

## NOTICE OF REQUEST FOR PROPOSALS (RFP)

### NATURAL GAS CAPACITY, LIQUIFIED NATURAL GAS (LNG), AND NATURAL GAS STORAGE PROCUREMENT

#### INTRODUCTION

On October 2, 2015, The Massachusetts Department of Public Utilities (“MDPU” or the “Department”) issued a policy decision in D.P.U. 15-37, authorizing Massachusetts Electric Distribution Companies to propose innovative mechanisms to secure new natural gas capacity for the region to benefit electric customers (the “Order”). The Department determined in the decision that it has the legal authority under G.L. c. 164, § 94A (“Section 94A”) to review and approve contracts filed by Electric Distribution Companies for pipeline capacity. The Department also established a standard of review for such contracts and identified the filing requirements for such proposals.

Consistent with the policy statement, Eversource and National Grid are issuing this Request for Proposals to solicit proposals for interstate capacity/gas supplies to further the goals of reduction of the cost of electricity and increasing the reliability of the New England electric system to benefit electric distribution customers. Eversource and National Grid may be referred to herein as “EDCs”.

The Department stated in the Order that the Electric Distribution Companies must demonstrate that they have conducted a fair and reasonable procurement to identify potential alternatives (Order at 45). The Department also stated in its Order that the Electric Distribution Company must demonstrate that a proposed agreement compares favorably to the range of alternative reliable and least cost resource options reasonably available to it at the time of acquisition or contract negotiation (id). In keeping with these statements, the Electric Distribution Companies must demonstrate that their proposed contracts and strategies for reducing the costs of electricity for their electric customers is the most appropriate alternative of the range of alternatives that may be leveraged to achieve reduced electricity costs while ensuring reliability for customers. Therefore, this RFP requests proposals for pipeline expansion projects, LNG supply alternatives, and regional storage projects for that purpose.

#### BACKGROUND

If the EDCs determine that proposals submitted in response to this RFP are commercially reasonable and sufficiently sized to address region-wide electric supply cost and reliability concerns, they intend to negotiate with the selected Bidder(s) and to finalize a contract that will be filed with the MDPU for approval. Any such determination would be made individually by EDCs on behalf of their respective Electric Distribution

Companies. It is anticipated that any contract(s) filed for approval with the MDPU would contain cost support of the associated proposed project(s) reflective of the cost that would apply to MA EDCs electric distribution customers based on such customers share of New England region-wide load.

Multiple states within New England are considering the procurement of natural gas resources to improve electric supply reliability and to meet other goals. Although this RFP is issued on behalf of EDCs' electric customers, EDCs are committed to working to further the collective interests of the New England States to procure natural gas capacity resources on behalf of customers in the region. To the extent that other States or utilities pursue their own solicitation processes for natural gas resources, and if the goals of such States and utilities are aligned with the goals set forth in this RFP, the EDCs may revise this RFP as necessary to coordinate the procurement of natural gas resources to maximize customer benefits. The EDCs also generally reserve the right to modify, withdraw and reissue this RFP at any time.

#### PROPOSAL DEADLINE

Proposals must be submitted by November 13<sup>th</sup>, 2015 at 12:00 P.M – EST. **Applications or supporting documents received after that date and time will not be considered.**

#### A. OBJECTIVE OF RFP

The primary objective of this RFP is to identify cost-effective resources that would function to increase the reliability of electric service and reduce electric costs for the benefit of the EDCs' electric customers. The primary firm gas supply resources solicited in this RFP are intended to be utilized by gas-fired generators in the New England region to improve regional electric supply reliability and lower the regional cost of retail electricity in substantial and timely manner. Currently there are inadequate gas supplies and transportation infrastructure to meet generation requirements, which threatens the reliability of the grid, especially during cold winter weather. This RFP is designed to identify alternatives for alleviating those constraints and improving winter electric supply reliability at the lowest cost for customers, by allowing the EDCs to contract for primary firm natural gas resources, which may include Natural Gas Capacity, LNG, and/or Natural Gas Storage for the benefit of customers. Capacity and/or storage rights will be released by the EDCs to gas-fired generators for the purpose of ensuring a reliable supply of natural gas to power generation. The EDCs intend to have competitive bidding for capacity releases.

#### B. REQUIREMENTS

Each proposal is required to address all of the following:

1. Delivery and Receipt locations: Provide physical locations where natural gas will

be delivered to and transported from, including but not limited to a description of the upstream supplies that would support the proposed resource. For pipeline project proposals, Bidders should discuss the liquidity at proposed receipt points as well as any known pipeline constraints upstream of such receipt points. For LNG proposals, Bidders should discuss the source of LNG supply including the country(ies) of origin and mode of transportation. Specifically, Bidders must supply a list of power generators within New England for which the delivery of primary firm gas supply is possible under the proposal, including identification of the volumes of gas that can be delivered to each facility under peak demand conditions. Bidders are responsible for the development of incremental infrastructure for the delivery of natural gas to generators in New England on a primary firm basis. A bidder shall submit receipt and delivery point MDQs. Bidders are encouraged to provide delivery point flexibility to the extent possible such that volumes of gas can be delivered to multiple generators within operational segments of the pipeline.

Given that the objective of this RFP is to benefit regional electric customers, Bidders are required to demonstrate that the proposal will provide reliable delivery of natural gas on a primary firm basis to multiple generating facilities on critical peak days across multiple load zones. Preference will be given to proposals that provide incremental delivery capacity that are most likely to yield substantial regional benefits to New England electric customers on an efficient, reliable and sustainable basis.

2. Service Type and Operational Flexibility: Bidder should indicate the type of service that will be provided and a detailed explanation of the operational flexibility afforded by the respective resource. The explanation of operational flexibility should set forth how the proposed project or service offering can meet the needs of gas-fired generation that frequently runs at a higher level during specific hours of the day (i.e. on-peak hours). The project or existing facility must be able to demonstrate that it can provide the required natural gas on a primary firm basis to generator delivery meters for the duration of the contract.
  
3. Quantity: EDCs may procure up to their respective load share of regional power demand for the natural gas resources, but the total quantity of natural gas resources purchased in the region through the expansion of this RFP and/or complimentary procurement processes undertaken by other States and utilities would not exceed 2,000,000 MMBtu/day nor shall be any individual project be less than 500,000 MMBtu/day. Accordingly, alternative proposals may be submitted for alternative total project facility and size configurations. Bidders should identify which generation facilities can be served at different levels of discrete investment. The proposal and each supply configuration should clearly delineate: i) the total project size; ii) the quantity already committed to other parties (via contracts, precedent agreements or other mechanisms); iii) the quantity, or range of quantities, offered to other entities; and, iv) the minimum quantity or range of quantities required to make each facility configuration

economically viable. There is no limit to the number of alternate quantity proposals that may be included, but Bidders must clearly specify any implications to the proposed project, including but not limited to schedule and rate impacts associated with such scaling. Bidders should identify all service commencement dates applicable to all quantity proposals, including the quantity and associated service commencement date, as well as associated receipt and delivery points, specific to each phase of any proposals consisting of a multi-phased implementation of service.

