

**FUEL PURCHASE ORDER: J18028**

**Buyer:** Louisville Gas and Electric Company ("LG&E" or "Buyer")  
Kentucky Utilities Company ("KU" or "Buyer")  
220 West Main Street  
Louisville, Kentucky 40232-2010

Attn: Delbert Billiter  
Phone: 502/627-4668  
Fax: 502/627-2194

**Seller:** Alliance Coal, LLC  
1717 South Boulder Avenue  
Tulsa, Oklahoma 74119-4886  
Attn: Tony Rowser  
Phone: 219/663-7399

**Purchase Order Number:** J18028

**Date:** April 26, 2018

**Shipping Destination:** LG&E's Mill Creek Station

**Commodity:** Crushed, bituminous coal substantially free from any extraneous material, with no intermediate sizes to be added or removed and otherwise meeting the specifications of this Fuel Purchase Order ("Purchase Order").

**Producer:** Warrior Coal, LLC

**Source:** Cardinal (Warrior) Mine  
Type of mining: Underground  
MSHA ID: 1517216

**Producer:** Webster County Coal, LLC

**Source:** Dotiki Mine  
Type of mining: Underground  
MSHA ID: 1502132

Producer(s) represents and warrants that the Source, including all applicable permits, is sufficient to supply the quantity and quality of coal required hereunder, subject to the Force Majeure provisions of the terms and conditions. Seller shall have the option of delivering the coal required hereunder from either the Cardinal (Warrior) Mine and/or the Dotiki Mine.

**Base Price(s):** Warrior Coal rail loading facility near Madisonville, Kentucky; F.O.B. Railcar \$40.50 per ton  
Webster County Coal rail loading facility near Providence, Kentucky;  
F.O.B. Railcar \$40.00 per ton

The Base Price will also be subject to adjustment for quality variations as described below in this Purchase Order J18028 under "BTU True Up," as well as Section 5 of the Fuel Purchase Order Terms and Conditions, titled "Quality Price Adjustments."

**Quantity:** The total quantity of coal supplied under this purchase order shall be 300,000 tons, to be delivered at a rate of approximately 10,000 to 11,000 tons per train. Shipments will be in accordance with a mutually agreed-upon schedule.

**Term:** The term for deliveries under this Purchase Order shall commence on April 1, 2018, and shall continue through September 30, 2018 or if earlier, the date on which the last train is shipped as contemplated hereunder, subject to early termination pursuant to the terms of this Purchase

Order.

**Transportation/Delivery:**

**Shipments:**

Rail: Coal is to be shipped in unit train lots ranging from 10,000 tons to 11,000 tons per train (each shipment by such unit train is herein called a "Rail Shipment"). Rail Shipments will be jointly scheduled by Buyer and Seller with the Buyer's rail carrier. Buyer or its contractor shall furnish suitable railcars in accordance with a delivery schedule mutually agreed to by Buyer and Seller. Buyer shall arrange for transporting the coal by train from the rail loading facility to LG&E's Mill Creek Generating Station and shall pay for the cost of such transportation

**Rail Delivery Point(s):**

FOB Railcar Warrior Coal rail loading facility near Madisonville, Kentucky, on the Paducah and Louisville Railroad and the Webster County Coal rail loading facility near Providence, Kentucky on the CSX railroad (collectively, the "Rail Delivery Points" and each individually, the "Rail Delivery Point").

**Destination Point(s):**

LG&E's Mill Creek Generating Station via Paducah and Louisville Railroad/Contract L17008 (Amendment No. 10 to PAL-C-0750).

**Quality Specifications:**

The coal shipped hereunder shall be of uniform quality and shall conform (calculated on a monthly weighted average basis) to the specifications set forth in the table below under the heading of Guaranteed Monthly Weighted Average (the "GMWA"):

**BTU True Up:**

The Base Price for coal unloaded hereunder in any particular calendar month is based on the assumption that the actual "as received" monthly weighted average BTU/LB for coal unloaded by Buyer during that particular calendar month is equal to the GMWA BTU/LB set forth below under the heading of GMWA. In the event the Actual Monthly Weighted Average (the "AMWA") varies from the GMWA for any particular calendar month, then the Base Price applicable to such unloaded coal will be adjusted for that particular calendar month to account for such variation in BTUs; such Base Price adjustment for BTUs for that particular calendar month to be determined as follows:

(i) Calculate the per ton Base Price BTU adjustment for any particular calendar month using the following formula (where Price per Ton is the applicable Base Price set forth above):

$$\frac{\text{AMWA} - \text{GMWA}}{\text{GMWA}} \times \text{Price per Ton} = \text{Per Ton Adjustment}$$

