Acceptance.** The attached Confirmation together with these Terms and Conditions shall be referred to as the ("Contract"). Any acceptance of the delivery of Coal, or any acceptance or Confirmation of this Contract, express or implied, shall constitute acceptance of these terms and conditions. Capitalized terms used herein and not defined elsewhere herein or in the Confirmation shall have the meaning as set forth in Article 11.

## Article 2: Term

**2.1 Duration.** The term of this Contract (the "Term") shall be as set forth on the Confirmation.

## Article 3: Obligations

**3.1 Obligations for Purchase and Sale of Coal.** During the Term, Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase, accept and pay for from Seller, the Contract Quantity to be delivered at the Delivery Point in approximate ratable amounts each calendar month over the Term.

**3.2 Scheduling.** The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period provided however that the Parties agree to make Commercially Reasonable Efforts to arrange and receive Shipments in accordance with a Delivery Schedule.

**(a) Non-PRB Rail Scheduling.** If the Source is not in the PRB, Buyer will advise Seller on or before the 15<sup>th</sup> day of each calendar month preceding scheduled Shipments of the number of Unit Trains it desires to load during the succeeding month to fulfill the Transaction volume (the "Monthly Shipment Volume") and Buyer's desired loading dates and delivery schedule ("Delivery Schedule"). Seller will advise Buyer on or before the 20<sup>th</sup> day of the month preceding Shipment of its Source for the scheduled monthly Shipment(s) and Buyer shall advise Seller of the specific transportation arrangements to comply with its Delivery Schedule no later than the 25<sup>th</sup> of the month preceding Shipment (the "Monthly Shipment Notification Date"). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period provided however that the Parties agree to make Commercially Reasonable Efforts to arrange and receive Shipments in accordance with a Delivery Schedule to be completed on or before the 20<sup>th</sup> of the month before the Shipment month. If either Party is unable to meet the scheduling requirements within time periods set forth herein, such Party shall not have failed to deliver or receive Coal if such scheduling requirements are met within five (5) days of the time for performance of such obligations.

**(b) PRB Rail Scheduling.** If the Source is in the PRB, Buyer will advise Seller on or before the 25<sup>th</sup> day of each calendar month preceding scheduled Shipments of the number of Unit Trains it desires to load during the succeeding month to fulfill the Transaction volume (the "Monthly Shipment Volume") and Buyer's desired destination and Transporter. Seller will advise Buyer on or before the 25<sup>th</sup> day of the month preceding Shipment of its Source for the scheduled monthly Shipment(s) and the Unique Identifier Number(s). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period provided however that the Parties agree to make Commercially Reasonable Efforts to arrange and receive Shipments. If either Party is unable to meet the scheduling requirements within time periods set forth herein, such Party shall not have failed to deliver or receive Coal if such scheduling requirements are met within five (5) days of the time for performance of such obligations.

### **3.3 Delivery and Title.**

**(a) Rail Deliveries.** For rail deliveries, the Coal shall be delivered to Buyer FOB Unit Train(s) at the Delivery Point. Title to and risk of loss of the Coal will pass to Buyer upon completion of loading all railcars in each Unit Train and release of the Unit Train to the railroad. Buyer shall furnish suitable Unit Trains for loading and delivery of the Coal.

**(b) Intentionally left blank.**

**(c) Additives.** Seller shall make Commercially Reasonable Efforts to treat the Coal with freeze control agents or other additives as directed by Buyer. Buyer shall thereafter reimburse Seller for the actual cost of materials, including all applicable taxes, fees and reasonable application costs as charged by the Source for application of the freeze control agents, or other additives. Seller shall invoice Buyer and Buyer shall pay Seller for such freeze conditioning in accordance with the provisions of Article 6.1 hereof.

**(d) Failure to Load As Scheduled.** If a scheduled Shipment fails to load as scheduled, despite the Parties' Commercially Reasonable Efforts to arrange and receive such Shipment in accordance with Article 3.2, the Parties shall make Commercially Reasonable Efforts to reschedule the Shipment to a future load date which is (i) for Shipments originating from the PRB, on or before the tenth day of the month following the originally scheduled delivery month, and (ii) for all other Shipments, on or before the later of (x) ten days after the originally scheduled Shipment date or (y) the last day of the originally scheduled delivery month. In the event the Shipment cannot be rescheduled to a load date within such time period and the Parties cannot agree upon a future load date during the Term, or otherwise, such Shipment will be subject to Article 3.8.

**(e) Buyer's Administrative Obligation.** The Parties agree that some of Buyer's obligations hereunder may be performed by Buyer's Customer; nevertheless, Buyer shall remain liable for all of Buyer's obligations hereunder and Buyer shall indemnify and hold Seller harmless from and against any and all claims made by Buyer's Customer against Seller. Additionally, Buyer agrees to the following:

**(i)** Buyer shall inform Seller at least twenty-four (24) hours in advance of arrival of each Unit Train at the Source of: (A) identification of Buyer's Customer, (B) the identification number or Unique Identifier Number, as applicable, (C) the estimated date of arrival, and (D) destination of such Unit Train.

**(ii)** The loading of such Unit Train shall be in accordance with the loading provisions provided to Seller herein unless Buyer notified Seller in advance of different loading provisions and such different loading provisions are in general accordance with operating parameters in the Source's region, and do not, in Seller's reasonable opinion, impose an undue operating or economic burden on Seller.

**(iii)** All information to be supplied by Seller under this Contract including but not limited to analysis, weights, manifest and invoicing information shall be supplied to Buyer and Buyer shall be responsible for transmitting such information to Buyer's Customer.

**3.4 Title Warranty and Indemnity.** Seller warrants that at the time of delivery it will have title to the Coal, and will deliver the Coal to Buyer, free and clear of all liens, claims and encumbrances arising prior to the transfer of title to Buyer. Seller and Buyer shall each indemnify, defend and hold harmless the other Party from any Claims arising from failure of title or loss of the Coal while title to and risk of loss of the Coal is vested in the indemnifying Party.

**3.5 Substitute Coal.** Seller shall, by giving prior notice, have the right but not the obligation, to provide the Coal from any alternate Source Seller may select. The Parties will cooperate with each other in arranging for alternative transportation. Any such substitute Coal must be of comparable quality and equivalent cost as if delivery had been made from the original Source. The Seller shall be solely responsible for any increased transportation, handling, storage and other costs, if any, incurred by Buyer directly resulting from this provision of substitute Coal.

**3.6 Taxes, Third Party Impositions and Other Liabilities.** Each Party shall make Commercially Reasonable Efforts to administer this Contract and implement the provisions in accordance with the intent to minimize Taxes within the good faith parameters of the law. Seller shall be solely responsible as to any Transaction for all assessments, fees, costs, expenses and Taxes imposed by governmental authorities or other third parties ("Third Party Impositions") relating to the mining, beneficiation, production, sale, use, loading and delivery of Coal to Buyer or in any way accrued or levied prior to the transfer of title to the Coal to Buyer, and including, without limitation, all severance taxes, royalties, black lung fees, reclamation fees and other costs, charges and liabilities and which are known to Seller as of the Trade Date. Buyer shall be solely responsible as to any Transaction for Third Party Impositions relating to the Coal accrued or levied at or after the transfer of title to the Coal to Buyer, including, but not limited to, sales or use tax if applicable. If any Third Party Imposition is adopted, changed or becomes effective after the Trade Date pursuant to any new law, regulation or ruling, or pursuant to changes in the interpretation or application of



existing laws, regulations or rulings, which causes an increase or decrease in the cost for the mining, beneficiation, production, sale, use, loading and delivery of Coal to Buyer hereunder, Seller shall notify Buyer and shall submit to Buyer in writing, an analysis identifying the Third Party Imposition causing the cost impact and the extent of such cost impact on the ownership or operation of the Coal mines designated as Sources hereunder or on the production, mining, preparation, or sale of Coal purchased hereunder and showing the calculation of the amount of change in the Contract Price. The Contract Price for Coal to be paid by Buyer hereunder shall then be adjusted by adding or subtracting the per ton cost of the specific Third Party Imposition to determine an adjusted Contract Price. Such change to the Contract Price will only be made when the total cost impact for the aggregate amount of Third Party Impositions increases or decreases by more than the Third Party Threshold. The effective date of any Contract Price increase or decrease pursuant to this article shall be the effective date of the Third Party Imposition causing the cost increase or decrease, as the case may be. Costs of implementation of the MINER Act and the Diesel Rule through the Trade Date are included in the Contract Price. Costs and expenses incurred by Seller in the further implementation of the MINER Act and the Diesel Rule after the Trade Date shall be considered Third Party Impositions.