Bids for LNG and storage must include both the MDQ and maximum annual quantity of commodity or storage space and indicate the extent to which reinjection can take place during the winter season. Bids including a liquefaction/injection component must also specify the point at which natural gas must be tendered for firm injection. Bids for LNG and storage must also include transportation via interstate pipeline to generators in New England on a primary firm basis.

4. Price: Each Bidder is required to provide the price of the resource, including but not limited to any fixed or variable charges that the customer would incur by executing a contract with the selected bidder. All Bids must specify the maximum rate to be charged for the services offered. Any bids based on cost of service must also specify a cap (maximum rate). Bidders must identify all relevant pricing terms including relevant price indices. In order to facilitate potential coordination in other states in which the EDCs New England affiliates offer distribution service, any bid must be applicable for incorporation into Precedent Agreements that may be submitted for regulatory approval in such states. Bidders are required to maintain all offers firm through December 31, 2015. Beyond such date, winning bid(s) are anticipated to be incorporated into an executed Precedent Agreement(s) subject to the terms and conditions therein.
5. Contract Term and Renewal Rights: Bidders are required to identify the expected in-service date of all Proposals as well as a guaranteed in-service date. Bidders are also required to specify the minimum required term (not less than 15 years but not to exceed 20 years) as well as corresponding renewal rights.
6. Pro-forma Contract/Precedent Agreements: Each Bidder is required to submit a contract or precedent agreement applicable and appropriate to the type of resource offered. A pro-forma precedent agreement is attached in Exhibit 1. Bidders who have not already tendered a form agreement must include a marked version showing any proposed changes to the Pro-forma Contract / Precedent Agreement with their bid, and it is assumed that Bidders would be willing to execute the marked-up pro-forma Contract/Precedent Agreement included in their bids. Alternatively, Bidders may provide a form of precedent agreement that has been approved previously by the MDPU or other New England jurisdiction with any markup changes proposed for a project bid under this RFP. Bidders are discouraged from proposing material changes to the Pro-forma

Contract/Precedent Agreements. A Natural Gas Base Contract is attached in Exhibit B, which represents standard terms and provisions from the North American Energy Standards Board, Inc. (NAESB), for contracting for Natural Gas supplies. Additional Special Provisions have been outlined in Exhibit B, and EDCs reserve the right to further update all contract provisions, including but not limited to those related to financial parameters, legal proceedings, warranties, terminations and force majeure.

7. Tariffs and Pro-forma Service Agreements: Bidders should submit existing and proposed Tariffs and Pro-forma Service agreements. Bidders that are submitting proposals for LNG and Natural Gas Storage should submit Tariffs and Pro-forma Service agreements as well. Pipelines, LNG, and Natural Gas Storage Bidders should also submit provisions, if any, for No-Notice Service.
8. Documentation of Experience with development and management of natural gas resources: Bidders are required to document their experience in developing and managing natural gas resources, identifying the scope of the activities for which they were responsible, the companies they served, and the periods in which the services were provided. Bidders are requested to highlight their experience in the northeastern US market.
9. Regulatory/Siting/Approvals/Timing: Bidders are required to list all regulatory/siting approvals necessary from agencies at the Federal, State and Municipal levels that will be required for the proposed resource.

Bidders are required to itemize all of the physical assets and/or facilities that are required to provide the services proposed in response to this RFP, including a list of all permits required (to the extent not already obtained). Preference will be given to those bidders that can provide the expected benefits in a timely manner and with the highest probability of success.

10. Audited Financial Statements, Annual Reports, and Credit Ratings. Bidders should provide a copy of their audited financial statements with notes for at least the past three years and their most recent annual report with management's discussion and analysis. Bidders should also provide documentation of their current credit ratings from Moody's Investor Services, Standard and Poor's, or Fitch Ratings. Preference will be given to entities with a credit rating of investment grade or above and with a positive outlook.
11. Business Condition and Financial Reports: Bidders shall provide an overview of their firm, including corporate profile, ownership structure, and financial condition. Bidders should include how the project or service will be financed or supported, including but not limited to the financial instruments and structures the company will utilize in both development and operation of its resource proposal. Bidders should also be prepared to provide other relevant information relating to their

qualifications, business and operations. Preference will be given to entities with substantial, proven operating experience and financial strength in providing the services offered under this RFP.

12. Disclosure of Legal Matters and Conflicts of Interest: Bidders shall provide details of any claims, disputes, litigation, FERC, SEC or state regulatory action, enforcement action, investigation or other legal proceedings relating to their firm or individual personnel referenced in the proposal (in their business capacity) in the three preceding years. Describe any activities or relationships in which the Bidder or its personnel are engaged with the EDCs or their affiliates, or which may constitute a conflict of interest in providing the services to the EDCs, and any claims or disputes with EDCs or any of their affiliates.

C. PROCEDURES AND BIDDER CERTIFICATION

All communications pertaining to this Notice must be submitted via e-mail with the subject line "EDC Pipeline Capacity/Supply Procurement" to the following:

Eversource:

Edna Karanian at: [edna.karanian@eversource.com](mailto:edna.karanian@eversource.com)

Eric Soderman at: [eric.soderman@eversource.com](mailto:eric.soderman@eversource.com)

National Grid:

John Allocca at: [John.Allocca@nationalgrid.com](mailto:John.Allocca@nationalgrid.com)

Timothy Brennan at: [TIMOTHY.J.BRENNAN@nationalgrid.com](mailto:TIMOTHY.J.BRENNAN@nationalgrid.com)

Samara Jaffe at: [Samara.Jaffe@nationalgrid.com](mailto:Samara.Jaffe@nationalgrid.com)

The following is the schedule (subject to change) for this RFP process:

Issue RFP	October 23, 2015
Bidder questions deadline	October 30, 2015
Proposals Due	November 13, 2015

SUBMISSION REQUIREMENTS

Responses to this RFP must be made in writing and be made by mail and electronically. All electronic and hardcopy proposals must be received by November 13<sup>th</sup>, 2015 at 12:00PM Eastern Time. EDCs will not accept by mail any proposal from a bidder sent as a follow up to its email proposal that differs from its email proposal.

