

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: June 26, 2003. The parties to this Base Contract are the following:

Anadarko Energy Services Company  
P. O. Box 1330, Houston, TX 77251-1330  
 Duns Number: 19-9116823  
 Contract Number: \_\_\_\_\_  
 U.S. Federal Tax ID Number: 76-0235540

and Louisville Gas and Electric Company/Kentucky Utilities Company ("LGE"/"KU")  
220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Duns Number: LGE 00-694-5505/KU 00-694-4938  
 Contract Number: \_\_\_\_\_  
 U.S. Federal Tax ID Number: LGE 61-026415/KU 61-0247570

Notices:

Anadarko Energy Services Company  
 Attn: Contract Administration  
 Phone: (832) 636-7101 Fax: (832) 636-7181

Louisville Gas and Electric Co./Kentucky Utilities Co.  
 Attn: Contract Administration  
 Phone: 502-627-4251 or 4197 Fax: 502-627-4222

Confirmations:

Anadarko Energy Services Company  
 Attn: Marketing Accounting  
 Phone: (832) 636-7101 Fax: (832) 636-7181

Louisville Gas and Electric Co./Kentucky Utilities Co.  
 Attn: Contract Administration  
 Phone: 502-627-4197 Fax: 502-627-4222

Invoices and Payments:

Anadarko Energy Services Company  
 Attn: Accounting  
P. O. Box 1330 Houston, TX 77251-1330  
 Phone: (832) 636-7037 Fax: (832) 636-7035

Louisville Gas and Electric Co./Kentucky Utilities Co.  
 Attn: Gas Accounting  
 Phone: 502-627-4627 Fax: 502-627-3800

Wire Transfer or ACH Numbers (if applicable):

BANK: Mellon Bank, N.A., Pittsburgh, PA  
 ABA: #043000261  
 ACCT: #1157237  
 Other Details: \_\_\_\_\_

BANK: PNC Bank, Pittsburgh PA  
 ABA: 043-0000-96  
 ACCT: 1008270544  
 Other Details: \_\_\_\_\_

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 only one box from each section:

<p><b>Section 1.2</b> <input checked="" type="checkbox"/> Oral (default)          Transaction Procedure <input type="checkbox"/> Written</p>	<p><b>Section 7.2</b> <input checked="" type="checkbox"/> 25<sup>th</sup> Day of Month following Month of delivery (default)          Payment Date <input type="checkbox"/> _____ Day of Month following Month of delivery</p>
<p><b>Section 2.5</b> <input checked="" type="checkbox"/> 2 Business Days after receipt (default)          Confirm Deadline <input type="checkbox"/> _____ Business Days after receipt</p>	<p><b>Section 7.2</b> <input checked="" type="checkbox"/> Wire transfer (default)          Method of Payment <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH)  <input type="checkbox"/> Check</p>
<p><b>Section 2.6</b> <input type="checkbox"/> Seller (default)          Confirming Party <input type="checkbox"/> Buyer  <input checked="" type="checkbox"/> LGE/KU</p>	<p><b>Section 7.7</b> <input checked="" type="checkbox"/> Netting applies (default)          Netting <input type="checkbox"/> Netting does not apply</p>
<p><b>Section 3.2</b> <input checked="" type="checkbox"/> Cover Standard (default)          Performance Obligation <input type="checkbox"/> Spot Price Standard</p> <p><i>Note: The following Spot Price Publication applies to both of the immediately preceding.</i></p> <p><b>Section 2.26</b> <input checked="" type="checkbox"/> Gas Daily Midpoint (default)          Spot Price Publication <input type="checkbox"/> _____</p>	<p><b>Section 10.3.1</b> <input checked="" type="checkbox"/> Early Termination Damages Apply (default)          Early Termination Damages <input type="checkbox"/> Early Termination Damages Do Not Apply</p> <p><b>Section 10.3.2</b> <input type="checkbox"/> Other Agreement Setoffs Apply (default)          Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Do Not Apply</p>
<p><b>Section 6</b> <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default)          Taxes <input type="checkbox"/> Seller Pays Before and At Delivery Point</p>	<p><b>Section 14.5</b> Choice Of Law <u>New York</u></p> <p><b>Section 14.10</b> <input checked="" type="checkbox"/> Confidentiality applies (default)          Confidentiality <input type="checkbox"/> Confidentiality does not apply</p>
<p>v Special Provisions Number of sheets attached: <u>4 Pages</u>  <input type="checkbox"/> Addendum(s): <u>None</u></p>	

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

Anadarko Energy Services Company  
 Party Name  
 By John Bretz  
 Name: **JOHN BRETZ**  
VICE PRESIDENT OF GAS MARKETING

Louisville Gas and Electric Company/Kentucky Utilities Company  
 Party Name  
 By Martyn Gallus  
 Name: **MARTYN GALLUS**  
SR. VICE PRESIDENT  
LOUISVILLE GAS & ELECTRIC COMPANY  
KENTUCKY UTILITIES

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Standard 6.3.1  
 April 19, 2002

AMENDMENT NUMBER ONE  
TO  
BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS

This Amendment Number One (“**Amendment**”) to the Base Contract for Sale and Purchase of Natural Gas is made and entered into this 17<sup>th</sup> day of August, 2009 by and between **Atmos Energy Marketing, LLC** (“**ATMOS**”) and **LOUISVILLE GAS AND ELECTRIC COMPANY/KENTUCKY UTILITIES COMPANY** (“**LGE/KU**”), (collectively the “**Parties**”).

**RECITALS**

**WHEREAS**, LGE/KU and ATMOS are parties to that certain Base Contract for Sale and Purchase of Natural Gas dated January 11, 2006 (the “**Contract**”); and

**WHEREAS**, the Parties desire to amend the Contract as hereinafter set forth.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 14.15 of the Special Provisions to the General Terms and Conditions of the Contract shall be amended by:

(i) deleting the following:

“Louisville Gas and Electric Company and Kentucky Utilities Company shall be severally, but not jointly, liable for their respective obligations under this Contract”

and

(ii) replacing such deleted language with the following:

“14.15 Louisville Gas and Electric Company and Kentucky Utilities Company shall be jointly and severally liable for their respective obligations under this Contract: provided, however, that LG&E and KU together shall not be liable for more than 100% of the total obligation.”

2. Except as herein amended, the Contract shall remain in full force and effect. If there are any conflicts between this Amendment and the Contract, the terms of this Amendment shall govern.
3. All capitalized terms used herein, unless otherwise defined, shall have the meanings given to them in the Contract.
4. This Amendment may be executed in counterparts, all of which taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties, by their respective authorized representatives, have executed this Amendment as of the date first above written.

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: November 3, 2008. The parties to this Base Contract are the following:

Louisville Gas and Electric Company, and  
Kentucky Utilities Company, jointly and severally liable  
220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
Duns Number: LGE 00-694-5505/ KU 00-694-4398  
Contract Number: Not Applicable  
U.S. Federal Tax ID No LGE: 61-0264150  
U.S. Federal Tax ID No. KU: 61-0247570

and BG Energy Merchants, LLC  
5444 Westheimer, Suite 1200, Houston, Texas 77056  
Duns Number: 62-121-6428  
Contract Number: Not Applicable  
U.S. Federal Tax ID No.: 20-4130200

**Notices:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
Attn: Contract Administration  
Phone: 502/627-4251 or 4197 Fax: 502/627-4222

Same as above  
Attn: MLO Contracts  
Phone: 713-599-5000 Fax: 713-599-3924

**Confirmations:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
Attn: Contract Administration  
Phone: 502/627-4197 Fax: 502/627-4222

Same as above  
Attn: Confirmations Analyst  
Phone: 713-599-5000 Fax: 713-599-3931

**Invoices and Payments:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
Attn: Gas Accounting  
Phone: 502/627-4627 Fax: 502/627-3800

Same as above  
Attn: Accounting  
Phone: 713-599-5000 Fax: 713-599-3931

**Wire Transfer or ACH Numbers (if applicable):**

BANK: Bank of America, New York, NY  
ABA: 0260-0959-3  
ACCT: 3752099133  
Other Details:

BANK: HSBC Bank USA NA, One HSBC Ctr 20<sup>th</sup> FL, Buffalo NY 14203  
ABA: 021001088  
ACCT: ~~0062566~~ 000162566 (mp)  
Other Details: For the Account of BG Energy Merchants, LLC

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 only one box from each section:

<b>Section 1.2</b>	<input checked="" type="checkbox"/> Oral (default)	<b>Section 7.2</b>	<input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default)
Transaction Procedure	<input type="checkbox"/> Written	Payment Date	<input type="checkbox"/> _____ Day of Month following Month of delivery
<b>Section 2.5</b>	<input checked="" type="checkbox"/> 2 Business Days after receipt (default)	<b>Section 7.2</b>	<input checked="" type="checkbox"/> Wire transfer (default)
Confirm Deadline	<input type="checkbox"/> _____ Business Days after receipt	Method of Payment	<input type="checkbox"/> Automated Clearinghouse Credit (ACH)
<b>Section 2.6</b>	<input type="checkbox"/> Seller (default)	<b>Section 7.7</b>	<input checked="" type="checkbox"/> Netting applies (default)
Confirming Party	<input type="checkbox"/> Buyer	Netting	<input type="checkbox"/> Netting does not apply
	<input checked="" type="checkbox"/> BGEM		
<b>Section 3.2</b>	<input checked="" type="checkbox"/> Cover Standard (default)	<b>Section 10.3.1</b>	<input checked="" type="checkbox"/> Early Termination Damages Apply (default)
Performance Obligation	<input type="checkbox"/> Spot Price Standard	Early Termination Damages	<input type="checkbox"/> Early Termination Damages Do Not Apply
<i>Note: The following Spot Price Publication applies to both of the immediately preceding.</i>			
<b>Section 2.26</b>	<input checked="" type="checkbox"/> Gas Daily Midpoint (default)	<b>Section 10.3.2</b>	<input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default)
Spot Price Publication	<input type="checkbox"/> _____	Other Agreement Setoffs	<input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b>	<input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default)	<b>Section 14.5</b>	Choice Of Law <u>New York</u>
Taxes	<input type="checkbox"/> Seller Pays Before and At Delivery Point	<b>Section 14.10</b>	<input checked="" type="checkbox"/> Confidentiality applies (default)
		Confidentiality	<input type="checkbox"/> Confidentiality does not apply
<input checked="" type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: <u>7</u>			
<input type="checkbox"/> <b>Addendum(s):</b>			

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

**LOUISVILLE GAS AND ELECTRIC COMPANY**

**BG ENERGY MERCHANTS, LLC**

By David S. Sinclair  
 Name: David S. Sinclair  
 Title: Vice President – Energy Marketing

By Matthew Schatzman  
 Name: Matthew Schatzman  
 Title: President

**KENTUCKY UTILITIES COMPANY**

By David S. Sinclair  
 Name: David S. Sinclair  
 Title: Vice President – Energy Marketing

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NAESB Standard 6.3.1  
 April 19, 2002

**AMENDMENT  
to the  
NATURAL GAS AND SALES PURCHASE AGREEMENT**

Reference is made to (a) the Natural Gas and Sales Purchase Agreement dated as of June 1, 2002 (as amended, supplemented or otherwise modified from time to time, the "Agreement"), entered into by and between BNP Paribas Energy Trading GP (formerly known as Fortis Energy Marketing & Trading GP) ("BNPP ET") and Louisville Gas and Electric Company (the "Counterparty"), and (b) the Consent, Termination, Release and Amendment Agreement dated effective as of April 1, 2011 (the "Consent Agreement") among Fortis Bank S.A./N.V. ("Fortis Bank"), BNP Paribas, BNP Paribas Energy Trading GP, BNP Paribas Energy Trading Canada Corp. and the Counterparty.

Unless otherwise defined in this Amendment (this "Amendment"), terms defined in the Agreement and used in this Amendment shall have the meanings ascribed to them in the Agreement.

Effective April 1, 2011 (the "Effective Date"), the parties hereby amend the Agreement as follows:

1. Each and every reference in the Agreement to Fortis Energy Marketing & Trading GP, or a predecessor entity thereto, or any reference of similar import or substance shall be deemed instead to be a reference to BNP Paribas Energy Trading GP.

2. Except as amended hereby, all terms and conditions of the Agreement shall remain in full force and effect. The amendments contained herein shall be part of the Agreement, all references to the Agreement in the Agreement and any related documents shall be deemed to refer to the Agreement as amended by the amendments set forth herein, and the term "this Agreement", and the words "hereof", "herein", "hereunder" and words of similar import, as used in the Agreement, shall mean the Agreement as amended hereby.

3. This Amendment may be executed and delivered in counterparts (including by facsimile or other electronic transmission), each of which, taken together, will be deemed one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment by facsimile or other electronic means shall be as effective as delivery of an originally executed counterpart of this Amendment.

4. This Amendment is executed pursuant to the Agreement and shall (unless otherwise expressly indicated therein) be construed, administered and applied in accordance with all of the terms and provisions of the Agreement, as amended hereby. **THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION THAT GOVERN THE AGREEMENT.**

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: August 18, 2014

The parties to this Base Contract are the following:

PARTY A Cargill, Incorporated	PARTY NAME	PARTY B Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")
9350 Excelsior Blvd; MS# 150 Hopkins, MN 55343	ADDRESS	220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
<a href="http://www.cargill.com">www.cargill.com</a>	BUSINESS WEBSITE	<a href="http://www.lge-ku.com">www.lge-ku.com</a>
	CONTRACT NUMBER	N/A
00-624-9189	D-U-N-S® NUMBER	LGE 00-694-5505 KU 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 41-0177680 <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247 <input type="checkbox"/> OTHER:
Delaware	JURISDICTION OF ORGANIZATION	Kentucky
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:
	GUARANTOR (IF APPLICABLE)	
<b>CONTACT INFORMATION</b>		
840 W. Sam Houston Parkway, Suite 300 Houston, TX 77024 ATTN: Paul Park TEL#: 713-403-4961      FAX#: 713-461-8646 EMAIL:	▪ COMMERCIAL	LGE/KU ATTN: <u>Trading Manager Gas</u> TEL#: 602-627-4269      FAX#: 602-627-4655 EMAIL:
840 W. Sam Houston Parkway, Suite 300 Houston, TX 77024 ATTN: Stacie Pogue TEL#: 713-932-2323      FAX#: 713-461-8646 EMAIL:	▪ SCHEDULING	LGE/KU ATTN: <u>Gas Scheduling</u> TEL#: 602-627-3034      FAX#: 602-627-4655 EMAIL:
9350 Excelsior Blvd, MS# 150, Hopkins, MN 55343 ATTN: ETM Contract Manager TEL#: 952-984-3090      FAX#: 952-984-3627 EMAIL:	▪ CONTRACT AND LEGAL NOTICES	LGE/KU ATTN: <u>Contract Administration</u> 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 TEL#: 602-627-4197 or 4253 FAX#: 602-627-4222 With Add'l Notice of Default Attn: General Counsel, 15th FL Add'l Notice of Default Fax# 602-627-3950 EMAIL: N/A
9350 Excelsior Blvd, MS# 150, Hopkins, MN 55343 ATTN: ETM Credit Relationship Manager TEL#: 952-984-3975      FAX#: 952-249-4216 EMAIL:	▪ CREDIT	LGE/KU ATTN: <u>Manager Credit</u> TEL#: 602-627-4253      FAX#: 602-627-3950 EMAIL: N/A
9350 Excelsior Blvd, MS# 150, Hopkins, MN 55343 ATTN: Natural Gas Confirmations Dept. TEL#: 952-984-3538      FAX#: 952-367-1575 EMAIL:	▪ TRANSACTION CONFIRMATIONS	LGE/KU ATTN: <u>Contract Administration</u> TEL#: 602-627-4197 or 2252 FAX#: 602-627-4222 EMAIL: N/A
<b>ACCOUNTING INFORMATION</b>		
9350 Excelsior Blvd, MS# 150, Hopkins, MN 55343 ATTN: Natural Gas Accounting TEL#: 952-984-4055 / 3349 FAX#: 952-367-1552 EMAIL:	▪ INVOICES ▪ PAYMENTS ▪ SETTLEMENTS	LGE/KU ATTN: <u>Gas Regulatory Accounting</u> TEL#: 602-627-3726      FAX#: 602-627-3800 EMAIL: N/A
BANK: JP Morgan Chase Bank ABA: 021000021      ACCT: 910-2-714038 OTHER DETAILS: For the Account of	WIRE TRANSFER NUMBERS (IF APPLICABLE)	BANK: Bank of America, New York, NY. ABA: 0260-0969-3      ACCT: 3752099133 OTHER DETAILS:
BANK: ABA:      ACCT:      OTHER DETAILS: For the Account of	ACH NUMBERS (IF APPLICABLE)	BANK: Bank of America, Dallas TX ABA: 111000012      ACCT: 3752099133 OTHER DETAILS: N/A
ATTN: ADDRESS:	CHECKS (IF APPLICABLE)	LGE/KU ATTN: <u>Gas Regulatory Accounting</u> ADDRESS: 220 W Main St., 9th FL Louisville KY 40202

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "LOUIS DREYFUS HIGHBRIDGE ENERGY LLC", CHANGING ITS NAME FROM "LOUIS DREYFUS HIGHBRIDGE ENERGY LLC" TO "CASTLETON COMMODITIES INTERNATIONAL LLC", FILED IN THIS OFFICE ON THE THIRTY-FIRST DAY OF DECEMBER, A.D. 2012, AT 1:11 O'CLOCK P.M.

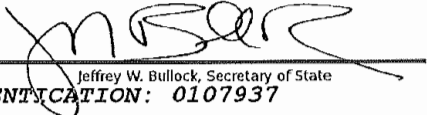
AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AMENDMENT IS THE FIRST DAY OF JANUARY, A.D. 2013.

3395812 8100

121408372

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



  
Jeffrey W. Bullock, Secretary of State

AUTHENTICATION: 0107937

DATE: 12-31-12

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: 11-11-13

The parties to this Base Contract are the following:

PARTY A CENTRAL CRUDE, INC	PARTY NAME	PARTY B Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")
10370 Richmond Ave., Suite 525 Houston, TX 77042	ADDRESS	220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
www.centralcrude.com	BUSINESS WEBSITE	www.lge-ku.com
	CONTRACT NUMBER	N/A
07415-5573	D-U-N-S® NUMBER	LGE 00-694-5505 KU 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 72-0806442 <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
	JURISDICTION OF ORGANIZATION	Kentucky
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
	GUARANTOR (IF APPLICABLE)	
CONTACT INFORMATION		
10370 Richmond Ave., Suite 525, Houston, TX 77042-4182 ATTN: <u>William (Bill) Clemons</u> TEL#: <u>713.783.2187 x 1220</u> FAX#: <u>713.783.5260</u> EMAIL: <u>billc@centralcrude.com</u>	• COMMERCIAL	LGE/KU ATTN: <u>Trading Manager Gas</u> TEL#: <u>502-627-4210</u> FAX#: <u>502-627-4655</u> EMAIL: _____
10370 Richmond Ave., Suite 525, Houston, TX 77042-4182 ATTN: <u>Michelle Lawrence</u> TEL#: <u>713.783.2187 x 1212</u> FAX#: <u>713.783.5260</u> EMAIL: <u>mlawrence@centralcrude.com</u>	• SCHEDULING	LGE/KU ATTN: <u>Gas Scheduling</u> TEL#: <u>502-627-3034</u> FAX#: <u>502-627-4655</u> EMAIL: _____
10370 Richmond Ave., Suite 525, Houston, TX 77042-4182 ATTN: <u>William (Bill) Clemons</u> TEL#: <u>713.783.2187 x 1220</u> FAX#: <u>713.783.5280</u> EMAIL: <u>billc@centralcrude.com</u>	• CONTRACT AND LEGAL NOTICES	LGE/KU ATTN: <u>Contract Administration</u> 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 TEL#: <u>502-627-4197</u> or <u>4253</u> FAX#: <u>502-627-4222</u> With Add'l Notice of Default Attn: <u>General Counsel, 15<sup>th</sup> FL</u> Add'l Notice of Default Fax# <u>502-627-4253</u> EMAIL: <u>N/A</u>
Central Crude, Inc. PO Box 1863, Lake Charles LA 70602 ATTN: <u>Kevin Dufrene</u> TEL#: <u>337-436-1000 x1126</u> FAX#: <u>337-436-9602</u> EMAIL: <u>Kevin@centralcrude.com</u>	• CREDIT	LGE/KU ATTN: <u>Manager Credit</u> TEL#: <u>502-627-4253</u> FAX#: <u>502-627-3950</u> EMAIL: <u>N/A</u>
10370 Richmond Ave., Suite 525, Houston, TX 77042-4182 ATTN: <u>Shawn Dorn</u> TEL#: <u>713.783.2187 x 1223</u> FAX#: <u>713.783.5260</u> EMAIL: <u>sdorn@centralcrude.com</u>	• TRANSACTION CONFIRMATIONS	LGE/KU ATTN: <u>Contract Administration</u> TEL#: <u>502-627-4197</u> or <u>2252</u> FAX#: <u>502-627-4222</u> EMAIL: <u>N/A</u>
ACCOUNTING INFORMATION		
Central Crude, Inc. PO Box 1863, Lake Charles LA 70602 ATTN: <u>Dallas Wilks</u> TEL#: <u>337-436-1000 x1127</u> FAX#: <u>337-436-9602</u> EMAIL: <u>dallas@centralcrude.com</u>	• INVOICES • PAYMENTS • SETTLEMENTS	LGE/KU ATTN: <u>Gas Regulatory Accounting</u> TEL#: <u>502-627-3239</u> FAX#: <u>502-627-3800</u> EMAIL: <u>N/A</u>
BANK: <u>Capital One Bank, Lake Charles, LA</u> ABA: <u>065000090</u> ACCT: <u>0102044701</u> OTHER DETAILS: _____	WIRE TRANSFER NUMBERS (IF APPLICABLE)	BANK: <u>Bank of America, New York, NY.</u> ABA: <u>0260-0959-3</u> ACCT: <u>3752099133</u> OTHER DETAILS: _____
BANK: <u>Capital One Bank, Lake Charles, LA</u> ABA: <u>065000090</u> ACCT: <u>0102044701</u> OTHER DETAILS: _____	ACH NUMBERS (IF APPLICABLE)	BANK: <u>Bank of America, Dallas TX</u> ABA: <u>111000012</u> ACCT: <u>3752099133</u> OTHER DETAILS: <u>N/A</u>
ATTN: <u>Tina Clark</u> ADDRESS: <u>Central Crude, Inc. P.O. Box 1863, Lake Charles, LA 70602</u>	CHECKS (IF APPLICABLE)	LGE/KU ATTN: <u>Gas Regulatory Accounting</u> ADDRESS: <u>220 W Main St., 9th Fl</u> <u>Louisville KY 40202</u>

