

**ISDA® GLOBAL PHYSICAL COAL ANNEX**

**to the Schedule to the**

**ISDA Master Agreement**

**dated as of .....**

**between**

**..... and .....**

This Global Physical Coal Annex (the “Coal Annex”) (including the appendices attached hereto) supplements, forms part of and is subject to the above-referenced Agreement and is part of the Schedule thereto.

**(a) Coal Transactions under this Agreement; Credit Support Documents**

(i) ***Physical Coal Transactions under this Agreement.*** The provisions of this Coal Annex shall apply solely to transactions between the parties for the purchase or sale of physical Coal Products on a spot or forward basis and options to purchase or sell physical Coal Products (each such transaction, a “Coal Transaction”). All Coal Transactions will be deemed to have been entered into in accordance with the terms of this Agreement and shall be Transactions for all purposes of this Agreement. A subsequent agreement between the parties to settle a Coal Transaction without physical delivery of a Coal Product shall not affect such Coal Transaction’s status as a Coal Transaction under this Coal Annex. In the event of any inconsistency among or between the other provisions of this Agreement and this Coal Annex, this Coal Annex will govern with respect to Coal Transactions. In the event of any inconsistency between the Confirmation for a Coal Transaction and this Coal Annex, the Confirmation will govern with respect to such Coal Transaction, except as provided in clause (a)(ii) of this Coal Annex with respect to Outstanding Coal Transactions.

(ii) ***Applicability to Outstanding Coal Transactions.*** Coal Transactions executed by the parties prior to the effectiveness of this Coal Annex and selected under clause (i)(1) of this Coal Annex (“Outstanding Coal Transactions”) shall be Transactions for purposes of this Agreement and shall be subject to the terms and conditions of this Agreement upon effectiveness of this Coal Annex, unless otherwise agreed in writing by the parties with respect to one or more specific Outstanding Coal Transactions. All documents and other confirming evidence confirming such Outstanding Coal Transactions shall constitute “Confirmations” within the meaning of this Agreement that supplement, form part of and are subject to this Agreement. If any confirmation issued or entered into with respect to one or more Outstanding Coal Transactions pursuant to the terms of a different master agreement or in a form that contains provisions that are not directly related to the commercial terms of the Transaction and that are inconsistent with or duplicative of the terms and conditions of this Agreement (such master agreement or the portion of such

confirmation containing such non-commercial terms being referred to herein as the “Prior Master Agreement”), then, notwithstanding any provision of this Agreement to the contrary, the terms of the Schedule and the pre-printed form of this Agreement shall automatically supersede such Prior Master Agreement with respect to Outstanding Coal Transactions effective upon the effectiveness of this Coal Annex.

(iii) ***Credit Support Documents.*** If elected under clause (i)(2) of this Coal Annex as being applicable:

(A) ***Outstanding Coal Credit Support.*** The parties agree that to the extent any collateral, margin, security or other similar form of credit support (such credit support, excluding guarantees, being referred to herein as “Outstanding Coal Credit Support”) is held by a party in connection with the obligations of the other party under Outstanding Coal Transactions, such Outstanding Coal Credit Support shall be deemed to have been delivered in respect of the obligations of the other party under and in connection with this Agreement.

The parties further agree that, with respect to any Outstanding Coal Credit Support, (x) if the parties have entered into a Credit Support Document in connection with this Agreement that governs the provision of collateral, margin, security or other similar form of credit support (such Credit Support Document, an “Existing ISDA Credit Support Document”), then the Outstanding Coal Credit Support shall be deemed to constitute credit support provided under such Existing ISDA Credit Support Document and such Existing ISDA Credit Support Document shall automatically supersede any agreement between the parties pursuant to which the Outstanding Coal Credit Support was provided (the “Outstanding Coal Credit Support Document”) effective upon the effectiveness of this Coal Annex, and (y) if the parties have not entered into an Existing ISDA Credit Support Document, then the Outstanding Coal Credit Support Document constitutes a Credit Support Document with respect to the party that provided such credit support.

(B) ***Amendments/Guarantees.*** The parties agree that they will enter into such amendments to any Outstanding Coal Credit Support Document as may be necessary to give effect to the terms of this clause (a)(iii). To the extent that a guaranty was delivered in connection with a party’s obligations under Outstanding Coal Transactions or a Prior Master Agreement, that party represents and warrants that any amendments necessary to ensure that the guaranty would extend to Transactions subject to this Agreement have been made prior to the effectiveness of this Coal Annex and agrees (x) that such guaranty constitutes a Credit Support Document with respect to the obligations of such party and (y) the guarantor under such guaranty constitutes a Credit Support Provider with respect to the obligations of such party under this Agreement.

(b) **Obligations and Deliveries**

(i) ***Seller’s and Buyer’s Obligations.*** With respect to each Coal Transaction, and subject to the terms and conditions of this Agreement, (A) Seller shall sell and make

available or deliver, or cause to be delivered, the Contract Quantity to the Delivery Point and (B) Buyer shall purchase and receive, or cause to be received, the Contract Quantity at the Delivery Point and shall pay Seller the Contract Price. With respect to Coal Transactions that are physically settled options, the obligations set forth in the preceding sentence shall only arise if the option is exercised in accordance with its terms.