If the cumulative change in Third Party Impositions during the Term would cause the Contract Price in any Transaction to increase or decrease by more than the Third Party Imposition Maximum, then Buyer and Seller shall thereafter attempt to negotiate a new Contract Price. If the Parties do not negotiate a new Contract Price within ninety (90) days from the date of Seller's written submittal to Buyer notifying Buyer of the Third Party Imposition(s) at issue, then Buyer shall have the right to terminate the Transaction sixty (60) days after giving Seller notice of such termination. In the event Buyer elects to terminate hereunder, Seller shall have the right to preclude such termination by giving Buyer notice within ten (10) days of receipt of Buyer's termination notice that Seller will not pass through to Buyer the portion of the increase that exceeds the Third Party Imposition Maximum. Termination hereunder shall release both parties from any further obligation except for Buyer's obligation to pay for Coal delivered.

**3.7 Option Exercise.** Article intentionally left blank.

**3.8 Failure to Deliver or Receive Coal.** The remedies set forth in this Article 3.8 shall be the Affected Party's exclusive remedies for the Non-Performing Party's failure to deliver or receive a Shipment of Coal as set forth in this Contract:

**(a) Rescheduling.** As an alternative to the damages provision below, if the Parties mutually agree in writing, the Affected Party may schedule deliveries or receipts, as the case may be, pursuant to such terms as the Parties agree in order to discharge some or all of the obligation to pay damages. In the absence such agreement, the damages provision of this Article shall apply.

**(b) Liquidated Damages.**

**(i) Seller Failure to Deliver.** Unless excused by Force Majeure or Buyer's failure to perform, if Seller fails to deliver all or part of the Contract Quantity for the relevant delivery month in accordance with the applicable Transaction, Seller shall pay to Buyer, within five (5) Business Days of invoice receipt, an amount for each Ton of Coal of such deficiency equal to (A) the commercially reasonable market price at which Buyer is able, or absent an actual purchase at the time of Seller's breach, would be able to purchase or otherwise receive comparable supplies of Coal of comparable quality on an equivalent adjusted basis (FOB Delivery Point) plus (i) direct costs reasonably incurred by Buyer in purchasing such substitute Coal and (ii) additional transportation charges, if any, reasonably incurred by Buyer as a result of taking delivery of substitute Coal at a location other than FOB Delivery Point ("Replacement Price") minus (B) the Contract Price agreed to for the Transaction; except that, if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

**(ii) Buyer Failure to Accept Delivery.** Unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to accept delivery of all or part of the Contract Quantity for the relevant delivery month in accordance with the applicable Transaction, Buyer shall pay to Seller, within five (5) Business Days of invoice receipt, an amount for each Ton of Coal of such deficiency equal to (A) the Contract Price agreed to for the Transaction plus any storage, transportation or other direct costs reasonably incurred by Seller in reselling the Coal minus (B) the commercially reasonable market price at which Seller is able, or absent an actual sale, would be able to sell or otherwise dispose of the Coal (FOB Delivery Point) at the time of Buyer's breach, ("Sales Price");

except that, if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

**(c) Duty to Mitigate.** Both Parties shall be subject to a commercially reasonable good faith obligation to mitigate any damages hereunder.

**(d) Payment.** Payment of amounts, if any, determined under this Article 3.8 shall be made in accordance with Article 3.8(b)(i)(ii). All such determinations shall be made in a commercially reasonable manner and the Affected Party shall not be required to enter into any actual replacement transaction in order to determine the Replacement Price or Sales Price as appropriate.

**(e) Damages Stipulation.** Each Party stipulates that the payment obligations set forth in this Article 3.8 for the damages incurred are a reasonable approximation of the anticipated harm or loss and acknowledges the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as unenforceable, an unreasonable penalty or otherwise.

**3.9 Quantity Variance Adjustment (QVA).** If QVA is applicable as set forth in a Confirmation, then for Transactions in which the Contract Quantity is designated in Unit Train loads or Barge loads, Coal delivered either in excess of or below the Basis of such Unit Train or Barge shall be priced as follows:

If the absolute value of the difference obtained by subtracting the actual Tons of Coal delivered from the Basis for each Shipment is greater than 2% of the Basis, then Seller shall calculate, and invoice a QVA determined by the following formula. A positive QVA shall be added to the invoice and paid by Buyer to Seller, a negative QVA shall be deducted from the invoice and paid by Seller to Buyer:

$$QVA = [\text{Basis} - \text{actual Tons delivered}] \times [\text{Contract Price} - (\text{Final Monthly Average Price} + \text{Product Differential})]$$

Where:

**"Final Monthly Average Price"** means the "Final Monthly Average" for the month of delivery, as published by *Platt's Coal Trader* in the "OTC Broker Index" table for the Product.

**"Product Differential"** has the meaning set forth in the Confirmation, and if not set forth therein, means (i) if the Product is CAPP Rail 12500 CS, the "Final Monthly Average" for the month of delivery, as published by *Platt's Coal Trader* in the "OTC Broker Index" table for the coal product specification "CAPP 1% vs. Compliance spread", or (ii) for all other Products, zero (0).

Product	Basis
EFFECTIVE 01/01/2011 OR LATER	
PRB 8800 or PRB 8800 Low Sulfur or PRB 8400	15,000 Tons 15,000 Tons 15,000 Tons
CAPP Rail 12500 CS or CAPP Rail 12500 LS	11,000 Tons 11,000 Tons
NYMEX Look-Alike	Five barges of 1,550 Tons per barge (7750 Tons)
EFFECTIVE PRIOR TO 01/01/2011	
PRB 8800 or PRB 8800 Low Sulfur or PRB 8400	14,500 Tons 14,500 Tons 14,500 Tons
CAPP Rail 12500 CS or CAPP Rail 12500 LS	10,000 Tons 10,000 Tons

NYMEX Look-Alike	Five barges of 1,550 Tons per barge (7750 Tons)
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#### **Article 4: Specifications, Weighing, Sampling and Analysis**

**4.1 Specifications.** Seller shall cause all Coal delivered to Buyer to comply with the Specifications.

**4.2 Unit Train Weighing.** Shipments delivered into Unit Trains shall be weighed at Seller's expense by means of a certified batch weighing system or certified track scale or in the absence of a batch weighing system or track scales for rail weights, official railroad weights. The weights determined thereby (absent manifest error) will be the basis on which invoices will be rendered and payments made hereunder.

**(a) Testing.** Seller shall make Commercially Reasonable Efforts to cause the Source to test, calibrate, and certify its scales at the Source approximately every six (6) months to maintain them at a scale accuracy in accordance with the guidelines outlined in the National Bureau of Standards Handbook #44.

**(b) Inoperative Scales.** If the scales at the Source are determined to be inoperative, if the Source is a Western Mine, then the weight of such Coal delivered shall be determined by averaging the lading weight per railcar of the last five (5) Unit Trains of like equipment under this Contract weighed at the Source prior to such breakdown. If the Source is an Eastern Mine, the weight of such Coal delivered shall be determined by railroad weights. If railroad weights are not available, the procedure for Western Mines shall be utilized.

