

## TERMS AND CONDITIONS OF COAL PURCHASE

### 1. GOVERNING DOCUMENTS

Listed in order of governance, the Confirmation, these Terms and Conditions of Coal Purchase (hereinafter referred to as "these Terms"), and the executed Producer-Broker Statement (where applicable) shall constitute the entire agreement (hereinafter referred to as "the Agreement") between Purchaser and Seller as to coal purchased and sold as specified in the Confirmation. (Purchaser and Seller are sometimes hereinafter referred to collectively as "the Parties" or separately as "each Party.") No additional or different terms stated by Seller in an acceptance or written confirmation of the Agreement shall be effective unless such terms are specifically accepted by Purchaser in writing. No modification of the Agreement shall be effective unless such modification is reduced to writing and signed by a duly authorized agent of each Party. There are no representations, understandings, or agreements, either oral or written, between the Parties that are not included as part of the Agreement. Purchaser may from time to time issue purchase orders for administrative purposes to facilitate shipment of coal under this Agreement. The purchase order(s) are for administrative purposes only and shall not constitute, nor be deemed to result in, any amendment, change, or modification of the terms and conditions of this Agreement.

### 2. SELLER'S ACCEPTANCE

Seller's execution of the Confirmation or Seller's shipment of coal under the Agreement shall constitute Seller's acknowledgment and acceptance of the Agreement.

### 3. BROKERS

Any Seller who does not mine or produce the coal to be supplied under the Agreement shall be deemed to be a broker ("Broker") and shall arrange for the execution of the Producer-Broker Statement by Seller and Broker. Broker shall be responsible for providing a copy of these Terms and a copy of the Confirmation (with optional deletion of price) to the coal producer ("Producer") designated in the Producer-Broker Statement from whom Broker purchases or acquires coal to be supplied under the Agreement. Broker shall, in its agreement with Producer, bind Producer to all of the terms of the Agreement and shall be responsible for compliance therewith by Producer; provided, however, that Producer's failure to comply therewith shall not relieve Broker from performance of any of its obligations or duties under the Agreement. The liability of Broker and Producer shall be joint and several under the Agreement. In the event that Seller is deemed to be a Broker, any reference herein to Seller shall be deemed to refer both to Broker and to Producer.

### 4. WARRANTY

Seller represents and warrants as follows: (a) Seller (or Producer, if any, identified in the Producer-Broker Statement) owns or controls and shall continue to own or control the Coal Property described in the Confirmation during the term of this Agreement; (b) the Coal Property contains commercially recoverable coal of a quality and in quantities sufficient to satisfy the requirements of the Agreement; (c) during the term of the Agreement, coal shall not be used or sold from the Coal Property in a manner that would result in Seller's inability to supply coal to Purchaser in such quantities, of such quality, and at such times as are specified in the Confirmation; (d) all quantities of coal supplied under the Agreement shall be mined or produced from the Coal Property and shall be shipped free and clear of all liens, encumbrances, and claims of third parties; and (e) no substitute coal from a source other than the Coal Property shall be supplied under the Agreement without Purchaser's prior written approval.

### 5. INSPECTION

Purchaser or its representatives may enter upon the Coal Property or other appropriate locations for one or more of the following purposes: (a) to inspect and examine the method, equipment used in, and manner of mining, producing, storing, washing, blending, crushing, loading, unloading, transporting, sampling, weighing, analyzing, or other handling of coal to be supplied under the Agreement; (b) to take samples of coal for Purchaser's analyses; or (c) in connection with any accounting, audit, or examination of Seller's records. Prior to entering the Coal Property (or other appropriate location), Purchaser's representative shall check in with appropriate personnel at the entrance to the Coal Property (or other appropriate location) and shall follow all applicable safety rules and regulations. No such inspection by Purchaser shall be deemed a waiver of any of Purchaser's rights or relieve Seller of any obligations under this Agreement or be deemed for any purpose to be an exercise of control by Purchaser of the methods and manner of the performance of

this Agreement by Seller. The purpose of any inspection by Purchaser or its representatives is to assure that the requirements of this Agreement are being complied with by Seller.

## 6. QUANTITY

Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the quantities of coal specified in the Confirmation; and such quantities shall be supplied within the time period(s) stated in the Confirmation. All quantities of coal to be supplied under the Agreement shall be delivered in reasonably equal shipments and at regular intervals over the term or in such other manner as may be stated in the Confirmation.

## 7. COAL SPECIFICATIONS

The following provisions shall apply to all quantities of coal supplied under the Agreement:

### A. Coal Size and Extraneous Material

Unless otherwise specified in the Confirmation, all quantities of coal supplied under the Agreement (i) shall be uniformly blended; (ii) shall be two inches and under in size (2" x 0"), as determined by the then-current American Society for Testing and Materials ("ASTM") D-4749 "Standard Test Method for Performing the Sieve Analysis of Coal and Designating Coal Size"; (iii) shall not contain more than fifty percent (50%) of particles less than one-quarter (¼) inch in size; and (iv) shall be substantially free of bone, slate, shale, rock, dirt, and clay and free of extraneous material (including, without limitation, plastic, rubber, metal, wood, and other waste materials). If, in Purchaser's sole judgment, coal-handling problems occur at any of Purchaser's facilities because of size consistency, Seller and Purchaser shall meet to discuss and shall cooperate in taking reasonable corrective action acceptable to Purchaser to resolve such problems. In the event that any shipment of coal fails to comply with the requirements of this Section 7.A (which compliance shall be determined based on Purchaser's sole judgment and may be based upon visual inspection), then the provisions of Sections 12.A, 12.B, and 12.C of these Terms shall apply.

### B. Quality Specifications

The Confirmation shall set forth the quality specifications for coal to be supplied under the Agreement. In the event that any shipment of coal fails to comply with the requirements of this Section 7.B, then the provisions of Sections 12.A, 12.B, and 12.C of these Terms shall apply.

### C. Synthetic Fuel

No quantities of coal supplied under the Agreement shall be treated with chemicals, binders, petroleum products, or other substances (whether or not treated with the intent to qualify the coal as synthetic fuel). In the event that any shipment of coal fails to comply with the requirements of this Section 7.C, then the provisions of Sections 12.A, 12.B, and 12.C of these Terms shall apply.

## 8. TRANSPORTATION

Purchaser, at its sole discretion and expense, may direct that coal supplied under the Agreement be delivered by the carrier to the designated destination or location(s) specified in the Confirmation ("Designated Destination") or to any other location designated by Purchaser ("Other Destination"); provided, however, that (i) Purchaser shall have no obligation to direct shipments to any Other Destination and (ii) Purchaser shall be obligated to pay the reasonable and documented incremental costs incurred by Seller in order to direct shipments to any Other Destination.

### A. Scheduling of Shipments and As Loaded Quality Analysis

1. Before the first shipment of coal under the Agreement is scheduled for loading and prior to the beginning of each subsequent calendar month while the Agreement is in effect, Seller shall communicate with Southern Company Services personnel by telephone or e-mail, as specified in the Confirmation, to obtain shipping instructions. In the event that Seller fails to comply with the shipping instructions, then Purchaser may reject one or more shipments; and in such event, Seller shall be obligated to take the actions required of Seller under Section 12.A of these Terms.
2. In addition to notices, analyses, and communications required by these Terms, Seller shall perform an "as loaded" coal quality analysis (with respect to the calorific value, ash content, moisture

content, and sulfur content) of each shipment after the shipment is loaded ("As Loaded Quality Analysis"). Within twenty-four (24) hours after loading, and in all cases prior to the shipment's arrival at the Designated Destination or Other Destination, Seller shall provide to Purchaser an As Loaded Quality Analysis in the form of Attachment A by way of File Transfer Protocol ("FTP"). Purchaser may refuse to unload or accept any shipment until Purchaser has received the As Loaded Quality Analysis File required under this Section 8.A.2, and Seller shall reimburse Purchaser for any demurrage or costs incurred and paid by Purchaser as a result of Seller's failure to provide the As Loaded Quality Analysis to Purchaser in accordance with these Terms. Purchaser shall use the As Loaded Quality Analysis required under this Section 8.A.2 in determining whether to accept or reject the shipment.

B. Delivery by Railcar

Where coal is to be delivered by railcar to Purchaser, all shipments of coal under the Agreement shall be supplied f.o.b. railcar at the shipping point or loading point specified in the Confirmation; and the loading facility at such point shall be available to load shipments twenty-four (24) hours per day, seven (7) days per week. Seller shall not permit coal to be loaded into railcars that contain foreign material. Seller shall bear all expenses and costs associated with delivery of coal to, and the loading of coal into railcars at, the loading facility and shall defend and indemnify Purchaser against all claims for costs, expenses, damages, or liabilities (whether liquidated or unliquidated) that may be asserted against Purchaser in connection with the delivery of coal to, and the loading of coal into railcars at, the loading facility. In the event that Seller fails to supply coal in the quantities or at the rates required under the Agreement, such failure shall be deemed to be a material breach of the Agreement by Seller and the provisions of Section 14 of these Terms shall apply. All quantities of coal to be shipped to Plants Bowen, Daniel, Gaston, Miller, Scherer, and Wansley shall be loaded into electro-pneumatic, rapid-discharge hopper railcars provided by Purchaser.

1. Shipping Notice

Promptly after each shipment is loaded, Seller shall prepare a shipping notice for the shipment (in the form of a 404 bill of lading) and shall cause the shipping notice to be transmitted electronically to Purchaser (via email to [R2RAACS@southernco.com](mailto:R2RAACS@southernco.com)) or to any other recipients specified in the Confirmation.

For each shipment, Seller shall use an Automatic Equipment Identification ("AEI") system, if available at the shipping point or loading point, to correctly identify and list all railcars in the system during the loading process. The weight for each railcar and the total train weight shall be automatically entered into the AEI system if mine-governing weights apply under the Agreement. Upon completion of loading and prior to the train's departure from the loading facility, Seller shall also cause the shipping notice to be transmitted electronically to the rail carrier.

The shipping notice shall provide the following information: the rail carrier's name, Seller's name, the loading facility's name and FASC number, purchase order number, destination, quantity of tons shipped, SES train number, number of railcars in the train, rail transportation contract number, train arrival date and time, loading start date and time, loading finish date and time, total loading time, date and time of release of the bill of lading to the rail carrier, and total train consist (including reporting marks and railcar numbers).

2. Risk of Loss; Passage of Title

Risk of loss for each shipment shall pass from Seller to Purchaser when the rail carrier accepts consignment of the shipment, and title to each shipment shall pass from Seller to Purchaser upon the shipment's arrival at the Designated Destination or Other Destination. Notwithstanding the foregoing provisions of this Section 8.B.2, Seller shall bear the risk of loss for, and shall retain title to, each shipment that is purchased on a delivered basis until the shipment is accepted at the Designated Destination or Other Destination for unloading.

