

# Coal Annex to the EEI Master Power Purchase and Sales Agreement Version 1.0 April 2, 2007

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**PARAGRAPH 4**  
**to the**  
**COAL ANNEX**  
**to the**  
**EEI MASTER POWER PURCHASE & SALE AGREEMENT**

**COAL ANNEX ELECTIONS COVER SHEET**

**Paragraph 4. Elections and Variables**

**Name:** \_\_\_\_\_, a \_\_\_\_\_ organized  
 under the laws of the State of  
 \_\_\_\_\_ (“\_\_\_\_\_” or “Party A”)

**Name:** \_\_\_\_\_, a \_\_\_\_\_  
 organized under the laws of the State of  
 \_\_\_\_\_ (“Counterparty” or “Party B”)

**Effective Date of EEI Master Agreement  
 between Party A and Party B:** \_\_\_\_\_

**All Notices:**

As set forth on the EEI Master Agreement Cover  
 Sheet unless otherwise set forth below:

Street: \_\_\_\_\_  
 City: \_\_\_\_\_  
 Attn: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_  
 Duns: \_\_\_\_\_  
 Federal Tax ID Number: \_\_\_\_\_

**All Notices:**

As set forth on the EEI Master Agreement Cover  
 Sheet unless otherwise set forth below:

Street: \_\_\_\_\_  
 City: \_\_\_\_\_  
 Attn: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_  
 Duns: \_\_\_\_\_  
 Federal Tax ID Number: \_\_\_\_\_

**Invoices:**

As set forth on the EEI Master Agreement Cover  
 Sheet unless otherwise set forth below:

Attn: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_

**Invoices:**

As set forth on the EEI Master Agreement Cover  
 Sheet unless otherwise set forth below:

Attn: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_

**Nominations:**

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:

Phone:

Facsimile:

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:

Phone:

Facsimile:

**Confirmations:**

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:

Phone:

Facsimile:

**Confirmations:**

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:

Phone:

Facsimile:

**Option Exercise:**

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:

Phone:

Facsimile:

**Option Exercise:**

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:

Phone:

Facsimile:

**Elections for Paragraph Three****3.19(a) Force Majeure – Make-Up of Tonnage**

Option A (Affected Quantity Made Up Upon Mutually Agreeable Schedule)

Option B (Affected Quantity Made Up at the Discretion of the Non-Claiming Party, On a Mutually Agreeable Schedule)

Option C (Affected Quantity Not Made Up Unless the Parties Mutually Agree Otherwise).

If none is checked, Option C shall be applicable.

**3.19(b) Force Majeure – Effect of Termination**

Option A (Neither Party Has Any Obligation To The Other (other than payment obligations for prior performance))

Option B (Termination Pursuant to Article Five (Termination Payment))

If neither is checked, Option A shall be applicable.

**3.20 Payment Netting**

Option A (Payment Netting Between Other Product and Coal Product Transactions - If neither Option A nor Option B is checked, Option A shall be applicable.

Option B (No Payment Netting Between Other Product and Coal Product Transactions)

If neither is checked, Option B shall be applicable.

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**Other Changes**

Specify, if any:

**COAL ANNEX**  
**TO THE**  
**EEI MASTER POWER**  
**PURCHASE & SALE AGREEMENT**

WHEREAS, Party A and Party B are parties to an EEI Master Power Purchase & Sale Agreement (including without limitation any amendments, annexes or Cover Sheet thereto which are provided for and incorporated into the EEI Master Power Purchase & Sale Agreement, the “EEI Master Agreement”), which EEI Master Agreement governs the terms and conditions pursuant to which the Parties may enter into transactions relating to the purchase and sale of electric capacity, energy or other products related thereto, or gas or other products involving gas; and

WHEREAS, the Parties desire to enter into this Coal Annex to the EEI Master Agreement to provide for the terms and conditions under which the Parties may enter into Transactions relating to the purchase and sale of coal;

NOW, THEREFORE, the Parties agree as follows:

**PARAGRAPH ONE: GENERAL TERMS**

1.1 **Scope of Agreement.** This Coal Annex to the EEI Master Agreement (this “EEI Coal Annex”) provides for the terms and conditions pursuant to which the Parties may enter into Transactions for Coal Products (as defined below).

The terms set forth in the EEI Master Agreement and this EEI Coal Annex apply to those Transactions that relate to Coal Products (each such Transaction, a “Coal Products Transaction”). Unless otherwise expressly provided in this EEI Coal Annex, all of the terms and conditions set forth in the EEI Master Agreement shall be applicable to Coal Products Transactions entered into between the Parties. The term “Transaction” as used in the EEI Master Agreement shall include Coal Products Transactions and, except as otherwise provided in this EEI Coal Annex, the EEI Master Agreement shall apply equally to all Transactions without differentiation. By way of example only, the occurrence of an Event of Default under Section 5.1 would enable the Non-Defaulting Party to exercise any or all of the rights provided in Article Five with respect to all Transactions notwithstanding whether such Transactions are for Coal Products and/or other Products; and that the collateral provisions agreed to by the Parties in the Collateral Annex to the EEI Master Agreement, if any, shall apply to all Transactions notwithstanding whether such Transactions are for Coal Products and/or other Products. In the event of any inconsistency among or between the EEI Master Agreement and this EEI Coal Annex, this EEI Coal Annex will govern with respect to Coal Products Transactions only.

**PARAGRAPH TWO: AMENDMENTS AND SUPPLEMENTS TO THE EEI MASTER AGREEMENT FOR COAL PRODUCTS TRANSACTIONS**

2.1 **Definitions.** For purposes of Coal Products Transactions only:

- (a) Section 1.23 is supplemented by adding the following sentence at the end of such Section:

This definition of Force Majeure in Section 1.23 shall not apply to Coal Products Transactions. In respect of Coal Products Transactions, “Force Majeure” shall have the following meaning: “*Force Majeure*” means events that are beyond the reasonable control and without the fault or negligence of the Party affected thereby (“Claiming Party”) that prevents the Claiming Party from performing its obligations under one or more Coal Product Transactions, that, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. A change in market conditions shall not be considered a Force Majeure event. For the avoidance of doubt, Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell Coal; (iii) Buyer’s or Buyer’s Customer’s ability to purchase Coal upon terms more favorable than the terms of the applicable Coal Product Transaction (including, but not limited to, purchasing Coal at a price less than the Contract Price); (iv) the loss or failure of Seller’s supply, whether or not foreseeable (including, without limitation, adverse mining conditions or Seller’s inability to economically produce or obtain the Coal); or (v) Seller’s ability to sell Coal upon terms more favorable than the terms of the applicable Coal Product Transaction (including, but not limited to, selling Coal at a price greater than the Contract Price). A transportation delay shall not be considered a Force Majeure event unless such delay affects Coal deliveries to all Persons at all locations comprising the Delivery Point.

- (b) Section 1.47 is supplemented by adding the following language at the end thereof:

1.47 “Product” or “Products” means or includes, as the case may require, Coal Products.

- (c) Sections 1.22, 1.31, 1.43, and 1.44 shall not be applicable to Coal Products Transactions.
- (d) Section 1.51 is supplemented by adding the following language as the second sentence thereof:

1.51 Notwithstanding the foregoing, for Coal Products, “Replacement Price” means, for each Ton of Coal Product not delivered by Seller, the commercially reasonable market price at which Buyer is able, or absent an

actual purchase at the time of Seller's breach, would be able (FOB Delivery Point) to purchase or otherwise receive comparable supplies of Coal of comparable quality on an equivalent  $\text{\$/MMBtu}$ ,  $\text{SO}_2$  adjusted basis, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Coal and (ii) additional transportation charges, if any, reasonably incurred by Buyer as a result of taking delivery of substitute Coal at a location other than FOB the Delivery Point.

- (e) Section 1.53 is supplemented by adding the following language as the second sentence thereof:

1.53 Notwithstanding the foregoing, for Coal Products, "Sales Price" means, for each Ton of Coal Product not accepted by Buyer, the commercially reasonable market price at which Seller is able, or absent an actual sale, would be able (FOB Delivery Point), to sell or otherwise dispose of the Coal Product at the time of Buyer's breach, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Coal Product and (ii) additional transportation charges, if any, reasonably incurred by Seller in delivering such Coal Product to the third party purchasers.

- (f) Section 1.54 is supplemented by adding the following language at the end thereof:

With respect to Coal Products, Coal shall be deemed to have been Scheduled or to be Scheduled Coal when the provisions in Section 3.4 of this EEI Coal Annex have been satisfied.

- (g) Section 1.61 is amended to add "or Transporter" after "Transmission Provider".
- (h) The definitions of "Master Agreement" and "Agreement" on the Cover Page to the EEI Master Power Purchase & Sale Agreement shall include this EEI Coal Annex.

2.2 **Confirmation.** The first sentence of Section 2.3 of the EEI Master Agreement shall be modified by the addition of the following at the end thereof: "or, with respect to Coal Product Transactions, substantially in the form of Exhibit A to this Coal Annex."

2.3 **Obligations and Deliveries.** Section 3.2 of the EEI Master Agreement shall be applicable only to Power Products. The applicable Transportation and Scheduling provisions with respect to Coal Products are set forth in Paragraph Three below.