Each proposal shall contain the full name and business address of the bidder

and bidder's contact person and shall be signed by an authorized representative of the bidder. Each proposal must be submitted by an authorized representative of the bidder, and by its submission of its bid the bidder certifies that:

- The bidder has reviewed the RFP and all attachments and has investigated and informed itself with respect to all matters pertinent to the RFP and its proposal;
- The bidder's proposal is submitted in compliance with all applicable federal, state and local laws and regulations, including antitrust and anti-corruption laws;
- Each bid is being bid independently and that it the bid was prepared without knowledge of the substance of any other proposal being submitted by a non-affiliated bidder in response to this RFP;
- The bidder has not disclosed and will not disclose prior to any award hereunder, any information relating to its proposal which could have an effect on whether another bidder submits a proposal to this RFP, or on the contents of such proposal that another bidder would be willing to submit in response to this RFP, which may include, as an example, the fact that the bidder is submitting a proposal in response to this RFP, the bidder's proposal[s], the quantities of each product bid, the bidder's estimation of the value of a product, the bidder's estimation of the risks associated with supplying a product, and the bidder's preference for bidding on one or several products; and
- The bidder has bound any agents, consultants or other third parties retained or otherwise used in connection with the preparation and submission of its proposal to observe these same restrictions and requirements concerning its proposal and maintain the confidentiality of information concerning its proposal.

EDCs shall have the exclusive right to select or reject any or all of the proposals submitted at any time, for any reason. EDCs may also disregard any bid submission not in accordance with the requirements contained in this RFP. Further, EDCs expressly reserve the right, in their sole and absolute discretion (exercised individually), to seek clarifications of any submissions, to seek modifications to any submissions, to unilaterally change the schedule described herein or modify any of the rules and procedures set forth herein or subsequently issued, to terminate the process described herein, and to invite any (or none) of the Respondents to participate further in the process, all without prior notice.

D. CONFIDENTIALITY

Bidder and EDCs agree to use commercially reasonable efforts to maintain the confidentiality of the Bidder's proposal. However, it is understood by all parties that any contract resulting from this procurement will need to be filed by EDCs for approval with the MDPU. The EDCs will also be required to disclose the details of any contract to their respective consultants as part of the analysis for these filings. It is also understood that a resulting contract may be filed or disclosed by a Bidder as part of the Bidder's regulatory filing and approval process. The confidentiality of commercially sensitive documents required to be filed at the MDPU or in other regulatory proceedings will be governed by applicable laws and regulations.

E. EVALUATION OF PROPOSALS AND SELECTION PROCESS

Once proposals are received, the proposals will be subject to a review, evaluation and selection process.

In order to obtain approval by the MDPU, an EDC must demonstrate that the proposed contract (1) results in net benefits for the Massachusetts Electric Distribution Company's customers at a reasonable cost, and (2) compares favorably to the range of alternative options reasonably available to the Electric Distribution Company at the time of acquisition of the resource or contract negotiation. An Electric Distribution Company must show that the price of the resource is competitive and that the contract satisfies other non-price factors such as reliability of service and diversity of supply. D.P.U. 15-37, October 2, 2015, p.43-44. Any selected Bidder is expected to fully support EDCs in their efforts to satisfy these requirements in order to receive MDPU approval.

All proposals will be evaluated on the price and non-price factors consistent with applicable MDPU policies, decisions and precedents.

F. REGULATORY APPROVAL

Any contract developed by the parties will be filed for approval with the MDPU and will not become effective unless approved by the MDPU. Should responses to this RFP be of a scale requiring approvals of related contracts in other states, Bidders agree to support the pursuit of regulatory approvals in those states. It is possible that the MDPU may condition approval of any contract that results from this RFP on approvals of related contracts in other states.



# **EXHIBIT A**

## **Precedent Agreement**

## PRECEDENT AGREEMENT

This PRECEDENT AGREEMENT (“Precedent Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2015 (“Effective Date”), by and between [TRANSPORTER], [STATE] [ENTITY TYPE] (“Transporter”), and [SHIPPER], a [STATE] [ENTITY TYPE] (“Shipper”). Transporter and Shipper are sometimes referred to individually as a “Party” and collectively as the “Parties.”

### WITNESSETH:

WHEREAS, Transporter owns and operates an interstate natural gas transmission system in (specify STATES);

WHEREAS, Shipper desires that Transporter expand such interstate natural gas transmission system and purchase firm natural gas transmission service under (insert applicable Tariff existing/new) in connection with the \_\_\_\_\_Project (the “Project”);

WHEREAS, subject to the terms and conditions of this Precedent Agreement, Transporter is willing to construct the Project and provide the firm transportation service that Shipper desires;

NOW, THEREFORE, in consideration of the mutual covenants herein assumed, and intending to be legally bound, Transporter and Shipper agree as follows:

#### 1. Transporter Obligations.

- a) Subject to the terms and conditions of this Precedent Agreement, Transporter shall proceed with due diligence to obtain from all governmental and regulatory authorities authorizations necessary[y: (i)] for Transporter to construct, install, own, operate, and maintain the Project facilities, and, if applicable, abandon existing facilities, necessary to provide the firm transportation service

contemplated herein (“Transporter’s Authorizations”)[, and (ii) for Transporter to perform its obligations as contemplated in this Precedent Agreement, including the obligation to seek authorization from the Federal Energy Regulatory Commission (“FERC”) for receipt point flexibility as described in the following sentence. ] [Placeholder - To be further defined] Furthermore, Transporter agrees to seek any necessary authorization or waiver from FERC that may be required to allow Shipper to release capacity to electric generators on a preferential basis.

- b) Transporter reserves rights to (i) file and prosecute any and all applications for such authorizations and, (ii) request for rehearing or court review, that are consistent with this Precedent Agreement, the FTSA (defined below in Paragraph 3) and the Negotiated Rate Agreement (in the form attached as Attachment A-2 hereto ("Negotiated Rate Agreement").
- c) Transporter agrees to (i) provide Shipper with an opportunity to review and comment on the text of Transporter’s FERC application, before filing, and shall, in good faith, work with Shipper to address any concerns raised by Shipper with respect to such application, (ii) promptly notify Shipper in writing when each of Transporter’s Authorizations is received, obtained, rejected or denied and, (ii) promptly notify Shipper in writing as to whether a Transporter Authorization that has been received or obtained is acceptable to Transporter.
- d) During the term of this Precedent Agreement, Transporter agrees to use reasonable efforts to support and cooperate with, and to not oppose, obstruct or otherwise interfere with, Shipper in Shipper’s efforts to obtain

Shipper Authorizations as referenced below. The term of the Precedent Agreement will commence on the Effective Date and continue until the Precedent Agreement is terminated.

2. Shipper Obligations.

- a) Subject to the terms and conditions of this Precedent Agreement, Shipper shall proceed with due diligence to obtain all necessary and appropriate authorizations and approvals from governmental and regulatory authorizations necessary for Shipper to perform its obligations as contemplated in this Precedent Agreement, the FTSA and the Negotiated Rate Agreement referenced in this agreement as (“Shipper’s Authorizations”).
- b) Shipper reserves the right to file and prosecute applications for Shipper Authorizations, and any court review, if necessary, in a manner it deems to be in its best interest. Shipper agrees to promptly notify Transporter in writing when each of Shipper Authorizations is received, obtained, rejected or denied.
- c) Shipper shall promptly notify Transporter in writing as to whether each of Shipper Authorizations that has been received or obtained is acceptable to Shipper.
- d) During the term of this Precedent Agreement, Shipper agrees to use reasonable efforts to support its obligations as contemplated by this Precedent Agreement. Nothing herein shall be construed to limit or waive Shipper’s rights to intervene or protest any filing by Transporter to the extent Shipper determines in good faith that such filing is not consistent with Transporter’s obligations or Shipper’s rights under this Precedent Agreement, the FTSA or the Negotiated Rate Agreement.

