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John J. Finnigan, Jr.
Associate General Counsel
Duke Energy Kentucky

VIA OVERNIGHT DELIVERY

PUBLIC SERVICE
COMMISSION

August 31, 2006

Ms. Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: In the Matter of an Adjustment of the Electric Rates of The Union Light, Heat and Power Company d/b/a Duke Energy Kentucky, Inc.
Case No. 2006-00172

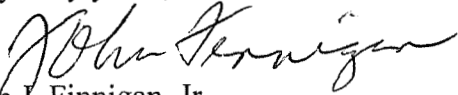
Dear Ms. O'Donnell:

When we filed our May 31, 2006 application and supporting information, we included copies of various coal contracts that Duke Energy Kentucky (a/k/a The Union Light, Heat and Power Company) has entered into related to the transfer of the generating plants from Duke Energy Ohio (a/k/a The Cincinnati Gas & Electric Company) to Duke Energy Kentucky. These coal contracts are located in Volume 17 of our May 31, 2006 filing. We hereby update our filing with a file copy and six additional copies of the following additional coal contracts:

- Confirmation, executed July 5, 2006, for additional coal purchases under the Oxford Contract, for the term August 1, 2006 through December 31, 2006;
- Master Coal Purchase and Sale Agreement between The Union Light, Heat and Power Company, d/b/a Duke Energy Kentucky, Inc., and Williamson Energy, LLC, dated May 4, 2006, and related confirmation, executed June 20, 2006, for coal purchases during the term January 1, 2007 through December 31, 2012;
- First Amendment to the Agreement for the Sale and Purchase of Coal, between ULH&P and Cumberland Coal Resources, LP, executed August 22, 2006; and
- Agreement for the Sale and Purchase of Coal between The Union Light, Heat and Power Company, d/b/a Duke Energy Kentucky, Inc., and Coal Network, Inc., dated July 30, 2006.

Thank you for your consideration in this matter.

Very truly yours,


John J. Finnigan, Jr.
Associate General Counsel

JJF/sew

cc: Hon. Dennis G. Howard (w/encl.)
Hon Elizabeth E. Blackford (w/encl.)
Hon. David G. Boehm (w/encl.)
Hon. Michael L. Kurtz (w/encl.)

Exhibit A
Confirmation / DRAFT

Coal Seller: ___ Coal Buyer: X

Coal Seller: X Coal Buyer: ___

The Union Light, Heat and Power, d/b/a
Duke Energy Kentucky, Inc.

Oxford Mining Company, Inc.

526 S. Church Street, EC11

PO Box 291

Charlotte, NC 28270

Cadiz, OH 43907

Attn: Kim Labrecht

Attn: Edward C Spiker

Tel. (704) 382-6344

Tel. (614) 361-4879

Fax. (513) 419-5840

Fax. (614) 241-5570

Ref #: HS10458E

Ref #: _____

This Confirmation sets forth the binding agreement entered into between The Union Light, Heat and Power Company d/b/a Duke Energy Kentucky, Inc. ("Buyer") and Oxford Mining Company, Inc. ("Seller"), on the Trade Date set out below as to a Transaction (this "Transaction") regarding the sale/purchase of Coal under the following terms:

- 1). Commodity: Coal, as defined in the Master Agreement
- 2). Trade Date: 6/22/06
- 3). Product: Coal as specified in Schedule 1
- 4). Term: August 1, 2006 through December 31, 2006
- 5). Quantity/Tons: 12,000 tons per month for a total Quantity of 60,000 tons over the Term of the Agreement.
- 6). Scheduling (Check One): Per Master Agreement
 Other: _____
- 7). Nomination Period (Check One): Monthly Quarterly Other: _____
- 8). Source(s): Seller's mines located in Belmont and Harrison Counties, OH
- 9). Delivery Point (Check One): F.O.B. railcar at the Source
 F.O.B. barge at the Source ORMP 92.8
 Other: _____
- 10). Contract Price: \$32.00 per ton at the Delivery Point. The price shall include all taxes, fees and proper charges.

- 11). Specifications (Check One): Per Attached Schedule 1 (Standard)
 Per Attached Schedule 2 (Periodic Performance)
- 12). Sampling Person (Check One): Per Master Agreement
 Other: _____
- 13). Analysis Person (Check One): Per Master Agreement
 Other: _____
- 14). Payment (Check One): Per Master Agreement
 Other _____

Buyer will self-invoice bi-monthly. Shipments unloaded during the first through the fifteenth of each month are payable ten days after the end of the month at the Contract Price. Shipments unloaded during the sixteenth through the end of the month are payable, with quality adjustments for all Shipments unloaded during the month, 25 days after the end of each month. Shipments shall be unloaded in the normal course of business without unreasonable delay by Buyer. Buyer shall pay, by electronic transfer in immediately available United States funds, the amount set forth on each invoice along with the necessary information enabling reconciliation to the relevant Shipment to the applicable payment address below.

Buyer billing contact:

1000 E. Main Street
 Plainfield, IN 46168
 Attn: Anita Webb
 Fax (317) 838-1023

Formulas for Quality Adjustments:

Btu: Btu price adjustment (\$/ton):

$$\$/\text{ton} = (\text{Monthly Weighted Average Actual Btu/lb} - \text{Monthly Weighted Average Guaranteed Btu/lb}) \times \text{Contract Price} / \text{Monthly Weighted Average Guaranteed Btu/lb}$$

SO₂ Penalty Adjustment (\$/ton):

If the Monthly Weighted Average Actual lbs SO₂/MMBtu exceeds the Monthly Weighted Average Guaranteed lbs SO₂/MMBtu for Coal loaded by Seller in any calendar month, the SO₂ Adjustment for all Coal loaded during the month is equal to:

$$\$/\text{ton} = ((\text{Monthly Weighted Average Guaranteed lbs. SO}_2/\text{mmbtu} - \text{Monthly Weighted Average Actual lbs. SO}_2/\text{MMBtu}) \times \text{Monthly Weighted Average Actual Btu/lb.}) \times ((E \times .10) + \$85) / 1,000,000$$

Where: Spot price of SO₂ Emission Allowances for any given delivery month means the 3 day average SO₂ Price of allowances expressed in dollars per ton of SO₂ in the table entitled "AIR Daily Emission Allowance Indices" published in Energy Argus Air Daily, or its successor publication, for such calendar month of delivery as published on the 3rd, 4th and 5th business days of the subsequent month (e.g. spot SO₂ price for allowances for January 2006 coal shipments would be calculated using an average of the indices published in Energy Argus air Daily on February 3, 6 and 7).

Ash Penalty Adjustment (\$/ton)

If the Monthly Weighted Average Actual Ash % exceeds the Monthly Guaranteed Ash %, the Ash Penalty Adjustment is equal to:

$$\$/\text{ton} = (\text{Monthly Weighted Average Actual Ash \%} - \text{Monthly Weighted Average Guaranteed Ash \%}) \times \$0.50$$

Example: $(13.5 - 12.5) \times \$0.50 = \0.50

Government Imposition (check one): Per Master Agreement
 Other _____

Other: _____

This letter constitutes a "Confirmation" as referred to in the Master Agreement specified below. This Confirmation supplements, forms part of, and is subject to the Master Coal Purchase and Sale Agreement dated December 29, 2005, as it has or may be amended, and supplemented from time to time (the "Master Agreement") between the Coal Seller and Coal Buyer. All provisions contained in the Master Agreement govern this Confirmation to the extent not in conflict with the terms hereof. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Please confirm that the foregoing correctly sets forth the terms of the agreement between you and us as to this Transaction by timely returning an executed copy of this letter by facsimile to (513) 419-5840. If you do not return this Confirmation or object to any of the terms stated herein within three (3) Business Days of your receipt of it, then in accordance with the Master Agreement this Confirmation shall be deemed correct, and binding and conclusive evidence of this Transaction. This Confirmation supercedes any broker confirmation concerning this Transaction.

The Union Light, Heat and Power Company
d/b/a Duke Energy Kentucky, Inc.

Oxford Mining Company, Inc.

By: *V.E. Stroud*

By: *Charles C. Ungurean*

Name: V.E. Stroud

Name: Charles C. Ungurean

Title: VP Reg. Perm

Title: President

Date: ~~7/1/06~~

Date: 6/28/06

7/5/06

Schedule 1
Standard to Confirmation: Specifications

The Coal delivered hereunder shall conform to the following specifications on an "as received" basis, in accordance with ASTM standards for each shipment in a month:

<u>Specification</u>	<u>Monthly Weighted Average Guarantee</u>	<u>Shipment Rejection Limits (Per Barge)</u>
BTU/LB.	11,800	< 11,200
MOISTURE	8 %	> 9 %
ASH	12.5 %	> 13.5 %
SULFUR		
SULFUR DIOXIDE (SO ₂)	6.5 lb./MMBTU	> 6.9 lb./MMBTU
VOLATILE	38.4 %	< 34 %
Size (2" x 0"):		
- Top size (inches)**	< 2 x 0 "	
- Fines (% by wgt)		
Passing 1/2" screen	< 35 %	> 45 %
GRINDABILITY (HGI)	51.4	< 48
<u>ASH FUSION TEMPERATURE (°F) (ASTM D1857)</u>		
<u>REDUCING ATMOSPHERE</u>		
Initial Deformation		
Softening (H=W)	2100°	min. 2050°
Softening (H=1/2W)		
Fluid		

* All the Coal will be such size that it will pass through a screen having square perforations three (3) inches in diameter, but shall not contain more than 55 percent (55.0%) by weight of Coal that will pass through a screen having square perforations one-quarter (1/4) of an inch in diameter.

Note: As used herein > means greater than and < means less than.

MASTER COAL PURCHASE AND SALE AGREEMENT

This **Master Coal Purchase and Sale Agreement** ("Master Agreement") is entered into this day of 5-4-06, (the "Effective Date") by and between **The Union Light, Heat and Power Company d/b/a Duke Energy Kentucky, Inc.** ("**Duke Energy Kentucky**") and **Williamson Energy, LLC** ("**Williamson**"). **UHL&P** and **Williamson** (each a "Party" and collectively, the "Parties") may, but shall not be required to, enter into Transactions which will be governed by this Master Agreement. Any capitalized term used herein and not defined in the Article in which it appears shall have the meaning set forth in Article 11 hereof. **Duke Energy Kentucky** and **Williamson** hereby agree as follows:

Article 1: Transactions

1.1. Procedures. A Transaction shall be entered into by means of an offer to buy or sell Coal or to buy or sell an Option by either Party to the other Party (through their respective agents and/or representatives) in writing. Any such Transaction shall be evidenced by an executed Confirmation (as hereinafter defined) as provided herein. Facsimile signatures by the appropriate authorities shall be considered as original signatures for all purposes under this Master Agreement.

1.2 Confirmations.

(a) The selling party ("Transaction Seller") will execute and send via facsimile to the buying party ("Transaction Buyer"), promptly after agreement as to a Transaction, a written confirmation memorializing the Transaction ("Confirmation"), which is substantially in the form attached hereto as Exhibit A-1. Each Confirmation will be promptly executed by the Transaction Buyer, if it accurately sets forth the terms and conditions of the Transaction agreed by the Parties, and returned to the Transaction Seller within three (3) Business Days of receipt. Each Confirmation will list the terms and conditions for the agreed Transaction not otherwise covered by this Master Agreement, including, without limitation, Transaction Buyer and Transaction Seller, Transaction Quantity, Term, Nomination Period(s), Scheduling, Transaction Price, Source(s), Delivery Point(s), Loading Capacities, Specifications, Periodic Performance Qualities (set forth in Schedule 2 of Exhibit A-1), Rejection Limits, premiums and/or penalties, and, if the Transaction includes an Option, Option Quantity, Exercise Date(s), Strike Price(s) and any other relevant terms agreed to by the Parties to the Transaction, including any exceptions to the Master Agreement. Should Transaction Seller fail to issue a Confirmation within three (3) Business Days after agreement to a Transaction or within such other time as agreed upon by the Parties, then the Transaction Buyer may issue a Confirmation which will evidence the Transaction. Such Confirmation shall nevertheless become enforceable only when fully executed by the Parties.

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(b) Except as otherwise provided in this Master Agreement, in the event of any inconsistency between the provisions of this Master Agreement and the terms set forth in a Confirmation, such Confirmation will prevail for the purpose of the relevant Transaction.

(c) Each Confirmation shall supplement and form a part of this Master Agreement and shall be read and construed together with this Master Agreement and all other applicable Annexes and Exhibits, which constitute a single integrated agreement between the Parties, and all the Transactions contemplated in Confirmations shall be integral parts of this Master Agreement. All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the Parties.

1.3 Representations. On the Effective Date hereof and on the Trade Date of each Transaction, each Party represents and warrants to the other that:

(a) The execution, delivery and performance of this Master Agreement and the relevant Transaction have been duly authorized by all necessary corporate or other organizational action on its part and do not violate or conflict with any law applicable to it, its organizational documents or any order or judgment of a court or other agency of government applicable to it or its assets;

(b) Its obligations under this Master Agreement and each Transaction are legally valid and binding obligations, enforceable in accordance with their terms;

(c) It has any and all necessary governmental and other third party permits, approvals and licenses required in connection with the execution, delivery and performance of this Master Agreement and any Transaction; and

(d) There are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

(e) There are no Legal Proceedings pending or, to its knowledge, threatened against it or any of its Affiliates that are likely to affect the legality, validity, enforceability or its ability to perform its obligations under this Master Agreement and each Transaction.

Article 2: Term

The term of this Master Agreement (the "Master Agreement Term") shall commence on the Effective Date and shall remain in effect until terminated by either Party upon thirty (30) days prior written notice; provided, however, that such termination shall not affect or

excuse the performance of any Party under any provision of this Master Agreement that by its terms survives any such termination, and this Master Agreement and any relevant Confirmations shall remain in effect with respect to any Transaction(s) entered into on or prior to the date of the termination until each Party has fulfilled all of its obligations with respect to all such Transaction(s).

Article 3: Obligations

3.1 Obligations for Purchase and Sale of Coal. During the Term of each Transaction, Seller agrees to sell and deliver to the Buyer, and Buyer agrees to purchase, accept and pay for from Seller, the Contract Quantity of Coal to be delivered at the Delivery Point as provided for in the relevant Confirmation.

3.2 Scheduling. Except as otherwise provided in the relevant Confirmation, Buyer will advise Seller on or before the 15th day of each calendar month preceding scheduled shipments of the number of unit trains, trucks or barges it desires to load during the succeeding month to fulfill the Transaction quantity and Buyer's desired loading dates and delivery schedule ("Delivery Schedule"). Seller will advise Buyer on or before the 25th day of the month preceding shipment of its Source mine(s)/loadout(s) for the scheduled monthly shipment(s). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period. Unless otherwise specifically set forth in the relevant Confirmation, all deliveries will occur in approximate ratable amounts over the Term of a Transaction. The Parties further agree that the Delivery Schedule shall take into account scheduled mine vacation periods and longwall moves and planned plant outages.

3.3 Delivery.

(a) Barge or vessel deliveries. For barge or vessel deliveries, the Coal shall be delivered to Buyer FOB barge or vessel at the Delivery Point. Title to and risk of loss of the Coal will pass to Buyer upon each barge or vessel being fully loaded and trimmed. Buyer, by itself or through its Transporter, shall furnish suitable barges or vessels for delivery of the Coal. Such barges or vessels shall be compatible with the Source's coal loading facilities to be utilized by Seller and shall be properly prepared to receive coal. Coal haulage or transportation equipment provided by either Seller or Buyer, as the case may be, shall be clean, dry and suitable for the transportation of coal and shall be provided in a timely fashion in order to comply with the delivery schedule. Seller shall arrange for and pay all costs of transporting the Coal to the Delivery Point and handling and loading the Coal into barges or vessels to the proper draft and proper distribution in such barges or vessels provided that Seller shall not be obligated to load any barge which it deems not to be clean and seaworthy.

Buyer shall arrange for and pay all costs for transporting the Coal by barge or vessel from and after the Delivery Point to its destination. If the Delivery Point at a Source is such that the Coal will have been transported by barge or vessel prior to delivery, then title to and risk of loss of the Coal will pass to Buyer upon the earlier to occur of (i) the safe and proper mooring of the barge(s) or vessel(s) at the Delivery Point loading dock or discharge point or (ii) other transfer of the custody and control of the barge(s) or vessel(s) to Buyer or Buyer's Transporter.

(b) Rail or truck deliveries. Unless otherwise specifically provided in the Confirmation, for rail or truck deliveries, the Coal shall be delivered to Buyer FOB Unit Train(s) or FOB truck(s) at the Delivery Point. For truck deliveries, title to and risk of loss of the Coal will pass to Buyer as each truck is loaded or unloaded, as appropriate. For rail deliveries, title to and risk of loss of the Coal will pass to Buyer upon completion of loading all railcars in each Unit Train and release of the Unit Train to the railroad. Buyer shall furnish suitable Unit Trains or trucks for loading and delivery of the Coal. Such Unit Trains or trucks shall be compatible with the coal loading facilities utilized by the Seller and shall be properly prepared to receive coal and shall be provided in a timely fashion in order to comply with the delivery schedule. Coal haulage or transportation equipment provided by either Seller or Buyer, as the case may be, shall be clean, dry and suitable for the transportation of coal. If the Delivery Point is at a Source such that the Coal will have been transported by Unit Train or truck prior to delivery, then title to and risk of loss of the Coal will pass to Buyer upon the earlier to occur of (i) the safe and proper placement of the Unit Trains or trucks at the Delivery Point or (ii) other transfer of the custody and control of the Unit Trains or trucks to Buyer or Buyer's Transporter.

