



American Electric Power  
 303 Marconi Boulevard, Suite 300  
 Columbus, OH 43215  
 aep.com

**AEP Purchase Order:** 03-00-21-003  
**Effective Date:** October 7, 2021

**Seller:** BAMM INC.  
 395 Redding Rd. #11  
 Lexington, KY 40517  
 Attn: Mickey Martin  
 Phone: (859) 333-8953  
 Email: bamminc12@gmail.com

**Buyer:** Kentucky Power Company  
 1 Riverside Plaza, 14<sup>th</sup> Floor  
 Columbus, OH 43215  
 Attn: Tina White  
 Phone: 614-716-6113  
 Cell Phone: 614-917-8404  
 Email: tmwhite@aep.com

**Primary Plant:** Mitchell  
**Email:** kmmlfuels@aep.com

**Commodity:** Crushed, raw bituminous Coal, partially washed, containing no synthetic fuels, substantially free from any extraneous material, with no intermediate sizes to be added or removed and otherwise meeting the specifications of this Contract.

**Term:** January 1, 2022 through December 31, 2023

**Quantity:** 144,000 Tons of Coal from the Source to be delivered by barge on a mutually agreeable shipment schedule at the Delivery Point during the Term (each barge shall constitute a "Shipment"). Approximately 72,000 Tons per year.

**Price:** \$71.58 per Ton of Coal FOB at the Delivery Point, except as set forth hereafter in Quality Adjustments.

**Quality:** As received basis, in accordance with ASTM standards ("Standards") for each Shipment, as follows:

<u>Characteristic:</u>	<u>Contracted Half-Month:</u>	<u>Half-Month Suspension Limit:</u>	<u>Shipment Rejection Limit:</u>
Heating Value (Btu/lb.):	12,000	11,900 minimum	11,800 minimum
SO <sub>2</sub> (lbs. SO <sub>2</sub> /mmBtu):	1.67	1.70 maximum	1.75 maximum
Moisture (%):	10.00	10.00 maximum	11.00 maximum
Ash (%):	12.00	13.00 maximum	13.50 maximum
Volatile Matter (%):	30.00	Not Applicable	30.00 minimum
Hardgrove Grindability:	45.00	Not Applicable	45.00 minimum
Ash Fusion Temperature (H=1/2w) °F Red. Atm.:	2,700	Not Applicable	2,600 minimum

Sizing: 2 X 0 inches topsize, nominal, with maximum 55% passing one-quarter inch square wire cloth sieve to be determined on the basis of the primary cutter of the mechanical sampling system.

**Source:** MATTCO's Elchorn 3 in Barbourville, KY and PRIME MET/ED Coal 's Douglas and Eagle seams in Pineville, WV

**MSHA #:** 15-10271 for MATTCO and 46-08575 for PRIME MET/ED Coal

**Delivery Point:** FOB Barge, KCT (Mile Post 7.5) on the Big Sandy River

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**Weighing Party:** Seller shall be the weighing party. The weighing party shall weigh the Coal in accordance with Section 3 of the AEP Coal Procurement Terms and Conditions attached.

**Sampling & Analysis Party:** Seller shall be the sampling party. The sampling party shall sample and analyze the Coal in accordance with Section 4 of the AEP Coal Procurement Terms and Conditions attached.

**Quality Adjustments:** If Coal delivered under this Purchase Order varies from the Quality specifications above (the "Specifications"), but Buyer does not exercise its rejection rights under Rejection and Suspension herein, quality adjustments shall be calculated pursuant to the formulas set forth in this section using the weighted averages by Purchase Order. All adjustment calculations shall be carried out four decimal places.

(A) If the weighted average heating value (Btu/lb.) of all Coal unloaded and taken into account hereunder in a Half-Month is not equal to the Contracted Half-Month Btu/lb., then there shall be an amount added to the Contract Price (if the calculated number is positive) or subtracted from the Contract Price (if such number is negative), as determined by the following formula, to arrive at the adjusted price for such Coal:

$$\text{Amount Per Ton of Increase or Decrease for Btu/lb.} = \frac{(\text{Actual Btu/lb.} - \text{Contracted Btu/lb.}) \times \text{Contract Price}}{\text{Contracted Btu/lb.}}$$

provided, however, no premium will be paid for Btu/lb. which exceeds the Contracted Half-Month Btu/lb. by 500 Btu/lb.

(B) If the weighted average SO<sub>2</sub> content of all Coal unloaded and taken into account hereunder in a Half-Month is tested to have an SO<sub>2</sub> content greater than the SO<sub>2</sub> Contracted Half-Month Specification, the Contract Price for such Coal will be reduced by an amount per Ton of Coal determined in accordance with the following formula:

$$\frac{((\text{Contracted SO}_2 - \text{Actual lbs. SO}_2/\text{mmBtu}) \times \text{Actual Btu/lb.} \times \text{SC})}{1,000,000}$$

SC = The actual variable cost, including limestone and sorbent costs but not including normal operating costs such as power or capital costs, for the prior year for Buyer to remove one ton of SO<sub>2</sub> from the applicable Plant's emissions (the "Scrubbing Cost"). The Scrubbing Cost shall be provided to Seller by March 1 of the current Year and shall be applicable for all SO<sub>2</sub> adjustments in the current Contract Year. Upon request of Seller, detailed data for the Scrubbing Cost will be provided to Seller by Buyer.

In addition to the above price reduction formula, for each Shipment of Coal having an SO<sub>2</sub> value greater than the Shipment Rejection Limit, should Buyer choose not to elect its rejection rights under Article II of this Agreement, a price discount shall be negotiable, with a minimum amount of five dollars (\$5.00) per Ton to be deducted from the Contract Price.

(C) For each Shipment of Coal tested to have ash content greater than the Contracted Half-Month Suspension Limit, the Contract Price for Coal in such Shipment will be decreased by \$0.15 for each 0.5% ash increment, or portion thereof, by which the Shipment's ash content is tested to be above the Contracted Half-Month Suspension Limit. (For example, if the Contracted Half-Month Suspension Limit is 13.00% and a Shipment has a percent ash value of 13.70, then the Contract Price decrease shall be \$0.30 per Ton of Coal.)