2.4 **References to Tariffs.** References to the Tariffs of Party A and Party B in the EEI Master Agreement shall only apply to Power Products.

2.5 **Default.** Section 5.1(c) of the EEI Master Agreement shall not be applicable to Coal Products. The following provision shall be applicable to Coal Products in lieu thereof:

The failure of the Defaulting Party to comply with its material obligations under a Coal Product Transaction, this EEI Coal Annex or the EEI Master Agreement (except to the extent constituting a separate Event of Default hereunder and except for such Party's obligations to deliver or receive Coal Product, the exclusive remedies for which are provided for in Article 4 of the EEI Master Agreement, and such failure continues uncured for ten (10) Business Days after written notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such ten (10) Business Day period, the cure period shall be extended for an additional period (not to exceed sixty (60) days) reasonably necessary to remedy such failure subject to the condition that during the additional period, the Defaulting Party shall be diligently pursuing a remedy for the failure.

2.6 **Limitation of Liability.** Section 7.1 of the EEI Master Agreement shall not be applicable to Coal Products. The following provision shall be applicable to Coal Products in lieu thereof:

**OTHER THAN THOSE EXPRESSLY PROVIDED IN THIS EEI COAL ANNEX 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. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A COAL TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT**



**ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.**

2.7 **Taxes and Other Liabilities.** Section 9.2 of the EEI Master Agreement shall not be applicable to Coal Products. The following provision shall be applicable to Coal Products in lieu thereof:

Seller shall be solely responsible as to any Coal Product Transaction for all assessments, fees, costs, expenses and Taxes (including without limitation, New Taxes, but not income 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. The risk of any change in such Third Party Impositions shall be borne solely by Seller. Buyer shall be solely responsible as to any Coal Product 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.

2.8 **Title and Risk of Loss.** The first sentence of Section 10.3 of the EEI Master Agreement shall not be applicable to Coal Products.

2.9 **General.** In Section 10.8 of the EEI Master Agreement, the covenant that "Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party" shall not apply in respect of Coal Products Transactions.

**PARAGRAPH THREE: SUPPLEMENTS TO THE EEI MASTER AGREEMENT FOR COAL PRODUCTS TRANSACTIONS**

The following provisions are applicable with respect to Coal Products Transactions only.

**3.1 Definitions.**

- (a) “Analysis Person” has the meaning set forth in Section 3.13(b).
- (b) “Analysis Report” has the meaning set forth in Section 3.13(d) of this Coal Annex.
- (c) “ASTM” means the American Society for Testing and Materials.
- (d) “ASTM Standards” means then-current, published, applicable ASTM guidelines relating to the characteristic referenced.
- (e) “ASTM Reproducibility Limits” mean the limits for permissible differences for reproducibility listed within the relevant ASTM Standard.
- (f) “Barge” means a barge with capacity sufficient to hold the number of Tons of Coal for delivery from the Source(s) or Delivery Point(s) (if the Delivery Point is different from the Source) as specified in the relevant Confirmation.
- (g) “Buyer’s Customer” means, if any, the party to which Buyer has contracted to sell the Coal purchased from Seller under a Coal Products Transaction.
- (h) “Claiming Party” has the meaning set forth in Section 2.1(a) of this Coal Annex.
- (i) “Coal” means a fossil fuel composed primarily of carbon along with assorted other elements and taking the form of a readily combustible black or brownish-black rock extracted from the ground by mining.
- (j) “Coal Product” or “Coal Products” mean products involving Coal as specified in a Transaction by reference to a Product listed in Exhibit B hereto or as otherwise specified by the Parties in the Transaction.
- (k) “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.

- (l) “Delivery Schedule” has the meaning set forth in Section 3.4(a) or (b), as applicable, of this Coal Annex.
- (m) “Eastern Mine” means a Coal mine that is located east of the Mississippi River.
- (n) “Financial Difference” means the difference, obtained by subtracting the Settlement Price from the Contract Price.
- (o) “FOB” has the meaning given to such term in the Uniform Commercial Code enacted by the State of New York.
- (p) “Monthly Shipment Notification Date” has the meaning set forth in Section 3.4(a) or (b), as applicable, of this Coal Annex.
- (q) “New Taxes” means (a) any Taxes, fees or assessments enacted and effective after the Trade Date of the relevant Coal Product Transaction, including, without limitation, that portion of any Taxes or New Taxes that constitutes an increase.
- (r) “Nomination Period” shall mean the period during which deliveries of Coal Products may be Scheduled during the term of a particular Coal Product Transaction.
- (s) “Non-Conforming Shipment” has the meaning set forth in Section 3.17 of this Coal Annex.
- (t) “Objecting Person” has the meaning set forth in Section 3.13(d) of this Coal Annex.
- (u) “Option Premium” means the amount, if any, paid by an Option Buyer to the Option Seller as consideration for an Option.
- (v) “Person” means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.
- (w) “PRB” means the Powder River basin located in the States of Montana and Wyoming.
- (x) “Quantity” means the quantity of Coal Product 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 Coal Product Transaction, as specified in a Confirmation.

- (y) “QVA” means Quantity Variation Adjustment as set forth in Section 3.9 hereto.
- (z) “Ratable Amount(s)” means the Quantity divided by the number of months in the Term, or if a Confirmation sets forth differing Quantities for delivery during discrete quarterly, annual or other time periods within the Term, then each such Quantity divided by the number of months in the applicable time period for delivery.
- (aa) “Rejection Limits” means the quality characteristics for the Coal Product that is the subject of a Coal Product Transaction, as specified in the relevant Confirmation, that, if exceeded, give rise to a rejection right of Buyer pursuant to Section 3.17 of this Coal Annex.
- (bb) “Sampling Person” has the meaning set forth in Section 3.13(a).
- (cc) “Shipping Notice” has the meaning set forth in Section 3.5(c) of this Coal Annex.
- (dd) “Shipment” means, as applicable, one Unit Train load, one Barge or vessel load, or the aggregate of the truckloads or other common carrier loads that are loaded for a single delivery loaded in accordance with the Delivery Schedule and in accordance with the applicable Transportation Specifications.
- (ee) “Source” means the mining region, mine(s), mining complex(es), loadout(s) or river dock(s) or other point(s) of origin that Seller and Buyer agree are acceptable origins for the Coal Products in a Coal Product Transaction as specified in the Confirmation by reference to a Source standard listed in Exhibit C hereto or as otherwise specified by the parties in a Confirmation.
- (ff) “Specifications” means the quality characteristics for the Coal Product specified in connection with a Coal Product Transaction, determined on an “as received” basis, using ASTM Standards.
- (gg) “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.
- (hh) “Ton” means 2,000 pounds avoirdupois.
- (ii) “Transportation Equipment” means Barges, vessels, railcars, or trucks, as specified in the relevant Confirmation.

- (jj) “Transportation Specifications” means that part of the agreement(s) made by or on behalf of Seller or Buyer with its respective Transporter(s) or any applicable tariff, as amended from time to time, with respect to transportation-related requirements for each Shipment.
- (kk) “Transporter” means the entity or entities transporting Coal Product on behalf of Seller to and at the Delivery Point, or, on behalf of Buyer or Buyer’s designee, from the Delivery Point.
- (ll) “Unit Train” means a train with capacity sufficient to hold the number of Tons of Coal Product for a Shipment, as defined in the relevant Confirmation.
- (mm) “Western Mine” means a Coal mine that is located West of the Mississippi River.

3.2 **Obligations and Deliveries.** The following Sections are added to Article Three of the EEI Master Agreement with respect to Coal Products only:

- 3.4 **Scheduling.** The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period for each Coal Product Transaction; provided, however that the Parties agree to make Commercially Reasonable Efforts to arrange and receive Shipments in accordance with a Delivery Schedule. Seller agrees to deliver and Buyer agrees to receive the Quantity to be delivered in approximate Ratable Amounts each calendar month over the Term of a Coal Product Transaction.
- (a) **Rail or Truck Scheduling.** Except as may be otherwise provided in the relevant Confirmation, Buyer shall advise Seller on or before the 15th day of each calendar month preceding scheduled Shipments of (i) the quantity of Coal Product and the number of Unit Trains or trucks Buyer desires to have delivered in the succeeding month to fulfill, in whole or in part, the Quantity; (ii) Buyer’s desired loading dates; and (iii) the delivery schedule therefor (“Delivery Schedule”). Seller shall advise Buyer on or before the 20th day of the month preceding Shipment of Seller’s Source and/or Delivery Point for the Scheduled monthly Shipment(s) and Buyer shall advise Seller of the specific transportation arrangements to comply with its Delivery Schedule no later than the 25<sup>th</sup> of the month preceding shipment (the “Monthly Shipment Notification Date”). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period provided however that the parties agree to make Commercially Reasonable Efforts to arrange and receive Shipments in accordance with a Delivery Schedule to be completed on or before the 20<sup>th</sup> of the month preceding the month of shipment. If either Party is

unable to meet the scheduling requirements within the time periods set forth herein, such Party shall not have failed to deliver or receive Coal if such scheduling requirements are met within five (5) days of the time for performance of such obligations as set forth above.