(c) Shipping notices. For each delivery by vessel, barge, truck, or rail, Seller shall supply Buyer with a shipping notice which shall include the vessel name, train or barge or truck number, Source from which supplied, tonnage shipped, shipping date, destination, along with the analysis information required under Article 4 and any other information reasonably required by Buyer and agreed to by Seller. Seller shall within two (2) Business Days of loading or prior to arrival of the vessel, barge, truck or train (as applicable) at the destination following loading of such shipment (whichever comes first), send the shipping notice to Buyer by telecopy or other means as agreed to between Buyer and Seller. Notwithstanding the obligations to send shipping notices as provided in the previous sentence, Seller agrees to use Commercially Reasonable Efforts to send any such notices. Seller shall also provide Buyer Bill of Lading for each delivery which shall include name of Seller, contract number or purchase order number, train, truck or barge number, date loaded and Seller's delivered weights. Seller shall, as soon as is reasonably possible, notify Buyer of

any loading deficiencies or delays in loading via telephone or other electronic means.

(d) Transportation Charges. If a Party involved in a Transaction is charged for any increased transportation charges, penalties or other costs, including demurrage, attributable to the other Party's failure to timely and appropriately load or unload the Coal in accordance with the terms of the Transaction or the timing and tonnage requirements of the Transportation Specification, and if such failure is not due to Force Majeure, failure of the other Party or the other Party's railcars or transportation carrier, such failing Party shall promptly reimburse the other for such actual charges, if such charges are usual and customary, after written notice thereof. Upon request by either Buyer or Seller, such Transportation Specifications shall be made available for review by the requesting Party, provided that the disclosing Party shall not be required to disclose pricing information. The requesting Party shall sign an appropriate Confidentiality Agreement if requested by the disclosing Party.

(e) Freeze Conditioning. Seller shall, if it reasonably can, treat the Coal with freeze control agents or other additives as directed by Buyer. Buyer shall thereafter reimburse Seller for the actual cost of materials, including reasonable application costs as charged by the Source mine for application of the freeze control agents, or other additives. Seller shall invoice Buyer and Buyer shall pay Seller for such freeze conditioning in accordance with the provisions of Article 6.1 hereof.

(f) Reconsignment and Resale Rights. Buyer shall have the right, at its sole option, to reconsign or resell all or any part of the Coal delivered hereunder. Should Buyer exercise its right to reconsign or resell Coal, Seller shall use commercially reasonable efforts in cooperation with Buyer to arrange for transportation to the destination designated by Buyer if other than the Delivery Point. Buyer shall be responsible for all additional costs incurred by Seller to deliver such reconsigned or resold Coal to a delivery point other than the Delivery Point.

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

(i) Buyer shall inform Seller at least twenty-four (24) hours in advance of arrival of each Unit Train, truck, barge or vessel at the Source's mine/loadout of the identification number of the Unit Train truck, barge or vessel,

identification of Buyer's Customer, and destination of such Unit Train truck, barge or vessel.

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

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

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

3.5 Legislation. In the event of the enactment, modification, or revision, to include a change due to judicial or administrative interpretation, of any federal, state or local legislation, regulations, rules, or mandates issued pursuant thereto, including but not limited to the Federal Mine Safety Health Act of 1977 and the Surface Mining Control and Reclamation Act of 1977, (a "Change in Law") on or after the Trade Date of the relevant Transaction, with respect to, by way of example, but not limited to, taxes other than income taxes; reclamation; conservation; mine safety; mine working conditions and practices; ventilation; health and health care; occupational hazards; reclamation, and conservation of mined areas; which increases or decreases Seller's cost to mine or deliver Coal from the Source, an appropriate adjustment will be made to the Contract Price paid by Buyer to reflect such changed cost. Additionally, such change in cost shall be determined by the difference in the new cost and the cost in effect on the Trade Date of the relevant Transaction.

In the event that any price adjustment exceeds the then current Contract Price by more than ten percent (10%), or should the cumulative total of all such adjustments under this Section exceed ten percent (10%) of the Contract Price in effect as of the Trade Date of the subject Transaction, Buyer shall have the right, but not the obligation, to terminate the subject Transaction. Should Buyer terminate the subject Transaction as provided in the prior sentence, Seller may nullify such termination by giving written notice to Buyer within seven (7) calendar days after receiving Buyer's notice of such termination that Seller waives its rights to the amount of any increase above ten percent (10%) of the then

current Contract Price or that exceeds ten percent (10%) of the Contract Price in effect as of the Trade Date of the subject Transaction. In the event Seller does not waive its rights to the amount of any increase, and the Buyer elects to terminate, the Agreement shall continue in full force and effect for sixty (60) days from date of notice of termination at the then current contract price, and any increase as a result of legislation, and shall then terminate upon the completion of the sixty (60) day period, unless terminated sooner by Buyer.

3.6 Taxes and Other Liabilities. Each Party shall use Commercially Reasonable Efforts to administer this Agreement and implement the provisions in accordance with the intent to minimize Taxes within the good faith parameters of the law. Seller shall be solely responsible as to any Transaction for all assessments, fees, costs, expenses and taxes except for New Taxes imposed by governmental authorities or other third parties ("Third Party Impositions") relating to the mining, beneficiation, production, sale, use, loading and delivery of Coal to Buyer or in any way accrued or levied prior to the transfer of title to the Coal to Buyer, and including, without limitation, all severance taxes, royalties, black lung fees, reclamation fees and other costs, charges and liabilities. Buyer shall be solely responsible as to any Transaction for Third Party Impositions relating to the Coal accrued or levied at or after the transfer of title to the Coal to Buyer, including, but not limited to, sales or use tax if applicable. If either Party is exempt from taxes, it shall provide a certificate of exemption or other reasonably satisfactory evidence of such exemption. The amount of any New Taxes shall be borne by the Buyer unless otherwise provided in the applicable Confirmation, provided however that if such New Tax exceeds the then current Contract Price by more than ten percent (10%), or should the cumulative total of all such adjustments under this Section 3.6 exceeds ten percent (10%) of the Contract Price in effect as of the Trade Date of the subject Transaction, Buyer shall have the right but not the obligation to terminate any Transaction affected by a New Tax. Seller may nullify such termination by giving written notice to Buyer within seven (7) calendar days after receiving Buyer's notice of such termination that Seller waives its right to the amount of any increase above ten percent (10%) of the then current contract price or that exceed ten percent (10%) of the Contract Price in effect as of the Trade Date of the subject Transaction. Each Party shall use reasonable efforts to obtain and cooperate with the attempts by any other Party to obtain any pass through, exemption from or reduction of any Tax. Each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all Third Party Impositions with respect to the Coal that are the responsibility of such Party pursuant to this Section 3.6.

3.7 Option Exercise. Unless otherwise expressly provided in the relevant Confirmation for an Option, in order to exercise the Option, the buyer of the Option ("Option Buyer") will, no later than 5:00 p.m. Eastern Prevailing Time on the Exercise Date for an Option, notify the seller of the Option ("Option Seller") either verbally or in writing, which notice will be irrevocable ("Notice of Exercise"), of the Option Buyer's exercise of its right or rights granted pursuant to the relevant Option. The Option Buyer may exercise the right or rights granted pursuant to the Option only by timely giving a Notice of Exercise to the Option Seller. If the Option is not timely exercised, it will

expire and neither the Option Buyer nor the Option Seller will have any further rights or liabilities with respect to that Option. Once an Option under a Transaction has been timely and properly exercised, the physical purchase and sale of the Coal related thereto shall be governed by the terms of this Master Agreement and the relevant Confirmation, and the terms "Buyer" and "Seller" as used in this Master Agreement shall refer to the physical buyer and seller of the Coal, respectively, and not to the Option Buyer and Option Seller. Notice to Option Buyer or Option Seller, as the case may be, shall constitute notice to Buyer or Seller.

Article 4: Specifications, Weighing, Sampling and Analysis

4.1 Specifications. Seller shall cause all Coal delivered to Buyer pursuant to any Transaction to comply with the Specifications set forth in the relevant Confirmation.

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

(a) Seller shall cause the Source to test, calibrate, and certify its scales at the Source approximately every twelve (12) months to maintain them at a scale accuracy in accordance with the guidelines outlined in the National Bureau of Standards Handbook #44. Seller shall use Commercially Reasonable Efforts to notify Buyer as soon as it knows the date and time for such testing and calibration, and Buyer shall have the right, but not the duty, to witness such testing, calibration, and certification of Seller's scales.

(b) If the scales at the Source are determined to be inoperative, or if the Source is a Western Mine, then the weight of such coal delivered shall be determined by averaging the lading weight per railcar of the last five (5) trains of like equipment under this Agreement weighed at the Source prior to such breakdown. If less than five (5) trains of like equipment under this Agreement were weighed at the Source prior to the breakdown, the weight per railcar shall be determined by averaging the weight per railcar of the train(s) of like equipment under this Agreement weighed at the Source prior to the breakdown as well as the lading weight per railcar of train(s) of like equipment under this Master Agreement first weighed at the Source after the scales are operable, so as to comprise a five (5) train weighted average. If the Source is an Eastern Mine, the weight of such coal delivered shall be determined by railroad weights.

(c) Buyer shall have the right to have a representative present at its own risk and expense at any and all times to observe weighing of the coal. If

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either Party should at any time question the accuracy of the scales at the Source, such Party may request a prompt test and adjustment of such track scales or batch weighing system at its expense by an entity mutually agreed upon by Buyer and Seller.

4.3 Barge and Vessel Weighing. Unless otherwise agreed by the Parties in the relevant Confirmation, Shipments delivered by barge(s) or vessel(s) shall be weighed at Seller's expense as determined by a certified belt scale (such certification to be not older than six (6) months from the date of loading, and certification to be completed using procedures established in the National Institute of Standards and Technology Handbook 44 ("NIST") ("Scale Test") or if not available by draft survey taken at the Delivery Point prior to the departure of the barge(s) or vessel(s) from the Delivery Point at Seller's expense. The weights thereby determined (absent manifest error) will be the basis on which invoices will be rendered and payments made hereunder. All such draft surveys at the Delivery Point shall be conducted by a mutually agreeable independent surveyor (certified commercial marine surveyor for vessels) experienced in the conduct of draft surveys selected the Parties.

4.4 Sampling and Analysis.

(a) The Sampling Person, which shall be Seller, the Source or the Source's agent unless otherwise specified in the relevant Confirmation, shall cause a representative coal sample to be taken by mechanical sampler that is in control, as defined by the Sampling Ratio Control Chart in Appendix X1 of ASTM D2234 and that has been bias tested as it is used to load coal by the Paired Test Batch Design Method in ASTM D6518 within twelve (12) months prior to delivery by an independent mutually agreed to third party experienced in bias testing. The reference samples shall be stopped belt samples taken from the load-out feed belt, or equivalent and a batch shall be defined as the coal required to load a single train, unless the definition of a batch is otherwise mutually agreed in writing between the Parties. Each such stopped-belt sample shall be air dried prior to being crushed and reduced in size and each shall be analyzed separately in accordance with the referee method in ASTM D3302. Any bias that is detected shall be used to adjust the analyses. The paired data sets will be evaluated using a two tailed student's t-test at the 99% confidence level. A statistically significant bias is present for a parameter if the confidence interval of the parameter as defined by the upper and lower confidence limits does not include zero. The point estimate of the bias is the average of the differences between the reference samples and the product of the mechanical sampling system being tested. If non-biased tested equipment is specifically authorized in a Confirmation, and in such event the Sampling Person is not able to obtain a sample with biased tested equipment in proper working condition, the Parties shall confer for purposes or reaching agreement as to an alternative means of sampling. Samples shall be taken on an "as-loaded" basis, and analyzed on an "as-

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received" basis and all sampling, sample preparation and analysis shall be performed in accordance with then current published applicable ASTM standards.

(b) Analysis shall be performed by the Analysis Person which shall be an independent certified laboratory chosen by good faith agreement of the Parties. If the Parties fail to agree upon such laboratory, then each Party shall select its own independent certified laboratory and the analyses of both laboratories of the Sampling Person's samples shall be averaged and such average shall be conclusive and binding for all purposes, provided that the results obtained by the individual laboratories are within ASTM (interlaboratory) Reproducibility Limits; if the results are not within ASTM (interlaboratory) Reproducibility Limits, the analyses of such Samples by the independent laboratories shall be repeated. Samples shall be analyzed on an "as-received" basis in accordance with then current published applicable ASTM standards.

(c) The Sampling Person's samples of Coal representing each Shipment and the analysis thereof as set forth above, shall be used to determine quality adjustments pursuant to Article 5.1 and any rejection or suspension rights pursuant to Article 5.2 or 5.3. Each sample shall be divided into four (4) parts in accordance with then current ASTM standards and placed in separate airtight containers. One (1) part of each sample will be analyzed by the Analysis Person as determined pursuant to Article 4.4(b) above; and one (1) part shall be retained by the Sampling Person for a period of sixty (60) days (if Seller is not the Sampling Person) or shipped as Seller directs; one (1) part shall be retained by the Sampling Person for a period of sixty (60) days (if Buyer is not the Sampling Person) or shipped as Buyer directs; and one (1) part shall be retained by the Sampling Person for a period of sixty (60) days to be used for a referee analysis, if necessary.

(d) The Analysis Person shall perform a short proximate analysis on an "as-received" basis, which shall include total moisture, ash, Btu, sulfur and, other data as required by the applicable Confirmation. At the request of either Buyer or Seller, and at the expense of the requesting Party, additional analyses may be performed. The Sampling Person shall or shall cause the results of the short proximate analysis to be reported to the Buyer and Seller, along with train I.D. number, weight and shipping data ("Shipping Report") by fax, telephone (to be confirmed promptly by fax) or other electronic means as soon as available, but in any event within twenty-four (24) hours (forty-eight (48) hours for PRB Sources) of the completion of the loading of each Shipment. By notice to the Sampling Person within twenty-four (24) hours after delivery of the Shipping Report and in any event prior to unloading of the coal at the destination, Buyer or Seller may object to the analysis (the "Objecting Person"), and if so, the

Sampling Person shall submit the retained sample to an independent testing laboratory selected by and unaffiliated with the Objecting Person for an independent analysis. If the results of the independent analysis are within ASTM (interlaboratory) Reproducibility Limits, the original short proximate, sodium, and any other specification analysis as required in the applicable Confirmation, as appropriate, shall control and the costs of the independent analysis shall be paid by the Objecting Person. If such results for any Specification are not within such Reproducibility Limits, the results of the independent analysis shall control and the costs of the independent analysis shall be borne by the non-Objecting Person. All analyses shall be performed in accordance with then current published applicable ASTM standards.

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

Article 5: Quality Adjustments; Rejection and Suspension Rights

5.1 Quality Adjustments. If Coal delivered under a Transaction varies from the Specifications in the Confirmation for such Transaction and Buyer does not exercise its rejection rights under Article 5.2, quality adjustments shall be calculated pursuant to the formulas set forth in the Confirmation, and for any other specification(s) according to formula(s) set forth in the Confirmation. Within ten (10) Business Days after the end of each month during the Term for each Transaction, the quality adjustments for each Transaction, if any, shall be netted against each other and the net quality adjustment, as appropriate, for all Shipments during such month shall be determined by Seller, and Buyer shall pay Seller the net positive adjustment, if any, or Seller shall credit Buyer the net negative adjustment, if any, on the next invoice (or pay such amount to Buyer in the event no further invoices are due) in accordance with the billing and payment terms of Article 6.

5.2 Buyer's Rejection Rights. Unless otherwise specified in the relevant Confirmation, if any Shipment of Coal triggers any of the Rejection Limits specified in the Confirmation for a Transaction (a "Non-Conforming Shipment"), Buyer shall have the option, exercisable by notice to Seller (a) within twenty-four (24) hours of Buyer's receipt of the Sampling Person's short proximate analysis and additional analysis, if any, unless such analysis is received on a weekend or holiday, in which case the Buyer shall provide notice to Seller within twenty-four (24) hours of the next business day, of the Coal provided pursuant to Article 4.4 or (b) within twenty-four (24) hours of receipt of Coal at the generating station if Coal is noticeably contaminated with a foreign material, of either (i) rejecting such Non-Conforming Shipment at the Delivery Point or in route, but prior to unloading from Transporter's equipment or (ii) accepting any Non-Conforming Shipment with a Contract Price adjustment mutually agreed upon by the

Parties in a Confirmation. If Buyer fails timely to exercise its rejection rights under this Article 5.2 as to a Shipment, Buyer shall be deemed to have waived such rights to reject with respect to that Shipment only. Buyer's failure to timely exercise such notice does not however, constitute a waiver of its right to any penalty adjustment provided for herein or in the relevant Confirmation with respect to such Non-Conforming Shipment. If Buyer timely rejects the Non-Conforming Shipment, 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 election, replace the rejected coal within a reasonable period of time, provided that Buyer gives written notice to Seller of its desire for replacement coal within forty-eight (48) hours after rejection of the Non-Conforming Shipment. Notwithstanding anything to the contrary set forth herein, any claim by Buyer with respect to Coal sold hereunder or any penalty adjustment due hereunder shall be deemed waived by Buyer unless submitted to Seller in writing within thirty (30) days after delivery of such Coal.