3. Demurrage and Other Costs

Seller shall be liable for and shall defend, indemnify, and hold harmless Purchaser from any demurrage charges, excess freight charges, deficiency freight charges, car-detention charges, and other transportation costs that are incurred by Purchaser as a result of Seller's failure (i) to timely

provide the shipping notice and the As Loaded Quality Analysis concerning the shipment as required under Section 8.B.1 and Section 8.A.2 of these Terms, respectively or (ii) to satisfy the loading or shipping requirements of the Agreement.

4. Overloaded Railcars

Seller shall be aware of, and shall comply with, all of the rail carrier's restrictions concerning maximum allowable gross railcar weights. If railcars are overloaded, Seller shall be responsible for any costs associated with reducing the weight of railcars to comply with the rail carrier's restrictions and shall provide Purchaser with corrected governing weight documentation. Seller shall also be responsible for any damages to the transportation equipment of Purchaser or other property caused by overloaded railcars. The maximum weight restrictions adopted by each of the applicable rail carriers are set forth in Attachment B "Railcar Weight Matrix."

5. Underloaded Railcars

Seller shall load each unit train to at least the minimum train weight as specified in the applicable rail transportation contract; and before loading a unit train, Seller shall determine the minimum weight for the unit train by contacting Purchaser's transportation coordinator.

6. Application of Freeze Conditioning/Dust Suppression

(a) If requested by Purchaser, Seller shall apply freeze control agents or other Products ("Product" means any item added to the coal or to Purchaser's railcars at the request of Purchaser; such items shall include, but not be limited to, various freeze control substances, and/or various side release agents, and/or various dust suppression substances), to the coal in each of Purchaser's railcars loaded at Seller's loading facility, or to such railcars themselves as required. Prior to applying any Product to the coal in Purchaser's railcars or to such railcars, Seller agrees to furnish to Purchaser a material safety data sheet ("MSDS") sheet and a sample of the Product to be applied by Seller. Any Product to be applied to Purchaser's coal or Purchaser's railcars must be approved by Purchaser in writing before application begins. Seller shall notify Purchaser in writing of any coal or railcars to which by using commercially reasonable efforts it is unable to apply the Product.

(b) Seller may not introduce a new Product, or substitute a new Product for one currently being applied by Seller to Purchaser's coal or Purchaser's railcars, without first providing an MSDS for the new Product to Purchaser and obtaining Purchaser's written consent to the Product change, including any change in cost to Purchaser, if any, of the new Product.

(c) Purchaser may request at any time a change in Products and may specify the new Product to be applied. Seller will commence application of the new Product within fifteen (15) days of the date of Purchaser's written request, unless the Parties agree in writing to a period greater than fifteen (15) days.

(d) Purchaser may decide, at any time during the term of the Agreement, to discontinue the application of a Product to the coal in Purchaser's railcars or to such railcars. In such event Purchaser shall give Seller written notice of such decision, and the application of the Product shall cease no later than fifteen (15) days after Seller has received such notice and Purchaser shall not be responsible for any costs associated with the application of Product after such fifteen (15) day period. Thereafter, if Purchaser decides to resume the application of the Product to the coal in Purchaser's railcars or to such railcars, Purchaser shall give Seller written notice of such decision; and the application of the Product shall resume no later than fifteen (15) days after Seller has received such notice, unless the Parties agree in writing to a longer period.

(e) Seller must give advance notice of any increase in the cost of a Product currently being used or any increase in Seller's cost to apply the Product. Within fifteen (15) days of any such notice, Purchaser must notify Seller whether or not Purchaser desires for Seller to continue to apply the Product. Purchaser shall not be responsible for any increase in cost of the Product or the Seller's cost to apply the Product unless Seller has provided notice as described in this Section 8.B.6(e).

(f) Seller shall require the dust suppression/freeze conditioning vendors ("Vendors") to agree in their contracts with Seller that any and all warranties or guarantees of the Product may be assigned

to Purchaser. Seller shall pass through the actual cost of such applications to Purchaser without markup, and Purchaser shall reimburse Seller for such cost; provided, however, that Purchaser's obligation to reimburse Seller shall be limited to the Purchaser's coal or railcars to which a Product is actually applied. In addition, Seller shall be entitled to pass through to Purchaser with no markup, and Purchaser shall reimburse Seller for, any and all taxes, fees and application costs incurred by Seller as a direct result of such applications. Seller shall invoice Purchaser monthly, and such invoice shall be itemized and accompanied by supporting documentation. Payment shall be due within fifteen (15) days after receipt of the invoice.

(g) Seller shall maintain books and records relating to the amounts charged to Purchaser for Products (including, without limitation, taxes related to the cost of such Products); and such books and records shall be subject to audit by Purchaser as provided in Section 15.G of the Agreement.

C. Delivery by Barge

Where coal is to be delivered by barge to Purchaser, all shipments of coal under the Agreement shall be supplied either f.o.b. barge at the shipping point or f.o.b. barge at the Designated Destination or Other Destination.

1. Loading Arrangements at Shipping Point

For coal purchased f.o.b. barge at the shipping point, Seller shall provide or designate one or more loading points that have adequate and accessible mooring and barge-loading facilities sufficient to load coal properly within the appropriate loading time. Purchaser shall designate the carrier to tow loaded barges from the loading point to the unloading point. Seller shall pay all costs to transport coal from the mine to the loading point (including, without limitation, barge-loading charges); and Purchaser shall pay barge freight costs to transport coal from the loading point to the unloading point. Purchaser shall arrange for the necessary barges to be available at the loading point so as to permit loading by Seller in an orderly manner and shall coordinate the arrival of barges at the loading point with Seller. Purchaser shall arrange for the barge carrier to give Seller reasonable notice, either orally or in writing, of the expected arrival date of empty barges at the loading point. Seller shall be liable for and shall defend, indemnify, and hold harmless Purchaser from any demurrage charges and other transportation costs that are incurred by Purchaser as a result of (i) the breakdown of the barge-loading facilities or (ii) Seller's failure to furnish and load coal at the loading point at the proper times and in the proper quantities.

2. Loading Restrictions

Seller shall not allow coal that contains foreign material or excessive amounts of water to be loaded into any barge for delivery to Purchaser.

3. Risk of Loss; Passage of Title

For coal purchased f.o.b. barge at the shipping point, Seller shall bear all risk of loss for each shipment until the loaded barges have been picked up by the barge carrier and have begun their movement from the loading point to the unloading point; and title to each shipment shall pass from Seller to Purchaser upon Purchaser's acceptance of the shipment from the barge carrier at the unloading point. Claims for coal lost en route shall be filed by Purchaser for the barge carrier's account. For coal purchased f.o.b. barge at the Designated Destination or Other Destination, Seller shall bear all risk of loss for, and shall retain title to, each shipment until the shipment has been received at the Designated Destination or Other Destination.

4. Shipping Notice

For each shipment of coal by barge, Seller shall use an Automatic Equipment Identification ("AEI") system to correctly identify each barge in the system during the loading process. The total net weight for each barge shall be automatically entered into the AEI system from mine-governing scales; or if en-route or destination weights apply under the Agreement, an estimated weight shall be used. Data for each loaded barge shall be retained in the AEI system; and upon completion of loading, Seller shall prepare a computer-generated shipping notice (in a form approved by Purchaser) and shall promptly cause the shipping notice to be transmitted electronically to Purchaser (via email to [R2RAACS@southernco.com](mailto:R2RAACS@southernco.com)). Seller shall also cause a copy of the shipping notice to be transmitted to any additional recipients specified in the Confirmation.

The shipping notice shall provide the following information: the barge carrier's name, Seller's name, Purchaser's name, the name of the dock (loading point), the barge number, the shipment number, purchase order number, the barge carrier's contract number, destination, load to maximum draft, actual or estimated actual tons (as applicable), barge arrival date and time at the loading point, loading start date and time, loading finish date and time, and condition of barge prior to loading.

5. Demurrage and Other Costs

Seller shall be liable for and shall defend, indemnify, and hold harmless Purchaser from any demurrage charges, excess freight charges, deficiency freight charges, and other transportation costs that are incurred by Purchaser under any applicable transportation contract as a result of Seller's failure to satisfy the loading, shipping, or tonnage requirements stated in the Agreement or any purchase order entered thereunder. Seller shall load all barges in accordance with any special loading provisions stated in the Agreement or purchase order entered thereunder and shall be liable for and shall defend, indemnify, and hold harmless Purchaser from any such charges or costs that are incurred by Purchaser as a result of Seller's failure to comply with such special loading provisions.

D. Delivery by Ocean Vessel

Where coal is to be delivered by ocean vessel to Purchaser, Purchaser may elect to have the coal delivered to, and loaded into an acceptable type of vessel at, a loading port of safe berth or may elect to have the coal delivered to a discharge port designated by Purchaser. Purchaser shall have the right to have a representative present to observe the loading of each ocean vessel with coal to be supplied under the Agreement. Seller shall act as importer of record for all shipments of coal delivered by ocean vessel under the Agreement. For shipments delivered by ocean vessel, the parties may specify billing and payment terms in the Confirmation in addition to or different from the terms contained in Section 10.

1. For coal purchased at loading port

(a) Unless otherwise specified in the Confirmation or otherwise agreed by the Parties, Seller shall arrange for a representative sample of each shipment of coal to be collected at the loading port by an independent laboratory approved by Purchaser and shall arrange for each sample to be collected in accordance with applicable procedures of the American Society for Testing and Materials ("ASTM"). Each sample shall be prepared as provided in Section 9.B of these Terms; and Seller shall cause one of the laboratory sample splits to be analyzed in accordance with applicable ASTM procedures to provide the As Loaded Quality Analysis in accordance with Section 8.A.2. The remaining laboratory sample splits shall be sent or stored as provided in Section 9.B.2 of these Terms.

(b) Seller shall arrange for the weight of each shipment of coal to be determined at the loading port by a draft survey conducted by a certified marine surveyor acceptable to Purchaser. The surveyor conducting the draft survey shall have a procedure approved by Southern Company Services and on file at its offices in Birmingham, Alabama. Seller shall notify Purchaser of the results of such weight determination e-mail within one (1) day after the loading of the shipment is completed. Except as otherwise provided in this Section 8.D.1, the weight of the shipment, as so determined, shall be accepted as the quantity of coal in the shipment and shall be used to calculate the amount of the payment for the shipment. Purchaser may have a designated representative present at any and all times that measurements and calculations are made in the drafting of a vessel. Purchaser reserves the right to draft any vessel using a certified marine surveyor at the discharge port; and if a discrepancy greater than two and one-half percent (2.5%) occurs with respect to a shipment's weight determination at the loading port and the shipment's weight determination at the discharge port, then the average of the two draft weights shall be used to calculate the amount of the payment for the shipment.