3. Firm Transportation Service Agreement ("FTSA").

- a) FTSA. Subject to the conditions set forth herein, Shipper and Transporter agree that no later than XXX (to be specified) days following the date on which the FERC issues an order granting Transporter a certificate of public convenience and necessity to construct the Project facilities to allow Transporter to commence the construction of the Project (or such other mutually agreed date) Transporter and Shipper will execute the FTSA in the form attached as Attachment A-1 hereto under Rate Schedule \_\_\_\_\_ which (i) specifies a Maximum Daily Quantity ("MDQ") of XX,XXX Dth/d, exclusive of fuel requirements, effective on the Service Commencement Date (as determined in accordance with Paragraph 4 of this Precedent Agreement), (ii) specifies a primary term of [\_\_\_\_\_ (XX)] years commencing on the Service Commencement Date ("Primary Term"), (iii) specifies Primary Point(s) of Receipt at [\_\_\_\_\_] and a Maximum Daily Receipt Quantity ("MDRQ") of XX,XXX Dth/d; (iv) specifies the following Primary Points of Delivery and Maximum Daily Delivery Quantities ("MDDQ"): [*location description and meter number(s)*]; and (v) incorporates the terms of the Negotiated Rate Agreement (the "FTSA"). (vi) Project shall provide details of any proposed Hourly flexibility. Transporter will accept its FERC certificate of public convenience and necessity to construct the Project facilities no later than TBD days after the execution of the FTSA between Transporter and Shipper.

- b) Rate. Transporter and Shipper further agree that they will execute, in accordance with Transporter's Tariff, the Negotiated Rate Agreement, consistent with the terms of this Precedent Agreement, as set forth on Attachment A-2 hereto, subject to approval by the FERC, which shall become effective on the Service Commencement Date.
- c) Primary Term Extension. Not less than X months prior to the end of the Primary Term, Shipper may, at its option, extend the Primary Term for up to 100% of the MDQ for TBD years (each a "Primary Term Extension"). The applicable rates during the term of such extension shall be as set forth in the Negotiated Rate Agreement.
- d) Renewal. Shipper shall have an evergreen right to extend the term of the FTSA after the end of the Primary Term or the Primary Term Extension for all or any portion of the MDTQ at the then-effective rate set forth in the Negotiated Rate Agreement, subject to Shipper providing Transporter written notice at least \_\_\_\_\_ (TBD) months prior to the end of the Primary Term or Primary Term Extension, as applicable, and subject to the right of first refusal ("ROFR") provisions as set forth in Transporter's FERC Gas Tariff.
- e) Right of First Refusal. Upon Transporter's termination of the FTSA at the end of the Primary Term, Primary Term Extension or annual renewal terms, Shipper shall have a Right of First Refusal pursuant to Transporter's Tariff to be applicable, at Shipper's discretion, to all or a portion of the Shipper's MDTQ, exercisable in accordance with the notice and other applicable provisions of the Tariff.

- f) Most Favored Nation Right. Shipper shall have a Most Favored Nation Right as set forth in the Negotiated Rate Agreement.
4. Commencement of Service.
- a) Subject to the terms and conditions of this Agreement, Transporter and Shipper agree to execute and deliver the FTSA in accordance with the provisions of Paragraph 3 (FTSA) and subject to the Conditions Precedent stated in this Agreement. Unless Transporter and Shipper amend this Agreement otherwise, service under the Firm Transportation Agreement shall commence no later than [DATE] The Firm Transportation Agreement shall have a primary term ending \_\_\_\_\_ (XX) years after the Commencement Date (the “Primary Term”).
5. Design and Permitting of Project Facilities. Transporter will undertake with due diligence the design of the Project facilities and any other preparatory actions necessary for Transporter to complete and file its application(s) related to the Project with the FERC or other governmental authority as appropriate.
6. Construction of Project. Upon satisfaction of the conditions precedent set forth in Paragraphs 7 of this Precedent Agreement, or written waiver of the same by Transporter or Shipper, as applicable, Transporter shall proceed with due diligence to complete construction of the authorized Project facilities to implement the firm transportation service contemplated in this Precedent Agreement by [DATE].
7. Conditions Precedent. Commencement of service under the FTSA and Transporter’s and Shipper’s rights and obligations under the FTSA are expressly made subject to satisfaction of the following conditions precedent in this

Paragraph 7 (only Transporter shall have the right to waive the conditions precedent set forth in Paragraph 7(a) and only Shipper shall have the right to waive the conditions precedent set forth in Paragraph 7(b)):

a) Transporter's Conditions Precedent.

- i. Transporter's receipt of approval, on or before [Date], from its Board of Directors, or similar governing body, to construct the Project facilities and/or to execute the FTSA;
- ii. Transporter's receipt, on or before [Date], of all Transporter's Authorizations pursuant to Paragraph 1;
- iii. Transporter's procurement, on or before [Date], of all rights-of-way, easements or permits necessary for the construction and operation of the Project facilities;
- iv. Transporter's completion of construction of the Project facilities and all other facilities required to render firm transportation service for Shipper pursuant to the FTSA, on or before [DATE]

b) Shipper's Conditions Precedent.

- i. Shipper's receipt of approval, on or before [DATE], from its Board of Directors, or similar governing body, to participate in the Project;
- ii. Shipper's receipt and acceptance by [DATE], of any necessary Shipper Authorizations identified in accordance with Paragraph 2 of this Precedent Agreement;
- iii. Transporter's receipt by [DATE] of Transporter's Authorizations to provide the firm transportation service on the terms contemplated herein and in



- the FTSA and the Negotiated Rate Agreement, and to perform its other obligations contemplated herein; and
- iv. Transporter's completion of construction of the Project facilities and all other facilities required to render firm transportation service for Shipper pursuant to the FTSA, on or before [DATE]
  - v. Receipt of Authorization from the FERC on or before [DATE] allowing Shipper to release capacity to electric generators on a preferential basis.
- c) With respect to each condition precedent set forth in Paragraph 7(a) of this Precedent Agreement, Transporter shall use commercially reasonable efforts to provide notice to Shipper within (TBD) days of the date that such condition precedent has been satisfied or waived. With respect to the conditions precedent set forth in Paragraphs 7(b)(i) and (ii) of this Precedent Agreement, Shipper shall use commercially reasonable efforts to provide notice to Transporter that such condition precedent has been satisfied or waived.
- d) Unless otherwise provided for herein, Transporter's Authorizations contemplated in Paragraph 1 of this Precedent Agreement and otherwise associated with the FTSA and Negotiated Rate Agreement contemplated by this Precedent Agreement must be issued in form and substance reasonably satisfactory to both Parties hereto; provided that this Paragraph 7(d) does not give rise to a termination right for either Party independent of Transporter's termination right pursuant to Paragraphs 9(a) and 10(a) or Shipper's termination right pursuant to Paragraphs 9(b) and 10(b) hereof. Transporter shall provide written notice to Shipper not later than (TBD) days after issuance of any of Transporter's

