

AEP COAL PROCUREMENT TERMS AND CONDITIONS

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

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

Unless otherwise provided in the Purchase Order, Buyer shall advise Seller of its desired loading dates and delivery schedule. The parties will work together in good faith to agree on a reasonable and mutually acceptable delivery schedule within the Term and within each month during the Term. Unless otherwise specified in the Purchase Order, Buyer shall designate to Seller the scheduling, routing and method of Shipments of coal purchased under this Contract. From time to time, and at any time, Buyer shall have the right, but not the obligation, to have all or any part of the coal hereunder reconsigned for delivery to any destination, and/or to make all or any part of the coal hereunder available for purchase by any person(s), whether or not affiliated with Buyer, through Buyer's purchase and subsequent resale to others of such coal. Should Buyer exercise its right to reassign or resell coal, Seller shall arrange for transport to the destination designated by Buyer, in accordance with this Section 2, or as otherwise provided by Buyer at the time of exercising its rights under this Section 2.

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

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

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

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

Seller shall indemnify, save harmless, and defend Buyer and its Affiliates and their officers, directors, agents, and employees (all referred to in this sentence as "Buyer") from and against any liabilities, expenses, losses, claims, damages, penalties, causes of action, or suits, and all other obligations whatsoever, including without limitation, all judgments rendered against and all fines and penalties imposed upon Buyer (whether severally, or in combination with others) and any reasonable attorneys' fees and any other costs of litigation (all of which are hereinafter referred to as "Liabilities") arising out of injuries or death to any person(s), or damage to any property, caused by or related to, in whole or in part the railcars (or barges, if applicable) furnished hereunder (as applicable), between the time that such railcars (or barges, if applicable) are delivered to Seller or Seller's agent and the time that custody thereof is properly returned to Buyer (or to Buyer's agent carrier, if applicable), or if deliveries are by truck, arising out of injuries or death to any person(s), or damage to any property, caused by or related to, in whole or in part, to trucking of coal, whether such coal is trucked by Seller or Seller's trucking contractor(s). Any injury or death to person(s) or damage to property as hereinbefore described shall be reported to Buyer by Seller immediately upon the occurrence thereof, and confirmed in writing as soon as possible.

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

- 1) Certificate of Insurance:
 - a. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and aggregate.
 - b. Commercial automobile liability insurance with a limit for bodily injury and property damage of not less than \$1,000,000 each accident.
- 2) Excess or Umbrella Liability:
 - a. Commercial Excess or Umbrella liability with not less than \$4,000,000 each occurrence and aggregate limit.
- 3) Worker's Compensation Certificate:
 - a. Coverage for the legal liability of Seller and its subcontractors under the worker's compensation laws of the state in which the work is to be performed.
 - b. Employer's liability coverage in an amount not less than \$1,000,000 for each accident shall be included.

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

3) **WEIGHING**

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

(A) The accuracy of the weighing party's rail scale(s), truck scale(s), or batch weighing system, as applicable, shall be maintained to within plus or minus two tenths of one percent ($\pm 0.20\%$). The weighing party's rail scale(s), truck scale(s), or batch weighing system, as applicable, shall be calibrated at least once every six months in accordance with the guidelines established by NIST. The calibration shall be performed by a qualified third party (e.g., the rail carrier), using such equipment as deemed appropriate by such third party. At the non-weighing party's request, which may be made from time to time, the weighing party shall inform the non-weighing party of the results of such testing and calibration. It shall be the responsibility of the weighing party to arrange and schedule scale calibrations when required.

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

(C) If the weighing party's scales are discovered to be outside of acceptable tolerance ranges ($\pm 0.20\%$ for rail scale(s), truck scales, or batch weighing system, and $\pm 0.25\%$ for conveyor belt scales), then an appropriate adjustment will be made to the tonnage and invoiced retroactively to the date of the most recent calibration or 30 calendar days prior to the calibration which was found in error, whichever is later.

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

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

Weights determined in accordance with this section shall be deemed accepted as correct (absent manifest error) and shall govern all invoicing and payments hereunder. Unless otherwise specified, the costs of weighing shall be for the account of the weighing party.

Irrespective of which party's weights govern for payment hereunder, Seller shall properly weigh each shipment hereunder and report such weights to Buyer within 24 hours after the coal has been loaded for shipment. Seller's weights shall be reported to the recipients designated by and in the manner specified by Buyer.