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**Payment:**

Seller shall submit to Buyer by the 6<sup>th</sup> calendar day after the Half-Month invoices for Coal shipped from the first through the fifteenth calendar day of each month and from the sixteenth through the last calendar day of each month, which shall include the weighted average analytical, and pricing data, as well as the above-referenced AEP Purchase Order number and the applicable transport vehicle numbers. Buyer shall make payment to Seller on or before the later of (a) the [20<sup>th</sup>][10<sup>th</sup>] calendar day following the Half-Month period, or (b) [ten][five] working days after receipt of Seller's invoice. Buyer shall not be obligated to make payment to Seller for Shipments of Coal until the analytical results have been provided to Buyer.

Payment shall be made by wire transfer or electronic means in immediately available United States funds for all Coal received, unloaded, taken into account, and accepted hereunder. If not already provided in this Contract, Seller shall provide Buyer all pertinent remittance instructions in a letter (containing the bank name, account name, ABA number, and account number, as well as Seller's federal tax identification number) which shall be signed by a duly authorized representative of Seller. Any change in the remittance instructions shall be provided in the same manner. Overdue payments shall accrue interest (the prime rate of interest for United States Dollars as published from time to time during such period under the section titled, "Money Rates" by *The Wall Street Journal*, plus two percent per annum but not to exceed the maximum applicable lawful interest rate [hereinafter "Interest Rate"]) from the due date until paid.

SEND INVOICES TO:

AEP Fuel Accounting  
1 Riverside Plaza, 26th Floor  
Columbus, OH 43215  
Email: cantonfuelaccounting@aep.com

REMIT PAYMENT TO:

Bank: Truist Bank  
Account Name: BAMB, INC.  
Account Number: 0005185789960  
ABA Number: 083900680  
Bank Contact Name: Tyler Hamilton  
and Phone Number: (859) 514-5280

If any 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. Upon resolution of any dispute involving an invoice, any additional amount owing shall be paid with interest at the Interest Rate. If any party fails to pay amounts under this Contract when due, unless such amount is the subject of a dispute as provided above, or is excused by a Force Majeure Event, in addition to the rights and remedies provided in this Contract, the aggrieved party shall have the right to suspend performance under this Contract until such amounts plus interest have been paid, and/or exercise any remedy available at law or in equity to enforce payment of such amount plus interest at the Interest Rate defined herein.

**If applicable**, Seller shall include on its invoice the statement "Seller certifies that (insert number) of Tons of Coal were mined in Virginia," such statement to be separately signed by Seller.

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**Other Terms:** This Purchase Order shall be governed by the AEP Coal Procurement Terms and Conditions Effective 12/1/17 attached hereto and incorporated herein by specific reference.

**Accepted:**

**Seller:**

BAMM INC.



Signature

MICKEY MARTIN

Name (Print)

Pros

Title

Date: 1-24-2022

1-24-2022

**Buyer:**

Kentucky Power Company

DocuSigned by:



20776FD366C7460

Signature

Paul Chodak III

Vice President

Date: 1/24/2022 | 5:25 AM PST

DS DS  
JW KKC

DS DS  
DC JCD

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MSL

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**AEP COAL PROCUREMENT TERMS AND CONDITIONS**  
**EFFECTIVE – 12/1/17**

1. **AGREEMENT**

The attached Purchase Order together with these AEP Coal Procurement Terms and Conditions shall constitute the “**Contract**.” Any changes or modifications to this Contract shall be made in writing and signed by both parties. In the event that any provision(s) of these AEP Coal Procurement Terms and Conditions are conflicting or inconsistent with the Purchase Order, the provision(s) of the Purchase Order shall control.

2. **SCHEDULING, DELIVERY & TITLE AND RISK OF LOSS**

(A) Unless otherwise provided in the Purchase Order, Buyer shall advise Seller of its desired loading dates and delivery schedule. The parties will work together in good faith to agree on a reasonable and mutually acceptable delivery schedule within the Term and within each month during the Term. Unless otherwise specified in the Purchase Order, Buyer shall designate to Seller the scheduling, routing and method of Shipments of Coal purchased under this Contract. From time to time, and at any time, Buyer shall have the right, but not the obligation, to have all or any part of the Coal hereunder reconsigned for delivery to any destination, and/or to make all or any part of the Coal hereunder available for purchase by any person(s), whether or not affiliated with Buyer, through Buyer’s purchase and subsequent resale to others of such Coal.

(B) Seller shall cause Coal sold hereunder to be properly loaded into the transport vehicle (i.e. railcars, barges, trucks, etc.) for delivery to Buyer, provided that Buyer has provided Seller with applicable loading instructions (including minimum and maximum weights) no less than twenty-four (24) hours prior to the arrival of Buyer’s transport vehicle. The delivery schedule specified in the Purchase Order or as designated by Buyer in absence of such in the Purchase Order is binding on both Buyer and Seller and may only be changed by mutual written agreement.

(C) Seller represents and warrants that it has title to all Coal sold hereunder and the same is shipped free and clear of all liens, encumbrances, and claims prior to the transfer of title to Buyer. Title to and risk of loss of Coal conforming to this Contract shall pass to Buyer as follows:

- (1) For barge deliveries, as the loaded barges are pulled from the Delivery Point.
- (2) For rail deliveries, as the loaded unit train or single car Shipment is pulled from the Delivery Point.
- (3) For truck deliveries, upon the Coal being delivered and dumped at the plant or other consigned destination.
- (4) For all Non-Conforming Shipments (as hereinafter defined) title to and risk of loss of Coal shall revert back to Seller immediately upon any rejection or nonacceptance by Buyer as provided elsewhere in this Contract.

(D) Seller and Buyer shall each indemnify, defend, and save harmless the other party, its officers, directors, affiliates, agents, and employees from and against any liabilities, expenses, losses, claim, damages, penalties, causes of action, or suits arising out of or in connection with its failure to comply with its obligations under this Contract.