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NAESB Standard 6.3.1  
September 5, 2006

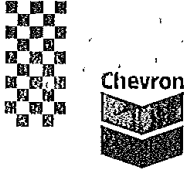
## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: November 1, 2011

The parties to this Base Contract are the following:

<b>PARTY A</b> Chesapeake Energy Marketing, Inc.	<b>PARTY NAME</b>	<b>PARTY B</b> Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")
P.O. Box 18496 Oklahoma City, OK 73164-0496	<b>ADDRESS</b>	220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
<a href="http://www.chk.com">www.chk.com</a>	<b>BUSINESS WEBSITE</b>	<a href="http://www.lge-ku.com">www.lge-ku.com</a>
	<b>CONTRACT NUMBER</b>	N/A
<b>80-984-9326</b>	<b>D-U-N-S® NUMBER</b>	LGE 00-694-5505 / KU 00-694-4398
<input checked="" type="checkbox"/> US FEDERAL: 73-1439175 <input type="checkbox"/> OTHER:	<b>TAX ID NUMBERS</b>	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
<b>Oklahoma</b>	<b>JURISDICTION OF ORGANIZATION</b>	Kentucky
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:	<b>COMPANY TYPE</b>	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:
	<b>GUARANTOR (IF APPLICABLE)</b>	N/A
<b>CONTACT INFORMATION</b>		
<b>ATTN: Gas Marketing</b> TEL#: 405-935-8000    FAX#: 405-879-9575 EMAIL: _____	▪ <b>COMMERCIAL</b>	<b>ATTN: Trading Manager Gas</b> TEL#: 502-627-4210    FAX#: 502-627-4655 EMAIL: _____
<b>ATTN: Gas Marketing</b> TEL#: 405-935-8000    FAX#: 405-879-9575 EMAIL: _____	▪ <b>SCHEDULING</b>	<b>ATTN: Gas Scheduling</b> TEL#: 502-627-3034(502) 627-3034    FAX#: 502-627-4655 EMAIL: _____
<b>ATTN: Contract Administration</b> TEL#: 405-935-8000    FAX#: 405-849-0034 EMAIL: ContractAdmin@chk.com	▪ <b>CONTRACT AND LEGAL NOTICES</b>	<b>LGE/KUATTN: Contract Administration</b> 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 TEL#: 502-627-4197 or 4253    FAX#: 502-627-4222 With Add'l Notice of Default Attn: General Counsel, 15 <sup>th</sup> FL Add'l Notice of Default Fax# 502-627-4253 EMAIL: N/A
<b>ATTN: Treasury</b> TEL#: 405-935-8000    FAX#: N/A EMAIL: _____	▪ <b>CREDIT</b>	<b>LGE/KU</b> <b>ATTN: Manager Credit</b> TEL#: 502-627-4253    FAX#: 502-627-3950 EMAIL: N/A
<b>ATTN: Contract Administration</b> TEL#: 405-935-8000    FAX#: 405-879-9575 EMAIL: _____	▪ <b>TRANSACTION CONFIRMATIONS</b>	<b>LGE/KU</b> <b>ATTN: Contract Administration</b> TEL#: 502-627-4197 or 2252    FAX#: 502-627-4222 EMAIL: N/A
<b>ACCOUNTING INFORMATION</b>		
<b>ATTN: CEMI Accounting</b> TEL#: 405-935-8000    FAX#: 405-849-0034 EMAIL: _____	▪ <b>INVOICES</b> ▪ <b>PAYMENTS</b> ▪ <b>SETTLEMENTS</b>	<b>LGE/KU</b> <b>ATTN: Financial Accounting &amp; Analysis</b> TEL#: 502-627-3686    FAX#: 502-627-3800 EMAIL: N/A
<b>BANK: Comerica Bank, NA</b> ABA: 111000753    ACCT: 1881486029 OTHER DETAILS: For the Account of _____	<b>WIRE TRANSFER NUMBERS (IF APPLICABLE)</b>	<b>BANK: Bank of America, New York, NY.</b> ABA: 0260-0959-3    ACCT: 3752099133 OTHER DETAILS: _____
<b>BANK:</b> ABA:    ACCT:    OTHER DETAILS: For the Account of _____	<b>ACH NUMBERS (IF APPLICABLE)</b>	<b>BANK: Bank of America, Dallas TX</b> ABA: 111000012    ACCT: 3752099133 OTHER DETAILS: N/A





Julie Durham  
Contract Administrator

Chevron Natural Gas,  
a division of Chevron U.S.A. Inc.  
1500 Louisiana St. - 3<sup>rd</sup> Floor  
Houston, TX 77002  
832-854-5107  
832-854-3292  
jdur@chevron.com

May 12, 2005

Contract Administrator,

Per our letter dated May 9, 2005, the name of ChevronTexaco Natural Gas, a division of Chevron U.S.A. Inc., was changed, effective as of May 9, 2005, to Chevron Natural Gas, a division of Chevron U.S.A. Inc. There has been no change in the name or organizational status of the underlying legal entity, Chevron U.S.A. Inc. The division name changes were accomplished by amending the By-Laws of Chevron U.S.A. Inc., and a copy of the amended By-Laws showing the new name of each division is enclosed for your file.

If you have any questions, please contact me at 832-854-5107.

Sincerely,

A handwritten signature in cursive script that reads 'Julie Durham'.  
Julie Durham

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: January 19, 2009. The parties to this Base Contract are the following:

Louisville Gas and Electric Co./Kentucky Utilities Co. ("LGE"/"KU") and  
220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Duns Number: LGE 00-694-5505/ KU 00-694-4398  
 Contract Number: Not Applicable  
 U.S. Federal Tax ID No.: LGE 61-0264150/KU 61-0247570

CIMA ENERGY, LTD.  
1221 McKinney Ave, Suite 4150, Houston, Texas 77010  
 Duns Number: 945-60-1599  
 Contract Number: B-0901-LOU-0750  
 U.S. Federal Tax ID No.: 76-0501884

**Notices:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502/627-4251 or 4197 Fax: 502/627-4222

Same as above  
 Attn: Contract Administration  
 Phone: 713.209.1112 Fax: 713.759.1186

**Confirmations:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502/627-4197 Fax: 502/627-4222

Same as above  
 Attn: Confirmation Dept  
 Phone: 713.209.1112 Fax: 713.739.6602

**Invoices and Payments:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Gas Accounting  
 Phone: 502/627-4627 Fax: 502/627-3800

Same as above  
 Attn: Gas Accounting  
 Phone: 713.209.1112 Fax: 713.759.1186

**Wire Transfer or ACH Numbers (if applicable):**

ACH ONLY:  
 BANK: Bank of America, Dallas, TX  
 ABA: 111-0000-12  
 ACCT: 3752099133  
 Other Details: \_\_\_\_\_

BANK: Compass Bank  
 ABA: 113010547  
 ACCT: 86770423  
 Other Details: \_\_\_\_\_

WIRES ONLY:

BANK: Bank of America, New York, NY  
 ABA: 0260-0959-3  
 ACCT: 3752099133  
 Other Details: \_\_\_\_\_

BANK: \_\_\_\_\_  
 ABA: \_\_\_\_\_  
 ACCT: \_\_\_\_\_  
 Other Details: \_\_\_\_\_

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 only one box from each section:**

<b>Section 1.2</b> Transaction Procedure	<input checked="" type="checkbox"/> Oral (default) <input type="checkbox"/> Written	<b>Section 7.2</b> Payment Date	<input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) <input type="checkbox"/> _____ Day of Month following Month of delivery
<b>Section 2.5</b> Confirm Deadline	<input checked="" type="checkbox"/> 2 Business Days after receipt (default) <input type="checkbox"/> _____ Business Days after receipt	<b>Section 7.2</b> Method of Payment	<input checked="" type="checkbox"/> Wire transfer (default) AND <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check
<b>Section 2.6</b> Confirming Party	<input type="checkbox"/> Seller (default) <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> LGE/KU	<b>Section 7.7</b> Netting	<input checked="" type="checkbox"/> Netting applies (default) <input type="checkbox"/> Netting does not apply
<b>Section 3.2</b> Performance Obligation	<input checked="" type="checkbox"/> Cover Standard (default) <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages	<input checked="" type="checkbox"/> Early Termination Damages Apply (default) <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>		<b>Section 10.3.2</b> Other Agreement Setoffs	<input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 2.26</b> Spot Price Publication	<input checked="" type="checkbox"/> Gas Daily Midpoint (default) <input type="checkbox"/> _____	<b>Section 14.5</b> Choice Of Law	_____ New York _____
<b>Section 6</b> Taxes	<input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) <input type="checkbox"/> Seller Pays Before and At Delivery Point	<b>Section 14.10</b> Confidentiality	<input checked="" type="checkbox"/> Confidentiality applies (default) <input type="checkbox"/> Confidentiality does not apply
X Special Provisions Number of sheets attached: 8 Addendum(s): _____			

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: August 17, 2011

The parties to this Base Contract are the following:

<b>PARTY A or "CEI"</b> <b>CITIGROUP ENERGY INC.</b>	<b>PARTY NAME</b>	<b>PARTY B</b> <b>Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")</b>
2800 Post Oak Blvd. Suite 500 Houston, TX 77056	<b>ADDRESS</b>	220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
<a href="http://www.citi.com">www.citi.com</a>	<b>BUSINESS WEBSITE</b>	<a href="http://www.lge-ku.com">www.lge-ku.com</a>
	<b>CONTRACT NUMBER</b>	N/A
14-518-4631	<b>D-U-N-S® NUMBER</b>	LGE 00-694-5505 / KU 00-694-4398
<input checked="" type="checkbox"/> US FEDERAL: 27-0069674 <input type="checkbox"/> OTHER:	<b>TAX ID NUMBERS</b>	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
Delaware	<b>JURISDICTION OF ORGANIZATION</b>	Kentucky for each Party A
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:	<b>COMPANY TYPE</b>	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:
Citigroup Inc.	<b>GUARANTOR (IF APPLICABLE)</b>	N/A
<b>CONTACT INFORMATION</b>		
<b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____	▪ <b>COMMERCIAL</b>	<b>ATTN:</b> <u>Trading Manager Gas</u> <b>TEL#:</b> 502-627-4259 <b>FAX#:</b> 502-627-4655 <b>EMAIL:</b> _____
<b>ATTN:</b> <u>Kristy Cude</u> <b>TEL#:</b> 713-693-6830 <b>FAX#:</b> 713-762-5237 <b>EMAIL:</b> <a href="mailto:kristy.m.cude@citi.com">kristy.m.cude@citi.com</a>	▪ <b>SCHEDULING</b>	<b>ATTN:</b> <u>Gas Scheduling</u> <b>TEL#:</b> 502-627-3034(502) 627-3034 <b>FAX#:</b> 502-627-4655 <b>EMAIL:</b> _____
<b>ATTN:</b> <u>Legal Department</u> <b>TEL#:</b> _____ <b>FAX#:</b> 713-752-5244 2800 Post Oak Blvd., Suite 500 Houston, TX 77056  Any notice regarding Section 10.2 shall also be sent to: <b>ATTN:</b> <u>Legal Department</u> <u>Senior Deputy General Counsel</u> <u>Citi Markets and Banking</u> <u>388 Greenwich Street, 17<sup>th</sup> Floor</u> <u>New York, NY 10013</u> <b>FAX#:</b> 212-816-5550	▪ <b>CONTRACT AND LEGAL NOTICES</b>	<b>LGE/KUATTN:</b> <u>Contract Administration</u> 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 <b>TEL#:</b> 502-627-4197 or 4253 <b>FAX#:</b> 502-627-4222 With Add'l Notice of Default Attn: <u>General Counsel, 15<sup>th</sup> FL</u> Add'l Notice of Default Fax# 502-627-4253 <b>EMAIL:</b> <u>N/A</u>
<b>ATTN:</b> <u>Credit Risk Management</u> <b>TEL#:</b> 713-762-5227 <b>FAX#:</b> 713-762-5244 <b>EMAIL:</b> _____	▪ <b>CREDIT</b>	<b>LGE/KU</b> <b>ATTN:</b> <u>Manager Credit</u> <b>TEL#:</b> 502-627-4253 <b>FAX#:</b> 502-627-3950 <b>EMAIL:</b> <u>N/A</u>
<b>ATTN:</b> <u>Commodity Operations Group</u> <b>TEL#:</b> 713-762-5428 <b>FAX#:</b> 646-291-3381 <b>EMAIL:</b> <a href="mailto:ceiconfirms@citi.com">ceiconfirms@citi.com</a>	▪ <b>TRANSACTION CONFIRMATIONS</b>	<b>LGE/KU</b> <b>ATTN:</b> <u>Contract Administration</u> <b>TEL#:</b> 602-627-4197 or 2252 <b>FAX#:</b> 502-627-4222 <b>EMAIL:</b> <u>N/A</u>
<b>ACCOUNTING INFORMATION</b>		
<b>ATTN:</b> <u>Commodity Operations Group</u> <b>TEL#:</b> 713-762-5417 <b>FAX#:</b> 646-291-3381 <b>EMAIL:</b> <a href="mailto:ceissettlements@citi.com">ceissettlements@citi.com</a>	▪ <b>INVOICES</b> ▪ <b>PAYMENTS</b> ▪ <b>SETTLEMENTS</b>	<b>LGE/KU</b> <b>ATTN:</b> <u>Financial Accounting &amp; Analysis, 10<sup>th</sup> FL</u> <b>TEL#:</b> 502-627-4326 <b>FAX#:</b> 502-627-3800 <b>EMAIL:</b> <u>N/A</u>

Contract No. 10126

Customer's Legal  
Corporate Name: KENTUCKY UTILITIES CO INC

Customer DBA: KENTUCKY UTILITIES

Customer Group:(Name) \_\_\_\_\_ (Number) \_\_\_\_\_

Billing Address: 220 West Main St, PO Box 32010 Louisville Kentucky 40232  
Street City State Zip Code

Telephone No. (502) 627-2367 Contact Person/Title: Gerhard Haimberger, Dir. Fuels Management  
Gas Source Information: Marketer(s) or Producer(s): ALLIANCE ENERGY SERVICES, INC.

**SERVICE AGREEMENT FOR GAS TRANSPORTATION (DS or MLDS)**

THIS AGREEMENT, made and entered into as of the 30 day of September, 1999, by and  
between **COLUMBIA GAS OF KENTUCKY, INC.** ("Company"), and KENTUCKY UTILITIES CO INC  
("Customer")

**WITNESSETH:** That in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**Section 1. Transportation Service to be Rendered.**

In accordance with the provisions of the effective applicable transportation rate schedule of Company's Tariff, on file with the Public Service Commission of Kentucky, and the terms and conditions herein contained, Company shall receive the quantities of gas requested by Customer to be transported and shall redeliver said gas to Customer's facilities. The point(s) of receipt, Customer facility Location, the applicable Rate Schedule, and the service and Levels of said services to be rendered, shall be set forth in Section 7 of this Agreement.

**Section 2. Incorporation of Tariff Provisions.**

This Agreement in all respects shall be subject to the Company's Terms, Conditions, Rules and Regulations as contained in the tariff, as the same may be amended or superseded from time-to-time, which are incorporated herein by reference and made a part hereof.

**Section 3. Regulation.**

This Agreement is contingent upon the receipt and continuation of all necessary regulatory approvals and authorizations. This Agreement shall become void or expire, as appropriate, if any necessary regulatory approval or authorization is not so received or continued.

**Section 4. Term.**

This Agreement shall become effective as of the first day of Customer's next billing cycle following its execution and shall continue through the Last day of Customer's October billing cycle, provided, however, that the Agreement shall continue in effect after that date on a year-to-year basis with each term ending on the last day of Customers October billing cycle. Either party may terminate this Agreement upon written notice thirty (30) days prior to each successive anniversary date hereof.

**Section 5. Notices.**

Any notices, except those relating to billing or interruption of service, required or permitted to be given hereunder shall be effective only if delivered personally to an officer or authorized representative of the party being notified, or if mailed by certified mail to the address provided in Section 7 of this Agreement.

**Section 6. Cancellation of Prior Agreements**

This Agreement supersedes and cancels, as of the effective date hereof, all previous two party transportation agreements between the parties for service to Customer's facilities served hereunder.

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: June 9, 2003. The parties to this Base Contract are the following:

Louisville Gas & Electric Co./Kentucky Utilities Co. ("LGE/KU")  
 220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Contract Number: Not Applicable  
 U.S. Federal Tax ID No: LGE 61-0264150/KU 61-0247570

Colonial Energy, Inc.  
 3975 Fair Ridge Drive, Suite T-10 North, Fairfax, VA 22033  
 Contract Number:  
 U.S. Federal Tax ID No.: 58-2209516

**Notices:**

200 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502/627-4251 Fax: 502/627-4222

3975 Fair Ridge Drive, Suite T-10 North, Fairfax, VA 22033  
 Attn: Brian M. Kelly, Executive Vice President  
 Phone: 703-218-2451 Fax: 703-218-3058

**Confirmations:**

200 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502/627-4251 Fax: 502/627-4222

3975 Fair Ridge Drive, Suite T-10 North, Fairfax, VA 22033  
 Attn: Brian M. Kelly, Executive Vice President  
 Phone: 703-218-2451 Fax: 703-218-3058

**Invoices and Payments:**

200 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Gas Accounting  
 Phone: 502/627-4627 Fax: 502/627-3800

3975 Fair Ridge Drive, Suite T-10 North, Fairfax, VA 22033  
 Attn: Gas Accounting  
 Phone: 703-218-3048 Fax: 703-218-3059  
 Payments: P.O. Box 277924, Atlanta, GA 30384

**Wire Transfer or ACH Numbers (if applicable):**

BANK: PNC Bank, Pittsburgh, PA  
 ABA: 043-0000-96  
 ACCT: 1008270544  
 Other Details:

BANK: Bank of America, Atlanta, GA  
 ABA: 061-0000-52  
 ACCT: 325-038-9931  
 Other Details:

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 only one box from each section:

<b>Section 1.2</b> Transaction Procedure	<input checked="" type="checkbox"/> Oral (default) <input type="checkbox"/> Written	<b>Section 7.2</b> Payment Date	<input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) <input type="checkbox"/> _____ Day of Month following Month of delivery
<b>Section 2.5</b> Confirm Deadline	<input checked="" type="checkbox"/> 2 Business Days after receipt (default) <input type="checkbox"/> _____ Business Days after receipt	<b>Section 7.2</b> Method of Payment	<input checked="" type="checkbox"/> Wire transfer (default) <input type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check
<b>Section 2.6</b> Confirming Party	<input checked="" type="checkbox"/> Seller (default) <input type="checkbox"/> Buyer <input type="checkbox"/> LGE/KU	<b>Section 7.7</b> Netting	<input checked="" type="checkbox"/> Netting applies (default) <input type="checkbox"/> Netting does not apply
<b>Section 3.2</b> Performance Obligation	<input checked="" type="checkbox"/> Cover Standard (default) <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages	<input checked="" type="checkbox"/> Early Termination Damages Apply (default) <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>		<b>Section 10.3.2</b> Other Agreement Setoffs	<input type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 2.26</b> Spot Price Publication	<input checked="" type="checkbox"/> Gas Daily Midpoint (default) <input type="checkbox"/> _____	<b>Section 14.5</b> Choice Of Law	_____ Kentucky _____
<b>Section 6</b> Taxes	<input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) <input type="checkbox"/> Seller Pays Before and At Delivery Point	<b>Section 14.10</b> Confidentiality	<input checked="" type="checkbox"/> Confidentiality applies (default) <input type="checkbox"/> Confidentiality does not apply
<b>X Special Provisions</b> Number of sheets attached: 7 pages <b>X Addendum(s):</b> _____			

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

**LOUISVILLE GAS & ELECTRIC CO./KENTUCKY UTILITIES CO**  
 Party Name

**COLONIAL ENERGY, INC.**  
 Party Name

By M. Gallus  
 Name: MARTIN GALLUS  
 Title: SR. VICE PRESIDENT  
 LOUISVILLE GAS & ELECTRIC COMPANY

By B. Kelly  
 Name: Brian M. Kelly  
 Title: Executive Vice President

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: **April 16, 2003**. The parties to this Base Contract are the following:

Louisville Gas & Electric Co./Kentucky Utilities Co. ("LGE/KU") and  
200 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Contract Number: Not Applicable  
 U.S. Federal Tax ID No: LGE 61-0264150/KU 61-0247570

Concord Energy LLC  
165 Union Blvd., Suite 610, Lakewood Colorado 80228  
 Contract Number: \_\_\_\_\_  
 U.S. Federal Tax ID No.: 47-0872913

**Notices:**

200 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502/627-4251 Fax: 502/627-4222

165 Union Blvd., Suite 610, Lakewood Colorado 80228  
 Attn: Contract Administration  
 Phone: 303 468 1247 Fax: 303 468 1901

**Confirmations:**

200 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502/627-4251 Fax: 502/627-4222

165 Union Blvd., Suite 610, Lakewood Colorado 80228  
 Attn: Risk Management  
 Phone: 303 468-1247 Fax: 303 468 1901

**Invoices and Payments:**

200 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Gas Accounting  
 Phone: 502/627-4627 Fax: 502/627-3800

165 Union Blvd., Suite 610, Lakewood Colorado 80228  
 Attn: Gas Accounting  
 Phone: 303 468-1247 Fax: 303 468 1901

**Wire Transfer or ACH Numbers (if applicable):**

BANK: PNC Bank, Pittsburgh, PA  
 ABA: 043-0000-96  
 ACCT: 1008270544  
 Other Details: \_\_\_\_\_

BANK: BNP Paribas, New York, NY  
 ABA: 026007689  
 ACCT: 200-600445-001-72  
 Other Details: \_\_\_\_\_

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 only one box from each section:

<b>Section 1.2</b> Transaction Procedure	<input checked="" type="checkbox"/> Oral (default) <input type="checkbox"/> Written	<b>Section 7.2</b> Payment Date	<input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) <input type="checkbox"/> _____ Day of Month following Month of delivery
<b>Section 2.5</b> Confirm Deadline	<input checked="" type="checkbox"/> 2 Business Days after receipt (default) <input type="checkbox"/> _____ Business Days after receipt	<b>Section 7.2</b> Method of Payment	<input checked="" type="checkbox"/> Wire transfer (default) <input type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check
<b>Section 2.6</b> Confirming Party	<input type="checkbox"/> Seller (default) <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> LGE/KU	<b>Section 7.7</b> Netting	<input checked="" type="checkbox"/> Netting applies (default) <input type="checkbox"/> Netting does not apply
<b>Section 3.2</b> Performance Obligation	<input checked="" type="checkbox"/> Cover Standard (default) <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages	<input checked="" type="checkbox"/> Early Termination Damages Apply (default) <input type="checkbox"/> Early Termination Damages Do Not Apply
<i>Note: The following Spot Price Publication applies to both of the immediately preceding.</i>		<b>Section 10.3.2</b> Other Agreement Setoffs	<input type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 2.26</b> Spot Price Publication	<input checked="" type="checkbox"/> Gas Daily Midpoint (default) <input type="checkbox"/> _____	<b>Section 14.5</b> Choice Of Law	<u>New York</u>
<b>Section 6</b> Taxes	<input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) <input type="checkbox"/> Seller Pays Before and At Delivery Point	<b>Section 14.10</b> Confidentiality	<input checked="" type="checkbox"/> Confidentiality applies (default) <input type="checkbox"/> Confidentiality does not apply
<input checked="" type="checkbox"/> Special Provisions Number of sheets attached: <input type="checkbox"/> Addendum(s): _____			

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

**LOUISVILLE GAS & ELECTRIC CO./KENTUCKY UTILITIES CO**  
 Party Name

**CONCORD ENERGY LLC**  
 Party Name

By M. Gallus  
 Name: MARTYN GALLUS  
 Title: SR. VICE PRESIDENT  
LOUISVILLE GAS & ELECTRIC COMPANY  
KENTUCKY UTILITIES

By Shawn T. McLaughlin  
 Name: Shawn T. McLaughlin  
 Title: Manager

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NAESB Standard 6.3.1  
 April 19, 2002









March 24, 2014

Louisville Gas and Electric Company and Kentucky Utilities Company (“Company”)  
glenn.flood@lge-ku.com

To whom it may concern:

Reference is made to the Consent Agreement or other agreement providing that Hess Energy Marketing, LLC (“HEM”) will notify the Company of the “Assignment Effective Date” upon which the Company’s contract(s) and/or transaction(s), as applicable, with Hess Corporation will be assigned from Hess Corporation to HEM as further provided in such Consent Agreement or other agreement (the “Assignment”).