4) **SAMPLING & ANALYSIS**

The sampling party shall perform all sampling and analysis of coal for payment hereunder.

Seller shall sample the coal or shall provide for the coal to be sampled as it is loaded, analyze the sample(s) so obtained, and, as provided in Section 20, notify Buyer and the consigned destination of such short proximate (calorific value per pound, percent moisture, percent ash, percent sulfur, and with respect to Illinois Basin coal, the sodium and chlorine content) average analytical results of each Shipment. All sampling and analysis performed hereunder shall be performed by the sampling party at its expense and shall comply with the governing ASTM procedures and specifications in effect at the time of such sampling and analysis.

Seller shall immediately notify Buyer if either its sampling system or its independent commercial laboratory becomes unavailable or unable, for any reason, to provide the short proximate analysis. Upon such occurrence(s), Buyer and Seller shall establish procedures for sampling and/or analyzing the coal shipped hereunder during such time that Seller's sampling system and/or its independent commercial laboratory are unable to provide the short proximate analysis for such coal.

Coal hereunder shall be sampled during the loading/unloading process by the sampling party, prior to its commingling with other coals. The coal samples shall then be prepared and analyzed in Buyer's laboratory, or, if Seller is the sampling party, by an independent commercial laboratory. The non-sampling party may observe the unloading, sampling, sample preparation and analysis hereunder. All sampling shall be performed using a mechanical sample system that has been certified within the previous 60 calendar months to be free of significant bias and that is properly operated and maintained.

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

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

Seller's analysis shall be reported to the recipients designated by and in the manner specified by Buyer. For purposes of determining moisture hereunder, the two-stage procedure as defined in ASTM D3302 shall be used.

5) **REJECTION AND SUSPENSION**

(A) If any Shipment of coal fails to conform to any requirement specified in the Purchase Order (a "Non-Conforming Shipment"), Buyer shall have the option, exercisable by notice to Seller of either (i) rejecting such Non-Conforming Shipment at the Delivery Point or en route, but prior to unloading from Transporter's equipment or (ii) accepting any Non-Conforming Shipment with a Contract Price adjustment agreed to between Seller and Buyer. Should Buyer exercise such right of rejection, it shall notify Seller by E-mail or verbally upon discovery of the nonconformance, any verbal notification to be promptly confirmed in writing. If Buyer fails to exercise its rejection rights hereunder as to a Non-Conforming Shipment, Buyer shall be deemed to have waived such rights with respect to that Non-Conforming Shipment only. If Buyer rejects the Non-Conforming Shipment, Seller shall be responsible for promptly transporting the rejected coal to an alternative destination determined by Seller and, if applicable, promptly unloading such coal, and shall reimburse Buyer for all reasonable costs and expenses associated with the transportation, storage, handling and removal of the Non-Conforming Shipment. Seller shall, at Buyer's request, replace the rejected coal as soon as possible, provided that Buyer gives written notice to Seller of Buyer's desire for replacement coal within 30 days after rejection of the Non-Conforming Shipment.

(B) If there are three Non-Conforming Shipments, whether rejected or not, under this Contract in any three-month period or if two out of four consecutive Shipments under this Contract are Non-Conforming Shipments, then Buyer may upon notice to Seller suspend the receipt of future Shipments (except Shipments already loaded or in transit to Buyer) under this Contract. A waiver by Buyer of the suspension right for any one period shall not constitute a waiver for subsequent periods. If Seller, within ten days of its receipt of such notice, provides reasonable assurances in writing to Buyer that future Shipments under this Contract will conform to the Specifications and Buyer

has accepted such assurances (such acceptance not to be unreasonably withheld), Shipments shall resume and any tonnage deficiencies shall be made up within the Term at Buyer's option. If (i) Seller fails to provide such acceptable assurances within such ten day period, or (ii) after such assurances are provided and for a period of three months thereafter, any Shipment of coal fails to meet any of Buyer's rejection rights under this section for the Rejection Limit parameter for which there was a prior suspension under this Contract, then such event shall constitute an Event of Default as provided in Section 10.