5.3 Suspension Rights. Unless otherwise specified in the relevant Confirmation, if there are three (3) Non-Conforming Shipments, whether rejected or not, under a Transaction in any three (3) month period or if two (2) out of four (4) consecutive Shipments under a Transaction (with respect to barge coal the preceding test shall be determined by one (1) or more rejectable barges being loaded in each of two (2) days of sequential Shipments under a given Transaction whether or not there are any intervening days without Shipments) 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 such Transaction. A waiver by Buyer of the suspension right for any one period shall not constitute a waiver for subsequent periods. If Seller, within ten (10) days of its receipt of such notice, provides reasonable assurances in writing to Buyer that future Shipments under the Transaction will conform to the Specifications and Buyer has accepted such assurances (such acceptance not to be unreasonably withheld), Shipments shall resume and any tonnage deficiencies shall be made up within the Term. 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 Shipments of Coal trigger any of Buyer's rejection rights under Article 5.2 for the Rejection Limit parameter for which there was a prior suspension under such Transaction or should Seller fail to meet one (1) or more of the Suspension limits as set forth in a Schedule 1 to a Confirmation, as the case may be, then such failure shall constitute an Event of Default (as hereinafter defined) with respect to such Transaction.

Article 6: Settlements; Security

6.1 Billing and Payment.

(a) Unless otherwise agreed by the Parties, after the end of each shipment month during the Term for each Transaction, Buyer and Seller shall provide the other, if necessary, with an invoice, setting forth, as

appropriate, (i) the aggregate Contract Price owed to Seller for the Coal actually delivered to Buyer at each Delivery Point during the applicable month; (ii) any quality adjustments and supporting calculations determined pursuant to Article 5.1, and (iii) any transportation or other charges owed by Buyer or Seller to the other pursuant to this Master Agreement; (iv) any liquidated damages payments pursuant to Article 8.4 and (v) any Early Termination Payment pursuant to Article 8.3 No later than ten (10) days after receipt of a Party's invoice, (or if such day is not a Business Day, the immediately following Business Day), the receiving Party shall pay, by electronic transfer in immediately available United States funds, the amount set forth on such invoice along with the necessary information enabling reconciliation to the relevant shipment to the applicable payment address provided in Exhibit B. With regard to (iv) and (v) above, the Performing Party may, at its sole option, accelerate payments due them within three (3) Business Days after receipt of invoice. All past due payments shall bear interest at the Interest Rate from and including the date due to but excluding the date paid.

(b) The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller (or if such day is not a Business Day, the immediately following Business Day).

(c) If the receiving Party in good faith reasonably disputes an invoice, it shall nevertheless pay such amount in full no later than the due date, and shall provide a written explanation specifying in detail the basis for the dispute. If any amount disputed and paid by the receiving Party is subsequently determined not to be owing, such amount shall be re-paid within five (5) days along with interest accrued at the Interest Rate from the original due date until the date paid. If any Party otherwise fails to pay amounts under this Master Agreement when due, unless such amount is excused by Force Majeure under Article 7 hereof, in addition to the rights and remedies provided in this Master Agreement, the aggrieved Party shall have the right to: (i) suspend performance under this Master Agreement until such amounts plus interest at the Interest Rate have been paid, and/or (ii) exercise any remedy available at law or in equity to enforce payment of such amount plus interest at the Interest Rate.

6.2 Netting and Setoff. If, under any Transaction under this Master Agreement, the Parties 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 may pay to the other Party 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 Master Agreement and/or any Transaction may be offset against each other, set off or recouped therefrom.

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

6.4. Collateral Requirement/Termination Payment Threshold. If at any time and from time to time during the term of this Master Agreement (and notwithstanding whether an Event of Default has occurred or is continuing) the Early Termination Payment that would be owed to (i) Williamson in respect of all Transactions involving Duke Energy Kentucky then outstanding should exceed \$10,000,000, Williamson, on any Business Day, may request Duke Energy Kentucky to provide Performance Assurance in an amount equal to the Early Termination Payment in excess of \$10,000,000 (rounding upwards for any fractional amount to the next \$100,000), and (ii) Duke Energy Kentucky in respect of all Transactions involving Williamson then outstanding should exceed (w) \$0.00 in the event a Financial Covenant Event has occurred and is continuing, or (x) \$5,000,000 in the event a Financial Covenant Event is not in effect, Duke Energy Kentucky, on any Business Day, may request Williamson to provide Performance Assurance in an amount equal to the Early Termination Payment in excess of (y) \$0.00 in the event a Financial Covenant Event has occurred and is continuing, or (z) \$5,000,000 in the event a Financial Covenant Event is not in effect (rounding upwards for any fractional amount to the next \$100,000), or such other collateral as may be reasonably acceptable to Duke Energy Kentucky. For avoidance of doubt, until Williamson provides to Duke Energy Kentucky audited financial statements and Duke Energy Kentucky has determined whether Williamson has satisfied the Financial Covenants, a Financial Covenant Event with respect to Williamson shall be deemed to have occurred and be continuing, and Williamson shall provide Performance Assurance in accordance with this Section 6.4. The Performance Assurance or other acceptable collateral shall be delivered within one (1) Business Day of the date of such request or such later date agreed in writing by the Exposed Party. On any Business Day (but no more frequently than weekly

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with respect to Letters of Credit and daily with respect to cash), a Party, at its sole cost, may request such Performance Assurance be reduced correspondingly to that amount of the Early Termination Payment. For purposes of this Article 6.4, the calculation of "Early Termination Payment" shall include all amounts owed but not yet paid by one Party to another Party whether or not such amounts are then due, for performance already provided pursuant to any and all Transactions.

As security for the prompt and complete payment of all amounts due or that may now or hereafter become due from a Party to the other Party and the performance by a Party of all covenants and obligations to be performed by it pursuant to this Agreement, each Party hereby pledges, assigns, conveys and transfers to the other Party, and hereby grants to the other Party a present and continuing security interest in and to, and a general first lien upon and right of set off against, all Performance Assurance which has been or may in the future be transferred to, or received by, the other Party, and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing and each Party agrees to take such action as the other Party reasonably requests in order to perfect the other Party's continuing security interest in, and lien on (and right of setoff against), such Performance Assurance.

(a) If the Non-Exposed Party disputes the amount of Performance Assurance requested by the Exposed Party and such dispute relates to the amount of the Early Termination Payment claimed by the Exposed Party, then the Pledging Party shall (i) notify the Exposed Party of the existence and nature of the dispute not later than the First Local Business Day following the date that the demand for Performance Assurance is made by the Exposed Party, and (ii) provide Performance Assurance to or for the benefit of the Exposed Party in an amount equal to the Pledging Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's collateral requirement. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Business Day following the date that the demand is made by the Exposed Party, then the Pledging Party's Early Termination Payment shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average current mark-to-market value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the current mark-to-market value of each Transaction in respect of which the Parties disagree as to the current mark-to-market value thereof, and the Exposed Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

(b) If the Exposed Party disputes the amount of Performance Assurance to be reduced by the Exposed Party and such dispute relates to the amount of the Early Termination Payment claimed by the Pledging Party, then the Exposed Party shall (i) notify the Pledging Party of the existence and nature of the dispute not later than the first Local

Business Day following the date that the demand to reduce Performance Assurance is made by the Pledging Party and (ii) effect the reduction of Performance Assurance to or for the benefit of the Pledging Party in an amount equal to the Exposed Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's collateral requirement. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Local Business Day following the date that the demand is made by the Non-Exposed Party, then the Non-Exposed Party's Early Termination Payment shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average current mark-to-market value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the current mark-to-market value of each Transaction in respect of which the Parties disagree as to the current mark-to-market value thereof, and the Exposed Party shall inform the Non-Exposed Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

6.5 Interest on Cash Collateral. So long as no Event of Default with respect to the Non-Exposed Party has occurred and is continuing, and no Early Termination Date has occurred for which any unsatisfied payment obligations of the Non-Exposed Party exist or been designated as the result of an Event of Default with respect to the Non-Exposed Party and to the extent that an obligation to deliver Performance Assurance would not be created or increased by the transfer, the Exposed Party will transfer to the Non-Exposed Party, in lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to the Performance Assurance in the form of cash ("Cash Collateral") (all of which may be retained by the Exposed Party), the Interest Amount (as hereinafter defined) three Business Days following the last Business Day of each calendar month. On or after the occurrence of an Event of Default with respect to the Non-Exposed Party or an Early Termination Date as a result of an Event of Default with respect to the Non-Exposed Party, the Exposed Party shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of the Non-Exposed Party under this Master Agreement have been satisfied. The term "Interest Amount" shall mean with respect to an "Interest Period" (as hereinafter defined), the aggregate sum of the amounts of interest calculated for each day in that Interest Period on the principal amount of Cash Collateral held by the Exposed Party on that day, determined by the Exposed Party for each such day as follows: (i) the amount of cash held on that day; multiplied by (ii) the Cash Interest Rate (as defined herein) for that day; divided by (iii) 360. "Interest Period" means the period from (and including) the last Business Day on which an Interest Amount was transferred (or if no Interest Amount has yet been transferred, the Business Day on which Cash Collateral was transferred to the Exposed Party) to (but excluding) the Business Day on which the current Interest Amount is to be transferred. "Cash Interest Rate" shall be the Federal Funds Overnight Rate (as hereinafter defined) as from time to time in effect. "Federal Funds Overnight Rate" means the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical

release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

6.6 Financial Information; Review of Audited Financial Statements. Periodically a Party shall have the right to request updated financial information from the other Party. Promptly upon the requesting Party executing Confidentiality undertakings if requested by the other Party, the other Party shall promptly furnish financial information required in order to verify credit worthiness. In addition, UHL&P shall have the right, during the term of this Agreement, to review Williamson's audited financial statements, as available, on a quarterly basis, at a mutually agreeable time at Williamson's corporate offices. At all material times such review shall be for the purpose of confirming that Williamson has satisfied the Financial Covenants and has not experienced a Financial Covenant Event as defined herein. UHL&P shall execute an appropriate confidentiality agreement in connection with such review confirming that the review is limited to such purpose, and forbidding the further dissemination of Williamson's financial information either within UHL&P or to third parties.

6.7 Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions.

(i) Unless otherwise agreed to in writing by the parties, each Letter of Credit shall be maintained for the benefit of the Exposed Party. The Non-Exposed Party shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or other Performance Assurance, in each case at least twenty (20) Local Business Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank issuing a Letter of Credit shall fail to honor the Exposed Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Exposed Party either a substitute Letter of Credit that is issued by a bank acceptable to the Exposed Party or other Performance Assurance, in each case within one (1) Local Business Day after such refusal.

(ii) As one method of providing Performance Assurance, the Non-Exposed Party may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(iii) Upon the occurrence of a Letter of Credit Default, the Non-Exposed Party agrees to Transfer to the Exposed Party either a substitute Letter of Credit or other Performance Assurance, in each case on or before the first Local Business Day after the occurrence thereof (or the fifth (5th) Local Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).

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(iv) (A) Upon or at any time after the occurrence and continuation of an Event of Default with respect to the Non-Exposed Party, or (B) if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Non-Exposed Party for which there exist any unsatisfied payment obligations, then the Exposed Party may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Non-Exposed Party's obligations to the Exposed Party. Notwithstanding the Exposed Party's receipt of cash proceeds of a drawing under the Letter of Credit, the Non-Exposed Party shall remain liable (y) for any failure to transfer sufficient Performance Assurance or (z) for any amounts owing to the Exposed Party and remaining unpaid after the application of the amounts so drawn by the Exposed Party.

(v) In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys' fees of the Exposed Party) of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by the Non-Exposed Party.

Article 7: Force Majeure

7.1 If a Party to a Transaction is delayed in or prevented from performing, in whole or in part, any of its obligations under a Transaction due to, by way of illustration and without limitation acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, natural disasters, adverse geologic or mining conditions, breakdown of or damage to necessary facilities or equipment, transportation delays, or other causes, whether of a similar or dissimilar nature, that are beyond the reasonable control and without the fault or negligence of the Party affected thereby, including a breakdown of or damage to necessary faculties or equipment that cause an unplanned outage, and which by the exercise of due diligence, could not have been prevented or avoided by such Party (such events being referred to herein as "Force Majeure"), and such Party gives oral notice and full details of the Force Majeure to the other Party as soon as reasonably practicable after the occurrence of the event of Force Majeure and the date such Force Majeure prevents delivery or receipt of Coal hereunder, (such notice to be confirmed in writing), then during the pendency of such Force Majeure but for no longer period, the obligations of the Parties under such affected Transaction (other than obligations to make payments then due) shall be suspended to the extent required by the event. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch and will keep the other Party advised as to the continuance of the Force Majeure event; provided however, that this provision shall not require Seller to deliver, or Buyer to receive, the Coal at points other than the Delivery Point for the authorized Source including allowable substitutions under the Transaction. Force Majeure does not include: (i) the loss of Buyer's markets; (ii) a change in market conditions including the ability of the Seller to sell Coal at a higher price; (iii) Seller's inability to economically produce or

obtain the Coal; (iv) Buyer or Buyer's customer to buy Coal at a lower price, whether or not foreseeable.

7.2 If an event of complete or partial Force Majeure persists for a continuous period of sixty (60) days, then the Party not claiming Force Majeure shall have the option, upon three days' prior written notice, to terminate the affected Transaction to the extent affected and the associated obligations of the Parties thereunder (other than payment obligations for prior performance thereunder). In the event of a Force Majeure, delivery of the affected quantity of Coal shall not be made up except by mutual agreement of the Buyer and Seller. If an event of complete or partial Force Majeure persists for a period of ten (10) days or less, then the Party not claiming Force Majeure shall have the option of requiring that the affected Quantity of Coal be shipped, so long as notice of the intent to make-up such shipments is provided within ten (10) days of the notice of termination of such Force Majeure event. The Parties shall mutually agree on a schedule for such make-up shipments.

7.3 If Seller claims Force Majeure and is unable to meet all of its sales obligations under an affected Transaction and any other of its coal sales agreements involving coal of a similar type and quality as the Coal, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under an affected Transaction and any other of its coal purchase agreements involving coal of a similar type and quality as the Coal, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated reasonably among the affected Transaction(s) and such other coal supply or purchase agreements involving Coal of a similar type and quality as the Coal from the same Source as identified in the Confirmation.

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

Article 8: Events of Default, Remedies and Limitation of Liability

8.1 Events of Default.

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

- (i) the failure of Defaulting Party to pay when due any required payment and such failure is not remedied within three (3) Business Days after written notice thereof;

(ii) the failure of the Defaulting Party to comply with its other material obligations under this Master Agreement or under any Transaction covered by this Master Agreement, and such failure continues uncured for three (3) Business Days after written notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such three (3) Business Day period, the cure period shall be extended for an additional period reasonably necessary to remedy such failure subject to the condition that during the additional period, the Defaulting Party shall be diligently pursuing a remedy for the failure;

(iii) the Defaulting Party shall be subject to a Bankruptcy Proceeding;

(iv) an event described in the last sentence of Article 5.3 has occurred with respect to a Transaction;

(v) any material representation or warranty made by a Party herein shall prove to be untrue in any material respect when made;

(vi) the Defaulting Party fails to establish, maintain, extend or increase Performance Assurance when required pursuant to this Master Agreement; or

(vii) (i) a default, event of default or other similar condition or event in respect to the Defaulting Party under one or more agreements or instruments, individually or collectively, relating to Specified Indebtedness in an aggregate amount of not less than the applicable Cross Default Amount, which results in such Specified Indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount.

(viii) Such Party defaults under a Specified Agreement and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Agreement or defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery

or exchange date of, or any payment on early termination of, a Specified Agreement (or such default continues for at least three Business Days if there is no applicable notice requirement or grace period), where "Specified Agreement" means (a) any privately negotiated rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, agreement for the purchase, sale or transfer of any Commodity or any other Commodity trading transaction, or any similar transaction (including any option with respect to any of these transactions), and (b) any combination of these transactions. For this purpose, the term "Commodity" means any tangible or intangible commodity of any type or description (including, without limitation, electric power, electric power capacity, petroleum, natural gas, and byproducts thereof) or any other similar transaction."

8.2 Early Termination. Upon the occurrence and during the continuance of an Event of Default, as to the Defaulting Party, the other Party (the "Non-Defaulting Party") may, in its sole discretion, (a) accelerate and liquidate the Parties' respective obligations under this Master Agreement and all Transactions by establishing, and notifying the Defaulting Party of, an early termination date (which shall be no earlier than the date such written notice is received and no later than twenty (20) days after the date of such notice) on which this Master Agreement and all Transactions shall terminate ("Early Termination Date"), and/or (b) withhold any payments due to the Defaulting Party until such Event of Default is cured, and/or (c) suspend performance of its obligations under this Master Agreement and any Transactions until such Event of Default is cured. If the "Event of Default" is one described in Article 8.1(a) (ii) or (v) above and the Non-Defaulting Party has elected to establish an Early Termination Date, the Non-Defaulting Party may, in its sole discretion, choose to terminate only the Transaction(s) which gave rise to such Event(s) of Default (in which case, this Master Agreement shall remain in effect as to all Transactions not then terminated, without prejudice to the Non-Defaulting Party's rights under this Article 8.2 to declare upon a subsequent Event of Default an Early Termination Date as to any remaining Transactions(s)). If the Event of Default is one described in Article 8.1 (a) clause (iii), this Master Agreement and all Transactions under it shall automatically terminate and the Early Termination Date shall be established by the Non-Defaulting Party. If notice of an Early Termination Date is given under this Article 8.2, the Early Termination Date will occur on the designated date, whether or not the relevant Event(s) of Default is then continuing. Any rights of a Non-Defaulting Party under this Article 8.2 shall be in addition to such Non-Defaulting Party's other rights under this Article 8.