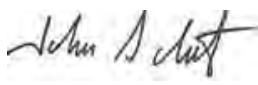
Unless HEM notifies the Company to the contrary prior to such date, **the Assignment Effective Date shall be 11:59:59 p.m. (Eastern Daylight Time) on March 31, 2014.** Please note that if HEM has requested that the Company activate HEM on ICE, please be sure to confirm such activation as soon as possible prior to the Assignment Effective Date to avoid any potential disruption of future transactions.

Furthermore, if any of the contract(s) and/or transaction(s) being so assigned constitute “swaps” reported to a “swap data repository” (such contract(s) and/or transaction(s) being the “Swaps”) under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as amended, and the regulations thereunder, then HEM hereby provides notice to the Company that the change in counterparty for the Swaps from Hess Corporation to HEM pursuant to the Assignment constitutes the occurrence of a “life-cycle event” (as that term is defined in CFTC Regulation 45.1) in respect of Hess Corporation and the Swaps and that such “life-cycle event” will be effective upon the Assignment Effective Date.

The W-9 applicable for HEM may be found at <https://www.hessenergy.com/pdf/W9.pdf>, and additional contact and notice information for HEM, as well as HEM’s CICI/LEI, may be found on Exhibit A attached hereto.

Should you have any questions or concerns, or require additional information regarding HEM, please contact the HEM Wholesale Consent team at [HEMWholesaleConsent@directenergy.com](mailto:HEMWholesaleConsent@directenergy.com).

Sincerely,  
HESS ENERGY MARKETING, LLC

By:   
Name: John Schultz  
Title: Vice President



www.HessEnergy.com | Phone: 1-800-HESS-AOK (1-800-437-7265) | For Questions: qcsteam@hess.com

**THIRD AMENDMENT  
TO THE  
ISDA MASTER AGREEMENT  
between**

**DTE Energy Trading, Inc.  
and  
Louisville Gas and Electric Company/Kentucky Utilities Company**

THIS THIRD AMENDMENT is dated as of **October 7, 2015** (the "Amendment") and made between DTE Energy Trading, Inc. ("Party A") and Louisville Gas and Electric Company/Kentucky Utilities Company ("LG&E"/"KU" or Party B").

WHEREAS, Party A and Party B have previously entered into the ISDA Master Agreement, including the Credit Support Annex, dated as of October 1, 2005, amended on July 1, 2006 and amended February 25, 2014 (collectively, the "Agreement"); and

WHEREAS, upon execution of this Amendment, Party A and Party B now desire to amend the Agreement, as hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Party A and Party B hereto agree as follows:

**1. Amendments to the Schedule to the Agreement.**

Part 5 "**Other Provisions**". The following shall be added to subsection (o) **Party B Liability**:

"Notwithstanding the foregoing, for purposes of the physical Gas Transactions under the Gas Annex dated February 25, 2014, the following shall apply:

LG&E and KU shall be jointly and severally liable for Party B's obligations for Gas Transactions under this Agreement; provided; however, that LG&E and KU together shall not be liable for more than 100% of the total obligation; provided that payments made by either company listed as Party B shall be applicable to the then-outstanding amount due from both companies listed as Party B.

Gas Transactions and Confirmations executed by the parties prior to the effectiveness of this Amendment shall be subject to this Amendment."

**2 Miscellaneous**

(a) This Amendment constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communications and prior writings with respect thereto.

(b) All capitalized terms used in this Amendment (but not defined herein) shall have the same meaning ascribed to them in the Agreement.

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: **January 4, 2016**

The parties to this Base Contract are the following:

PARTY A <i>Eco-Energy, LLC</i>	PARTY NAME	PARTY B Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")
6100 Tower Circle, Suite 500, Franklin, TN 37067	ADDRESS	220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
www.eco-energy.com	BUSINESS WEBSITE	www.lge-ku.com
	CONTRACT NUMBER	N/A
82-949-8971	D-U-N-S® NUMBER	LGE 00-694-5505 KU 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 62-1722312 <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
	JURISDICTION OF ORGANIZATION	Kentucky
<input type="checkbox"/> Corporation <input checked="" type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:
Eco-Energy Global Biofuels LLC	GUARANTOR (IF APPLICABLE)	N/A
<b>CONTACT INFORMATION</b>		
<u>c/o Eco-Energy, LLC</u> 6100 Tower Circle, Suite 500, Franklin, TN 37067 ATTN: <a href="mailto:nq-trading@eco-energy.com">nq-trading@eco-energy.com</a> TEL#: (615) 224-8139 FAX#: (615) 778-2897	• COMMERCIAL	LGE/KU ATTN: <u>Trading Manager Gas</u> TEL#: <b>502-627-4259</b> FAX#: <b>502-627-4655</b> EMAIL:
<u>c/o Eco-Energy, LLC</u> 6100 Tower Circle, Suite 500, Franklin, TN 37067 ATTN: <a href="mailto:nq-scheduling@eco-energy.com">nq-scheduling@eco-energy.com</a> TEL#: (615) 224-8139 FAX#: (615) 778-2897	• SCHEDULING	LGE/KU ATTN: <u>Gas Scheduling</u> TEL#: <b>502-627-3034</b> FAX#: <b>502-627-4655</b> EMAIL:
<u>c/o Eco-Energy, LLC</u> 6100 Tower Circle, Suite 500, Franklin, TN 37067 ATTN: <a href="mailto:contracts@eco-energy.com">contracts@eco-energy.com</a> TEL#: (615) 778-2898 FAX#: (615) 778-2897	• CONTRACT AND LEGAL NOTICES	LGE/KU ATTN: <u>Contract Administration</u> <u>220 W Main St., 7<sup>th</sup> FL, Louisville KY 40202</u> TEL#: <b>502-627-4197 or 4253</b> FAX#: <b>502-627-4222</b> <u>With Add'l Notice of Default Attn: General Counsel, 15<sup>th</sup> FL</u> <u>Add'l Notice of Default Fax# 502-627-3950</u> EMAIL: N/A
<u>c/o Eco-Energy, LLC</u> 6100 Tower Circle, Suite 500, Franklin, TN 37067 ATTN: Nathan Meacham TEL#: (615) 778-2898 FAX#: (615) 778-2897	• CREDIT	LGE/KU ATTN: <u>Manager Credit</u> TEL#: <b>502-627-4253</b> FAX#: <b>502-627-3950</b> EMAIL: N/A
<u>c/o Eco-Energy, LLC</u> 6100 Tower Circle, Suite 500, Franklin, TN 37067 ATTN: <a href="mailto:contracts@eco-energy.com">contracts@eco-energy.com</a> TEL#: (615) 778-2898 FAX#: (615) 778-2897	• TRANSACTION CONFIRMATIONS	LGE/KU ATTN: <u>Contract Administration</u> TEL#: <b>502-627-4197 or 2252</b> FAX#: <b>502-627-4222</b> EMAIL: <a href="mailto:ContractAdmin@lge-ku.com">ContractAdmin@lge-ku.com</a>
<b>ACCOUNTING INFORMATION</b>		
<u>Eco-Energy, LLC</u> ATTN: Lori Bramlett TEL#: (615) 778-2898 FAX#: (615) 778 2897 EMAIL: <a href="mailto:apinvoic@eco-energyinc.com">apinvoic@eco-energyinc.com</a> & <a href="mailto:ar@eco-energyinc.com">ar@eco-energyinc.com</a>	• INVOICES • PAYMENTS • SETTLEMENTS	LGE/KU ATTN: <u>Gas Accounting</u> TEL#: <b>502-627-3731</b> FAX#: <b>502-217-2204</b> EMAIL: <a href="mailto:Gas.Accounting@lge-ku.com">Gas.Accounting@lge-ku.com</a>
BANK: <u>Bank of America</u> ABA: <b>026009593</b> ACCT: <b>4451088020</b> OTHER DETAILS: <u>Swift: BOFAUS33</u>	WIRE TRANSFER NUMBERS (IF APPLICABLE)	BANK: <u>Bank of America, New York, NY</u> ABA: <u>0260-0959-3</u> ACCT: <u>3752099133</u> OTHER DETAILS:

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: August 13, 2012

The parties to this Base Contract are the following:

<b>PARTY A</b> EDF Trading North America, LLC	<b>PARTY NAME</b>	<b>PARTY B</b> Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")
4700 West Sam Houston Parkway North Suite 250 Houston, TX 77041	<b>ADDRESS</b>	220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
<a href="http://www.edftrading.com">www.edftrading.com</a>	<b>BUSINESS WEBSITE</b>	<a href="http://www.lge-ku.com">www.lge-ku.com</a>
	<b>CONTRACT NUMBER</b>	N/A
130385763	<b>D-U-N-S® NUMBER</b>	LGE 00-694-5505 KU 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 30-0464462 <input type="checkbox"/> OTHER:	<b>TAX ID NUMBERS</b>	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
Texas	<b>JURISDICTION OF ORGANIZATION</b>	Kentucky
<input type="checkbox"/> Corporation <input checked="" type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:	<b>COMPANY TYPE</b>	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:
EDF TRADING LIMITED	<b>GUARANTOR (IF APPLICABLE)</b>	N/A
<b>CONTACT INFORMATION</b>		
Same as above ATTN: <u>Gas Desk</u> TEL#: <u>281-781-0333</u> FAX#: <u>281-781-0360</u> EMAIL: _____	• <b>COMMERCIAL</b>	LGE/KU ATTN: <u>Trading Manager Gas</u> TEL#: <u>502-627-4210</u> FAX#: <u>502-627-4655</u> EMAIL: _____
Same as above ATTN: <u>Gas Scheduling</u> TEL#: <u>281-781-0333</u> FAX#: <u>281-781-0360</u> EMAIL: _____	• <b>SCHEDULING</b>	LGE/KU ATTN: <u>Gas Scheduling</u> TEL#: <u>502-627-3034</u> FAX#: <u>502-627-4655</u> EMAIL: _____
Same as above ATTN: <u>Contract Administration</u> TEL#: <u>281-781-0333</u> FAX#: <u>281-653-1454</u> EMAIL: _____	• <b>CONTRACT AND LEGAL NOTICES</b>	LGE/KU ATTN: <u>Contract Administration</u> 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 TEL#: <u>502-627-4197</u> or <u>4263</u> FAX#: <u>502-627-4222</u> With Add'l Notice of Default Attn: <u>General Counsel, 15<sup>th</sup> FL</u> Add'l Notice of Default Fax# <u>502-627-4253</u> EMAIL: _____
Same as above ATTN: <u>Credit Department</u> TEL#: <u>281-781-0333</u> FAX#: <u>281-781-0360</u> EMAIL: _____	• <b>CREDIT</b>	LGE/KU ATTN: <u>Manager Credit</u> TEL#: <u>502-627-4253</u> FAX#: <u>502-627-3950</u> EMAIL: _____
Same as above ATTN: <u>Confirmation Department</u> TEL#: <u>281-781-0333</u> FAX#: <u>281-653-1034</u> EMAIL: <u>gas.invoicing@edftrading.com</u>	• <b>TRANSACTION CONFIRMATIONS</b>	LGE/KU ATTN: <u>Contract Administration</u> TEL#: <u>502-627-4197</u> or <u>2262</u> FAX#: <u>502-627-4222</u> EMAIL: _____
<b>ACCOUNTING INFORMATION</b>		
Same as above ATTN: <u>Gas Accounting</u> TEL#: <u>281-781-0333</u> FAX#: <u>281-653-1034</u> EMAIL: <u>gas.invoicing@edftrading.com</u>	• <b>INVOICES</b> • <b>PAYMENTS</b> • <b>SETTLEMENTS</b>	LGE/KU ATTN: <u>Regulatory Accounting &amp; Analysis</u> TEL#: <u>502-627-3726</u> FAX#: <u>502-627-3800</u> EMAIL: _____

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: January 1, 2004. The parties to this Base Contract are the following:

**Enbridge Marketing (U.S.) L.P.**  
 1100 Louisiana, Suite 3300 Houston, TX 77002  
 Duns Number: 80-044-2761  
 Contract Number: \_\_\_\_\_  
 U.S. Federal Tax ID Number: 39-1715850

and **Louisville Gas and Electric Company/Kentucky Utilities Company**  
 220 West Main Street, 7<sup>th</sup> Floor, Louisville, KY 40202  
 Duns Number: LGE 00-694-5505/KU 00-694-4938  
 Contract Number: \_\_\_\_\_  
 U.S. Federal Tax ID Number: LGE 61-0264150/KU 61-0247570

**Notices:**  
 1100 Louisiana, Suite 3300 Houston, TX 77002  
 Attn: Contract Administration  
 Phone: 713-821-2046 Fax: 713-653-6746

**Notices:**  
 220 West Main Street, 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502-627-4251 or 4197 Fax: 502-627-4222

**Confirmations:**  
 1100 Louisiana, Suite 3300 Houston, TX 77002  
 Attn: Michelle Donahue  
 Phone: 713-821-2157 Fax: 713-653-1748

**Confirmations:**  
 220 West Main Street, 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502-627-4197 or 4251 Fax: 502-627-4222

**Invoices and Payments:**  
 1100 Louisiana, Suite 3300 Houston, TX 77002  
 Attn: Gas Marketing Accounting  
 Phone: 713-821-2094 Fax: 713-653-6746

**Invoices and Payments:**  
 220 West Main Street, 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Energy Marketing Accounting - Natural Gas  
 Phone: 502-627-4627 Fax: 502-627-3800

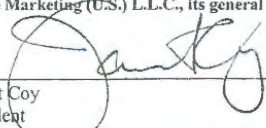
**Wire Transfer or ACH Numbers (if applicable):**  
 BANK: LaSalle Bank N.A. Chicago, IL  
 ABA: 071 000 505  
 ACCT: 5800393349  
 Other Details: Swift Code: LASLUS44

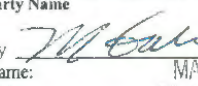
BANK: PNC Bank, Pittsburgh, PA  
 ABA: 043-0000-96  
 ACCT: 1008270544  
 Other Details: \_\_\_\_\_

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 only one box from each section:**

<p><b>Section 1.2</b> Transaction Procedure  <input checked="" type="checkbox"/> Oral (default)  <input type="checkbox"/> Written</p>	<p><b>Section 7.2</b> Payment Date  <input checked="" type="checkbox"/> 25<sup>th</sup> Day of Month following Month of delivery (default)  <input type="checkbox"/> _____ Day of Month following Month of delivery</p>
<p><b>Section 2.5</b> Confirm Deadline  <input checked="" type="checkbox"/> 2 Business Days after receipt (default)  <input type="checkbox"/> _____ Business Days after receipt</p>	<p><b>Section 7.2</b> Method of Payment  <input checked="" type="checkbox"/> Wire transfer (default) AND  <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH)  <input type="checkbox"/> Check</p>
<p><b>Section 2.6</b> Confirming Party  <input type="checkbox"/> Seller (default)  <input type="checkbox"/> Buyer  <input checked="" type="checkbox"/> <u>Louisville Gas and Electric Company/Kentucky Utilities Company</u></p>	<p><b>Section 7.7</b> Netting  <input checked="" type="checkbox"/> Netting applies (default)  <input type="checkbox"/> Netting does not apply</p>
<p><b>Section 3.2</b> Performance Obligation  <input checked="" type="checkbox"/> Cover Standard (default)  <input type="checkbox"/> Spot Price Standard</p> <p><i>Note: The following Spot Price Publication applies to both of the immediately preceding.</i></p> <p><b>Section 2.26</b> Spot Price Publication  <input checked="" type="checkbox"/> Gas Daily Midpoint (default)  <input type="checkbox"/> _____</p>	<p><b>Section 10.3.1</b> Early Termination Damages  <input checked="" type="checkbox"/> Early Termination Damages Apply (default)  <input type="checkbox"/> Early Termination Damages Do Not Apply</p> <p><b>Section 10.3.2</b> Other Agreement Setoffs  <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default)  <input type="checkbox"/> Other Agreement Setoffs Do Not Apply</p> <p><b>Section 14.5</b> Choice Of Law  <u>New York</u></p>
<p><b>Section 6</b> Taxes  <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default)  <input type="checkbox"/> Seller Pays Before and At Delivery Point</p>	<p><b>Section 14.10</b> Confidentiality  <input checked="" type="checkbox"/> Confidentiality applies (default)  <input type="checkbox"/> Confidentiality does not apply</p>
<p><input checked="" type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: <u>10</u>  <input type="checkbox"/> Addendum(s): _____</p>	

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

**ENBRIDGE MARKETING (U.S.) L.P.**  
 By: Enbridge Marketing (U.S.) L.L.C., its general partner  
 Party Name  
 By:   
 Name: Janet Coy  
 Title: President

**LOUISVILLE GAS AND ELECTRIC COMPANY/  
 KENTUCKY UTILITIES COMPANY**  
 Party Name SVP  
 By:   
 Name: MARTYN GALLUS  
 Title: SR. VICE PRESIDENT  
**LOUISVILLE GAS & ELECTRIC COMPANY  
 KENTUCKY UTILITIES**

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NAESB Standard 6.3.1  
 April 19, 2002

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: July 23, 2012

The parties to this Base Contract are the following:

PARTY A Energy America, LLC	PARTY NAME	PARTY B Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")
12 Greenway Plaza, Suite 250 Houston, TX 77046	ADDRESS	220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
<a href="http://www.directenergy.com">www.directenergy.com</a>	BUSINESS WEBSITE	<a href="http://www.lge-ku.com">www.lge-ku.com</a>
	CONTRACT NUMBER	N/A
85-844-3377	D-U-N-S® NUMBER	LGE 00-694-5505 KU 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 06-1514-890	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570
Delaware	JURISDICTION OF ORGANIZATION	Kentucky
<input type="checkbox"/> Corporation <input checked="" type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
	GUARANTOR (IF APPLICABLE)	
<b>CONTACT INFORMATION</b>		
12 Greenway Plaza, Suite 250, Houston, TX 77046 ATTN: <u>V.P., Head of US Gas and Options</u> TEL#: <u>713.877.3878</u> FAX#: <u>713.877.3552</u>	▪ COMMERCIAL	LGE/KU ATTN: <u>Trading Manager Gas</u> TEL#: <u>502-627-4210</u> FAX#: <u>502-627-4655</u> EMAIL: _____
12 Greenway Plaza, Suite 250, Houston TX 77046 ATTN: <u>Director Gas Operations</u> TEL#: <u>713.877-3646</u> FAX#: <u>713.877.3552</u>	▪ SCHEDULING	LGE/KU ATTN: <u>Gas Scheduling</u> TEL#: <u>502-627-3034</u> FAX#: <u>502-627-4655</u>
12 Greenway Plaza, Suite 250, Houston, TX 77046 ATTN: <u>V.P., Head of Upstream/Wholesale Legal &amp; Regulatory Affairs</u> TEL#: <u>713.877.3851</u> FAX#: <u>713.621.6648</u>	▪ CONTRACT AND LEGAL NOTICES	LGE/KU ATTN: <u>Contract Administration</u> 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 TEL#: <u>502-627-4197 or 4253</u> FAX#: <u>502-627-4222</u> With Add'l Notice of Default Attn: <u>General Counsel, 15<sup>th</sup> FL</u> Add'l Notice of Default Fax# <u>502-627-4253</u>
525, 8 <sup>th</sup> Ave. SW Suite 1200, Calgary, AB Canada T2P 1G1 ATTN: <u>Sr. Director, Credit Risk Management</u> TEL#: <u>403.776.2246</u> FAX#: <u>403.290.8770</u>	▪ CREDIT	LGE/KU ATTN: <u>Manager Credit</u> TEL#: <u>502-627-4263</u> FAX#: <u>502-627-3960</u>
12 Greenway Plaza, Suite 250, Houston TX 77046 ATTN: <u>Confirmations</u> TEL#: <u>713.877.3728</u> FAX#: <u>713.877.3729</u>	▪ TRANSACTION CONFIRMATIONS	LGE/KU ATTN: <u>Contract Administration</u> TEL#: <u>502-627-4197 or 2252</u> FAX#: <u>502-627-4222</u>
<b>ACCOUNTING INFORMATION</b>		
12 Greenway Plaza, Suite 250, Houston TX 77046 ATTN: <u>Gas Accounting</u> TEL#: <u>713.877.3500</u> FAX#: <u>713.877.3837</u> EMAIL: <u>Elizabeth.shadwell@directenergy.com</u>	▪ INVOICES ▪ PAYMENTS ▪ SETTLEMENTS	LGE/KU ATTN: <u>Regulatory Gas Accounting, 10<sup>th</sup> FL</u> TEL#: <u>502-627-3239</u> FAX#: <u>502-627-3800</u>
BANK: <u>Citibank, N.A.</u> ABA: <u>031100209</u> ACCT: <u>38826211</u> OTHER DETAILS: <u>S.W.I.F.T. BIC CODE: CITIUS33</u>	WIRE TRANSFER NUMBERS (IF APPLICABLE)	BANK: <u>Bank of America, New York, NY.</u> ABA: <u>0260-0959-3</u> ACCT: <u>3752099133</u>
BANK: ABA:     ACCT:     OTHER DETAILS: For the Account of	ACH NUMBERS (IF APPLICABLE)	BANK: <u>Bank of America, Dallas TX</u> ABA: <u>111000012</u> ACCT: <u>3752099133</u> OTHER DETAILS: <u>N/A</u>
ATTN: _____ ADDRESS: _____	CHECKS (IF APPLICABLE)	LGE/KU ATTN: <u>Regulatory Gas Accounting, 10<sup>th</sup> FL</u> ADDRESS: <u>220 W Main St., 7th Fl</u> <u>Louisville KY 40202</u>

# BASE CONTRACT FOR SHORT-TERM SALE AND PURCHASE OF NATURAL GAS

This Base Contract is entered into as of the following date: June 1, 2001

The parties to this Base Contract are the following:

**EnergyUSA-TPC Corp.**

2603 Augusta, 14<sup>th</sup> Floor

Houston, TX 77057

Duns # 10-901-4746

Contract #

Attn: Contract Administration

Phone: (713) 369-7500 Fax: (713) 369-7505

Federal Tax ID Number: 352116555

Invoices and Payments:

EnergyUSA - TPC Corp.