2. For coal purchased at discharge port

(a) Unless otherwise agreed by the Parties, Purchaser shall arrange for a representative sample of each shipment of coal to be collected at the discharge port and shall arrange for each sample to be collected in accordance with applicable ASTM procedures. Each sample shall be prepared as provided in Section 9.B of these Terms; and Purchaser shall cause one of the laboratory sample splits to be analyzed as provided in Section 9.D of these Terms. The remaining laboratory sample splits shall be stored as provided in Section 9.B.2 of these Terms. In the event that Purchaser is

unable to obtain a sample of any shipment for analysis, then the analysis of such shipment shall be deemed to be the average of the analyses of all other shipments supplied under the Agreement during the preceding thirty (30)-day period.

(b) Purchaser shall arrange for the weight of each shipment of coal to be determined, for all purposes under the Agreement, by the methods and devices employed at the discharge port. In the event that Purchaser is unable to obtain the weight of any shipment at the discharge port, then the weight of the shipment shall be determined from the "as loaded" weight of the vessel at the loading port.

3. Risk of Loss; Passage of Title

Unless otherwise specified in the Confirmation, Seller shall bear all risk of loss for, and shall retain title to, each shipment until the shipment is unloaded from the vessel at the discharge port.

E. Delivery by Truck

Where coal is to be delivered by truck to Purchaser, dump trucks and dump trailers shall be used to transport the coal to the Designated Destination or Other Destination.

1. Requirements for Truck Shipments

Dump trucks and dump trailers used to transport shipments of coal shall not have cross beams installed in the cargo area that could damage a sampling auger. All trucks and trailers operated on Purchaser's properties shall comply with all applicable federal and state safety standards and weight restrictions. Whenever required by Purchaser, each vehicle shall be furnished an identification number, which shall be affixed to the vehicle, to gain admittance to the Designated Destination or Other Destination. Seller shall employ or use only competent commercially licensed truck drivers and shall be responsible for compliance by such drivers with Purchaser's rules and requirements (including, without limitation, speed limits and weight restrictions) concerning roads within Purchaser's properties. Such drivers shall comply with the requirements for loading, transporting, weighing, sampling, and unloading of coal supplied under the Agreement in such manner and at such locations on Purchaser's properties as are designated by the manager of the Designated Destination or Other Destination or his/her representative; and such drivers shall cooperate with Purchaser's coal-receiving employees and other suppliers in a manner so as not to interfere with any of Purchaser's operations. Coal may be delivered to the Designated Destination or Other Destination according to the then-current operating schedule for coal receipts in effect at the destination, and Seller shall be responsible for determining the schedule in effect and shall comply therewith in all respects.

2. Weight Restrictions

Vehicles used by Seller to transport truck shipments of coal shall comply with the weight restrictions set forth in this Section 8.E.2 and any other weight restrictions imposed by federal, state, or local laws.

With respect to Purchaser's properties in the State of Alabama, coal shall be delivered to such properties in dump trucks or dump trailers with gross vehicle weights (including cargo) that do not exceed the following limits: 44,000 pounds for vehicles with two (2) axles; 66,000 pounds for vehicles with three (3) axles; 82,500 pounds for vehicles with four (4) axles; 88,000 pounds for vehicles with five (5) axles; and 92,400 pounds for vehicles with six (6) axles.

With respect to Purchaser's properties in the State of Georgia, coal shall be delivered to such properties in dump trucks or dump trailers with gross vehicle weights (including cargo) that do not exceed the following limits: 40,680 pounds for vehicles with two (2) axles; 61,020 pounds for vehicles with three (3) axles; 70,000 pounds for vehicles with four (4) axles; 73,280 pounds to 80,000 pounds (depending on the distance from the center of the front axle to the center of the rear axle) for vehicles with five (5) axles; and 74,000 pounds to 80,000 pounds (depending on the distance from the center of the front axle to the center of the rear axle) for vehicles with six (6) axles.

In the event that any truck shipment of coal delivered to Purchaser exceeds the applicable gross vehicle weight, Purchaser may, at its sole option, either (i) reject the shipment or (ii) refuse to pay for the quantity of coal that causes the vehicle to exceed the applicable gross vehicle weight limit.

3. Risk of Loss; Passage of Title

Seller shall bear all risk of loss for, and shall retain title to, each truck shipment of coal until the shipment is unloaded and received by Purchaser at the Designated Destination or Other Destination. Purchaser may direct shipments of coal to a location other than the Designated Destination or Other Destination; provided, however, that Purchaser shall pay any additional costs that are incurred by Seller as a result of Purchaser's direction of shipments to such other location.

4. Shipping Notices; Weight Tickets

Seller shall provide a properly completed shipping notice (on a form furnished by Purchaser) for each truck shipment of coal. Purchaser shall weigh each shipment on a certified scale at the Designated Destination or Other Destination and shall issue a weight ticket for the shipment and provide a copy of the weight ticket, along with a copy of the shipping notice, to the truck driver.

5. Insurance

Seller, at its expense, will procure and maintain in effect without interruption during the term of this Agreement, with insurance companies authorized to transact insurance in the State in which the Designated Destination or Other Destination is located, policies of insurance providing, at a minimum, the coverages and limits specified, and will comply with the other requirements stated below:

(a) Statutory Workers' Compensation covering the legal liability of Seller under the applicable worker compensation or occupational disease laws of the State or Federal Government for claims for personal injuries and death to Seller's employees in amounts required by statute. Seller will also have Employer's Liability insurance covering Seller in an amount not less than \$500,000 (five hundred thousand dollars).

(b) Business Auto Liability insurance covering any owned, non-owned, and hired vehicles in an amount not less than \$1,000,000 (one million dollars) combined single limit for bodily injury and property damage for any one occurrence. The Business Auto Liability insurance coverage must name the Purchaser and the Indemnified Parties (as defined in Section 15.B of these Terms) as additional insureds with respect to liability arising out of Seller's performance under this Agreement.

(c) Seller hereby waives and relinquishes and agrees to require its insurer(s) to waive and relinquish any right of subrogation against the Purchaser and the Indemnified Parties it might possess for all policies of insurance required under this Agreement or under any State or Federal Workers' Compensation or Employers' Liability Act.

(d) To the extent that Seller uses deductibles in conjunction with the insurance required by this Agreement (including self-insurance), all deductible expenses will be assumed and paid by Seller.

(e) Upon request, Seller will submit to Purchaser Certificates of Insurance evidencing the coverage prescribed by this Agreement and certifying the amount and nature of such coverage, the expiration date(s) of each applicable policy, and that such policies have been endorsed as required by this Agreement. Seller will furnish to the Purchaser such additional information concerning its insurance coverage as the Purchaser may reasonably request.

(f) The provisions requiring Seller to carry insurance will not be construed as waiving, restricting, or limiting the liability of Seller as to any obligations imposed under the Agreement, whether or not the same are covered by insurance. It is the intent of the Parties that, to the extent there is in force insurance coverage available to cover the legal and contractually assumed liability of Seller, any payments due therefor will be made first from the proceeds of such policy or policies to the extent of coverage limits.

(g) Seller will be solely responsible for and will bear the risk of loss of or damage to any property of Seller and any property for which they are responsible, wherever located, and any insurance provided for such property will be solely at Seller's expense. Seller and its insurers waive any right of recovery they may have against Purchaser and any of the Indemnified Parties for any loss or damage to Seller's property.

(h) Purchaser reserves the right to require additional insurance coverages, including, but not limited to, the following: Commercial General Liability, Excess Liability, or Umbrella Liability. Any such additional coverages shall be in an amount not less than \$1,000,000 (one million dollars) for any one occurrence.

(i) All of the foregoing obligations related to insurance will apply to any subcontractors that Seller uses to perform work hereunder. Seller will require its subcontractors (if any) to adhere to all of the foregoing provisions.

## 9. WEIGHING, SAMPLING, AND ANALYSIS

With respect to shipments of coal for which Seller is to provide the governing weights and collect the governing samples, Purchaser or its designated representative may observe any or all loading, weighing, sampling, or sample preparation activities performed by Seller.

### A. Weighing

Unless otherwise specified in the Agreement, the net weight of each shipment of coal shall be determined by a certified scale system located at the shipping point or loading point specified in the Confirmation and shall be final and binding on the Parties. The following provisions shall also apply to the weighing of shipments of coal under the Agreement:

1. Seller shall bear the expense of weighing each shipment of coal and all costs associated with the testing and certification of scales or weighing systems located at the shipping point or loading point. Purchaser shall have the right to inspect and verify such scales or weighing systems and the procedures for operating and testing such scales or weighing systems. Each scale or weighing system used to obtain governing weights for shipments delivered by railcar under the Agreement shall be maintained and operated in accordance with (i) the then-current Association of American Railroads Scale Handbook and (ii) the National Institute of Standards and Technology Handbook 44 entitled "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices."
2. In the event that the weighing system at the shipping point or loading point specified in the Confirmation ceases to operate properly or is otherwise unavailable, Seller shall immediately notify Purchaser or its authorized representative, orally and in writing, to determine the course of action to be taken concerning subsequent shipments under this Agreement and Purchaser may, at its sole discretion, delay or stop the loading of shipments under the Agreement; provided further than Seller shall be liable for and shall defend, indemnify and hold harmless Purchaser from any transportation costs and other expenses that are incurred by Purchaser as a result of such delay or stoppage. Seller shall repair the weighing system as soon as practical, and Shipments under this Agreement shall not resume until (i) such repair is completed and Purchaser consents to the resumption of Shipments or (ii) the Parties mutually agree on a method for weighing Shipments under this Agreement. In the event that Seller fails to provide the net weight of any rail Shipment, then the net weight of the Shipment shall be determined by the rail carrier at Seller's expense. In the event that the rail carrier is unable to or fails to weigh the Shipment in question, the net weight of such Shipment shall be determined by using the average weight per railcar, for the same size railcars, for the previous two (2) Shipments for which an actual scale weight is available.

### B. Sampling and Sample Preparation

Unless otherwise specified in the Agreement, Seller shall arrange for samples of shipments of coal under the Agreement to be collected at each loading facility applicable to the Agreement and shall bear all costs related to obtaining an acceptable sample of each shipment. Purchaser shall have the option, which may be exercised at any time during the term of the Agreement, to obtain samples of shipments, for governing purposes and at Purchaser's expense, at the Designated Destination or Other Destination.