- (b) Barge Scheduling. On or before the third to last Business Day of the month preceding the delivery month:

(i) Buyer shall advise Seller of the quantity of Coal and number of Barges it desires to load during the succeeding month to fulfill the Coal Product Transaction volume and Buyer's desired loading dates and delivery schedule ("Delivery Schedule");

(ii) Seller shall advise Buyer of its Source and/or Delivery Point for the scheduled monthly Shipment(s); and

(iii) Buyer shall advise Seller of the specific transportation arrangements to comply with its Delivery Schedule (the "Monthly Shipment Notification Date").

3.5 Delivery and Risk of Loss.

- (a) Rail or Truck Deliveries. 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 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 Buyer's Transporter. For truck deliveries, title to and risk of loss of the Coal will pass to Buyer upon completion of loading of the trucks. 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 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. Seller shall arrange for and pay all costs of transporting the Coal to the Delivery Point and handling and loading the Coal into Unit Trains or trucks and proper distribution in such Unit Trains or trucks. 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.
- (b) 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 or its Transporter shall furnish suitable Barges or vessels for delivery of the Coal. Such Barges or vessels shall be compatible with the Source's or Delivery Point's (if the Source is other than the Delivery Point) 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. 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. 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.

- (c) Documentation/Shipping Notice. For each Shipment, Seller shall supply Buyer with a shipping notice that includes, as appropriate, the vessel name, Unit Train or Barge or truck number, Source or other point from which supplied or shipped, tonnage shipped, shipping date, destination (if known to Seller), time loading commenced and finished, along with the Analysis Report required under Section 3.13(d) of this Coal Annex and any other information reasonably required by Buyer and agreed to by Seller ("Shipping Notice"). Seller shall within twenty-four (24) hours (or forty-eight (48) hours for PRB sources) of loading or prior to arrival of the vessel, Barge, truck or Unit Train (as applicable) at the destination following loading of such Shipment (whichever comes first), send the Shipping Notice to Buyer by telecopy or other mutually agreed upon method. Notwithstanding the obligations to send Shipping Notices as provided in the previous sentence, Seller agrees to make Commercially Reasonable Efforts to send any such notices as soon as practicable. Seller shall, as soon as is reasonably possible, notify Buyer of any loading deficiencies or delays in loading via telephone or other electronic means, with confirmation in writing.
- (d) Additional Transportation Charges. If, in connection with a Coal Product Transaction, a Party is charged for any increased transportation charges, penalties or other costs, including demurrage or detention, attributable to the other Party's failure to timely load or unload Coal Product in accordance with the terms of such Coal Product Transaction or the timing and tonnage requirements of the Transportation Specifications, and if such failure is not due to Force Majeure or the other Party's Transportation Equipment or Transporter, the Party failing to timely load or unload Coal

Product shall promptly reimburse the other Party for any such charges actually incurred, 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) Additives/Freeze Conditioning. Seller shall use Commercially Reasonable Efforts to treat the Coal with freeze control agents or other additives as directed by Buyer. Buyer shall reimburse Seller for the actual cost of materials, including reasonable application costs as charged by the Source or Delivery Point, as applicable, 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 of the EEI Master Agreement.
- (f) Failure to Load as Scheduled. If a Scheduled Shipment fails to load as scheduled, despite the Parties' Commercially Reasonable Efforts to arrange and receive such Shipment in accordance with Sections 3.4(a) or (b), as applicable, the Parties shall make Commercially Reasonable Efforts to reschedule the Shipment to a future load date which is on or before the later of (i) ten (10) days after the originally scheduled Shipment date or (ii) the last day of the originally scheduled delivery month, consistent with industry practices. In the event the Shipment cannot be rescheduled to a load date within such time period and the Parties cannot agree upon a future load date during the Term, or otherwise, such Shipment will be subject to the provisions of Article 4 of the EEI Master Agreement. If a rescheduled Shipment fails to load as Scheduled, such Shipment will be subject to the provisions of Article 4 of the EEI Master Agreement, unless it is mutually agreed that another future delivery date can be established. The remedies set forth in Article 4 of the EEI Master Agreement shall be a Party's exclusive remedies for the other Party's failure to load a Shipment of Coal as set forth in this EEI Coal Annex.
- (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 or Delivery point (if the Delivery Point is other than the Source) 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, truck, Barge or vessel shall be in accordance with the loading provisions provided to Seller herein unless Buyer notified Seller in advance of different loading provisions and such different loading provisions are in general accordance with operating parameters in the Source's region, and do not, in Seller's reasonable opinion, impose an undue operating or economic burden on Seller.

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

- 3.6 Title and Indemnity. With respect to each Coal Product Transaction, Seller warrants that it shall have good and marketable title to Coal and shall deliver such Coal to Buyer, free and clear of all claims, liens, security interests, encumbrances, or an interest therein or thereto by any person arising prior to the transfer of title to Buyer. Seller shall indemnify, defend and hold harmless Buyer from any and all Claims arising prior to the transfer of title to Coal from Seller to Buyer. Buyer shall indemnify, defend and hold harmless Seller from any and all Claims arising after the transfer of title to Coal from Seller to Buyer.
- 3.7 Substitute Coal. Unless otherwise restricted by the subject Confirmation, Seller shall, by giving timely notice as provided in Section 3.4 above, have the option, subject to Buyer's approval, not to be unreasonably withheld, to provide the Coal Product from any alternate Source Seller may select. Any such substituted Coal Product must comply with all Specifications for the Coal Product to be replaced and be otherwise acceptable to Buyer. Seller shall cooperate with Buyer in Buyer's arranging for alternative transportation to allow the Coal Product shipped from the alternate Source to be delivered to Buyer at the Delivery Point at the same time and at the same Contract Price on an equivalent \$/mmBtu and SO<sub>2</sub> adjusted basis (if SO<sub>2</sub> adjustment is provided in the relevant Confirmations) as if delivery had been made to Buyer from the original Source. The Seller shall be solely responsible for any increased transportation, handling, storage and other costs, if any, incurred by Buyer directly resulting from Seller's provision of substitute Coal Product.
- 3.8 Failure to Deliver or Receive Coal. The remedies set forth in Article 4 of the EEI Master Agreement shall be a Party's exclusive remedies for the other Party's failure to deliver or receive all or part of the Quantity for the

relevant delivery month in accordance with the applicable Coal Product Transaction.

- (a) Rescheduling. As an alternative to the damages provision in Article 4 of the EEI Master Agreement, if the Parties mutually agree in writing, the Party other than the Party failing to deliver or receive a Shipment of Coal 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 liquidated damages provision in Article 4 of the EEI Master Agreement shall apply.
  - (b) Duty to Mitigate. Both parties shall be subject to a commercially reasonable good faith obligation to mitigate any damages hereunder.
  - (c) Payment. Payment of amounts, if any, determined under this Section 3.8 shall be made in accordance with Article 4 of the EEI Master Agreement. All such determinations shall be made in a commercially reasonable manner and the Party other than the Party failing to deliver or receive a Shipment of Coal Product shall not be required to enter into any actual replacement transaction in order to determine the Replacement Price or Sales Price as appropriate.
  - (d) Damages Stipulation. Each Party stipulates that the payment obligations set forth in this Section 3.8 for the damages incurred are a reasonable approximation of the anticipated harm or loss and acknowledges the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as unenforceable, an unreasonable penalty or otherwise.
- 3.9 Quantity Variation Adjustment. If a Confirmation for a Coal Product Transaction in which the Quantity is designated in Unit Train loads or Barge loads states that QVA is applicable, then Coal Product delivered in respect of that Coal Product Transaction that is either in excess of or below the designated capacity of such Unit Train or Barge shall be priced as set forth in Exhibit D.
- 3.10 Specifications. Seller agrees that the quality of any and all Coal Product to be delivered by Seller and purchased by Buyer pursuant to any Coal Product Transaction shall conform to the relevant Specifications and contain no synthetic fuels, be 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), be substantially consistent in quality throughout a Shipment, meet the size required, and have had no intermediate sizes (including fines) added or removed.

- 3.11 Unit Train or Truck Weighing. 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) Testing. Seller shall make Commercially Reasonable Efforts to cause the Source or Delivery Point (if the Delivery point is other than the Source) to test, calibrate, and certify its scales approximately every six (6) months to maintain them at a scale accuracy in accordance with the guidelines outlined in the National Bureau of Standards Handbook #44. Seller shall make 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 such scales.
- (b) Inoperative Scales. If the scales are determined to be inoperative, if the Source is a Western Mine, then the weight of such Coal delivered shall be determined by averaging the lading weight per railcar of the last five (5) Unit Trains of like equipment under this Agreement weighed at the Source or Delivery Point (if the Delivery Point is other than the Source) prior to such breakdown. If less than five (5) Unit Trains of like equipment under this EEI Coal Annex were weighed at the Source or Delivery Point (if the Delivery Point is other than the Source) prior to the breakdown, the weight per railcar shall be determined by averaging the lading weight per railcar of the Unit Train(s) of like equipment under this EEI Coal Annex weighed at the Source or Delivery Point (if the Delivery Point is other than the Source) prior to the breakdown as well as the lading weight per railcar of Unit Train(s) of like equipment under this EEI Coal Annex first weighed at the Source or Delivery Point (if the Delivery Point is other than the Source) after the scales are operable, so as to comprise a five (5) Unit Train weighted average. If the Source is an Eastern Mine, the weight of such Coal delivered shall be determined by railroad weights. If railroad weights are not available, the procedure for Western Mines shall be utilized.
- (c) Observation. 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 either Party should at any time question the accuracy of the scales at the Source or Delivery Point (if the Delivery Point is other than 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.