(ii) ***Title and Indemnity.*** With respect to each Coal Transaction, Seller warrants that it shall have good and marketable title to the relevant Coal Product and shall deliver such Coal Product 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 the Coal Product from Seller to Buyer. Buyer shall indemnify, defend and hold harmless Seller from any and all Claims arising after the transfer of title to the Coal Product from Seller to Buyer.

(iii) ***Other Terms Related to Obligations and Deliveries.*** The additional provisions of Appendix 1 to this Coal Annex shall apply solely with respect to U.S. Coal. The additional provisions of Appendix 2 to this Coal Annex shall apply solely with respect to International Coal.

(c) **Force Majeure**

(i) ***Force Majeure Generally.*** If a party is prevented from performing, in whole or in part, any of its obligations to deliver or receive a Coal Product at the Delivery Point under any Coal Transaction due to Force Majeure (as defined in the relevant Appendix to this Coal Annex), and such party (the “Claiming Party”) gives oral notice and full details of the Force Majeure to the other party (the “Non-Claiming Party”) as soon as reasonably practicable after the occurrence of the Force Majeure (such notice to be confirmed in writing), then during the period for which the Claiming Party’s performance is prevented by such Force Majeure, but for no longer period, the obligations of the parties under such affected Coal Transaction (other than obligations to make payments whether then due or due thereafter) shall be excused to the extent performance is so prevented. The Claiming Party shall remedy the Force Majeure with all reasonable dispatch and will keep the other party advised of its efforts to remedy the Force Majeure; provided, however, that this provision shall not require Seller to deliver, or Buyer to receive, the affected quantity of the Coal Product at points other than the Delivery Point (including allowable substitutions under the terms of the Coal Transaction). In the event of Force Majeure, delivery of the affected quantity of the Coal Product shall be made up only as set forth in clause (i)(3) of this Coal Annex. If the pre-printed form portion of this Agreement is the 2002 ISDA Master Agreement form, Section 5(b)(ii) of this Agreement shall not apply to any Coal Transaction.

(ii) ***Extended Force Majeure Event.*** If the Claiming Party is excused, in whole or in part, from the performance of its obligations with respect to a Coal 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) Local Business Days’ prior written notice, to terminate

such Transaction and the associated obligations of the parties thereunder (other than payment obligations for prior performance thereunder).

(iii) ***Pro Rata Allocation.*** If Seller claims Force Majeure and is unable to meet all of its sales obligations under any affected Coal Transaction and any other of its Coal sales agreements involving Coal of a similar type and quality as the Coal Product that is the subject of the affected Coal Transaction, or if Buyer claims Force Majeure and is unable to meet all of its obligations to receive a Coal Product under an affected Coal Transaction and any other of its Coal purchase agreements involving Coal of a similar type and quality as the Coal Product that is the subject of the affected Coal Transaction, 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 Transaction(s) and such other Coal supply or purchase agreements involving Coal of the same type and quality as such Coal Product, to the extent contractually permitted by such Coal Transaction and agreements.

(iv) ***Limitation on Due Diligence to Remedy Force Majeure.*** It is understood and agreed that significant capital expenditures and settlement of strikes and lockouts shall be entirely within the discretion of the Claiming Party, and that the above requirement that any Force Majeure 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 Claiming Party.

(d) **Coal Payment Netting.** Notwithstanding Section 2(c) of this Agreement and any election made in other Parts of this Schedule with respect thereto, the parties agree that, in respect of two or more Coal Transactions, a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Coal Transactions. If elected in clause (i)(4) of this Coal Annex, amounts payable in respect of Coal Transactions may be netted with other Transactions as specified in clause (i)(4) of this Coal Annex.

(e) **Coal Transaction Netting.** If the parties enter into one or more Coal Transactions in respect of the same Coal Product, which in conjunction with one or more other outstanding Coal Transactions in respect of the same Coal Product, constitute Offsetting Coal Transactions (as defined below), then all such Offsetting Coal Transactions may, by agreement of the parties, be netted into a single Coal Transaction under which:

(i) the party obligated to deliver the greater amount of Coal Product will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Coal Transactions, and

(ii) the party owing the greater aggregate payment will pay the net difference owed between the parties in respect of the Offsetting Coal Transactions.

Each single Coal Transaction resulting under this clause shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Coal Transaction occurs, outstanding obligations under the Offsetting Coal Transactions which are satisfied by such offset shall terminate. For the purposes of this Coal Annex, "Offsetting

Coal Transactions” shall mean any two or more Coal Transactions in respect of the same Coal Product having the same or overlapping Delivery Period(s) (as specified in the Coal Transaction), same Delivery Point, same currency and same payment date, where under one or more of such Coal Transactions, one party is the Seller and under the other such Coal Transaction(s) the same party is the Buyer.

(f) **Limitation of Liability**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS CLAUSE (f) OF THIS COAL ANNEX, THE FOLLOWING PROVISION SHALL APPLY SOLELY TO COAL TRANSACTIONS, AND NOTHING IN THIS PROVISION SHALL AFFECT THE ENFORCEABILITY OF SECTION 6 OF THIS AGREEMENT WITH RESPECT TO COAL TRANSACTIONS OR OTHERWISE.**

**OTHER THAN THOSE EXPRESSLY PROVIDED IN THIS 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 ANY COAL PRODUCT 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 ANY COAL PRODUCT 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.**

(g) **Certain Amendments to this Agreement for Coal Transactions**

(i) **Section 5(a)(i).** With respect to all Coal Transactions, (A) if the pre-printed form portion of this Agreement is the 1992 version of the ISDA Master Agreement, the words “or delivery under Section 2(a)(i) or 2(e)” in the second line of Section 5(a)(i) of this Agreement are deleted; and (B) if the pre-printed form portion of this Agreement is the 2002 ISDA Master Agreement, the words “or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4)” in the second line of Section 5(a)(i) of this Agreement, and “or the first Local Delivery Day in the case of any such delivery” and “, in each case,” in the third and fourth lines of Section 5(a)(i) of this Agreement, are deleted.