(ii) Determine the Base Price adjustment for BTUs for that month by multiplying the Per Ton Adjustment (as calculated in (i) above) by the total number of tons of coal actually unloaded by Buyer under this Purchase Order for that particular calendar month. Depending on whether the AMWA is greater or less than the GMWA in any particular calendar month, the Per Ton Adjustment (and thus the Base Price adjustment for BTUs) for that particular calendar month can be positive or negative. If the Base Price adjustment for BTUs (as calculated above) for a particular calendar month is positive, then Buyer shall be obligated to pay the amount of such adjustment to Seller. If the Base Price adjustment for BTUs (as calculated above) for a particular calendar month is negative, then Seller shall be obligated to pay or credit the amount of such adjustment to Buyer. Buyer shall be responsible for making the calculations and shall send a written statement to Seller of the amount of such adjustment each month. Such payments shall be due when the next payment for coal is due hereunder.

For example, if the AMWA for a particular calendar month equals 11,600 BTU/LB, the GMWA equals 11,500 BTU/LB and the Price Per Ton equals \$40.00/ton, then the Per Ton Adjustment would be  $((11,600 - 11,500) \div 11,500) \times \$40.00 = \$0.34782$  per ton. If a total of 50,000 tons were unloaded during that particular calendar month, then the Base Price adjustment for BTUs would equal \$17,391.50 (50,000 x \$0.34782). Since it is positive, this amount would be due and owed to Seller by Buyer with respect to the coal unloaded for that particular calendar month.

**Monthly/Shipment Quality Price Adjustments:**

As Received / Guaranteed Monthly Weighted Average ("GMWA")		Individual Shipment Rejection Limits	Monthly Discount Limits	Monthly Discount Values \$/mmBtu
Moisture	8.00 lbs./MMBtu	> 9.50 lbs./MMBtu	9.00 lbs./mmBtu	0.0016
Ash	11.30 lbs./MMBtu	> 14.00 lbs./MMBtu	11.80 lbs./mmBtu	0.0083
BTU/Lb.	11,500 Min.	< 11,200	11,200	0.2604
Sulfur – Max	3.00 lbs./MMBtu	> 3.20 lbs./MMBtu	3.15 lbs./mmBtu	0.1232
Sulfur – Min	2.40 lbs./MMBtu	< 2.00 lbs./MMBtu	-	-
Sizing	2.5 x 0 (inch.)	> 3.0 inch.	-	-
Fines	55%	>60%	-	-
Volatile	31 Min (dry basis)	<30	-	-
Ash Fusion (H=W Reducing) 2020 <sup>o</sup> Min		1975 <sup>o</sup> Min.	-	-
Fixed Carbon	40 Min (dry basis)	<39	-	-
Grindability (HGI)	50 Min.	<48	-	-
Chlorine	2,300 ppm Max	>2,500 ppm	-	-
Arsenic	10.0 ppm Max	>12 ppm		
Calcium Oxide in Ash	2.66% Max			

**Preship Quality:** The Seller has sole responsibility for quality control of the coal and shall forward as loaded quality to the Buyer as soon as possible. Each shipment hereunder shall have coal of substantially the same quality throughout. All Shipments shall be sampled and analyzed by Seller prior to shipment to determine loading quality. Seller shall provide the results of such sampling and analysis to the recipients designated by Buyer and in the format specified by Buyer, with the Short Proximate Analysis (moisture, ash, Btu and sulfur) to be provided within 24 hours after the Shipment is loaded. Shipments not conforming (i.e. exceeding any maximum or falling below any minimum) with one or more Rejection Limits set forth above (the "Rejection Limits") may result in suspension or rejection as provided herein.

In the event of a conflict between the terms and conditions contained in this Purchase Order J18028 and those contained in the exhibits or attachments attached hereto, including the Louisville Gas and Electric Company/Kentucky Utilities Company Fuel Purchase Order Terms and Conditions attached hereto, the terms and conditions contained in this Purchase Order J18028 shall govern.

**BUYER**

**LOUISVILLE GAS AND ELECTRIC COMPANY**  
**KENTUCKY UTILITIES COMPANY**

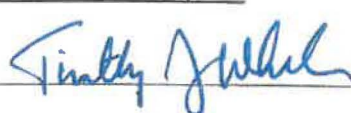
  
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David Sinclair  
VP – Energy Supply and Analysis

Date: 5-1-18

**SELLER**

**ALLIANCE COAL, LLC**

  
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Timothy J. Whelan  
Senior Vice President Sales & Marketing

Date: 4/27/18

**LOUISVILLE GAS AND ELECTRIC COMPANY  
KENTUCKY UTILITIES COMPANY  
FUEL PURCHASE ORDER TERMS AND CONDITIONS**

**ALLICANCE COAL, LLC**

**P.O. # J18028**

**1. SCHEDULING & DELIVERY**

Seller shall cause coal sold hereunder to be properly loaded into the transport vehicles (railcars) for delivery to Buyer. The delivery schedule specified in the Purchase Order or as mutually agreed by Seller and Buyer in absence of such in the Purchase Order is binding on both Buyer and Seller and may only be changed by mutual agreement followed by a mutual written agreement between the parties.