- 3.12 Barge and Vessel Weighing. 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) 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 an independent surveyor (certified commercial marine surveyor for vessels) experienced in the conduct of draft surveys and selected by mutual agreement of the parties or, failing agreement, by Seller.
- 3.13 Sampling and Analysis.
- (a) Sampling. The Sampling Person shall be Seller or Seller's designee and shall perform sampling and analysis of the Coal pursuant to a Coal Product Transaction at Seller's expense. The Sampling Person shall cause a representative Coal sample to be taken by mechanical sampler that is in working condition and that has been dynamically bias tested within twelve (12) months prior to delivery by an independent certified third party. In the event the Sampling Person is not able to obtain a sample with bias tested equipment in proper working condition, the Parties shall confer for purposes of reaching agreement as to an alternative means of sampling. Samples shall be taken on an "as-loaded" basis, and analyzed on an "as-received" basis, and all sampling, sample preparation and analysis shall be performed in accordance with then current published applicable ASTM Standards.
- (b) Analysis Procedures. The Analysis Person shall be an independent certified laboratory. The Analysis Person shall be chosen by good faith agreement of the Parties, or failing agreement, by Seller. The Analysis Person shall, at Seller's expense, 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.
- (c) Analysis Splits. The Sampling Person's samples of Coal representing each Shipment and the analysis thereof shall be used to determine quality adjustments pursuant to Section 3.16 and any rejection or suspension rights pursuant to Sections 3.17 and 3.18. Each sample shall be divided into three (3) 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 sub-section (b) above; one (1) part shall be retained by the Sampling Person for a period of forty-five (45) days or shipped as Buyer directs; and one (1) part shall

be retained by the Sampling Person for a period of forty-five (45) days to be used for a referee analysis, if necessary.

- (d) Analysis Objections. 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 Buyer and Seller along with Shipment I.D. number, weight and shipping data ("Analysis 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 Analysis 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 ("Referee Analysis"). If the results of the Referee Analysis are within ASTM (interlaboratory) Reproducibility Limits, the Analysis Report shall control, and the costs of the Referee Analysis shall be paid by the Objecting Person. If such results for any Specification are not within such Reproducibility Limits, the results of the Referee Analysis shall control, and the costs of the Referee Analysis shall be borne by the non-Objecting Person. All analyses shall be performed in accordance with then current published applicable ASTM Standards.

- 3.14 Rounding and Significant Digits. All calculations will use floating decimals with the final operation being rounded to the significant digits to the right of the decimal place as follows:

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

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

- 3.15 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 Product.
- 3.16 Quality Adjustments. If Coal Product delivered in connection with a Coal Product Transaction varies from the Specifications required in respect thereof, and Buyer does not exercise its rejection rights under Section 3.17, quality adjustments shall be calculated pursuant to the formula(s) set forth in the relevant Confirmation. Within ten (10) days after the end of each month during the Term for each Coal Product Transaction, the quality adjustments for each Coal Product 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 of the EEI Master Agreement.
- 3.17 Buyer's Rejection Rights. If any quality characteristic of any Shipment of Coal Product, determined in accordance with the sampling and analysis procedures set forth herein, is above or below, as applicable, any of the Rejection Limits specified in connection with a Coal Product Transaction (a "Non-Conforming Shipment"), Buyer shall have the option, exercisable by notice to Seller within one (1) Business Day after Buyer's receipt of the Analysis Report and additional analysis, if any, of the Coal provided pursuant to Section 3.13, to either (i) reject such Non-Conforming Shipment at the Delivery Point or in route, but prior to unloading from Transporter's Transportation Equipment; or (ii) reach a mutually agreeable price adjustment or other resolution using Commercially Reasonable Efforts. If Buyer fails timely to exercise its rejection rights under this Section 3.17 as to a Shipment, Buyer shall be deemed to have waived such rights to reject with respect to that Shipment only. In addition, any waiver pursuant to the foregoing sentence shall not constitute a waiver of Buyer's rights under Section 3.18. If Buyer timely exercises its rejection rights under this Section 3.17 with respect to a Non-Conforming Shipment, title, if already passed, shall immediately revert to Seller, and 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.

3.18 Suspension Rights. If there are three (3) Non-Conforming Shipments, whether rejected or not, in any three (3) month period or if two (2) out of any four (4) consecutive Shipments under a Coal Product Transaction are Non-Conforming Shipments (or with respect to Shipments by Barge, one (1) or more Non-Conforming Shipments in each of two (2) days of sequential Shipments under a given Coal Product Transaction, whether or not there are any intervening days without Shipments), as the case may be, then Buyer may upon written notice to Seller suspend the receipt of future Shipments under such Coal Product Transaction (except Shipments already loaded or in transit to Buyer; provided that Buyer shall retain all rights under Sections 3.16 and 3.17 with regard to such Shipments). A waiver by Buyer of its suspension right in respect of any one series of Shipments shall not constitute a waiver for any subsequent series of Shipments. If Seller, within ten (10) days of its receipt of such notice of suspension from Buyer under this Section 3.18, provides reasonable assurances in writing to Buyer that future Shipments 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 within three (3) months thereafter, any Shipments of Coal Product fail to conform to the Specifications and give rise to any of Buyer's rejection rights under Section 3.17 for the Rejection Limit parameter for which there was a prior suspension under such Coal Product Transaction, as the case may be, then such failure shall constitute an Event of Default under the EEI Master Agreement solely with respect to the affected Coal Product Transaction, with Seller deemed to be the Defaulting Party under Article 5 of the EEI Master Agreement.

3.19 Force Majeure.

(a) Excuse from Performance. In addition to the provisions of Section 3.3 of the EEI Master Agreement, in the event of Force Majeure affecting a Party's obligation to deliver or receive Coal Products:

Option A: delivery of the affected quantity of Coal Product shall be made up on a schedule mutually agreeable to the Parties.

Option B: delivery of the affected quantity of Coal Product shall be made up at the non-Claiming Party's discretion on a schedule mutually agreeable to the Parties.

Option C: delivery of the affected quantity of Coal Product shall not be made up unless the Parties mutually agree otherwise.

- (b) Extended Force Majeure/Non-Claiming Party's Right to Terminate. If the Claiming Party is excused, in whole or in part, from the performance of its obligations with respect to a Coal Product Transaction by Force Majeure for a continuous period of sixty (60) days or more, then the Non-Claiming Party shall have the right, upon three (3) Business Days' prior written notice, to terminate such Coal Product Transaction and the associated obligations of the Parties thereunder (other than payment obligations for prior performance thereunder).

Option A: Neither Party shall have any liability hereunder as a result of termination of the affected Coal Product Transaction (other than payment obligations for prior performance thereunder), including, but not limited to, any Termination Payment pursuant to Section 5.3 of the EEI Master Agreement.

Option B: In the event of termination of the affected Coal Product Transaction, the non-Claiming Party must declare an Early Termination Date pursuant to Article 5 of the EEI Master Agreement and a Termination Payment will be calculated and payable with respect to the Coal Product Transaction as if such Coal Product Transaction were being terminated in accordance therewith, in which case references to the Defaulting Party and the Non-Defaulting Party will be deemed references to the Claiming Party and the non-Claiming Party, respectively. For the avoidance of doubt, while the Claiming Party shall be deemed to be the Defaulting Party for purposes of calculating the Termination Payment, the Claiming Party shall not be a Defaulting Party for purposes of Article 5 of the EEI Master Agreement solely as a result of the non-Claiming Party's termination of the Coal Product Transaction pursuant to this Section 3.19. In determining a Termination Payment pursuant to this Section, the non-Claiming Party shall (a) if obtaining market quotations from one or more third parties, ask each third party (i) not to take account of the current creditworthiness of the non-Claiming Party or any existing Performance Assurance and (ii) to provide mid-market quotations; and (b) in any other case, use mid-market values without regard to the creditworthiness of the non-Claiming Party.

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



extent contractually permitted by such Coal Product Transaction and agreements.

- (d) Capital Expenditures and Labor Matters. It is understood and agreed that significant capital expenditures and settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require significant capital expenditure or settlement of strikes and lockouts by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the Party having difficulty.
- (e) Delivery at Delivery Point. This Section 3.19 shall not require Seller to deliver, or Buyer to receive, the quantity of Coal affected by Force Majeure at points other than the Delivery Point (including allowable substitutions under the terms of the Coal Product Transaction).

3.20 Payment Netting. If neither Option A nor Option B is specified on the Paragraph 4 Cover Sheet as applicable, Option B of this Section 3.20 shall apply.

Option A: Payment Netting Between Other Product and Coal Product Transactions.

Section 6.4 of the EEI Master Agreement shall be applicable to all Products; monthly payment obligations in respect of all other Products shall be netted with monthly payment obligations in respect of Coal Products, all in accordance with Article 6 of the EEI Master Agreement. For clarity, it is expressly agreed that, in addition to the netting of monthly payment obligations in respect of other Products and Coal Products, if an Early Termination Date is declared by the Non-Defaulting Party pursuant to Article 5 of the EEI Master Agreement, then all Settlement Amounts and any other payments for all Transactions whether for other Products and/or Coal Products shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

Option B: No Payment Netting Between Other Product and Coal Product Transactions.