(ii) **Section 5(a)(ii).** With respect to all Coal Transactions, (A) if the pre-printed form portion of this Agreement is the 1992 version of the ISDA Master Agreement, the words “or delivery under Section 2(a)(i) or 2(e)” in the second line of Section 5(a)(ii) are hereby deleted and the words “or to deliver or receive a Coal Product, the exclusive remedy for which is provided in the Coal Annex to the Schedule” are added at the end of the parenthetical of Section 5(a)(ii); and (B) if the pre-printed form portion of this Agreement is the 2002 ISDA Master Agreement, the words “or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4)” in the second line of Section 5(a)(ii)(1) are deleted and the words “or to deliver or receive a Coal Product, the exclusive remedy for which is provided in the Coal Annex to the Schedule” are hereby added at the end of the parenthetical of or Section 5(a)(ii)(1).

(iii) **Section 5(a)(v).** With respect to all Coal Transactions, (A) if the pre-printed form portion of this Agreement is the 1992 version of the ISDA Master Agreement, the parenthetical “(other than by failing to make a delivery)” is inserted after the word “defaults” in clause (1) of Section 5(a)(v) and the words “or delivery” and “, delivery” in clause (2) of Section 5(a)(v) of this Agreement are deleted; and (B) if the pre-printed form portion of this Agreement is the 2002 ISDA Master Agreement, the words “(including any delivery due on the last delivery or exchange date of) a Specified Transaction or” in clause (3) of Section 5(a)(v) of this Agreement are deleted.

(iv) **Limitation on Condition Precedent.** Section 2(a)(iii) of this Agreement is hereby amended by adding the following phrase at the end of clause (1) immediately before the last comma of such phrase: “(provided, however, that in relation to any Transaction that is a Coal Transaction, if an Event of Default has occurred and is continuing for longer than fifteen (15) Local Business Days without an Early Termination Date being designated, then the condition specified in this clause (1) shall cease to be a condition precedent to the obligations under Section 2(a)(i)).”

(h) **Definitions**

For purposes of this Coal Annex, the following definitions apply:

**“Buyer”** means the party to a Coal Transaction that is obligated to purchase and receive, or cause to be received, a Coal Product, as specified in a Coal Transaction.

**“Claiming Party”** has the meaning set forth in clause (c)(i) of this Coal Annex.

**“Claims”** means all claims or actions, threatened or filed and whether groundless, false or fraudulent, arising from failure of title or loss of a Coal Product, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

**“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.

**“Coal Product”** means a Coal product that is the subject of a Coal Transaction and specified in a Confirmation (1) by reference to either a U.S. Coal product listed in Exhibit A to this Coal Annex or the applicable Relevant Standard Specifications (as defined in Appendix 2) for an International Coal product; or (2) by otherwise identifying the relevant specifications of the Coal product.

**“Coal Transaction”** has the meaning set forth in clause (a)(i) of this Coal Annex.

**“Contract Price”** means (i) with respect to U.S. Coal, the price in U.S. dollars per ton of the relevant Coal Product (unless otherwise provided for) and (ii) with respect to International Coal, the price in U.S. dollars per metric ton of the relevant Coal Product (unless otherwise provided for), in either case, to be paid by Buyer to Seller for the purchase of the Coal Product, as specified in the relevant Confirmation.

**“Contract 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 Transaction, as specified in the relevant Confirmation.

**“Delivery Point”** means the point at which the Coal Product will be delivered and received as specified in the relevant Confirmation.

**“Existing ISDA Credit Support Document”** has the meaning set forth in clause (a)(iii)(A) of this Coal Annex.

**“Force Majeure”** has the meaning set forth in Appendix 1 with respect to U.S. Coal and the meaning set forth in Appendix 2 with respect to International Coal.

**“International Coal”** has the meaning specified in the first paragraph of Appendix 2.

**“Non-Claiming Party”** has the meaning set forth in clause (c)(i) of this Coal Annex.

**“Outstanding Coal Credit Support”** has the meaning set forth in clause (a)(iii)(A) of this Coal Annex.

**“Outstanding Coal Credit Support Document”** has the meaning set forth in clause (a)(iii)(A) of this Coal Annex.

**“Outstanding Coal Transactions”** has the meaning set forth in clause (a)(ii) of this Coal Annex.

**“Prior Master Agreement”** has the meaning set forth in clause (a)(ii) of this Coal Annex.

**“Seller”** means the party to a Coal Transaction that is obligated to sell and deliver, or cause to be delivered, a Coal Product, as specified in the relevant Confirmation.

**“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.

**“Transportation Specifications”** means the agreement(s) made by Seller, Buyer or either party’s designee with its respective Transporter(s), as amended from time to time, covering the requirements for each Shipment, which agreements, including the timing and tonnage requirements thereunder, shall be no more restrictive than typical agreements for transport of Coal on rail lines, highways, vessels or Barges transporting Coal to or from the Delivery Point(s) for third parties or to and from other delivery points in the vicinity of the Delivery Point. Such Transportation Specifications, or relevant portions therein, shall be made available upon request to the extent authorized within the relevant transportation agreement.