(E) Seller shall indemnify, save harmless, and defend Buyer and its Affiliates, and their officers, directors, agents, and employees (all referred to in this sentence as “**Buyer**”) from and against any liabilities, expenses, losses, claims, damages, penalties, causes of action, or suits, and all other obligations whatsoever, including without limitation, all judgments rendered against and all fines and penalties imposed upon Buyer (whether severally, or in combination with others) and any reasonable attorneys’ fees and any other costs of litigation (all of which are hereinafter referred to as “**Liabilities**”) arising out of injuries or death to any person(s), or damage to any property, caused by or related to, in whole or in part the railcars (or barges, if applicable) furnished hereunder (as applicable), between the time that such railcars (or barges, if applicable) are delivered to Seller or

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Seller's agent and the time that custody thereof is properly returned to Buyer (or to Buyer's agent carrier, if applicable), or if deliveries are by truck, arising out of injuries or death to any person(s), or damage to any property, caused by or related to, in whole or in part, to trucking of Coal, whether such Coal is trucked by Seller or Seller's trucking contractor(s). Any injury or death to person(s) or damage to property as hereinbefore described shall be reported to Buyer by Seller immediately upon the occurrence thereof, and confirmed in writing as soon as possible.

(F) **FOR TRUCK DELIVERIES** Seller, at its expense, shall have coverage of the insurance specified below, which shall be placed with insurance carrier(s) acceptable to Buyer, and shall maintain this insurance at all times during performance of this Contract:

- (1) Certificate of Insurance:
  - (a) Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and aggregate.
  - (b) Commercial automobile liability insurance with a limit for bodily injury and property damage of not less than \$5,000,000 each accident.
- (2) Excess or Umbrella Liability:
  - (a) Commercial Excess or Umbrella liability with not less than \$5,000,000 each occurrence and aggregate limit.
- (3) Worker's Compensation Certificate:
  - (a) Coverage for the legal liability of Seller and its subcontractors under the worker's compensation laws of the state in which the work is to be performed.
  - (b) Employer's liability coverage in an amount not less than \$1,000,000 for each accident shall be included.

(G) Seller also warrants that it is in compliance with the Federal and State Motor Carrier Safety Acts (Financial Responsibility is USDOT 387.9).

### 3. **WEIGHING**

All Deliveries: The weighing party shall determine the weight of the Coal delivered hereunder at its expense using its rail, truck, or belt scales, as applicable.

(A) The accuracy of the weighing party's rail scale(s), truck scale(s), or batch weighing system, as applicable, shall be maintained to within plus or minus two tenths of one percent ( $\pm 0.20\%$ ) accuracy. The weighing party's rail scale(s), truck scale(s), or batch weighing system, as applicable, shall be tested and calibrated semiannually by the appropriate certifying agency in accordance with the guidelines outlined in the National Institute of Standards and Technology Handbook #44, or other procedures which shall be mutually acceptable to Seller and Buyer. At the non-weighing party's request, which may be made from time to time, the weighing party shall inform the non-weighing party of the results of such testing and calibration. It shall be the responsibility of the weighing party to arrange and schedule scale calibrations when required.

(B) The accuracy of the weighing party's belt scales shall be maintained to within plus or minus one-quarter of one percent ( $\pm 0.25\%$ ) accuracy. The weighing party's belt scales shall be tested and calibrated once each month in accordance with the guidelines outlined in the National Institute of Standards and Technology Handbook #44 or other procedures which shall be mutually acceptable to Seller and Buyer. At the non-weighing party's request, which may be made from time to time, the weighing party shall inform the non-weighing party of the results of such testing and calibration. It shall be the responsibility of the weighing party to arrange and schedule scale calibrations when required.

(C) If the weighing party's scales are discovered to be outside of acceptable tolerance ranges ( $\pm 0.20\%$  for rail scale(s), truck scales, or batch weighing system, and  $\pm 0.25\%$  for conveyor belt scales), then an appropriate adjustment will be made to the tonnage and invoiced retroactively to

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the date of the most recent calibration or thirty (30) calendar days prior to the calibration which was found in error, whichever is later.

(D) Buyer shall have no obligation to pay for any Coal being delivered via truck that Buyer determines is in excess of the maximum number of Tons of Coal that is legally deliverable to the plant or other consigned destination by such truck at the time of such delivery in accordance with applicable law.

(E) If there is no certified belt scale system at the Delivery Point, and if the parties specifically agree that weights shall be determined hereunder by draft survey taken at the Delivery Point, then all such draft surveys to determine weight shall be conducted by an independent surveyor (certified commercial marine surveyor for vessels) experienced in the conduct of draft surveys selected by mutual agreement of the parties. In cases where (i) there is no certified belt scale system at the Delivery Point and a draft survey is not taken at the Delivery Point or (ii) the Delivery Point is the ultimate destination, weights and where available, sampling, shall be determined at the destination by Buyer.

(F) Weights determined in accordance with this section shall be deemed accepted as correct (absent manifest error) and shall govern all invoicing and payments hereunder. Unless otherwise specified, the costs of weighing shall be for the account of the weighing party. The weighing party shall notify the other party if its scales are inoperable at any time.

(G) Irrespective of which party's weights govern for payment hereunder, Seller shall properly weigh each Shipment hereunder and report such weights to Buyer within twenty-four (24) hours after the Coal has been loaded for shipment. Seller's weights shall be reported to the recipients designated by and in the manner specified by Buyer. If Seller's scales are inoperable, Seller shall notify Buyer.

(H) Exclusive of Section 3(E), during any period when weighing party's scales are inoperable then both the determination of the quantities of Coal delivered and the manner for sampling and analysis for such period shall be based on the following order of precedence, as applicable: (i) if the non-weighing party is able to use a scale system that is certified in accordance with the requirements of Section 3(A) above and the non-sampling party has a sampling system that is operable, then the non-weighing party shall become both the weighing party and the sampling and analysis party and the non-weighing party shall weigh the Coal in accordance with the weighing provisions of Section 3 and sample and analyze the Coal in accordance with the sampling and analysis provisions of Section 4, or (ii) if the non-weighing party is not able to use a certified scale system, then determination of the quantities of Coal delivered shall be made by a procedure to be established at such time by agreement of Buyer and Seller.

#### 4. **SAMPLING & ANALYSIS**

The sampling party, except as otherwise provided for pursuant to Section 3(H), shall perform all sampling and analysis of Coal for payment hereunder.

(A) Whether or not Seller is the sampling party, if able, Seller shall sample the Coal or shall provide for the Coal to be sampled as it is loaded, analyze the sample(s) so obtained, and, as provided in Section 20, notify the other party and the consigned destination of such short proximate (Btu/lb., percent moisture, percent ash, percent sulfur, and with respect to Illinois Basin Coal, the sodium and chlorine content) average analytical results of each Shipment.

(B) If Buyer is sampling party, Coal hereunder shall be sampled during the unloading process prior to its commingling with other coals.