**2. TITLE AND RISK OF LOSS; WARRANTY**

Title to and risk of loss of coal conforming to this Purchase Order shall pass to Buyer as follows:

- a) For rail deliveries, upon departure of loaded railcars from the Rail Delivery Point.
- b) 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 non-acceptance by Buyer as provided elsewhere in this Purchase Order.

Seller and Buyer shall each indemnify, defend, and save harmless the other party, its affiliates and their respective officers, directors, agents, representatives and employees from and against any liabilities, losses, claim, damages, penalties, causes of action, or suits (collectively "Claims") arising out of, in connection with or related to their respective actions or omissions in the performance of this Purchase Order. Seller represents and warrants that it has title to, and the right to sell, all coal sold hereunder and the same is shipped free and clear of all liens, encumbrances, and claims of all third parties.

Seller and Buyer each also agree to indemnify and save harmless the other party, its officers, directors, employees and representatives from any responsibility and liability for any and all claims, demands, losses, or legal actions (including reasonable external attorney's fees) for personal injuries, property damage or pollution which result from or relate to the indemnifying party's negligence or willful misconduct, or which result from or relate to any failure of the indemnifying party to comply with applicable laws, regulations, or ordinances.

Seller agrees to carry insurance coverage with minimum limits as follows:

- (1) Commercial General Liability, including Completed Operations and Contractual Liability, \$2,000,000 per occurrence and \$2,000,000 in the aggregate.
- (2) Automobile General Liability, \$2,000,000 single limit liability.
- (3) Employer's Liability, \$2,000,000 single limit liability.
- (4) In addition, Seller shall carry umbrella liability insurance covering the foregoing perils in the amount of \$10,000,000 for any one occurrence, and excess liability insurance in the amount of \$10,000,000 covering the foregoing perils to the extent of any excess above such amount.
- (5) Workers' Compensation with statutory limits.

If any of the above policies are written on a claims-made basis, then the retroactive date of the policy or policies will be no later than the effective date of this Purchase Order.

Seller shall provide certificates of insurance satisfactory in form to the Buyer and signed by the Seller's insurer, evidencing that the above insurance is in force upon the effective date of this Purchase Order. Further, Seller shall provide such satisfactory certificates of insurance, upon request, during the term of the Purchase Order. Notwithstanding the above, Seller shall provide forty five (45) days advance notification to Buyer in the event of a termination or reduction in coverage under the insurance, should the termination or reduction occur during the term of this Purchase Order.

### 3. WEIGHTS

Rail Shipments: The weight of the coal delivered hereunder shall be determined by Buyer on a per-shipment basis, on the basis of certified scale weights at Buyer's generating stations, unless another method is mutually agreed upon by the parties (the "Payment Weight").

If Buyer's scale is inoperable or if Buyer fails to obtain a sample of the coal for qualitative analysis upon unloading, Seller's loading weight shall be used for the relevant shipment, and Seller's analysis shall be the analysis used in determining the payment for the relevant Shipment (the "Payment Analysis"). Seller will be notified as soon as possible whenever the Buyer's belt scale or sampling equipment is out of operation. Seller will transmit its loading weights and qualitative analysis for the relevant shipment to Buyer as soon as possible.

Scales (whether Buyer's or Seller's) shall be operated in accordance with NIST Handbook 44. Such scales shall be duly reviewed by an appropriate testing agency and maintained in an accurate condition and certified (i.e. material tested) at least every twelve (12) months in accordance with NIST Handbook 44 with a third party oversight. Seller shall have the right, at Seller's expense and upon reasonable notice, to have the Buyer's scales checked for accuracy at any reasonable time or frequency. Buyer shall use commercially reasonable efforts to notify Seller as soon as it knows the date and time for such testing, calibration, and certification and Seller shall have the right to witness such events at Seller's expense.

If the Buyer's scales are used for payment purposes and are found to be over or under the tolerance range allowable for the scale based on guidelines outlined in NIST Handbook 44 (the "Tolerance"), the Buyer shall recalculate the payments for coal weighed on those scales for the period of inaccuracy (not to exceed thirty (30) days before the time any inaccuracy of the scale is determined) based on the percentage of variance identified for the scales from the Tolerance, plus the amount of the Tolerance. Buyer or Seller, as applicable, shall pay to the other such amounts owed as a result of the recalculation, and the expenses incurred in checking the accuracy of said scales shall be paid for by Buyer.