(C) If any of the Half-Month weighted average coal qualities fail to conform to the Half-Month Suspension specifications, then Buyer may suspend the receipt of future Shipments (except Shipments already loaded or in transit to Buyer) under this Contract. A waiver by Buyer of the suspension right for any one period shall not constitute a waiver for subsequent periods. If Seller, within ten days of its receipt of such notice, provides reasonable assurances in writing to Buyer that future Shipments under this Contract will conform to the Specifications and Buyer has accepted such assurances (such acceptance not to be unreasonably withheld, Shipments shall resume and any tonnage deficiencies shall be made up within the Term at Buyer's option. If (i) Seller fails to provide such acceptable assurances within such ten day period, or (ii) after such assurances are provided and for a period of six months thereafter, any Shipment of coal fails to meet any of the Suspension limits under this section for any of the Half-Month Suspension limits for which there was a prior suspension under this Contract, then such event shall constitute an Event of Default as provided in Section 10.

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

6) **ASSIGNMENT**

(a) This Contract shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns and shall not be assigned or otherwise conveyed, in whole or in part, by either Party without the prior written consent of the other, except as provided in (b) and (c) below.

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

(c) This Contract may be assigned to an Affiliate by either Party, without the prior written consent of the other, provided, that if this Contract is assigned or otherwise conveyed to an Affiliate, the assignor or conveying Party shall take all necessary actions, and shall require its affiliated assignee or Affiliate receiving entity, and any subsequent affiliated assignee(s) and affiliated receiving entity(ies), to take all necessary actions to prevent a non-Affiliate from acquiring the assignor's or conveying Party's rights and obligations pursuant to this Contract without the prior written consent of the other Party.

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

If AEP or one of its Affiliates is the Buyer under this Contract, it shall have the right to assign this Contract, in whole or in part, to a producer of synthetic fuel (as defined in Section 45K of the Internal Revenue Code of 1986, as amended, hereafter referred to as "Synthetic Fuel"). Should such assignment occur, Seller also agrees upon the request of AEP or its Affiliate to enter into a new agreement with such Synthetic Fuel producer on substantially the same terms and conditions as provided in this Contract with respect to all or part of the coal to be purchased hereunder. In such event, AEP or its Affiliate shall be excused from its obligations under this Contract to purchase coal hereunder to the extent of the quantities provided for in such new agreement.

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

7) **FORCE MAJEURE**

To the extent either party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Contract and such party (the "Claiming Party") gives notice and details, orally and confirmed promptly in writing, of the Force Majeure to the other party as soon as practicable (but in no event later than 30 days after the occurrence thereof), then the Claiming Party shall be excused from the performance of its obligations during such event. The

Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party that are excused by Force Majeure. Failure to give such notice and furnish such information within the time specified shall be deemed a waiver of all rights under this Article for such period of time during which notice was not given. Buyer and Seller shall exercise reasonable efforts to mitigate or eliminate the conditions which have caused the Force Majeure condition, provided, however, nothing herein contained shall be construed as requiring Seller or Buyer to accede to any demands of labor, or labor unions, or suppliers, or other parties which Seller or Buyer considers unacceptable. The Claiming Party claiming Force Majeure shall furnish the non-Claiming Party a monthly statement by the 15th day of the calendar month setting forth the amount of tonnage not shipped or to be reduced because of Force Majeure causes asserted during the second preceding calendar month.

Except as set forth in this paragraph, no suspension or reduction by reasons of Force Majeure shall invalidate the remainder of this Contract but, on the removal of the cause, shipments shall resume at the specified rate. If an event of Force Majeure persists for (i) a continuous period of 60 days or (ii) an aggregate of 75 days in any twelve month period or during the Term of this Contract (if the Term is less than twelve months), then, at any time thereafter during the Force Majeure period, the non-Claiming Party shall have the option, upon three days' prior written notice, to terminate this Contract and the obligations of the parties thereunder.

In the event of a Force Majeure, delivery of the affected quantity of coal shall not be made up except at Buyer's sole discretion.

If Seller claims Force Majeure under this Contract and has obligations to provide coal of a similar type and quality as the coal under other coal sales agreements, or if Buyer claims Force Majeure and has obligations to purchase coal of a similar type and quality as the coal under other coal sales agreements, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated by the party claiming Force Majeure on a pro rata basis among this Contract and such other coal purchase or sales agreements involving coal of a similar type and quality as the coal, to the extent contractually permitted by such agreements. Without limiting the generality of this Article, in the event of a Force Majeure event which causes a partial or total curtailment of electrical generation from or electrical generating capacity at the consigned destination or partial or total curtailment of transmission or distribution of electricity therefrom, Buyer shall at its option, be relieved under this Article from its obligation to accept up to the pro rata (based on such partial curtailment) quantity or entire (based on such total curtailment) quantity of Seller's coal scheduled for delivery for the period during which such event or occurrence exists or existed.