**4.3 Intentionally left blank.**

**4.4 Sampling and Analysis.**

**(a) Sampling.** The Sampling Person shall be Seller or Seller's designee. The Sampling Person shall cause a representative Coal sample to be taken on an "as-loaded" basis in accordance with then current published applicable ASTM standards by a mechanical sampler that is in working condition and that has been bias tested by an independent third party within twelve (12) months prior to delivery. In the event the Sampling Person is not able to obtain a sample with bias tested equipment in proper working condition, the Parties shall confer for purposes of reaching agreement as to an alternative means of sampling.

**(b) Analysis Procedures.** The Analysis Person shall be Seller. Analysis of Coal shall be performed by an independent laboratory ("Analysis Lab") selected by good faith agreement of the Parties, and if the Parties fail to agree, then the Analysis Person shall select the Analysis Lab. The Analysis Person shall cause the samples to be divided into three (3) splits in accordance with then current ASTM standards and placed in separate airtight containers. The Analysis Lab will analyze one split, shall either ship one split or retain it for forty five (45) days as the Buyer directs, and shall retain one split for forty five (45) days to be used for a referee analysis (the "Referee Split"), if necessary. The Analysis Lab shall perform a short proximate analysis on an "as-received" basis in accordance with then current published applicable ASTM standards, which shall include total moisture, ash, Btu, sulfur and, other data as required by the Confirmation. The Analysis Person shall caused the results of the short proximate analysis to be reported to Buyer and Seller, along with Shipment I.D. number, weight and shipping data ("Shipping Report") by fax, telephone (to be confirmed promptly by fax) or other electronic means as soon as available, but in any event within the following time period:

- (i) PRB Sources: forty-eight (48) hours after the completion of the loading of each Shipment; or
- (ii) all other Sources: twenty-four (24) hours after the completion of the loading of each Shipment.

**(c) Analysis Use.** The samples of Coal taken pursuant to this Article 4.4 and the analysis thereof shall be used to determine quality adjustments pursuant to Article 5.1 and any rejection or suspension rights pursuant to Article 5.2 or 5.3.

**(d) Analysis Objections.** At the request of either Buyer or Seller, and at the expense of the requesting Party, additional analyses may be performed. By notice to the Analysis Person within twenty-four (24) hours after delivery of the Shipping Report and in any event prior to unloading of the Coal at the destination, Buyer or Seller may object to an individual Specification in the analysis (the "Objecting

Person"). In that event, the Analysis Person shall cause the Referee Split to be submitted to an independent testing laboratory selected by mutual agreement of the Parties for an independent analysis. If the results of the independent analysis for the disputed Specification are within ASTM (interlaboratory) Reproducibility Limits, the original analysis shall control and the costs of the independent analysis shall be paid by the Objecting Person. If such results for any disputed Specification are not within such Reproducibility Limits, the results of the independent analysis for the disputed Specification shall control and the costs of the independent analysis shall be borne by the non-Objecting Person. All analyses shall be performed in accordance with then current published applicable ASTM standards.

**(e) Rounding and Significant Digits.** All calculations will start with the digits listed below, using floating decimals during the calculations with the final operation being rounded to the significant digits to the right of the decimal place as follows:

Btu/lb. will be zero (0)	nn,nnn.
Grindability will be zero (0)	nn.
Tons will be two (2)	nn,nnn.nn
Dollars for payment will be two (2)	nnn,nnn.nn
Moisture % will be two (2)	nn.nn%
Ash % will be two (2)	nn.nn%
Sulfur % will be two (2)	nn.nn%
Sodium % will be two (2)	nn.nn%
SO2 lbs./MMBTU will be two (2)	.nn lbs/MMBTU
Dollars per ton will be three (3)	nn.nnn / Ton
Quality Dollars per ton will be three (3)	n.nnn / Ton

Items not specified above will use the industry standards for significant digits to the right of the decimal place.

**4.5 Representative Presence.** Each Party has the right to have a representative present, at such Party's expense, at the Delivery Point during the loading, weighing and sampling of the Coal.

#### **Article 5: Quality Adjustments: Rejection and Suspension Rights**

**5.1 Quality Adjustments.** If Coal delivered varies from the Specifications and Buyer does not exercise its rejection rights under Article 5.2(a), quality adjustments shall be calculated pursuant to the formulas set forth below (unless otherwise provided for in the Confirmation), and for any other specification(s) according to formula(s) set forth in the Confirmation. The following Quality Adjustment(s) Formula(s) shall be calculated (pro rata). All calculations shall be made on a per Shipment basis and all calculations per Shipment are cumulative. Positive quality adjustments are due Seller and negative quality adjustments are due Buyer.

FORMULA(S) FOR QUALITY ADJUSTMENTS: When noted in a Confirmation, the following formulas shall apply:

#### **BTU:**

If the actual Btu on an as-received basis of any Shipment accepted by Buyer is other than the Standard Btu, an adjustment shall be calculated based on each Shipment as follows:

**BTU Adjustment = ((Actual Shipment Btu/lb - Standard Btu/lb) ÷ Standard Btu/lb) x Contract Price**

#### **SO<sub>2</sub>:**

All SO<sub>2</sub> Adjustments will be financially settled based on the formula below.

If the actual SO<sub>2</sub> lbs/MMBTU on an as-received basis of any Shipment accepted by Buyer is other than the Standard SO<sub>2</sub> lbs/MMBTU, an adjustment shall be calculated based on each Shipment as follows:

$$\text{SO}_2 \text{ Adjustment} = ( (\text{Standard SO}_2 \text{ lbs/MMBTU} - \text{Actual Shipment SO}_2 \text{ lbs/MMBTU}) \times \text{Actual Shipment Btu/lb} \times E \times F ) / 1,000,000$$

Where E is the price of one SO<sub>2</sub> Allowance. The price of an SO<sub>2</sub> Allowance is determined by the monthly SO<sub>2</sub> price indices published in *Argus Air Daily* published by *Argus Media Ltd.* or any successor publication ("Air Daily") for the vintage year of the SO<sub>2</sub> Index Month, and F is the number of SO<sub>2</sub> Allowances required to emit one ton of SO<sub>2</sub> during the current calendar year in a state covered by the Clean Air Interstate Rule under 40 CFR 96.202 ("CAIR") (see Final Rule, 70 Fed. Reg. 91 (May 12, 2005) at p. 25363). F shall be as follows (irrespective of where the coal is delivered or burned):

YEAR	F
2010 through 2014:	2.00
After 2014:	2.86

In the event the information contained in Air Daily is no longer published or a change in the methodology, law, regulations or industry standards has occurred that will materially alter the information, a substitute calculation shall be mutually agreed to by the Parties.

The above information reflects that pursuant to CAIR, currently two SO<sub>2</sub> Allowances are required to emit one ton of SO<sub>2</sub> during a calendar year in a state covered by CAIR and that in 2015, this will increase to 2.86 SO<sub>2</sub> Allowances required to emit one ton of SO<sub>2</sub>. The Parties recognize that CAIR is required to be modified pursuant to a court order, and agree that SO<sub>2</sub> Adjustments shall be calculated using the ratios of SO<sub>2</sub> Allowances to tons of SO<sub>2</sub> as set forth above, or as may be otherwise changed by the modification of CAIR or any replacement or successor rules or laws, as applicable, to as closely as possible reflect that number of SO<sub>2</sub> Allowances and all similar allowances required to emit one ton of SO<sub>2</sub> in a state subject to all aspects of CAIR or any replacement thereof.