If the Seller's scales are used for payment purposes and found to be over or under the tolerance range allowable for the scale based on guidelines outlined in NIST Handbook 44, then the Buyer shall recalculate the payments for coal weighed on those scales for the period of inaccuracy (not to exceed thirty (30) days before the time any inaccuracy of the scale is determined) based on the percentage of variance identified for the scales from the Tolerance, plus the amount of the Tolerance. Buyer or the Seller, as applicable, shall pay to the other such amounts owed as a result of that recalculation, and the expenses incurred in checking the accuracy of said scales shall be paid for by Seller.

The weight of the coal delivered hereunder shall be determined on a per-shipment basis by Seller on the basis of railroad accepted weights at the Rail Delivery Point unless another method is mutually agreed by the parties. Scales shall be operated in accordance with NIST Handbook 44. Such scales shall be duly reviewed by an appropriate testing agency and maintained in an accurate condition and certified (i.e. material tested) at least every twelve (12) months in accordance with NIST Handbook 44 with third party oversight. Buyer shall have the right, at Buyer's expense and upon reasonable notice, to have the Seller's scales checked for accuracy at any reasonable time or frequency. Seller shall use commercially reasonable efforts to notify Buyer as soon as it knows the date and time for such testing, calibration, and certification and Buyer shall have the right to witness such events at Buyer's expense.

If Seller's scales are found to be over or under the tolerance range allowable for the scale based on guidelines outlined in NIST Handbook 44 (the "Tolerance"), the Buyer shall recalculate the payments for coal weighed on those scales for the period of inaccuracy (not to exceed thirty (30) days before the time any inaccuracy of the scale is determined) based on the percentage of variance identified for the scales from the Tolerance, plus the amount of the Tolerance. Buyer or Seller, as applicable, shall pay to the other such amounts owed as a result of the recalculation, and the expenses incurred in checking the accuracy of said scales shall be paid for by Seller.

### 4. SAMPLING AND ANALYSIS

Rail Shipments: The Seller has sole responsibility for quality control of the coal and shall forward the loading quality to Buyer within two (2) business days after loading. The sampling and analysis of the coal delivered hereunder shall be performed by Buyer or by an independent commercial laboratory appointed by Buyer, on a per-Shipment basis, as defined hereinabove, and the results thereof shall be accepted and used for the quality and characteristics of the coal delivered under this Agreement, except as otherwise provided herein. Seller's "as-loaded" quality shall be the Payment Analysis only when Buyer's sampler and/or scales are inoperable, or if Buyer fails to obtain a sample upon unloading. All analyses shall be made in Buyer's laboratory or at an independent commercial laboratory, at Buyer's expense in accordance with ASTM standards.

Samples for analyses shall be taken in accordance with ASTM standards, may be composited and shall be taken with a frequency and regularity sufficient to provide reasonably accurate representative samples of the deliveries made hereunder.

Buyer shall notify Seller in writing of any significant changes in Buyer's sampling and analysis practices within five (5) business days after any such change. Any such changes in Buyer's sampling and analysis practices shall, except for ASTM accepted changes in practices, provide for no less accuracy than the sampling and analysis practices existing at the time of the execution of this Agreement, unless the Parties otherwise mutually agree.

Each sample taken by Buyer shall be divided into four (4) parts and put into airtight containers, properly labeled and sealed. One (1) part shall be used for analysis by Buyer; one (1) part shall be used by Buyer as a check sample, if Buyer in its sole judgment determines it is necessary; one (1) part shall be retained by Buyer until the twenty fifth (25<sup>th</sup>) of the month following the month of unloading (the "Disposal Date") and shall be delivered to Seller for analysis if Seller so requests before the Disposal Date; and one (1) part ("Referee Sample") shall be retained by Buyer until the Disposal Date. Seller, on reasonable notice to Buyer, shall have the right to have a representative present to observe the sampling and analyses performed by Buyer. Unless Seller requests a Referee Sample analysis before the Disposal Date, Buyer's analysis shall be used to determine the quality of the coal delivered hereunder and shall be the Payment Analysis. The Monthly Weighted Averages shall be determined by utilizing the individual Shipment analyses.