8) **WAIVER**

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

9) **FINANCIAL RESPONSIBILITY**

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

10) **EVENT OF DEFAULT AND DAMAGES**

If an Event of Default (as hereafter defined) occurs with respect to a party or its guarantor (the "Defaulting Party") at any time during the term of this Contract, the other party (the "Non-Defaulting Party") may, in its sole discretion, do any or all of the following: (i) establish a date (which date shall be no earlier than the date that such notice is given to the Defaulting Party and no later than 20 days from notice) ("Early Termination Date") on which this Contract shall terminate, (ii) withhold any payments due in respect of this Contract, (iii) suspend performance under this Contract and/or (iv) exercise such other remedies as may be provided in this Contract. An event of default with respect to any party ("Event of Default") shall mean any of the following: (i) the failure of either party or its guarantor to make when due, any payment required hereunder if such failure is not remedied within two Business Days after notice of such failure is given to the Defaulting Party by the Non-Defaulting Party; (ii) the failure of either party or its guarantor to comply with any or all of its other respective obligations in good faith as herein set forth and such noncompliance is not cured within five Business Days after notice thereof to defaulting party; or (iii) failure to provide adequate Performance Assurance or other assurances satisfactory to the Non-Defaulting Party of its ability to perform its

further obligations under this Contract within 48 hours, but at least within one Business Day of a reasonable written request by the Non-Defaulting Party; (iv) either party (a) filing a petition in bankruptcy, (b) having such a petition filed against it, (c) becoming otherwise insolvent or unable to pay its debts as they become due; (v) the failure of a party's guarantor, if any, to perform any covenant set forth in its guaranty, or such guaranty shall expire or be terminated or shall cease to guarantee the obligations of such party hereunder, or such guarantor shall become subject to any of the events specified in (iv) (a), (b) or (c); or (vi) an event described in the last sentence of subsections (B) and (C) of the Rejection & Suspension Rights of this Contract shall have occurred. If this Contract terminates on an Early Termination Date, the Non-Defaulting Party shall calculate, in a good faith commercially reasonable manner, the Settlement Amount as of the Early Termination Date as soon as is reasonably practicable and shall promptly notify the Defaulting Party of the amount thereof.

"Settlement Amount" shall mean the present value of the single net aggregate amount for the remaining term of the Contract, including any exercised option period, of any Losses, Costs and Gains, expressed in United States dollars, which the Non-Defaulting Party incurs as a result of the early termination of this Contract in accordance with this Section 10, including, but not limited to, Losses or Gains based upon the then current replacement value of this Contract, the amounts of any unpaid invoices, and the amount for coal delivered but not yet billed. In calculating the Settlement Amount, the Non-Defaulting Party shall set off all amounts that are due to the Defaulting Party against such Settlement Amount so that the Settlement Amount shall be netted to a single liquidated amount. Any collateral being held by the Non-Defaulting Party shall be setoff against the amount owed to the Non-Defaulting Party. If the Defaulting Party is holding collateral posted by the Non-Defaulting Party, then the Non-Defaulting Party will have the right to set off that amount against any payment to be made to the Defaulting Party.

The Non-Defaulting Party shall provide the Defaulting Party with an explanation of how it calculated the Settlement Amount, as well as supporting calculations and documentation reasonably requested by the Defaulting Party. The Non-Defaulting Party shall use good faith commercially reasonable efforts to mitigate any Costs or Losses it is entitled to hereunder. The Defaulting Party shall have the right to audit (through a third party independent auditor mutually agreed to by the parties) the calculation of all of the Non-Defaulting Party's Gains, Losses and Costs.

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

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

11) **QUANTITY SHORTFALL DAMAGES**

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

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

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

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

12) GRANT OF SECURITY INTEREST

To secure its obligations under this Contract and to the extent either or both parties deliver Performance Assurance hereunder, each party (a "Pledgor") hereby grants to the other party (the "Secured Party") a present and continuing first priority secured interest in, and lien on (and right of recoupment and setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each party agrees to take such action as the other party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of recoupment and/or setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

13) HOLDING AND USE OF PERFORMANCE ASSURANCE

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

14) FORWARD CONTRACT

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

15) NETTING AND SETOFF

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

16) CONFIDENTIALITY

The parties and their respective affiliates shall keep confidential any and all matters relating to this Contract, except those readily obtainable from public information, requested by a regulatory commission, or otherwise required by law to be disclosed.