(C) Sampling party shall immediately notify the other party if either its sampling system or its analysis laboratory becomes unavailable or unable, for any reason, to provide the short proximate

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analysis. Upon such occurrence(s), Buyer and Seller shall follow the procedures identified in Section 3(H) (i) for sampling and/or analyzing the Coal shipped hereunder during such time that sampling party's sampling system is unable to provide the short proximate analysis for such Coal. In the event Section 3(H)(i) is not applicable, then for Coal received, unloaded, and taken into account that is not sampled or is sampled but not analyzed, it shall be taken into account as follows: (i) if during any Half-Month period at least fifty percent (50%) (by weight) of Coal delivered at a respective consigned destination during such period has been sampled and analyzed, then the weighted average analytical results of such samples shall be applicable to all Coal delivered to such consigned destination during such Half-Month period, or (ii) if more than fifty percent (50%) (by weight) of Coal delivered at a consigned destination during any such Half-Month period has not been sampled and analyzed, then the weighted average analytical results of the portion of sampled and analyzed Coal shall apply to such portion, and the weighted average analytical result of the last preceding Half-Month period in which at least fifty percent (50%) (by weight) of the Coal delivered to such consigned destination was sampled and analyzed shall be applicable to such portion of the Coal delivered which was not sampled and/or was not analyzed for such Half-Month period.

(D) All sampling and analysis performed hereunder shall be performed by the sampling party at its expense and shall comply with the governing ASTM procedures and specifications in effect at the time of such sampling and analysis. The Coal samples collected shall be prepared and analyzed by (i) Buyer's laboratory or by an independent commercial laboratory, if Buyer is the sampling party, or (ii) by an independent commercial laboratory if Seller is the sampling party. The non-sampling party may observe the sampling, sample preparation and analysis hereunder. All sampling shall be performed using a mechanical sample system that has been certified within the previous sixty (60) calendar months to be free of significant bias and that is properly operated and maintained. Any independent commercial laboratory used for analysis shall be mutually agreed upon by the parties.

(E) Each Coal sample collected by the sampling party shall be properly divided into at least three (3) subsamples. One subsample shall be immediately analyzed by the applicable laboratory for the governing contractual analysis. The second subsample is to be sealed in an airtight container and sent to the non-sampling party. The third subsample is to be sealed in an airtight container and held by the sampling party for a period of at least thirty (30) days (hereinafter the "**Referee Sample**").

(F) The non-sampling party may request analysis of the Referee Sample by an independent laboratory mutually agreed upon by the parties. If the results of the Referee Sample analysis and the governing contractual analysis are within ASTM Reproducibility Limits, the original governing analysis shall control and the cost of analyzing the Referee Sample shall be borne by the party requesting the Referee Sample analysis. If the results are outside such ASTM Reproducibility Limits, then the results of the Referee Sample analysis shall be used for payment, and the cost of analyzing the Referee Sample shall be borne by the sampling party.

(G) The sampling party's analysis shall be reported to the recipients designated by and in the manner specified by the other party. For purposes of determining moisture hereunder, the two-stage procedure as defined in ASTM D3302 shall be used.

## 5. **REJECTION AND SUSPENSION**

(A) If any Shipment of Coal fails to conform to any requirement specified in the Purchase Order (a "**Non-Conforming Shipment**"), Buyer shall have the option, exercisable by notice to Seller of either (i) rejecting such Non-Conforming Shipment at the Delivery Point or en route, but prior to unloading from Transporter's equipment or (ii) accepting any Non-Conforming Shipment with a Contract Price adjustment agreed to between Seller and Buyer. Should Buyer exercise such right of rejection, it shall notify Seller by E-mail or verbally upon discovery of the nonconformance, any verbal notification to be promptly confirmed in writing. If Buyer fails to exercise its rejection rights hereunder as to a Non-Conforming Shipment, Buyer shall be deemed to have waived such rights with respect to that Non-Conforming Shipment only. If Buyer rejects the Non-Conforming Shipment, Seller shall be responsible for promptly transporting the rejected Coal to an alternative destination

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determined by Seller and, if applicable, promptly unloading such Coal, and shall reimburse Buyer for all reasonable costs and expenses associated with the transportation, storage, handling and removal of the Non-Conforming Shipment. Seller shall, at Buyer's request, replace the rejected Coal as soon as possible, provided that Buyer gives written notice to Seller of Buyer's desire for replacement Coal within thirty (30) days after rejection of the Non-Conforming Shipment.

(B) If there are three (3) Non-Conforming Shipments, whether rejected or not, under this Contract in any three (3) month period or if two (2) out of four (4) consecutive Shipments under this Contract are Non-Conforming Shipments, then Buyer may upon notice to Seller suspend the receipt of future Shipments (except Shipments already loaded or in transit to Buyer) under this Contract. 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 this Contract 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. If (i) Seller fails to provide such acceptable assurances within such ten (10) day period, or (ii) after such assurances are provided and for a period of three (3) months thereafter, any Shipment of Coal fails to meet any of Buyer's rejection rights under this section for the Rejection Limit parameter for which there was a prior suspension under this Contract, then such event shall constitute an Event of Default as provided in Section 10.

(C) If any of the Half-Month weighted average Coal qualities fail to conform to the Half-Month Suspension specifications, then Buyer may suspend the receipt of future Shipments (except Shipments already loaded or in transit to Buyer) under this Contract. 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 this Contract 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. If (i) Seller fails to provide such acceptable assurances within such ten (10) day period, or (ii) after such assurances are provided and for a period of six (6) months thereafter, any Shipment of Coal fails to meet any of the Suspension limits under this section for any of the Half-Month Suspension limits for which there was a prior suspension under this Contract, then such event shall constitute an Event of Default as provided in Section 10.

(D) Buyer may terminate this Contract or terminate deliveries from the Source if Buyer in its reasonable judgment determines through operating experience that the Coal therefrom causes unsatisfactory performance at the Plant of consignment, even if such Coal meets the requirements and specifications of this Contract. In such event, Buyer shall provide Seller with written notice thereof, specifying the basis of such unsatisfactory performance.

## 6. **ASSIGNMENT**

(A) This Contract shall inure to the benefit of and is binding upon the parties hereto and their respective successors and assigns and shall not be assigned or otherwise conveyed, in whole or in part, by either party without the prior written consent of the other, except as provided in (B) and (C) below.