Authorizations, and shall offer to meet with Shipper promptly upon the issuance of any such authorization(s) to discuss any concerns or issues related thereto. For purposes of this Precedent Agreement, Transporter's Authorizations shall be deemed satisfactory to Shipper if such Authorizations are consistent with the terms of this Precedent Agreement, the FTSA and the Negotiated Rate Agreement and do not impose conditions or obligations that adversely affect Shipper. To the extent Shipper determines in Shipper's sole reasonable judgment that the Transporter's Authorizations do not satisfy the requirements of the immediately preceding sentence, Shipper shall notify Transporter in writing not later than (TBD) days after receipt of Transporter's notice of such Authorizations, and shall detail the basis of such determination. Designated representatives of the Parties shall meet promptly and negotiate in good faith to reach mutual agreement on a reasonable modification or an agreeable alternative to address the unsatisfactory elements of such Authorizations, and each Party agrees to discuss in good faith any positions advanced by the other Party in accordance with the foregoing. All other governmental authorizations, approvals, permits and/or exemptions that Transporter must obtain must be issued in form and substance reasonably acceptable to Transporter. All governmental approvals that Transporter is required by this Precedent Agreement to obtain must be duly granted by the FERC or other governmental agency or authority having jurisdiction, and must be final and no longer subject to rehearing or appeal; provided, however, Transporter may waive the requirement that such authorization(s) and approval(s) be final and no longer subject to

rehearing or appeal. Transporter shall provide quarterly updates to Shipper regarding Transporter's progress in obtaining Transporter's Authorizations.

8. Limitation of Liability. NEITHER PARTY HERETO SHALL BE LIABLE FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE.

9. Termination of Precedent Agreement for Failure of Conditions Precedent

a) If the conditions precedent set forth in Paragraph 7(a) of this Precedent Agreement have not been fully satisfied or waived by Transporter by the applicable dates specified therein or the Service Commencement Dates have not occurred by [DATE], and this Precedent Agreement has not been terminated pursuant to Paragraphs 10 or 11 hereof, then Transporter—may thereafter terminate this Precedent Agreement (and the FTSA, if executed), by providing (TBD) days' prior written notice of its intention to terminate to Shipper; provided, however, if the conditions precedent are satisfied, or waived by Transporter within such (TBD) day notice period, then termination notice of such agreements will be null and void. Transporter's termination right pursuant to this Paragraph 9(a) expires if it is not exercised within (TBD) days after the deadline giving rise to such termination right. In the event of such termination, Shipper shall have no financial or other obligation to Transporter.

b) If the conditions precedent set forth in Paragraph 7(b) of this Precedent Agreement have not been fully satisfied or waived by Shipper by the applicable dates specified therein or if Service Commencement Date has not occurred by [DATE] and this Precedent Agreement has not been terminated pursuant to

Paragraphs 10 or 11 hereof, then Shipper may thereafter terminate this Precedent Agreement (and the FTSA, if executed) by providing (TBD) days' prior written notice of its intention to terminate to Transporter; provided, however, if the conditions precedent are satisfied, or waived by Shipper within such (TBD) day notice period (as applicable), then termination of such agreements will not be effective. Shipper's termination right pursuant to this Paragraph 9(b) expires if it is not exercised within (TBD) days after the deadline giving rise to such termination right. In the event of such termination, Shipper shall have no financial or other obligation to Transporter.

10. Additional Termination Rights.

- a) Transporter Termination Right. In addition to the provisions of Paragraph 9 hereof, Transporter may terminate this Precedent Agreement (and the FTSA, if executed) by providing written notice of termination to Shipper if: (i) by the earlier of (a) the sixtieth (60<sup>th</sup>) day following the issuance of the FERC certificate for the Project, provided that no other material Transporter's Authorizations are outstanding, or (b) by [DATE], Transporter, in its sole and reasonable discretion, determines for any reasons that the Project contemplated herein is no longer economically viable; [or (ii) as of [DATE], substantially all precedent agreements, FTSA's or other contractual agreements for the firm service to be made available by the Project are terminated, other than by reason of commencement of service] In the event of such termination, Shipper shall have no financial or other obligation to Transporter.

11. Shipper Termination Right. In the event that (i) Transporter's certificates and authorizations from the FERC are not in form and substance reasonably satisfactory to

Shipper, (ii) Shipper notifies Transporter in writing pursuant to Paragraph 7(d) that such Transporter's certificates and authorizations are not satisfactory, including the basis for such determination, and (iii) Transporter does not receive a subsequent order from the FERC prior to the deadline in Paragraph 7(a)(ii) eliminating such basis and rendering the same reasonable satisfactory to Shipper, Shipper may terminate this Precedent Agreement by providing (TBD) days' prior written notice of its intention to terminate to Transporter; provided that Shipper's termination right pursuant to this Paragraph 10(b) expires if it is not exercised within (TBD) days of the deadline in Paragraph 7(a)(ii). In the event of such termination, Shipper shall have no financial or other obligation to Transporter.

12. Termination upon Service Commencement Date. If this Precedent Agreement is not terminated pursuant to Paragraphs 9 or 10 hereof, then this Precedent Agreement will terminate by its express terms on the Service Commencement Date and thereafter Transporter's and Shipper's rights and obligations related to the transportation service contemplated herein shall be determined pursuant to the terms and conditions of the FTSA, the Negotiated Rate Agreement and Transporter's FERC Gas Tariff, as effective from time to time. Notwithstanding any termination of this Precedent Agreement pursuant to Paragraphs 9, 10 or 11 hereof, or otherwise, to the extent that a provision of this Precedent Agreement contemplates that one or both Parties may have further rights and/or obligations hereunder following such termination, the provision shall survive such termination as necessary to give full effect to such rights and/or obligations.