Purchaser shall arrange for all samples, whether collected at the loading facility or elsewhere, to be analyzed by Purchaser's designated laboratory at Purchaser's expense.

1. At each loading facility applicable to the Agreement, Seller shall provide a mechanical sampling system and shall use the sampling system to collect a representative sample of each shipment of coal under the Agreement. The following provisions shall apply to the sampling system:

(a) The design and operation of the sampling system and the procedures used for sample preparation shall, at a minimum, meet the requirements of the most current published ASTM D-7430 "Standard Practice for Mechanical Sampling of Coal" and ASTM D-2013 "Standard Practice for Preparing Coal Samples for Analysis." The sampling system shall be enclosed to minimize moisture loss and shall be designed for one stage of sample crushing to the No. 4 sieve size (as determined by Purchaser based on the most current published ASTM D-4749 "Standard Test Method for Performing the Sieve Analysis of Coal and Designating Coal Size"). The sample flow rates through the sampling system shall be sufficient to minimize moisture loss. The Parties shall use their best efforts to agree on modification of procedures and equipment to meet future revisions of ASTM D-7430 and ASTM D-2013.

(b) All sample increments collected at all stages of sampling in the sampling system shall cut the full stream of coal presented. Upon Purchaser's request, Seller shall make available to Purchaser the values of current measurements of sampling system cutter openings, cutter velocities, belt speeds, and sample flow rates, which shall be subject to Purchaser's review and acceptance.

(c) Seller shall monitor the sampling ratio of its sampling system in a manner that meets the most current published ASTM standards and published addenda and is acceptable to Purchaser and, upon Purchaser's request, shall make sampling ratio data available to Purchaser. Out of control conditions or excessive variation must be promptly investigated by the Party responsible for operation of the sampling system.

(d) Using bias test procedures that, at a minimum, meet the requirements of the most current published ASTM D-7430 "Standard Practice for Mechanical Sampling of Coal," Seller shall cause the sampling system to be tested periodically, no less than every two (2) years, at Seller's expense, for bias against stopped-belt reference samples. Such testing shall be scheduled such that when each shipment of coal is sampled, the most recent bias test results are dated by no more than two (2) previous years; *provide, however*, that such testing shall not occur more than once during a period of twelve (12) calendar months unless a problem is detected, in which case the Parties shall mutually determine additional bias testing procedures and apportionment of the cost for such additional testing. Seller shall give Purchaser or its representative sufficient written notice of the scheduled date of each bias test; and Purchaser or its representative shall have the right to be present during such test and to observe and inspect sample collection, sample preparation, and laboratory analysis of bias test samples. Prior to the beginning of each bias test, the Parties shall mutually agree on the coal characteristics for testing and the acceptable confidence interval widths for each coal characteristic. If a bias is detected by the test, Seller shall immediately take all reasonable measures to correct or remove the source of the bias, and the Parties shall agree upon an alternative means of sampling Shipments under this Agreement until such time as Seller's sampling system is determined to be accurate. If no alternative means of sampling Shipments under this Agreement is acceptable to Purchaser, Purchaser may suspend Shipments under this Agreement until (i) the source of the bias is corrected or removed and (ii) the sampling system is re-tested for bias. If major changes are made to the equipment or major changes are made to the sample flow rates through the system, a new bias test shall be performed.

(e) Prior to the installation of any new sampling system or a modification of an existing sampling system at any loading facility applicable to the Agreement, Seller shall notify Purchaser of the planned installation of a new sampling system or the modification of an existing sampling system and allow Purchaser to review and approve the design drawings, specifications and sample extraction parameters for the new or modified sampling system, approval of which shall not be unreasonably withheld.

2. Using an enclosed riffle and following the procedures of ASTM D-2013 with respect to each shipment of coal under the Agreement, Seller shall divide the final sample of No. 4 sieve size into at

least four (4) laboratory sample splits, with each split weighing a minimum of four thousand (4,000) grams. Sample preparation procedures shall not include any additional steps to "homogenize" the sample such as, but not limited to, by mixing the sample in a cement-type mixer or by making extra passes through a riffle. Within twenty-four (24) hours after the shipment is loaded, Seller shall send one (1) laboratory sample split to Purchaser's designated laboratory and shall analyze one (1) laboratory sample split to provide the As Loaded Quality Analysis as required by Section 8.A.2. Seller shall retain the remaining two (2) laboratory sample splits as reserve samples for at least sixty (60) days from the date on which the shipment was loaded; provided, however, that for coal delivered by ocean vessel and purchased at the discharge port, Purchaser shall retain two (2) laboratory sample splits as reserve samples for at least sixty (60) days after the shipment was unloaded at the discharge port. Reserve samples shall be heat sealed in 6-mil plastic bags or double-bagged 4-mil bags, adequately labeled and stored in a clean, cool and secure location.

3. Purchaser or its representative may observe any sampling or sample preparation performed by Seller, and Seller or its representative may observe any sampling or sample preparation performed by Purchaser's designated laboratory.
4. In the event that Seller's sampling system ceases to operate properly, Seller shall immediately notify Purchaser or its representative, orally or in writing, to determine the course of action to be taken concerning subsequent Shipments under this Agreement. If the sampling system malfunctions during the loading of any Shipment, the Parties shall attempt to mutually agree upon a method to determine the analysis of the Shipment; in the absence of such agreement, Purchaser may, at its option, use a weighted average analysis of the last two (2) Shipments loaded prior to such malfunction to determine the analysis of the Shipment being loaded at the time of such malfunction. If the sampling system ceases to operate in accordance with the requirements of this Agreement, Purchaser or its representative may, in its sole discretion, direct Seller to delay or stop the loading of any one or more Shipments under this Agreement. After any such direction is given, the following provisions shall apply:
  - a) Seller shall immediately delay or stop, as the case may be, the loading of such shipment(s) and Seller shall pay all charges and costs incurred by Purchaser as a result of such delay or stoppage in the loading of such shipment(s).
  - b) Seller shall repair the sampling system as soon as practical, and the Parties shall agree upon an alternative means of sampling shipments under this Agreement until such time as Seller's sampling system is repaired. If no alternative means of sampling shipments under this Agreement is acceptable to Purchaser, Purchaser may suspend Shipments under this Agreement until (i) Seller's sampling system is repaired, and (ii) Seller's sampling system is re-tested for bias and shipments under this Agreement shall not resume until such repair is completed.

D. Analysis

Unless otherwise specified in the Agreement, the following provisions shall apply to the analysis of samples of shipments of coal under the Agreement:

1. Purchaser, at its expense, shall analyze the laboratory samples sent to Purchaser's designated laboratory in accordance with then-current ASTM standards; and the results of such analyses shall be used for the governing purposes of the Agreement. (Such analysis of the laboratory sample of each shipment is hereinafter referred to as the "Governing Analysis" of the shipment.) Purchaser shall e-mail a copy of each such analysis to Seller within thirty (30) working days after the sample is received at the designated laboratory or a qualified independent coal-testing laboratory selected by Purchaser. If Purchaser elects to employ an independent coal-testing laboratory, Seller shall not be liable for any costs that are incurred by Purchaser except as otherwise provided in these Terms.
2. In the event that Seller disputes the results of the Governing Analysis of any shipment, Seller shall give Purchaser written notice thereof within thirty (30) days after the shipment is unloaded at the Designated Destination or Other Destination. Promptly after giving such notice, Seller shall send one of the reserve samples of the shipment to a qualified commercial independent testing laboratory (selected jointly by the Parties), which shall conduct a referee analysis of such reserve sample in accordance with current ASTM standards; and the cost of such referee analysis shall be borne by

Seller. After the referee analysis of such reserve sample is completed, the following provisions shall apply:

(a) With respect to a dispute over the calorific value analysis, the Governing Analysis shall be deemed to have been confirmed, and no further adjustment in billing calculations shall be made, if the dry basis calorific value analysis by such testing laboratory differs from the Governing Analysis by no more than one hundred (100) Btu/lb. If such testing laboratory's analysis differs from the Governing Analysis by more than one hundred (100) Btu/lb., such independent testing laboratory's analysis shall be final and binding upon the Parties with regard to the calorific value of the shipment, and appropriate adjustments in billing calculations shall be promptly made concerning the calorific value of the shipment.

(b) With respect to disputes over other items of analysis, the Governing Analysis shall be deemed to have been confirmed, and no further adjustment in billing calculations shall be made, if the analysis by such independent testing laboratory differs from the Governing Analysis by no more than the applicable tolerances in the most current published ASTM reproducibility standards for moisture, ash, volatile matter, sulfur <2.0%, sulfur >2.0%, ash fusion temperature (H=W reducing atmosphere), grindability, chlorine and iron oxide. If Purchaser's analysis is confirmed, the cost of the referee analysis shall be paid by Seller. If Purchaser's analysis is not confirmed, the cost of the referee analysis shall be paid by Purchaser and appropriate adjustments shall be made with respect to billing calculations hereunder.

## 10. PRICE, BILLING, AND PAYMENT

The following provisions shall apply to determine the price, billing, and payment for quantities of coal supplied under the Agreement:

### A. Price

The Confirmation shall set forth the price (stated in U.S. dollars per ton) for coal supplied under the Agreement. Such price is fixed and is subject to adjustment only as provided in the Agreement, and such price includes, without limitation, all costs for mining, processing, marketing, and quality control work necessary to supply coal as required under the Agreement (including the costs of complying with all laws and regulations regardless of the date of issuance, enactment, or effectiveness of any law or regulation) and all federal, state, and local taxes of every nature (but not including sales and use taxes, which are to be paid by Purchaser) that are assessed or may be assessed as a result of the mining, processing, production, shipment, or sale of coal under the Agreement.

### B. Billing

Seller shall prepare a file containing shipment detail information in the form of Attachment C to the Purchaser for processing electronically ("Shipment Detail File") for each shipment. Seller shall transmit the Shipment Detail File electronically to the Rail Carrier prior to the time the railcars containing the shipment depart from the loading facility, shall transmit the Shipment Detail File to Purchaser via File Transfer Protocol ("FTP") promptly after each shipment is loaded, and shall retain a copy of the Shipment Detail File for Seller's records. Purchaser shall use the Shipment Detail File to prepare an invoice for the shipment and shall submit each invoice electronically to Seller to an e-mail address provided by Seller. Seller shall not submit invoices to Purchaser for shipments under this Agreement.