(B) Either party may without the written consent of the other party assign to any financing institution or institutions this Contract or any monies due or to become due hereunder.

(C) Either party may, without the prior written consent of the other party, assign or convey any and/or all of its interest in this Contract to an Affiliate, provided, that if this Contract is assigned or otherwise conveyed to an Affiliate, the assignor or conveying party shall take all necessary actions, and shall require its affiliated assignee or Affiliate receiving entity, and any subsequent affiliated

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assignee(s) and affiliated receiving entity(ies), to take all necessary actions to prevent a non-Affiliate from acquiring the assignor's or conveying party's rights and obligations pursuant to this Contract.

(D) No assignment under this Section 6 or conveyance of any interest in this Contract shall in any way relieve the assignor or the conveying party from liability for full performance under this Contract. Any such affiliated assignee, or other entity to whom an interest is conveyed (which conveyance must be with the prior written consent of the other party), shall assume and agree to be bound by the terms and conditions of this Contract.

(E) Written consent to one or more assignments shall not be construed as waiving the necessity of obtaining written consent to other and/or additional assignments.

7. **FORCE MAJEURE EVENT**

(A) To the extent either party is prevented by a Force Majeure Event from carrying out, in whole or part, its obligations under this Contract and such party (the "**Claiming Party**") gives notice and details, orally and confirmed promptly in writing, of such Force Majeure Event to the other party as soon as practicable (but in no event later than thirty (30) days after the occurrence thereof), then the Claiming Party shall be excused from the performance of its obligations during such Force Majeure Event. The Claiming Party shall remedy the Force Majeure Event with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party that are excused by the Force Majeure Event. Failure to give such notice and furnish such information within the time specified shall be deemed a waiver of all rights under this section for such period of time during which notice was not given. Buyer and Seller shall exercise reasonable efforts to mitigate or eliminate the conditions which have caused the Force Majeure Event, provided, however, nothing herein contained shall be construed as requiring Seller or Buyer to accede to any demands of labor, or labor unions, or suppliers, or other parties which Seller or Buyer considers unacceptable. The Claiming Party shall furnish the non-Claiming Party a monthly statement by the fifteenth (15<sup>th</sup>) day of the calendar month setting forth the amount of tonnage not shipped or to be reduced because of a Force Majeure Event asserted during the second preceding calendar month.

(B) Except as set forth in this paragraph, no suspension or reduction by reason of a Force Majeure Event shall invalidate the remainder of this Contract but, on the removal of the cause therefor, Shipments shall resume at the specified rate. If a Force Majeure Event persists for (i) a continuous period of sixty (60) days or (ii) an aggregate of seventy-five (75) days during the Term of the Purchase Order or in any twelve month rolling period (if the Term is more than twelve (12) months), then, at any time thereafter during the Force Majeure Event, the non-Claiming Party shall have the option, upon three (3) days' prior written notice, to terminate this Contract and the obligations of the parties hereunder.

(C) If there is a Force Majeure Event, delivery of the affected quantity of Coal shall not be made up except at Buyer's sole discretion.

(D) If Seller claims a Force Majeure Event under this Contract and has obligations to provide coal of a similar type and quality as the Coal under other coal sales agreements, or if Buyer claims a Force Majeure Event and has obligations to purchase coal of a similar type and quality as the Coal under other coal sales agreements, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated by the party claiming the Force Majeure Event on a pro rata basis among this Contract and such other coal purchase or sales agreements involving coal of a similar type and quality as the Coal, to the extent contractually permitted by such agreements. Without limiting the generality of this section, if there is a Force Majeure Event that causes a partial or total curtailment of electrical generation from or electrical generating capacity at the consigned destination or partial or total curtailment of transmission or distribution of electricity therefrom, Buyer shall at its option, be relieved under this this section from its obligation to accept up to the pro rata

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(based on such partial curtailment) quantity or entire (based on such total curtailment) quantity of Seller's Coal scheduled for delivery for the period of the Force Majeure Event.

8. **WAIVER**

The failure of Buyer or Seller to insist in any one or more instances upon strict performance of any of the provisions of this Contract or to take advantage of any of its rights hereunder shall not be construed as a future waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect for the term of this Contract.

9. **FINANCIAL RESPONSIBILITY**

Either party shall have the right, but not the obligation, to request from the other party or its guarantor, as applicable, audited annual financial statements and unaudited quarterly financial statements. In the event a party's financial statements are filed with the Securities and Exchange Commission and are available at [www.sec.gov](http://www.sec.gov), then such party has fulfilled its obligations hereunder. In the event the performance, creditworthiness or financial condition of either party becomes unsatisfactory to the other party, in its reasonable judgment, at any time during which this Contract is in effect, that party may demand Performance Assurance before further deliveries or receipts are made by it under this Contract.

10. **EVENT OF DEFAULT AND DAMAGES**

(A) If an Event of Default (as hereafter defined) occurs with respect to a party or its guarantor (the "**Defaulting Party**") at any time during the term of this Contract, the other party (the "**Non-Defaulting Party**") may, in its sole discretion, do any or all of the following: (i) establish a date (which date shall be no earlier than the date that such notice is given to the Defaulting Party and no later than twenty (20) days from notice) ("**Early Termination Date**") on which this Contract and the Other Contract(s) shall terminate, (ii) withhold any payments due in respect of this Contract and the Other Contract(s), (iii) suspend performance under this Contract and the Other Contract(s) and/or (iv) exercise such other remedies as may be provided in this Contract.

(B) An event of default with respect to any party ("**Event of Default**") shall mean any of the following: (i) the failure of either party or its guarantor to make when due, any payment required hereunder if such failure is not remedied within two (2) Business Days after notice of such failure is given to the Defaulting Party by the Non-Defaulting Party; (ii) the failure of either party or its guarantor to comply with any or all of its other respective obligations in good faith as herein set forth and such noncompliance is not cured within five (5) Business Days after notice thereof to Defaulting Party; (iii) failure to provide adequate Performance Assurance or other assurances satisfactory to the Non-Defaulting Party of its ability to perform its further obligations under this Contract within forty-eight (48) hours, but at least within one (1) Business Day of a reasonable written request by the Non-Defaulting Party; (iv) the Defaulting Party has been notified by the Non-Defaulting Party of a valid Event of Default committed by the Defaulting Party pursuant to the terms of any Other Contract(s); (v) either party (a) filing a petition in bankruptcy, (b) having such a petition filed against it, (c) becoming otherwise insolvent or unable to pay its debts as they become due; (vi) the failure of a party's guarantor, if any, to perform any covenant set forth in its guaranty, or such guaranty shall expire or be terminated or shall cease to guarantee the obligations of such party hereunder, or such guarantor shall become subject to any of the events specified in (iv) (a), (b) or (c); or (vii) an event described in the last sentence of subsections (B) and (C) of Section 5, Rejection & Suspension, shall have occurred.