Section 6.4 of the EEI Master Agreement shall be separately applicable to Coal Products; for this limited purpose only, monthly payment obligations in respect of other Products shall not be netted with monthly payment obligations in respect of Coal Products and monthly payment obligations in respect of Coal Products shall be netted only with monthly payment obligations in respect of other Coal Products. For clarity, it is expressly agreed that if an Early Termination Date is declared by the Non-Defaulting Party, then all Settlement Amounts and any other payments for

all Transactions whether for other Products and/or Coal Products shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

3.3 **Miscellaneous**. The following Section is added to Article 10 of the EEI Master Agreement with respect to Coal Products only:

10.12 **UCC Waiver**. Section 8 of the EEI Master Agreement and, if applicable, the Collateral Annex, set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1 and 8.2, in Section 8.3, and in the relevant portions of the Collateral Annex, neither Party:

- (a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or
- (b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Section 8 of this Agreement;

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the Parties have caused this EEI Coal Annex to be duly executed in one or more counterparts (each of which shall be deemed an original, and all of which, taken together with the EEI Master Agreement, shall constitute one and the same agreement) effective as of the Effective Date of the EEI Master Agreement. The Parties expressly acknowledge the validity of facsimile counterparts of the executed EEI Coal Annex, if any, which may be transmitted in advance of, or in lieu of, executed original documents.

\_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A-1"**  
**TO THE**  
**EEI COAL ANNEX**

**CONFIRMATION - EXCLUDING OPTIONS**

**Date:** \_\_\_\_\_

**Counterparties**

**Coal Seller:**

**Coal Buyer:**

**---Counterparty1--- ("---CP-1---")**

**---Counterparty2--- ("---CP-2---")**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Tel. \_\_\_\_\_

Tel. \_\_\_\_\_

Fax. \_\_\_\_\_

Fax. \_\_\_\_\_

**---CP-1--- Ref #:** \_\_\_\_\_

**---CP-2--- Ref #:** \_\_\_\_\_

This Confirmation sets forth the binding agreement entered into between ---  
**Counterparty1--- ("---CP-1---")** and **---Counterparty2--- ("---CP-2---")** on the TRADE  
DATE set out below as to a Transaction (this "Transaction") regarding the sale/purchase  
of Coal under the following terms:

Commodity: Coal: As defined in the Coal Annex.

Trade

Date: \_\_\_\_\_

\*\*\*\*\*Purchase / Sale Information\*\*\*\*\*

Product: \_\_\_\_\_

Term: \_\_\_\_\_

Quantity/Tons: \_\_\_\_\_

Scheduling (Check one):  Per Master Agreement

Other: \_\_\_\_\_

Nomination Period (Check one):  Monthly  Quarterly  Other: \_\_\_\_\_

Source(s): \_\_\_\_\_

Delivery Point (Check one):           \_\_\_ FOB railcar at the Source  
   \_\_\_ FOB barge at the Source  
   \_\_\_ Other: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Payment (check one):                 \_\_\_\_\_ Per Coal Annex  
   \_\_\_\_\_ Other \_\_\_\_\_

SPECIFICATIONS:	<u>CHARACTERISTIC</u>	<u>STANDARD</u>	<u>REJECTION LIMIT</u>
	Base Calorific Value	min__ Btu/lb.	Max __ Btu/lb.
	Total Moisture	max__%	Max __%
	Ash	max__%	Max __%
	Sulfur	max__%	Max __%
	lbs. SO <sub>2</sub> /mmBtu	max__lbs.	Max __lbs.
	Ash Fusion	__°F	Min __°
	Temperature (H= 1/2W °F Reducing Atmosphere)		
	Volatile Matter	__%	Min __%
	Grindability (HGI)	__	Min __
	Sodium (%)	__%	
	Size	[__]" x 0" topsize, nominal, with a maximum of 55% passing 1/4" square wire cloth sieve to be determined on the basis of the primary cutter of the mechanical sampling system.	

FORMULA(S)  
FOR QUALITY  
ADJUSTMENTS:

**Btu Adjustment:**

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

$$\text{Base Calorific Value Adjustment} = \frac{[(\text{Actual Calorific Value}) \textit{minus} (\text{Base Calorific Value})]}{\text{Base Calorific Value}} \times (\text{Contract Price})$$

WHERE:

Actual Calorific Value = Shipment average Btu/lb

Base Calorific Value = Btu/lb as shown above

**SO<sub>2</sub> Adjustment** (Applicable only if box is checked) :

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

$$\frac{((\text{Standard SO}_2 \text{ lbs/MMBtu} - \text{Actual lbs. SO}_2/\text{mmbtu}) * \text{Actual Btu/lb.} * E)}{1,000,000}$$

WHERE:

E is the price of one SO<sub>2</sub> Allowance (as defined below) expressed in dollars. The price of an SO<sub>2</sub> Allowance is determined by the monthly SO<sub>2</sub> price indices published in Argus Air Daily published by Argus Media Ltd. or any successor publication (“Air Daily”) for the calendar month of delivery.<sup>1</sup>

In lieu of a financial SO<sub>2</sub> adjustment, Buyer and Seller may, upon mutual agreement at the time, exchange SO<sub>2</sub> Allowances as determined by the following formula:

$$\text{Number of SO}_2 \text{ Allowances} = (\text{Standard SO}_2 \text{ lbs/MMBtu} - \text{Actual SO}_2 \text{ lbs/MMBtu} \times \text{Actual Btu/lb} \times \text{Tons of Coal} \div 1,000,000)^2$$

<sup>1</sup> As noted in the definition of “SO<sub>2</sub> Allowance” below, currently one SO<sub>2</sub> Allowance is required to emit one Ton of SO<sub>2</sub> during a calendar year. Upon implementation of the *Clean Air Interstate Rule* under 40 CFR 96.202 (see Final Rule, 60 Fed. Reg. 91 (May 12, 2005) at p. 25363), this formula will need to be adjusted based upon an increase in the ratio of allowances required for SO<sub>2</sub> emissions as follows:

- a. Use of Title IV allowances with vintage years 2010-2014 will require 2 allowances per Ton of SO<sub>2</sub>.
- b. Use of Title IV allowances with vintage years 2015 or later will require 2.86 allowances per Ton of SO<sub>2</sub>.

<sup>2</sup> *Id.*

If the product of the above is positive, Buyer shall transfer SO<sub>2</sub> Allowances to Seller, and if the product of the above is negative, Seller shall transfer SO<sub>2</sub> Allowances to Buyer. SO<sub>2</sub> Allowances due to Buyer or Seller hereunder shall be transferred to such party consistent with the payment required for cash SO<sub>2</sub> adjustments. Fractional SO<sub>2</sub> Allowances resulting from the calculations shall be paid in cash.

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

If the party owed the SO<sub>2</sub> Allowances (the "SO<sub>2</sub> Transferee") requests the transfer of the SO<sub>2</sub> Allowances, the party owing SO<sub>2</sub> Allowances (the "SO<sub>2</sub> Transferor") shall deliver a fully executed Allowance Transfer Form (OMB No. 2060-0258) ("ATF") relating to such SO<sub>2</sub> Allowances to the SO<sub>2</sub> Transferee. The SO<sub>2</sub> Transferee shall promptly cause all appropriate and fully completed SO<sub>2</sub> Allowance transfer documentation, including the ATF, to be placed on file with the EPA in accordance with the applicable regulations relating to the Allowance Tracking System.

The SO<sub>2</sub> Transferor warrants that it will deliver to the SO<sub>2</sub> Transferee the SO<sub>2</sub> Allowances, free and clear of all liens, claims, security interests, encumbrances and other defects of title. EACH PARTY EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

Each party shall be responsible for any taxes or other fees associated with its respective delivery and receipt of such SO<sub>2</sub> Allowances.

Quality price adjustments shall be rounded to the nearest \$0.001 and calculated on a monthly weighted average.

OTHER:

OPTIONAL TERMS

The following provisions are for administrative convenience and do not alter, or release Seller or Buyer from contractual liability to perform, any obligation of Seller or Buyer under this Transaction.

**BUYER NOT END-USER**

Buyer Not End-User (Applicable only if box is checked.)

Buyer is not able or expecting to use or consume, or take physical delivery of the Coal that is the subject of this Transaction and designates Buyer's Customer as its agent for purposes of, and delegates to Buyer's Customer all of, Buyer's rights, duties and obligations relating to, scheduling,

transportation from the Delivery Point, unloading, additional charges (demurrage, etc.), shipping documentation, freeze conditioning, weighing, sampling and analysis, quality adjustments and related payments, and rejection and suspension rights (“*Physical Receipt Functions*”) relating to the Coal that Buyer may resell to Buyer’s Customer(s) (the “*Delegated Downstream Physical Receipt Functions*”). Seller acknowledges and agrees to Buyer’s delegation of all rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions and further agrees to recognize and accept exercise and performance thereof by Buyer’s Customer as exercise and performance by Buyer.