## 5. QUALITY PRICE ADJUSTMENTS

- (A) Base Price is based on the coal unloaded hereunder meeting or exceeding (i.e. greater than or equal to any minimum and less than or equal to any maximum) the Guaranteed Monthly Quality Specifications set forth in the Purchase Order. If, during any particular calendar month, the Actual Monthly Quality (as defined below) does not meet or exceed one or more of the Guaranteed Monthly Quality Specifications, then, to the extent provided in the Purchase Order, the Base Price shall be reduced with respect to each such non-conforming specification. The amount of the Base Price discount for each non-conforming specification, if any, is determined by using the corresponding Monthly Discount Value with respect to each such non-conforming specification, and is calculated in the manner set forth on Exhibit A attached hereto and made a part hereof. For purposes of this Purchase Order, the "Actual Monthly Quality" shall mean the weighted average quality of all coal (on an as received basis during any particular calendar month) unloaded hereunder (but not including any coal rejected pursuant to Paragraph (B) below) determined in accordance with the terms and conditions hereof.
- (B) If any Shipment of coal triggers any of the Rejection Limits specified herein (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, or (ii) accepting any Non-Conforming Shipment subject to the applicable Base Price discount for each applicable non-conforming specification. Should Buyer exercise its right of rejection, it shall notify Seller by E-mail or verbally upon discovery of the Non-Conforming Shipment, such notification to be promptly confirmed in writing. If Buyer fails timely 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 timely rejects the Non-Conforming Shipment, Seller shall be responsible for promptly transporting the rejected coal to an alternative destination 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 10 days after rejection of the Non-Conforming Shipment.
- (C) If there are three Non-Conforming Shipments, whether rejected or not, Buyer may upon notice to Seller suspend the receipt of future Shipments (except Shipments already loaded or in transit to Buyer) under this Purchase Order. A waiver by Buyer of the suspension right for any 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 Purchase Order 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 fifteen (15) days after resumption of Shipments. The Contract Price for such makeup deliveries shall be the Contract Price in effect during the suspension period. 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 two (2) weeks thereafter, any Shipments of coal trigger any of Buyer's rejection rights under this Section 5, then such events shall constitute an Event of Default.

## 6. INVOICING AND PAYMENT

- (A) Exhibit A attached hereto shows the methodology for calculating the coal payment and quality price adjustments for the month Seller's coal is unloaded by Buyer.
- (B) For all coal unloaded and accepted by Buyer at the Destination Point between the first (1<sup>st</sup>) and fifteenth (15<sup>th</sup>) days of any calendar month, Buyer shall make a preliminary payment of one-hundred percent (100%) of the amount owed for the coal (based on the assumption that the coal will meet all guaranteed monthly quality parameters) by the twenty-fifth (25<sup>th</sup>) day of such month of unloading, except that, if the 25<sup>th</sup> is not a regular work day, payment shall be made on the next regular work day. All preliminary payments shall be calculated based on the then-current price on a dollar per ton basis as calculated based on the guaranteed monthly weighted average BTU/lb. For all coal unloaded and accepted by Buyer at the Destination Point between the sixteenth (16<sup>th</sup>) and the last day of any calendar month, Buyer shall make a payment of one-hundred percent (100%) of the amount owed for the coal by the fifteenth (15<sup>th</sup>) day of the month following the month of unloading. Also by the fifteenth (15<sup>th</sup>) day of the month following the month of unloading, with respect to all coal unloaded and accepted by Buyer at the Destination Point during the month of unloading, a reconciliation of amounts paid and amounts owing during said month shall be made, including, making any adjustments for any applicable discounts or other adjustments provided herein, except that, with respect to all amounts due or owing on the fifteenth (15<sup>th</sup>) of the month following the month of unloading, if the fifteenth (15<sup>th</sup>) is not a regular work day, payment shall be made on the next regular work day.

For example, Buyer will make a preliminary payment by May 25 for coal unloaded from May 1 through May 15. By June 15, a payment for coal unloaded from May 16 through May 31 will be made which will be adjusted to include a reconciliation with respect to all coal unloaded in May. The reconciliation shall be made as follows: Seller shall invoice Buyer on or before the 10<sup>th</sup> day of the month following the month of unloading for all coal unloaded at Buyer's plant(s) during the previous month. The amount due for all coal (based on the Base Price plus or minus any Quality Price Discounts) unloaded and accepted by Buyer during any calendar month shall be calculated and compared to the sum of the preliminary payment made for coal unloaded and accepted during such month. The difference shall be paid by Seller or paid to Seller, as applicable, by the fifteenth (15<sup>th</sup>) day of the month following the month of unloading, except that, if the 15<sup>th</sup> is not a regular work day, payment shall be made on the next regular work day.

Seller shall invoice Buyer at the Base Price, plus or minus any quality price adjustments if applicable, for all coal unloaded by Buyer in a calendar month by the 10<sup>th</sup> day of the month following unloading.

