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VIA OVERNIGHT DELIVERY

October 16, 2006

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OCT 17 2006

PUBLIC SERVICE
COMMISSION

John J. Finnigan, Jr.
Associate General Counsel

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 also made a supplemental filing in this proceeding on August 31, 2006, where we included updated information about our coal contracts. We hereby update our filing with a file copy and six additional copies of the following additional coal contracts:

- 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 October 11, 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.)
Hon. Richard G. Raff (w/encl.)

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PUBLIC SERVICE
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HS 10464

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 October, 11, 2006

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AGREEMENT FOR THE SALE AND PURCHASE OF COAL

THIS AGREEMENT is dated 10-11-06, 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 October 15, 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 60,000 Tons shipped in approximately equal monthly shipments of 20,000 tons per month during the period October 15, 2006 through December 31, 2006. Seller and Tyrone Synfuel L.P. ("Tyrone") contemporaneously herewith are entering into that certain Coal Supply Agreement ("Tyrone Agreement"), dated as of even date. Quantity shall be ratable throughout the Term of this Agreement. Tyrone and Seller may enter into purchase order(s) under the aforementioned Coal Supply agreement pursuant to which Tyrone will purchase coal from Seller that would otherwise be purchased by Buyer pursuant to this Agreement ("Corresponding Tyrone Purchase Order"). Seller acknowledges and agrees that any Coal that Tyrone purchases pursuant to a Corresponding Tyrone Purchase Order 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 quantity of Coal under the Tyrone Agreement and this Agreement exceed the annual Quantity set forth in this paragraph 5 above. The Corresponding Tyrone Purchase Order and Tyrone Agreement shall govern such transaction between Seller and Tyrone. Seller further acknowledges that Buyer shall have no obligations under this Agreement or any purchase order 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 or any Corresponding Tyrone Purchase Order. Buyer agrees that any coal

that Tyrone agrees to purchase pursuant to a Corresponding Tyrone Purchase Order 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: Hopedale
Underground Mine

Mine Operating Co.: CAM-Ohio LLC
Mine State: OH

Mine County: Harrison
BOM District: 4

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. \$39.08 per Ton of Coal for the period October 15, 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 80.9 (the "**Delivery Point**"), 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 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)	12,500 Minimum	12,100 Minimum
Ash Content:	10.0 % Maximum,	11.0 % Maximum
* SO ₂ Content:	4.0 Lbs. per MMBtu Maximum	5.0 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:

$$\frac{[\text{"As Received"} \% \text{ Sulfur} \times 20,000]}{\text{"As Received"} \text{ Btu Per Pound}} = \text{Pounds SO}_2 \text{ Per MMBtu}$$

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.

14.3.3 **Payment of Early Termination Damages.** Payment of amounts, if any, determined under this Section 14 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.

14.3.4 **Damages Cumulative.** Damages recoverable under this Section 14.3 are for Tons which would have been delivered or purchased after an Early Termination Date and are recoverable in addition to any damages which may be recoverable under Section 13 for deficiencies during the Term.

SECTION 15. INDEMNIFICATION

Seller shall defend, indemnify and hold harmless Buyer and its affiliates, directors, officers, employees and agents from and against all claims, demands, losses, damages, liabilities, obligations and costs (including reasonable attorneys' and other litigation fees and expenses) (collectively "**Claims**") arising out of or relating to personal injury or property damage resulting from the acts or omissions of Seller or its agents in the performance of this Agreement, except to the extent such injury or damage arises out of the negligent acts or omissions of Buyer or its agents. Buyer shall defend, indemnify and hold harmless Seller and its directors, officers, employees and agents from and against all Claims arising out of or relating to personal injury or property damage resulting from the acts or omissions of Buyer or its agents in the performance of this Agreement, except to the extent such injury or damage arises out of the negligent acts or omissions of Seller or its agents.

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.

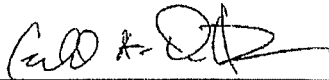
The Union Light, Heat and Power Company
d/b/a Duke Energy Kentucky, Inc.

By: 

Name: **Vincent Stroud**

Title: **Vice President, Regulated Fuels**

Coal Network, Inc.

By: 

Name: Gerald A. Dantz

Title: Exec. Vice President