**“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.

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

**“U.S. Coal”** has the meaning specified in the first paragraph of Appendix 1.

(i) **Elective Provisions**

(1)  **Applicability of Coal Annex to Outstanding Coal Transactions [clause (a)(ii)]**. If not checked, not applicable.

(2)  **Applicability of Outstanding Credit Support to Outstanding Coal Transactions [clause (a)(iii)]**. If not checked, not applicable.

(3) **Force Majeure Make-up [clause (c)(ii)]** - Unless otherwise specified in a Confirmation, in the event of Force Majeure (*select one option*):

**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 election 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.

If none of the above options is selected, Option C shall apply.

(4) **Coal Payment Netting [clause (d)] (*select one option*)**:

**Option A:** Only amounts payable in respect of Coal Transactions will be netted.

**Option B:** Amounts payable in respect of the following Transactions will be netted with amounts payable in respect of Coal Transactions (*check all that apply*):

Power Transactions (as defined in the ISDA North American Power Annex)

Gas Transactions (as defined in the ISDA North American Gas Annex)

Emissions Transactions (as defined in the ISDA U.S. Emissions Allowance Transaction Annex)

GTMA Transactions (as defined in the ISDA GTMA Annex (UK Power))

NBP Transactions and NBP Options (as defined in the ISDA European Gas Annex)

EU Emissions Allowance Transactions (as defined in the ISDA EU Emissions Allowance Transaction Document)

All Transactions under this Agreement

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

If none of the above options is selected, Option A shall apply.

***Appendix 1 Elective Provisions***

(5)  **Accelerated Payment of Damages.** [clause 3(B) of Appendix 1]. If not checked, not applicable.

(6)  **Financial Bookout Payment Date** [clause 14(C) of Appendix 1]. If not checked, not applicable.

***Appendix 2 Elective Provision***

(7)  **Applicability of SCoTA Dispute Resolution** [clause 14 of Appendix 2]. If not checked, not applicable.

(j) **Notices for Coal Transactions.** Notices in respect of Coal Transactions will be provided as set forth below.

**PARTY A**

**Invoices:**

As set forth in the notices provision in Part 4 of the Schedule unless otherwise set forth below:

Attn:

\_\_\_\_\_  
Phone:

\_\_\_\_\_  
Facsimile:

\_\_\_\_\_

**Nominations/Scheduling:**

As set forth in the notices provision in Part 4 of the Schedule unless otherwise set forth below:

Attn:

\_\_\_\_\_  
Phone:

\_\_\_\_\_  
Facsimile:

\_\_\_\_\_

**Confirmations:**

As set forth in the notices provision in Part 4 of the Schedule unless otherwise set forth below:

Attn:

\_\_\_\_\_  
Phone:

\_\_\_\_\_  
Facsimile:

\_\_\_\_\_

**Option Exercise:**

As set forth in the notices provision in Part 4 of the Schedule unless otherwise set forth below:

Attn:

\_\_\_\_\_  
Phone:

\_\_\_\_\_  
Facsimile:

\_\_\_\_\_

**PARTY B**

**Invoices:**

As set forth in the notices provision in Part 4 of the Schedule unless otherwise set forth below:

Attn:

\_\_\_\_\_  
Phone:

\_\_\_\_\_  
Facsimile:

\_\_\_\_\_

**Nominations/Scheduling:**

As set forth in the notices provision in Part 4 of the Schedule unless otherwise set forth below:

Attn:

\_\_\_\_\_  
Phone:

\_\_\_\_\_  
Facsimile:

\_\_\_\_\_

**Confirmations:**

As set forth in the notices provision in Part 4 of the Schedule unless otherwise set forth below:

Attn:

\_\_\_\_\_  
Phone:

\_\_\_\_\_  
Facsimile:

\_\_\_\_\_

**Option Exercise:**

As set forth in the notices provision in Part 4 of the Schedule unless otherwise set forth below:

Attn:

\_\_\_\_\_  
Phone:

\_\_\_\_\_  
Facsimile:

\_\_\_\_\_

**(k) Other Provisions/Modifications to this Coal Annex**

## Appendix 1 to the ISDA Coal Annex

### Terms for U.S. Coal

The terms below shall apply to Coal Transactions involving Coal Products sourced at origins within the United States (“U.S. Coal”). Capitalized terms used in this Appendix have the meanings set forth in clause 16 of this Appendix or, absent a definition in clause 16, elsewhere in this Agreement.

- (1) **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 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 Contract Quantity to be delivered in approximate Ratable Amounts each calendar month over the Term of a Coal Transaction.

(A) **Rail or Truck Scheduling.** Buyer shall advise Seller on or before the 15<sup>th</sup> day of each calendar month preceding scheduled Shipments of the number of railcars or trucks Buyer desires to have delivered in the succeeding month to fulfill the Coal Transaction volume and Buyer’s desired loading dates and delivery schedule (“Delivery Schedule”). Seller shall advise Buyer on or before the 20<sup>th</sup> day of the month preceding Shipments of its Source 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> day of the month preceding Shipment. 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> day of the month preceding the month of Shipment. If either party is unable to meet the scheduling requirements within time periods set forth herein, such party shall not have failed to deliver or receive Coal Product 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 Local Business Day of the month preceding the delivery month:

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

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

(iii) Buyer shall advise Seller of the specific transportation arrangements to comply with its Delivery Schedule.