- (C) Payment for coal unloaded in a calendar month will be electronically transferred, via ACH, to Seller's Account based on account information (including bank name, ABA number and account number) provided via electronic mail prior to the first payment under this Purchase Order. Seller reserves the right to modify such account instructions on prior written notice reasonably acceptable to Buyer.

This order is not subject to Kentucky Sales Tax.

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. Notwithstanding anything herein to the contrary, non-payment of disputed portions, so long as such amounts remain disputed in good faith, shall not constitute an Event of Default hereunder.

## 7. ASSIGNMENT/DELEGATION

This Purchase Order 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 Purchase Order or any of its rights or obligations hereunder without the prior written consent of the other party. Notwithstanding the foregoing, any party may, without the need for consent from the other party (and without relieving itself from liability hereunder), (a) transfer, sell, pledge, encumber or assign this Purchase Order or the accounts, revenues or proceeds hereof or thereof in connection with any financing or other financial arrangements or (b) transfer or assign this Purchase Order to an affiliate of such party; provided, however, that no such assignment shall in any way relieve the assignor from liability for full performance under this Purchase Order. Any such assignee shall assume and agree to be bound by the terms and conditions of this Purchase Order.

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.

## 8. FORCE MAJEURE

No party shall be subject to liability to the other party for the failure to perform in conformity with this Purchase Order where such failure results from a Force Majeure. A party affected by Force Majeure shall notify the other party in writing as promptly as practicable of the existence of such Force Majeure condition, and shall provide to the other party a written confirmation of such Force Majeure condition, and its expected effect on deliveries and expected duration within 3 days following such initial notification. The party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch. In the event of a Force Majeure, delivery of the affected quantity of coal shall be made up in full or in part only at the discretion of the Party not claiming Force Majeure. If an event of Force Majeure persists for a continuous period of at least 60 days, then the party not claiming Force Majeure shall have the option, upon three days' prior written notice, to terminate this Purchase Order and the obligations of the parties hereunder shall terminate (other than obligations and liabilities for prior performance thereunder). If Seller claims Force Majeure and is unable to meet all of its sales obligations under this Purchase Order and any other of its coal sales agreements involving coal of a similar type and quality as the coal sold hereunder, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under this Purchase Order and any other of its coal and/or coal purchase agreements involving coal and/or coal of a similar type and quality as the coal purchased hereunder for the same generating station, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated by the party claiming Force Majeure on a pro rata basis among this Purchase Order and such other coal and/or coal purchase agreements involving coal of a similar type and quality as the coal to be sold and purchased hereunder to the extent contractually permitted by this Purchase Order and such other agreements. For purposes of this paragraph, the term "Force Majeure" means an event or circumstance which prevents one party from performing its obligations under this Purchase Order, which is not within the reasonable control of, or the result of the negligence of, the party claiming Force Majeure, and which by the exercise of due diligence, the claiming party is unable to overcome or avoid or cause to be avoided, and includes, by way of illustration and without limitation, acts of God, equipment breakdowns or outages at the Sources, Delivery Point, or Destination Points, insurrections, riots, labor disputes, labor or material shortages, strikes, fires, explosions, floods, notices or declarations of Force Majeure by transportation carriers or coal terminals, embargoes, legislation, court orders, governmental regulation, or orders or acts of any governmental or military authority (so long as the party claiming Force Majeure has not sought and has opposed, to the extent reasonable, such actions or restraints), or other causes, whether of a similar or dissimilar nature and otherwise meeting the requirements earlier set forth in this sentence. Force Majeure shall not be based on: (1) the loss of Buyer's markets; (2) Buyer's inability economically to use or resell the coal purchased hereunder; (3) Seller's ability to sell the coal at a price greater than the Base Price; or (4) Buyer's ability to buy the coal at a price less than the Base Price; or (5) Seller's inability to economically produce or obtain the coal.

#### 9. 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 Purchase Order or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions (now or in the future) or the relinquishment of any such rights, but the same shall continue and remain in full force and effect for the term of this Purchase Order.

#### 10. [NOT USED]

#### 11. EVENT OF DEFAULT AND DAMAGES

If an Event of Default (as hereafter defined) occurs with respect to a party (the "Defaulting Party") at any time during the term of this Purchase Order, 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) ("Early Termination Date") on which this Purchase Order shall terminate, (ii) withhold any disputed payments due in respect of this Purchase Order, (iii) suspend performance under this Purchase Order and/or (iv) exercise such other remedies as may be provided in this Purchase Order or at law or in equity. An event of default with respect to any party ("Event of Default") shall mean any of the following: (i) the failure of either party 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 10 days after notice thereof to Defaulting Party; (ii) failure to provide adequate security for or assurance of its ability to perform its further obligations under this Purchase Order within 72 hours of a reasonable written request by the Non-Defaulting Party; (iii) 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; (iv) 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 (iii) (a), (b) or (c); or (v) an event described in Section 5(C) (dealing with non-conforming deliveries or monthly averages) shall have occurred.