8.3 Early Termination Payment. If an Early Termination Date is established, the Non-Defaulting Party shall in good faith calculate its Gains or Losses, and Costs, resulting from the termination of the terminated Transaction(s), aggregate such Gains or Losses, and Costs, with respect to all terminated Transactions into a single net amount, and then notify the Defaulting Party of the net amount owed or owing. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within one (1) day of its receipt of such notice be required to pay the net amount to the Non-Defaulting Party, including interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from such early termination, the Non-Defaulting Party shall pay the net amount to the Defaulting Party in accordance with Article 6.1 hereof. The Non-Defaulting Party shall determine its Gains or Losses, and Costs, as of the Early Termination Date, or, if that is not possible, at the earliest date thereafter that is reasonably possible. If an Event of Default occurs, the Non-Defaulting Party may (at its election) set off any or all amounts which the Defaulting Party owes to the Non-Defaulting Party (or any Affiliates of the Non-Defaulting Party) under this Master Agreement or any other agreement(s) against any or all amounts which the Non-Defaulting Party (or any Affiliates of the Non-Defaulting Party) owes to the Defaulting Party under this Master Agreement and any other agreement(s) between the Parties. The Non-Defaulting Party shall use Commercially Reasonable Efforts to mitigate any costs and damages that it is entitled to hereunder and act at all times in a commercially reasonable manner. The Defaulting Party shall have the right to audit (through a third party independent auditor mutually agreed to by the Parties) the calculation of all such gains, losses and costs.

8.4 Remedies. Due to an Event of Default, and provided the Non-Defaulting Party has not set an Early Termination Date, the Non-Defaulting Party may recover the following monetary damages directly resulting from such Event of Default subject to the Non-Defaulting Party's duty to mitigate damages in accordance with Section 10.8. In circumstances where the Non-Defaulting Party has not set an Early Termination Date, the remedies set forth in this Article 8.4 shall be the Non-Defaulting Party's sole and exclusive monetary remedies for the Defaulting Party's failure to perform under a Transaction due to an Event of Default pursuant to Article 8.1 Notwithstanding the foregoing, the Non-Defaulting Party shall maintain all rights in equity to enforce the terms of this Master Agreement and any Transaction thereunder, including rights to demand specific performance thereof.

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

(b) Unless excused by Force Majeure or Buyer's failure to perform, if Seller commits an Event of Default or otherwise fails to deliver the

quantity of coal in accordance with the applicable Transaction and this Master Agreement, Seller shall pay to Buyer an amount for each ton of coal of such deficiency equal to (i) the market price at which Buyer is able, or at the time of Seller's breach, would be able (FOB Delivery Point) to purchase or otherwise receive comparable supplies of Coal of comparable quality on an equivalent $\$/\text{mmBtu}$, SO_2 adjusted basis ("Replacement Price") minus (ii) the Contract Price agreed to for the specific Transaction; except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

(c) Unless excused by Force Majeure or Seller's failure to perform, if Buyer commits an Event of Default or otherwise fails to accept delivery of the quantity of coal in accordance with the applicable Transaction and this Master Agreement, Buyer shall pay to Seller an amount for each ton of coal of such deficiency equal to (i) the Contract Price agreed to for the specific Transaction minus (ii) the market price at which Seller is able, or would be able (FOB Delivery Point), to sell or otherwise dispose of the coal at the time of Buyer's breach ("Sales Price") ; except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

(d) Both Parties shall be subject to a commercially reasonable good faith obligation to mitigate any damages hereunder.

(e) Payment of amounts, if any, determined under paragraph (b) or (c) of this Article 8.4 shall be made in accordance with Article 6.1. All such determinations shall be made in a commercially reasonable manner and 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.

(f) If a Party obligated to make a payment under this Section 8.4 timely makes such payment to the other Party, no failure to perform, short of an Event of Default, as described in this Section 8.4 shall constitute an Event of Default pursuant to Section 8.1.

(g) The Parties agree that any Gains, Losses, Early Termination Damages or other damages that directly result from an Event of Default shall be limited to the period measured from the date that such Event of Default first occurs until the date of any contract reopener or similar price reopener date for the subject tonnage.

8.5 Damages Stipulation. Each party stipulates and agrees that the methodology for computing damages set forth in Article 8 is not unenforceable as a matter of law.

8.6 Expenses. The Defaulting Party will indemnify and hold harmless the Non-Defaulting Party for and against all reasonable out-of-pocket expenses, including Legal Costs, incurred by the Non-Defaulting Party by reason of the enforcement and protection of its rights under this Master Agreement or any Transaction by reason of an Event of Default or a termination of a Transaction, including, but not limited to, costs of collection.

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

Article 9: Arbitration

Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in New York, New York and the laws of New York shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) calendar days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by Duke Energy Kentucky and one shall be selected by Williamson. A knowledgeable, disinterested and impartial arbitrator, with significant experience and expertise with respect to coal supply agreements, shall be selected by the

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two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) calendar days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be limited discovery during the arbitration as directed by the arbitrator(s). The arbitrator(s) shall have the authority only to award equitable relief (including immediate or expedited injunctive relief) and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) calendar days after the date of the selection of the arbitrator(s) or within such period as the parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article. Each Party agrees that in the event of any dispute between the parties, it will continue to perform its obligations hereunder.

Article 10: Miscellaneous

10.1 Successors and Assigns; Assignment. This Master Agreement 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 Master Agreement or any Transaction or any of its rights or obligations hereunder or under any Transaction without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, any Party may, without the need for consent from the other Parties (and without relieving itself from liability hereunder and under any Transaction), (a) transfer, sell, pledge, encumber or assign this Master Agreement and/or any Transaction or the accounts, revenues or proceeds hereof or thereof in connection with any financing or other financial arrangements; (b) transfer or assign this Master Agreement and/or any Transaction to an Affiliate of such Party so long as the Affiliate has a credit rating equal to or higher than the original Party; or (c) transfer or assign this Master Agreement and/or any Transaction to any creditworthy person or entity, as such creditworthiness is determined by the non-assigning Party using reasonable commercial practices, succeeding to all or substantially all of the assets of such Party by way of merger, reorganization or otherwise; provided, however, that no such assignment shall in any way relieve the assignor from liability for full performance under this Master Agreement and the Transactions. Any such assignee shall assume and agree to be bound by the terms and conditions of this Master Agreement and such Transactions. Any transfer in violation of this section shall be deemed null and void.

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

10.3 Notices. All notices, requests, statements or payments shall be made to the addresses specified in Exhibit B hereto. Unless expressly provided otherwise, notices shall be in writing and delivered by letter, facsimile, electronically or other documentary form. Notice by facsimile, electronic means or hand delivery shall be deemed to have been received by the close of Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of the Business Day in which it shall be deemed received at the close of the next Business Day). Notice by overnight mail or courier shall be deemed to have been received one (1) Business Day after it was sent. A Party may change its address by providing notice thereof in accordance with this Article 10.3.

10.4 Confidentiality. No Party shall disclose, without the prior written consent of the other Party, the terms of any Transaction to a third party (other than a Party's and its Affiliates' employees, lenders, counsel, or accountants) except in order to comply with any applicable law, order, regulation or exchange rule; provided, each Party shall notify the other Party of any proceeding of which it is aware which may result in disclosure and use Commercially Reasonable Efforts to prevent or limit the disclosure.

10.5 Governing Law. THIS MASTER AGREEMENT AND EACH TRANSACTION AND THE RIGHTS AND DUTIES OF THE PARTIES ARISING HEREFROM AND THEREFROM SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.6 Entire Agreement; Amendments; Interpretation. This Master Agreement, the Schedules, Annexes, Exhibits and Appendices hereto and made a part hereof, if any, and each Transaction, constitute the entire agreement between the Parties relating to the subject matter contemplated by this Master Agreement and supersedes any prior or contemporaneous agreements or representations affecting the same subject matter. Except for any matters which, in accordance with the express provisions of this Agreement, may be resolved by verbal agreement between the Parties, no amendment, modification or change to this Master Agreement shall be enforceable unless reduced to a writing

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executed by the Party against whom such amendment, modification or change is sought to be enforced and specifically referencing this Master Agreement. The Parties acknowledge that each Party and its counsel have reviewed and revised this Master Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be used in interpretation of this Master Agreement.

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

10.8 Non-Waiver; Duty to Mitigate; No Partnership or Third Party Beneficiaries. No waiver by any Party of any of its rights with respect to any other Party or with respect to any matter or default arising in connection with this Master Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver shall be in writing signed by the waiving Party. Each Party agrees that it has a duty to mitigate damages. Except as otherwise set forth in the Preamble to this Master Agreement, nothing contained in this Master Agreement or in any Transaction shall be construed or constitute any Party as the employee, agent, partner, joint venturer or contractor of any other Party. This Master Agreement and each Transaction is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Master Agreement or any Transaction.

Article 11: Definitions

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

“Analysis Person” means the person or entity specified in the relevant Confirmation that will pay for and perform, or cause to be performed, analysis of the Coal pursuant to a

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Transaction. Unless otherwise stated in the relevant Confirmation, the Analysis Person shall be an independent certified laboratory chosen by good faith agreement of the Parties.

“ASTM” means the American Society for Testing and Materials.

“Bankruptcy Proceeding” means with respect to a Party or entity, such Party or entity (a) makes an assignment or any general arrangement for the benefit of creditors, (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, (c) has such a petition filed against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (d) otherwise becomes bankrupt or insolvent (however evidenced), or (e) is unable to pay its debts as they fall due.

“Bill of Lading” means with respect to a truck delivery, a certified truck scale weight, and with respect to a train delivery, a certified rail weight certificate.

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

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

“Buyer” means the Party to a Transaction who is obligated to purchase and receive, or cause to be received, Coal during the Term of the Transaction.

“Buyer’s Customer” means the party that Buyer has contracted to sell the Coal purchased from Seller under a Transaction.

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

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

“Coal Buyer” means Buyer.

“Coal Seller” means Seller.

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

“Contract Price” means the price in \$U.S. per Ton (unless otherwise specified in the Confirmation) to be paid by Buyer to Seller for the purchase of Coal and any other proper charges pursuant to a Transaction.

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

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

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“Cross Default Amount” means for Duke Energy Kentucky, ~~\$25,000,000~~ (twenty-five million US dollars, and for Williamson means \$2,500,000.

“Current Ratio” means the result of dividing current assets by current liabilities, as such terms are defined consistent with generally accepted accounting principles.

“Delivery Point” means the agreed point(s) of delivery and receipt of the Coal pursuant to a Transaction. Title to and risk of loss of the Coal pass to Buyer as set forth in Section 3.3.

“Eastern Prevailing Time” means Eastern Standard Time or Eastern Daylight Time in effect in New York, New York, as the case may be.

“Eastern Mine” means a coal mine that is located east of the Mississippi River.

“EBITDA Interest Coverage” means (a) adjusted earnings from continuing operations before interest, income, taxes, depreciation and amortization; divided by (b) gross interest incurred before subtracting capitalized interest and interest income, as all such terms are defined consistent with generally accepted accounting principles.

“Exercise Date” means the agreed date (as specified in the relevant Confirmation for an Option) prior to or on which the Option buyer must notify the Option Seller that the

Option Buyer has elected to purchase or sell, as applicable, the relevant Option Quantity, if any, under a Transaction. Unless otherwise specified in the Confirmation the Exercise Date will be on or before the first Business Day of the month preceding an Exercise Period.

“Exercise Period” means the period of time covered by the exercise of an Option.

“Exposed Party” means the Party that the Non-Exposed Party is required to provide Performance Assurances to.

“FFO/Debt (%)” means the (a) the sum of (i) net income from continuing operations plus (ii) depreciation and amortization plus (iii) deferred income taxes plus (iv) other non-cash items; divided by (b) the sum of (i) long-term debt plus (ii) current maturities plus (iii) commercial paper plus (iv) other short term borrowings, as all such terms are defined consistent with generally accepted accounting principles.

“Financial Covenants” means that Williamson has satisfied each of the following financial metrics, in the reasonable judgment of Duke Energy Kentucky, as evidenced by Williamson’s audited financial statements reflecting Williamson’ financial position over the previous twelve months:

- a. Operating Margin (%) greater than or equal to 17%;
- b. FFO/Debt (%) greater than or equal to 35.9%;
- c. Total Debt/Capital (%) less than or equal to 42.5 %;
- d. Total net worth (\$) greater than \$100 million;
- e. Current Ratio greater than or equal to 1.65;
- f. EBITDA Interest Coverage greater than or equal to 6.5.

“Financial Covenant Event” means that Williamson has failed to satisfy one or more of the Financial Covenants, in the reasonable judgment of Duke Energy Kentucky, as evidenced by Williamson’s audited financial statements reflecting Williamson’s financial position.

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

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

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

“Interest Rate” means, for any date, two percent over the per annum rate of interest equal to the prime lending rate as may from time to time be published in the *Wall Street*

Journal under “Money Rates” provided the Interest Rate shall never exceed the maximum rate allowed by applicable law.

“Legal Costs” means, with respect to a Party, the reasonable out-of-pocket expenses incurred by it, including legal fees, by reason of the enforcement and protection of its rights under this Master Agreement or any Transaction.

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

“Letter of Credit” means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a 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, in a form mutually agreed upon by Duke Energy Kentucky and Williamson, with such changes to the terms of the form as the issuing bank may require and as may be acceptable to the beneficiary thereof.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (i) “A-” by S&P or “A3” by Moody's, if such issuer is rated by both S&P and Moody's, (ii) “A-” by S&P, if such issuer is rated only by S&P, or (iii) “A3” by Moody's, if such issuer is rated only by Moody's; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any such case without replacement; or (e) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Master Agreement.

“Long-term Debt” means the sum of all senior debt, including bonds, debentures, bank debt, mortgages, deferred portions of long-term debt, and capital lease obligations with maturity greater than or equal to one year, including amounts for operating lease debt equivalent, and debt associated with accounts receivables sales securitization programs, as all such terms are defined consistent with generally accepted accounting principles.

“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 a terminated Transaction, determined in a commercially reasonable manner.

“Moody's” means Moody's Investor Services, Inc. or its successor.

“New Taxes” means (a) any taxes, fees or assessments enacted and effective after the Trade Date of the relevant Transaction, including, without limitation, that portion of any taxes or New Taxes that constitutes an increase.

“Nomination Period” shall mean the agreed calendar term for scheduling Coal within the applicable Term pursuant to a Transaction.

“Non-Exposed Party” means the Party who is required to provide Performance Assurances hereunder.

“Operating Margin (%)” means operating income divided by sales revenue, as such terms are defined consistent with generally accepted accounting principles.

“Option” means the right, but not the obligation, which one Party grants to the other Party under a Transaction to either sell or purchase the Option Quantity under that Transaction.

“Option Quantity” means the quantity of Coal that is covered by an Option and that, upon the proper exercise of such Option by the Option Buyer, is required to be sold and delivered (and purchased and received) pursuant to the Transaction.

“PRB” means the Powder River Basin located in the States of Montana and Wyoming.

“Performance Assurance” means collateral in the form of either (i) cash, (ii) Letters of Credit, or (iii) such other form of Performance Assurance, all of which shall be acceptable to the party requesting such Performance Assurance.

“Reference Market-maker” means a leading dealer in the relevant market selected by a Party determining its Early Termination Payment in good faith from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

“Rejection Limits” means the quality characteristics for the Coal pursuant to a Transaction as specified in the relevant Confirmation that give rise to a rejection right of Buyer pursuant to Article 5.2 of this Master Agreement.

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

“Sampling Person” means the person or entity specified in the relevant Confirmation that will pay for and perform, or cause to be performed, sampling and analysis of the Coal pursuant to a Transaction. Unless otherwise agreed by the Parties in a Confirmation the Sampling Person shall be the Seller for sampling purposes.

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

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“Shipment” means, as applicable, one Unit Train, one barge, or the tonnage delivered by truck within a payment period, as set forth on the Confirmation.

“SO₂” means sulfur dioxide and lbs. of SO₂ per mmBtu means sulfur dioxide per million Btu.

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

“Specifications” means the quality characteristics for the Coal subject to a Transaction on an “as received” basis, using ASTM standards, specified in a Schedule 1 (Standard) or a Schedule 2 (Periodic Performance) of the relevant Confirmation.

“Specified Indebtedness” referred to in Section 8.1 means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of any money.”

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

“Term” means the period of time from the date a Transaction is to commence to the date a Transaction is to terminate or expire.

“Ton” means 2,000 pounds.

“Total Debt/Capital (%)” means (a) the sum of (i) Long-term Debt plus (ii) current maturities plus (iii) commercial paper plus (iv) other short term borrowings, divided by (b) the sum of (i) long-term debt plus (ii) current maturities plus (iii) commercial paper plus (iv) other short term borrowings plus (v) Total Member Equity plus (vi) minority interest, as all such terms are defined consistent with generally accepted accounting principles unless otherwise defined herein.

“Total Member Equity” means the dollar amount of all equity held by all members of a limited liability company.

“Transaction” means a particular transaction agreed to by the Parties relating to the purchase, sale or exchange(s) of Coal, or an Option relating thereto, subject to this Master Agreement.

“Transportation Specifications” means the agreement(s) made by Seller, Buyer or any Party’s designee with its respective Transporter(s), as amended from time to time, covering the requirements for each Shipment, which agreements, including the timing

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and tonnage requirements thereunder, shall be no more restrictive than typical agreements for transport of Coal on rail lines, highways, vessels or barges transporting Coal to or from the Delivery Point(s) for third parties or to and from other delivery points in the vicinity of the Delivery Point. Such Transportation Specifications, or relevant portions therein, shall be made available upon request to the extent authorized within the relevant transportation agreement and shall be no more restrictive than typical agreements for transport of Coal on rail lines, highways, vessels or barges transporting Coal to or from Delivery Point(s) for third parties or to and from other delivery points in the vicinity of the Delivery Point.