2603 Augusta, 14<sup>th</sup> Floor, Houston, TX 77057

Attn: Gas Accounting

Phone: (713) 369-7500 Fax: (713) 369-7503

Wire Transfer or ACH Nos. (if applicable)

First National Bank of Chicago

Acct # 9426701 ABA # 071000013

and **Louisville Gas and Electric Company/Kentucky Utilities**

**Company** corporations operating as one jointly dispatched utility

220 West Main Street, 7<sup>th</sup> Floor, Louisville, Kentucky 40202

Duns # 00-694-5505

Contract #

Attn: Contract Administration

Phone: (502) 627-4251 Fax: (502) 727-4222

Federal Tax ID Number: #61-0264150

Invoices and Payments:

**Louisville Gas and Electric/Kentucky Utilities**

220 West Main Street, 7<sup>th</sup> Floor, Louisville, Kentucky 40202

Attn: Gas Accounting

Phone: (502) 627-2079 Fax: (502) 627-3800

Wire Transfer or ACH Nos. (if applicable)

PNC Bank, Pittsburgh, PA

Acct # 1008270544 ABA # 043-0000-96

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Short-Term Sale and Purchase of Natural Gas published by the Gas Industry Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions (select only one from each box, but see "Note" relating to Section 2.24.):

<b>Section 1.2</b> Transaction Procedure	<input type="checkbox"/> Oral <input checked="" type="checkbox"/> Written	<b>Section 6.</b> Taxes	<input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point <input type="checkbox"/> Seller Pays Before and At Delivery Point
<b>Section 2.4</b> Confirm Deadline	<input checked="" type="checkbox"/> 2 Business Days after receipt (default) <input type="checkbox"/> Business Days after receipt	<b>Section 7.2</b> Payment Date	25 <sup>th</sup> date of Month following Month of delivery
<b>Section 2.5</b> Confirming Party	<input type="checkbox"/> Seller <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Both	<b>Section 7.2</b> Method of Payment	<input checked="" type="checkbox"/> Wire Transfer (WT) <input checked="" type="checkbox"/> Automated Clearinghouse (ACH) <input type="checkbox"/> Check
<b>Section 3.2</b> Performance Obl.	<input checked="" type="checkbox"/> Cover Standard <input type="checkbox"/> Spot Price Standard	<b>Section 13.5</b> CHOICE OF LAW: <u>New York</u>	
<i>Note: The following Spot Price Publication applies to both of the immediately preceding Standards and must be filled in after a Standard is selected.</i>			
<b>Section 2.24</b> Spot Price Publication: Gas Daily - Midpoint			
<input checked="" type="checkbox"/> <b>Special Provisions:</b> Number of sheets attached: 8			

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

**EnergyUSA-TPC Corp.**

**Louisville Gas and Electric Company/Kentucky**

**Utilities Company**

(Party Name)

(Party Name)

By: 

By: 

Title: Chief Operating Officer

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

**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. This Contract is intended for Interruptible transactions or Firm transactions of one month or less and may not be suitable for Firm transactions of longer than one month. Further, GISB does not mandate the use of this Contract by any party. GISB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO GISB'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 GISB 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 GISB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.

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GISB Standard 6.3.1  
May 13, 1996

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"CONSTELLATION ENERGY COMMODITIES GROUP, INC.", A DELAWARE CORPORATION,

WITH AND INTO "EXELON GENERATION COMPANY, LLC" UNDER THE NAME OF "EXELON GENERATION COMPANY, LLC", A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF PENNSYLVANIA, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-FOURTH DAY OF JANUARY, A.D. 2013, AT 2:43 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE FIRST DAY OF FEBRUARY, A.D. 2013, AT 12:01 O'CLOCK A.M.

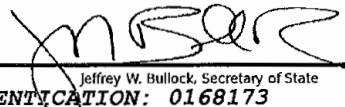
A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

5279102 8100M

130086372

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 0168173

DATE: 01-24-13



## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: 8/4/2015

The parties to this Base Contract are the following:

<b>PARTY A or Aron J. ARON &amp; COMPANY</b>	<b>PARTY NAME</b>	<b>PARTY B or Louisville Gas and Electric Company and Kentucky Utilities Company</b> (each, a "Counterparty" or "Party B")
200 West Street New York, NY 10282-2198	<b>ADDRESS</b>	220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
www.gs.com	<b>BUSINESS WEBSITE</b>	www.lge-ku.com
	<b>CONTRACT NUMBER</b>	N/A
00-698-0312	<b>D-U-N-S® NUMBER</b>	Louisville Gas and Electric Company 00-694-5505 Kentucky Utilities Company 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 13-3092284 <input type="checkbox"/> OTHER:	<b>TAX ID NUMBERS</b>	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
<b>New York</b>	<b>JURISDICTION OF ORGANIZATION</b>	<b>Kentucky</b>
<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input checked="" type="checkbox"/> Other: general partnership	<b>COMPANY TYPE</b>	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:
The Goldman Sachs Group, Inc.	<b>GUARANTOR (IF APPLICABLE)</b>	Not applicable
<b>CONTACT INFORMATION</b>		
<u>200 West Street, New York, NY 10282-2198</u> ATTN: <u>Natural Gas Sales</u> TEL#: <u>212-902-0776</u> FAX#: _____ EMAIL: _____	<input checked="" type="checkbox"/> <b>COMMERCIAL</b>	ATTN: <u>Trading Manager Gas</u> TEL#: <u>502-627-4259</u> FAX#: <u>502-627-4655</u> EMAIL: _____
<u>200 West Street, New York, NY 10282-2198</u> ATTN: <u>Natural Gas Logistics</u> TEL#: <u>403-233-8148</u> FAX#: <u>212-493-9847</u> EMAIL: <u>ficc-jaron-natgasops@ny.email.gs.com</u>	<input checked="" type="checkbox"/> <b>SCHEDULING</b>	ATTN: <u>Gas Scheduling</u> TEL#: <u>502-627-3034</u> FAX#: <u>502-627-4655</u> EMAIL: _____
<u>200 West Street, New York, NY 10282-2198</u> ATTN: <u>Commodity Operations</u> TEL#: <u>212-357-0326</u> FAX#: <u>212-493-9846</u> EMAIL: <u>jaron@gs.com</u>	<input checked="" type="checkbox"/> <b>CONTRACT AND LEGAL NOTICES</b>	ATTN: <u>Contract Administration</u> <u>220 W Main St., 7<sup>th</sup> FL, Louisville KY 40202</u> TEL#: <u>502-627-4197 or 4253</u> FAX#: <u>502-627-4222</u> <u>With Add'l Notice of Default Attn: General Counsel, 16<sup>th</sup> FL</u> <u>Add'l Notice of Default Fax# 502-627-3950</u> EMAIL: <u>N/A</u>
<u>200 West Street, New York, NY 10282-2198</u> ATTN: <u>Credit Risk Management - Energy</u> TEL#: <u>212-855-0990</u> FAX#: <u>212-493-0821</u> EMAIL: <u>gs-credit-energy-ny@ny.email.gs.com</u>	<input checked="" type="checkbox"/> <b>CREDIT</b>	ATTN: <u>Manager, Credit</u> TEL#: <u>502-627-4253</u> FAX#: <u>502-627-3950</u> EMAIL: <u>N/A</u>
<u>200 West Street, New York, NY 10282</u> ATTN: <u>Commodity Operations</u> TEL#: <u>212-357-0326</u> FAX#: <u>212-493-9846</u> EMAIL: <u>jaron@gs.com</u>	<input checked="" type="checkbox"/> <b>TRANSACTION CONFIRMATIONS</b>	ATTN: <u>Contract Administration</u> TEL#: <u>502-627-4197 or 2252</u> FAX#: <u>502-627-4222</u> EMAIL: <u>ContractAdmin@lge-ku.com</u>
<b>ACCOUNTING INFORMATION</b>		
<u>200 West Street, New York, NY 10282</u> ATTN: <u>Energy Settlements, Manager</u> TEL#: <u>212-357-6450</u> FAX#: <u>212-493-9848</u> EMAIL: <u>ficc-ex-ny@ny.email.gs.com</u>	<input checked="" type="checkbox"/> <b>INVOICES</b> <input checked="" type="checkbox"/> <b>PAYMENTS</b> <input checked="" type="checkbox"/> <b>SETTLEMENTS</b>	ATTN: <u>Gas Accounting</u> TEL#: <u>502-627-3731</u> FAX#: <u>502-217-2204</u> EMAIL: <u>Gas.Accounting@lge-ku.com</u>
BANK: <u>CITIBANK, NA</u> ABA: <u>021000089</u> ACCT: <u>09292521</u> OTHER DETAILS: <u>For the account of J. Aron &amp; Co., New York</u>	<b>WIRE TRANSFER NUMBERS (IF APPLICABLE)</b>	BANK: <u>Bank of America, New York, NY.</u> ABA: <u>0260-0859-3</u> ACCT: <u>3752099133</u> OTHER DETAILS: _____

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# Master Power Purchase & Sale Agreement

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Version 2.1 (modified 4/25/00)

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ATTRIBUTION TO THE COPYRIGHT OWNERS IS REQUESTED.

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: March 2, 2015

The parties to this Base Contract are the following:

<b>PARTY A</b> Kaiser Marketing Appalachian, LLC	<b>PARTY NAME</b>	<b>PARTY B</b> Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")
6733 South Yale Avenue Tulsa, OK 74136	<b>ADDRESS</b>	220 West Main Street, 7th FL Louisville, KY 40202
www. _____	<b>BUSINESS WEBSITE</b>	www.lge-ku.com
	<b>CONTRACT NUMBER</b>	n/a
079581978	<b>D-U-N-S® NUMBER</b>	LGE 00-694-5505 KU 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 46-4993213 <input type="checkbox"/> OTHER: _____	<b>TAX ID NUMBERS</b>	<input checked="" type="checkbox"/> US FEDERAL: US FEDERAL: LGE 61-0264150 KU 61-0247570 <input type="checkbox"/> OTHER: _____
Delaware	<b>JURISDICTION OF ORGANIZATION</b>	Kentucky
<input type="checkbox"/> Corporation           X LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	<b>COMPANY TYPE</b>	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
	<b>GUARANTOR (IF APPLICABLE)</b>	
<b>CONTACT INFORMATION</b>		
P. O. Box 21468, Tulsa, OK 74121-1468 ATTN: <u>Daryl Brown</u> TEL#: <u>918-491-4559</u> FAX#: <u>918-491-4694</u> EMAIL: <u>DarylB@kfoc.net</u>	▪ <b>COMMERCIAL</b>	LGE/KU ATTN: <u>Trading Manager Gas</u> TEL#: <u>502-627-4259</u> FAX#: <u>502-627-4655</u> EMAIL: _____
P. O. Box 21468, Tulsa, OK 74121-1468 ATTN: <u>Courtney Stewart</u> TEL#: <u>918-491-4693</u> FAX#: <u>918-491-4694</u> EMAIL: <u>CourtneyC@kfoc.net</u>	▪ <b>SCHEDULING</b>	LGE/KU ATTN: <u>Gas Scheduling</u> TEL#: <u>502-627-3034</u> FAX#: <u>502-627-4655</u> EMAIL: _____
P. O. Box 21468, Tulsa, OK 74121-1468 ATTN: <u>Daryl Brown</u> TEL#: <u>918-491-4559</u> FAX#: <u>918-491-4694</u> EMAIL: <u>DarylB@kfoc.net</u>	▪ <b>CONTRACT AND LEGAL NOTICES</b>	LGE/KU: <u>220 W Main St., 7<sup>th</sup> FL, Louisville KY 40202</u> ATTN: <u>Contract Administration</u> TEL#: <u>502-627-4197 or 4253</u> FAX#: <u>502-627-4222</u> With Add'l Notice of Default Attn: <u>General Counsel, 15<sup>th</sup> FL</u> Add'l Notice of Default Fax# <u>502-627-3950</u> EMAIL: _____
P. O. Box 21468, Tulsa, OK 74121-1468 ATTN: <u>Daryl Brown</u> TEL#: <u>918-491-4559</u> FAX#: <u>918-491-4694</u> EMAIL: <u>DarylB@kfoc.net</u>	▪ <b>CREDIT</b>	LGE/KU ATTN: <u>Manager Credit</u> TEL#: <u>502-627-4253</u> FAX#: <u>502-827-3950</u> EMAIL: _____
P. O. Box 21468, Tulsa, OK 74121-1468 ATTN: <u>Daryl Brown</u> TEL#: <u>918-491-4559</u> FAX#: <u>918-491-4694</u> EMAIL: <u>DarylB@kfoc.net</u>	▪ <b>TRANSACTION CONFIRMATIONS</b>	LGE/KU ATTN: <u>Contract Administration</u> TEL#: <u>502-627-4197 or 2252</u> FAX#: <u>502-627-4222</u> EMAIL: <u>ContractAdmin@lge-ku.com</u>
<b>ACCOUNTING INFORMATION</b>		
P. O. Box 21488, Tulsa, OK 74121-1468 ATTN: <u>Marsha McCall</u> TEL#: <u>918-491-4246</u> FAX#: <u>918-524-3002</u> EMAIL: <u>MarshaM@kfoc.net</u>	▪ <b>INVOICES</b> ▪ <b>PAYMENTS</b> ▪ <b>SETTLEMENTS</b>	LGE/KU ATTN: <u>Gas Accounting</u> TEL#: <u>502-627-3731</u> FAX#: <u>502-217-2204</u> EMAIL: <u>Gas.Accounting@lge-ku.com</u>
BANK: <u>Bank of Oklahoma, Tulsa</u> ABA: <u>103-900-036</u> ACCT: <u>208-377-668</u> OTHER DETAILS: _____	<b>WIRE TRANSFER NUMBERS (IF APPLICABLE)</b>	BANK: <u>Bank of America, New York, NY</u> ABA: <u>0260-0959-3</u> ACCT: <u>3752099133</u> OTHER DETAILS: _____
BANK: <u>Bank of Oklahoma, Tulsa</u> ABA: <u>103-900-036</u> ACCT: <u>208-377-668</u> OTHER DETAILS: _____	<b>ACH NUMBERS (IF APPLICABLE)</b>	BANK: <u>Bank of America, Dallas TX</u> ABA: <u>111000012</u> ACCT: <u>3752099133</u> OTHER DETAILS: _____
P. O. Box 21468, Tulsa, OK 74121-1468 ATTN: <u>Marsha McCall</u>	<b>CHECKS (IF APPLICABLE)</b>	LGE/KU ATTN: <u>Gas Accounting</u> ADDRESS: <u>220 W Main St., 7th FL</u> <u>Louisville KY 40202</u>

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: March 2, 2015

The parties to this Base Contract are the following:

PARTY A Kaiser Marketing Northeast, LLC	PARTY NAME	PARTY B Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")
6733 South Yale Avenue Tulsa, OK 74136	ADDRESS	220 West Main Street, 7th FL Louisville, KY 40202
www. _____	BUSINESS WEBSITE	www.lge-ku.com
	CONTRACT NUMBER	n/a
079251850	D-U-N-S® NUMBER	LGE 00-694-6505 KU 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 46-4475377 <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
Delaware	JURISDICTION OF ORGANIZATION	
<input type="checkbox"/> Corporation <input checked="" type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
	GUARANTOR (IF APPLICABLE)	
<b>CONTACT INFORMATION</b>		
P. O. Box 21468, Tulsa, OK 74121-1468 ATTN: <u>Daryl Brown</u> TEL#: <u>918-491-4559</u> FAX#: <u>918-491-4694</u> EMAIL: <u>DarylB@kfoc.net</u>	▪ COMMERCIAL	LGE/KU ATTN: <u>Trading Manager Gas</u> TEL#: <u>502-627-4269</u> FAX#: <u>502-627-4655</u> EMAIL: _____
P. O. Box 21468, Tulsa, OK 74121-1468 ATTN: <u>Courtney Stewart</u> TEL#: <u>918-491-4693</u> FAX#: <u>918-491-4694</u> EMAIL: <u>CourtneyC@kfoc.net</u>	▪ SCHEDULING	LGE/KU ATTN: <u>Gas Scheduling</u> TEL#: <u>502-627-3034</u> FAX#: <u>502-627-4655</u> EMAIL: _____
P. O. Box 21468, Tulsa, OK 74121-1488 ATTN: <u>Daryl Brown</u> TEL#: <u>918-491-4559</u> FAX#: <u>918-491-4694</u> EMAIL: <u>DarylB@kfoc.net</u>	▪ CONTRACT AND LEGAL NOTICES	LGE/KU: <u>220 W Main St., 7th FL, Louisville KY 40202</u> ATTN: <u>Contract Administration</u> TEL#: <u>502-627-4197 or 4253</u> FAX#: <u>502-627-4222</u> <u>With Add'l Notice of Default Attn: General Counsel, 16th FL</u> <u>Add'l Notice of Default Fax# 502-627-3950</u> EMAIL: _____
P. O. Box 21468, Tulsa, OK 74121-1468 ATTN: <u>Daryl Brown</u> TEL#: <u>918-491-4559</u> FAX#: <u>918-491-4694</u> EMAIL: <u>DarylB@kfoc.net</u>	▪ CREDIT	LGE/KU    ATTN: <u>Manager Credit</u> TEL#: <u>502-627-4263</u> FAX#: <u>502-627-3950</u> EMAIL: _____
P. O. Box 21468, Tulsa, OK 74121-1468 ATTN: <u>Daryl Brown</u> TEL#: <u>918-491-4559</u> FAX#: <u>918-491-4694</u> EMAIL: <u>DarylB@kfoc.net</u>	▪ TRANSACTION CONFIRMATIONS	LGE/KU ATTN: <u>Contract Administration</u> TEL#: <u>502-627-4197 or 2262</u> FAX#: <u>502-627-4222</u> EMAIL: <u>ContractAdmin@lge-ku.com</u>
<b>ACCOUNTING INFORMATION</b>		
P. O. Box 21468, Tulsa, OK 74121-1468 ATTN: <u>Marsha McCall</u> TEL#: <u>918-491-4248</u> FAX#: <u>918-524-3002</u> EMAIL: <u>MarshaM@kfoc.net</u>	▪ INVOICES ▪ PAYMENTS ▪ SETTLEMENTS	LGE/KU ATTN: <u>Gas Accounting</u> TEL#: <u>502-627-3731</u> FAX#: <u>502-217-2204</u> EMAIL: <u>Gas.Accounting@lge-ku.com</u>
BANK: <u>Bank of Oklahoma, Tulsa</u> ABA: <u>103-900-036</u> ACCT: <u>208-377-668</u> OTHER DETAILS: _____	WIRE TRANSFER NUMBERS (IF APPLICABLE)	BANK: <u>Bank of America, New York, NY</u> ABA: <u>0260-0959-3</u> ACCT: <u>3752099133</u> OTHER DETAILS: _____
BANK: <u>Bank of Oklahoma, Tulsa</u> ABA: <u>103-900-036</u> ACCT: <u>208-377-668</u> OTHER DETAILS: _____	ACH NUMBERS (IF APPLICABLE)	BANK: <u>Bank of America, Dallas TX</u> ABA: <u>111000012</u> ACCT: <u>3752099133</u> OTHER DETAILS: _____
P. O. Box 21468, Tulsa, OK 74121-1468 ATTN: <u>Marsha McCall</u>	CHECKS (IF APPLICABLE)	LGE/KU    ATTN: <u>Gas Accounting</u> ADDRESS: <u>220 W Main St., 7th FL</u> <u>Louisville KY 40202</u>

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: October 1, 2010

The parties to this Base Contract are the following:

PARTY A LACLEDE ENERGY RESOURCES, INC	PARTY NAME	PARTY B Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")
720 Olive Rd, Suite 750, St. Louis, MO 63101	ADDRESS	220 West Main Street, 7 <sup>th</sup> FL, Louisville, KY 40202
<a href="http://www.thelacledegroup.com">www.thelacledegroup.com</a>	BUSINESS WEBSITE	<a href="http://www.eon-us.com">www.eon-us.com</a>
	CONTRACT NUMBER	N/A
18-877-9862	D-U-N-S® NUMBER	LGE 00-694-5505 / KU 00-694-4398
<input checked="" type="checkbox"/> US FEDERAL: 43-123-1347 <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
Missouri	JURISDICTION OF ORGANIZATION	
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
	GUARANTOR (IF APPLICABLE)	
<b>CONTACT INFORMATION</b>		
<b>Wholesale Marketing Representative</b> ATTN: <u>Andrea Beam</u> TEL#: <u>(314) 575-4821</u> FAX#: <u>(314) 516-8551</u> EMAIL: <u>abeam@lacledeenergy.com</u>	• COMMERCIAL	ATTN: <u>Trading Manager Gas</u> TEL#: <u>502-627-4578</u> FAX#: <u>502-627-4655</u> EMAIL: _____
<b>Gas Supply Administrator</b> ATTN: <u>Ashley Dixon</u> TEL#: <u>(314) 342-0522</u> FAX#: <u>(314) 516-8551</u>	• SCHEDULING	ATTN: <u>Gas Scheduling</u> TEL#: <u>502-627-3034</u> FAX#: <u>502-627-4655</u>
<b>Contract Administration</b> ATTN: <u>Contract Administration</u> TEL#: <u>(314) 342-3303</u> FAX#: <u>(314) 516-8551</u> EMAIL: <u>tgalloway@lacledeenergy.com</u>	• CONTRACT AND LEGAL NOTICES	LGE/KUATTN: <u>Contract Administration</u> 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 With Add'l Notice of Default Attn: <u>General Counsel, 11<sup>th</sup> FL</u> TEL#: <u>502-627-4197</u> or <u>4253</u> FAX#: <u>502-627-4222</u> Add'l Notice of Default Fax# <u>502-627-3950</u>
<b>Credit</b> ATTN: <u>Treasury Department</u> TEL#: <u>(314) 342-0544</u> FAX#: <u>(314) 516-8551</u> EMAIL: _____	• CREDIT	LGE/KU ATTN: <u>Manager Credit</u> TEL#: <u>502-627-4253</u> FAX#: <u>502-627-3950</u> EMAIL: <u>N/A</u>
<b>Contract Administration</b> ATTN: <u>Contract Administration</u> TEL#: <u>(314) 342-3303</u> FAX#: <u>(314) 516-8551</u> EMAIL: <u>tgalloway@lacledeenergy.com</u>	• TRANSACTION CONFIRMATIONS	LGE/KU ATTN: <u>Contract Administration</u> TEL#: <u>502-627-4197</u> or <u>2252</u> FAX#: <u>502-627-4222</u> EMAIL: <u>N/A</u>
<b>ACCOUNTING INFORMATION</b>		
<b>INVOICES and PAYMENTS: 720 Olive, Rm 1409, St. Louis, MO 63101</b> ATTN: <u>Accounts Payable</u> TEL#: <u>(314) 342-3322</u> FAX#: <u>(314) 516-8551</u> EMAIL: _____	• INVOICES • PAYMENTS • SETTLEMENTS	LGE/KU ATTN: <u>Gas Accounting</u> TEL#: <u>502-627-4325</u> FAX#: <u>502-627-3800</u> EMAIL: <u>N/A</u>
<b>BANK: U.S. Bank of St. Louis, St. Louis, MO</b> ABA: <u>081000210</u> ACCT: <u>1001470010</u> OTHER DETAILS: _____	WIRE TRANSFER NUMBERS (IF APPLICABLE)	<b>BANK: Bank of America, New York, NY.</b> ABA: <u>0260-0959-3</u> ACCT: <u>3752099133</u> OTHER DETAILS: _____
<b>BANK: U.S. Bank of St. Louis, St. Louis, MO</b> ABA: <u>081000210</u> ACCT: <u>1001470010</u> OTHER DETAILS: _____	ACH NUMBERS (IF APPLICABLE)	<b>BANK: Bank of America, Dallas TX</b> ABA: <u>111000012</u> ACCT: <u>3752099133</u> OTHER DETAILS: <u>N/A</u>
ATTN: _____ ADDRESS: _____	CHECKS (IF APPLICABLE)	ATTN: _____ ADDRESS: _____

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"MACQUARIE COOK POWER INC.", A DELAWARE CORPORATION,  
WITH AND INTO "MACQUARIE COOK ENERGY, LLC" UNDER THE NAME OF  
"MACQUARIE COOK ENERGY, LLC", A LIMITED LIABILITY COMPANY  
ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE,  
AS RECEIVED AND FILED IN THIS OFFICE THE THIRTIETH DAY OF  
NOVEMBER, A.D. 2009, AT 5:52 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF  
THE AFORESAID CERTIFICATE OF MERGER IS THE FIRST DAY OF  
FEBRUARY, A.D. 2010.

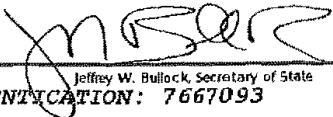
A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE  
NEW CASTLE COUNTY RECORDER OF DEEDS.

2468860 8100M

091054292

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 7667093

DATE: 11-30-09

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: 2-19-2014

The parties to this Base Contract are the following:

<b>PARTY A</b> Magnum Hunter Marketing, LLC	<b>PARTY NAME</b>	<b>PARTY B</b> Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")
777 Post Oak Blvd., Suite 910 Houston, TX 77056	<b>ADDRESS</b>	220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
<a href="http://www.magnumhunterresources.com">www.magnumhunterresources.com</a>	<b>BUSINESS WEBSITE</b>	<a href="http://www.lge-ku.com">www.lge-ku.com</a>
	<b>CONTRACT NUMBER</b>	N/A
62-162-5883	<b>D-U-N-S® NUMBER</b>	LGE 00-694-5505 KU 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 45-3202527 <input type="checkbox"/> OTHER:	<b>TAX ID NUMBERS</b>	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
Delaware	<b>JURISDICTION OF ORGANIZATION</b>	Kentucky
<input type="checkbox"/> Corporation <input checked="" type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	<b>COMPANY TYPE</b>	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
<b>GUARANTOR (IF APPLICABLE)</b>		
<b>CONTACT INFORMATION</b>		
<u>777 Post Oak Blvd., Ste 910, Houston, TX 77056</u> <b>ATTN:</b> <u>Greg Trefz</u> <b>TEL#:</b> <u>713-568-4438</u> <b>FAX#:</b> <u>832-203-4580</u> <b>EMAIL:</b> <u>gtrefz@magnumhunterresources.com</u>	<ul style="list-style-type: none"> <li>* <b>COMMERCIAL</b></li> </ul>	<b>LGE/KU</b> <b>ATTN:</b> <u>Trading Manager Gas</u> <b>TEL#:</b> <u>502-627-4259</u> <b>FAX#:</b> <u>502-627-4655</u> <b>EMAIL:</b> _____
<u>777 Post Oak Blvd., Ste 910, Houston, TX 77056</u> <b>ATTN:</b> <u>Shawn Davis</u> <b>TEL#:</b> <u>832-203-4555</u> <b>FAX#:</b> <u>832-203-4580</u> <b>EMAIL:</b> <u>sdavis@magnumhunterresources.com</u>	<ul style="list-style-type: none"> <li>* <b>SCHEDULING</b></li> </ul>	<b>LGE/KU</b> <b>ATTN:</b> <u>Gas Scheduling</u> <b>TEL#:</b> <u>502-627-3034</u> <b>FAX#:</b> <u>502-627-4655</u> <b>EMAIL:</b> _____
<u>777 Post Oak Blvd., Ste 910, Houston, TX 77056</u> <b>ATTN:</b> <u>Greg Trefz</u> <b>TEL#:</b> <u>713-568-4438</u> <b>FAX#:</b> <u>832-203-4580</u> <b>EMAIL:</b> <u>gtrefz@magnumhunterresources.com</u>	<ul style="list-style-type: none"> <li>* <b>CONTRACT AND LEGAL NOTICES</b></li> </ul>	<b>LGE/KU</b> <b>ATTN:</b> <u>Contract Administration</u> 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 <b>TEL#:</b> <u>502-627-4197</u> or <u>4253</u> <b>FAX#:</b> <u>502-627-4222</u> With Add'l Notice of Default Attn: General Counsel, 15 <sup>th</sup> FL Add'l Notice of Default Fax# 502-627-3950 <b>EMAIL:</b> <u>N/A</u>
<u>777 Post Oak Blvd., Ste 910, Houston, TX 77056</u> <b>ATTN:</b> <u>Mark Wolf</u> <b>TEL#:</b> <u>832-203-4564</u> <b>FAX#:</b> <u>832-203-4580</u> <b>EMAIL:</b> <u>mwolf@magnumhunterresources.com</u>	<ul style="list-style-type: none"> <li>* <b>CREDIT</b></li> </ul>	<b>LGE/KU</b> <b>ATTN:</b> <u>Manager Credit</u> <b>TEL#:</b> <u>502-627-4253</u> <b>FAX#:</b> <u>502-627-3950</u> <b>EMAIL:</b> <u>N/A</u>
<u>777 Post Oak Blvd., Ste 910, Houston, TX 77056</u> <b>ATTN:</b> <u>Mark Wolf</u> <b>TEL#:</b> <u>832-203-4564</u> <b>FAX#:</b> <u>832-203-4580</u> <b>EMAIL:</b> <u>mwolf@magnumhunterresources.com</u>	<ul style="list-style-type: none"> <li>* <b>TRANSACTION CONFIRMATIONS</b></li> </ul>	<b>LGE/KU</b> <b>ATTN:</b> <u>Contract Administration</u> <b>TEL#:</b> <u>502-627-4197</u> or <u>2252</u> <b>FAX#:</b> <u>502-627-4222</u> <b>EMAIL:</b> <u>N/A</u>
<b>ACCOUNTING INFORMATION</b>		
<u>1050 Texan Trill, Ste 300, Grapevine, TX 76051</u> <b>ATTN:</b> <u>Scott Arnold</u> <b>TEL#:</b> <u>469-444-4666</u> <b>FAX#:</b> _____ <b>EMAIL:</b> <u>sarnold@eurekapipline.com</u>	<ul style="list-style-type: none"> <li>* <b>INVOICES</b></li> <li>* <b>PAYMENTS</b></li> <li>* <b>SETTLEMENTS</b></li> </ul>	<b>LGE/KU</b> <b>ATTN:</b> <u>Gas Regulatory Accounting</u> <b>TEL#:</b> <u>502-627-3726</u> <b>FAX#:</b> <u>502-627-3800</u> <b>EMAIL:</b> <u>N/A</u>
<b>BANK:</b> <u>Amegy Bank</u> <b>ABA:</b> <u>113011258</u> <b>ACCT:</b> <u>54029127</u> <b>OTHER DETAILS:</b> _____	<ul style="list-style-type: none"> <li>* <b>WIRE TRANSFER NUMBERS (IF APPLICABLE)</b></li> </ul>	<b>BANK:</b> Bank of America, New York, NY. <b>ABA:</b> 0260-0959-3 <b>ACCT:</b> 3752099133 <b>OTHER DETAILS:</b> _____
<b>BANK:</b> <u>Amegy Bank</u> <b>ABA:</b> <u>113011258</u> <b>ACCT:</b> <u>54029127</u> <b>OTHER DETAILS:</b> _____	<ul style="list-style-type: none"> <li>* <b>ACH NUMBERS (IF APPLICABLE)</b></li> </ul>	<b>BANK:</b> Bank of America, Dallas TX <b>ABA:</b> 111000012 <b>ACCT:</b> 3752099133 <b>OTHER DETAILS:</b> <u>N/A</u>

# BASIS CONTRACT FOR SHORT-TERM SALE AND PURCHASE OF NATURAL GAS

This Base Contract is entered into as of the following date: March 1, 2001

The parties to this Base Contract are the following:

**MARATHON OIL COMPANY**  
 P.O. Box 3128, Houston, Texas 77253  
 Duns # 05-512-2568  
 Contract # 14-001-VA-8355  
 Attn: North American Natural Gas - Contract Services  
 Phone: (713) 296-3733 Fax: (713) 296-4382  
 Federal Tax ID Number: 25-1410539

and **LOUISVILLE GAS & ELECTRIC CO./KENTUCKY UTILITIES CO.**  
 Kentucky corporations operating as one jointly dispatched utility  
 Duns # 06945505  
 Contract #  
 Attn: Contract Administration, 7<sup>th</sup> Floor  
 Phone: (502) 627-4197 Fax: (502) 627-7270  
 Federal Tax ID Number: 61-0264150

Invoices and Payments:  
**Marathon Oil Company**  
 539 S. Main Street, Findlay, Ohio 45840  
 Attn: Gas Marketing Accounting  
 Phone: (419) 421-3332 Fax: (419) 421-4525  
 Wire Transfer or ACH Nos. (if applicable)  
 Wire: Account #0000027; Bank ABA # 041000124  
 ACH: Account #3674355; Bank ABA # 071000288

**Louisville Gas & Electric Company**  
 220 W. Main Street, 7<sup>th</sup> Floor, Louisville, Kentucky 40202  
 Attn: Robin B. Hayes, Mgr. Energy Marketing Accounting  
 Phone: (502) 627-2079 Fax: (502) 540-7500  
 Wire Transfer or ACH Nos. (if applicable)  
 Benefit LG&E Utility Gas Purchases: PNC Bank, Pittsburgh, PA  
 Account # 1008270544; Bank ABA # 043000096

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Short-Term Sale and Purchase of Natural Gas published by the Gas Industry Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions (select only one from each box, but see "Note" relating to Section 2.24.):

<p><b>Section 1.2</b> Transaction Procedure <input type="checkbox"/> Oral <input checked="" type="checkbox"/> Written</p> <p><b>Section 2.4</b> Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) <input type="checkbox"/> Business Days after receipt</p> <p><b>Section 2.5</b> Confirming Party <input type="checkbox"/> Seller <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> <b>Marathon</b></p> <p><b>Section 3.2</b> Performance Obl. <input checked="" type="checkbox"/> Cover Standard <input type="checkbox"/> Spot Price Standard <i>Note: The following Spot Price Publication applies to both of the immediately preceding Standards and must be filled in after a Standard is selected.</i></p> <p><b>Section 2.24</b> Spot Price Publication: Gas Daily <input checked="" type="checkbox"/> <b>Special Provisions:</b> Number of sheets attached: One (1) The prices paid under this Contract are inclusive of reimbursement for state severance taxes paid by the producer.</p>	<p><b>Section 6.</b> Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point <input type="checkbox"/> Seller Pays Before and At Delivery Point</p> <p><b>Section 7.2</b> Payment Date <input checked="" type="checkbox"/> 25<sup>th</sup> date of Month following Month of delivery</p> <p><b>Section 7.2</b> Method of Payment <input checked="" type="checkbox"/> Wire Transfer (WT) <input checked="" type="checkbox"/> Automated Clearinghouse (ACH) <input type="checkbox"/> Check</p> <p><b>Section 13.5</b> CHOICE OF LAW: Commonwealth of Kentucky</p>
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IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

**MARATHON OIL COMPANY**  
 (Party Name)  
 By *I. R. Bowden*  
 Title I. R. Bowden  
 Attorney-in-Fact

**LOUISVILLE GAS & ELECTRIC CO./KENTUCKY UTILITIES CO.**  
 (Party Name)  
 By *Martyn Gallus*  
 Title MARTYN GALLUS  
SR. VICE PRESIDENT  
**LOUISVILLE GAS & ELECTRIC COMPANY**  
**KENTUCKY UTILITIES**

**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. This Contract is intended for Interruptible transactions or Firm transactions of one month or less and may not be suitable for Firm transactions of longer than one month. Further, GISB does not mandate the use of this Contract by any party. GISB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO GISB'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 GISB 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 GISB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.



## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: September 1, 2011

The parties to this Base Contract are the following:

PARTY A Marathon Petroleum Company LP	PARTY NAME	PARTY B Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")
539 S. Main Street Findlay, OH 45840	ADDRESS	220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
<a href="http://www.marathonpetroleum.com">www.marathonpetroleum.com</a>	BUSINESS WEBSITE	<a href="http://www.lge-ku.com">www.lge-ku.com</a>
	CONTRACT NUMBER	N/A
96-299-3101	D-U-N-S® NUMBER	LGE 00-694-5505 / KU 00-694-4398
<input checked="" type="checkbox"/> US FEDERAL: 31-1537655 <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
Delaware	JURISDICTION OF ORGANIZATION	
<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input checked="" type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:
	GUARANTOR (IF APPLICABLE)	
<b>CONTACT INFORMATION</b>		
539 S. Main Street, Findlay, OH 45840 ATTN: Natural Gas Trader TEL#: _____ FAX#: _____ EMAIL: _____	▪ COMMERCIAL	ATTN: <u>Trading Manager Gas</u> TEL#: 502-627-4210 FAX#: 502-627-4655 EMAIL: _____
539 S. Main Street, Findlay, OH 45840 ATTN: Natural Gas Scheduler TEL#: _____ FAX#: _____ EMAIL: _____	▪ SCHEDULING	ATTN: <u>Gas Scheduling</u> TEL#: 502-627-3034(502) 627-3034 FAX#: 502-627-4655 EMAIL: _____
539 S. Main Street; Findlay, OH 45840 ATTN: Contracts & Compliance Analysis TEL#: (419) 421-2502 FAX#: (419) 427-4483 EMAIL: _____	▪ CONTRACT AND LEGAL NOTICES	LGE/KUATTN: <u>Contract Administration</u> 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 TEL#: 502-627-4197 or 4253 FAX#: 502-627-4222 With Add'l Notice of Default Attn: General Counsel, 15 <sup>th</sup> FL Add'l Notice of Default Fax# 502-627-4253 EMAIL: N/A
539 S. Main Street, Findlay, OH 45840 ATTN: Credit Department TEL#: 419-421-3700 FAX#: 419-421-3153 EMAIL: _____	▪ CREDIT	LGE/KU ATTN: <u>Manager Credit</u> TEL#: 502-627-4253 FAX#: 502-627-3950 EMAIL: N/A
539 S. Main Street; Findlay, OH 45840 ATTN: Contracts & Compliance Analysis TEL#: (419) 421-2502 FAX#: (419) 427-4483 EMAIL: _____	▪ TRANSACTION CONFIRMATIONS	LGE/KU ATTN: <u>Contract Administration</u> TEL#: 502-627-4197 or 2252 FAX#: 502-627-4222 EMAIL: N/A
<b>ACCOUNTING INFORMATION</b>		
539 S. Main Street, Findlay, OH 45840 ATTN: Accounting Department TEL#: 419-421-2259 FAX#: 419-421-4624 EMAIL: _____	▪ INVOICES ▪ PAYMENTS ▪ SETTLEMENTS	LGE/KU ATTN: <u>Gas Accounting</u> TEL#: 502-627-3688 FAX#: 502-627-3800 EMAIL: N/A
BANK: Contact Accounting Department ABA: _____ ACCT: _____ OTHER DETAILS: _____	WIRE TRANSFER NUMBERS (IF APPLICABLE)	BANK: Bank of America, New York, NY. ABA: 0260-0959-3 ACCT: 3752099133 OTHER DETAILS: _____
BANK: Contact Accounting Department ABA: _____ ACCT: _____ OTHER DETAILS: _____	ACH NUMBERS (IF APPLICABLE)	BANK: Bank of America, Dallas TX ABA: 111000012 ACCT: 3752099133 OTHER DETAILS: N/A



June 21, 2016

LOUISVILLE GAS AND ELECTRIC COMPANY KENTUCKY UTILITIES COMPANY  
220 W Main St 7th FL  
Louisville, KY 40202  
ATTENTION: Contract Administration

**Subject:** *Merger of Mercuria Energy Gas Trading LLC ("MEGT") into and with Mercuria Energy America, Inc. ("MEA").*

**RE:** *2006 Base Contract for Sale and Purchase of Natural Gas effective as of 4/20/2015 (the "Agreement")*

Dear Sir or Madam:

This letter confirms and serves as the official notice that MEGT is merging into and with its parent, MEA as part of a corporate reorganization. You are receiving this letter because MEGT is your counterparty under the Agreement(s). Unless MEGT notifies you to the contrary prior to such date, **the merger shall be effective at 12:00AM (Eastern Daylight Time) on Monday, August 1, 2016.** In accordance with the Agreement, from that point forward, your counterparty will be MEA. Until then, MEGT will proceed in a business as usual fashion.

In light of the referenced merger and to better assist you with any internal transitional processes that you may need to address, we have enclosed (1) the Delaware Secretary of State Certificate of Merger, (2) the Certificate of Good Standing for MEA, (3) the Certificate of Good Standing for MEGT, (4) the W-9 for MEA, (5) tax exemption certificates, and (6) contact and banking information for MEA. However, please note that the current MEGT bank account will remain open in August for any July 31 and prior deliveries and activities.

If you have any questions, please feel free to reach out to the below contacts or your usual contact at Mercuria.

Legal:	John R. Velasquez, Jr.	(832) 531-7728	<a href="mailto:jvelasquez@mercuria.com">jvelasquez@mercuria.com</a>
Credit:	Jason Sohmer	(832) 209-2462	<a href="mailto:jsohmer@mercuria.com">jsohmer@mercuria.com</a>
Gas Sched.:	Katherine Vandemark	(832) 531-7651	<a href="mailto:kvandemark@mercuria.com">kvandemark@mercuria.com</a>

We look forward to continuing our relationship under MEA and working with you on this transition.