### C. Payment

For each shipment of coal under the Agreement, Seller shall notify Purchaser, as specified in these Terms, of the loading of such shipment. Unless otherwise specified in the Agreement, Purchaser shall pay Seller for each shipment as follows:

1. Purchaser shall remit to Seller, normally within thirty (30) days after shipment is received, an initial payment of at least ninety percent (90%) of the price set forth in the Confirmation if Purchaser (i) has received and accepted the shipment at the Designated Destination or Other Destination, (ii) has received the required shipping notice or other appropriate shipping documentation related to the shipment, and (iii) has received, where required, the sample of the shipment collected by Seller.
2. Within forty-five (45) days after the end of each calendar month, Purchaser shall submit to Seller a report showing the computation of adjustments to the billing price and any adjustments to the billing

price. All computations of adjustments shall be made in accordance with the provisions of this Agreement, and such adjustments shall be applied to determine the amount to be paid for shipments during the applicable calendar month. If, as a result of the determination and application of quality adjustments, the total amount owed to Seller for such shipments is less than the amount previously paid by Purchaser for such shipment, Purchaser shall deduct the amount of the overpayment from any sums of money that are subsequently owed by Purchaser to Seller under the Agreement; or if no such sums are subsequently owed by Purchaser to Seller under the Agreement, Seller shall promptly reimburse Purchaser for the amount of such overpayment.

3. Notwithstanding the foregoing provisions of this Section 10.C, Purchaser shall have set-off rights with respect to all amounts owed by Purchaser to Seller under the Agreement and may deduct from such amounts any payments or sums of money that are owed by Seller to Purchaser, whether or not such payments or sums of money are due under the Agreement.

D. Acceptance of Payments

Except as set forth in Section 15.G, Seller's acceptance of the amounts paid by Purchaser for coal supplied under the Agreement shall constitute full and final settlement of any and all claims by Seller for costs or expenses (including, without limitation, taxes, fees, governmental impositions, assessments, premiums, and penalties) that are incurred or paid by Seller, either while the Agreement is in effect or at any time in the future, with respect to the mining, processing, production, shipment, or sale of coal supplied under the Agreement. Seller shall defend and indemnify Purchaser against any claim or liability for any such taxes, fees, governmental impositions, assessments, premiums, or penalties.

## 11. PRICE ADJUSTMENTS FOR QUALITY

Unless otherwise specified in the Confirmation, Purchaser shall calculate the following price adjustments (stated in U.S. dollars per ton) for shipments of coal that are received from Seller and accepted by Purchaser under the Agreement:

A. Calorific Value Adjustment

The amount to be paid for each shipment of coal shall be adjusted according to the "as received" calorific value of coal contained in the shipment. Such adjustment (hereinafter referred to as "the Calorific Value Adjustment" or "CVA") shall be calculated as follows:

1. The "as received" calorific value of coal contained in the shipment shall first be divided by the guarantee or typical specification for calorific value (stated in Btu/lb.) set forth in the Confirmation.
2. If the resulting quotient is greater than 1.0000, the quotient shall be multiplied by the price applicable to the shipment as set forth in the Confirmation (hereinafter referred to as "the Applicable Price"). The Applicable Price shall then be subtracted from the resulting product, and the resulting difference (a positive number in this situation) shall constitute the Calorific Value Adjustment for the shipment.
3. If the resulting quotient is less than 1.0000, the quotient shall be multiplied by the sum of (i) the Applicable Price and (ii) the transportation costs (stated in U.S. dollars per ton) paid by Purchaser for the shipment. (Such sum is hereinafter referred to as "the Delivered Cost.") The Delivered Cost shall then be subtracted from the resulting product, and the resulting difference (a negative number in this situation) shall constitute the Calorific Value Adjustment for the shipment.
4. If the Calorific Value Adjustment is a positive amount, it shall be added to the Applicable Price; and if the Calorific Value Adjustment is a negative amount, it shall be subtracted from the Applicable Price. (The Applicable Price, as adjusted by the number of the Calorific Value Adjustment, is hereinafter referred to as "the Calorific Value Adjusted Price.")

**EXAMPLE:** Assume that the following factors apply to Shipments A and B: (i) the guarantee or typical specification for calorific value set forth in the Confirmation is 12,000 Btu/lb.; (ii) the price set forth in the Confirmation is \$35.00 per ton f.o.b. railcar (or other delivery mode) at the shipping point or loading point specified in the Confirmation; and (iii) the transportation costs for Shipments A and B are \$15.00 per ton. Also assume that the "as received" calorific value of coal contained in Shipment A is 12,500 Btu/lb. and that the "as received" calorific value of coal contained in Shipment B is 11,500 Btu/lb. Based

on these assumptions, the Calorific Value Adjustments for Shipments A and B would be calculated as follows:

<u>Shipment A</u>	<u>Shipment B</u>
$\frac{12,500 \text{ Btu/lb.}}{12,000 \text{ Btu/lb.}} = 1.041666$ <p>1.041666 is greater than 1.00, therefore the CVA is calculated as follows:</p> $\$35.00/\text{ton} \times 1.041666 = \$36.458331/\text{ton}$ $\$36.458331/\text{ton} - \$35.00/\text{ton} = \$1.458331/\text{ton}$ <p>CVA = \$1.4583/ton (as rounded)</p>	$\frac{11,500 \text{ Btu/lb.}}{12,000 \text{ Btu/lb.}} = 0.958333$ <p>0.958333 is less than 1.00, therefore the CVA is calculated as follows:</p> $(\$35.00/\text{ton} + \$15.00/\text{ton}) \times 0.958333 = \$47.916665/\text{ton}$ $\$47.916665/\text{ton} - \$50.00/\text{ton} = (\$2.083335/\text{ton})$ <p>CVA = (\$2.0833/ton) (as rounded)</p>

**B. Excess Moisture Adjustment**

The amount to be paid for a shipment of coal shall be adjusted downward if the "as received" moisture content (stated as a percentage) of coal contained in the shipment exceeds the guarantee or typical specification for moisture (stated as a percentage) set forth in the Confirmation. Such adjustment (hereinafter referred to as "the Excess Moisture Adjustment" or "EMA") shall be calculated as follows:

1. The guarantee or typical specification for moisture set forth in the Confirmation shall first be subtracted from the "as received" moisture (stated as a percentage) content of coal contained in the shipment. The resulting difference (stated as a percentage) shall be multiplied by 100 (to eliminate the percentage). (The resulting product is hereinafter referred to as "the Moisture Adjustment Factor.")
2. In the case of a shipment of **bituminous coal**, the Moisture Adjustment Factor shall be multiplied by \$0.25 per ton; and the resulting product shall then be subtracted from the Calorific Value Adjusted Price for the shipment.
3. In the case of a shipment of **sub-bituminous coal**, the Moisture Adjustment Factor shall be multiplied by \$0.03 per ton; and the resulting product shall then be subtracted from the Calorific Value Adjusted Price for the shipment.
4. No Excess Moisture Adjustment shall be made if the "as received" moisture content of coal contained in the shipment is less than or equal to the guarantee or typical specification for moisture set forth in the Confirmation.

**EXAMPLE:** Assume that Shipment C contains bituminous coal and that Shipment D contains sub-bituminous coal. Also assume that the guarantee or typical specification for moisture set forth in the Confirmation applicable to Shipment C is 10% and that the "as received" moisture content of coal contained in Shipment C is 11.50%. Assume further that the guarantee or typical specification for moisture set forth in the Confirmation applicable to Shipment D is 30% and that the "as received" moisture content of coal contained in Shipment D is 32.30%. Based on these assumptions, the Excess Moisture Adjustments for Shipments C and D would be calculated as follows:

<u>Shipment C</u>	<u>Shipment D</u>
$(11.50\% - 10.00\%) \times 100 = 1.5000$ $1.5000 \times \$0.15/\text{ton} = \$0.2250/\text{ton}$ <p>EMA = \$0.2250/ton</p>	$(32.30\% - 30.00\%) \times 100 = 2.3000$ $2.3000 \times \$0.03/\text{ton} = \$0.0690/\text{ton}$ <p>EMA = \$0.0690/ton</p>

**C. Excess Ash Adjustment**

The amount to be paid for a shipment of coal shall be adjusted downward if the "as received" ash content (stated as a percentage) of coal contained in the shipment exceeds the guarantee or typical specification for ash (stated as a percentage) set forth in the Confirmation. Each such adjustment shall be made after the calorific value adjustment (pursuant to Section 11.A, hereinafter referred to as "the Excess Ash Adjustment" or "EAA") for such Shipments and shall be calculated as follows:

1. The guarantee or typical specification for ash set forth in the Confirmation shall first be subtracted from the "as received" ash (stated as a percentage) content of coal contained in the shipment. The resulting difference (stated as a percentage) shall be multiplied by 100 (to eliminate the percentage). (The resulting product is hereinafter referred to as "the Ash Adjustment Factor.")
2. The Ash Adjustment Factor shall be multiplied by \$1.00 per ton; and the resulting product shall then be subtracted from the Calorific Value Adjusted Price for the shipment.
3. No Excess Ash Adjustment shall be made if the "as received" ash content of coal contained in the shipment is less than the guarantee or typical specification for ash set forth in the Confirmation.

**EXAMPLE:** Assume that the guarantee or typical specification for ash set forth in the Confirmation applicable to Shipment E is 12% and that the "as received" ash content of coal contained in Shipment E is 12.60%. Based on these assumptions, the Excess Ash Adjustment for Shipment E would be calculated as follows:

Shipment E

$(12.60\% - 12.00\%) \times 100 = 0.6000$

$0.6000 \times \$1.00/\text{ton} = \$0.6000/\text{ton}$

EAA = \$0.6000/ton

D. Excess Sulfur Adjustment

The amount to be paid for a shipment of coal shall be adjusted downward if the "as received" sulfur content (stated as a percentage) of coal in such shipment exceeds the guarantee or typical specification for sulfur (stated as a percentage) set forth in the Confirmation. Such adjustment (hereinafter referred to as "the Excess Sulfur Adjustment" or "ESA") shall be calculated as follows:

1. The guarantee or typical specification for sulfur set forth in the Confirmation shall first be subtracted from the "as received" sulfur content of coal contained in such shipment. The resulting difference (stated as a percentage) shall be multiplied by 100 (to eliminate the percentage). (The resulting product is hereinafter referred to as "the Sulfur Adjustment Factor.")
2. The Sulfur Adjustment Factor shall be multiplied by \$2.50 per ton; and the resulting product shall then be multiplied by the quantity of coal (stated in tons) contained in such shipment. The resulting product shall constitute the Excess Sulfur Adjustment for the shipment involved.
3. No Excess Sulfur Adjustment shall be made if the "as received" sulfur content of coal contained in such shipment is less than the guarantee or typical specification for sulfur set forth in the Confirmation.