“Transporter” means the entity or entities transporting Coal on behalf of Seller to and at the Delivery Point or on behalf of Buyer or Buyer’s designee from the Delivery Point.

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

“Western Mine” means a coal mine that is located West of the Mississippi River.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Master Agreement effective as of the Effective Date. This Master Agreement shall not become effective as to either Party unless and until executed by both Parties.

The Union Light, Heat and Power Company d/b/a

Duke Energy Kentucky, Inc.

By: Gianna Manes

Name: Gianna Manes

Title: Group Vice President

“Williamson”

Williamson Energy, LLC

By: Donald R. Holcomb

Name: DONALD R. HOLCOMB

Title: AUTHORIZED PERSON

DRH

Exhibit A
Confirmation

Coal Seller: ___ Coal Buyer: X Coal Seller: X Coal Buyer: ___
The Union Light, Heat and Power Company Williamson Energy, LLC

d/b/a Duke Energy Kentucky, Inc.

139 E. Fourth Street, EA606

Cincinnati, OH 45202

Attn: Confirmations

Tel. (704) 382-6344

Fax. (513) 419-5840

Ref #: HC10456E

430 Harper Park Drive

Beckley, WV 25801

Attn: Mike Moran

Tel. (704) 846-8248

Fax. (704)-844-0569

Ref #: _____

This Confirmation sets forth the binding agreement entered into between **The Union Light, Heat and Power Company d/b/a Duke Energy Kentucky, Inc. ("Duke Energy Kentucky")** and **Williamson Energy, LLC**, on the Trade Date set out below as to a Transaction (this "Transaction") regarding the sale/purchase of Coal under the following terms:

- 1). Commodity: Coal, as defined in the Master Agreement
- 2). Trade Date: 10/26/05
- 3). Product: Illinois Basin High Sulfur Washed Coal
- 4). Test Burn: This Confirmation is subject to Buyer conducting a 60,000 ton test burn, with the coal to be delivered at the 2007 FOB Barge contract price in accordance with a schedule that is mutually agreeable to the parties. This Confirmation may be terminated in the event that the test burn demonstrates operating problems, including without limitation slag formation, resulting from the use of such Coal by Buyer at its plants in Buyer's reasonable judgment. Seller will have the right to have a representative observe such test burn.
- 5). Term: January 1, 2007 thru December 31, 2012, or until termination or cancellation pursuant to any other provision hereof, whichever occurs first ("Term").
- 6). Quantity/Tons: 2007: 150,000 tons (ratable at approximately 12,500 per month)
2008 - 2012: 750,000 tons annually (ratable at approximately 62,500 tons per month).
- 7). Scheduling (Check One): Per Master Agreement
 Other: _____
- 8). Nomination Period (Check One): Monthly Quarterly Other: _____

DKH

- 9). Source(s): Pond Creek No. 1 Mine, Illinois Seam 6, located in Williamson and Franklin Counties, Illinois.
- 10). Delivery Point (Check One): X F.O.B. railcar, subject to the following: At Buyer's option, for calendar years beginning in 2008, with notice of at least 90 days prior to the commencement of the calendar year ("Annual Rail Notice"), Buyer may require Seller to supply up to 250,000 tons annually of the Quantity/Tons defined in Section 6 F.O.B. railcar. In the event Buyer does not provide to Seller an Annual Rail Notice for a given calendar year, , Buyer may elect to take 45,000 tons per calendar quarter of such calendar year by rail with a 30 day notice prior to the beginning of each such calendar quarter ("Quarterly Rail Notice"). Within three (3) days of Seller's receipt of Buyer's Quarterly Rail Notice, Seller shall notify Buyer of any unavoidable dock fees to be incurred by Seller during the applicable calendar quarter, up to \$0.75 per ton of quarterly Quantity/Tons of Coal ("Unavoidable Dock Expenses"). Within three (3) days of Buyer's receipt of Seller's notice of Unavoidable Dock Expenses, Buyer shall notify Seller of whether Buyer wishes to proceed with rail shipments in accordance with Buyer's Quarterly Rail Notice, or whether Buyer elects instead to receive such applicable quarterly shipments by barge. In the event Buyer elects to receive its applicable quarterly shipments by rail, the Contract Price for such shipments shall be increased by (i) \$0.25 per ton; plus (ii) the Unavoidable Dock Expenses up to \$0.75 per ton. For avoidance of doubt, Unavoidable Dock Expenses shall include only those expenses assessed or to be assessed against Seller by a docking facility relating to the Quantity/Tons for the applicable calendar quarter that Seller cannot, through commercially reasonable efforts, mitigate, avoid incurring or otherwise eliminate. Further, Seller (x) shall provide Buyer with a written explanation of Seller's efforts to mitigate Unavoidable Dock Expenses, and (y) confirms that the provisions of Section 6.3 – Audit of the Master Agreement shall apply to Unavoidable Dock Expenses.

X F.O.B. barge at the mile post 947.5 on the Ohio River or such other points of delivery as approved by Buyer provided that Seller holds Buyer harmless from any incremental transportation costs associated with delivery and receipt of coal at such other points of delivery

11).	Contract Price (\$/ton):	<u>FOB Barge</u>	<u>F.O.B. Railcar</u>
	2007	\$37.40	n/a
	2008	\$37.40	\$33.34
	2009-2010	Re-opener	Re-opener
	2011-2012	Re-opener	Re-opener

All FOB Barge pricing includes all harbor shifting and fleeting charges at the Delivery Point.

Barge Loading Terms: Except as otherwise instructed by the Buyer's transportation provider, Seller agrees to load a minimum of 1,500 tons into each open hopper rake jumbo barge and a minimum of 1,700 tons into each open hopper box jumbo barge. If Seller fails to load the barges to meet these minimums, the difference between the minimum tonnage and the actual tonnage times the barge rate (\$/ton) to Buyer's destination will be withheld from payments. Seller agrees

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to ensure that coal is available and that the loading dock has the capacity to load barges within 72 hours of placement within the parameters of the mutually agreed to Delivery Schedule. Failure to load barges within 72 hours may result in demurrage charges to the Seller. Buyer may withhold demurrage charges from final payment. Buyer shall be responsible for all fleeting charges, which shall not exceed \$100.00 per day, incurred for coal that has been loaded into barges at the Delivery Point and has not been removed by Buyer for longer than 72 hours.

Effective for the calendar years 2009 and 2010, and for the calendar years 2011 and 2012 thereafter, the Contract Price will be the Market Price for the applicable two calendar years as determined as hereinafter provided:

By February 1, 2008, and then by February 1, 2010 Buyer and Seller shall provide each other with their determination of the Market Price for the next applicable reopening period. "Market Price" shall mean the prevailing price, F.O.B. barge at the Delivery Point, to be charged or paid, or which is proposed to be paid, in arms-length transactions, for the applicable calendar years, for the quantity and quality of Coal which Seller is to supply during such calendar year. The Parties shall work in good faith to determine such Market Price.

If the Parties fail to agree on Market Price, and therefore the Contract Price for the applicable calendar years, by March 31, 2008, and then by March 31, 2010, as the case may be, this Agreement will automatically terminate effective December 31, 2008, or December 31, 2010 as the case may be.

At the request of Buyer, Seller agrees to cooperate with Buyer and Buyer's synthetic fuel provider, Tyrone Synfuels, LP ("TSLP") to facilitate TSLP's ownership of and use of Coal in its synthetic fuel production facility at the East Bend Electric Generating Station, at no additional cost to Buyer. Any such transfer of ownership and

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use of Coal to TSLP will not relieve Buyer of its obligations and duties under this Confirmation.

- 12). Specifications (Check One): Per Attached Schedule 1 (Standard)
 Per Attached Schedule 2 (Periodic Performance)
- 13). Sampling Person (Check One): Per Master Agreement
 Other: _____
- 14). Analysis Person (Check One): Per Master Agreement
 Other: _____
- 15). Weight (Check One): Per Master Agreement
 Other: _____
- 16). Payment (Check One): Per Master Agreement
 Buyer will self-invoice bi-monthly. Shipments loaded during the first through the fifteenth of each month are payable 10 days after the end of the month at the Contract Price. Shipments loaded during the sixteenth through the end of each month are payable, with quality adjustments for all Shipments loaded during the month, 25 days after the end of each month. Buyer shall pay, by electronic transfer in immediately available United States funds, the amount set forth on each invoice along with the necessary information enabling reconciliation to the relevant Shipment to the applicable payment address below:

Buyer Billing Contact:

1000 E. Main Street
Plainfield, IN 46168
Attn: Anita Webb
Fax: (317) 838-1023

Seller Billing Contact:

Attn: Paula Hendrick
Fax: 618-983-3017

Seller Payment Address:

Bank Name: Huntington National Bank
900 Lee Street
Charleston, WV 25301
Account Number: 01221202657
ABA number: 044000024

ORA

17). Additional Warranties:

Seller shall provide Product under this Transaction from Source. Seller warrants that it owns, leases, or controls with a contractual agreement, coal reserves at the Source with sufficient coal characteristics necessary to fulfill the requirements of this Transaction, including without limitation total and monthly tonnage requirements and coal quality specifications. Seller further warrants that it shall maintain such ownership, leasehold interest or contractual rights to such coal at the Source for the duration of the Term hereof.

Formulas for Quality Adjustments:

Btu adjustment:

$\$/\text{ton} = (\text{Monthly Weighted Average Actual Btu/lb} - \text{Monthly Weighted Average Guaranteed Btu/lb}) \times \text{Contract Price} / \text{Monthly Weighted Average Guaranteed Btu/lb}.$

Ash Penalty Adjustment: If the Monthly Weighted Average Actual Ash % exceeds the Monthly Weighted Guaranteed Ash %, the Ash Penalty Adjustment is equal to:

$\$/\text{ton} = (\text{Monthly Weighted Average Actual Ash \%} - \text{Monthly Weighted Average Guaranteed Ash \%}) \times \$0.50.$

Monthly weighted avg SO₂ Adjustment:

For purposes of this Agreement, a lb. of SO₂ shall equal $\frac{\text{AR S\%} \times 20,000}{\text{AR Btu/lb}}.$

If the Monthly Weighted Average Actual lbs SO₂/mmbtu varies from the Monthly Weighted Average Guaranteed lbs SO₂/mmbtu for Coal loaded by Seller in any calendar month, the SO₂ Adjustment for all Coal loaded during the month is equal to:

The Contract Price will be adjusted, on a monthly basis, to reflect actual SO₂ value received according to the following formula:

$\$/\text{ton} = (\text{Monthly Weighted Average Guaranteed lbs SO}_2/\text{mmbtu} - \text{Monthly Weighted Average Actual lbs. SO}_2/\text{mmbtu}) \times \text{Monthly Weighted Average Actual Btu/lb} \times ((E \times 10) + \$85) / 1,000,000$

Where: E is defined for any given delivery month as the three (3) day average SO₂ Price of allowances expressed in dollars per ton of SO₂ in the table entitled "Daily Market Assessments, SO₂ Allowances, Price for current vintage year" published in Energy Argus Air Daily, or its successor publication, as published on the 3rd, 4th and 5th business days of the subsequent month (e.g., spot price for allowances for January 2007 would be calculated by using an average of the daily market assessment price for the 2007 vintage year published in Energy Argus Air Daily on February 5th, 6th and 7th.)

However, in the event the monthly weighted average actual lbs. SO₂ per MMBtu is less than 4.0 lbs, Seller's premium shall be calculated as if the monthly weighted average actual lbs. SO₂/MMBtu equals 4.0 lbs.

D&H

18). Suspension Rights: Per Master Agreement
 Other _____

Suspension Rights: If there are two (2) consecutive months or three (3) months in a consecutive twelve (12) month period that the monthly weighted average as-delivered quality of Coal does not conform to the Monthly Weighted Average Suspension Quality for any Specification as set forth in Schedule 1, whether rejected or not by Buyer, then Buyer may upon notice to Seller suspend the receipt of future Shipments (except Shipments already loaded or in transit to Buyer) under such Transaction. A waiver by Buyer of the suspension right for any one period shall not constitute a waiver for subsequent periods. If Seller, within ten (10) days of its receipt of such notice, provides reasonable assurances in writing to Buyer that future Shipments under the Transaction will conform to the Specifications and Buyer has accepted such assurances (such acceptance not to be unreasonably withheld), Shipments shall resume and any tonnage deficiencies shall be made up within the Term at Buyer's option. 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 Monthly Weighted Average Qualities of Coal trigger any of Buyer's rejection rights under this Confirmation and the Master Agreement as noted below for the Rejection Limit parameter under such Transaction, then such failure shall constitute an Event of Default per the Master Agreement with respect to such Transaction.

Government Imposition (check one): Per Master Agreement
 Other _____

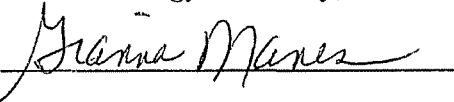
Other:
None. _____

This letter constitutes a "Confirmation" as referred to in the Master Agreement specified below. This Confirmation supplements, forms part of, and is subject to the Master Coal Purchase and Sale Agreement dated _____, as it has or may be amended, and supplemented from time to time (the "Master Agreement") between the Coal Seller and Coal Buyer. All provisions contained in the Master Agreement govern this Confirmation to the extent not in conflict with the terms hereof. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Please confirm that the foregoing correctly sets forth the terms of the agreement between you and us as to this Transaction by timely returning an executed copy of this letter by facsimile to (513) 419-5790. If you do not return this Confirmation or object to any of the terms stated herein within three (3) Business Days of your receipt of it, then in accordance with the Master Agreement this Confirmation shall be deemed correct, and binding and conclusive evidence of this Transaction. This Confirmation supercedes any broker confirmation concerning this Transaction.

**The Union Light, Heat and Power Company
d/b/a Duke Energy Kentucky, Inc.**

By: _____



Williamson Energy, LLC

By: _____



DRH

Name: Gianna Manes

Title: Group Vice President

Date: 6/20/06

Name: DONALD R. HOLCOMB

Title: AUTHORIZED PERSON

Date: 5-7-06

DRH

**Schedule 1
Standard to Confirmation: Specifications**

Illinois Basin High Sulfur Product

The Coal delivered hereunder shall conform to the following specifications on an "as received" basis:

Specification	Guaranteed Monthly Weighted Average Quality (Barge or Unit Train)	Shipment Rejection Limits (Barge/Unit Train)	Suspension Specifications (Barge/ Unit Train)
BTU/LB. (min)	11,400	<11,000	<11,200
MOISTURE (max)	10.00%	>13.0%	
ASH (max)	10.00%	>12.0%	>11.0%
SULFUR DIOXIDE (SO ₂) (max)	4.50 lb./MMBtu	>5.20 lb./MMBtu	>5.20 lb./MMBtu
VOLATILE	36%		
Chlorine	0.20%		
SIZE (2" x 0")			
Top Size (inches) * max	<2"		
Fines (% by wgt)			
Passing 1/4 inch screen (max)	55%		
GRINDABILITY	50	<45	
ASH FUSION TEMPERATURE (°F) (ASTM D1857)			
REDUCING ATMOSPHERE			
Initial Deformation			
Softening (H=W) (min)	2100°		
Softening (H=1/2W) (min)			
Fluid			

* All the Coal will be such size that it will pass through a screen having square perforations three (3) inches in diameter, but shall not contain more than 55 percent (55.0%) by weight of Coal that will pass through a screen having square perforations one-quarter (1/4) of an inch in diameter.

Note: As used herein > means greater than and < means less than.

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FIRST AMENDMENT TO THE AGREEMENT FOR THE
SALE AND PURCHASE OF COAL

This **FIRST AMENDMENT TO THE COAL SUPPLY AGREEMENT** ("First Amendment") is made and entered into this seventh (7th) day of August, 2006, by and between The Union Light, Heat and Power Company d/b/a Duke Energy Kentucky ("Buyer") and Cumberland Coal Resources, LP ("Seller").

WITNESSETH:

WHEREAS, the parties entered into a Coal Supply Agreement effective January 23, 2006 ("Agreement"); and

WHEREAS, the parties wish to amend the Agreement as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereto, the parties agree as follows:

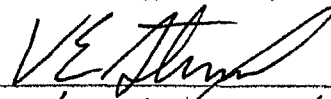
1. **AMENDMENTS** The Agreement is amended as follows:
 - a. "3). **Contract Price:** \$40.00 per ton F.O.B. Delivery Point." shall be deleted and replaced with the following:

"The first 180,000 tons of the Quantity delivered under the Agreement shall be at the price of \$40.00 per ton F.O.B. Delivery Point. The next 130,000 tons of the Quantity shall be delivered at the price of \$38.73per ton F.O.B. Delivery Point."
 - b. "5). **Quantity:** 250,000 tons." shall be deleted and replaced with the following:

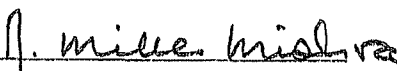
"5). **Quantity:** 310,000 tons."
2. **FULL FORCE AND EFFECT.** The Agreement remains in full force and effect except as modified by this First Amendment.
3. **ENTIRE AGREEMENT AND SUCCESSORS IN INTEREST.** The Agreement and this First Amendment contain the entire agreement between the parties hereto with regard to the matters set forth therein and shall be binding upon and inure to the benefit of the successors and assigns of each.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed on the dates set forth below.

Union Light, Heat & Power Company
d/b/a Duke Energy Kentucky

By: 
Title: V.P. Ray Ruel
Date: 8-22-06

Cumberland Coal Resources, LP
By: Pennsylvania Services Corporation,
Its General Partner

By: 
Title: President
Date: 8/7/06

PRK

Cinergy Corporate Records

06001466



Document Code _____

AGREEMENT FOR THE SALE AND PURCHASE OF COAL

BETWEEN

The Union Light, Heat and Power Company, d/b/a Duke Energy Kentucky, Inc.