**Damages Owed to Buyer.** If, at the end of the Term, unless excused by Force Majeure or Buyer's failure to perform, if Seller fails to deliver all or any part of the Quantity of coal to be delivered hereunder, and such shortfall is not made up (at Buyer's option exercised within 30 days of such Term end) within the next three calendar months after the Term following written notice by Buyer, Seller shall pay Buyer for each ton of such deficiency an amount equal to the positive difference, if any,



obtained by subtracting the Base Price for the deficiency from the Replacement Price plus any additional transportation costs incurred by Buyer due to such failure. "Replacement Price" means the price, determined by Buyer in a commercially reasonable manner, at which Buyer purchases substitute coal which meets the specifications or, absent such purchase, the market price for such Quantity of coal, FOB Delivery Point.

**Damages Owed to Seller.** If, at the end of the Term, unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to accept all or any part of the Quantity of coal to be delivered hereunder, and such shortfall is not made up (at Seller's option exercised within 30 days of such Term end) within the next three calendar months after the Term following written notice by Seller, Buyer shall pay Seller for each ton of such deficiency an amount equal to the positive difference, if any, obtained by subtracting the Sales Price for the deficiency from the Base Price for the deficiency plus any additional transportation costs incurred by Seller due to such failure. "Sales Price" means the price, determined by Seller in a commercially reasonable manner, at which Seller resells the coal, or, absent such sale, the market price for such Quantity and quality of Coal, FOB Delivery Point.

Each Party shall take commercially reasonable steps to mitigate any damages resulting from any termination of this Purchase Order or a party's breach or default of its obligations under this Purchase Order.

## 12. LIMITATION ON LIABILITY AND WARRANTIES

NEITHER SELLER NOR BUYER 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; PROVIDED THIS PARAGRAPH SHALL NOT APPLY OR BE CONSTRUED TO LIMIT ANY OBLIGATIONS UNDER ANY INDEMNITY OR WARRANTY PROVISION HEREIN.

NEITHER PARTY MAKES ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WHETHER AS TO MERCHANTABILITY, FITNESS FOR ANY OR A PARTICULAR PURPOSE, OR ANY OTHER MATTER, EXCEPT AS EXPRESSLY SET FORTH HEREIN. BUYER SPECIFICALLY AGREES THAT IT IS NOT RELYING ON SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH COAL THAT IS SUITABLE FOR A PARTICULAR PURPOSE OF BUYER.

## 13. REMEDIES

- (A) Subject to the formula for the calculation of damages identified in Section 11 above, which the parties agree satisfies the essential purposes hereof and is the exclusive method by which such damages are to be determined, the parties reserve their right to any other legal or equitable remedies.
- (B) Subject to the formula for the calculation of damages identified in Section 11 above, the parties' remedies arising from this Purchase Order are cumulative, and the exercise of any one of them shall not preclude the exercise by a party of any other remedy set forth herein as well as any equitable remedy.

## 14. ENTIRE AGREEMENT; MODIFICATIONS

This Purchase Order, the Fuel Purchase Order Terms and Conditions, together with any attachments or exhibits specifically referenced herein (collectively, the "Purchase Order"), 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.

## 15. COMPLIANCE WITH THE LAW

The parties' shall 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, including, without limitation:

- a) applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act of 1938, as amended, and of the regulations and orders of the U. S. Department of Labor issued under Section 14 thereof.
- b) federal and state Occupational Safety and Health laws;
- c) regulations of the Public Service Commission of Kentucky and Virginia;
- d) the Equal Opportunity Clause in Section 202, Paragraphs 1 through 7 or Executive Order 11246, as amended, and the

implementing Rules and Regulations of the Office of Federal Contract Compliance by all of which are incorporated herein by reference; and

- c) federal and state affirmative action obligations for contractors or subcontractors for minorities and females, handicapped workers and disabled veterans and veterans of the Vietnam Era, and the regulations issued thereunder, as amended from time to time (applicable government affirmative action clauses are incorporated herein by reference); and,

## **16. GOVERNING LAW**

The rights and duties of the parties hereto shall be determined by the laws of the Commonwealth of Kentucky and to that end this agreement shall be construed and considered as a contract made and to be performed in the Commonwealth of Kentucky,

## **17. NOTICES**

Notices provided for or required under this Purchase Order, unless expressly required to the contrary, 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 transmitted by facsimile or sent by certified mail, postage prepaid, return receipt requested, or by overnight mail or courier.