13. Creditworthiness.

- a) In exchange for Transporter's execution of this Agreement, the FTSA, the Negotiated Rate Agreement and any other related agreements, and as a condition precedent to Transporter's obligations pursuant to such agreements, Shipper shall satisfy the following credit assurance provisions as of the effective date of this Agreement, and shall have a continuing obligation to satisfy the credit assurance provisions of this Agreement throughout the term of this Agreement, and such provisions of the FTSA, the Negotiated Rate Agreement and any other related agreements as may be in effect from time to time.
- b) Shipper - credit worthiness standards such as: [Shipper's senior unsecured debt or corporate credit rating is at least BBB- (outlook stable) by Standard & Poor's Financial Services LLC ("S&P") and at least Baa3 (outlook stable) by Moody's Investor Service ("Moody's") or equivalent rating from a nationally recognized statistical rating organization, registered with the Securities and Exchange FERC, and acceptable to Transporter; provided, however, that if Shipper is only rated by one agency, then only that rating shall be considered ("Credit Ratings"). For the purpose of this Paragraph 13(b), in the event of a split rating the lower rating applies.]
- c) If, at any time, Shipper does not meet the creditworthiness provisions of Paragraph 13(b), then Shipper shall provide to Transporter credit assurance in the form of either a guaranty from a guarantor which meets the creditworthiness standards in Paragraph 13(b), and in a form reasonably acceptable to Transporter, a letter of credit from an institution acceptable to Transporter and in a form reasonably acceptable to Transporter, or a cash security deposit, as

follows: (i) during the first (\_\_\_\_) years of the Primary Term an amount equal to (TBD) months of reservation charges, and (ii) at the beginning of year \_\_\_\_\_ (\_\_\_\_) and until the end of the Primary Term, an amount equal to (TBD) months of reservation charges. At end of the Primary Term and all subsequent extension periods, credit assurance (if any) shall then be based on Paragraph\_\_\_\_\_ of the General Terms & Conditions of Transporter's Tariff.

- d) The credit assurance provided to Transporter in this Paragraph 13 shall continue in effect until the earlier of (i) Shipper satisfies the Credit Ratings standards, (ii) the execution of a credit agreement to replace this provision, or (iii) the end of the Primary Term, and full payment of all undisputed balances and charges and resolution of any asserted claims with respect thereto has been made by Shipper.
- e) If Shipper does not remedy its failure to demonstrate or furnish acceptable credit assurance as required by this Paragraph 13 within (TBD) days of receipt of written notice of such failure from Transporter, then Transporter shall, in addition to any other remedy available under this Agreement, have the right to terminate this Agreement, the FTSA, and any other related agreements in accordance with the terms of Transporter's Tariff upon (TBD) days written notice to Shipper, provided that such Transporter notice of termination shall be null and void if Shipper has demonstrated or furnished the required credit assurance prior to the expiration of such (TBD) days written notice.

14. Amendments. This Precedent Agreement may not be modified or amended unless the Parties execute written agreements to that effect.
15. Prior Agreements. This Precedent Agreement and its attachments, when executed, supersede all prior agreements and understandings, whether oral or written, with respect to the Project.
16. Successors; Assignments. Any company which succeeds by purchase, merger, or consolidation of title to the properties, substantially as an entirety, of Transporter or Shipper, will be entitled to the rights and will be subject to the obligations of its predecessor in title under this Precedent Agreement. Otherwise, neither Shipper nor Transporter may assign any of its rights or obligations under this Precedent Agreement without the prior written consent of the other Party hereto, provided that such consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Transporter and Shipper shall each have the right, without obtaining the other Party's consent, to pledge or assign its rights under this Precedent Agreement and/or the FTSA as collateral security for indebtedness incurred by such Party or its affiliate.
17. No Third-Party Rights. Except as expressly provided for in this Precedent Agreement, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person not a Party hereto any rights, remedies or obligations under or by reason of this Precedent Agreement.
18. Joint Efforts: No Presumptions. Each and every provision of this Precedent Agreement shall be considered as prepared through the joint efforts of the Parties and shall not be construed against either Party as a result of the preparation or



drafting thereof. It is expressly agreed that no consideration shall be given or presumption made on the basis of who drafted this Precedent Agreement or any specific provision hereof

19. Choice of Law. This Precedent Agreement shall be governed by, construed, interpreted, and performed in accordance with the laws of the Commonwealth of Massachusetts without recourse to any laws governing the conflict of laws.
20. Notice. Any notice and/or request provided for in this Agreement or any notice either Party may desire to give to the other shall be transmitted in writing (overnight delivery, U.S. Mail, or electronic mail) such that it is received before (TBD) p.m. time on the due date.

Transporter:

Shipper:

Notice is effective as of the date of confirmed receipt, or, in the absence of confirmed receipt, as of the date actually received.

21. Defined Terms. When used in this Precedent Agreement, and unless otherwise defined herein, capitalized terms shall have the meanings set forth in Transporter's FERC Gas Tariff on file with the FERC, as amended from time to time.
22. Waivers. The waiver by either Party of a breach or violation of any provision of this Precedent Agreement will not operate as or be construed to be a waiver of any subsequent breach or violation hereof.

23. Counterparts. This Precedent Agreement may be executed in any number of counterparts, each of which will be an original, but such counterparts together will constitute one and the same instrument.
24. Headings. The headings contained in this Precedent Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Precedent Agreement.
25. Representations and Warranties. Each Party represents and warrants to each other as follows:
- (i) Ability to execute and perform this Precedent Agreement.
  - (ii) This Precedent Agreement has been duly executed and delivered by such Party.
26. Confidentiality and Disclosures.
- (a) The substance and terms of this Precedent Agreement are confidential. Either Party may disclose the substance and terms of this Precedent Agreement to its or its affiliate's directors, officers, employees, representatives, agents, consultants, attorneys or auditors ("Representatives") who have a need to know the substance and terms of this Precedent Agreement. Transporter and Shipper agree not to disclose or communicate, and will cause their respective Representatives not to disclose or communicate, the substance or terms of this Precedent Agreement to any other person, entity, firm, or corporation without the prior written consent of the other Party, provided that either Party may disclose the substance or terms of this Precedent Agreement as required by law, order, rule or regulation of any duly constituted governmental body or official authority having jurisdiction, subject to the condition that the disclosing Party first give the other Party five TBD business days' notice of same or as much notice as possible under the circumstances, so that a protective order or other protective arrangements may be

sought. Notwithstanding the foregoing, the Parties acknowledge that (A) Transporter may, in its sole discretion, exercised reasonably, (i) file a copy of this Precedent Agreement with the FERC under seal in connection with the FERC certificate application, (ii) place on public file with the FERC a description of the terms of any negotiated rate prior to the commencement of firm transportation service under the FTSA, and (iii) use the terms and conditions of this Precedent Agreement (excluding any information proprietary to Shipper) in Transporter's preparation of the pro forma precedent agreement for other Shippers under the Project, and (B) Shipper, in its sole discretion, may provide Project information, including a copy of this Precedent Agreement, to the MDPU; provided Transporter or Shipper will request confidential treatment for any such filing or written disclosure of confidential information. Such filings will not constitute a breach of this confidentiality provision and will not require compliance with the foregoing five TBD day notice provision.