AND

Coal Network, Inc.

DATED AS OF July 30 2006

Confidential

PO HC 10460

cin000828

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AGREEMENT FOR THE SALE AND PURCHASE OF COAL

THIS AGREEMENT is dated July 30, 2006 (the "Effective Date") and is between The Union Light, Heat and Power Company dba Duke Energy Kentucky, Inc., a Kentucky Corporation ("Buyer") and Coal Network, a South Dakota corporation ("Seller"), each a "Party" and collectively the "Parties."

SECTION 1. PURCHASE AND SALE

Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, the Coal described herein pursuant to the terms and conditions set forth in this Agreement.

SECTION 2. TERM

The term of this Agreement (the "Term") shall commence on August 1, 2006 and shall remain in effect until December 31, 2006 unless terminated earlier as set forth herein.

SECTION 3. CONTRACT QUANTITY

3.1 **Quantity.** Seller shall mine, sell and deliver, and Buyer shall purchase, accept, and pay for, the following quantity of Coal: approximately 150,000 Tons shipped in approximately equal monthly shipments of 30,000 tons per month, subject to the following. Seller and Tyrone Synfuels L.P. ("Tyrone") contemporaneously herewith are entering into that certain Agreement for the Sale and Purchase of Coal dated of even date herewith (the "Tyrone Agreement"). Tyrone may purchase from Seller under the Tyrone Agreement Coal that would otherwise be purchased by Buyer pursuant to this Agreement. Seller acknowledges and agrees that any coal that Tyrone purchases under the Tyrone Agreement shall be credited towards the satisfaction of Buyer's obligation to purchase Coal and Seller's obligation to deliver Coal under this Agreement, to the same extent as if Buyer had purchased such Coal from Seller and Seller had delivered Coal to Buyer under this Agreement. In no event shall Seller's obligation to deliver the aggregate quantity of Coal under the Tyrone Agreement and this Agreement exceed the quantity set forth in this section 3.1 above. The Tyrone Agreement shall govern such transaction between Seller and Tyrone. Seller further acknowledges that Buyer shall have no obligation with respect to any coal that Tyrone purchases or agrees to purchase, and agrees that Seller shall look solely to Tyrone for the payment for, and for the performance of any obligations with respect to, any coal that Tyrone purchases or agrees to purchase from Seller pursuant to the Tyrone Agreement. Buyer agrees that any coal that Tyrone purchases under the Tyrone Agreement that is shipped for delivery to Buyer's East Bend facility after the date on which the Synthetic Fuel and Coal Supply Agreement by and between The Cincinnati Gas & Electric Company and Tyrone

Synfuels, L.P. dated March 11, 2004, as amended and assigned to Buyer, is terminated, shall be purchased by Buyer pursuant to this Agreement.

3.2 **Scheduling**. Prior to the Month of delivery, the Parties will work together in good faith to agree upon a reasonable and mutually acceptable delivery schedule (the "**Delivery Schedule**") for the succeeding Month. The Delivery Schedule shall set forth the quantity, dates of delivery, Delivery Point, destination, route, any special loading requirements, Carrier to be utilized, and other relevant details as applicable. Deliveries will occur in approximately ratable amounts over the Term. Reasonable consideration will be given for expected holidays for Seller and coal handling outages and lock outages (if applicable) for Buyer. Any shortfall in scheduled monthly deliveries resulting from Carrier's failure of performance will be made up based upon a mutually agreeable shipping schedule.

3.3 **Source and Sufficient Supply**. The source of the Coal delivered hereunder (the "**Source**") shall be:

Mine: Dunningsville

Surface: _____ Underground:

Mine Operating Co.: Neiswonger Coal

Mine State: PA

Mine County: Washington

BOM District: 2

Seller represents and warrants that it has and shall continue to have from the Source sufficient reserves and/or access to a sufficient supply of Coal, and all ancillary materials and resources necessary in the quantity and quality required to perform its obligations and to fulfill its commitment to Buyer under this Agreement. At Buyer's request, Seller shall provide Buyer for its review a copy of the most recent mining plans for the Source.

SECTION 4. CONTRACT PRICE

4.1 **Contract Price**. Subject to adjustment pursuant to Section 8, the Contract Price for the Coal shall be:

(i) U.S. \$31.45 per Ton of Coal for the period August 1, 2006 through December 31, 2006;

Seller's cost of scheduling deliveries of Coal, loading Coal for delivery, providing Seller's weights and analysis, providing shipping notices or other applicable notices, taxes imposed on Seller, and all other preparations and activities (excluding freeze-

proofing set forth in Section 4.4) required to produce and ship Coal are included in the Contract Price.

4.2 **Compliance with Laws.** Except as provided in Section 4.3, the Contract Price includes (and is not subject to adjustment for) all costs of compliance by Seller with all applicable Laws as they may be amended from time to time. Seller represents that it is, and agrees that at all times during the term of this Agreement it shall be, in full compliance with all Laws.

4.3 **Government Imposition.** "Government Imposition" means taxes or fees imposed by any federal, state or local government or government agency upon the production, severance, preparation or sale of Coal hereunder, including, but not limited to, severance taxes on Coal produced or sold hereunder, and ad valorem taxes on Seller's land, improvements, machinery, equipment and the like. The term does not include impositions such as federal or state income taxes; employee benefits or payroll taxes such as employer's Social Security, unemployment or worker's compensation taxes or payments, or any civil or criminal money fine or penalty imposed as the result of failure to comply with any Law.

Adjustment to the Contract Price may be made for changes in Seller's costs per Ton of Coal sold hereunder after the Effective Date caused directly by increased or decreased Governmental Impositions. Seller shall give prompt notice to Buyer of the amount of any such increased or decreased cost per Ton of Coal sold hereunder incurred by reason of a change of Governmental Imposition along with detailed documentation of such amount.

In the event of an increase in cost, Seller in such notice further shall indicate the increase in Contract Price that Seller will require which increase may not exceed the increase in Seller's cost caused by Governmental Impositions effective after the Effective Date. Within thirty (30) Days of receipt of such notice, Buyer will give notice that Buyer at its option will either pay the requested increased Contract Price or will terminate this Agreement as of the date the increased Governmental Imposition becomes effective.

In the event of a decrease in cost, the Contract Price will be decreased by an amount equal to the decrease in Seller's cost caused by Governmental Impositions effective after the Effective Date.

Any adjustment to the Contract Price under this Section 4.3 will be effective as of the date the change in Governmental Imposition is effective.

4.4 **Freeze Proofing.** n/a

SECTION 5. DELIVERIES

5.1 **Delivery Point.** All Coal provided under this Agreement shall be delivered at Seller's Loading Facilities on the Ohio River, Mile Post 23.5 (the "Delivery Point"), however,

of 2" X 0" or such smaller size that does not interfere with, or cause difficulty in, Buyer's ability to handle, sample or utilize the Coal;

- (ii) shall not have a temperature in excess of 120 Degrees F.;
- (iii) shall be free from impurities, such as clay, non-carbonaceous rock, wood, or metals, that can be kept out or removed with the exercise of reasonable care during mining, processing, preparation or loading;
- (iv) shall be loaded in a manner that will ensure reasonably uniform consistency as to size and quality;
- (v) shall not contain slurry pond material (washer tailings), gob piles (mine refuse), asphalt, petroleum-coke, synthetic material, synthetic fuel, or blends of such materials;
- (vi) shall meet the following "As Received" guaranteed Coal quality Specifications, as determined pursuant to analyses performed in accordance with Section 7.4:

CHARACTERISTIC	MONTHLY WEIGHTED AVERAGE SPECIFICATION	REJECTION LIMITS/ PER SHIPMENT
Calorific Value: (Btu Content Per Pound)	11,500 Minimum	11,200 Minimum
Ash Content:	13.0 % Maximum,	13.5 % Maximum
* SO ₂ Content:	6.0 Lbs. per MMBtu Maximum	6.50 Lbs per MMBtu Maximum
Moisture Content (Total):	8.0 % Maximum	10.0 % Maximum
Volatile Matter Content:	30 % Minimum	<30 % Minimum
Fusion Temperature (Softening (H=W) °F, Reducing Atmosphere):	2200 °F Minimum	2000 °F Minimum
Grindability: (Hardgrove Index)	45 Minimum	< 42 Minimum
Size:	2" x 0"	2" x 0"

*The SO₂ content per MMBtu shall be determined by the following formula:

["As Received" % Sulfur x 20,000] / "As Received" Btu Per Pound = Pounds SO₂ Per MMBtu

Seller shall have the right to deliver up to four (4) barges per month at Mile Post 256.2, with any transportation savings to be shared equally between Buyer and Seller. Coal shall be delivered to Buyer F.O.B. barge or vessel at the Delivery Point. Title to and risk of loss to the Coal shall pass to Buyer upon each barge or vessel being fully loaded and trimmed. Buyer shall furnish suitable barges or vessels for loading and delivery of Coal. Such barges or vessels shall be compatible with Seller's Loading Facilities and shall be properly prepared to receive Coal. Coal haulage or transportation equipment provided by either Seller or Buyer, as the case may be, shall be clean and suitable for the transportation of Coal. If, prior to delivery, Coal is transported by barge or vessel by Seller to the Delivery Point, then title to and risk of loss to the Coal shall pass to Buyer upon the earlier to occur of (i) the safe and proper mooring of the barge(s) or vessel(s) at the Delivery Point loading dock or discharge point, or (ii) other clear transfer of the custody and control of the barge(s) or vessel(s) to Buyer or Carrier.

- 5.2 **Loading.** All Coal delivered hereunder shall be loaded and delivered by Seller into barges or vessels at Seller's Loading Facilities, at the loading times established under the Delivery Schedule. Seller will load a minimum of 1,500 tons into each open hopper rake jumbo barge and a minimum of 1,700 tons into each open hopper box jumbo barge. If Seller fails to load a barge to meet these minimums, then Seller will pay to Buyer the difference between the minimum tonnage and the actual tonnage times the barge rate (\$/ton) to Buyer's destination. Seller will ensure that Coal is available and that the Coal is loaded within 72 hours of placement. Seller will pay any demurrage charges resulting from failure to load barges within 72 hours of placement.

Seller shall maintain, or cause to be procured and maintained, Statutory Longshore and Harbor Workers' Compensation Act Insurance or Statutory State Workers' Compensation Insurance or Jones Act (Maritime Employers Liability), whichever is applicable, covering Seller's responsibilities with respect to all workers at the docks and fleets at all Delivery Points utilized by Seller, and Comprehensive Marine Liability insurance (in any combination of primary and excess coverage), including but not limited to Protection and Indemnity Liability, Jones Act (Maritime Employers Liability), Pollution Liability, Full Collision Liability, Marine Operators Liability, Marine Contractual Liability, Wharfinger Liability, Towers' Liability, Hull and Cargo Legal Liability and Cost of Removal of Wreck and Cargo (including voluntary or statutory), where applicable, covering the docks and fleets at all Delivery Points utilized by Seller in an amount not less than \$10,000,000 per occurrence.

SECTION 6. QUALITY

Seller warrants and guarantees that all Coal delivered to Buyer hereunder:

- (i) shall be Coal processed or quality controlled as necessary to meet the Specifications, free-flowing at temperatures above freezing and crushed to a size

Rejection Limits are applicable to each Shipment. Compliance with the Specifications for price adjustments is determined on a Monthly weighted average basis.

SECTION 7. WEIGHT, SAMPLING, ANALYSIS

- 7.1 **Seller's Short Proximate Analysis.** Within 24 hours from the time of each Shipment of Coal, Seller is required to fax or electronically mail ("email") to both Buyer's Coal Procurement Department and the receiving Station, Seller's Short Proximate Analysis for such Coal. If Seller fails to provide this data as required and a Shipment arrives at the receiving Station, Buyer shall have the right to hold such Shipment in detention until said data is properly received. Seller shall be responsible for charges associated with such detention assessed to Buyer by Carrier.
- 7.2 **General.** Coal shall be weighed, sampled and analyzed in accordance with Sections 7.3 and 7.4 for the purpose of (a) determining Seller's compliance with Section 6, (b) determining payment due Seller, including any adjustments to the Contract Price in accordance with Section 8.1, and (c) determining Buyer's rights and Seller's obligations under each of the other provisions of Section 8. If for any reason the Coal is not weighed, sampled and/or analyzed in the manner set forth in Sections 7.3 and 7.4, then Buyer and Seller shall mutually agree by what methods the governing weight and analysis of such Coal delivered hereunder shall be determined.
- 7.3 **Weight.** Shipments shall be weighed at Seller's expense as determined by a certified belt scale (such certification to be not older than six (6) months from the date of loading and to be completed using procedures established in the National Institute and Technology Handbook 44) or, if such a scale is not available, by draft survey taken at the Delivery Point prior to the departure of the barge(s) or vessel(s) from the Delivery Point at Seller's expense. All such draft surveys at the Delivery Point 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.
- 7.4 **Sampling and Analysis.** Seller shall sample, via a mechanical sampler, and analyze Coal at its expense. Sampling shall be carried out following the American Society of Testing and Materials (ASTM) standard, as set forth in ASTM standard D2234 (Type I, condition A or B, systematic spacing). Analysis is to be done in accordance with applicable ASTM standards. Such analysis shall be final and binding and shall govern for payment.

Seller shall make available sample splits and a report of each sample's quality for Buyer upon request. Buyer, at its expense, may make arrangements to pick up samples. Seller shall retain, for a period of 60 days from the loading date, sample splits taken in accordance with the provisions of this Agreement for use by Seller and the independent laboratory specified below.

In the event of a disagreement over Coal analysis and upon Buyer and Seller selecting a mutually agreed upon independent laboratory, Seller shall provide sample splits to the independent laboratory for analysis. Such analysis shall be accepted as the quality of Coal received. The cost of the independent analysis shall be equally shared between Buyer and Seller; however, the cost of the independent analysis shall be paid by Buyer if the results of such analysis and Seller's analysis are within applicable ASTM standards for repeatability and reproducibility, or in the absence of ASTM standards, mutually agreeable coal industry standards. If Seller's results are not so confirmed, then the laboratory's results shall be accepted as the quality and characteristics of the Coal.

SECTION 8. PRICE ADJUSTMENT, REJECTION, QUALITY ISSUES

8.1 Quality Price Adjustments.

If Coal delivered hereunder varies from the Specifications but Buyer does not exercise its rejection rights under Section 8.2, Coal quality adjustments pursuant to this Section 8.1 shall be made increasing or decreasing the Contract Price of the Coal to compensate for variations in the "As Received" monthly weighted average Btu content, Ash content and SO₂ content of such Coal from the Btu content, Ash content and SO₂ content set forth in the Specifications.

8.1.1 Btu Contract Price Adjustment.

If the "As Received" weighted average Btu content per pound of Coal in any Month is either less than or greater than the Btu content per pound of Coal as set forth in the Specifications, an adjustment increasing or decreasing the Contract Price per Ton of such Coal shall be calculated as follows:

$$[(\text{"As Received" Monthly weighted average Btu content per pound} / \text{Specification Btu per pound}) \times \text{Contract Price}] - \text{Contract Price} = \text{Btu Contract Price adjustment per Ton of Coal}$$

8.1.2 Ash Contract Price Adjustment.

There shall be no Ash Contract Price adjustment increasing the Contract Price per Ton of Coal if the "As Received" Monthly weighted average Ash content in such Coal is equal to or less than the Ash content as set forth in the Specifications.

If the "As Received" weighted average Ash content of Coal in any Month is greater than the Ash content as set forth in the Specifications, an adjustment decreasing the Contract Price per Ton of such Coal shall be calculated as follows:

$$\$0.35 \times (\text{Specification Ash Content} - \text{"As Received" weighted average Ash Content}) = \text{Ash Contract Price adjustment per Ton of Coal.}$$

8.1.3 SO₂ Contract Price Adjustment.

There shall be no SO2 Contract Price adjustment increasing the Contract Price per Ton of Coal if the "As Received" Monthly weighted average SO2 content is equal to or less than the SO2 content as set forth in the Specifications.

If the monthly weighted average actual lbs SO₂/mmbtu exceeds the Monthly Weighted Average Specification for Sulfur Dioxide (SO₂) lb/mmbtu for Coal loaded by Seller in any Month, the SO₂ adjustment for all Coal shipped in any Month is equal to:

$$\$/\text{ton} = (\text{Monthly Weighted Average Specification for Sulfur Dioxide (SO}_2\text{) lb /mmbtu} - \text{monthly weighted average actual lbs. SO}_2\text{/mmbtu}) \times \text{monthly weighted average actual Btu/lb} \times ((E \times .10) + \$85) / 1,000,000.$$

WHERE: E is defined for any given Month as the 3 day average SO₂ price of allowances expressed in dollars per ton of SO₂ in the table entitled "Daily Market Assessments, SO₂ Allowances, Price for current vintage year" published in Energy Argus Air Daily, or its successor publication, for such Month as published on the 3rd, 4th and 5th Business Days of the subsequent month (e.g., spot SO₂ price (E) for allowances for January 2007 coal shipments would be calculated by using an average of the indices published in Energy Argus Air Daily on February 1, 2, and 5).