- (2) **Taxes and Other Liabilities.** With respect to any Coal Transaction, Seller shall be solely responsible 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 relevant Coal Product 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. With respect to any Coal Transaction, Buyer shall be solely responsible for Third Party Impositions relating to the relevant Coal Product accrued or levied at or after the transfer of title to the Coal Product to Buyer including, but not limited to, sales or use tax if applicable.
- (3) **Failure to Deliver or Receive Coal.** The remedies set forth in this clause 3 shall be a party’s exclusive remedies for the other party’s failure to deliver or receive a Shipment of a Coal Product as set forth in this Coal Annex.

(A) **Rescheduling.** As an alternative to the damages provision below, if the parties mutually agree in writing, the party other than the party failing to deliver or receive a Shipment of a Coal Product 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 subclause (B) of this clause 3 shall apply.

**(B) Liquidated Damages.**

(i) *Seller Failure to Deliver.* Unless excused by Force Majeure or Buyer’s failure to perform, if Seller fails to deliver all or part of the Contract Quantity for the relevant delivery month in accordance with the applicable Coal Transaction, Seller shall pay to Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified in clause (i)(5) of the Coal Annex, within five (5) Local Business Days of invoice receipt, an amount for each ton of Coal Product of such deficiency equal to (a) 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 Product of comparable quality on an equivalent \$/MMBtu, SO<sub>2</sub> adjusted basis plus (1) costs reasonably incurred by Buyer in purchasing such substitute Coal Product and (2) additional transportation charges, if any, reasonably incurred by Buyer as a result of taking delivery of substitute Coal Product at a location other than FOB Delivery Point (“Replacement Price”) minus (b) the Contract Price agreed to for the specific Coal Transaction; except that if such difference is zero or negative, then neither party shall have any obligation to make any deficiency payment to the other.

(ii) *Buyer Failure to Accept Delivery.* Unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to accept delivery of all or part of the Contract Quantity in accordance with the applicable Coal Transaction, Buyer shall pay to Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Local Business Days of invoice receipt, an amount for each ton of Coal Product of such deficiency equal to (a) the Contract Price agreed to for the specific Coal Transaction plus any storage, transportation or other costs reasonably incurred by Seller in reselling the Coal Product minus (b) 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 ("Sales Price"); except that if such difference is zero or negative, then neither party shall have any obligation to make any deficiency payment to the other.

(C) **Duty to Mitigate.** Both parties shall be subject to a commercially reasonable good faith obligation to mitigate any damages hereunder.

(D) **Payment.** Payment of amounts, if any, determined under this clause 3 shall be made in accordance with clause 14 of this Appendix 1. 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.

(E) **Damages Stipulation.** Each party stipulates that the payment obligations set forth in this clause 3 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.

(4) ***Delivery and Risk of Loss.***

(A) **Rail or Truck Deliveries.** For rail or truck deliveries, the relevant Coal Product 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 Product will pass to Buyer upon completion of loading all railcars in each Unit Train and release of the Unit Train to the railroad. For truck deliveries, title to and risk of loss of the Coal Product 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 Product. Such Unit Trains or trucks shall be compatible with the coal loading facilities utilized by Seller and shall be properly prepared to receive the Coal Product. Seller shall arrange for and pay all costs of transporting the Coal Product to the Delivery Point and handling and loading the Coal Product into Unit Trains or trucks and proper distribution in such Unit Trains or trucks. 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 the Coal Product. If the Delivery Point is at a Source such that the Coal Product will have been transported by Unit Train or truck prior to delivery, then title to and

risk of loss of the Coal Product 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 Product shall be delivered to Buyer FOB Barge or vessel at the Delivery Point. Title to and risk of loss of the Coal Product 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 Product. Such Barges or vessels shall be compatible with the Source's coal loading facilities to be utilized by Seller and shall be properly prepared to receive Coal. Coal haulage or transportation equipment provided by either Seller or Buyer, as the case may be, shall be clean, dry and suitable for the transportation of Coal. Seller shall arrange for and pay all costs of transporting the Coal Product to the Delivery Point and handling and loading the Coal Product 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 Product 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 Product will have been transported by Barge or vessel prior to delivery, then title to and risk of loss of the Coal Product 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) Shipping Notices.** For each delivery by vessel, Barge, truck, or Unit Train, Seller shall supply Buyer with a shipping notice that includes, as appropriate, the vessel name, Unit Train or Barge or truck number, Source from which supplied, tonnage shipped, shipping date, destination, time loading commenced and finished, along with the Analysis Report required under clause 9(D) of this Appendix 1 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. 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 Transaction, a party is charged for any increased transportation charges, penalties or other costs, including demurrage, attributable to the other party's failure to timely and appropriately load or unload Coal Product in accordance with the terms of such Coal Transaction or the timing and tonnage requirements of the Transportation Specifications, and if such failure is not due to Force Majeure, failure of the other party or the other party's railcars or transportation carrier, the failing party 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.** Seller shall make Commercially Reasonable Efforts to treat 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 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 clause 14 of this Appendix 1.

**(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 clause 1 of this Appendix 1, 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 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 settled pursuant to clause 3(B) of this Appendix 1. If a rescheduled Shipment fails to load as scheduled, such Shipment will be settled pursuant to clause 3(B) of this Appendix 1, unless it is mutually agreed that another future delivery date can be established.