**EXAMPLE:** Assume that the following factors apply to shipment No. 1: (i) the guarantee or typical specification for sulfur set forth in the Confirmation applicable to such shipment is 1.00%; (ii) the "as received" sulfur content of coal contained in the shipment is 1.20%; and (iii) the quantity of coal contained in such shipment is 12,000 tons. Also assume that the following factors apply to shipment No. 2: (i) the guarantee or typical specification for sulfur set forth in the Confirmation applicable to such shipment is 1.20%; (ii) the "as received" sulfur content of coal contained in the shipment is 1.75%; and (iii) the quantity of coal contained in the shipment is 10,000 tons. Based on these assumptions, the Excess Sulfur Adjustments for shipments No. 1 and No. 2 would be calculated as follows:

<u>No. 1 Shipment</u>	<u>No. 2 Shipment</u>
$(1.20\% - 1.00\%) \times 100 = 0.20$	$(1.75\% - 1.20\%) \times 100 = 0.55$
$0.20 \times \$2.50/\text{ton} = \$.50/\text{ton}$	$0.55 \times \$2.50/\text{ton} = \$1.375/\text{ton}$
$\$.50/\text{ton} \times 12,000 \text{ tons} = \$6,000$	$\$1.375/\text{ton} \times 10,000 \text{ tons} = \$13,750$
ESA = \$6,000	ESA = \$13,750

4. In the event that Purchaser accepts one or more shipments in which the actual "as received" sulfur content is greater than or equal to 3.00%, Purchaser may deduct twenty percent (20%) of the Applicable Price for such shipments as liquidated damages for administrative costs and other

incidental expenses related to the handling and disposition of such shipments. The Parties agree that such amount is a reasonable pre-loss estimate of Purchaser's damages, which are difficult to measure, and that such amount is not intended as a penalty. Such reduction shall apply to a shipment only if the shipment is accepted by Purchaser; and Seller acknowledges that the availability of the remedy provided in this Section 11.D.4 shall not obligate Purchaser to accept the shipment(s) nor prevent Purchaser from rejecting any future shipments that exceed such limit.

5. Notwithstanding the foregoing provisions of this Section 11.D, the Parties acknowledge that Plants Daniel, Miller, and Scherer are subject to certain requirements that limit (i) the maximum sulfur content of coal used at Plants Miller and Scherer to 0.60 pounds of sulfur per million Btus (0.60 lbs. S/MMBtu) and (ii) the maximum sulfur content of coal used at Plant Daniel to 0.575 pounds of sulfur per million Btus (0.575 lbs. S/MMBtu). Purchaser may reject a shipment of coal to any such plant named in this Section 11.D.5 if the sulfur content of coal contained in such shipment exceeds such limit; and in such event, the provisions of Section 12.A of these Terms shall apply.

**E. Ash Fusion Temperature Adjustment**

For purposes of this Section 11.E, the ash fusion temperature (hereinafter referred to as "AFT") of coal shall be stated in degrees Fahrenheit (° F) and shall be measured by H=W in a reducing atmosphere. If Purchaser so elects, the amount to be paid for a shipment of coal may be adjusted downward if the analysis of any size sample of the shipment indicates that the "as received" AFT (stated in ° F) of coal contained in the shipment is less than the guarantee or typical specification for AFT (stated in ° F) set forth in the Confirmation. Each such adjustment shall be made after the calorific value adjustment (pursuant to Section 11.A, hereinafter referred to as "AFT Adjustment" or "AFTA") and any excess ash adjustment (pursuant to Section 11.B) for such Shipment and shall be calculated as follows:

1. The "as received" AFT of coal in the shipment sample shall first be subtracted from the guarantee or typical specification for AFT set forth in the Confirmation. (The number of degrees Fahrenheit reflected in the resulting difference is hereinafter referred to as "the AFT Adjustment Factor.")
2. In the case of a shipment of **bituminous coal**, the AFT Adjustment Factor shall be multiplied by \$0.01 per ton; and the resulting product shall then be subtracted from the Calorific Value Adjusted Price for the shipment.
3. In the case of a shipment of **sub-bituminous coal**, the AFT Adjustment Factor shall be multiplied by \$0.002 per ton; and the resulting product shall then be subtracted from the Calorific Value Adjusted Price for the shipment.
4. No AFT Adjustment shall be made if the "as received" AFT of coal contained in the shipment sample is equal to or greater than the guarantee or typical specification for AFT set forth in the Confirmation.

**EXAMPLE:** Assume that Shipments Y-1 and Y-2 contain bituminous coal and that Shipments Z-1 and Z-2 contain sub-bituminous coal. Also assume that the guarantee or typical specification for AFT set forth in the Confirmation applicable to Shipments Y-1 and Y-2 and the Confirmation applicable to Shipments Z-1 and Z-2 is 2400° F. Assume further that the "as received" AFT of coal contained in the sample of each shipment is as follows: 2360° F for Shipment Y-1; 2120° F for Shipment Y-2; 2350° F for Shipment Z-1; and 2130° F for Shipment Z-2. Based on these assumptions, no AFT Adjustment would be made for Shipments Y-1 and Z-1 because the "as received" AFT of coal contained in the sample of Shipment Y-1 and the sample of Shipment Z-1 is within fifty (50) degrees of 2400° F. The AFT Adjustments for Shipments Y-2 and Z-2 would be calculated as follows:

<u>Shipment Y-2</u>	<u>Shipment Z-2</u>
2400° – 2120° = 280°	2400° – 2130° = 270°
280 x \$0.01/ton = \$2.80/ton	270 x \$0.002/ton = \$0.54/ton
AFTA = \$2.80/ton	AFTA = \$0.54/ton

**F. Adjustment in General**

The adjustments provided in this Section 11 are in addition to other rights and remedies that are available to Purchaser under other provisions of these Terms or at law or in equity. Any adjustment

under this Section 11 with respect to any shipment of coal under the Agreement shall not waive, nor otherwise affect, such other rights and remedies with respect to any future shipments of coal under the Agreement.

**12. REJECTION, SUSPENSION, CANCELLATION, AND TERMINATION**

**A. Rejection**

In addition to (and not as a limitation on) Purchaser's rights and remedies under this Agreement, Purchaser may reject, and refuse to accept, any shipment of coal under any one or more of the following circumstances: (1) coal in the shipment fails to comply with one or more of the coal quality specifications set forth in the Confirmation; (2) coal in the shipment fails to comply with the size specifications set forth in Section 7.A of these Terms; (3) the shipment contains extraneous material as described in Section 7.A of these Terms; (4) coal in the shipment was mined or produced from a seam or source other than the Coal Property without obtaining Purchaser's prior written approval; (5) coal in the shipment or a portion thereof was treated with chemicals, binders, petroleum products or other substances not authorized by Purchaser (whether or not treated with the intent to qualify the coal as synthetic fuel); (6) the shipment is delivered in equipment other than as agreed to; or (7) the shipment fails to comply with the loading requirements set forth herein. For purposes of this Section 12.A, "coal quality specifications" refer to any quality specification stated in the Confirmation, regardless of whether it is explicitly labeled as a "rejection limit" or similar. In the event that Purchaser rejects a shipment, then Seller shall immediately remove, at Seller's expense, the shipment from Purchaser's property or transportation equipment (if the shipment is rejected prior to unloading) and shall be liable for and shall defend, indemnify, and hold harmless Purchaser from any transportation costs and other expenses that are incurred by Purchaser with respect to the rejected shipment. Any shipment that is rejected and not accepted by Purchaser shall not be included in determining any price adjustments based on the quality of such shipments.

After receipt of notice of any rejection or acceptance of rejectable train by Purchaser, Seller shall not resume shipments until coal quality or other deficiency has been corrected to Purchaser's satisfaction.

In the event that Purchaser rejects any shipment under this Agreement pursuant to Section 12, Seller shall, if Purchaser so requests, make up such shipment within the next twelve (12) months following receipt of Purchaser's notice of rejection in accordance with a mutually agreeable schedule. The price of such makeup shipment shall be determined according to the Billing Price in effect at the time the shipment was rejected. If (i) Seller is unable to make up a rejected shipment within such twelve-month period and (ii) Purchaser acquires replacement coal as cover for such deficiency, Seller shall pay to Purchaser an amount determined in accordance with the terms of Sections 14B and 14C.

In the event that Purchaser, in its sole discretion, accepts any shipment for which the "as received" analysis exceeds any one or more of the Rejection Limits set forth in the Confirmation, then the following price adjustments shall apply and shall be in addition to (i) the calorific value adjustment (pursuant to Section 11.A), (ii) any excess ash adjustment (pursuant to Section 12.C) for the Shipment, and (iii) any excess moisture adjustment (pursuant to Section 12.B) for the shipment, and (iv) any other adjustment pursuant to this Agreement for the shipment:

Calorific Value Adjustment:	\$2.00 per Ton for each 100 Btu or fraction thereof less than 11,400 Btu/lb.
Ash Adjustment:	\$3.00 per Ton for each 1% or any fraction thereof in excess of 11.00% ash
Moisture Adjustment:	\$3.00 per Ton for each 1% or any fraction thereof in excess of 14.50% moisture

**B. Cancellation and Termination**

In addition to (and not as a limitation on) Purchaser's rights and remedies under other provisions of these Terms, Purchaser may cancel the remaining shipments of coal to be supplied under the Agreement and may terminate the Agreement immediately under any one or more of the following circumstances: (1) coal in any shipment fails to comply with one or more of the coal quality specifications set forth in the Confirmation; (2) coal in any shipment fails to comply with the size specifications set forth in Section 7.A of these Terms; (3) any shipment contains extraneous material as described in Section 7.A of these Terms; (4) coal in any shipment was mined or produced from a seam or source other than the Coal Property without obtaining Purchaser's prior written approval; (5) coal in any shipment or a portion thereof was treated with chemicals, binders, petroleum products or other

substances not authorized by Purchaser (whether or not treated with the intent to qualify the coal as synthetic fuel); or (6) Seller has engaged in any fraudulent or illegal conduct in connection with its performance under the Agreement. Purchaser shall exercise its right of termination under this Section 12.B by giving Seller a written notice of termination, which shall specify the effective date of termination.

C. Termination for Operational Difficulties

In addition to (and not as a limitation on) Purchaser's rights and remedies under Sections 12.A and 12.B of these Terms, Purchaser may cancel the remaining shipments of coal to be supplied under the Agreement and may terminate the Agreement if Purchaser experiences operational difficulties in the unloading, storage, or burning of Seller's coal that, in Purchaser's judgment, impedes the efficient use of Purchaser's generating facilities (including operational difficulties arising as a result of any laws or regulations). Purchaser shall exercise its right of termination under this Section 12.C by giving Seller a written notice of termination, which shall specify the effective date of termination. In the event that Purchaser terminates the Agreement under this Section 12.C, the provisions of Section 14.G of these Terms shall apply.