(C) If this Contract terminates on an Early Termination Date, the Non-Defaulting Party shall calculate, in a good faith commercially reasonable manner, the Settlement Amount as of the Early Termination Date as soon as is reasonably practicable and shall promptly notify the Defaulting Party of the amount thereof.

(D) "**Settlement Amount**" means the total present value of the single net aggregate amount for the remaining Term, including any exercised option period, of any Losses, Costs and Gains,

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expressed in United States dollars, which the Non-Defaulting Party incurs as a result of the early termination of this Contract and the Other Contract(s) in accordance with this Section 10, including, but not limited to, Losses or Gains based upon the current Replacement Price of this Contract and the Other Contract(s), the amounts of any unpaid invoices, and the amount for Coal delivered but not yet billed. In calculating the Settlement Amount, the Non-Defaulting Party shall set off all amounts that are due to the Defaulting Party against such Settlement Amount so that the Settlement Amount shall be netted to a single liquidated amount. Any collateral being held by the Non-Defaulting Party shall be setoff against the amount owed to the Non-Defaulting Party. If the Defaulting Party is holding collateral posted by the Non-Defaulting Party, then the Non-Defaulting Party will have the right to set off that amount against any payment to be made to the Defaulting Party.

(E) The Non-Defaulting Party shall provide the Defaulting Party with an explanation of how it calculated the Settlement Amount, as well as supporting calculations and documentation reasonably requested by the Defaulting Party. The Non-Defaulting Party shall use Commercially Reasonable Efforts to mitigate any Costs or Losses it is entitled to hereunder. 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 of the Non-Defaulting Party's Gains, Losses and Costs.

(F) If the present value of the Non-Defaulting Party's aggregate Losses and Costs (net of any amounts due to the Defaulting Party) exceed the present value of its aggregate Gains, all as finally determined in accordance with the preceding provisions of this section, the Defaulting Party shall, within five (5) Business Days of such final determination, pay the Settlement Amount to the Non-Defaulting Party, including interest thereon at the Interest Rate from the Early Termination Date until paid in full. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Settlement Amount, the Defaulting Party will provide its calculations to the Non-Defaulting Party within two (2) Business Days of receipt of calculation from the Non-Defaulting Party. The Defaulting Party shall nevertheless pay to the Non-Defaulting Party the undisputed portion of the Settlement Amount and provide Performance Assurance for the remaining amount.

(G) Notwithstanding any provision to the contrary contained in this Contract, the Non-Defaulting Party shall not be required to pay the Defaulting Party any amount under this Section 10, until the Non-Defaulting Party receives confirmation satisfactory to it, in its reasonable discretion (which may include an opinion of its counsel), that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Contract (or otherwise) have been fully and finally performed.

11. **QUANTITY SHORTFALL DAMAGES**

(A) Unless excused by a Force Majeure Event, by written agreement of Buyer and Seller, or Seller's failure to perform, if Buyer fails to accept all or any part of the quantity of Coal to be delivered under this Contract, Buyer shall pay Seller for each Ton of Coal of such deficiency an amount equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price plus (i) any additional transportation costs incurred by Seller due to such failure and (ii) reasonable legal costs incurred by Seller in enforcement and protection of its rights under this Contract. "**Sales Price**" means the price, determined by Seller in a commercially reasonable manner, at which Seller resells (if at all) the Coal, or, absent such a sale, the market price for such quantity of Coal FOB Delivery Point.

(B) Unless excused by a Force Majeure Event, by written agreement of Buyer and Seller, or Buyer's failure to perform, if Seller fails to deliver all or any part of the quantity of Coal to be delivered under this Contract, Seller shall pay Buyer for each Ton of Coal of such deficiency an amount equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price plus (i) any additional transportation costs incurred by Buyer due to such failure, and (ii) reasonable legal costs incurred by Buyer in enforcement and protection of its rights under this Contract. "**Replacement Price**" means the price, determined by Buyer in a commercially

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reasonable manner, at which Buyer purchases (if at all) substitute Coal for the deficiency or, absent such a purchase, the market price for such quantity of Coal at the consigned destination.

(C) Each party hereby stipulates that the payment obligations set forth in (A) and (B) above are reasonable in light of the anticipated harm and each party hereby waives the right to contest such payments as an unreasonable penalty or otherwise.

(D) Payment of amounts, if any, determined under this Section 11 shall be made in accordance with the applicable Payment provision of this Contract; provided, that payment of any such amounts shall be made on the 20<sup>th</sup> calendar day of the month following such failure to deliver or accept Coal, as applicable. All such determinations shall be made in a commercially reasonable manner. The Non-Defaulting Party shall not be required to enter into any actual replacement transaction in order to determine the Replacement Price or Sales Price, as appropriate, provided, however, that the Non-Defaulting Party shall take all reasonable steps to mitigate its damages.

12. **GRANT OF SECURITY INTEREST**

For the avoidance of doubt, the following grant of a security interest does not cover the general assets of either party, but is limited solely to any Performance Assurance delivered by a party to the other party under this Contract, and is not intended to be read as inconsistent with the lending arrangements of a party hereunder as this is not a general grant of a security interest, but only a grant of security interest with respect to any Performance Assurance delivered hereunder. Accordingly, to secure its obligations under this Contract and only to the extent either or both parties deliver Performance Assurance hereunder, each party as a pledgor hereby grants to the other party as a secured party (the “**Secured Party**”) a present and continuing first priority secured interest in, and lien on (and right of recoupment and setoff against), and assignment of, all such Performance Assurance, including, any such cash collateral delivered as Performance Assurance and cash equivalent collateral delivered as Performance Assurance and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each party agrees to take such action as the other party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of recoupment and/or setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

13. **HOLDING AND USE OF PERFORMANCE ASSURANCE**

Each party will be entitled to hold Performance Assurance in the form of cash so long as the credit rating of the senior unsecured debt obligation of the entity or its guarantor is rated at least BBB- by S&P’s and Baa3 by Moody’s and further provided that an Event of Default has not occurred and is not continuing with respect to the party. If an Event of Default has occurred and is continuing with respect to a party or its guarantor (if any) or if a party or its guarantor (if any) is not rated or has a rating below the aforesaid standard, then, if it holds Performance Assurance in the form of cash, it shall be required to immediately place all such Performance Assurance in the form of cash in an escrow account with an independent third party financial institution mutually acceptable to the parties.