Buyer shall notify Seller as soon as practicable, but in any event no later than the Monthly Shipment Notification Date, of the identity of Buyer’s Customer(s) and provide Seller with the name, telephone number, fax number and electronic mail address of the individual responsible for Buyer’s Customer’s scheduling activities.

For purposes of this Transaction, the term “*Buyer’s Customer*” means any person to which Buyer may resell any or all of the Coal that is the subject of this Transaction.

Daisy-chain Provision (Applicable only if box is checked.)

Buyer’s designation of Buyer’s Customer as its agent and delegation to Buyer’s Customer of the Delegated Downstream Physical Receipt Functions is with full right on the part of Buyer’s Customer to designate any person to which Buyer’s Customer may resell any or all of the Coal that is the subject of this Transaction (a “*Downstream Customer*”) as Buyer’s Customer’s (and, thus, Buyer’s) agent for purposes of, and delegate to such person all of, Buyer’s Customer’s rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions, including the right on the part of such person pursuant to this paragraph to further delegate all of the rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions. Seller acknowledges and agrees to the right on the part of Buyer’s Customer to further designate an agent for performance of, and to further delegate the rights, duties and obligations relating to, the Delegated Downstream Physical Receipt Functions and further agrees to recognize and accept exercise and performance thereof by a Downstream Customer as exercise and performance by Buyer.

Buyer is End-user (Applicable only if box is checked.)

Buyer is able or expecting to use or consume, or take physical delivery of the Coal that is the subject of this Transaction. Seller designates Buyer as its agent for purposes of, and delegates to Buyer all of, Seller’s rights, duties and obligations relating to the Physical Receipt Functions relating to Coal that Seller may purchase from Seller’s Vendor (“*Delegated Upstream Physical*



*Receipt Functions*”). Buyer acknowledges and agrees to Seller’s delegation of all rights, duties and obligations relating to the Delegated Upstream Physical Receipt Functions and agrees to exercise and perform such rights, duties and obligations on behalf of Seller of the benefit and on behalf of Seller and, if applicable, Seller’s predecessor(s) in the chain of title to the Coal that is the subject of this Transaction.

**SELLER NOT PRODUCER**

- Seller Not Producer (Applicable only if box is checked.)

Seller is not able or expecting to produce, or make physical delivery of the Coal that is the subject of this Transaction and designates Seller’s Vendor as its agent for purposes of, and delegates to Seller’s Vendor all of, Seller’s rights, duties and obligations relating to, scheduling, loading, transportation to the Delivery Point, additional charges (demurrage, etc.), shipping documentation, freeze conditioning, weighing, sampling and analysis, quality adjustments and related payments and rejection and suspension rights (“*Physical Delivery Functions*”) relating to the Coal that Seller may purchase from Seller’s Vendor (the “*Delegated Upstream Physical Delivery Functions*”). Buyer acknowledges and agrees to Seller’s delegation of all rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions and further agrees to recognize and accept exercise and performance thereof by Seller’s Vendor as exercise and performance thereof by Seller.

Seller shall notify Buyer as soon as practicable, but in any event no later than the Monthly Shipment Notification Date, of the identify of Seller’s Vendor and provide Buyer with the name, telephone number, fax number and electronic mail address of the individual responsible for Seller’s Vendor’s scheduling activities.

For purposes of this transaction, the term “*Seller’s Vendor*” means any person from whom Seller may purchase any or all of the Coal that is the subject of this Transaction.

- Daisy-chain Provision (Applicable only if box is checked.)

Seller’s designation of Seller’s Vendor as its agent and delegation to Seller’s Vendor of the Delegated Upstream Physical Delivery Functions is with full right on the part of Seller’s Vendor to designate any person from which Seller’s Vendor may purchase any or all of the Coal that is the subject of this Transaction (an “Upstream Vendor”) as Seller’s Vendor’s (and, thus, Seller’s) agent for purposes of, and delegate to such person all of Seller’s Vendor’s rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions, including the right on the part of such person pursuant to this paragraph to further delegate all of the rights, duties and

obligations relating to the Delegated Upstream Physical Delivery Functions. Buyer acknowledges and agrees to the right on the part of Seller's Vendor to further designate an agent for performance of, and to further delegate the rights, duties and obligations relating to, the Delegated Upstream Physical Delivery Functions and further agrees to recognize and accept exercise and performance thereof by an Upstream Vendor as exercise and performance by Seller.

Seller is Producer (Applicable only if box is checked.)

Seller is able or expecting to produce, or make physical delivery of, the Coal that is the subject of this Transaction. Buyer designates Seller as its agent for purposes of, and delegates to Seller all of, Buyer's rights, duties and obligations relating to the Physical Delivery Functions relating to Coal that Buyer may resell to Buyer's Customer (the "*Delegated Downstream Physical Delivery Functions*"). Seller acknowledges and agrees to Buyer's delegation of all rights, duties and obligations relating to the Delegated Downstream Physical Delivery Functions and agrees to exercise and perform such rights, duties and obligations on behalf of Buyer for the benefit and on behalf of Buyer and, if applicable, Buyer's successor(s) in the chain of title to the Coal that is the subject of this Transaction.

This letter constitutes a “Confirmation” as referred to in the Master Agreement described below. This Confirmation supplements, forms part of, and is subject to, the Master Power Purchase & Sale Agreement dated \_\_\_\_\_, \_\_\_\_\_, as it may be amended, and supplemented from time to time (the “Master Agreement”) between Coal Buyer and Coal Seller. 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 at the fax number specified in the Master Agreement. If you do not return this Confirmation or object to any of the terms stated herein within two (2) Business Days of your receipt of it, then in accordance with the EEI Master Agreement this Confirmation shall be deemed correct, and binding and conclusive evidence of this Transaction. This Confirmation supersedes any broker confirmation concerning this Transaction.

**COAL SELLER****COAL BUYER**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT "A-2"  
TO THE  
EEI COAL ANNEX**

**CONFIRMATION - OPTIONS**

**Date:** \_\_\_\_\_

**Counterparties**

**Option Seller:**

**Option Buyer:**

**---Counterparty1--- ("---CP-1---")**

**---Counterparty2--- ("---CP-2---")**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Tel. \_\_\_\_\_

Tel. \_\_\_\_\_

Fax. \_\_\_\_\_

Fax. \_\_\_\_\_

**---CP-1---** Ref #: \_\_\_\_\_

**---CP-2---** Ref #: \_\_\_\_\_

This Confirmation sets forth the binding agreement entered into between ---  
**Counterparty1---** ("---CP-1---") and ---**Counterparty2---** ("---CP-2---") on the TRADE  
DATE set out below as to a Transaction (this "Transaction") regarding the sale/purchase  
of Coal under the following terms:

Commodity: Coal: As defined in the Master Agreement.

Trade

Date: \_\_\_\_\_

**\*\*\*\*\*Purchase / Sale Information\*\*\*\*\***

Option Type: \_\_\_\_\_

Option Term: \_\_\_\_\_

Strike Price: \_\_\_\_\_

Option Quantity / Tons: \_\_\_\_\_

Exercise Period: \_\_\_\_\_

Exercise Date (s) (Check one):  Per Master Agreement  
 Other: \_\_\_\_\_  
 \_\_\_\_\_

\*\*\*\*\***Purchase / Sale Information**\*\*\*\*\*

Product: \_\_\_\_\_

Term: \_\_\_\_\_

Quantity/Tons: \_\_\_\_\_

Scheduling (Check one):  Per Master Agreement  
 Other: \_\_\_\_\_

Nomination Period (Check one):  Monthly  Quarterly  Other: \_\_\_\_\_

Source(s): \_\_\_\_\_

Delivery Point (Check one):  FOB railcar at the Source  
 FOB barge at the Source  
 Other: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Payment (check one):  Per Master Agreement  
 Other \_\_\_\_\_

SPECIFICATIONS:	<u>CHARACTERISTIC</u>	<u>STANDARD</u>	<u>REJECTION LIMIT</u>
	Base Calorific Value	min__ Btu/lb.	Max __Btu/lb.
	Total Moisture	max__%	Max __%
	Ash	max__%	Max __%
	Sulfur	max__%	Max __%
	lbs. SO <sub>2</sub> /mmBtu	max__lbs.	Max __lbs.
	Ash Fusion Temperature(H= 1/2W °F Reducing Atmosphere)	__°F	Min __°
	Volatile Matter		
	Grindability (HGI)	__%	Min __%
	Sodium (%)	__%	Min __%
	Size	[__]” x 0” topsize, nominal, with a maximum of 55% passing	

1/4" square wire cloth sieve to be determined on the basis of the primary cutter of the mechanical sampling system.