- 8.2 **Rejection of Shipments.** If any one or more of the quality characteristics of any Shipment of Coal, based on Seller's Short Proximate Analysis, exceeds any of the Rejection Limits specified in the Specifications, or, if a Shipment is materially contaminated with foreign materials (a "Non-Conforming Shipment"), then Buyer shall have the option to reject such Non-Conforming Shipment by notice delivered to Seller by fax or email. In the case of a Non-Conforming Shipment in which a Rejection Limit is exceeded, such notice shall be delivered within 48 hours of Buyer's receipt of Seller's Short Proximate Analysis or any additional analysis of the Coal agreed to by the Parties and prior to unloading. In the case of a Non-Conforming Shipment which is contaminated with foreign materials, such notice shall be delivered within 24 hours of receipt of the Shipment at the Station and prior to unloading. Buyer may reject discrete portions of a Shipment for foreign materials if practical under the circumstances. If Buyer fails to exercise timely its rejection rights under this Section 8.2 as to a Shipment, Buyer shall be deemed to have waived such rights with respect to the rejection of that Shipment only and Buyer shall have the right to apply the pricing adjustments as set forth in Section 8.1 to such Shipment. 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 shall reimburse Buyer for all reasonable out-of-pocket costs and expenses incurred by Buyer associated with the transportation, storage, handling and removal of the Non-Conforming Shipment. Seller shall, at Buyer's option, replace the rejected Coal as soon as possible, provided that Buyer gives notice to Seller of Buyer's desire for replacement Coal within 48 hours after rejection of the Non-Conforming Shipment.
- 8.3 **Nonconformance to Specifications.** If any Coal delivered to Buyer fails to conform to one or more of the Specifications for a period of two (2) consecutive Months, Buyer shall have

the right to suspend all further deliveries of Coal from any or all Sources (as determined by Buyer) by giving notice thereof to Seller and such suspension shall continue until Buyer receives assurances from Seller satisfactory to Buyer, in its sole discretion, that future deliveries will conform to the Specifications. Seller's assurances shall include a written analysis of Seller's Coal, performed by Standard Laboratories, Inc. in Charleston, West Virginia, or by another independent commercial testing laboratory mutually agreed upon by the Parties and paid for by Seller, indicating conformity of such Coal with the Specifications. If Seller does not give such satisfactory assurances within one Month following Buyer's notice of suspension, this shall constitute an Event of Default by Seller.

8.4 **Plant Difficulties Due to Coal.** If Buyer determines, in good faith, that any Coal delivered by Seller causes Station performance, operating, receiving or handling difficulties, even if such Coal meets the Specifications, Buyer shall give Seller notice of such difficulties and Buyer shall have the right to suspend all further deliveries of Coal by giving notice thereof to Seller. Promptly after such notice is delivered, the Parties shall meet and attempt in good faith to reach a mutually agreeable solution to resolve the difficulties. Buyer shall document difficulties due to use of Seller's Coal and shall make such documentation available for Seller's review during such time as the Parties are attempting in good faith to resolve the difficulties. If the Parties are unable to reach a mutually agreeable solution within thirty (30) Days after delivery of Buyer's notice to Seller, then Buyer may terminate this Agreement upon fifteen (15) Days prior notice to Seller and neither Party shall be liable to the other Party for such termination.

8.5 **Foreign Matter Damage.** If Buyer determines, in good faith, that any foreign matter in the Coal delivered by Seller causes damage to operating, receiving or handling equipment at the Station, Buyer shall have the right to suspend all further deliveries of Coal from Seller by giving notice thereof to Seller. Promptly after such notice is delivered, the Parties shall meet to mutually investigate the extent of the damage and to attempt in good faith to resolve the matter. Buyer shall document the damage due to the foreign matter and shall make such documentation available for Seller's review during such time as the Parties are attempting in good faith to resolve the matter. If it is determined that foreign matter in Seller's Coal is responsible for any of the damage, then the Parties shall attempt in good faith to agree upon the cost of repair or replacement, as the case may be, of damaged equipment, which cost and all other costs and expenses relating to such damage shall be paid by Seller to Buyer, or, at Buyer's option, upon what adjustments in the Contract Price for the Coal or the Coal tonnage can be made to resolve the matter. Any Contract Price adjustments or Coal quantity adjustments shall equate to the cost of any necessary repair or replacement, and other costs and expenses incurred by Buyer relating to such damages, including any material or labor costs, to the extent caused by the Coal delivered hereunder containing such foreign matter. If the Parties cannot resolve the matter or agree on price or other adjustments within forty-five (45) Days after Buyer's notice of the damage is given to Seller, this shall constitute an Event of Default by Seller. In addition to Buyer's rights for an Event of Default under Section 14, Seller shall remain liable to Buyer for the cost of repair or replacement, as the case may be, of damaged equipment and for all other costs and expenses relating to such damage.

- 8.6 **Freight Charges.** For any Month during which deliveries are suspended under this Section 8, Buyer shall not be liable for failing to purchase any minimum quantity of Coal as set forth in Section 3. If Buyer suspends deliveries under this Section 8, Seller shall promptly pay Buyer any excess freight charges thereby incurred under the applicable tariff and/or contract with the Carrier as a result of such reduced Shipments. The Parties shall thereafter coordinate scheduling to provide for Shipments not suspended pursuant hereto.
- 8.7 **Option to Make Up Deliveries.** Buyer shall have the right to require Seller to make up any or all deliveries affected by a suspension under this Section 8. If Buyer exercises such right, then each delivery of make up quantities of Coal shall be scheduled for no later than thirty (30) Days following Buyer's notice to Seller to resume deliveries.
- 8.8 **SO₂ Liquidated Damages.** n/a
- 8.9 **No Waiver.** Buyer's failure to exercise any right to suspend any deliveries of Coal or to terminate this Agreement as provided in this Section 8 shall not constitute a waiver of any subsequent right to suspend Coal deliveries or to terminate this Agreement as provided in this Section 8.

SECTION 9. PAYMENT

- 9.1 **Payment Terms.** The Buyer will self-invoice bi-monthly. Shipments loaded during the first through the fifteenth of each Month are payable ten (10) Days after the end of the Month at the Contract Price. Shipments loaded during the sixteenth through the end of each Month are payable, with quality adjustments for all Shipments loaded during the Month, twenty-five (25) Days after the end of each Month. Each invoice shall include the necessary information for Seller to match Shipments for each invoice and otherwise to verify the amount being invoiced. Buyer shall pay, by electronic transfer in immediately available United States funds to the address below:

Buyer Billing Contact:

1000 E. Main Street
Plainfield, IN 46168
Attn: Anita Webb
Fax: (317) 838-1023

Seller Billing Contact:

Attn: Coal Network, Inc.
1111 Western Row Road
Attn: Amy Larkin
Fax: 513-398-5419

Seller's Payment Address:

Bank Name: Fifth Third Bank
Account Number: 99942822
ABA number: 042000314
Account Name: Coal Network, Inc.

Phone Number: (513)534-0087

- 9.2 **Disputes.** Buyer shall have the right to withhold payment (or any portion thereof) on any transaction (or portion thereof) which Buyer, in good faith, disputes. Buyer shall give Seller notice promptly upon making a determination that it, in good faith, disputes any transaction (or portion thereof). If Buyer intends to withhold any payment under this section, such notice shall also set forth its intent to withhold payment and detail the amount and basis of any dispute. Thereafter, the Parties shall engage in good faith negotiations in an effort to resolve the dispute. Payment for any portion of the transaction that is not in dispute shall be made by the original payment due date. Payment for any portion of the transaction that remains in dispute shall be paid promptly upon final resolution. If any dispute is not settled by the Parties within thirty (30) Days following Buyer's notice to Seller of such dispute, then either Party shall have the right to refer the matter to arbitration pursuant to Section 16.
- 9.3 **Electronic Transfer.** All payments due by Buyer to Seller pursuant to this Agreement shall be remitted to Seller by electronic transfer of immediately available funds.

Buyer billing contact:

Seller billing contact: Amy Larkin (513)701-0375

- 9.4 **Netting and Setoff.** If the Parties are required to pay any amount on the same day or in the same month under this or any other Coal agreement, 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 may pay to the other Party the difference between the amounts owed. The obligations to make payments under this Agreement and/or any other agreement between the Parties may be offset against each other, set off or recouped therefrom.

SECTION 10. ADEQUATE ASSURANCE

If at any time during the term of this Agreement, either Party has a commercially reasonable good faith belief that the ability of the other Party, or the other Party's guarantor, as the case may be, to perform its obligations under this Agreement has been materially impaired, then the insecure Party (the "Insecure Party") may require the other Party (the "Impaired Party") to provide financial information reasonably needed to ascertain the Impaired Party's or its guarantor's ability to perform together with such items of credit enhancement as are described in (i) – (iv) below ("Adequate Assurance"). The Impaired Party shall deliver such Adequate Assurance within five (5) Days of such request. The Insecure Party may hold such Adequate Assurance for so long as it has a commercially reasonable good faith belief that the ability of the Impaired Party, or the Impaired Party's guarantor, to perform its obligations is materially impaired. Adequate Assurance may, at the option and sole discretion of the Insecure Party, include (i) the posting of a Letter of Credit; (ii) cash prepayments; (iii) corporate guarantee or

(iv) other collateral security acceptable to the Insecure Party. Letters of Credit shall be valued at zero dollars (\$0) if there are thirty (30) Days or less remaining before its expiration. Each Party agrees that the provisions of this Section 10 are in addition to any rights and requirements of law relating to adequate assurance of future performance, including, without limitation, Article 2 of the Uniform Commercial Code, as enacted in the State of North Carolina. Any cash collateral provided pursuant to this Section 10 shall accrue interest at the Federal Funds Overnight Rate. "Federal Funds Overnight Rate" means the rate for that Day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

SECTION 11. INSPECTIONS

Buyer shall have the right, at its expense, to send its employees and/or representatives to Seller's Coal mines, Coal processing facilities, and Seller's Loading Facilities and other Seller facilities for the purpose of inspection, review and audit of Seller's operations during normal business hours. In connection with such inspection, review and audit, Seller shall make available its management personnel to discuss with Buyer's employees and/or representatives Seller's operations. Seller shall at all times schedule its production and carry out its operations according to good mining, processing, preparation, management, and engineering practices in the industry in order to produce Coal consistent with its obligations hereunder.

SECTION 12. FORCE MAJEURE; CHANGE IN LAWS

12.1 **General.** "Force Majeure" shall mean any act, event or condition that causes delay in, or failure of, performance of obligations under this Agreement (other than payment obligations) or renders the intended use of the Coal impossible, impractical or unfeasible if the act, event or condition (a) is beyond the reasonable control of the Party relying on it, (b) is not the result of the willful misconduct or negligent act or omission of that Party (or any person or entity over whom that Party has control), and (c) is not an act, event or condition, the risk or consequence of which that Party has assumed under this Agreement, and then only to the extent the same cannot be cured, remedied, avoided, offset, or otherwise overcome by the prompt exercise of reasonable diligence by the Party relying on it (or any person or entity over whom that Party has control). A change in market conditions including the ability of Seller to sell Coal at a higher price, or Buyer to buy Coal at a lower price, whether or not foreseeable, shall not be a Force Majeure. If either Party is prevented from performing or delayed in performing any of its obligations hereunder or the intended use of the Coal is rendered impossible, impractical or unfeasible because of Force Majeure, and if such Party promptly gives notice to the other Party of the nature and estimated duration of such Force Majeure, then the obligations of the Party giving such notice and the corresponding obligations of the other Party shall be suspended to the extent made necessary by and during the continuance of such Force Majeure; provided, however, that the affected Party shall make all reasonable efforts to eliminate the cause of such Force Majeure and shall keep the other Party informed as to the continuance of the Force Majeure.

- 12.2 **Make Up.** If an event of Force Majeure persists for a period of ten (10) days or less, then the Party not claiming Force Majeure shall have the option of requiring that the affected quantity of Coal be shipped, so long as notice of the intent to make-up such shipments is provided within ten (10) days of the notice of termination of such Force Majeure event. In the event of a Force Majeure greater than ten days, delivery of the affected quantity of Coal shall not be made up except by mutual agreement of the Buyer and Seller. The Parties shall mutually agree on a schedule for such make-up shipments.
- 12.3 **Equitable Proration.** If an event of Force Majeure affects some but not all of the production or the delivery of Coal, Seller shall equitably prorate (based on deliveries over the preceding six Months) deliveries of all Coal available to Seller at any of its facilities only among Buyer and each other purchaser of Coal with whom Seller has a written agreement in effect at the time of the event of Force Majeure and obligating Seller to sell Coal to such purchaser. In such event, Seller shall advise Buyer of contract shipments to each such purchaser for the preceding six Months in order that the size of the reduced deliveries can be established. Seller shall not enter into any new contracts for the sale of similar quality Coal while Buyer is receiving prorated deliveries.
- 12.4 **Termination.** If an event of Force Majeure suspends the obligations of a Party for more than three (3) Months, the Party not asserting Force Majeure may, at its option, terminate this Agreement without liability to the other Party.
- 12.5 **Change in Laws.** The Parties recognize that legislative, regulatory, administrative or other governmental bodies or the courts may impose new Laws or amend existing Laws after the Effective Date that may:
- (a) prevent Buyer from burning the quality of Coal set forth in this Agreement at any one or more of its Stations; or
 - (b) make it necessary for Buyer to make material additional capital or operating expenditures to use the Coal delivered hereunder at any one or more of its Stations.

If any such Law is imposed or amended, Buyer shall give notice to Seller, and Buyer and Seller shall consider what steps can be taken by Buyer in the handling, transportation and use of such Coal or by Seller in the production, processing, preparation and loading of Coal. If no such practicable solution to the problem is implemented by either Buyer or Seller at least three Months prior to the effective date of the new or revised Law, the foregoing shall constitute an event of Force Majeure that shall operate to excuse Buyer's purchasing obligations hereunder to the extent such obligations are required to be reduced by the imposition or amendment of such Laws, or to avoid such material additional capital or operating expenditures.

SECTION 13. DAMAGES FOR FAILURE TO DELIVER OR ACCEPT COAL

- 13.1 **Damages Owed to Buyer.** During 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, Seller shall pay Buyer for each Ton of such deficiency an amount equal to the positive difference, if any, obtained by subtracting the Contract Price for the deficiency from the Replacement Price plus (i) any additional transportation costs incurred by Buyer due to such failure, and (ii) Legal Costs incurred by Buyer in connection with the Event of Default and replacement. "Replacement Price" means the price, determined by Buyer in a commercially reasonable manner, at which Buyer purchases (if at all) substitute Coal which meets the Specifications or, absent such purchase, the market price for such quantity and quality of Coal, FOB Delivery Point.
- 13.2 **Damages Owed to Seller.** During 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, 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 Contract Price for the deficiency plus (i) any additional transportation costs incurred by Seller due to such failure, and (ii) Legal Costs incurred by Seller in connection with the Event of Default and resale. "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 sale, the market price for such quantity and quality of Coal, FOB Delivery Point.
- 13.3 **Payment of Damages.** Payment of amounts, if any, determined under this Section 13 shall be made within ten (10) Days following receipt of notice from the Party owed. All such determinations shall be made in a commercially reasonable manner and the Party owed 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 Party owed shall take reasonable steps to mitigate its damages.

SECTION 14. DEFAULT AND REMEDIES

- 14.1 **Events of Default.** An event of default ("Event of Default") with respect to a Party (the "Defaulting Party") shall mean any of the following:
- (i) the failure of Defaulting Party to pay when due any required payment and such failure is not remedied within five (5) Days after notice thereof, provided the payment is not subject to a good faith dispute as described in Section 9.2;
 - (ii) the failure of the Defaulting Party to deliver or to accept delivery of the quantity of Coal to be delivered hereunder unless excused by Force Majeure or the other Party's failure to perform;
 - (iii) the occurrence of an Event of Default as described in Section 8.3 concerning nonconformance to the Specifications or in Section 8.5 concerning foreign matter;

- (iv) the Defaulting Party or its guarantor, if applicable, shall be subject to a Bankruptcy Proceeding;
- (v) any representation or warranty made by Seller herein shall prove to be untrue in any material respect when made;
- (vi) the failure of the Defaulting Party to comply with any material obligation under this Agreement (other than those described specifically in this Section 14.1 above) and such failure continues uncured for five Days after notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such five Day period, the cure period shall be extended for an additional period reasonably necessary to remedy such failure subject to the condition that during the additional period, the Defaulting Party shall be diligently pursuing a remedy for the failure; or
- (vii) the Impaired Party fails to establish, maintain, extend or increase Adequate Assurance when required pursuant to Section 10.

14.2 **Remedies.** Upon the occurrence and during the continuance of an Event of Default, as to the Defaulting Party, the other Party (the "Non-Defaulting Party") may (i) withhold any payments due to the Defaulting Party until such Event of Default is cured, (ii) suspend performance of its obligations under this Agreement until such Event of Default is cured, (iii) terminate by written notice this Agreement as of any date specified by the Non-Defaulting Party ("Early Termination Date") within thirty (30) Days after such notice is given; and (iv) recover from the Defaulting Party damages as set forth in Section 14.3 and any other amounts owed by the Defaulting Party under this Agreement.

14.3 **Damages Upon Early Termination**

14.3.1 **Damages Owed to Buyer.** If Buyer is the Non-Defaulting Party and establishes an Early Termination Date, then Seller shall pay Buyer for each Ton which Seller would have been obligated to deliver between the Early Termination Date and the end of the Term but for the early termination an amount equal to the positive difference, if any, obtained by subtracting the Contract Price for such Tons from the Replacement Price for such Tons plus (i) any additional transportation costs incurred by Buyer due to such failure, and (ii) Legal Costs incurred by Buyer in connection with the Event of Default and replacement.

14.3.2 **Damages Owed to Seller.** If Seller is the Non-Defaulting Party and an Early Termination Date has been established, then Buyer shall pay Seller for each Ton which Buyer would have been obligated to purchase between the Early Termination Date and the end of the Term but for the early termination an amount equal to the positive difference, if any, obtained by subtracting the Sales Price for such Tons from the Contract Price for such Tons plus (i) any additional transportation costs incurred by Seller due to such failure, and (ii) Legal Costs incurred by Seller in connection with the Event of Default and resale.