[signature page follows]

27. Execution of Agreement. This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first hereinabove written.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attachment A-1  
Form of Rate Schedule \_\_\_\_\_  
Firm Transportation Service Agreement

(To be attached)

## Attachment A-2 Negotiated Rate Agreement

(To include critical provisions and representations related to rate and other negotiated anchor shipper clauses such as Most Favored Nation (“MFN”), which is intended to provide anchor shipper with longer term economic and service rights protection and benefits)

## STATEMENT OF NEGOTIATED RATES (Footnotes)

Shipper Name: [SHIPPER]

FTSA: [INSERT CONTRACT NUMBER]

Term of Negotiated Rate:

Rate Schedule:

MDQ / Dth on the Service Commencement Date

Reservation Rate: Shipper shall pay a negotiated reservation rate of \$[\_\_\_\_] per Dth, per month of MDQ.

Commodity Charge:

Primary Receipt Point(s):

Primary Delivery Points:

Recourse Rate(s): The Recourse Rate(s) applicable to this service is the applicable maximum rate(s) stated on Transporter's Statement of Rates for Rate Schedule \_\_\_\_\_ at the applicable time.

### FOOTNOTES:

- 1/ This negotiated rate complies with Transporter's FERC Gas Tariff.
- 2/ This Negotiated Rate shall apply only to transportation service under this Contract No. [INSERT CONTRACT NUMBER], up to Shipper's specified MDQ, Primary Receipt Point and Primary Delivery Point designated herein, and any secondary receipt and delivery points available under Rate Schedule \_\_\_\_\_.
- 3/ Construction cost caps - Bidders must submit how costs will be managed to ensure the best possible rate is achieved. A rate cap is required and a proposal to address construction cost under- and over-runs if construction of facilities are necessary.
- 4/ Notice Provisions - Proposals should include details on applicable notice provisions

5/ Transporter and Shipper agree that Contract No. [INSERT CONTRACT NUMBER] is a ROFR Agreement.

6/ Shipper shall pay a commodity charge which shall be (TBD).

7/ Renewal rates are described: Bidders should provide a description of renewal rate options at the end of the primary term.

8/ Most Favored Nations (MFN)

Designed and included to protect project anchor shippers' economic position, in the event future projects are constructed and/or capacity is sold using the Projects' assets and resulting in a lower rate than the negotiated rate paid by anchor shippers.

1. Identifies applicable project capacity, length of time such MFN is in effect, mechanism by which projects are compared and the resulting reduction in anchor shippers' Negotiated Rate, if a subsequent project is determined to render a lower rate.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first hereinabove written.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



# **EXHIBIT B**

**North American Energy Standards  
Board, Inc.**

**Natural Gas Base Contract**

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: \_\_\_\_\_

The parties to this Base Contract are the following:

PARTY A	PARTY NAME	PARTY B
	<i>ADDRESS</i>	
	<i>BUSINESS WEBSITE</i>	
	<i>CONTRACT NUMBER</i>	
	<i>D-U-N-S® NUMBER</i>	
<input type="checkbox"/> US FEDERAL: <input type="checkbox"/> OTHER	<i>TAX ID NUMBERS</i>	<input type="checkbox"/> US FEDERAL: <input type="checkbox"/> OTHER:
Delaware	<i>JURISDICTION OF ORGANIZATION</i>	
<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other _____	<i>COMPANY TYPE</i>	<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other _____
	<i>GUARANTOR (IF APPLICABLE)</i>	
<b>CONTACT INFORMATION</b>		
_____ <b>ATTN</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____	▪ <b>COMMERCIAL</b>	_____ <b>ATTN</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____
_____ <b>ATTN</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____	▪ <b>SCHEDULING</b>	_____ <b>ATTN</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____
_____ <b>ATTN</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____	▪ <b>CONTRACT AND LEGAL NOTICES</b>	_____ <b>ATTN</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____
_____ <b>ATTN</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____	▪ <b>CREDIT</b>	_____ <b>ATTN</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____
_____ <b>ATTN</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____	▪ <b>TRANSACTION CONFIRMATIONS</b>	_____ <b>ATTN</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____
<b>ACCOUNTING INFORMATION</b>		
_____ <b>ATTN</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____	▪ <b>INVOICES</b> ▪ <b>PAYMENTS</b> ▪ <b>SETTLEMENTS</b>	_____ <b>ATTN</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____
<b>BANK:</b> _____ <b>ABA:</b> _____ <b>ACCT:</b> _____ <b>OTHER DETAILS:</b> _____	<b>WIRE TRANSFER NUMBERS (IF APPLICABLE)</b>	<b>BANK:</b> _____ <b>ABA:</b> _____ <b>ACCT:</b> _____ <b>OTHER DETAILS:</b> _____
<b>ATTN:</b> _____ <b>ADDRESS:</b> _____	<b>CHECKS (IF APPLICABLE)</b>	<b>ATTN:</b> _____ <b>ADDRESS:</b> _____
<b>BANK:</b> _____ <b>ABA:</b> _____ <b>ACCT:</b> _____ <b>OTHER DETAILS:</b> _____	<b>ACH NUMBERS (IF APPLICABLE)</b>	<b>BANK:</b> _____ <b>ABA:</b> _____ <b>ACCT:</b> _____ <b>OTHER DETAILS:</b> _____

## Base Contract for Sale and Purchase of Natural Gas

(Continued)

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select the appropriate box(es) from each section:

<b>Section 1.2</b> <input type="checkbox"/> Oral (default) Transaction     OR Procedure <input type="checkbox"/> Written	<b>Section 10.2</b> <input type="checkbox"/> No Additional Events of Default (default) Additional <input type="checkbox"/> Indebtedness Cross Default Events of <input type="checkbox"/> Party A: _____ Default <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u>
<b>Section 2.7</b> <input type="checkbox"/> 2 Business Days after receipt (default) Confirm Deadline OR <input type="checkbox"/> _____ Business Days after receipt	
<b>Section 2.8</b> <input type="checkbox"/> Seller (default) Confirming Party OR <input type="checkbox"/> Buyer <input type="checkbox"/> _____	
<b>Section 3.2</b> <input type="checkbox"/> Cover Standard (default) Performance OR Obligation <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> <input type="checkbox"/> Early Termination Damages Apply (default) Early     OR Termination <input type="checkbox"/> Early Termination Damages Do Not Apply Damages
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>	
<b>Section 2.31</b> <input type="checkbox"/> Gas Daily Midpoint (default) Spot Price     OR Publication <input type="checkbox"/> _____ _____ _____ _____	<b>Section 10.3.2</b> <input type="checkbox"/> Other Agreement Setoffs Apply (default) Other <input type="checkbox"/> Bilateral (default) Agreement <input type="checkbox"/> Triangular Setoffs OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b> <input type="checkbox"/> Buyer Pays At and After Delivery Point Taxes     (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	
<b>Section 7.2</b> <input type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery Payment Date (default) OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 15.5</b> _____ Choice Of Law _____
<b>Section 7.2</b> <input type="checkbox"/> Wire transfer (default) Method of Payment <input type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	<b>Section 15.10</b> <input type="checkbox"/> Confidentiality applies (default) Confidentiality OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.7</b> <input type="checkbox"/> Netting applies (default) Netting     OR <input type="checkbox"/> Netting does not apply	
<input type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: ____ (____)	
<input type="checkbox"/> <b>Addendum(s):</b> _____	