**5.2 Buyer's Rejection Rights.** If any Shipment triggers one or more of the Rejection Limits (a "Non-Conforming Shipment"), Buyer shall have the option, exercisable by notice to Seller within one (1) Business Day of Buyer's receipt of the Analysis Lab's short proximate analysis or additional analysis, as applicable, of the Coal provided pursuant to Article 4.4, of either (a) rejecting such Non-Conforming Shipment at the Delivery Point or in route, but prior to unloading from Transporter's equipment or (b) accepting any Non-Conforming Shipment with a Contract Price adjustment agreed to between Seller and Buyer using Commercially Reasonable Efforts. If Buyer fails timely to exercise its rejection rights under this Article 5.2 as to a Shipment, Buyer shall be deemed to have waived such rights to reject with respect to that Shipment only. Buyer's failure to timely exercise such notice does not however, constitute a waiver of its right to any penalty adjustment provided for herein or in the relevant Confirmation with respect to such Non-Conforming Shipment. If Buyer timely rejects the Non-Conforming Shipment, title, if already passed, shall revert to Seller and Seller shall be responsible for promptly transporting the rejected Coal to an alternative destination determined by Seller and shall reimburse Buyer for all reasonable costs and expenses associated with the transportation, storage, and handling the Non-Conforming Shipment. Seller shall replace the rejected Coal on or before the last day of the originally scheduled delivery month, otherwise it will be considered a failure to load as scheduled pursuant to Article 3.3 (f). Buyer, at its election, may extend the time for delivery of replacement Coal provided in Article 3.3 (f) by giving written notice to Seller within forty-eight (48) hours after rejection of the Non-Conforming Shipment that Buyer shall require replacement Coal to be delivered within a reasonable time after the end of the originally scheduled delivery month. Article 5.2 shall NOT apply to vessels.

**5.3 Suspension Rights.** Buyer shall have the right to suspend all further Shipments hereunder in the event that;

(a) for Transactions with calendar year tonnage of less than one million Tons, there are three (3) Non-Conforming Shipments (whether rejected or not) under a Transaction in any three (3)-month period; or

(b) for Transactions with calendar year tonnage of from one to three million Tons, there are five (5) Non-Conforming Shipments, (whether rejected or not) under a Transaction in any three (3)-month period; or

(c) for Transactions with calendar year tonnage of greater than three but less than five million Tons, there are seven (7) Non-Conforming Shipments, (whether rejected or not) under a Transaction in any three (3)-month period; or

(d) for Transaction with calendar year tonnage of five million tons or more, there are greater than twenty percent (20%) Non-Conforming Shipments (whether rejected or not) under a Transaction in any three (3)-month period.

Buyer may upon notice to Seller suspend the receipt of future Shipments under such Transaction, excluding Shipments already loaded or in transit to Buyer. A waiver by Buyer of the suspension right for any one period shall not constitute a waiver for subsequent periods. If Seller, within ten (10) days of its receipt of such notice, provides reasonable assurances in writing to Buyer that future Shipments under the Transaction will conform to the Specifications and Buyer has accepted such assurances (such acceptance not to be unreasonably withheld), Shipments shall resume and **any tonnage deficiencies shall be made up within the Term at Buyer's option**, such option to be declared in writing to Seller within forty five (45) days after resumption of Shipments. The Contract Price for such makeup deliveries shall be the Contract Price in effect during the suspension period. If (x) Seller fails to provide such acceptable assurances within such ten (10) day period, or (y) after such assurances are provided and within a period of three (3) months thereafter, any Shipment triggers any of Buyer's rights under Article 5.2 for the Rejection Limit parameter for which there was a prior suspension under such Transaction then such failure shall constitute an Event of Default (as hereinafter defined) with respect to such Transaction.

## **Article 6: Settlements**

### **6.1 Billing and Payment.**

**(a) Invoicing and Payment.** After each Invoicing Period during the Term, or at the end of a month if there are amounts owed which are not based on a Shipment, Seller shall provide Buyer with an invoice (which may be delivered electronically), setting forth, as appropriate, (i) the aggregate Contract Price owed to Seller for the Coal actually delivered to Buyer at each Delivery Point during the applicable month; (ii) any quality adjustments and supporting calculations determined pursuant to Article 5.1; (iii) any transportation or other charges owed by Buyer or Seller to the other pursuant to this Contract; (iv) any amounts due pursuant to Article 3.8 ; and (v) any Early Termination Payment pursuant to Article 8.3. No later than ten (10) days after receipt of a Party's invoice (or if such day is not a Business Day, the immediately following Business Day), the receiving Party shall pay, by wire transfer in immediately available United States funds, the amount set forth on such invoice along with the necessary information enabling reconciliation to the relevant shipment to the applicable payment address set forth on the Confirmation.

**(b) Invoice Disputes.** If the receiving Party in good faith reasonably disputes an invoice, it shall provide a written explanation specifying in detail the basis for the dispute and pay any undisputed portion no later than the due date. If any amount disputed by the receiving Party is subsequently determined to be due, it shall be paid within five (5) days along with interest accrued at the Interest Rate from the original due date until the date paid.

**(c) Failure to Timely Pay.** If any Party fails to pay amounts under this Contract when due, in addition to the rights and remedies provided in this Contract, the aggrieved Party shall have the right to: (i) suspend performance under this Contract until such amounts plus interest at the Interest Rate have been paid, and/or (ii) exercise any remedy available at law or in equity to enforce payment of such amount plus interest at the Interest Rate.

**6.2 Audit.** Each Party shall maintain accurate records relating to Coal sales and purchases made pursuant to this Contract. Such records shall be retained for a period of at least two (2) years after completion or termination of this Contract. Each Party (and its representatives) has the right, at its sole expense during normal working hours and upon reasonable advance notice, to examine the records of the other Party, but only to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Contract. If requested, a Party shall provide to the requesting Party statements evidencing the quantities of Coal delivered or received at the Delivery Point. Examination of records hereunder shall be limited to one examination per year. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statements and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any

statement or payment will be made unless objection to the accuracy thereof was made in writing prior to the lapse of two (2) years from the rendition of such statement, charge, or computation; and provided further, that for the purpose of such statement and payment objections, this Article will survive any termination of this Contract.

#### **Article 7: Force Majeure**

**7.1 Effect of Force Majeure Event.** If a Party is prevented from performing, in whole or in part, any of its obligations to deliver or receive Coal at the Delivery Point under a Transaction due to causes that are beyond the reasonable control and without the fault or negligence of the Party affected thereby (such causes being referred to herein as "Force Majeure"), and such Party gives oral notice and full details of the Force Majeure to the other Party as soon as reasonably practicable after the occurrence of the Force Majeure (such notice to be confirmed in writing), then during the period for which such Party's performance is prevented by such Force Majeure but for no longer period, the obligations of the Parties under such affected Transaction (other than obligations to make payments whether then due or due thereafter) shall be excused to the extent performance is so prevented. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch and will keep the other Party advised of its efforts to remedy the Force Majeure; provided however, that this provision shall not require Seller to deliver, or Buyer to receive, the Coal at points other than the Delivery Point (including allowable substitutions under the Transaction pursuant to Article 3.S). For the avoidance of doubt, a transportation delay shall not be considered a Force Majeure event unless such delay, affects coal deliveries to all Persons at all locations comprising the Delivery Point. A change in market conditions (including the ability of Seller to sell Coal at a higher price or Buyer or Buyer's Customer to buy Coal at a lower price) and Buyer's inability to economically use or resell the Coal, whether or not foreseeable shall not be considered Force Majeure events. Seller's obligation under this Contract to provide coal is contingent on all necessary permits (federal and state) either being maintained for those currently in place or being obtained for those necessary for future mining production. The failure of the forgoing condition for any reason other than gross negligence or willful misconduct of Seller shall be considered a Force Majeure event. In the event of a Force Majeure, delivery of the affected quantity of Coal shall **NOT** be made up except by mutual agreement of the Parties.

**7.2 Extended Force Majeure Event.** If Force Majeure event prevents full performance of a Party's obligations under a Transaction continuous period of one hundred eighty (180) days, then the Party not claiming Force Majeure shall have the option, upon three (3) days' prior written notice, to terminate the affected Transaction to the extent affected and the associated obligations of the Parties thereunder (other than payment obligations for prior performance).

**7.3 Pro Rationing.** If Seller claims Force Majeure and is unable to meet all of its sales obligations under an affected Transaction and any other of its coal sales agreements involving coal of a similar type and quality as the Coal, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under an affected Transaction and any other of its coal purchase agreements involving coal of a similar type and quality as the Coal, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated on a pro rata basis among the affected Transaction(s) and such other coal supply or purchase agreements involving coal of the same type and quality as the Coal to the extent contractually permitted by such Transaction and agreements.