**13. FORCE MAJEURE**

The term "Force Majeure," as used in these Terms, means a cause reasonably beyond a Party's control that, wholly or in substantial part, prevents (i) the mining, processing, or loading of coal at the Coal Property or the transportation of coal from the Coal Property or (ii) the transportation of coal to the Designated Destination or Other Destination or the unloading, storing, or use of coal by Purchaser at the Designated Destination or Other Destination. Force Majeure shall include any new environmentally related prohibition, restriction, or limitation regarding the use of coal at the Designated Destination or Other Destination or Purchaser's other coal-fired generation facilities (including related to coal quality or the type or amount of emissions) ("Environmental Related Requirement") or any change to or new or changed interpretation of an Environmental Related Requirement, where Purchaser determines in its sole judgment that the burning of the coal purchased hereunder is no longer reasonable. Examples (without limitation) of Force Majeure, but only if reasonably beyond a Party's control, are the following: acts of God; acts of the public enemy; insurrections; riots; strikes; labor disputes; work stoppages; fires; explosions; floods; electric power failures; interruptions to or contingencies of transportation; coal frozen to railcars; embargoes; and orders or acts of any governmental agency or authority (including, without limitation, a city or county ordinance, an administrative regulation or ruling, an act of a state legislature, an act of the United States Congress, and a final judicial decision, order, or decree); provided, however, that Force Majeure, for the purposes of the Agreement, shall not include (i) geologic conditions that affect Seller's mining activities, (ii) the development or existence of economic conditions that may adversely affect the anticipated profitability of a Party's activities under the Agreement, (iii) acts of omissions of a Party that constitute negligence or mismanagement on the part of a Party, or (iv) reduced productivity of labor employed by a Party in its activities under the Agreement.

If a Party is unable to carry out its obligations under the Agreement because of Force Majeure and if such Party promptly gives the other Party written notice of the condition(s) giving rise to such Force Majeure, the obligations of the Party giving such notice and the corresponding obligations of the other Party shall be suspended to the extent made necessary by and during the continuance of such Force Majeure; provided, however, that the Party invoking the provisions of this Section 13 shall make reasonable efforts to eliminate, as soon as, and to the extent possible, the effects of such condition(s), except that a Party, in its sole discretion, may settle its own labor disputes or strikes or terminate any of its own lockouts. Purchaser, in its sole discretion, shall determine whether to make up any tonnage shortfall that is caused by Force Majeure; but the Agreement shall otherwise remain in full force and effect. Notwithstanding the foregoing provisions of this Section 13, if one or more conditions of Force Majeure cause a suspension of obligations under the Agreement for a continuous period equal to thirty percent (30%) or more of the term of the Agreement, Purchaser may terminate the Agreement by giving Seller a written notice of termination, which shall specify the effective date of termination. In the event Purchaser determines, in its sole judgment, that the burning of the coal purchased hereunder is no longer reasonable due to a new Environmental Related Requirement or a change to or new or changed interpretation of an Environmental Related Requirement, Purchaser shall have the right to immediately terminate the Agreement. In the event that Purchaser terminates the Agreement under this Section 13, the provisions of Section 14.G of these Terms shall apply.

#### 14. BREACH BY SELLER

In the event of a material breach of the Agreement by Seller, Purchaser may exercise the rights and remedies set forth in this Section 14. Such rights and remedies are in addition to other rights and remedies that are available to Purchaser under other provisions of these Terms or at law or in equity.

A. Undersupply of Coal Quantities

Without limiting the foregoing, in the event that (i) Seller fails to supply at least ninety percent (90%) of the quantity of coal to be supplied during any calendar month (as specified in the Confirmation or as otherwise agreed by the Parties) and (ii) such failure is not excused by Force Majeure ("shortfall month"), such failure shall constitute a material breach of the Agreement. In such event, Purchaser may cancel the remaining shipments to be supplied under the Agreement and may terminate the Agreement by giving Seller a written notice of termination, which shall specify the effective date of termination.

In addition to the rights and remedies that are available to Purchaser under this Section 14.A, Purchaser may choose, in its sole discretion, to require Seller to make up the tonnage failed to be delivered in the shortfall month. In the event Purchaser elects to make up the tonnage, Purchaser shall provide written notice of such election within thirty (30) days of the end of the shortfall month. The deliveries of make-up tonnage shall be completed within three (3) months of Purchaser's election, on a schedule mutually agreed to by the Parties. The term of this Agreement shall be extended as necessary to accommodate make-up deliveries scheduled pursuant to this Section 14.A.

B. Replacement Coal Costs

In the event that Seller materially breaches the Agreement or Purchaser terminates the Agreement under Section 12.B, 14, or 15.E of these Terms or Seller is unable to make up a rejected shipment in accordance with Section 12.A, then Purchaser may buy replacement coal (of similar, but not exactly the same, quality) from one or more third parties in an amount up to (but not exceeding), in the case of a termination, the remaining quantity of coal to be supplied under the Agreement prior to termination or, in the case of a rejected shipment under Section 12.A, the number of such rejected shipments not made up by Seller in accordance with Section 12.A, and hold Seller liable for the incremental cost of such replacement coal as provided in this Section 14.B. Seller shall be liable to Purchaser for the positive difference, if any, between (i) the actual delivered cost that is incurred by Purchaser (including, without limitation, the costs of transportation, sulfur dioxide emission allowances, other applicable emission allowances, and taxes) to obtain such replacement coal and (ii) the delivered cost of Seller's coal (including, without limitation, the costs of transportation, sulfur dioxide emission allowances, other applicable emission allowances, and taxes) as of the effective date of termination.

C. Incidental Expenses

In the event that Purchaser terminates the Agreement under Section 12.B, 14, or 15.E of these Terms or Seller is unable to make up a rejected shipment under Section 12.A, then Seller shall be liable for and shall defend, indemnify, and hold harmless Purchaser from any transportation costs and other expenses (including, without limitation, charges under the applicable tariff or transportation contract as a result of reduced shipments by Seller to Purchaser) that are incurred by Purchaser as a result of such termination or as a result of Seller's inability to make up a rejected shipment under Section 12.A. Any such payment shall not prejudice other rights and remedies that are available to Purchaser under other provisions of these Terms (including, without limitation, Purchaser's right to recover replacement coal costs as provided in Section 14.B of these Terms) or at law or in equity.

D. Oversupply of Coal Quantities

In the event that (i) Seller supplies more than one hundred ten percent (110%) of the quantity of coal to be supplied during any calendar month (as specified in the Confirmation or as otherwise agreed by the Parties) and (ii) Purchaser has not approved such oversupply, such oversupply shall constitute a material breach of the Agreement. In such event, Purchaser may deduct ten percent (10%) of the Applicable Price for each shipment or portion thereof that resulted in such oversupply as liquidated damages for such oversupply. After making such deduction, Purchaser also may cancel the remaining shipments to be supplied under the Agreement and may terminate the Agreement by giving Seller a written notice of termination, which shall specify the effective date of termination.

E. Shipments from Unauthorized Source

In the event that (i) Seller supplies coal under the Agreement from a shipping point or loading point other than that specified in the Confirmation and (ii) Purchaser has not approved such other shipping point or loading point in writing, then the supply of one or more shipments of coal from such other shipping point or loading point shall constitute a material breach of the Agreement. In such event, Purchaser may accept such shipment(s) and may deduct from the Applicable Price for such shipment(s) the following amounts: (1) any transportation costs incurred by Purchaser in connection with the shipment(s) that exceed the transportation costs that Purchaser would have incurred if the shipment(s) had originated at the shipping point or loading point specified in the Confirmation; and (2) ten percent (10%) of the Applicable Price as liquidated damages for such shipment(s).

F. Liquidated Damages

The Parties agree that the amount to be deducted pursuant to Section 14.D or 14.E of these Terms is a reasonable pre-loss estimate of Purchaser's damages, which are difficult to measure, and that such amount is not intended as a penalty.

G. Effect of Certain Terminations

Notwithstanding any other provision of these Terms, a termination of the Agreement under Section 12.C or 13 of these Terms shall not be construed as, or deemed to be, a breach or default under the Agreement. Upon any such termination, neither Party shall have any further obligations or liability under this Agreement, except with respect to (i) shipments of coal that were made prior to the effective date of such termination or (ii) other obligations or liability that may have accrued prior to the effective date of such termination.

## 15. OTHER PROVISIONS

A. Independent Contractor

The Parties acknowledge and agree that (i) Seller is an independent contractor and not an agent or employee of Purchaser, (ii) Seller shall employ, direct, control, manage, supervise, discharge, and pay its own employees, and (iii) Purchaser shall have no control of or supervision over any of Seller's employees.

B. Indemnification by Seller

Seller shall defend and indemnify Purchaser, The Southern Company, any subsidiary of The Southern Company, and their respective officers, directors, employees, and agents ("the Indemnified Parties") against any claim for costs, expenses, damages, or liabilities (whether liquidated or unliquidated) that may be asserted against one or more of the Indemnified Parties in connection with property damages or personal injuries (including, without limitation, injuries resulting in death) that arise out of Seller's performance of its obligations under the Agreement or the performance of Seller's obligations under the Agreement by any employees, subcontractors, or agents of Seller.

C. Applicable Law, Choice of Forum, and Waiver

All questions concerning the execution, construction, performance, breach, or enforcement of the Agreement shall be governed by, and all provisions of the Agreement shall be construed under, the substantive laws of the State in which the Designated Destination is located. Any action, suit, or legal proceeding of any nature by one Party against the other Party shall be brought in the state or federal courts located in such State; and the Parties shall submit to, and accept the exclusive jurisdiction of, such courts for the purpose of any such action, suit, or legal proceeding. A Party's failure to insist upon strict performance of any provision of the Agreement, or to take advantage of any right under the Agreement, shall not be construed as a waiver of such provision or right in the future.

D. Compliance with Laws

In connection with the performance of this Agreement, Seller shall comply in all material respects with applicable laws and regulations (including, without limitation, those set forth in Attachment D "General Services Administration – Flowdown Provisions," which is hereby made a part of this Agreement). Seller shall acquire and maintain, in a timely manner, all licenses and permits required by governmental authorities to enable Seller to perform its duties and obligations under this Agreement.

E. Assignment

Seller may not assign its rights, duties, obligations, or interests under the Agreement without Purchaser's prior written consent, which shall not be unreasonably withheld. Any purported assignment

without such consent shall be null and void and shall give Purchaser the right to terminate the Agreement immediately; and in such event, the provisions of Sections 14.B and 14.C of these Terms shall apply. Notwithstanding the foregoing provisions of this Section 15.E, Seller may assign its right to payments due under the Agreement; provided, however, that (i) Seller shall give Purchaser written notice of each such assignment and (ii) upon Purchaser's receipt of such notice, Purchaser shall have up to forty-five (45) days from the next scheduled payment date to verify such assignment and to change the payment address.