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

	<i>PARTY NAME</i>	
By: _____	<i>SIGNATURE</i>	By: _____
Name: _____	<i>PRINTED NAME</i>	Name: _____
Its: _____	<i>TITLE</i>	Title: _____

# General Terms and Conditions

## Base Contract for Sale and Purchase of Natural Gas

### SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

**The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.**

#### **Oral Transaction Procedure:**

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

#### **Written Transaction Procedure:**

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

### SECTION 2. DEFINITIONS

2.1. The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

- 2.2. "Additional Event of Default" shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.
- 2.3. "Affiliate" shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.
- 2.4. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.
- 2.5. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.
- 2.6. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.7. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.8. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.9. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.10. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.
- 2.11. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.12. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.13. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.14. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.
- 2.15. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.16. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.17. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.18. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.19. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.20. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section

4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.

2.21. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.

2.22. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.

2.23. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.

2.24. "Indebtedness Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.

2.25. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

2.26. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.

2.27. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.

2.28. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.

2.29. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.

2.30. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.

2.31. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.

2.32. "Spot Price " as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

2.33. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.

2.34. "Transactional Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.

2.35. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.

2.36. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

## SECTION 3. PERFORMANCE OBLIGATION

3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

**The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base**

**Contract.****Cover Standard:**

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

**Spot Price Standard:**

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

## SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

## SECTION 5. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

## SECTION 6. TAXES

**The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.**

### **Buyer Pays At and After Delivery Point:**

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

### **Seller Pays Before and At Delivery Point:**

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

## SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed without undue delay. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with



Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

8.5. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

## SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payment instructions, and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

9.4. The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

## SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or guaranty. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; or ix) be the affected party with respect to any Additional Event of Default; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

**The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.**

**Early Termination Damages Apply:**

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

**Early Termination Damages Do Not Apply:**

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes

such payment under this Contract.

**The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.**

**Other Agreement Setoffs Apply:**

**Bilateral Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

**Triangular Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option, and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff (i) any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; (ii) any Net Settlement Amount against any amount(s) (including any excess cash margin or excess cash collateral) owed by or to a party under any other agreement or arrangement between the parties; (iii) any Net Settlement Amount owed to the Non-Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Non-Defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement; (iv) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party to the Non-Defaulting Party or its Affiliates under any other agreement or arrangement; and/or (v) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party or its Affiliates to the Non-Defaulting Party under any other agreement or arrangement.

**Other Agreement Setoffs Do Not Apply:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

## SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

## SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH

NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

## SECTION 15. MISCELLANEOUS

15.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

15.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

15.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

15.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

15.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

15.7. There is no third party beneficiary to this Contract.

15.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

15.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any

transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency's reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties

15.12. Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence—on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

**DISCLAIMER:** The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.**

TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

EXHIBIT A

Letterhead/Logo	Date: _____, ____ Transaction Confirmation #: _____			
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.				
<b>SELLER:</b>  Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	<b>BUYER:</b>  Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____			
Contract Price: \$_____/MMBtu or _____				
Delivery Period: Begin: _____ End: _____				
<b>Performance Obligation and Contract Quantity: (Select One)</b>  <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;"> <b>Firm (Fixed Quantity):</b>                      _____ MMBtus/day  <input type="checkbox"/> EFP                 </td> <td style="width: 33%; vertical-align: top;"> <b>Firm (Variable Quantity):</b>                      _____ MMBtus/day Minimum                      _____ MMBtus/day Maximum                      subject to Section 4.2. at election of  <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller                 </td> <td style="width: 33%; vertical-align: top;"> <b>Interruptible:</b>                      Up to _____ MMBtus/day                 </td> </tr> </table>		<b>Firm (Fixed Quantity):</b> _____ MMBtus/day <input type="checkbox"/> EFP	<b>Firm (Variable Quantity):</b> _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	<b>Interruptible:</b> Up to _____ MMBtus/day
<b>Firm (Fixed Quantity):</b> _____ MMBtus/day <input type="checkbox"/> EFP	<b>Firm (Variable Quantity):</b> _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	<b>Interruptible:</b> Up to _____ MMBtus/day		
Primary Delivery Point(s): _____				
<b>Special Conditions:</b> <p style="text-align: center;">1.) Seller must utilize pipeline contracts with primary firm capacity to the Primary Delivery Point.</p>				
Seller: _____  By: _____  Title: _____  Date: _____	Buyer: _____  By: _____  Title: _____  Date: _____			

### **Special Provisions to Base Contract**

\_\_\_\_\_ and \_\_\_\_\_, hereby agree, effective as of ("Effective Date"), to the following special provisions ("Special Provisions"), which hereby modify and amend the North American Energy Standards Board, Inc. ("NAESB") Base Contract for Sale and Purchase of Natural Gas, with the Effective Date \_\_\_\_\_ ("Base Contract"). Unless specifically agreed to otherwise in a Transaction Confirmation by the parties, the Base Contract, as modified by these Special Provisions, shall apply to all transactions for the purchase and sale of Gas between the parties. All capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Base Contract.

- 1) Section 3.4 is amended by adding the following:

A performing party shall have the option to terminate an Affected Transaction by providing written notice to the non-performing party designating an Early Termination Date on which the Affected Transaction shall terminate. An "Affected Transaction" means a Firm Transaction with a Delivery Period of at least 30 Days in respect of which there has occurred either three consecutive Failure Days or five total Failure Days during the Term of such Firm Transaction. A "Failure Day" means a Day on which the non-performing party has failed to purchase and receive, or sell and deliver, as applicable, an amount equal to or greater than 96% of the Contract Quantity to be purchased and received or sold and delivered on such Day, which failure is not excused because of the non-performance of the performing party or by Force Majeure.

- 2) Section 5 shall be deleted in its entirety and replaced with following:

All Gas delivered by Seller shall meet the pressure, quality, heat content and interchangeability standards provided in the effective tariff at the time of delivery of the respective Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures provided in the effective tariff at the time of delivery of the Receiving Transporter.

- 3) This section shall be added as new 11.7.

Notwithstanding anything to the contrary in Section 11, Force Majeure shall not include any act, event or circumstances occurring in a country in which LNG is produced or procured or any event that affects an LNG vessel prior to such vessel's departure from the LNG Loading Facilities (including but not limited to Gas liquefaction trains and associated liquefaction facilities, LNG storage and loading facilities, berth and marine facilities and other facilities, at which LNG is loaded onto LNG vessels) or during its voyage to the regasification or storage terminal for eventual delivery to selected delivery points.