**7.4 Capital Expenditures and Labor Matters.** It is understood and agreed that significant capital expenditures and settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require significant capital expenditure or settlement of strikes and lockouts by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the Party having difficulty.

#### **Article 8: Events of Default, Non-Performance, Remedies and Limitation of Liability**

**8.1 Events of Default.** An event of default ("Event of Default") with respect to a Party (the "Defaulting Party") shall mean any of the following:

**(a) Failure to Pay.** The failure of Defaulting Party to pay when due any required payment and such failure is not remedied within three (3) Business Days after written notice thereof (provided the payment is not subject to a good faith dispute as described in Article 6.1(b)).

(b) **Failure of Other Obligations.** The failure of the Defaulting Party to comply with its other material obligations under this Contract (except to the extent constituting a separate Event of Default hereunder and except for such Party's obligations to deliver or receive Coal, the exclusive remedies for which are provided for in Article 3.8), and such failure continues uncured for ten (10) Business Days after written notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such ten (10) Business Day period, the cure period shall be extended for an additional period (not to exceed sixty (60) days) reasonably necessary to remedy such failure subject to the condition that during the additional period, the Defaulting Party shall be diligently pursuing a remedy for the failure.

(c) **Bankruptcy.** The Defaulting Party shall be subject to a Bankruptcy Proceeding.

(d) **Failure of Guarantor.** The failure of a Party's Guarantor, if any, to perform any covenant in its guaranty, such guaranty expires, is terminated or ceases to guarantee the obligations of such Party under this Contract, or such Guarantor becomes subject to a Bankruptcy Proceeding.

(e) **Non-Conforming Shipments.** An event described in the last sentence of Article 5.3 has occurred.

(f) **Breach of Representation.** Any representation or warranty made by a Party herein shall prove to be untrue in any material respect when made.

(g) **Failure to Provide Performance Assurance.** The Defaulting Party fails to establish, maintain, extend or increase Performance Assurance when required pursuant to this Contract.

(h) **Material Adverse Change.** The occurrence of a Material Adverse Change with respect to the Defaulting Party; provided, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party establishes and maintains, for so long as the Material Adverse Change is continuing, Performance Assurance with the Non-Defaulting Party in an amount equal to the sum of (in each case rounding upwards for any fractional amount to the next \$250,000) (i) the Early Termination Payment that would be owed to the Non-Defaulting Party plus (ii) if the Non-Defaulting Party is Seller, the aggregate of the amounts Seller is entitled to receive under this Contract for Coal scheduled during the sixty (60) day period preceding the Material Adverse Change (the amount of said Performance Assurance to be adjusted quarterly to reflect amounts owing at that point in time).

**8.2 Early Termination.** Upon the occurrence and during the continuance of an Event of Default, as to the Defaulting Party, the other Party (the "Non-Defaulting Party") may, in its sole discretion, (a) accelerate and liquidate the Parties' respective obligations under this Contract by establishing, and notifying the Defaulting Party of, an early termination date (which shall be no earlier than the day such notice is effective and no later than twenty (20) days after the date of such notice) on which this Contract shall terminate and be liquidated pursuant to Article 8.3 ("Early Termination Date"), and/or (b) withhold any payments due to the Defaulting Party until such Event of Default is cured, and/or (c) suspend performance of its obligations under this Contract until such Event of Default is cured; provided, however, that in no event shall any withholding of payment or suspension of performance under this Article 8.2 continue for longer than fifteen (15) Business Days unless an Early Termination Date shall have been declared and notice thereof given pursuant to this Article 8.2. If Non-Defaulting Party in its sole discretion elects to establish an Early Termination Date and terminate this Contract, the Non-Defaulting Party may pursue both the remedies provided for in Article 3.8 for damages accrued prior to the Early Termination Date and to liquidate pursuant to Article 8.3 for all remaining Coal that has yet to be delivered under this Contract. If notice of an Early Termination Date is given under this Article 8.2, the Early Termination Date will occur on the designated date, whether or not the relevant Event(s) of Default is then continuing. Any rights of a Non-Defaulting Party under this Article 8.2 shall be in addition to such Non-Defaulting Party's other rights under this Article 8.

**8.3 Early Termination Payment.** If an Early Termination Date is established, the Non-Defaulting Party shall in good faith calculate its Gains or Losses, and Costs, resulting from the termination of this Contract, aggregate such Gains or Losses, and Costs, with respect to all terminated Transactions into a single net amount, and then notify the Defaulting Party of the net amount owed, if any. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within five (5) days of its receipt of such notice pay the net amount to the Non-Defaulting Party, including interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the Non-Defaulting Party shall pay the net amount to the Defaulting Party. The Non-Defaulting Party shall determine its Gains or Losses, and Costs, as of the Early Termination Date,



or, if that is not possible, at the earliest date thereafter that is reasonably possible. If an Event of Default occurs, the Non-Defaulting Party may (at its election) set off any or all amounts which the Defaulting Party owes to the Non-Defaulting Party (under this Contract) against any or all amounts which the Non-Defaulting Party owes to the Defaulting Party (under this Contract). The Non-Defaulting Party shall make Commercially Reasonable Efforts to mitigate any costs and damages that it is entitled to hereunder and act at all times in a commercially reasonable manner. The Defaulting Party shall have the right to audit (through a third party independent auditor mutually agreed to by the Parties) the calculation of all such gains, losses and costs.

**8.4 Expenses.** The Defaulting Party will, on demand, indemnify and hold harmless the Non-Defaulting Party for and against all reasonable out-of-pocket expenses, including Legal Costs, incurred by the Non-Defaulting Party by reason of the enforcement and protection of its rights under this Contract by reason of an Event of Default or an early termination of this Contract, including, but not limited to, costs of collection.

**8.5 Limitation of Liability.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS CONTRACT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE LIABLE PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS OTHERWISE PROVIDED IN THIS CONTRACT. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE LIABLE PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. NOTWITHSTANDING ANY OTHER PROVISION IN THIS CONTRACT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR IN CONTRACT, UNDER THIS CONTRACT, ANY INDEMNITY PROVISION OR OTHERWISE.

#### **Article 9: Proceedings**

ANY PROCEEDINGS ARISING OUT OF OR RELATING TO THIS CONTRACT SHALL BE RESOLVED BY A JUDGE TRIAL WITHOUT A JURY AND THE RIGHT TO A JURY TRIAL IS WAIVED, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

#### **Article 10: Miscellaneous**

**10.1 Successors and Assigns; Assignment.** This Contract shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. However, no Party shall assign this Contract or any of its rights or obligations hereunder without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, any Party may, without the need for consent from the other Parties (and without relieving itself from liability hereunder), (a) transfer, sell, pledge, encumber or assign this Contract or the accounts, revenues or proceeds hereof or thereof in connection with any financing or other financial arrangements; (b) transfer or assign this Contract to an Affiliate of such Party as long as the Affiliate is at least as creditworthy as the assignor; or (c) transfer or assign this Contract to any Person succeeding to all or substantially all of the assets of such Party by way of merger, reorganization or otherwise; provided, however, that no such assignment shall in any way relieve the assignor from liability for full performance under this Contract and the Transactions. Any such assignee shall assume and agree to be bound by the terms and conditions of this Contract and such Transactions.

**10.2 Warranties.** OTHER THAN THOSE EXPRESSLY PROVIDED IN ARTICLE 3.4 AND 4.1 OR IN THE CONFIRMATION, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SALE AND PURCHASE OF COAL HEREUNDER. ALL WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE SPECIFICALLY EXCLUDED. SELLER MAKES NO WARRANTY CONCERNING THE SUITABILITY OF COAL DELIVERED HEREUNDER FOR USE IN ANY FACILITIES.

**10.3 Notices.** All notices, requests, statements or payments shall be made to the addresses set forth on the Confirmation. Unless expressly provided otherwise, notices shall be in writing and delivered by letter,

facsimile, electronically or other documentary form. Notice by facsimile, electronic means or hand delivery shall be deemed to have been received by the close of Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of the Business Day in which case it shall be deemed received at the close of the next Business Day). Notice by overnight mail or courier shall be deemed to have been received one (1) Business Day after it was sent. A Party may change its address by providing notice thereof in accordance with this Article 10.3.