14. **FORWARD CONTRACT**

Buyer and Seller each acknowledge that it is a “forward contract merchant” and that this Contract constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

15. **NETTING AND SETOFF**

If Buyer and Seller are required to pay any amount in the same month, then such amounts with respect to each party may be aggregated and the parties may discharge their obligations to pay through netting, in which case the party, if any, owing the greater aggregate amount shall pay to the party owed the difference between the amounts owed. Each party reserves to itself all rights, setoffs, counterclaims, combination of accounts, liens and other remedies and defenses which such party has or may be entitled to (whether by operation of law or otherwise). The obligations to make

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payments under this Contract and/or any Other Contract(s) between the parties hereto may be offset against each other, set off or recouped therefrom.

16. **CONFIDENTIALITY**

(A) Neither party shall disclose, either directly or indirectly, information pertaining to this Contract ("**Confidential Information**") to a third party without the written consent of the other party (other than to a party's and its Affiliates' employees, officers, directors, co-owners, lenders, counsel, accountants, consultants, agents or prospective purchasers, (collectively its "**Representatives**") whose access is necessary and who have been informed of and agreed to comply with the confidentiality restrictions contained in this Contract). "**Confidential Information**" does not include information that (i) has become part of the public domain other than by acts or omissions of the recipient; (ii) has been furnished or made known to the recipient by a third person as a matter of legal right and without restriction on use; (iii) was in the recipient's possession prior to disclosure by the disclosing party without restriction on use; or (iv) is independently developed by the recipient without access to the Confidential Information.

(B) Each party agrees (i) to protect the Confidential Information of the other with at least the same degree of care used to protect its own Confidential Information; and (ii) not to use (except in connection with the performance of its obligations under this Contract), publish or disclose to third parties such Confidential Information.

(C) To the extent that during the performance of this Contract a party and/or its Representatives acquires any information that could identify an individual either directly or indirectly, such party and/or Representative shall treat such information as confidential and safeguard it from unauthorized use and disclosure.

(D) If either party is required pursuant to applicable law, is requested by a regulatory commission, or becomes legally compelled to disclose any of the Confidential Information, such party shall promptly advise the disclosing party in order that the disclosing party may seek a protective order or such other remedy as the disclosing party may consider appropriate in the circumstances. In any event, the recipient may disclose only that portion of the Confidential Information which such party is required to disclose in the judgment of the party's legal counsel without any liability to the disclosing party hereunder and such disclosure shall not be a breach of this Section.

17. **ENTIRE AGREEMENT; MODIFICATION; EXECUTION**

This Contract, together with any attachments or exhibits specifically referenced herein, constitutes the entire contract between the Seller and the Buyer with respect to the subject matter hereof, supersedes all prior oral or written representations and contracts, and may be modified only by a written amendment signed by Buyer and Seller. This Contract may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The delivery of copies of this Contract and of the signature page by electronic mail in "portable document format" ("**pdf**") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, will constitute effective execution and delivery of this Contract and may be used in lieu of the original Contract for all purposes. A party's signature transmitted by such electronic means will be deemed to be its original signatures for all purposes.

18. **COMPLIANCE WITH LAW**

Seller and Buyer shall make good faith efforts to comply with the provisions of all applicable federal, state, and other governmental laws and any applicable order and/or regulations, or any amendments or supplements thereto, which have been, or may at any time be, issued by a governmental agency.

19. **GOVERNING LAW; WAIVER OF JURY TRIAL; UCC; VENUE,**

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## **GOVERNMENT CONTRACTOR COMPLIANCE**

This Contract shall be construed, enforced, and performed in accordance with the laws of the State of New York, including New York General Obligation Law Sections 5-1401 and 5-1402. Each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Contract. Except as otherwise provided for herein, the provisions of the Uniform Commercial Code (“UCC”) of the State of New York shall govern this Contract and Coal provided hereunder shall be deemed to be “goods” for purposes of the UCC. Each party hereby submits to the exclusive jurisdiction of state or federal courts located in Franklin County, Ohio and all appellate courts therefrom and waives any objection which it may have at any time to the laying of venue of any proceedings brought in such court, waives any claim that such proceedings have been brought in an inconvenient forum, and further waives the right to object, with respect to such proceedings, that such court does not have jurisdiction over such party.

Unless exempted, Seller shall comply with the equal employment opportunity clause in Section 202 of Executive Order 11246 and all applicable rules, regulations, and relevant orders pertaining to Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and Section 4212 of the Vietnam Era Readjustment Assistance Act of 1974, as amended.

## 20. **NOTICES**

(A) Notices provided for or required under this Contract may be exercised verbally, but shall be confirmed in writing as soon as practicable. The parties shall be legally bound from the date the notification is exercised. Notices provided for or required in writing herein shall be delivered by hand or electronic means or sent by certified mail, postage prepaid, return receipt requested, or by overnight mail or courier.

(B) Unless Seller otherwise notifies Buyer in writing, notices to Seller shall be sent to the Seller using such contact information as provided on page one of this Contract.

(C) Following each Shipment, Seller shall provide Buyer with a shipping notice that includes: (i) the applicable AEP Purchase Order number; (ii) the Plant destination; (iii) the short proximate (Btu/lb., percent moisture, percent ash, percent sulfur, sodium content where included in Quality specifications and with respect to Illinois Basin Coal, the chlorine content) average analytical results of each Shipment; (iv) Seller’s weight determination and the identifying number(s) of each Shipment; and (v) the date the Coal was loaded into the railcars or barges, with the starting and stopping times of the loading. If the Coal is to be sold FOB rail, then the notice shall also include the transportation agreement number, the origin station, and the train number. If the Coal is to be sold FOB barge, then the notice shall also include the shipping origin (dock name and milepost number) and barge number. Such notice shall be provided within twenty-four (24) hours after the Coal is loaded for shipment, or within thirty-six (36) hours should the Shipment be loaded on a Saturday. Seller’s analysis shall be reported to the recipients designated by and in the manner specified by Buyer.