**(G) Buyer's Administrative Obligations.** 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 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 Agreement, 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.

- (5) **Substitute Coal.** Seller shall, by giving timely notice as provided in clause 1 of this Appendix 1, have the option, subject to Buyer's approval, not to be unreasonably withheld, to provide the Coal Product from any alternate Source that 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 specified 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.
- (6) **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 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. If Coal Product delivered by Seller fails to meet the requirements of this clause 6, such failure will not constitute an Event of Default under Section 5(a)(ii) of this Agreement; rather, Buyer will be entitled to exercise any other rights and remedies available to it under this Coal Annex or, in the absence of express rights and remedies hereunder, at law.
- (7) **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, as applicable, to test, calibrate, and certify its scales at the Source or Delivery Point, as applicable, 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, and if the Source is a Western Mine, then the weight of such Coal Product 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, as applicable, prior to such breakdown. If less than five (5) Unit Trains of like equipment under this Agreement were weighed at the Source prior to the breakdown, the lading weight per railcar shall be

determined by averaging the weight per railcar of the Unit Train(s) of like equipment under this Agreement weighed at the Source prior to the breakdown as well as the lading weight per railcar of Unit Train(s) of like equipment under this Agreement first weighed at the Source or Delivery Point, as applicable, 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 Product 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 Product. If either party should at any time question the accuracy of the scales at the Source, such party may request a prompt test and adjustment of such track scales or batch weighing system at its expense by an entity mutually agreed upon by Buyer and Seller.

(8) **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.

(9) **Sampling and Analysis.**

(A) **Sampling.** The "Sampling Person" shall be Seller or Seller's designee and shall perform sampling and analysis of the Coal Product pursuant to a Coal Transaction at Seller's expense. The Sampling Person shall cause a representative Coal Product 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 Product representing each Shipment and the analysis thereof shall be used to determine quality adjustments pursuant to clause 10 and any rejection or suspension rights pursuant to clauses 12 and 13. 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 clause (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 (or 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 Product 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.

**(E) Rounding and Significant Digits.** All calculations will use floating decimals during the calculations 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)	xx,xxx.
Grindability will be zero (0)	xx.
Emission Allowances will be zero (0)	x,xxx.
Tons will be two (2)	xx,xxx.xx
Dollars for payment will be two (2)	xxx,xxx.xx
Moisture % will be two (2)	xx.xx%
Ash % will be two (2)	xx.xx%
Sulfur % will be two (2)	xx.xx%
Sodium % will be two (2)	xx.xx%
SO <sub>2</sub> lbs./MMBtu will be two (2)	.xx lbs/MMBtu
Dollars per ton will be three (3)	xx.xxx / Ton
Quality Dollars per ton will be three (3)	x.xxx / Ton

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

(F) **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.

- (10) **Quality Adjustments.** If Coal Product delivered in connection with a Coal Transaction varies from the Specifications required in respect thereof, and Buyer does not exercise its rejection rights under clause 12, quality adjustments shall be calculated pursuant to the formula(s) set forth in Exhibit B and for any other specification(s) according to formula(s) set forth in the Confirmation. Within ten (10) days after the end of each month during the Term for each Coal Transaction, the quality adjustments for each Coal 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 clause 14 of this Appendix 1.
- (11) **Quantity Variation Adjustment ("QVA").** If a Confirmation for a Coal Transaction in which the Contract Quantity is designated in Unit Train loads or Barge loads states that QVA is applicable, then Coal Product delivered in respect of that Coal 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 C.
- (12) **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 Transaction (a "Non-Conforming Shipment"), Buyer shall have the option, exercisable by notice to Seller within one (1) Local Business Day after Buyer's receipt of the Sampling Person's short proximate analysis and additional analysis, if any, of the Coal Product provided pursuant to clause 9 of this Appendix 1, 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 clause 12 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 clause 10. If Buyer timely exercises its rejection rights under this clause 12 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 Product to an alternative destination determined by Seller and, if applicable, promptly unloading such Coal Product 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 Product within a reasonable period of time, provided that Buyer gives written notice to Seller of its desire for replacement Coal Product within forty-eight (48) hours after rejection of the Non-Conforming Shipment.
- (13) **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

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 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 (except Shipments already loaded or in transit to Buyer). 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 clause 13, 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 clause 12 for the Rejection Limit parameter for which there was a prior suspension under such Coal Transaction, as the case may be, then such failure shall constitute an Additional Termination Event solely with respect to such Coal Transaction, with Seller deemed to be the sole Affected Party.

(14) ***Payment.***

(A) **Billing Period.** Unless otherwise specifically agreed upon by the parties, the calendar month shall be the standard period for all payments pursuant to any Coal Transaction under this Agreement (other than (x) payments due as a result of the designation of an Early Termination Date; or (y) any option premium payments). As soon as practicable after the end of each calendar month, each party will render to the other party an invoice (which may be delivered electronically) for the payment obligations, if any, incurred hereunder during the preceding calendar month with respect to Coal Transactions.

(B) **Timeliness of Payment.** Each party shall remit the amount due to the other party under clause 14(A) hereof, in immediately available United States dollars to the account specified from time to time by the other party, no later than ten (10) days after receipt of a party's invoice (provided that if the such date is not a Local Business Day, payment is due on the next Local Business Day following that date). Each party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(C) **Financial Bookouts.** If financial bookout is specified as applicable in clause (i)(6) of the Coal Annex, for all financial bookout Coal Transactions, all such invoices shall provide for payment on the 25<sup>th</sup> of the month of the scheduled delivery.