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 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 facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of a successful transmission. If the day on which such facsimile is received is not a business day or is after five p.m. Eastern Prevailing Time on a business day, then such facsimile shall be deemed to have been received on the following business day. Notices provided by certified mail, postage prepaid, return receipt requested, or by overnight mail or courier, shall be deemed delivered upon mailing.

## **18. [NOT USED]**

## **19. FORWARD CONTRACT**

Buyer and Seller each acknowledge that it is a "forward contract merchant" and that all transactions pursuant to this Contract constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

## **20. NETTING AND SETOFF**

If Buyer and Seller are required to pay any amount on the same day or 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 payments under this Contract and/or any other contract between the parties hereto may be offset against each other, set off or recouped therefrom.

## **21. SEVERAL LIABILITY**

LG&E and KU shall be severally but not jointly liable for any and all obligations of Buyer hereunder, and either shall be liable only for such obligations that pertain to the particular party actually constituting Buyer with respect to any particular Shipment hereunder.

**EXHIBIT A**  
**SAMPLE COAL PAYMENT CALCULATIONS**  
(Separate calculation will be performed on each quality coal)  
Total Evaluated Coal Costs for Purchase Order No. J18028

<u>Section I</u>		<u>Base Data</u>
1)	Base or Adjusted Base FOB Price per Ton:	<u>    \$40.00    </u> /ton
1a)	Tons of coal unloaded:	<u>                    </u> tons
2)	Guaranteed average heat content:	<u>    11,500    </u> BTU/LB.
2a)	As received monthly avg. heat content:	<u>                    </u> BTU/LB.
2b)	Total BTUs unloaded in the month:	<u>                    </u> MMBTUs
3)	Guaranteed shipment. max. Sulfur	<u>      3.00    </u> LBS./MMBTU
3a)	As received monthly avg. Sulfur	<u>                    </u> LBS./MMBTU
4)	Guaranteed monthly avg. Ash	<u>      11.30    </u> LBS./MMBTU
4a)	As received monthly avg. Ash	<u>                    </u> LBS./MMBTU
5)	Guaranteed monthly avg. max. Moisture	<u>      8.00    </u> LBS./MMBTU
5a)	As received monthly avg. Moisture	<u>                    </u> LBS./MMBTU
6)	BTU True Up: $\{[(\text{line } 2a) - (\text{line } 2)] \div \text{line } 2\} \times \text{line } 1$	<u>                    </u> Dollars/Ton
6a)	BTU True Up Dollars (line 6 x line 1a)	<u>                    </u> Dollars
<u>Section II</u>		<u>Discounts</u>
Assign a (-) to all discounts (round to (5) decimal places)		
7)	BTU/LB.: If line 2a < 11,200 BTU/LB. then: $\{1 - [(\text{line } 2a) / (\text{line } 2)]\} * \$0.2604/\text{MMBTU}$ $\{1 - ( ) / ( )\} * \$0.2604 =$	\$ <u>          </u> /MMBTU
7a)	Sulfur: If line 3a is greater than 3.15 lbs/MMBTU $[(\text{line } 3a) - (\text{line } 3)] * 0.1232/\text{MMBTU}$ $[( ) - ( )] * 0.1232 =$	\$ <u>          </u> /MMBTU
7b)	ASH: If line 4a is greater than 11.80 LBS/MMBTU $[(\text{line } 4a) - (\text{line } 4)] * 0.0083/\text{MMBTU}$ $[( ) - ( )] * 0.0083 =$	\$ <u>          </u> /MMBTU
7c)	MOISTURE: If line 5a is greater than 9.00 LBS/MMBTU $[(\text{line } 5a) - (\text{line } 5)] * 0.0016/\text{MMBTU}$ $[( ) - ( )] * 0.0016 =$	\$ <u>          </u> /MMBTU

**Section III**

**Total Price  
Adjustments**

Determine total Discounts as follows:

- |     |   |                  |
|-----|---|------------------|
| 8)  | BTU/Lb Discount Dollars (line 7 x line 2b)      | \$ _____ Dollars |
| 9)  | Sulfur Discount Dollars (line 7a x line 2b)     | \$ _____ Dollars |
| 10) | Ash Discount Dollars (line 7b x line 2b)        | \$ _____ Dollars |
| 11) | Moisture Discount Dollars (line 7c x line 2b)   | \$ _____ Dollars |
| 12) | Total Discount Dollars: Sum of lines 8 thru 11: | \$ _____ Dollars |

**Total Coal Payment Calculation**

- |     |   |                  |
|-----|---|------------------|
| 13) | Total coal payment for month:<br>[(line 1 x line 1a) + line 6a] – line 12 | \$ _____ Dollars |
|-----|---|------------------|