**10.4 Confidentiality.** No Party shall disclose, without the prior written consent of the other Party, the terms of this Contract to a third party (other than a Party's and its Affiliates' employees, lenders, counsel, accountants, lessors, landowners or prospective permitted purchasers, directly or indirectly, of a Party or all or substantially all of a Party's assets or of any rights under this Contract, in each case who have agreed to keep such terms confidential) except in order to comply with any applicable law, order, regulation or exchange rule; provided, each Party shall notify the other Party of any proceeding of which it is aware which may result in disclosure and make Commercially Reasonable Efforts to prevent or limit the disclosure.

**10.5 Governing Law.** THIS CONTRACT AND THE RIGHTS AND DUTIES OF THE PARTIES ARISING HEREFROM SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.

**10.6 Entire Agreement; Amendments; Interpretation.** This Contract constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Contract and supersedes any prior or contemporaneous agreements or representations affecting the same subject matter. Except for any matters which, in accordance with the express provisions of this Contract, may be resolved by verbal agreement between the Parties, no amendment, modification or change to this Contract shall be enforceable unless reduced to a writing executed by the Party against whom such amendment, modification or change is sought to be enforced and specifically referencing this Contract.

**10.7 Counterparts; Severability; Survival.** This Contract may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument. Except as may otherwise be stated herein, any provision or Article hereof that is declared or rendered unlawful by any applicable court of law or regulatory agency, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Contract. In the event any provision of this Contract is declared unlawful, the Parties will promptly renegotiate to restore this Contract or such Transaction as near as possible to its original intent and effect. All indemnity and audit rights shall survive the termination of this Contract in full for a period of two (2) years (except with respect to audit rights as to Third Party Impositions which shall survive for the applicable statute of limitations, including any extensions thereof).

**10.8 Forward Contract.** The Parties agree that the Contract shall constitute a "forward contract", and that the Parties shall constitute "forward contract merchants" within the meaning of the United States Bankruptcy Code.

#### **Article 11: Definitions**

**"Additive(s)"** means any item added to the Coal at the request of Buyer; such items shall include, but not be limited to various freeze control agents and/or various dust control agents.

**"Affected Party"** means the Party other than the Non-Performing Party.

**"Affiliate"** means, with respect to any Person, any other Person (other than an individual) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person. For this purpose, "**control**" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

**"Analysis Person"** has the meaning set forth in Article 4.4(b).

**"ASTM"** means the American Society for Testing and Materials.

**"Bankruptcy Proceeding"** means with respect to a Party or entity, such Party or entity (a) makes an assignment or any general arrangement for the benefit of creditors, (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, (c) has such a petition filed against it and such

petition is not withdrawn or dismissed within thirty (30) days after such filing, (d) otherwise becomes bankrupt or insolvent (however evidenced), or (e) is unable to pay its debts as they fall due.

**"Barge"** means a barge with capacity sufficient to hold the number of Tons of Coal for delivery from the Source(s) as specified in the relevant Confirmation.

**"Basis"** means the size of each Shipment as set forth in the Confirmation, or if not specified in the Confirmation shall (i) have the meaning for the applicable Product as set forth in Article 3.9; or (ii) if otherwise, Basis shall equal the actual Shipment size.

**"Btu"** means the amount of energy required to raise the temperature of one (1) pound of pure water one (1) degree Fahrenheit from 59.5° Fahrenheit to 60.5° Fahrenheit at a constant pressure of 14.73 pounds per square inch absolute.

**"Business Day"** means a day on which Federal Reserve member banks in New York City are open for business unless such day is a Holiday; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

**"Buyer"** means the Party who is obligated to purchase and receive, or cause to be received, Coal during the Term.

**"Buyer's Customer"** means the party that Buyer has contracted to sell the Coal purchased from Seller.

**"Claims"** means all claims or actions, threatened or filed and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such Claims or actions are threatened or filed prior to or after the termination of this Contract.

**"Coal"** means any and all of the coal to be sold by Seller and purchased by Buyer, the quality of which conforms to the Specifications and which does not trigger Buyer's rejection rights under Article 5.2, or is otherwise accepted by Buyer under this Contract, and which contains no synthetic fuels, is substantially free from any extraneous materials (including, but not limited to mining debris, bone, slate, iron, steel, petroleum coke, earth, rock, pyrite, wood or blasting wire), is substantially consistent in quality throughout a Shipment, meets the size required, and has had no intermediate sizes (including fines) added or removed.

**"Commercially Reasonable Efforts"** means the taking by a Person of such action as would be in accordance with reasonable commercial practices as applied to the particular matter in question to achieve the result as expeditiously as practicable; provided, however, that such action shall not require that such Person incur unreasonable expense.

**"Confirmation"** means a written confirmation memorializing the Transaction.

**"Contract Price"** means the price in \$U.S. per Ton to be paid by Buyer to Seller for the purchase of Coal and any other proper charges pursuant to this Contract.

**"Contract Quantity"** means the quantity of Coal that Seller agrees to sell to (or if applicable, exchange with), or cause to be delivered to, Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller, as specified in the Confirmation.

**"Costs"** means any brokerage fees, commissions and other transactional costs and expenses reasonably incurred either by the Non-Defaulting Party as a result of terminating any hedges or other risk management contracts and/or entering into new arrangements in order to replace the early terminated Transaction(s), and Legal Costs incurred by the Non-Defaulting Party.

**"Defaulting Party"** has the meaning set forth in Article 8.1.

**"Delivery Point"** means the agreed point(s) of delivery and receipt of the Coal pursuant to this Contract. Title to and risk of loss of the Coal shall pass to Buyer as set forth in Article 3.3.

**"Delivery Schedule"** has the meaning set forth in Article 3.2.

**"Diesel Rule"** means the EPA's implementation of the "Control of Emissions of Air Pollution From Nonroad Diesel Engines and Fuel (Final Rule)", Federal Register 69:124 (June 29, 2004) p. 38958 (the "Diesel Rule") which phases in additional emission controls for diesel engines through 2015.

**"Early Termination Date"** has the meaning set forth in Article 8.2.

**"Eastern Mine"** means a Coal mine that is located east of the Mississippi River.

**"Eastern Prevailing Time"** means Eastern Standard Time or Eastern Daylight Time in effect in New York City, New York, as the case may be.

**"Event of Default"** has the meaning set forth in Article 8.1.

**"FOB"** shall have the meaning given to such term in the Uniform Commercial Code of the State of New York.

**"Force Majeure"** has the meaning set forth in Article 7.1.

**"Gains"** means, with respect to a Party, an amount equal to the present value of the economic benefit, if any, (exclusive of Costs) to it resulting from the termination of its obligations with respect to a terminated Transaction, determined in a commercially reasonable manner.

**"Guarantor"** means in respect to a Party, the guarantor, if any, specified for such Party on the Confirmation.

**"Holiday"** means a day recognized as a holiday in the State in which the Delivery Point is located.

**"Interest Rate"** means, for any date, two percent over the per annum rate of interest equal to the prime lending rate as may from time to time be published in the *Wall Street Journal* under "Money Rates;" provided the Interest Rate shall never exceed the maximum rate allowed by applicable law.

**"Invoicing Period"** means the time period covered by an invoice generated for Coal actually delivered to Buyer hereunder. The Invoicing Period will be for each Shipment, or as specified in the confirmation.

**"Legal Costs"** means, with respect to a Party, the reasonable out-of-pocket expenses incurred by it, including legal fees, by reason of the enforcement and protection of its rights under this Contract.

**"Legal Proceedings"** means any suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority.

**"Letter of Credit"** means one or more irrevocable, transferable standby letters of credit from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

**"Losses"** means, with respect to a Party, an amount equal to the present value of the economic loss, if any, (exclusive of Costs) to it resulting from the termination this Contract, determined in a commercially reasonable manner.