(D) **Invoice Disputes.** If the receiving party in good faith reasonably disputes an invoice, it shall provide a written explanation specifying in detail the basis for the dispute and pay any undisputed portion no later than the due date. If any amount disputed by the

receiving party is subsequently determined to be due, it shall be paid within five (5) days along with interest accrued at the Default Rate from the original due date until the date paid.

- (15) **UCC.** Each party agrees that notwithstanding any provisions of law relating to adequate assurance of future performance, including without limitation Article 2-609 of the Uniform Commercial Code, the parties shall only be entitled to request adequate assurance as specifically provided in this Agreement, including the Credit Support Annex hereto. For purposes of the foregoing, Uniform Commercial Code refers to the code as adopted by the jurisdiction governing the parties and the Coal Transactions. Section references are to the Model Uniform Commercial Code and are intended to correspond to the same substantive provisions contained in the specific codes adopted in the controlling jurisdictions, to the extent that section references differ.
- (16) **Appendix 1 Definitions.** For purposes of this Appendix only, the following capitalized terms shall have the meanings set forth below.

**“Additive(s)”** means any item added to Coal at the request of Buyer; such items shall include, but not be limited to, various freeze control agents and/or various dust control agents.

**“Analysis Person”** has the meaning set forth in clause 9(B) of this Appendix 1.

**“Analysis Report”** has the meaning set forth in clause 9(D) of this Appendix 1.

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

**“ASTM Standards”** means then-current, published, applicable ASTM guidelines relating to the characteristic referenced.

**“Barge”** means a barge with capacity sufficient to hold the number of Tons of Coal Product 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.

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

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

**“Commercially Reasonable Efforts”** means the taking by a party 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 a party to incur unreasonable expense.

**“Delivery Schedule”** has the meaning set forth in clause 1 of this Appendix 1.

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

**“FOB”** has the meaning given to such term in the Uniform Commercial Code enacted by the State of New York.

**“Force Majeure”** means an event or circumstance that prevents the performance by a party, in whole or in part, of any of its obligations to deliver or receive Coal Product at the Delivery Point under a Coal Transaction due to causes that are beyond the reasonable control and without the fault or negligence of the party affected thereby. For the avoidance of doubt, a transportation delay shall not be considered a Force Majeure event unless such delay affects Coal Product deliveries to all Persons at all locations comprising the Delivery Point. A change in market conditions (including the ability of Seller to sell the relevant Coal Product at a higher price, or Buyer or Buyer’s Customer to buy the relevant Coal Product at a lower price), Buyer’s inability to economically use or resell the Coal Product, and the loss or failure of Seller’s supply, whether or not foreseeable, shall not be considered Force Majeure events.

**“MMBtu”** means one million British thermal units.

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

**“Nomination Period”** shall mean the period during which deliveries of Coal Products may be scheduled during the Term of a particular Coal Transaction.

**“Non-Conforming Shipment”** has the meaning set forth in clause 12 of this Appendix 1.

**“Objecting Person”** has the meaning set forth in clause 9(D) of this Appendix 1.

**“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.

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

**“Ratable Amount(s)”** means the Contract Quantity divided by the number of months in the Term, or if a Confirmation sets forth differing Contract Quantities for delivery during discrete quarterly, annual or other time periods within the Term, then each such Contract Quantity divided by the number of months in the applicable time period for delivery.

**“Rejection Limits”** means the quality characteristics for the Coal Product that is the subject of a Coal Transaction, as specified in the relevant Confirmation, that, if exceeded, give rise to a rejection right of Buyer pursuant to clause 12 of this Appendix 1.

**“Replacement Price”** has the meaning set forth in clause 3 of this Appendix 1.

**“Sales Price”** has the meaning set forth in clause 3 of this Appendix 1.

**“Sampling Person”** has the meaning set forth in clause 9(A) of this Appendix 1.

**“Shipping Notice”** has the meaning set forth in clause 4(C) of this Appendix 1.

**“SO<sub>2</sub>”** means sulfur dioxide.

**“SO<sub>2</sub> lbs./MMBtu”** means pounds of sulfur dioxide per MMBtu and is calculated as [Sulfur % ÷ Btu] x 20,000 rounded per clause 9(E) of this Appendix 1. Weighted average SO<sub>2</sub> lbs./MMBtu is calculated in the same manner except using weighted average sulfur % and weighted average Btu.

**“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 Product in a Coal Transaction as specified in the relevant Confirmation by reference to a Source standard listed in Exhibit D hereto or as otherwise specified by the parties in a Confirmation.

**“Specifications”** means the quality characteristics for the Coal Product set forth in Exhibit A or as otherwise specified in the relevant Confirmation, determined on an “as received” basis, using ASTM Standards.

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

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

**“Ton”** means 2,000 pounds avoirdupois.

**“Transportation Equipment”** means Barges, vessels, railcars or trucks, as specified in the relevant Confirmation.

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

## Appendix 2 to the ISDA Coal Annex

### Terms for International Coal

The terms below shall apply to Coal Transactions involving Coal Products sourced at origins outside the United States (“International Coal”).