**FORMULA(S) FOR QUALITY**

**ADJUSTMENTS:**

**Btu Adjustment:**

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

Base Calorific

$$\text{Value Adjustment} = \frac{[(\text{Actual Calorific Value}) \text{ minus } (\text{Base Calorific Value})] \times (\text{Contract Price})}{\text{Base Calorific Value}}$$

WHERE:

Actual Calorific Value = Shipment average Btu/lb

Base Calorific Value = Btu/lb as shown above

**SO<sub>2</sub> Adjustment** (Applicable only if box is checked) :

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

$$\frac{((\text{Standard SO}_2 \text{ lbs/MMBtu} - \text{Actual lbs. SO}_2/\text{mmbtu}) * \text{Actual Btu/lb.} * E)}{1,000,000}$$

WHERE:

E is the price of one SO<sub>2</sub> Allowance (as defined below) expressed in dollars. The price of an SO<sub>2</sub> Allowance is determined by the monthly SO<sub>2</sub> price indices published in Argus Air Daily published by Argus Media Ltd. or any successor publication (“Air Daily”) for the calendar month of delivery.<sup>3</sup>

<sup>3</sup> As noted in the definition of “SO<sub>2</sub> Allowance” below, currently one SO<sub>2</sub> Allowance is required to emit one Ton of SO<sub>2</sub> during a calendar year. Upon implementation of the *Clean Air Interstate Rule* under 40 CFR 96.202 (see Final Rule, 60 Fed. Reg. 91 (May 12, 2005) at p. 25363), this formula will need to be adjusted based upon an increase in the ratio of allowances required for SO<sub>2</sub> emissions as follows:

a. Use of Title IV allowances with vintage years 2010-2014 will require 2 allowances per Ton of SO<sub>2</sub>.

In lieu of a financial SO<sub>2</sub> adjustment, Buyer and Seller may, upon mutual agreement at the time, exchange SO<sub>2</sub> Allowances as determined by the following formula:

$$\text{Number of SO}_2 \text{ Allowances} = (\text{Standard SO}_2 \text{ lbs/MMBtu} - \text{Actual SO}_2 \text{ lbs/MMBtu} \times \text{Actual Btu/lb} \times \text{Tons of Coal} \div 1,000,000)^4$$

If the product of the above is positive, Buyer shall transfer SO<sub>2</sub> Allowances to Seller, and if the product of the above is negative, Seller shall transfer SO<sub>2</sub> Allowances to Buyer. SO<sub>2</sub> Allowances due to Buyer or Seller hereunder shall be transferred to such party consistent with the payment required for cash SO<sub>2</sub> adjustments. Fractional SO<sub>2</sub> Allowances resulting from the calculations shall be paid in cash.

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

If the party owed the SO<sub>2</sub> Allowances (the "SO<sub>2</sub> Transferee") requests the transfer of the SO<sub>2</sub> Allowances, the party owing SO<sub>2</sub> Allowances (the "SO<sub>2</sub> Transferor") shall deliver a fully executed Allowance Transfer Form (OMB No. 2060-0258) ("ATF") relating to such SO<sub>2</sub> Allowances to the SO<sub>2</sub> Transferee. The SO<sub>2</sub> Transferee shall promptly cause all appropriate and fully completed SO<sub>2</sub> Allowance transfer documentation, including the ATF, to be placed on file with the EPA in accordance with the applicable regulations relating to the Allowance Tracking System.

The SO<sub>2</sub> Transferor warrants that it will deliver to the SO<sub>2</sub> Transferee the SO<sub>2</sub> Allowances, free and clear of all liens, claims, security interests, encumbrances and other defects of title. EACH PARTY EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

Each party shall be responsible for any taxes or other fees associated with its respective delivery and receipt of such SO<sub>2</sub> Allowances.

Quality price adjustments shall be rounded to the nearest \$0.001 and calculated on a monthly weighted average.

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b. Use of Title IV allowances with vintage years 2015 or later will require 2.86 allowances per Ton of SO<sub>2</sub>

<sup>4</sup> *Id.*

OTHER:

OPTIONAL TERMS

The following provisions are for administrative convenience and do not alter, or release Seller or Buyer from contractual liability to perform, any obligation of Seller or Buyer under this Transaction.

**BUYER NOT END-USER**

Buyer Not End-User (Applicable only if box is checked.)

Buyer is not able or expecting to use or consume, or take physical delivery of the Coal that is the subject of this Transaction and designates Buyer's Customer as its agent for purposes of, and delegates to Buyer's Customer all of, Buyer's rights, duties and obligations relating to, scheduling, transportation from the Delivery Point, unloading, additional charges (demurrage, etc.), shipping documentation, freeze conditioning, weighing, sampling and analysis, quality adjustments and related payments, and rejection and suspension rights ("*Physical Receipt Functions*") relating to the Coal that Buyer may resell to Buyer's Customer(s) (the "*Delegated Downstream Physical Receipt Functions*"). Seller acknowledges and agrees to Buyer's delegation of all rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions and further agrees to recognize and accept exercise and performance thereof by Buyer's Customer as exercise and performance by Buyer.

Buyer shall notify Seller as soon as practicable, but in any event no later than the Monthly Shipment Notification Date, of the identity of Buyer's Customer(s) and provide Seller with the name, telephone number, fax number and electronic mail address of the individual responsible for Buyer's Customer's scheduling activities.

For purposes of this Transaction, the term "*Buyer's Customer*" means any person to which Buyer may resell any or all of the Coal that is the subject of this Transaction.

Daisy-chain Provision (Applicable only if box is checked.)

Buyer's designation of Buyer's Customer as its agent and delegation to Buyer's Customer of the Delegated Downstream Physical Receipt Functions is with full right on the part of Buyer's Customer to designate any person to which Buyer's Customer may resell any or all of the Coal that is the subject of this Transaction (a "Downstream Customer") as Buyer's Customer's (and, thus, Buyer's) agent for purposes of, and delegate to such person all of, Buyer's Customer's rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions, including the right on the part of such person pursuant to this paragraph to further delegate all of the rights,



duties and obligations relating to the Delegated Downstream Physical Receipt Functions. Seller acknowledges and agrees to the right on the part of Buyer's Customer to further designate an agent for performance of, and to further delegate the rights, duties and obligations relating to, the Delegated Downstream Physical Receipt Functions and further agrees to recognize and accept exercise and performance thereof by a Downstream Customer as exercise and performance by Buyer.

- Buyer is End-user (Applicable only if box is checked.)

Buyer is able or expecting to use or consume, or take physical delivery of the Coal that is the subject of this Transaction. Seller designates Buyer as its agent for purposes of, and delegates to Buyer all of, Seller's rights, duties and obligations relating to the Physical Receipt Functions relating to Coal that Seller may purchase from Seller's Vendor ("*Delegated Upstream Physical Receipt Functions*"). Buyer acknowledges and agrees to Seller's delegation of all rights, duties and obligations relating to the Delegated Upstream Physical Receipt Functions and agrees to exercise and perform such rights, duties and obligations on behalf of Seller of the benefit and on behalf of Seller and, if applicable, Seller's predecessor(s) in the chain of title to the Coal that is the subject of this Transaction.

**SELLER NOT PRODUCER**

- Seller Not Producer (Applicable only if box is checked.)

Seller is not able or expecting to produce, or make physical delivery of the Coal that is the subject of this Transaction and designates Seller's Vendor as its agent for purposes of, and delegates to Seller's Vendor all of, Seller's rights, duties and obligations relating to, scheduling, loading, transportation to the Delivery Point, additional charges (demurrage, etc.), shipping documentation, freeze conditioning, weighing, sampling and analysis, quality adjustments and related payments and rejection and suspension rights ("*Physical Delivery Functions*") relating to the Coal that Seller may purchase from Seller's Vendor (the "*Delegated Upstream Physical Delivery Functions*"). Buyer acknowledges and agrees to Seller's delegation of all rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions and further agrees to recognize and accept exercise and performance thereof by Seller's Vendor as exercise and performance thereof by Seller.

Seller shall notify Buyer as soon as practicable, but in any event no later than the Monthly Shipment Notification Date, of the identify of Seller's Vendor and provide Buyer with the name, telephone number, fax number and electronic mail address of the individual responsible for Seller's Vendor's scheduling activities.

For purposes of this transaction, the term “*Seller’s Vendor*” means any person from whom Seller may purchase any or all of the Coal that is the subject of this Transaction.

Daisy-chain Provision (Applicable only if box is checked.)

Seller’s designation of Seller’s Vendor as its agent and delegation to Seller’s Vendor of the Delegated Upstream Physical Delivery Functions is with full right on the part of Seller’s Vendor to designate any person from which Seller’s Vendor may purchase any or all of the Coal that is the subject of this Transaction (an “Upstream Vendor”) as Seller’s Vendor’s (and, thus, Seller’s) agent for purposes of, and delegate to such person all of Seller’s Vendor’s rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions, including the right on the part of such person pursuant to this paragraph to further delegate all of the rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions. Buyer acknowledges and agrees to the right on the part of Seller’s Vendor to further designate an agent for performance of, and to further delegate the rights, duties and obligations relating to, the Delegated Upstream Physical Delivery Functions and further agrees to recognize and accept exercise and performance thereof by an Upstream Vendor as exercise and performance by Seller.

Seller is Producer (Applicable only if box is checked.)

Seller is able or expecting to produce, or make physical delivery of, the Coal that is the subject of this Transaction. Buyer designates Seller as its agent for purposes of, and delegates to Seller all of, Buyer’s rights, duties and obligations relating to the Physical Delivery Functions relating to Coal that Buyer may resell to Buyer’s Customer (the “*Delegated Downstream Physical Delivery Functions*”). Seller acknowledges and agrees to Buyer’s delegation of all rights, duties and obligations relating to the Delegated Downstream Physical Delivery Functions and agrees to exercise and perform such rights, duties and obligations on behalf of Buyer for the benefit and on behalf of Buyer and, if applicable, Buyer’s successor(s) in the chain of title to the Coal that is the subject of this Transaction.