**"Material Adverse Change"** means an event or occurrence that constitutes or would result in a material adverse effect on the operations, financial condition, or creditworthiness of a Party taken as a whole such that the Party has become, or is reasonably likely to become, unable to perform its obligations under the Contract.

**"MINER Act"** means the Mine Improvement and New Emergency Response Act of 2006 (PL 109-236) enacted June 15, 2006, including implementing rules and regulations.

**"MMBTU"** means one million Btu.

**"Monthly Shipment Notification Date"** has the meaning set forth in Article 3.2.

**"Monthly Shipment Volume"** has the meaning set forth in Article 3.2.

**"Nomination Period"** shall mean the agreed calendar term for scheduling Coal within the Term.

**"Non-Conforming Shipment"** has the meaning set forth in Article 5.2.

**"Non-Defaulting Party"** has the meaning set forth in Article 8.2.

**"Non-Performing Party"** means a Party which has failed to deliver or to take delivery of Coal as required under this Contract.

**"Party"** shall mean either Buyer or Seller as indicated by the context, and "Parties" shall mean Buyer and Seller.

**"Performance Assurance"** means collateral in the form of either cash or Letters of Credit.

**"Person"** means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

**"PRB"** means the Powder River Basin located in the States of Montana and Wyoming.

**"Proceedings"** means any suit, action or proceedings relating to or arising out of this Contract or any of the Transactions contemplated hereby.

**"Product"** means Coal or other product(s) related thereto as specified by the Parties in the Confirmation.

**"Quantity Variation Adjustment"** or **"QVA"** means the amount to be paid by Buyer or Seller for quantity variations in the loading of Unit Trains or Barges, as determined pursuant to Article 3.9.

**"Rejection Limits"** means the quality characteristics for the Coal as specified in the Confirmation that give rise to a rejection right of Buyer pursuant to Article 5.2 of this Contract.

**"Replacement Price"** has the meaning set forth in Article 3.8(b).

**"S&P"** means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

**"Sales Price"** has the meaning set forth in Article 3.8(b).

**"Sampling Person"** has the meaning set forth in Article 4.4(a).

**"Seller"** means the Party who is obligated to sell and deliver or cause to be delivered Coal during the Term of the Transaction.

**"Shipment"** means, as applicable, one Unit Train load.

**"SO<sub>2</sub>"** means sulfur dioxide.

**"SO<sub>2</sub> Allowance"** means an authorization by the administrator of the United States Environmental Protection Agency (or its successor) ("EPA") under Title IV of the Clean Air Act Amendments of 1990 (effective November 15, 1990), any amendments thereto and any regulations promulgated thereunder, to emit one Ton of SO<sub>2</sub> during the current calendar year.

**"SO<sub>2</sub> Index Month"** means, the calendar month prior to delivery (if the Invoicing Period is less than monthly), means calendar month of delivery (if the Invoicing Period is Monthly) or as set forth on the Confirmation.

**"SO<sub>2</sub> lbs./MMBTU", "lbs. SO<sub>2</sub>/MMBTU" and "# SO<sub>2</sub>/MMBTU"** means pounds sulfur dioxide per MMBTU and is calculated as  $[\text{Sulfur \%} \div \text{BTU}] \times 20,000$  rounded per this Contract. Weighted average SO<sub>2</sub> lbs./ MMBTU is calculated the same except using weighted average Sulfur% and weighted average BTU.

**"Source"** means the mine(s), mining complexes, loadout, river dock(s) or other point(s) or origin that Seller and Buyer agree are acceptable origins for the Coal as specified in the Confirmation.

**"Taxes"** means any or all ad valorem, property, occupation, severance, generation, first use, conservation, Btu or energy, utility, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth.

**"Term"** means the period of time from the date the Transaction is to commence to the date the Transaction is to terminate or expire.

**"Third Party Imposition"** shall have the meaning set forth in Article 3.6(a).

**"Third Party Imposition Maximum"** if set forth on the Confirmation shall have the meaning therein, if the Confirmation either has nothing set forth or has blanks set forth for the Third Party Imposition Maximum, then for purposes of this Contract there shall be no Third Party Imposition Maximum and Article 3.6(b) shall be inapplicable to this Contract.

**"Third Party Imposition Threshold"** if set forth on the Confirmation shall have the meaning therein, if the Confirmation either has nothing set forth or has blanks set forth for the Third Party Imposition Threshold, shall mean \$0.00.

**"Ton"** means 2,000 pounds.

**"Trade Date"** has the meaning set forth in the Confirmation.

**"Transaction"** has the meaning set forth in the Confirmation.

**"Transportation Specifications"** means the agreement(s) made by Seller, Buyer or any Party's designee with its respective Transporter(s), as amended from time to time, covering the requirements for each Shipment, which agreements, including the timing and tonnage requirements thereunder, shall be no more restrictive than typical agreements for transport of Coal on rail lines, highways, vessels or Barges transporting Coal to or from the Delivery Point(s) for third parties or to and from other delivery points in the vicinity of the Delivery Point. Such Transportation Specifications, or relevant portions therein, shall be made available upon request to the extent authorized within the relevant transportation agreement and shall be no more restrictive than typical agreements for transport of Coal on rail lines, highways, vessels or Barges transporting Coal to or from Delivery Point(s) for third parties or to and from other delivery points in the vicinity of the Delivery Point.

**"Transporter"** means the entity or entities transporting Coal on behalf of Seller to and at the Delivery Point or on behalf of Buyer or Buyer's designee from the Delivery Point.

**"Unit Train"** means a train with capacity sufficient to hold the number of Tons of Coal for delivery from the Source(s) as specified in the Confirmation.

**"Western Mine"** means a Coal mine that is located West of the Mississippi River.

## GUARANTY

This Guaranty (the "Guaranty") is made by Arch Coal, Inc. (the "Guarantor"), a Delaware corporation, in favor of **Louisville Gas and Electric Company and Kentucky Utilities Company** (collectively the "Beneficiary"), in consideration of the Beneficiary entering into agreement(s) with Arch Coal Sales Company, Inc. and Thunder Basin Coal Company, LLC (collectively the "Counterparty"), each being subsidiaries of Guarantor.

1. **Guaranty:** Guarantor does hereby unconditionally and absolutely guarantee to Beneficiary the full and faithful (i) payment by Counterparty of any amounts due to the Beneficiary under and pursuant to that certain Confirmation dated on or about May 16, 2017 (identified as Contract J18008) and any amendments thereto that may be entered into from time to time hereafter, (the "Agreement") and (ii) performance of all obligations of Counterparty now existing or hereafter arising under the Agreement, including obligations that would exist under the Agreement but for operation of any applicable provision of Title 11 (bankruptcy) of the United States Code or similar laws affecting creditor rights, or under applicable law or by agreement of Counterparty (the payment and performance obligations described in clauses (i) and (ii) above are referred to herein collectively as the "Guaranteed Obligations") Notwithstanding anything herein to the contrary, Guarantor shall have no performance obligation to sell, deliver, supply or transport coal or any other commodity under the Agreement from any property other than the source identified in the Agreement.

**This Guaranty shall replace, supersede and render null and void any existing guaranties currently in force with respect to the Agreement.**

**Guaranty Absolute:** The Guarantor guarantees that the Guaranteed Obligations will be paid or performed strictly in accordance with the terms of the Agreement, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of Beneficiary with respect thereto. The obligations of the Guarantor under this Guaranty are independent of, but related to, the Counterparty's obligations under the Agreement and a separate action or actions may be brought and prosecuted against the Guarantor to enforce this Guaranty, irrespective of whether any action is brought against one or more of the parties constituting Counterparty or whether one or more of the parties constituting Counterparty is joined in any such action or actions.