SECTION 16. ARBITRATION

- 16.1 **Demand for Arbitration.** All claims, disputes and other controversies arising out of or relating to this Agreement (“Disputes”) shall be fully and finally settled by binding arbitration. All arbitration proceedings shall take place in Charlotte, North Carolina under the auspices of the American Arbitration Association (“AAA”) in accordance with the AAA Commercial Arbitration Rules then in effect, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. For all Disputes where the amount in controversy is less than \$500,000, the arbitration proceeding shall be conducted by a single arbitrator selected by the Parties (or the AAA if the Parties cannot agree). For all Disputes where the amount in controversy between the Parties is equal to or more than \$500,000, the arbitration proceeding shall be conducted by a panel of three (3) neutral arbitrators. If the Parties have not so agreed on such three arbitrator(s) on or before thirty (30) Days following the delivery of a demand for arbitration to the other Party, then the AAA will designate the remaining arbitrator(s) pursuant to its Commercial Arbitration Rules. No demand for arbitration shall be made or permitted after the date when the institution of a civil action based on the Dispute would be barred by the applicable statute of limitations or repose.
- 16.2 **Consolidation.** No arbitration arising under the Agreement shall include, by consolidation, joinder or any other manner, any Person not a party to the Agreement unless (a) such Person is substantially involved in a common question of fact or Laws, (b) the presence of the Person is required if complete relief is to be accorded in the arbitration, and (c) the Person has consented to be included.
- 16.3 **Equitable Remedies.** The procedures specified in this Section 16 shall be the sole and exclusive procedures for the resolution of Disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party may file a complaint in a court of competent jurisdiction on issues of statute of limitations or repose or to seek injunctive relief, sequestration, garnishment, attachment, or an appointment of a receiver. Preservation of these remedies does not limit the power of the arbitrator(s) to grant similar remedies, and despite such actions, the Parties will continue to participate in good faith in and be bound by the dispute resolution procedures specified in this Section 16.
- 16.4 **Award; Binding Nature.** The arbitration decision shall be by majority vote and shall be issued in a writing that sets forth in separately numbered paragraphs all of the findings of fact and conclusions of law necessary for the decision. Findings of fact and conclusions of law shall be separately designated as such. The arbitrator(s) shall not be entitled to deviate from the construct, procedures or requirements of this Agreement. Any decision rendered by the arbitrator(s) in any arbitration shall be final and binding upon the Parties, and judgment may be entered on the award in any court of competent jurisdiction. The cost of the arbitration shall be borne equally by the Parties.
- 16.5 **Discovery.** Either Party may apply to the arbitrator(s) for the privilege of conducting discovery. The right to conduct discovery shall be granted by the arbitrator(s) in his/her sole discretion with a view to avoiding surprise and providing reasonable access to

necessary information or to information likely to be presented during the course of the arbitration, provided that such discovery period shall not exceed ninety (90) Days.

SECTION 17. NOTICES

All notices, consents, invoices and other communications required or permitted to be made pursuant to this Agreement shall be made in writing and sent by (i) registered or certified mail, postage prepaid and return receipt requested, (ii) reputable overnight courier, or (iii) facsimile (fax) or email, and promptly confirmed in writing as set forth in (i) or (ii) above, and properly addressed as follows:

- (i) If the notice is to Buyer:

526 South Church Street
P. O. Box 1002
Charlotte, NC 28201-1002
ATTENTION: Manager, Procurement Coal and Bulk Materials
Mail Code: EC11Z
FAX: (704) 382-4568

- (ii) If the notice is to Seller:

Coal Network, Inc.
1111 Western Row Rd.
Mason, OH 45040
ATTENTION: Gerald Quitter
FAX: (513)398-5419

Notices shall become effective when received by the other Party. Either Party may from time to time change the information with respect to it in Section 17.1 by giving the other Party written notice thereof.

SECTION 18. GENERAL

- 18.1 **Clear Title.** Seller represents and warrants that the Coal delivered under this Agreement shall be delivered free and clear from any covenants, restrictions, liens or other encumbrances of any nature whatsoever upon delivery to Buyer, provided that nothing contained in this section shall preclude Seller from granting a security interest in accounts receivable which may be due to Seller from Buyer hereunder. Buyer may require reasonable documentation requirements upon any holder of such lien(s) before recognition of the assignment of the right to receive proceeds hereunder.
- 18.2 **Assignment.** This Agreement and the rights and obligations hereunder shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party may assign any of its rights, obligations or interest herein without the prior written consent of the other Party, which consent shall not be unreasonably

withheld; except that Buyer may assign this Agreement to any affiliated entity without Seller's consent and if Buyer sells or transfers operating control over one or more Stations that collectively have been the primary receiving Stations of Coal covered by this Agreement (receiving more than 50% of the Coal under this Agreement), Buyer may assign this Agreement to the purchaser of such Station(s) without Seller's consent.

Without limiting the provisions of the immediately preceding paragraph, at Buyer's request, Seller will consent to Buyer's assignment of its rights and obligations hereunder with respect to all or a portion of the Coal to Buyer's synthetic fuel provider, Tyrone Synfuels, LP ("TSLP"), or Seller will enter into a coal supply agreement with TSLP for all or a portion of the Coal hereunder, without any change in price hereunder, in order to facilitate Buyer's purchase of synthetic fuel from TSLP at Buyer's East Bend Station.

An assignment of this Agreement shall not release the assignor from any obligations hereunder unless the assignee has a credit rating for its senior unsecured debt of BBB- or better from Standard & Poor's or the other Party agrees in writing that the assignor shall be released, which agreement may be withheld in the sole discretion of the other Party.

- 18.3 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, excluding its conflict of law principles.
- 18.4 **Confidential Information.** Each Party shall retain confidential information obtained from the other Party hereunder in strict confidence and shall not disclose it to any third party, except for any information that (i) is at the time of such disclosure known to the public or thereafter becomes so known through no violation of this Agreement; (ii) was in its possession or known to it prior to disclosure hereunder; or (iii) is required by Law to be so disclosed. Notwithstanding the foregoing, either Party may communicate such information to its directors, officers, employees, affiliates, attorneys, consultants and other representatives who have a need to know such information, subject to the confidentiality provisions of this section, provided that (x) such parties agree to be bound by the confidentiality provisions of this Agreement as if it were the receiving Party and (y) such Party shall be liable for any breach by such parties of the confidentiality provisions of this section.
- 18.5 **Confidentiality of Terms.** The Parties shall keep the price, quantity and other terms of this Agreement confidential and shall not disclose the same without the prior written consent of the other Party, unless required by Law to do so, and provided that Buyer shall have the right, without Seller's consent, to make such disclosure to a prospective purchaser of, or to a lender in connection with the financing of, all or a material portion of any Station supplied by Seller hereunder, and each Party shall have the right, without the other Party's consent, to make such disclosure to a prospective purchaser of all or a material portion of the assets or equity of the Party; provided in each case that the party to whom the information is disclosed agrees in writing to be bound by confidentiality provisions at least as restrictive as those in this Agreement.

- 18.6 **Remedies Cumulative.** Except as otherwise specifically provided in this Agreement, the remedies provided in this Agreement are cumulative, not exclusive, and are in addition to any other rights and remedies provided at law or in equity, and may be exercised concurrently or cumulatively.
- 18.7 **Entire Agreement; Non-Waiver.** The terms and conditions set forth herein are intended by Seller and Buyer to constitute a final, complete and exclusive statement of their agreement with respect to the subject matter hereof and all prior proposals, communications, negotiations, understandings and representations, whether oral or written, relating to that same subject matter are hereby superseded. This Agreement shall not be supplemented, modified, or amended except in writing and signed by the Party to be bound thereby. Waiver by either Party of any default of the other Party hereunder shall not be deemed a waiver of any other default.
- 18.8 **Compliance With Laws.** Unless Seller is exempted by the applicable rules, regulations or orders, Seller shall comply fully at all times relevant to this Purchase Order with all applicable laws, rules, regulations and court orders, including, but not limited to: (a) Executive Order 11246 issued by the President of the United States on September 24, 1965; (b) the Vietnam Era Veterans Readjustment Assistance Act of 1974 and applicable sections of 41 CFR and 48 CFR 52.222.35 relating to the employment of veterans; (c) Section 503 of the Rehabilitation Act of 1973 and 48 CFR 52.222-36; (d) regulations of the United States Occupational Safety and Health Act; (e) 15 U.S.C. 637(d)(3) and 48 CFR 52.219 (Aid to Small Business); (f) 48 CFR 52.202-1 (Definitions); (g) 48 CFR 52.203-3 (Gratuities); (h) 48 CFR 52.203-5 (Covenant Against Contingent Fees); (i) 48 CFR 52.203-6 (Restrictions on Subcontractor Sales to the Government); (j) 48 CFR 52.203-7 (Anti-Kickback Procedures); (k) 48 CFR 52.203-8 (Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity); (l) 48 CFR 52.209-6 (Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment); (m) 48 CFR 52.212-5 (Contract Terms and Conditions Required to Implement Statutes or Executive Orders- Commercial Items); (n) 48 CFR 52.215-19 (Notification of Ownership Changes); (o) 48 CFR 52.222-21 (Prohibition of Segregated Facilities); (p) 48 CFR 52.222-26 (Equal Opportunity); (q) 48 CFR 52.223-13 (Certification of Toxic Chemical Release Reporting); (r) 48 CFR 52.223-14 (Toxic Chemical Release Reporting); (s) 48 CFR 52.229-1 (State and Local Taxes); (t) 48 CFR 52.232-23 (Assignment of Claims); (u) all applicable rules, regulations and orders issued by the United States Secretary of Labor under any of the foregoing; and (v) all amendments of the foregoing that may be made from time to time. "CFR" is the Code of Federal Regulations.
- 18.9 **Consequential Damages.** Without limiting any remedy expressly set forth herein, neither Party shall be liable to the other Party for any special, consequential or punitive damages arising out of the performance, breach or nonperformance, irrespective of any legal theory under which the same may otherwise be asserted, except to the extent that third party claims with respect to which a Party is indemnified hereunder are deemed to constitute such damages.

- 18.10 **Severability.** If any provision of this Agreement or the application of this Agreement to any circumstance shall to any extent be held invalid or unenforceable by a court of competent jurisdiction or an arbitrator under Section 16, the remainder of the Agreement and the application of that provision to circumstances other than those as to which it is specifically held invalid or unenforceable shall not be affected, and every remaining provision of this Agreement shall be valid and binding to the fullest extent permitted by law.
- 18.11 **Headings.** The section headings of this Agreement are for reference purposes only and are to be given no effect in the construction or interpretation hereof. "Including" shall mean including without limitation.
- 18.12 **Joint Preparation.** The preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other.
- 18.13 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 18.14 **Forward Contract.** The Parties agree that this Agreement constitutes a "forward contract" and that the Parties are "forward contract merchants" within the meaning of the United States Bankruptcy Code.

SECTION 19. DEFINITIONS

- 19.1 "**AAA**" shall have the meaning set forth in Section 16.1.
- 19.2 "**Adequate Assurance**" shall have the meaning set forth in Section 10.
- 19.3 "**As Received**" means the state and condition of the Coal when received by Buyer at the scheduled receiving Station.
- 19.4 "**ASTM**" means the American Society for Testing and Materials.
- 19.5 "**Bankruptcy Proceeding**" means with respect to a Party or entity, such Party or entity (a) makes an assignment or any general arrangement for the benefit of creditors, (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of debtors, or has such a petition filed against it and such petition is not withdrawn or dismissed for 30 Days after such filing, (c) otherwise becomes bankrupt or insolvent (however evidenced) or (d) is unable to pay its debts as they fall due.
- 19.6 "**Barging Contractor**" means the entity or entities transporting Coal by barge or vessel for Buyer or Buyer's designee from the Delivery Point.

- 19.7 "**Btu**" means the amount of energy required to raise the temperature of one pound of pure water one degree Fahrenheit from 59.5 degrees Fahrenheit to 60.5 degrees Fahrenheit at a constant pressure of 14.73 pounds per square inch absolute.
- 19.8 "**Carrier**" means the Railroad, Barging Contractor, or Trucking Contractor, as applicable.
- 19.9 "**Carrier Specifications**" means the provisions of the applicable Carrier tariff or applicable agreement(s) made by Buyer with the Carrier, as amended from time to time, covering the requirements for each Shipment, including the timing and loading requirements thereunder, which are incorporated herein by reference.
- 19.10 "**Coal**" means bituminous coal.
- 19.11 "**Contract Price**" means the price in \$US per Ton to be paid by Buyer to Seller for the purchase of Coal and any other proper charges pursuant to this Agreement.
- 19.12 "**Contract Quantity**" means the quantity of Coal that Seller agrees to sell and deliver to Buyer and that Buyer agrees to purchase and receive or caused to be received, from Seller hereunder.
- 19.13 "**Day**" means a calendar day.
- 19.14 "**Defaulting Party**" shall have the meaning set forth in Section 14.1.
- 19.15 "**Delivery Point**" shall have the meaning set forth in Section 5.1.
- 19.16 "**Delivery Schedule**" shall have the meaning set forth in Section 3.2
- 19.17 "**Disputes**" shall have the meaning set forth in Section 16.1.
- 19.18 "**Early Termination Date**" shall have the meaning set forth in Section 14.2.
- 19.19 "**Effective Date**" shall be the date set forth in the introductory paragraph.
- 19.20 "**Event of Default**" shall have the meaning set forth in Section 13.1.
- 19.21 "**Federal Funds Overnight Rate**" shall have the meaning set forth in Section 10.
- 19.22 "**F.O.B.**" means free on board and shall have the meaning given to such term in the Uniform Commercial Code.
- 19.23 "**Force Majeure**" shall have the meaning set forth in Section 12.1.
- 19.24 "**Governmental Imposition**" shall have the meaning set forth in Section 4.3.
- 19.25 "**Impaired Party**" shall have the meaning set forth in Section 10.

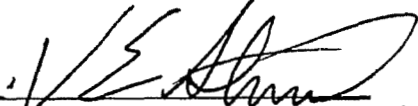
- 19.26 **"Insecure Party"** shall have the meaning set forth in Section 10.
- 19.27 **"Laws"** shall mean all federal, state and local laws, rules, orders, regulations, standards and restrictions, including but not limited to those governing taxes and fees.
- 19.28 **"Legal Costs"** means, with respect to a Party, the reasonable out-of-pocket expenses incurred by it, including legal fees, by reason of the enforcement and protection of its rights under this Agreement.
- 19.29 **"Letter of Credit"** means one or more irrevocable, transferable standby letters of credit from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3 from Moody's.
- 19.30 **"Month"** means a calendar month.
- 19.31 **"Moody's"** means Moody's Investor Services, Inc. or its successor.
- 19.32 **"Non-Conforming Shipment"** shall have the meaning set forth in Section 8.2.
- 19.33 **"Non-Defaulting Party"** shall have the meaning set forth in Section 14.2.
- 19.34 **"Party"** and **"Parties"** shall have the meaning set forth in the introductory paragraph.
- 19.35 **"Railroad"** means the entity or entities transporting Coal by rail for Buyer or Buyer's designee from the Delivery Point.
- 19.36 **"Rejection Limits"** means the quality characteristics for a Shipment of Coal set forth in Section 6 that gives rise to a rejection right of Buyer pursuant to Section 8.2.
- 19.37 **"Replacement Price"** shall have the meaning set forth in Section 13.1.
- 19.38 **"S&P"** means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 19.39 **"Sales Price"** shall have the meaning set forth in Section 13.2.
- 19.40 **"Seller's Loading Facilities"** means Seller's loading facilities which are located at the Delivery Point.
- 19.41 **"Seller's Short Proximate Analysis"** means, with respect to any Shipment of Coal, the determination by Seller, through sampling and testing of such Coal in accordance with methods approved by ASTM (or such other methods as may be mutually agreed upon by the Parties), of the Btu, ash, moisture and SO₂ content of such Coal, certified as accurate by Seller and accompanied by such documentation as Buyer may from time to time reasonably request in support thereof.

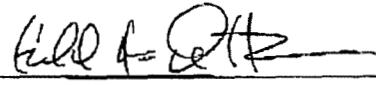
- 19.42 "**Shipment**" means one Transportation Vehicle load that is loaded on any one Day.
- 19.43 "**Source**" shall have the meaning set forth in Section 3.3.
- 19.44 "**SO₂**" means sulfur dioxide.
- 19.45 "**SO₂ Emission Allowance Price**" shall have the meaning set forth in Section 8.1.
- 19.46 "**Specifications**" means the quality characteristics for the Coal set forth in Section 6 on an "As Received" basis, using ASTM standards.
- 19.47 "**Station**" means any Buyer owned or operated facility used to produce and supply electricity.
- 19.48 "**Term**" shall have the meaning set forth in Section 2.
- 19.49 "**Ton**" means a net ton of two thousand (2,000) pounds avoirdupois weight.
- 19.50 "**Transportation Vehicle**" means a train, barge, vessel, or truck used to transport Coal under this Agreement.
- 19.51 "**Trucking Contractor**" means the entity or entities transporting Coal by truck for Buyer or Buyer's designee from the Delivery Point.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

The Union Light, Heat and Power Company
d/b/a Duke Energy Kentucky, Inc.

Coal Network, Inc.

By: 

By: 

Name: V. E. Stroud

Name: Gerald A Ritter

Title: Vice President Reg. Regs

Title: Exec. Vice President