*Definitions.* For the purposes of any Coal Transaction governed by this Appendix 2, “SCoTA®” refers to the most recent version of the Standard Coal Trading Agreement published by globalCOAL® as of the Trade Date of such Coal Transaction, unless the parties specify otherwise in the relevant Confirmation (“SCoTA®”). References to “RSS” are to the Relevant Standard Specifications as published by globalCOAL Limited and attached as schedules to the SCoTA®. Other capitalized terms used or incorporated by reference in this Appendix 2 shall have the meanings specified in SCoTA® as the context requires.

*Necessary License.* globalCOAL Limited is the sole proprietor of any and all intellectual property rights in, to, arising from and associated with each and all versions of the Standard Coal Trading Agreement (“SCoTA®”). Express consent is required from globalCOAL Limited in order to make use of SCoTA® in any manner, including the SCoTA® terms incorporated by reference through this Appendix 2 to the Coal Annex. Accordingly, if a party wishes to enter into Coal Transactions governed by this Appendix 2 to the Coal Annex, before doing so it must accept and therefore enter into the globalCOAL Limited licensing scheme, which is available at <http://www.globalcoal.com>.

*Incoterms.* Unless otherwise specified in this Agreement or in the relevant Confirmation, the parties’ obligations with respect to Shipments of International Coal shall be governed by Incoterms 2000.

*Inconsistency.* Notwithstanding clause (a)(1) of the Coal Annex, in the event of any inconsistency between this Agreement and the terms incorporated by reference from SCoTA (1) the SCoTA terms shall govern but only to the extent necessary to address delivery requirements and (2) this Agreement shall govern for all other purposes in accordance with clause (a)(1) of the Coal Annex.

(1) **Scheduling.** The provisions of clause 6 of SCoTA and the applicable RSS shall apply to Coal Transactions in International Coal.

(2) **Loading.** The provisions of clause 8 of SCoTA and the applicable RSS shall apply to Coal Transactions in International Coal.

(3) **Failure to Deliver or Receive Coal.** The provisions of clause 15 of SCoTA and the applicable RSS shall apply to Coal Transactions in International Coal.

(4) **Delivery.** International Coal shall be delivered to the Delivery Point specified by the parties in accordance with clauses 6, 7 and 8 of SCoTA and the applicable RSS.

(5) **Title and Risk of Loss.** Title and all risk of loss or damage to a Shipment of International Coal shall pass to Buyer as provided in clause 9.2 of SCoTA.

- (6) **Documentation.** The provisions of clauses 13.5 and 13.6 of SCoTA and the applicable RSS shall apply to Coal Transactions in International Coal.
- (7) **Specifications.** Seller shall cause all International Coal delivered to Buyer to comply with the RSS as specified in the relevant Confirmation.
- (8) **Barge and Vessel Weighing.** Shipments of International Coal delivered by barge(s) or vessel(s) shall be weighed in accordance with the provisions of clause 10 of SCoTA and the applicable RSS.
- (9) **Sampling and Analysis.** Sampling and analysis of Shipments of International Coal shall be performed in accordance with the provisions of clause 10 of SCoTA and the applicable RSS.
- (10) **Quality Adjustments.** If International Coal delivered pursuant to a Coal Transaction varies from the specified Relevant Standard Specifications, the rights and obligations of the parties with respect to any quality adjustments shall be governed by clause 11 of SCoTA.
- (11) **Buyer's Rejection Rights.** Buyer's right to reject a Shipment of International Coal shall be governed by clauses 11 and 12 of SCoTA.
- (12) **Payment.** The terms of clause 13 of SCoTA and the applicable RSS shall apply to payments made in respect of Coal Transactions involving International Coal.
- (13) **Force Majeure.** "Force Majeure" shall have the meaning specified in SCoTA (inclusive of Clause 17) with respect to Coal Transactions involving International Coal.
- (14) **SCoTA Dispute Resolution.** If the parties specify in paragraph (i)(7) of this Coal Annex that this provision is applicable, the terms of clause 18 of the SCoTA shall apply with respect to disputes regarding Coal Transactions involving International Coal, notwithstanding anything else to the contrary in this Agreement.
- (15) **Financial Settlement.** The terms of clause 5 of SCoTA shall apply with respect to financial settlement of Coal Transactions involving International Coal.

**EXHIBIT A  
TO THE ISDA COAL ANNEX**

**COAL PRODUCTS AND PRODUCT SPECIFICATIONS**

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.

“**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	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 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 (S02)	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 (S02)	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:

<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> )	0.80 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 B**  
**TO THE ISDA COAL ANNEX**  
**QUALITY ADJUSTMENT FORMULAS**

When specified in a Confirmation, the following formulae shall apply for quality adjustments:

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

$$\text{BTU Adjustment} = \left[ (\text{Actual Shipment Btu/lb} - \text{Standard Btu/lb}) \div \text{Standard Btu/lb} \right] \times \text{Contract Price}$$

2. SO<sub>2</sub>: 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:

$$\text{SO}_2 \text{ Adjustment} = \left[ (\text{Standard SO}_2 \text{ lbs/MMBtu} - \text{Actual Shipment SO}_2 \text{ lbs/MMBtu}) \times \text{Actual Shipment Btu/lb} \times E \right] / 1,000,000$$

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:

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<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>.

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

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.

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

**EXHIBIT C**  
**TO THE ISDA COAL ANNEX**  
**QUANTITY VARIATION ADJUSTMENTS**

The formulae 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).

**EXHIBIT D**  
**TO THE ISDA 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.