Notwithstanding any provision to the contrary contained herein, Guarantor's liability hereunder shall be and is specifically limited as expressly set forth in Section 1 above, and except to the extent specifically provided in the Agreement, in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive, tort, or any other damages, costs, or attorney's fees.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by Beneficiary or any other Person upon the insolvency,

bankruptcy or reorganization of one or more of the parties constituting Counterparty or the Guarantor or otherwise, all as though such payments had not been made. The obligations of the Guarantor under this Guaranty shall at all times rank at least *pari passu* in right of payment with all other unsecured and unsubordinated indebtedness (actual or contingent) of the Guarantor, except as may be required by law. This Guaranty shall continue to be effective if one or more of the parties constituting Counterparty merges or consolidates with or into another entity, loses its separate legal identity or ceases to exist.

This Guaranty is a continuing guaranty of the payment (and not of collection) and of the performance by each of the parties constituting Counterparty of its obligations under the Agreement. In no event shall Guarantor's liability to Beneficiary exceed Counterparty's liability under the Agreement, notwithstanding the effect of the insolvency, bankruptcy or reorganization of Counterparty. The Guarantor agrees that its obligations under this Guaranty shall not be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of one or more parties constituting Counterparty (or the estate in bankruptcy of one or more parties constituting Counterparty) resulting from the operation of any present or future provision of the federal bankruptcy law or other similar statute.

2. **Waivers and Acknowledgments:** The Guarantor hereby waives presentment, protest, acceleration, dishonor, promptness, diligence, filing of claims with a court in the event of insolvency or bankruptcy of the one or more parties constituting Counterparty, notice of acceptance of this Guaranty and any other notice with respect to any of the Guaranteed Obligations and this Guaranty and any requirement that Beneficiary protect, secure, perfect or insure any lien or any property subject thereto or exhaust any right or take any action against one or more of the parties constituting Counterparty or any other Person or entity, or any collateral. During the term hereof, the Guarantor hereby waives any right to revoke this Guaranty, and acknowledges that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

No delay of Beneficiary in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder nor shall any single or partial exercise by Beneficiary of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to Beneficiary or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Beneficiary from time to time.

3. **Expenses:** Guarantor agrees to pay on demand any and all out-of-pocket costs, including reasonable legal fees and expenses, and other expenses incurred by Beneficiary Counterparty in enforcing Guarantor's obligations under this Guaranty.



- 4. Subrogation:** The Guarantor will not exercise any right that it may now or hereafter acquire against Counterparty that arise from the existence, payment, performance or enforcement of the Guarantor's Obligations under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of Beneficiary against Counterparty or any collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from Counterparty, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim, remedy or right, unless and until all of the obligations of Counterparty under the Agreement and all other amounts payable under this Guaranty shall have been performed or paid in full in cash (and not subject to disgorgement in bankruptcy or otherwise). If any amount shall be paid to the Guarantor in violation of the preceding sentence at any time prior to the later of the payment in full in cash of the Guaranteed Obligations and all other amounts payable under this Guaranty, the Guarantor shall hold such amount as agent for the benefit of Beneficiary, which amount shall forthwith be paid to Beneficiary to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the Agreement, or to be held as collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If (i) the Guarantor shall make payment to Beneficiary of all or any part of the Guaranteed Obligations and (ii) all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall be paid in full in cash, Beneficiary will, at the Guarantor's request and expense, execute and deliver to the Guarantor appropriate documents, without recourse and without representation or warranty by Beneficiary, of all of Beneficiary's rights and benefits under the Agreement. In the event Guarantor performs part or all of Counterparty's obligations, Guarantor shall be entitled to Counterparty's rights and benefits under the Agreement and shall be subrogated to Counterparty's rights to Beneficiary with respect to such of Counterparty's obligations so performed by Guarantor.
- 5. Reservation of Defenses:** Guarantor agrees that except as expressly set forth herein, it will remain bound upon this Guarantee notwithstanding any defenses which, pursuant to the laws of suretyship, would otherwise relieve a guarantor of its obligations under a guaranty. Guarantor does reserve the right to assert defenses which Counterparty may have to payment of any Guaranteed Obligation other than defenses arising from the bankruptcy or insolvency of Counterparty and other defenses expressly waived hereby.
- 6. Notices:** All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, (a) be in writing addressed to the party receiving the notice at the address set forth below or at such other address as may be designated by written notice, from time to time, to the other party, and (b) be effective upon receipt, when mailed by U.S. mail, registered or certified, return receipt requested, postage prepaid, or personally delivered. Notices shall be sent to the following addresses:

**If to Guarantor:**

Arch Coal, Inc.  
CityPlace One, Suite 300  
St. Louis, Missouri 63141  
Attn: Vice President, Contract Administration

**If to Beneficiary:**

Louisville Gas and Electric Company  
220 West Main Street  
Louisville, Kentucky 40202  
Attn: Director Corporate Fuels and By-Products

Kentucky Utilities Company  
220 West Main Street  
Louisville, Kentucky 40202  
Attn: Director Corporate Fuels and By-Products

7. **Demand and Payment:** Any demand by Beneficiary for performance or payment hereunder shall be in writing, signed by a duly authorized officer of Beneficiary and delivered to the Guarantor pursuant to Section 7 hereof, and shall (a) reference this Guaranty, (b) specifically identify Beneficiary, the Guaranteed Obligations to be performed or paid and the amount of such Guaranteed Obligations and (c) if applicable, set forth payment instructions. There are no other requirements of notice, presentment or demand. Guarantor shall perform or pay, or cause to be performed or paid, such Guaranteed Obligations within thirty (30) business days of receipt of such demand.
8. **Representations and Warranties of Guarantor:** Guarantor represents and warrants that:
- (a) it is a corporation duly organized and validly existing under the laws of the State of Delaware and has the power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
  - (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
  - (c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization,

moratorium or similar laws effecting creditors' rights generally and by general principles of equity.

**9. Miscellaneous:**

**Default.** Guarantor represents and warrants that to its best information, knowledge and belief, no default(s) of the Agreement are known to exist as of the date of this Guaranty. In the event Counterparty defaults in the performance of any Guaranteed Obligations under the Agreement, Beneficiary shall give written notice to Guarantor. Promptly thereafter, Guarantor shall perform or cause to be performed such obligation of Counterparty as required by the Agreement.

**Term.** This Guaranty shall continue in full force and effect until first anniversary of the termination or expiration of the Agreement. Notwithstanding the foregoing, upon termination or expiration hereof, Guarantor agrees that the obligations and liabilities hereunder shall survive and continue in full force and effect with respect to any Guaranteed Obligations that have been contracted for or arise prior to the termination or expiration date, whether such Guaranteed Obligations become due and payable prior to or after the expiration or termination date.

**Assignment.** The Guarantor shall not assign this Guaranty without the express written consent of the Beneficiary and any purported assignment absent such consent is void. The Beneficiary shall be entitled to assign its rights under this Agreement in its sole discretion.

**Severability.** If any provision or portion of a provision of this Agreement is declared void and/or unenforceable, such provision or portion shall be deemed severed from this Agreement which shall otherwise remain in full force and effect.

**Amendments.** No amendment of this Guaranty shall be effective unless in writing and signed by Guarantor, Counterparty and Beneficiary. No waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless such waiver or consent shall be in writing and signed by Beneficiary. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

**Successors and Assigns.** This Guaranty shall be binding upon Guarantor, its successors and permitted assigns and inure to the benefit of and be enforceable by Beneficiary, its successors and assigns.

**Prior Agreements.** The Guaranty embodies the entire agreement and understanding between Guarantor and Beneficiary and supercedes all prior agreements and understandings relating to the subject matter hereof.

**Headings.** The headings in this Guaranty are for purposes of reference only, and shall not effect the meaning hereof.

- 10. Limitation by Law:** All rights, remedies and powers provided in this Guaranty may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Guaranty are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Guaranty invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.
- 11. Governing Law:** This Guaranty shall in all respects be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized officer effective as of this 16<sup>th</sup> day of May, 2017 ("Effective Date").

Guarantor: ARCH COAL, INC.

By: Matthew C. Giljum  
Name: MATTHEW C. GILJUM  
Title: VP - FINANCE & TREASURER