(D) Shipping notices shall be sent to [fuels@aep.com](mailto:fuels@aep.com), and the Primary Plant email address as identified on the Purchase Order (or other Plant as requested by Buyer).

(E) For all notices, other than shipping notices, to AEP and/or its Affiliates:

American Electric Power Service Corporation  
Attn: Fuel Contract Administration  
303 Marconi Boulevard, Suite 300  
Columbus, OH 43215  
Email: [Contracts\\_Notice@aep.com](mailto:Contracts_Notice@aep.com)

(F) Notices hand delivered or delivered by electronic means, shall be deemed delivered by the close of the Business Day on which it was hand delivered or delivered by electronic means (unless

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hand delivered or transmitted by electronic means after the close of the Business Day in which case it shall be deemed received by the close of the next Business Day). Notices provided by certified mail, postage prepaid, return receipt requested, or by overnight mail or courier shall be deemed delivered upon mailing.

21. **RIGHT OF AUDIT**

Buyer and its designated representatives and/or agents including but not limited to its auditors, engineers, and geologists, shall at Buyer's discretion, have access to the mine(s) producing Coal under this Contract, to all support facilities, and to all records pertaining to the coal reserves covered by this Contract; to the production and cost of production records of coal produced at the production sources providing Coal under this Contract; and to all records pertaining to the cost of transporting Coal (where applicable), to the extent necessarily required for purposes of administering this Contract; and to all records pertaining to this Contract.

22. **DEFINITIONS**

The following definitions and any terms defined internally in this Contract shall apply to this Contract and all notices and communications made pursuant to this Contract.

**"AEP"** means American Electric Power Service Corporation.

**"Affiliate"** means with respect to any entity, any other entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such entity. 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.

**"ASTM"** means ASTM International, formerly known as the American Society for Testing and Materials.

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

**"Coal"** means crushed, bituminous coal to be sold by Seller and purchased by Buyer, the quality of which shall conform to the Quality Specifications set forth in the Quality Item of the attached Purchase Order, and which does not trigger Buyer's rejection rights under Section 5, REJECTION AND SUSPENSION, or is otherwise acceptable by Buyer under this Contract. Such Coal shall (a) be substantially free from any extraneous materials (including, but not limited to mining debris, synthetic fuels, bone, slate, iron, steel, petroleum coke, earth, rock, pyrite, wood or blasting wire), (b) be substantially consistent in quality throughout a Shipment, (c) meet the size required, and (d) have no intermediate sizes (including fines) added or removed.

**"Commercially Reasonable Efforts"** means the taking by a party 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 party incur unreasonable expense.

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

**"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 Contract Quantity not delivered by Seller or not accepted by Buyer, as the case may be, under this Contract and the Other Contract(s) and legal costs incurred by the Non-Defaulting Party.

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

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**“FOB”** shall have the meaning given to such term as provided in the Uniform Commercial Code of the State of New York.

**“Force Majeure Event”** means an event or circumstance which prevents one party (the **“Claiming Party”**) from performing its obligations under this Contract, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. A Force Majeure Event includes, but is not limited to, an event or occurrence beyond the control of Claiming Party, such as without limitation, acts of God, war, insurrection, riots, terrorism, nuclear disaster, strikes, labor disputes, threats of violence, labor and material shortages, fires, explosions, floods, river freeze-ups, breakdowns or damage to mines, plants, equipment, or facilities (including a forced outage or an extension of a scheduled outage of equipment or facilities to make repairs to avoid breakdowns thereof or damage thereto), interruptions to or slowdowns in transportation, railcar shortages, barge shortages, embargoes, orders, or acts of civil or military authority, laws, regulations, or administrative rulings, or total or partial interruptions of either party’s operations which are due to any enforcement action or other administrative or judicial action arising from an environmental law or regulation. A Force Majeure Event shall not be based on: (1) Buyer’s inability economically to use or resell the Coal purchased hereunder; (2) adverse geological or mining conditions; (3) the Seller’s ability to sell the Coal at a price greater than the Contract Price; or (4) Seller’s inability to economically produce or obtain the Coal.

**“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 this Contract and the Other Contract(s), determined in a commercially reasonable manner.

**“Half-Month”** means, with respect to any calendar month, both (a) the period from and including the first day of such month through and including the fifteenth (15<sup>th</sup>) day of such month and (b) the period from and including the sixteenth (16<sup>th</sup>) day of such month through and including the last day of such month.

**“Letter of Credit”** means an irrevocable, standby letter of credit, issued by a major United States commercial bank or the United States branch office of a foreign bank, reasonably acceptable to the beneficiary with, in either case, a senior unsecured credit rating of at least (a) **“A-”** by S&P and **“A3”** by Moody’s, if such entity is rated by both S&P and Moody’s or (b) **“A-”** by S&P or **“A3”** by Moody’s, if such entity is rated by either S&P or Moody’s but not both.

**“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 of its obligations with respect to this Contract and the Other Contract(s), determined in a commercially reasonable manner.

**“Moody’s”** means Moody’s Investors Service, Inc. or its successor.

**“NIST”** means the National Institute of Standards and Technology Handbook #44.

**“Other Contract(s)”** means those contracts, if any, other than this Contract, in effect as of the date of this Contract, or entered into and in effect hereafter during the term of this Contract, that provide for the sale of coal from Seller to Buyer.

**“Performance Assurance”** means collateral in the form of either cash or Letter of Credit or such other security of the type and amount requested by the party demanding Performance Assurance.

**“S&P”** means the Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. or its successor.

**“Shipment”** means, as applicable: (a) one (1) unit trainload of Coal or at Buyer’s election a composite of two (2) or more unit trainloads of Coal; or (b) the aggregate of single railcars of Coal loaded on any one (1) day (only where single car rates apply); or (c) one (1) barge of Coal or at Buyer’s election a composite of two (2) or more barges of Coal, or vessel load of Coal; or (d) the aggregate of the truckloads of Coal that are unloaded at the Delivery Point on any one (1) day in accordance with the applicable transportation specifications.

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**“Ton”** means 2,000 pounds avoirdupois weight.

**“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.

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