17) ENTIRE AGREEMENT; MODIFICATION

This Contract, together with any attachments or exhibits specifically referenced herein, constitutes the entire contract between the Seller and the Buyer with respect to the subject matter hereof, supersedes all prior oral or written representations and contracts, and may be modified only by a written amendment signed by Buyer and Seller.

18) COMPLIANCE WITH LAW

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

19) **GOVERNING LAW; WAIVER OF JURY TRIAL; UCC; VENUE, GOVERNMENT CONTRACTOR COMPLIANCE**

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

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

20) **NOTICES**

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

Unless Seller otherwise notifies Buyer in writing, notices to Seller shall be sent to the Seller as provided on page one of this Contract.

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

Shipping notices shall be sent to fuels@aep.com, and the Primary Plant (or other Plant as requested by Buyer) in accordance with the following:

<u>Primary Plant:</u>		<u>Primary Plant:</u>	
Amos	amosfuels@aep.com	Gavin	gavinfuels@aep.com
Kanawha River	kanawhariverfuels@aep.com	Kammer	kmmlfuels@aep.com
Mountaineer	mountaineerfuels@aep.com	Mitchell	kmmlfuels@aep.com
Sporn	spornfuels@aep.com	Muskingum	mrpfuels@aep.com
Picway	picwayfuels@aep.com	Rockport	rockportfuels@aep.com
Oklaunion	oklaunionfuels@aep.com	Tanners Creek	tannerscreekfuels@aep.com

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

American Electric Power Service Corporation, as agent
Attn: Fuel Contract Administration
155 West Nationwide Boulevard
Columbus, OH 43215
Fax: 614-583-1627

All notices hand delivered or delivered by electronic means, shall be deemed delivered by the close of the Business Day on which it was hand delivered or delivered by electronic means (unless hand delivered or transmitted by

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

21) DEFINITIONS

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

"AEP" means American Electric Power Service Corporation, as agent.

"Affiliate" means with respect to any entity, any other entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such entity. For this purpose, "control" means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

"ASTM" means the American Society for Testing and Materials.

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

"Contract Price" means the price in United States dollars per ton (unless otherwise specified in the Purchase Order) to be paid by Buyer to Seller for purchase of coal and any other proper charges pursuant to this Contract.

"Costs" means any brokerage fees, commissions and other transactional costs and expenses reasonably incurred either by the Non-Defaulting Party as a result of terminating any hedges or other risk management contracts and/or entering into new arrangements in order to replace the Contract Quantity not delivered by Seller or not accepted by Buyer, as the case may be, and legal costs incurred by the Non-Defaulting Party.

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

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

"Gains" means, with respect to a party, an amount equal to the present value of the economic benefit, if any, (exclusive of Costs) to it resulting from the termination of its obligations with respect to this Contract, determined in a commercially reasonable manner.

"Half-Month" means the first 15 days of a calendar month or the 16th through the last calendar day of a calendar month, as applicable.

"Letters of Credit" means one or more irrevocable, transferable, standby letter of credit, issued by a major United States commercial bank or the United States branch office of a foreign bank, reasonably acceptable to the beneficiary with, in either case, a senior unsecured credit rating of at least (a) "A-" by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. ("S&P"), and "A3" by Moody's Investors Service, Inc. ("Moody's"), if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's, but not both.

"Losses" means, with respect to a party, an amount equal to the present value of the economic loss, if any, (exclusive of Costs) to it resulting from the termination of its obligations with respect to this Contract, determined in a commercially reasonable manner.

"NIST" means the National Institute of Standards and Technology Handbook #44.

"Performance Assurance" means collateral in the form of either cash or Letters of Credit or such other security of the type and amount requested by the party demanding Performance Assurance.

"Shipment" means, as applicable, one unit trainload or at Buyer's election a composite of two or more unit trainloads, the aggregate of single railcars loaded on any one day (only where single car rates apply), one barge or at Buyer's election a composite of two or more barges, one vessel load, or the aggregate of the truckloads that are unloaded on any one day in accordance with the applicable transportation specifications.

"Transporter" means the entity or entities transporting the coal on behalf of Seller to and at the Delivery Point or on behalf of Buyer or Buyer's designee from the Delivery Point.