This letter constitutes a “Confirmation” as referred to in the Master Agreement described below. This Confirmation supplements, forms part of, and is subject to, the Master Power Purchase & Sale Agreement dated \_\_\_\_\_, \_\_\_\_\_, as it may be amended, and supplemented from time to time (the “Master Agreement”) between Coal Buyer and Coal Seller. 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 at the fax number specified in the Master Agreement. If you do not return this Confirmation or object to any of the terms stated herein within two (2) Business Days of your receipt of it, then in accordance with the EEI Master Agreement this Confirmation shall be deemed correct, and binding and conclusive evidence of this Transaction. This Confirmation supersedes any broker confirmation concerning this Transaction.

**Option Buyer**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Option Seller**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT B**  
**TO THE**  
**EEI COAL ANNEX**

**PRODUCTS**

As used in this Exhibit:

\* This specification will be determined per ASTM standards.

“>” means “greater than”.

“<” means “less than”.

“N/A” means such specification is not applicable to the Product.

**Product Specifications.**

“**CAPP Rail 12500 CS**” or “**CAR125CS**” means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

<b><u>Specification</u></b>	<b><u>Standard</u></b>	<b><u>Shipment Rejection Limits (Lot: Unit Train)</u></b>
BTU/LB.	12,500	< 12,200
MOISTURE	7.0 %	> N/A %
ASH	12.0 %	> 13.5 %
SULFUR		
- CS	N/A	> N/A %
SULFUR DIOXIDE (S02)		
- CS	1.20 lb./MMBTU	> 1.20 lb./MMBTU
VOLATILE	N/A %	< 30.0 %
Size (2" x 0"):		
-- Top size (inches)*	< 2"	> N/A "
-- Fines (% by weight)*		
Passing ¼" screen	< N/A %	> 55.0 %
GRINDABILITY (HGI)	43	< 40

“**CAPP Rail 12500 LS**” or “**CAR125LS**” means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

<b><u>Specification</u></b>	<b><u>Standard</u></b>	<b><u>Shipment Rejection Limits (Lot: Unit Train)</u></b>
BTU/LB.	12,500	< 12,200
MOISTURE	7.0 %	> N/A %
ASH	12.0 %	> 13.5 %
SULFUR		
- LS	N/A	> 1.00 %
SULFUR DIOXIDE (S02)		
- CS	N/A	N/A
VOLATILE	N/A %	< 30.0 %
Size (2" x 0"):		

-- Top size (inches)*	< 2"	> N/A "
-- Fines (% by weight)*		
Passing 1/4" screen	< N/A %	> 55.0 %
GRINDABILITY (HGI)	43	< 40

“**NYMEX Look-alike**” or “**NXLA**” means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

<b><u>Specification</u></b>	<b><u>Standard</u></b>	<b><u>Shipment Rejection Limits (Lot: Barge)</u></b>
BTU/LB.	12,000	< 11,750
MOISTURE	10.0 %	> 10.0 %
ASH	13.5 %	> 13.5 %
SULFUR	1.00 %	> 1.05 %
SULFUR DIOXIDE (SO <sub>2</sub> )	N/A	> N/A lb./MMBTU
VOLATILE	30.0 %	< 30.0 %
Size (3" x 0"):		
-- Top size (inches)*	< 3"	> N/A "
-- Fines (% by weight)*		
Passing 1/4" screen	< N/A %	> 55.0 %
GRINDABILITY (HGI)	41	< 38

“**PRB 8400**” or “**PR84**” means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

<b><u>Specification</u></b>	<b><u>Standard</u></b>	<b><u>Shipment Rejection Limits (Lot: Unit Train)</u></b>
BTU/LB.	8,400	< 8,200
MOISTURE	30.0 %	> N/A %
ASH	5.5 %	> N/A %
SULFUR	N/A %	> N/A %
SULFUR DIOXIDE (SO <sub>2</sub> )	0.80 lb./MMBTU	> 1.20 lb./MMBTU
VOLATILE	N/A %	< N/A %
Size (3" x 0"):		
-- Top size (inches)*	< 3"	> N/A "
-- Fines (% by weight)*		
Passing 1/4" screen	< N/A %	> N/A %
GRINDABILITY (HGI)	N/A	< N/A

“**PRB 8800**” or “**PR88**” means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

<b><u>Specification</u></b>	<b><u>Standard</u></b>	<b><u>Shipment Rejection Limits (Lot: Unit Train)</u></b>
BTU/LB.	8,800	< 8,600
MOISTURE	27.0 %	> N/A %
ASH	5.5 %	> N/A %

SULFUR	N/A %	> N/A %
SULFUR DIOXIDE (SO <sub>2</sub> )	0.80 lb./MMBTU	> 1.20 lb./MMBTU
VOLATILE	N/A %	< N/A %
Size (3" x 0"):		
-- Top size (inches)*	< 3"	> N/A "
-- Fines (% by weight)*		
Passing 1/4" screen	< N/A %	> N/A %
GRINDABILITY (HGI)	N/A	< N/A

“**PRB 8800 Low Sulfur**” or “**PR88LS**” means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

<u>Specification</u>	<u>Standard</u>	<u>Shipment Rejection Limits (Lot: Unit Train)</u>
BTU/LB.	8,800	< 8,600
MOISTURE	27.0 %	> N/A %
ASH	5.5 %	> N/A %
SULFUR	N/A %	> N/A %
SULFUR DIOXIDE (SO <sub>2</sub> )	0.55 lb./MMBTU	> 0.80 lb./MMBTU
VOLATILE	N/A %	< N/A %
Size (3" x 0"):		
-- Top size (inches)*	< 3"	> N/A "
-- Fines (% by weight)*		
Passing 1/4" screen	< N/A %	> N/A %
GRINDABILITY (HGI)	N/A	< N/A

**EXHIBIT C**  
**TO THE**  
**EEI COAL ANNEX**

**SOURCE STANDARDS**

“**CAPP–CSX Standard**” means any rail loadout located on the CSX railroad within the Kanawha Rate District or the Big Sandy Rate District capable of loading 100 car/10,000 Ton Unit Trains in four hours or less.

“**CAPP–NS Standard**” means any rail loadout located on the Norfolk Southern railroad within the Kenova Rate District or the Thacker Rate Districts capable of loading 100 car/10,000 Ton Unit Trains in four hours or less.

“**NYMEX Standard**” means any dock located on the Ohio River between MP 306 and MP 317 or on the Big Sandy River.

“**PRB Standard**” means any rail loadout located on the joint line (Burlington Northern Santa Fe/Union Pacific) in the Southern Powder River Basin within Converse or Campbell Counties, Wyoming capable of loading 12,000 to 15,000 Ton Unit Trains.

**EXHIBIT D**  
TO THE  
EEI COAL ANNEX

**QUANTITY VARIATION ADJUSTMENTS**

The formula for determining the Quantity Variation Adjustment when applicable are as follows:

If the absolute value of the difference obtained by subtracting the actual Tons of Coal delivered during a calendar month from Contract Quantity for such month is greater than the Allowance, then Seller shall calculate and invoice a Quantity Variation Adjustment determined as follows:

$$\text{Quantity Variation Adjustment} = [(\text{Basis} \times \text{number of monthly contracted Barges or Unit Trains}) - \text{actual monthly Tons delivered}] \times [(\text{Prompt Monthly Price} + \text{Product Basis Differential}) - \text{Contract Price}]$$

Where

“**Allowance**” has the meaning for the applicable Product as set forth below.

“**Basis**” has the meaning for the applicable Product as set forth below.

“**Monthly Quantity**” means the Basis multiplied by the number of Barges or Unit Trains to be delivered for the applicable calendar month as set forth in a Transaction.

“**Product Basis Differential**” has the meaning for the applicable Product as set forth below.

“**Prompt Monthly Price**” means the average daily OTC Prompt Month Broker Index for the applicable Product published in Platts Coal Trader, published for the month immediately preceding the month of scheduled delivery.

If Quantity Variation Adjustment is a negative number, Seller shall pay the absolute value of the Quantity Variation Adjustment to Buyer. If Quantity Variation Adjustment is a positive number, Buyer shall pay the absolute value of the Quantity Variation Adjustment to Seller.

**For Products PRB 8800, PRB 8800 Low Sulfur, PRB 8400:**

“**Allowance**” means one percent (1%) of the Monthly Quantity.



“**Basis**” means 14,500 Tons per Unit Train.

“**Product Basis Differential**” is zero (0).

**For Products CAPP Rail 12500 LS, CAPP Rail 12500 CS:**

“**Allowance**” means two percent (2%) of the Monthly Quantity.

“**Basis**” means 10,000 Tons per Unit Train.

“**Product Basis Differential**” has the meaning as set forth on the Confirmation, or if not set forth therein, zero (0).

**For Product NYMEX Look-Alike:**

“**Allowance**” means two percent (2%) of the Monthly Quantity.

“**Basis**” shall mean 7,550 Tons per monthly contract.

“**Product Basis Differential**” is zero (0).