F. Purchaser's Agent

Purchaser has designated Southern Company Services, Inc. ("SCS"), which is an affiliate of Purchaser, to act as Purchaser's agent for purposes of giving or receiving notices required or permitted under the Agreement, scheduling shipments under this Agreement, and performing other activities related to this Agreement as determined by Purchaser from time to time. Purchaser's designation of SCS as Purchaser's authorized agent shall not in any way relieve Purchaser of its duties and obligations under this Agreement.

G. Access to Seller's Records and Adjustment to Previous Payments

Seller shall maintain accurate records relating to shipments of coal under the Agreement in accordance with generally accepted accounting principles and shall retain such records for at least three (3) years after the Agreement is terminated or expires. Seller shall make such records available to Purchaser, its accountants, auditors, or other designated representatives, who shall be given access to and be permitted to examine such records at reasonable times. If an audit determines that any payments previously made under the Agreement ("Previous Payments") were not properly calculated, adjustments shall be promptly made in amounts to be paid in the future for shipments under the Agreement ("Future Payments") and to reflect the proper amounts of such adjustment; or if no Future Payments are then due, payments shall be promptly made to reflect the difference between the Previous Payments and the proper amounts determined by audit.

H. Confidentiality

The terms and conditions (including, without limitation, price) set forth in the Agreement are considered by the Parties to be confidential and proprietary information. Neither Party shall disclose any such information to any third party without the other Party's prior written consent, which consent shall not be unreasonably withheld; provided, however, that no such consent shall be needed where such disclosure (i) is required by law, regulation, or regulatory agencies having jurisdiction over one of the Parties or (ii) is necessary in connection with a Party's assertion of a claim or defense in a judicial or administrative proceeding and that, in either of these events, the Party intending to make such disclosure shall advise the other Party in advance and cooperate to the extent practicable to minimize the disclosure of any such information. Notwithstanding the foregoing provisions of this Section 15.H, either Party may disclose any information contained in this Agreement to a prospective purchaser of the stock or assets of that Party or to a lender in connection with a financing transaction; provided, however, that any such prospective purchaser or lender shall be bound by the provisions of this Section 15.H. For purposes of this Section 15.H, the term "third party" shall not include (i) a Party's parent, subsidiary, affiliate, or sister corporation or (ii) the officers, directors, employees, legal advisers, accountants, insurers, or consultants of a Party.

I. Survival of Certain Provisions

All provisions of Sections 10, 11, 14, and 15 of these Terms and all provisions of these Terms concerning Seller's reimbursement obligations shall survive the termination or expiration of the Agreement.

**ATTACHMENT A****Form of As Loaded Quality Analysis**

**Acceptable Record Formats:**  
**CSV, FLAT ASCII, XML**

**CSV is the preferred record format.**

**Record Layout:**

Frequency: Per Shipment

Format: csv

File Name: SupplerNameFuelingActivity\_YYYYMMDD.csv

Header Record:

Field Number	Name	Data Type	Description
1	Company Name	Alphanumeric	
2	BOL Number	Alphanumeric	
3	Commodity	Alphanumeric	Coal
4	Commodity PO	Alphanumeric	Purchase order
5	Ship Date	Date	
6	Permit Number	Alphanumeric	
7	Moisture	Numeric	As received
8	Ash	Numeric	As received
9	BTU	Numeric	As received
10	Sulfur	Numeric	As received

Ex:

ALLIED COAL,C38045A045,COAL,C38045,20130215, CEBMMHS023,13055.40,7.77,13035,1.33

**ATTACHMENT B****Railcar Weight Matrix**

Weight limitations on railcars apply to all coal shipments by railcar to satisfy railcar design limitations and track standards. Railcars should be loaded to full visible capacity, if possible, but must not exceed the lesser of the following two criteria:

**Item 1: Railcar Design Limitations**

- All private aluminum railcars are designed to withstand a maximum of 286,000 pounds gross weight on rail (GWR).
- All private steel railcars are designed to withstand a maximum of 272,000 pounds GWR.
- Railroad-owned railcars must be loaded in accordance with stenciled weights on railcars unless otherwise specified by the rail carrier.

Item 2: In addition to the general constraints of Item 1, all railcars shall be loaded to full visible capacity but within each rail carrier's load limits for maximum GWR. The maximum GWR (stated in pounds) for the originating rail carrier for each of the generating plants in the Southern electric system is specified below.

**ALABAMA POWER COMPANY**

<u>Generating Plant</u>	<u>Burlington Northern Santa Fe (BNSF)</u>	<u>CSXT</u>	<u>Norfolk Southern (NS)</u>
Gaston	N/A	286,000	286,000
Miller	286,000	286,000	N/A

**GEORGIA POWER COMPANY**

<u>Generating Plant</u>	<u>CSXT</u>	<u>Norfolk Southern (NS)</u>	<u>Union Pacific (UP)/ Burlington Northern Santa Fe (BNSF)</u>	<u>Illinois Central (IC)</u>
Bowen	286,000	N/A	N/A	N/A
Branch	286,000	286,000	N/A	N/A
Hammond	N/A	286,000	N/A	N/A
Kraft	N/A	286,000	N/A	N/A
McDonough	286,000	286,000	N/A	N/A
McIntosh	286,000	286,000	N/A	N/A
Mitchell	286,000	N/A	N/A	N/A
Scherer	N/A	286,000	286,000	N/A
Wansley	286,000	286,000	N/A	286,000

**GULF POWER COMPANY**

<u>Generating Plant</u>	<u>CSXT</u>
Scholz	286,000

**MISSISSIPPI POWER COMPANY**

<u>Generating Plant</u>	<u>Burlington Northern Santa Fe (BNSF)</u>	<u>CSXT</u>	<u>Canadian National Illinois Central (IC)</u>	<u>Union Pacific (UP)</u>
Daniel	286,000	286,000	286,000	286,000

**ATTACHMENT C****Form of Shipment Detail File**

**Acceptable Record Formats:**  
**CSV, FLAT ASCII, XML**

**CSV is the preferred record format.**

**Record Layout:**

Frequency: Per Shipment

Format: csv

File Name: SupplerNameFuelingActivity\_YYYYMMDD.csv

Header Record:

<b>Field Number</b>	<b>Name</b>	<b>Data Type</b>	<b>Description</b>
1	Record Indicator	Alphanumeric	H
2	Company Name	Alphanumeric	
3	BOL Number	Alphanumeric	Invoice num, item num, etc.
4	Commodity	Alphanumeric	Coal
5	Commodity PO	Alphanumeric	Purchase order
6	Ship Date/Time	Date/Time	YYYYMMDD HH:MM
7	Start Load Date/Time	Date/Time	YYYYMMDD HH:MM
8	End Load Date/Time	Date/Time	YYYYMMDD HH:MM
9	Gross Quantity	Numeric (7.2)	XXXXXXXX.xx
10	Carrier	Alphanumeric	
11	Carrier Contract	Alphanumeric	
12	Permit Number	Alphanumeric	
13	Car Count	Alphanumeric	
14	Destination	Alphanumeric	
15	Origin	Alphanumeric	Fueling station name
16	Comments	Alphanumeric	
17	Waybill Number	Alphanumeric	

Ex:

H,ALLIED COAL,C38045A045,COAL, C38045,20130215 14:30, 20130214 22:30, 20130215  
11:30,12452.65,BNSF,BN12611, CEBMMHS023,135,SCHERER,NACCO JCT WY,CAR JHMX908780  
SKIPPED

Detail Record:

Field Number	Name	Data Type	Description
1	Record Indicator	Alphanumeric	D
2	Car Sequence	Alphanumeric	
3	Car Mark	Alphanumeric	
4	Car Number	Alphanumeric	
5	Car Weight	Alphanumeric	Ton

Ex:

D,1,JHMX,980652,116.23

Example of Shipment:

H,ALLIED COAL,C38045A045,COAL, C38045,20130215 14:30, 20130214 22:30, 20130215  
11:30,12452.65,BNSF,BN12611, CEBMMHS023,135,SCHERER,NACCO JCT WY,CAR JHMX908780  
SKIPPED

D,1,JHMX,980652,116.23  
D,2,JHMX,005236,115.23  
D,3,RWSX,102336,119.23  
D,4,RWSX,104336,119.45  
D,5,HBWX,902336,111.23  
D,6,RWGX,199036,118.45  
D,7,HWYX,002336,117.32  
D,8,RWSX,568906,114.23  
D,9,RWWO,199336,113.01  
D,10,CNFX,409836,112.65  
.....  
.....  
D,135,JHWX,563695,113.65

**ATTACHMENT D**

**General Services Administration – Flowdown Provisions**

1.1 Purchaser is a government contractor under an Areawide Public Utilities Agreement with the General Services Administration of the United States Government. Seller agrees that each of the sections contained in the Federal Acquisition Regulations referred to below will be incorporated into and form a part of the Agreement as if set forth herein in full text, and Seller will comply therewith, if the amount of the Agreement and the circumstances surrounding its performance require Purchaser to include such section in contracts between Purchaser and others:

- (i) 52.203-3 Gratuities (APR 1984);
- (ii) 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995);
- (iii) 52.203-7 Anti-Kickback Procedures (JUL 1995);
- (iv) 52.219-8 Utilization of Small Business Concerns (MAY 2004);
- (v) 52.219-9 Small Business Subcontracting Plan (SEPT 2006);
- (vi) 52.222-21 Prohibition of Segregated Facilities (FEB 1999); and
- (vii) 52.222-26 Equal Opportunity (APR 2002).

1.2 Upon written request, Purchaser will provide the full text of any of the above sections incorporated herein by reference.

1.3 Seller warrants and represents that neither it nor any of its Representatives is debarred, suspended or proposed for debarment as a contractor or subcontractor to any department, agency or other division of the United States Government. In the event that Seller or any of its Representatives become debarred, suspended or proposed for debarment during the term of this Agreement, Seller will immediately notify Purchaser verbally and in writing.

1.4 If Seller is subject to the requirements set forth in Federal Acquisition Regulation 52.219-9, Seller will, (i) adopt a subcontracting plan ("Plan") that complies with the requirements of 52.219-9, (ii) provide a written copy of that Plan to the Purchaser, and (iii) if requested, provide timely periodic report(s) to the Purchaser that reflect the amounts paid to subcontractors who are a small business concern, veteran-owned small business concern, service-disabled veteran-owned small business concern, HUBZone small business concern, small disadvantaged business concern, or women-owned small business concern.