Very truly yours,

**Mercuria Energy Gas Trading LLC**

20 E. GREENWAY PLAZA, SUITE 650, HOUSTON, TX 77046, USA, T: 832-209-2400, F: 832-209-2401, [WWW.MERCURIA.COM](http://WWW.MERCURIA.COM)

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## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: **December 1, 2009**

The parties to this Base Contract are the following:

PARTY A MIECO Inc.	PARTY NAME	PARTY B
12110 North Pecos Street, Suite 220 Westminster, CO 80234	ADDRESS	Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU") 220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
<a href="http://www.mieco.com">www.mieco.com</a>	BUSINESS WEBSITE	<a href="http://www.eon-us.com">www.eon-us.com</a>
<b>11-856-2412</b>	CONTRACT NUMBER	N/A
<input checked="" type="checkbox"/> US FEDERAL: 33-0040680 <input type="checkbox"/> OTHER:	D-U-N-S® NUMBER	LGE 00-694-5505 / KU 00-694-4398
<b>Delaware</b>	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Limited Partnership <input type="checkbox"/> LLP	JURISDICTION OF ORGANIZATION	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:
Marubeni Corporation	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:
	GUARANTOR (IF APPLICABLE)	
<b>CONTACT INFORMATION</b>		
12110 North Pecos Street, Suite 220 Westminster, CO 80234 ATTN: <u>David Engbrock</u> TEL#: <u>303-450-0006</u> FAX#: <u>303-450-8190</u> EMAIL: <u>dengbrock@mieco.com</u>	<ul style="list-style-type: none"> <li>▪ <b>COMMERCIAL</b></li> </ul>	ATTN: <u>Trading Manager Gas</u> TEL#: <u>502-627-4210</u> FAX#: <u>502-627-4655</u> EMAIL: _____
12110 North Pecos Street, Suite 220 Westminster, CO 80234 ATTN: <u>Pam Hawkins</u> TEL#: <u>303-450-0006</u> FAX#: <u>303-450-8190</u> EMAIL: <u>phawkins@mieco.com</u>	<ul style="list-style-type: none"> <li>▪ <b>SCHEDULING</b></li> </ul>	ATTN: <u>Gas Scheduling</u> TEL#: <u>502-627-3034(502) 627-3034</u> FAX#: <u>502-627-4655</u> EMAIL: _____
12110 North Pecos Street, Suite 220 Westminster, CO 80234 ATTN: <u>David Engbrock</u> TEL#: <u>303-450-0006</u> FAX#: <u>303-450-8190</u> EMAIL: <u>dengbrock@mieco.com</u>	<ul style="list-style-type: none"> <li>▪ <b>CONTRACT AND LEGAL NOTICES</b></li> </ul>	LGE/KU ATTN: <u>Contract Administration</u> 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 TEL#: <u>502-627-4197</u> or <u>4253</u> FAX#: <u>502-627-4222</u> With Add'l Notice of Default Attn: <u>General Counsel, 15<sup>th</sup> FL</u> Add'l Notice of Default Fax# <u>502-627-4253</u> EMAIL: <u>N/A</u>
301 E Ocean Blvd, Suite 1100 Long Beach, CA 90802 ATTN: <u>Paula Crutchley</u> TEL#: <u>562-951-1765</u> FAX#: <u>562-901-2385</u> EMAIL: <u>pcrutchley@mieco.com</u>	<ul style="list-style-type: none"> <li>▪ <b>CREDIT</b></li> </ul>	LGE/KU ATTN: <u>Manager Credit</u> TEL#: <u>502-627-4253</u> FAX#: <u>502-627-3950</u> EMAIL: <u>N/A</u>
301 E Ocean Blvd, Suite 1100 Long Beach, CA 90802 ATTN: <u>Paula Crutchley</u> TEL#: <u>562-951-1765</u> FAX#: <u>562-901-2385</u> EMAIL: <u>pcrutchley@mieco.com</u>	<ul style="list-style-type: none"> <li>▪ <b>TRANSACTION CONFIRMATIONS</b></li> </ul>	LGE/KU ATTN: <u>Contract Administration</u> TEL#: <u>502-627-4197</u> or <u>2252</u> FAX#: <u>502-627-4222</u> EMAIL: <u>N/A</u>
<b>ACCOUNTING INFORMATION</b>		
301 E Ocean Blvd, Suite 1100 Long Beach, CA 90802 ATTN: <u>Gas Accounting</u> TEL#: <u>562-951-1773</u> FAX#: <u>562-439-2385</u> EMAIL: <u>dlamadrid@mieco.com</u>	<ul style="list-style-type: none"> <li>▪ <b>INVOICES</b></li> <li>▪ <b>PAYMENTS</b></li> <li>▪ <b>SETTLEMENTS</b></li> </ul>	LGE/KU ATTN: <u>Gas Accounting</u> TEL#: <u>502-627-4325</u> FAX#: <u>502-627-3800</u> EMAIL: <u>N/A</u>
BANK: <u>Bank of America N.A.</u> ABA: <u>026-009-593</u> ACCT: <u>12573-54052</u> OTHER DETAILS: For MIECO Inc., Natural Gas	<ul style="list-style-type: none"> <li>▪ <b>WIRE TRANSFER NUMBERS (IF APPLICABLE)</b></li> </ul>	BANK: <u>Bank of America, New York, NY.</u> ABA: <u>0260-0958-3</u> ACCT: <u>3752099133</u> OTHER DETAILS: _____
BANK: <u>Bank of America N.A.</u> ABA: <u>121-000-358</u> ACCT: <u>12573-54052</u> OTHER DETAILS: For MIECO Inc., Natural Gas	<ul style="list-style-type: none"> <li>▪ <b>ACH NUMBERS (IF APPLICABLE)</b></li> </ul>	BANK: <u>Bank of America, Dallas TX</u> ABA: <u>111000012</u> ACCT: <u>3752099133</u> OTHER DETAILS: <u>N/A</u>

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NAESB Standard 6.3.1  
September 5, 2006



# LATHAM & WATKINS LLP

811 Main Street, Suite 3700  
Houston, TX 77002  
Tel: +1.713.546.5400 Fax: +1.713.546.5401  
www.lw.com

## FIRM / AFFILIATE OFFICES

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Düsseldorf	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

**FACSIMILE TRANSMISSION**  
September 22, 2015

---

**To:** Louisville Gas & Electric Co.    **Fax:** 502-627-4222    **Tel:**  
 ATTN: Contract  
 Administration

---

**From:** Brock Naeve

**Re:** Assignment

047108-0022

Original(s) to follow

Number of pages, including cover: 5

Please see attached for your review. Thank you.

The information contained in this facsimile is confidential and may also contain privileged attorney-client information or work product. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received the facsimile in error, please immediately notify us by telephone, and return the original message to us at the address above via the U.S. Postal service. Thank you.

If there are any problems with this transmission, please call +1.713.546.5400.

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: April 1, 2009. The parties to this Base Contract are the following:

Louisville Gas and Electric Co./Kentucky Utilities Co. ("LGE"/"KU") and  
220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Duns Number: LGE 00-694-5505/ KU 00-694-4398  
 Contract Number: Not Applicable  
 U.S. Federal Tax ID No.: LGE 61-0264150/KU 61-0247570

NJR Energy Services Company  
1415 Wyckoff Road, PO Box 1464, Wall, NJ 07719  
 Duns Number: 02-571-5165  
 Contract Number: \_\_\_\_\_  
 U.S. Federal Tax ID No.: 22-3486298

**Notices:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502/627-4251 or 4197 Fax: 502/627-4222

1415 Wyckoff Road, PO Box 1464, Wall, NJ 07719  
 Attn: Contracts Dept.-Energy Services  
 Phone: (732)938-1196 Fax: (732) 919-8118

**Confirmations:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
07719  
 Attn: Contract Administration  
 Phone: 502/627-4197 or 4251 Fax: 502/627-4222

1415 Wyckoff Road, PO Box 1464, Wall, NJ  
 Attn: Kathy Casey  
 Phone: (732) 938-7879 Fax: (732) 938-6744

**Invoices and Payments:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Gas Accounting  
 Phone: 502/627-4627 Fax: 502/627-3800

1415 Wyckoff Road, PO Box 1464, Wall, NJ 07719  
 Attn: Gas Accounting/ Dawn Leibowitz  
 Phone: (732) 938-1124 Fax: (732) 938-7547

**Wire Transfer or ACH Numbers (if applicable):**

ACH ONLY:  
 BANK: Bank of America, Dallas, TX  
 ABA: 111-0000-12  
 ACCT: 3752099133  
 Other Details: \_\_\_\_\_

BANK: PNC Bank NA, Pittsburgh, PA  
 ABA: 043-000-096  
 ACCT: 1004387446  
 Other Details: \_\_\_\_\_

**WIRES ONLY:**

BANK: Bank of America, New York, NY  
 ABA: 0260-0959-3  
 ACCT: 3752099133  
 Other Details: \_\_\_\_\_

BANK: PNC Bank NA, Pittsburgh, PA  
 ABA: 043-000-096  
 ACCT: 1004387446  
 Other Details: \_\_\_\_\_

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 only one box from each section:

<b>Section 1.2</b> Transaction Procedure	<input checked="" type="checkbox"/> Oral (default) <input type="checkbox"/> Written	<b>Section 7.2</b> Payment Date	<input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) <input type="checkbox"/> _____ Day of Month following Month of delivery
<b>Section 2.5</b> Confirm Deadline	<input checked="" type="checkbox"/> 2 Business Days after receipt (default) <input type="checkbox"/> _____ Business Days after receipt	<b>Section 7.2</b> Method of Payment	<input checked="" type="checkbox"/> Wire transfer (default) AND <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check
<b>Section 2.6</b> Confirming Party	<input type="checkbox"/> Seller (default) <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> LGE/KU	<b>Section 7.7</b> Netting	<input checked="" type="checkbox"/> Netting applies (default) <input type="checkbox"/> Netting does not apply
<b>Section 3.2</b> Performance Obligation	<input checked="" type="checkbox"/> Cover Standard (default) <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages	<input checked="" type="checkbox"/> Early Termination Damages Apply (default) <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>		<b>Section 10.3.2</b> Other Agreement Setoffs	<input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 2.26</b> Spot Price Publication	<input checked="" type="checkbox"/> Gas Daily Midpoint (default) <input type="checkbox"/> _____	<b>Section 14.5</b> Choice Of Law	<u>New York</u>
<b>Section 6</b> Taxes	<input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) <input type="checkbox"/> Seller Pays Before and At Delivery Point	<b>Section 14.10</b> Confidentiality	<input checked="" type="checkbox"/> Confidentiality applies (default) <input type="checkbox"/> Confidentiality does not apply
<input checked="" type="checkbox"/> Special Provisions Number of sheets attached: <input type="checkbox"/> Addendum(s): _____			

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: October 13, 2014

The parties to this Base Contract are the following:

PARTY A Range Resources – Appalachia, LLC	PARTY NAME	PARTY B Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")
3000 Town Center Blvd Canonsburg, PA 15317	ADDRESS	220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
<a href="http://www.rangeresources.com">www.rangeresources.com</a>	BUSINESS WEBSITE	<a href="http://www.lge-ku.com">www.lge-ku.com</a>
11-453-4337	CONTRACT NUMBER	N/A
11-453-4337	D-U-N-S® NUMBER	LGE 00-694-5505 KU 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 34-1902948 <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
Delaware	JURISDICTION OF ORGANIZATION	Kentucky
<input type="checkbox"/> Corporation <input checked="" type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
GUARANTOR (IF APPLICABLE)		
<b>CONTACT INFORMATION</b>		
3000 Town Center Blvd, Canonsburg, PA 15317 ATTN: <u>David West</u> TEL#: (330) 805-4838      FAX#: (724) 873-3385 EMAIL: <a href="mailto:dwest@rangeresources.com">dwest@rangeresources.com</a>	▪ COMMERCIAL	LGE/KU ATTN: <u>Trading Manager Gas</u> TEL#: 502-627-4259      FAX#: 502-627-4655 EMAIL: _____
Range Resources – Appalachia, LLC (Marcellus Division) 3000 Town Center Blvd, Canonsburg, PA 15317 ATTN: <u>Susan Forslund</u> TEL#: (724) 873-3244      FAX#: (724) 873-3342 EMAIL: <a href="mailto:sforslund@rangeresources.com">sforlund@rangeresources.com</a>	▪ SCHEDULING	LGE/KU ATTN: <u>Gas Scheduling</u> TEL#: 502-627-3034      FAX#: 502-627-4655 EMAIL: _____
100 Throckmorton St., Suite 1200, Ft. Worth, TX 76102 ATTN: <u>Karen Bratcher</u> TEL#: (817) 869-4271      FAX#: (817) 869-9171 EMAIL: <a href="mailto:kbratcher@rangeresources.com">kbratcher@rangeresources.com</a>	▪ CONTRACT AND LEGAL NOTICES	LGE/KU ATTN: <u>Contract Administration</u> 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 TEL#: 502-627-4197 or 4253      FAX#: 502-627-4222 With Add'l Notice of Default Attn: General Counsel, 15 <sup>th</sup> FL Add'l Notice of Default Fax# 502-627-3950 EMAIL: <u>N/A</u>
100 Throckmorton St., Suite 1200, Ft. Worth, TX 76102 ATTN: <u>Mark Scucchi - Vice President - Finance</u> TEL#: 817-869-4288      FAX#: 817-869-9188 EMAIL: <a href="mailto:finance@rangeresources.com">finance@rangeresources.com</a>	▪ CREDIT	LGE/KU ATTN: <u>Manager Credit</u> TEL#: 502-627-4253      FAX#: 502-627-3950 EMAIL: <u>N/A</u>
Range Resources – Appalachia, LLC (Marcellus Division) 3000 Town Center Blvd, Canonsburg, PA 15317 ATTN: <u>Confirmations</u> TEL#:      FAX#: EMAIL: <a href="mailto:rangeconfirmssmsd@rangeresources.com">rangeconfirmssmsd@rangeresources.com</a>	▪ TRANSACTION CONFIRMATIONS	LGE/KU ATTN: <u>Contract Administration</u> TEL#: 502-627-4197 or 2252      FAX#: 502-627-4222 EMAIL: <u>N/A</u>
<b>ACCOUNTING INFORMATION</b>		
Range Resources – Appalachia, LLC (Marcellus Division) 3000 Town Center Blvd, Canonsburg, PA 15317 ATTN: <u>Susan Forslund</u> TEL#: (724) 873-3244      FAX#: (724) 873-3342 EMAIL: <a href="mailto:sforslund@rangeresources.com">sforlund@rangeresources.com</a>	▪ INVOICES ▪ PAYMENTS ▪ SETTLEMENTS	LGE/KU ATTN: <u>Gas Regulatory Accounting</u> TEL#: 502-627-3752      FAX#: 502-627-3800 EMAIL: <u>N/A</u>
BANK: <u>AMEGY Bank, N.A.</u> ABA: <u>113011258</u> ACCT: <u>0051895834</u> OTHER DETAILS: _____	WIRE TRANSFER NUMBERS (IF APPLICABLE)	BANK: <u>Bank of America, New York, NY.</u> ABA: <u>0260-0959-3</u> ACCT: <u>3752099133</u> OTHER DETAILS: _____

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: July 2, 2012

The parties to this Base Contract are the following:

PARTY A SEMPRA MIDSTREAM SERVICES, INC.	PARTY NAME	PARTY B
16945 Northchase Drive, Suite 1150 Houston, TX 77060	ADDRESS	Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU") 220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
www.sempra.com	BUSINESS WEBSITE	www.lge-ku.com
	CONTRACT NUMBER	N/A
93-275-1985	D-U-N-S® NUMBER	LGE 00-694-5505 KU 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 63-0843795 <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
Alabama	JURISDICTION OF ORGANIZATION	Kentucky
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:
Sempra Energy	GUARANTOR (IF APPLICABLE)	
<b>CONTACT INFORMATION</b>		
16945 Northchase Drive, Suite 1150, Houston, TX 77060 ATTN: <u>Director, Asset Optimization</u> TEL#: <u>281-423-2712</u> FAX#: <u>281-423-2740</u> EMAIL: <u>abohall@semprausgp.com</u>	▪ COMMERCIAL	LGE/KU ATTN: <u>Trading Manager Gas</u> TEL#: <u>502-627-4210</u> FAX#: <u>502-627-4655</u> EMAIL:
16945 Northchase Drive, Suite 1150, Houston, TX 77060 ATTN: <u>Volume Analyst</u> TEL#: <u>281-423-2714</u> FAX#: <u>281-423-2740</u> EMAIL: <u>hdelmas@semprausgp.com</u>	▪ SCHEDULING	LGE/KU ATTN: <u>Gas Scheduling</u> TEL#: <u>502-627-3034</u> FAX#: <u>502-627-4655</u> EMAIL:
101 Ash Street, HQ13B, San Diego, CA 92101 ATTN: <u>Senior Counsel</u> TEL#: <u>619-699-5194</u> FAX#: <u>281-423-2740</u> EMAIL:	▪ CONTRACT AND LEGAL NOTICES	LGE/KU ATTN: <u>Contract Administration</u> 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 TEL#: <u>502-627-4197</u> or <u>4253</u> FAX#: <u>502-627-4222</u> With Add'l Notice of Default Attn: <u>General Counsel, 15<sup>th</sup> FL</u> Add'l Notice of Default Fax# <u>502-627-4253</u> EMAIL: <u>N/A</u>
16945 Northchase Drive, Suite 1150, Houston, TX 77060 ATTN: <u>Risk Analyst</u> TEL#: <u>281-423-2734</u> FAX#: <u>281-423-2740</u> EMAIL: <u>dchalman@semprausgp.com</u>	▪ CREDIT	LGE/KU ATTN: <u>Manager Credit</u> TEL#: <u>502-627-4253</u> FAX#: <u>502-627-3950</u> EMAIL: <u>N/A</u>
16945 Northchase Drive, Suite 1150, Houston, TX 77060 ATTN: <u>Business Services Associate</u> TEL#: <u>281-423-2705</u> FAX#: <u>281-423-2740</u> EMAIL: <u>ksilva@semprausgp.com</u>	▪ TRANSACTION CONFIRMATIONS	LGE/KU ATTN: <u>Contract Administration</u> TEL#: <u>602-627-4197</u> or <u>2252</u> FAX#: <u>502-627-4222</u> EMAIL: <u>N/A</u>
<b>ACCOUNTING INFORMATION</b>		
16945 Northchase Drive, Suite 1150, Houston, TX 77060 ATTN: <u>Business Services Analyst</u> TEL#: <u>281-423-2765</u> FAX#: <u>281-423-2740</u> EMAIL: <u>stthomas@semprausgp.com</u>	▪ INVOICES ▪ PAYMENTS ▪ SETTLEMENTS	LGE/KU ATTN: <u>Gas Regulatory Accounting, 9<sup>th</sup> FL</u> TEL#: <u>502-627-3239</u> FAX#: <u>502-627-3800</u> EMAIL: <u>N/A</u>
BANK: <u>Wells Fargo Bank</u> ABA: <u>121000248</u> ACCT: <u>2079900618000</u> OTHER DETAILS:	WIRE TRANSFER NUMBERS (IF APPLICABLE)	BANK: <u>Bank of America, New York, NY.</u> ABA: <u>0260-0959-3</u> ACCT: <u>3752099133</u> OTHER DETAILS:

# BASE CONTRACT FOR SHORT-TERM SALE AND PURCHASE OF NATURAL GAS

This Base Contract is entered into as of the following date: January 1, 2003

The parties to this Base Contract are the following:

**Sequent Energy Management, L.P.**  
1000 Louisiana, Suite 1975  
Houston, TX 77002

and **Louisville Gas and Electric Company/Kentucky Utilities Company**, Kentucky corporations operating as one jointly dispatched utility, 220 West Main St., 7<sup>th</sup> Floor  
Louisville, KY 40202

Duns # 61-207-5846

Duns # LGE 00-694-5505/KU 00-694-4938

Contract #

Contract #

Attn: Contract Administration

Attn: Contract Administration

Phone: (832) 397-1700 Fax: (832) 397-1722

Phone: (502) 627-4251 or 4197 Fax: (502) 627-4222

Federal Tax ID Number: 58-2642294

Federal Tax ID Number: LGE 61-0264150/KU 61-0247570

Invoices and Payments:

Invoices and Payments:

Same as above

Same as above

Attn: Gas Accounting

Attn: Gas Accounting

Phone: (832) 397-1700 Fax: (832) 397-1709

Phone: (502) 627-4627 Fax: (502) 627-3800

Wire Transfer or ACH Nos. (if applicable)

Wire Transfer or ACH Nos. (if applicable)

Wachovia Bank, Wachovia, GA

PNC Bank, Pittsburgh, PA

ABA #061-0000-10, Acct #14-164-495

ABA # 043-0000-96, Acct# 1008270544

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Short-Term Sale and Purchase of Natural Gas published by the Gas Industry Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions (select only one from each box, but see "Note" relating to Section 2.24.):

Section 1.2 Transaction Procedure	<input checked="" type="checkbox"/> Oral <input type="checkbox"/> Written	Section 6. Taxes	<input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point <input type="checkbox"/> Seller Pays Before and At Delivery Point
Section 2.4 Confirm Deadline	<input checked="" type="checkbox"/> 2 Business Days after receipt (default) <input type="checkbox"/> Business Days after receipt	Section 7.2 Payment Date	25 <sup>th</sup> date of Month following Month of delivery
Section 2.5 Confirming Party	<input type="checkbox"/> Seller <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Both Parties	Section 7.2 Method of Payment	<input checked="" type="checkbox"/> Wire Transfer (WT) <input checked="" type="checkbox"/> Automated Clearinghouse (ACH) <input type="checkbox"/> Check
Section 3.2 Performance Obl.	<input checked="" type="checkbox"/> Cover Standard <input type="checkbox"/> Spot Price Standard	Section 13.5 CHOICE OF LAW: State of New York	
<p>Note: The following Spot Price Publication applies to both of the immediately preceding Standards and must be filled in after a Standard is selected.</p> <p>Section 2.24 Spot Price Publication: Gas Daily Midpoint Price</p> <p><input checked="" type="checkbox"/> Special Provisions: Number of sheets attached: Nine (9) Pages</p>			

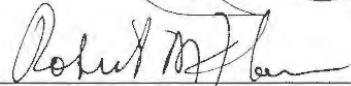
IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

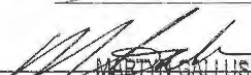
SEQUENT ENERGY MANAGEMENT, L.P.

LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY

(Party Name)

(Party Name)

By   
Title Executive V.P. of Business Support & Development

By   
Title SR. VICE PRESIDENT  
LOUISVILLE GAS & ELECTRIC COMPANY  
KENTUCKY UTILITIES

**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. This Contract is intended for Interruptible transactions or Firm transactions of one month or less and may not be suitable for Firm transactions of longer than one month. Further, GISB does not mandate the use of this Contract by any party. GISB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO GISB'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 GISB 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 GISB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.



## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: April 1, 2009. The parties to this Base Contract are the following:

<b>Shell Energy North America (US), L.P.</b> , a Delaware limited partnership Duns Number: <u>83-756-5548</u> Contract Number: _____ U.S. Federal Tax ID No: <u>76-0480645</u>	and <b>Kentucky Utilities Co. / Louisville Gas and Electric Co.</b> Duns Number: _____ Contract Number: <u>Not Applicable</u> U.S. Federal Tax ID No: <u>KU 61-0247570 / LGE 61-0264150</u>
--	--

<b>Notices:</b> 909 Fannin, Plaza Level 1, Houston, TX 77010 Attn: <u>Contracts North America</u> Phone: <u>(713) 230-7505</u> Fax: <u>(713) 767-5644</u>	220 West Main St., 7 <sup>th</sup> Floor, Louisville, KY 40202 Attn: <u>Contract Administration</u> Phone: <u>502-627-4251 or 4197</u> Fax: <u>502-627-4222</u>
--	---

<b>Confirmations:</b> 909 Fannin, Plaza Level 1, Houston, TX 77010 Attn: <u>Contracts North America</u> Phone: <u>(713) 230-7505</u> Fax: <u>(713) 265-2171</u>	220 West Main St., 7 <sup>th</sup> Floor, Louisville, KY 40202 Attn: <u>Contract Administration</u> Phone: <u>502-627-4197 or 4251</u> Fax: <u>502-627-4222</u>
--	---

<b>Invoices and Payments:</b> 909 Fannin, Plaza Level 1, Houston, TX 77010 Attn: <u>Gas Accounting</u> Phone: <u>(713) 767-5400</u> Fax: <u>(713) 767-5445</u>	220 West Main St., 7 <sup>th</sup> Floor, Louisville, KY 40202 Attn: <u>Gas Accounting</u> Phone: <u>502-627-4627</u> Fax: <u>502-627-3800</u>
---	--

<b>Wire Transfer or ACH Numbers (if applicable):</b> BANK: <u>Citibank, N.A.</u> ABA: <u>021000089</u> ACCT: <u>30603902</u> Other Details: _____	BANK: <u>Bank of America, Dallas, TX</u> ABA: <u>111-0000-12</u> ACCT: <u>3752099133</u> Other Details: _____
---	--

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 only one box from each section:

<b>Section 1.2</b> Transaction Procedure <input checked="" type="checkbox"/> Oral (default) <input type="checkbox"/> Written	<b>Section 7.2</b> Payment Date <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) <input type="checkbox"/> _____ Day of Month following Month of delivery
<b>Section 2.5</b> Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) <input type="checkbox"/> _____ Business Days after receipt	<b>Section 7.2</b> Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) <input type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check
<b>Section 2.6</b> Confirming Party <input type="checkbox"/> Seller (default) <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> <b>KU/LGE</b>	<b>Section 7.7</b> Netting <input checked="" type="checkbox"/> Netting applies (default) <input type="checkbox"/> Netting does not apply
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) <input type="checkbox"/> Spot Price Standard  Note: The following Spot Price Publication applies to both of the immediately preceding. <b>Section 2.26</b> Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) <input type="checkbox"/> _____	<b>Section 10.3.1</b> Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) <input type="checkbox"/> Early Termination Damages Do Not Apply  <b>Section 10.3.2</b> Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input type="checkbox"/> Other Agreement Setoffs Do Not Apply  <b>Section 14.5</b> Choice Of Law _____ New York
<b>Section 6</b> Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) <input type="checkbox"/> Seller Pays Before and At Delivery Point	<b>Section 14.10</b> Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) <input type="checkbox"/> Confidentiality does not apply
<input checked="" type="checkbox"/> Special Provisions Number of sheets attached: <u>Five (5)</u> <input checked="" type="checkbox"/> Addendum(s): <u>Exhibit B - Credit Support Addendum</u>	

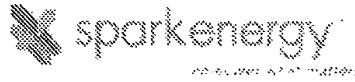
IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

**SHELL ENERGY NORTH AMERICA (US), L.P.**  
 Party Name  
 By Steve Widner  
 Name: Steve Widner  
 Title: Senior Vice President

**KENTUCKY UTILITIES CO. / LOUISVILLE GAS AND ELECTRIC CO.**  
 Party Name  
 By David S. Sinclair  
 Name: David S. Sinclair  
 Title: Vice President - Energy Marketing

TO : LGE-KU COMPANY :

From: Fax Server Page: 9/23 Date: 7/9/2014 3:24:10 AM



July 7, 2014

TO: PARTIES THAT HAVE CONTRACTS WITH ANY SPARK ENERGY GAS, LP

RE: Notice of Name Change

Please be advised that effective immediately, Spark Energy Gas, LP has converted from a limited partnership to a limited liability company, now known as Spark Energy Gas, U.C. No contract assignment has occurred and the terms and conditions of your contracts, including bank account numbers, will remain the same.

Attached is a copy of the relevant documentation filed with the Secretary of State along with a W-9 evidencing these changes.

Please direct any questions to [contractsadmin@sparkenergy.com](mailto:contractsadmin@sparkenergy.com). Thank you for your cooperation in this matter.

A handwritten signature in cursive script that reads "Ruth Hudson".

Ruth Hudson  
Credit Manager

2105 CityWest Blvd., Suite 300 Houston, TX 77042

This fax was received by GFI FaxMaker fax server. For more information, visit: <http://www.gfi.com>



Corporate Office  
P.O. Box 12359  
Spring, Texas 77301-2359  
www.swn.com

February 10, 2015

Kentucky Utilities  
220 West Main St., 7th Floor  
Louisville, KY 40202

Attn: Contract Administration Department

Dear Sir:

Please be advised that effective February 6, 2015, *Southwestern Energy Services Company* has changed its name and corporate form to *SWN Energy Services Company, LLC*, a Texas limited liability company. Please change your records accordingly. Please note that SWN Energy Services Company, LLC is the same company as Southwestern Energy Services Company and all contracts remain in full force and effect. A copy of the corresponding documentation is attached for your files. ***Please note that there is no change in the Federal Taxpayer Identification Number.***

Also, if you have not yet provided us with a copy of your Reseller Tax Certificate(s), please send them to the attention of Dan High at [Dan\\_High@swn.com](mailto:Dan_High@swn.com).

Should you have any questions regarding the above, please feel free to contact Bill Hebenstreit at [Bill\\_Hebenstreit@swn.com](mailto:Bill_Hebenstreit@swn.com) or at 832-796-6263.

Sincerely,

Contract Administration

Attachment

10000 Energy Drive  
Spring, TX 77389-4854

The Right People doing the Right Things,  
wisely investing the cash flow from our  
underlying Assets, will create Value+<sup>®</sup>

AMENDMENT TO  
BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS

This Amendment to Base Contract for Sale and Purchase of Natural Gas is made and entered into this 15<sup>th</sup> day of November, 2008 by and between Tenaska Marketing Ventures ("TMV") and Louisville Gas and Electric Company/Kentucky Utilities Company ("Counterparty"), (collectively the "Parties").

WHEREAS, TMV and Counterparty are parties to that certain Base Contract for Sale and Purchase of Natural Gas dated July 1, 2004 (the "Contract"); and

WHEREAS, the Parties now desire to amend the Contract as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 10.2 of the General Terms and Conditions of the Contract shall be amended by:

(i) deleting the following:

"For purposes of this Section 10.2, with respect to TMV, guarantor shall be limited to American International Group, Inc. and AIG Financial Products Corp. notwithstanding that Tenaska Energy, Inc. and Tenaska Energy Holdings, LLC are signatories to the Guarantee with AIG Financial Products Corp. provided to Counterparty on behalf of TMV."

and

(ii) replacing such deleted language with the following:

"For purposes of this Section 10.2, with respect to TMV, the term "guarantor" or "Guarantor" shall be limited to Tenaska Energy, Inc. and Tenaska Energy Holdings, LLC only; notwithstanding that AIG Financial Products Corp. is also a signatory to a joint and several guaranty previously provided to Counterparty on behalf of TMV."

2. Except as herein amended, the Contract shall remain in full force and effect. If there are any conflicts between this Amendment and the Contract, the terms of this Amendment shall govern.

3. All capitalized terms used herein, unless otherwise defined, shall have the meanings given to them in the Contract.

4. This Amendment may be executed in counterparts, all of which taken together shall constitute one and the same instrument.

*[Signature page follows]*

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: December 1, 2007. The parties to this Base Contract are the following:

**Louisville Gas and Electric Co./Kentucky Utilities Co. ("LGE"/"KU")** and  
 220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Duns Number: LGE: 00-694-5505 / KU: 00-694-4398  
 Contract Number: \_\_\_\_\_  
 U.S. Federal Tax ID Number: LGE: 61-0264150/KU: 61-0247570

**TOTAL GAS & POWER NORTH AMERICA, INC.**  
 1201 Louisiana St., Suite 1600, Houston, TX 77002  
 Duns Number: 62-005-9980  
 Contract Number: 1993  
 U.S. Federal Tax ID Number: 75-2334559

**Notices:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: (502) 627-4251 or 4197 Fax: (502) 627-4222

1201 Louisiana St., Suite 1600, Houston, TX 77002  
 Attn: Contract Administration  
 Phone: (713) 647-4000 Fax: (713) 647-4030

**Confirmations:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: (502) 627-4197 or 4251 Fax: (502) 627-4222

1201 Louisiana St., Suite 1600, Houston, TX 77002  
 Attn: Confirmations Analyst  
 Phone: (713) 647-4000 Fax: (713) 647-4094

**Invoices and Payments:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Gas Accounting  
 Phone: (502) 627-4251 or 4197 Fax: (502) 627-4222

1201 Louisiana St., Suite 1600, Houston, TX 77002  
 Attn: Natural Gas Accounting  
 Phone: (713) 647-5075 Fax: (713) 647-4094

**Wire Transfer or ACH Numbers (if applicable):**

BANK: Bank of America, New York, NY  
 ABA: 0260-0959-3 ACH: 111-0000-12  
 ACCT: 3752099133 ACH: 3752099133  
 Other Details: \_\_\_\_\_

BANK: JPMorgan Chase Bank, New York, NY  
 ABA: 021000021  
 ACCT: 323-157769  
 Other Details: \_\_\_\_\_


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 only one box from each section:**


<p><b>Section 1.2</b> <input checked="" type="checkbox"/> Oral (default)                  Transaction <input type="checkbox"/> Written                  Procedure</p>	<p><b>Section 7.2</b> <input checked="" type="checkbox"/> 25<sup>th</sup> Day of Month following Month of                  Payment Date delivery (default)  <input type="checkbox"/> _____ Day of Month following Month of                  delivery</p>
<p><b>Section 2.5</b> <input checked="" type="checkbox"/> 2 Business Days after receipt (default)                  Confirm <input type="checkbox"/> _____ Business Days after receipt                  Deadline</p>	<p><b>Section 7.2</b> <input checked="" type="checkbox"/> Wire transfer (default)                  Method of <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH)                  Payment <input type="checkbox"/> Check</p>
<p><b>Section 2.6</b> <input type="checkbox"/> Seller (default)                  Confirming <input type="checkbox"/> Buyer                  Party <input checked="" type="checkbox"/> Both</p>	<p><b>Section 7.7</b> <input checked="" type="checkbox"/> Netting applies (default)                  Netting <input type="checkbox"/> Netting does not apply</p>
<p><b>Section 3.2</b> <input checked="" type="checkbox"/> Cover Standard (default)                  Performance <input type="checkbox"/> Spot Price Standard                  Obligation</p> <p><b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b></p> <p><b>Section 2.26</b> <input checked="" type="checkbox"/> Gas Daily Midpoint (default)                  Spot Price <input type="checkbox"/> _____                  Publication</p>	<p><b>Section 10.3.1</b> <input checked="" type="checkbox"/> Early Termination Damages Apply (default)                  Early Termination <input type="checkbox"/> Early Termination Damages Do Not Apply                  Damages</p> <p><b>Section 10.3.2</b> <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default)                  Other Agreement <input type="checkbox"/> Other Agreement Setoffs Do Not Apply                  Setoffs</p> <p><b>Section 14.5</b>                  Choice Of Law New York</p>
<p><b>Section 6</b> <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point                  Taxes (default)  <input type="checkbox"/> Seller Pays Before and At Delivery Point</p>	<p><b>Section 14.10</b> <input checked="" type="checkbox"/> Confidentiality applies (default)                  Confidentiality <input type="checkbox"/> Confidentiality does not apply</p>
<p><input checked="" type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: Six (6)  <input type="checkbox"/> <b>Addendum(s):</b> None</p>	

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

Louisville Gas and Electric Co./Kentucky Utilities Co.  
 Party Name

TOTAL GAS & POWER NORTH AMERICA, INC.  
 Party Name

By   
 Name: MARTYN GALLUS  
 Title: SR. VICE PRESIDENT

By  DAP  
 Name: Bruce E. Henderson  
 Title: President and General Manager

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: 2.19.2014

The parties to this Base Contract are the following:

<b>PARTY A</b> Triad Hunter, LLC	<b>PARTY NAME</b>	<b>PARTY B</b> Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")
125 Putnam Street Marietta, OH 45750	<b>ADDRESS</b>	220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
<a href="http://www.magnumhunterresources.com">www.magnumhunterresources.com</a>	<b>BUSINESS WEBSITE</b>	<a href="http://www.lge-ku.com">www.lge-ku.com</a>
	<b>CONTRACT NUMBER</b>	N/A
62-162-5883	<b>D-U-N-S® NUMBER</b>	LGE 00-694-5505 KU 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 45-3202527 ✓ <input type="checkbox"/> OTHER:	<b>TAX ID NUMBERS</b>	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
Delaware	<b>JURISDICTION OF ORGANIZATION</b>	Kentucky
<input type="checkbox"/> Corporation <input checked="" type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	<b>COMPANY TYPE</b>	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
	<b>GUARANTOR (IF APPLICABLE)</b>	
<b>CONTACT INFORMATION</b>		
<u>777 Post Oak Blvd., Ste 910, Houston, TX 77056</u> ATTN: <u>Greg Trefz</u> TEL#: <u>713-568-4438</u> FAX#: <u>832-203-4580</u> EMAIL: <u>gtrefz@magnumhunterresources.com</u>	• <b>COMMERCIAL</b>	LGE/KU ATTN: <u>Trading Manager Gas</u> TEL#: <u>502-627-4259</u> FAX#: <u>502-627-4655</u> EMAIL:
<u>777 Post Oak Blvd., Ste 910, Houston, TX 77056</u> ATTN: <u>Shawn Davis</u> TEL#: <u>832-203-4555</u> FAX#: <u>832-203-4580</u> EMAIL: <u>sdavis@magnumhunterresources.com</u>	• <b>SCHEDULING</b>	LGE/KU ATTN: <u>Gas Scheduling</u> TEL#: <u>502-627-3034</u> FAX#: <u>502-627-4655</u> EMAIL:
<u>777 Post Oak Blvd., Ste 910, Houston, TX 77056</u> ATTN: <u>Greg Trefz</u> TEL#: <u>713-568-4438</u> FAX#: <u>832-203-4580</u> EMAIL: <u>gtrefz@magnumhunterresources.com</u>	• <b>CONTRACT AND LEGAL NOTICES</b>	LGE/KU ATTN: <u>Contract Administration</u> <u>220 W Main St., 7<sup>th</sup> FL, Louisville KY 40202</u> TEL#: <u>502-627-4197</u> or <u>4253</u> FAX#: <u>502-627-4222</u> With Add'l Notice of Default Attn: <u>General Counsel, 15<sup>th</sup> FL</u> Add'l Notice of Default Fax# <u>502-627-3950</u> EMAIL: <u>N/A</u>
<u>777 Post Oak Blvd., Ste 910, Houston, TX 77056</u> ATTN: <u>Mark Wolf</u> TEL#: <u>832-203-4564</u> FAX#: <u>832-203-4580</u> EMAIL: <u>mwolf@magnumhunterresources.com</u>	• <b>CREDIT</b>	LGE/KU ATTN: <u>Manager Credit</u> TEL#: <u>502-627-4253</u> FAX#: <u>502-627-3950</u> EMAIL: <u>N/A</u>
<u>777 Post Oak Blvd., Ste 910, Houston, TX 77056</u> ATTN: <u>Shawn Davis</u> TEL#: <u>832-203-4555</u> FAX#: <u>832-203-4580</u> EMAIL: <u>mwolf@magnumhunterresources.com</u>	• <b>TRANSACTION CONFIRMATIONS</b>	LGE/KU ATTN: <u>Contract Administration</u> TEL#: <u>502-627-4197</u> or <u>2252</u> FAX#: <u>502-627-4222</u> EMAIL: <u>N/A</u>
<b>ACCOUNTING INFORMATION</b>		
<u>1046 Texan Trail, Grapevine, TX 76051</u> ATTN: <u>Lesley Thompson</u> TEL#: <u>469-293-2763</u> FAX#: _____ EMAIL: <u>lthompson@magnumhunterresources.com</u>	• <b>INVOICES</b> • <b>PAYMENTS</b> • <b>SETTLEMENTS</b>	LGE/KU ATTN: <u>Gas Regulatory Accounting</u> TEL#: <u>502-627-3726</u> FAX#: <u>502-627-3800</u> EMAIL: <u>N/A</u>
BANK: <u>Amegy Bank</u> ABA: <u>113011258</u> ACCT: <u>53265994</u> OTHER DETAILS: _____	<b>WIRE TRANSFER NUMBERS (IF APPLICABLE)</b>	BANK: <u>Bank of America, New York, NY.</u> ABA: <u>0260-0959-3</u> ACCT: <u>3752099133</u> OTHER DETAILS: _____
BANK: <u>Amegy Bank</u> ABA: <u>113011258</u> ACCT: <u>53265994</u> OTHER DETAILS: _____	<b>ACH NUMBERS (IF APPLICABLE)</b>	BANK: <u>Bank of America, Dallas TX</u> ABA: <u>111000012</u> ACCT: <u>3752099133</u> OTHER DETAILS: <u>N/A</u>

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: **December 1, 2003**. The parties to this Base Contract are the following:

Louisville Gas & Electric Co./Kentucky Utilities Co. ("LGE/KU")  
 220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Duns Number: 00-694-5505/00-694-4938  
 Contract Number: Not Applicable  
 U.S. Federal Tax ID No: LGE 61-0264150/KU 61-0247570

Tennessee Valley Authority  
 1101 Market St., Suite MR 2N 416, Chattanooga, TN 37402  
 Duns Number: 967537572  
 Contract Number: Not Applicable  
 U.S. Federal Tax ID No.: 62-0474417

**Notices:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502/627-4251 or 4197 Fax: 502/627-4222

1101 Market St. Suite MR 2N 16, Chattanooga, TN 37402  
 Attn: Steven C. Settle, C.P.M.  
 Phone: 423-751-4650 Fax: 423-751-8702

**Confirmations:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502/627-4251 or 4197 Fax: 502/627-4222

1101 Market St. Suite MR 2N 16, Chattanooga, TN 37402  
 Attn: Steven C. Settle, C.P.M.  
 Phone: 423-751-4650 Fax: 423-751-8702

**Invoices and Payments:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202

P.O. Box 15500, 400 West Summit Hill Dr, Knoxville, TN 37902

Attn: Gas Accounting  
 Phone: 502/627-4627 Fax: 502/627-3800

Attn: TVA Accts. Payable attn: Boby Copeland  
 Phone: 865-632-3028 Fax: 865-632-4019 or 8609

**Wire Transfer or ACH Numbers (if applicable):**

BANK: PNC Bank, Pittsburgh, PA  
 ABA: 043-0000-96  
 ACCT: 1008270544  
 Other Details: \_\_\_\_\_

**WIRE PAYMENTS:**

BANK: Treas NYC (Official Abbreviation)  
 ABA: 021030004  
 ACCT: 4912  
 Other Details: \_\_\_\_\_

**ACH PAYMENTS:**

Depository Institution Name: Cash Link ACH Receiver  
 Routing Transit Number: 051036706  
 Account Name: Tennessee Valley Authority  
 Account Number: 349000

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 only one box from each section:**

<b>Section 1.2</b> Transaction Procedure	<input checked="" type="checkbox"/> Oral (default) <input type="checkbox"/> Written	<b>Section 7.2</b> Payment Date	<input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) <input type="checkbox"/> _____ Day of Month following Month of delivery
<b>Section 2.5</b> Confirm Deadline	<input checked="" type="checkbox"/> 2 Business Days after receipt (default) <input type="checkbox"/> _____ Business Days after receipt	<b>Section 7.2</b> Method of Payment	<input checked="" type="checkbox"/> Wire transfer (default) <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check
<b>Section 2.6</b> Confirming Party	<input type="checkbox"/> Seller (default) <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> LGE/KU	<b>Section 7.7</b> Netting	<input checked="" type="checkbox"/> Netting applies (default) <input type="checkbox"/> Netting does not apply
<b>Section 3.2</b> Performance Obligation	<input checked="" type="checkbox"/> Cover Standard (default) <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages	<input checked="" type="checkbox"/> Early Termination Damages Apply (default) <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>		<b>Section 10.3.2</b> Other Agreement Setoffs	<input type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 2.26</b> Spot Price Publication	<input checked="" type="checkbox"/> Gas Daily Midpoint (default) <input type="checkbox"/> _____	<b>Section 14.5</b> Choice Of Law	<u>Federal law and to the extent not inconsistent, New York law</u>
<b>Section 6</b> Taxes	<input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) <input type="checkbox"/> Seller Pays Before and At Delivery Point	<b>Section 14.10</b> Confidentiality	<input checked="" type="checkbox"/> Confidentiality applies (default) <input type="checkbox"/> Confidentiality does not apply
<input checked="" type="checkbox"/> Special Provisions Number of sheets attached: 7 <input type="checkbox"/> Addendum(s): _____			

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: **March 19, 2012**

The parties to this Base Contract are the following:

PARTY A	PARTY NAME	PARTY B
<b>Twin Eagle Resource Management, LLC ("TERM")</b>		<b>Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")</b>
5120 Woodway Dr., Suite 10010 Houston, TX 77056	ADDRESS	220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
<u>Termna.com</u>	BUSINESS WEBSITE	<u>www.lge-ku.com</u>
	CONTRACT NUMBER	N/A
965177889	D-U-N-S® NUMBER	LGE 00-694-5505 KU 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 27-3631224 <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
<b>Delaware</b>	JURISDICTION OF ORGANIZATION	<b>Kentucky</b>
<input type="checkbox"/> Corporation <input checked="" type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
	GUARANTOR (IF APPLICABLE)	
<b>CONTACT INFORMATION</b>		
ATTN: <u>Gas Desk</u> TEL#: <u>713-341-7300</u> FAX#: <u>713-341-7324</u> EMAIL: _____	▪ <b>COMMERCIAL</b>	LGE/KU ATTN: <u>Trading Manager Gas</u> TEL#: 502-627-4210      FAX#: 502-627-4655 EMAIL: _____
ATTN: Gas Scheduling TEL#: <u>713-341-7300</u> FAX#: <u>713-341-7324</u> EMAIL: _____	▪ <b>SCHEDULING</b>	LGE/KU ATTN: <u>Gas Scheduling</u> TEL#: 502-627-3034      FAX#: 502-627-4655 EMAIL: _____
ATTN: Contract Services TEL#: <u>713-341-7300</u> FAX#: <u>713-341-7324</u> EMAIL: <u>Contracts@termna.com</u>	▪ <b>CONTRACT AND LEGAL NOTICES</b>	LGE/KU ATTN: <u>Contract Administration</u> 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 TEL#: 502-627-4197 or 4253      FAX#: 502-627-4222 With Add'l Notice of Default Attn: <u>General Counsel, 15<sup>th</sup> FL</u> Add'l Notice of Default Fax# 502-627-4253 EMAIL: <u>N/A</u>
ATTN: Credit Services TEL#: <u>713-341-7300</u> FAX#: <u>713-341-7324</u> EMAIL: <u>credit@termna.com</u>	▪ <b>CREDIT</b>	LGE/KU ATTN: <u>Manager Credit</u> TEL#: 502-627-4253      FAX#: 502-627-3950 EMAIL: <u>N/A</u>
ATTN: Confirmations Dept. TEL#: <u>713-341-7300</u> FAX#: 713-341-7303 EMAIL: <u>confirmations@termna.com</u>	▪ <b>TRANSACTION CONFIRMATIONS</b>	LGE/KU ATTN: <u>Contract Administration</u> TEL#: 502-627-4197 or 2252      FAX#: 502-627-4222 EMAIL: <u>N/A</u>
<b>ACCOUNTING INFORMATION</b>		
ATTN: Gas Accounting TEL#: <u>713-341-7300</u> FAX#: <u>713-341-7324</u> EMAIL: <u>invoices@termna.com</u>	▪ <b>INVOICES</b> ▪ <b>PAYMENTS</b> ▪ <b>SETTLEMENTS</b>	LGE/KU ATTN: <u>Financial Accounting &amp; Analysis</u> TEL#: <u>502-627-3686</u> FAX#: <u>502-627-3800</u> EMAIL: <u>N/A</u>
BANK: BNP Paribas ABA: 026007689 ACCT: <u>0020062108900150</u>  OTHER DETAILS: For the Account of Twin Eagle Resource Management, LLC	WIRE TRANSFER NUMBERS (IF APPLICABLE)	BANK: Bank of America, New York, NY. ABA: 0260-0959-3 ACCT: 3752099133 OTHER DETAILS: _____



## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: 2-1-2005. The parties to this Base Contract are the following:

Louisville Gas and Electric Co./Kentucky Utilities Co. ("LGE"/"KU")  
220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Contract Number: Not Applicable  
 U.S. Federal Tax ID No: LGE 61-0264150/KU 61-0247570

and United Energy Trading, LLC  
919 S 7<sup>th</sup> St., Suite 405, Bismarck, ND 58504  
 Contract Number: Not Applicable  
 U.S. Federal Tax ID No.: 37-1439798

**Notices:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502/627-4251 or 4197 Fax: 502/627-4222

919 S 7<sup>th</sup> St., Suite 405, Bismarck, ND 58504  
 Attn: Contract Administration  
 Phone: 701-250-9367 Fax: 701-255-7952

**Confirmations:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502/627-4197 or 4251 Fax: 502/627-4222

919 S 7<sup>th</sup> St., Suite 405, Bismarck, ND 58504  
 Attn: Contract Administration  
 Phone: 701-250-9367 Fax: 701-255-7952

**Invoices and Payments:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Gas Accounting  
 Phone: 502/627-4627 Fax: 502/627-3800

919 S 7<sup>th</sup> St., Suite 405, Bismarck, ND 58504  
 Attn: Gas Accounting - Jane Mann  
 Phone: 701-250-9367 Fax: 701-255-7952

**Wire Transfer or ACH Numbers (if applicable):**

BANK: Bank of America, Dallas, TX  
 ABA: 111-0000-12  
 ACCT: 3752099133  
 Other Details: \_\_\_\_\_

BANK: BNC National Bank - Bismarck, ND  
 ABA: 091310754  
 ACCT: #163702  
 Other Details: \_\_\_\_\_

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 only one box from each section:**

<p><b>Section 1.2</b> <input checked="" type="checkbox"/> Oral (default)                  Transaction Procedure <input type="checkbox"/> Written</p>	<p><b>Section 7.2</b> <input checked="" type="checkbox"/> 25<sup>th</sup> Day of Month following Month of delivery (default)                  Payment Date <input type="checkbox"/> _____ Day of Month following Month of delivery</p>
<p><b>Section 2.5</b> <input checked="" type="checkbox"/> 2 Business Days after receipt (default)                  Confirm Deadline <input type="checkbox"/> _____ Business Days after receipt</p>	<p><b>Section 7.2</b> <input checked="" type="checkbox"/> Wire transfer (default) AND                  Method of Payment <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH)  <input type="checkbox"/> Check</p>
<p><b>Section 2.6</b> <input type="checkbox"/> Seller (default)                  Confirming Party <input type="checkbox"/> Buyer  <input checked="" type="checkbox"/> LGE/KU</p>	<p><b>Section 7.7</b> <input checked="" type="checkbox"/> Netting applies (default)                  Netting <input type="checkbox"/> Netting does not apply</p>
<p><b>Section 3.2</b> <input checked="" type="checkbox"/> Cover Standard (default)                  Performance Obligation <input type="checkbox"/> Spot Price Standard</p> <p><i>Note: The following Spot Price Publication applies to both of the immediately preceding.</i></p> <p><b>Section 2.26</b> <input checked="" type="checkbox"/> Gas Daily Midpoint (default)                  Spot Price Publication <input type="checkbox"/> _____</p>	<p><b>Section 10.3.1</b> <input checked="" type="checkbox"/> Early Termination Damages Apply (default)                  Early Termination Damages <input type="checkbox"/> Early Termination Damages Do Not Apply</p> <p><b>Section 10.3.2</b> <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default)                  Other Agreement Setoffs <input type="checkbox"/> Other Agreement Setoffs Do Not Apply</p>
<p><b>Section 6</b> <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default)                  Taxes <input type="checkbox"/> Seller Pays Before and At Delivery Point</p>	<p><b>Section 14.5</b> Choice Of Law <u>                    New York                    </u></p> <p><b>Section 14.10</b> <input checked="" type="checkbox"/> Confidentiality applies (default)                  Confidentiality <input type="checkbox"/> Confidentiality does not apply</p>
<p><input checked="" type="checkbox"/> Special Provisions Number of sheets attached: <u>8</u>  <input type="checkbox"/> Addendum(s): _____</p>	

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

**LOUISVILLE GAS AND ELECTRIC CO./KENTUCKY UTILITIES CO**  
 Party Name

**UNITED ENERGY TRADING, LLC**  
 Party Name

By MBA  
 Name: \_\_\_\_\_  
 Title: **MARTYN GALLUS**  
**SR. VICE PRESIDENT, ENERGY MARKETING**

By [Signature]  
 Name: **Tom Williams**  
 Title: **President**

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: April 1, 2010

The parties to this Base Contract are the following:

PARTY A VITOL INC.	PARTY NAME	PARTY B LOUISVILLE GAS AND ELECTRIC COMPANY / KENTUCKY UTILITIES COMPANY ("LGE/KU")
1100 Louisiana, Suite 5500 Houston, Texas 77002-5255	ADDRESS	220 West Main Street, 7 <sup>th</sup> FL Louisville KY 40202
www.vitol.com	BUSINESS WEBSITE	www.gon-us.com
	CONTRACT NUMBER	N/A
790620046	D-U-N-S® NUMBER	LGE 00-694-5505 / KU 00-694-4398
<input checked="" type="checkbox"/> US FEDERAL: 20-5733288 <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
Delaware	JURISDICTION OF ORGANIZATION	Kentucky
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:
Vitol Holding B.V.	GUARANTOR (IF APPLICABLE)	
CONTACT INFORMATION		
1100 Louisiana St, Suite 5500, Houston, TX 77002-5255 ATTN: <u>Chris Keahey</u> TEL#: (713) 230-1296    FAX#: _____ EMAIL: <u>ctk@vitol.com</u>	▪ COMMERCIAL	ATTN: <u>Trading Manager Gas</u> TEL#: 502-627-4210    FAX#: 502-627-4655 EMAIL: _____
1100 Louisiana St, Suite 5500, Houston, TX 77002-5255 ATTN: <u>Jeannette Nguyen</u> TEL#: (713) 230-1052    FAX#: (713) 230-1111 EMAIL: <u>jln@vitol.com</u>	▪ SCHEDULING	ATTN: <u>Gas Scheduling</u> TEL#: 502-627-3034(502) 627-3034    FAX#: 502-627-4655 EMAIL: _____
1100 Louisiana St, Suite 5500, Houston, TX 77002-5255 ATTN: <u>Dedreah Hicks-Edwards</u> TEL#: (713) 230-1036    FAX#: (713) 230-1300 EMAIL: <u>dah@vitol.com</u>	▪ CONTRACT AND LEGAL NOTICES	LGE/KUATTN: <u>Contract Administration</u> 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 TEL#: 502-627-4197 or 4253    FAX#: 502-627-4222 With Add'l Notice of Default Attn: General Counsel, 15 <sup>th</sup> FL Add'l Notice of Default Fax# 502-627-3950 EMAIL: N/A
1100 Louisiana St, Suite 5500, Houston, TX 77002-5255 ATTN: <u>Jeff Buzonas</u> TEL#: 713-230-1370    FAX#: 713-652-9599 EMAIL: <u>jxb@vitol.com</u>	▪ CREDIT	LGE/KU ATTN: <u>Manager Credit</u> TEL#: 502-627-4253    FAX#: 502-627-3950 EMAIL: N/A
1100 Louisiana St, Suite 5500, Houston, TX 77002-5255 ATTN: <u>Dedreah Hicks-Edwards</u> TEL#: (713) 230-1036    FAX#: (713) 230-1300 EMAIL: <u>dah@vitol.com</u>	▪ TRANSACTION CONFIRMATIONS	ATTN: <u>Contract Administration</u> TEL#: 502-627-4197 or 2252    FAX#: 502-627-4222 EMAIL: N/A
ACCOUNTING INFORMATION		
1100 Louisiana St, Suite 5500, Houston, TX 77002-5255 ATTN: <u>Ashley Cruz</u> TEL#: (713) 230-1317    FAX#: (713) 230-1199 EMAIL: <u>awc@vitol.com</u>	▪ INVOICES ▪ PAYMENTS ▪ SETTLEMENTS	LGE/KU ATTN: <u>Gas Accounting</u> TEL#: 502-627-4325    FAX#: 502-627-3800 EMAIL: N/A

# Delaware

PAGE 1

*The First State*


I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF A DELAWARE CORPORATION UNDER THE NAME OF "WILLIAMS GAS MARKETING, INC." TO A DELAWARE LIMITED LIABILITY COMPANY, CHANGING ITS NAME FROM "WILLIAMS GAS MARKETING, INC." TO "WPX ENERGY MARKETING, LLC", FILED IN THIS OFFICE ON THE TWENTIETH DAY OF JUNE, A.D. 2011, AT 2:27 O'CLOCK P.M.



2331526 8100V

110740143

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 8848649

DATE: 06-21-11

# Delaware

PAGE 2

*The First State*

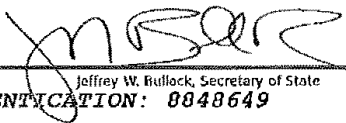
I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF CERTIFICATE OF FORMATION OF "WPX ENERGY MARKETING, LLC" FILED IN THIS OFFICE ON THE TWENTIETH DAY OF JUNE, A.D. 2011, AT 2:27 O'CLOCK P.M.



2331526 8100V

110740143

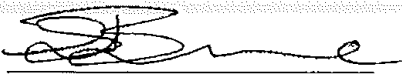
You may verify this certificate online  
at [corp.delaware.gov/authver.html](http://corp.delaware.gov/authver.html)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 8848649  
DATE: 06-21-11

STATE OF DELAWARE  
CERTIFICATE OF CONVERSION  
FROM A CORPORATION TO A  
LIMITED LIABILITY COMPANY PURSUANT TO  
SECTION 18-214 OF THE LIMITED LIABILITY ACT

- 1.) The jurisdiction where the Corporation first formed is Delaware.
- 2.) The jurisdiction immediately prior to filing this Certificate is Delaware.
- 3.) The date the corporation first formed is April 5, 1993.
- 4.) The name of the Corporation immediately prior to filing this Certificate is Williams Gas Marketing, Inc.
- 5.) The name of the Limited Liability Company as set forth in the Certificate of Formation is WPX Energy Marketing, LLC.

IN WITNESS WHEREOF, the undersigned have executed this Certificate on the  
20th day of June, 2011.

By:   
Authorized Person

Name: La Fleur C. Browne

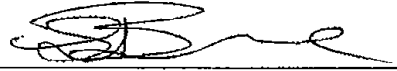
CERTIFICATE OF FORMATION

OF

WPX ENERGY MARKETING, LLC

1. The name of the limited liability company is WPX Energy Marketing, LLC.
2. The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation of WPX Energy Marketing, LLC this 20th day of June, 2011.



La Fleur C. Browne  
Authorized Person

## BASE CONTRACT FOR SHORT-TERM SALE AND PURCHASE OF NATURAL GAS

This Base Contract is entered into as of the following date: December 1, 2001. The parties to this Base Contract are the following:

Louisville Gas and Electric Company/Kentucky Utilities Company and  
Both Kentucky corporations operating as one jointly dispatched  
Utility, with offices at 220 West Main Street, 7<sup>th</sup> Floor  
Louisville, KY 40202  
Duns # LGE 00-694-5505/ KU 00-694-4938  
Contract # \_\_\_\_\_  
Attn: Contract Administration  
Phone: (502)-627-4251 Fax: (502)-627-4222  
Federal Tax ID Number: 61-0264150

WILLIAMS ENERGY MARKETING & TRADING  
COMPANY, on behalf of itself and its wholly-owned  
subsidiary TRANSCO ENERGY MARKETING COMPANY  
P.O. Box 2848, Tulsa, Oklahoma 74101-2848  
Duns # 82-467-8478  
Contract # 82991  
Attn: Contract Administration  
Phone: (918) 573-4872 Fax: (918) 573-1935  
Federal Tax ID Number: 73-1423657  
Confirmation Fax: (918) 573-8233

Invoices and Payments:  
Same address as above

Attn: Gas Accounting  
Phone: (502)-627-4627 Fax: (502)-627-3800  
Wire Transfer or ACH Nos. (if applicable)  
PNC Bank, Pittsburgh, PA  
ABA #: 043-000-96 Account #: 1008270544

Same as above  
Attn: EM&T Gas & Power Operations Accounting  
Phone: (918) 573-6242 Fax: (918) 573-1965  
Wire Transfer or ACH Nos. (if applicable)  
Bank One, NA, Chicago, Illinois  
ABA #: 071-0000-13 Account #: As Invoiced

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Short-Term Sale and Purchase of Natural Gas published by the Gas Industry Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions (select only one from each box, but see "Note" relating to Section 2.24.):

Section 1.2 Transaction Procedure	<input checked="" type="checkbox"/> Oral <input type="checkbox"/> Written	Section 6. Taxes	<input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point <input type="checkbox"/> Seller Pays Before and At Delivery Point
Section 2.4 Confirm Deadline	<input checked="" type="checkbox"/> 2 Business Days after receipt (default) <input type="checkbox"/> Business Days after receipt	Section 7.2 Payment Date	25 <sup>th</sup> date of Month following Month of delivery
Section 2.5 Confirming Party	<input type="checkbox"/> Seller <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> both parties to confirm	Section 7.2 Method of Payment	<input checked="" type="checkbox"/> Wire Transfer (WT) <input checked="" type="checkbox"/> Automated Clearinghouse (ACH) <input type="checkbox"/> Check
Section 3.2 Performance Obl.	<input checked="" type="checkbox"/> Cover Standard <input type="checkbox"/> Spot Price Standard	Section 13.5 CHOICE OF LAW: New York	
Note: The following Spot Price Publication applies to both of the immediately preceding Standards and must be filled in after a Standard is selected.			
Section 2.24 Spot Price Publication:	Gas Daily		
<input checked="" type="checkbox"/> Special Provisions: Number of sheets attached: 6			

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

LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY (Party Name)

WILLIAMS ENERGY MARKETING & TRADING COMPANY,  
for itself and on behalf of TRANSCO ENERGY MARKETING  
COMPANY

By M. Gallus SBR  
MARTIN GALLUS  
Title SR. VICE PRESIDENT  
LOUISVILLE GAS & ELECTRIC COMPANY

By Teri L. Eaton TE  
Teri L. Eaton  
Title Manager, Contract Management

**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. This Contract is intended for use in public transactions or Firm transactions of one month or less and may not be suitable for Firm transactions of longer than one month. Further, GISB does not mandate the use of this Contract by any party. GISB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO GISB'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 GISB 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 GISB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT. SPECIAL PROVISIONS

**GENERAL TERMS AND CONDITIONS  
BASE CONTRACT FOR SHORT-TERM  
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 parties have selected either the "Oral" version or the "Written" version of transaction procedures 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. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party.

**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 non-conflicting Transaction Confirmation 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 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. The entire agreement between the parties shall be those provisions contained in both the Base Contract and any effective Transaction Confirmation. In the event of a conflict among the terms of (i) a Transaction Confirmation, (ii) the Base Contract, and (iii) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

**SECTION 2 DEFINITIONS**

2.1. "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.

2.2. "British thermal unit" or "Btu" shall have the meaning ascribed to it by the Receiving Transporter.

2.3. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.

2.4. "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.

2.5. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.

2.6. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract and (ii) the provisions contained in any effective Transaction Confirmation.

2.7. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu, as evidenced by the Contract Price on the Transaction Confirmation.

2.8. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as set forth in the Transaction Confirmation.



- 2.9. "Cover Standard", if applicable, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the non-defaulting party shall use commercially reasonable efforts to obtain Gas or alternate fuels, or sell Gas, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the defaulting 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 defaulting party.
- 2.10. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.11. "Delivery Period" shall be the period during which deliveries are to be made as set forth in the Transaction Confirmation.
- 2.12. "Delivery Point(s)" shall mean such point(s) as are mutually agreed upon between Seller and Buyer as set forth in the Transaction Confirmation.
- 2.13. "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.
- 2.14. "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".
- 2.15. "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.
- 2.16. "Gas" shall mean any mixture of hydrocarbons and non-combustible gases in a gaseous state consisting primarily of methane.
- 2.17. "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.
- 2.18. "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.
- 2.19. "MMBtu" shall mean one million British thermal units which is equivalent to one dekatherm.
- 2.20. "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.
- 2.21. "Payment Date" shall mean a date, selected by the parties in the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.22. "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.
- 2.23. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.24. "Spot Price" as referred in Section 3.2 shall mean the price listed in the publication specified by the parties in 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.
- 2.25. "Transaction Confirmation" shall mean the document, substantially in the form of Exhibit A, setting forth the terms of a purchase and sale transaction formed pursuant to Section 1. for a particular Delivery Period.
- 2.26. "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 Confirmation.

### 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 specified in the Transaction Confirmation.

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

**Cover Standard:**

3.2 In addition to any liability for Imbalance Charges, which shall not be recovered twice by the following remedy, the exclusive and sole remedy of the parties in the event of a breach of a Firm obligation 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 for replacement Gas or alternative fuels 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); 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); or (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, then the exclusive and sole remedy of the non-breaching party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s).

**Spot Price Standard:**

3.2 In addition to any liability for Imbalance Charges, which shall not be recovered twice by the following remedy, the exclusive and sole remedy of the parties in the event of a breach of a Firm obligation 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; (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.

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS CONTRACT, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.

## **SECTION 4. TRANSPORTATION, NOMINATIONS AND IMBALANCES**

4.1 Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s) and for delivering such Gas at a pressure sufficient to effect such delivery but not to exceed the maximum operating pressure of the Receiving Transporter. 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 actions or inactions (which shall include, but shall not be limited to, Buyer's failure to accept quantities of Gas equal to the Scheduled Gas), then Buyer shall pay for such Imbalance Charges, or reimburse Seller for such Imbalance Charges paid by Seller to the Transporter. If the Imbalance Charges were incurred as a result of Seller's actions or inactions (which shall include, but shall not be limited to, Seller's failure to deliver quantities of Gas equal to the Scheduled Gas), then Seller shall pay for such Imbalance Charges, or reimburse Buyer for such Imbalance Charges paid by Buyer to the Transporter.

## **SECTION 5. QUALITY AND MEASUREMENT**

All Gas delivered by Seller shall meet the 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 the "Buyer Pays At and After Delivery Point" version or the "Seller Pays Before and At Delivery Point" version 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 which 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 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. If Buyer fails to remit the full amount payable by it when due, interest on the unpaid portion shall accrue 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 from the date due until the date of payment; or (ii) the maximum applicable lawful interest rate. If Buyer, in good faith, disputes the amount of any such statement or any part thereof, Buyer will pay to Seller such amount as it concedes to be correct; provided, however, if Buyer disputes the amount due, Buyer must provide supporting documentation acceptable in industry practice to support the amount paid or disputed.

7.3. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with Section 7.2. above.

7.4. A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine the books and records 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 examination right 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 unless 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.

**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.

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

8.4. 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, payments 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 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 two Business Days after mailing.

## **SECTION 10. FINANCIAL RESPONSIBILITY**

10.1. When reasonable grounds for insecurity of payment or title to the Gas arise, either party may demand adequate assurance of performance. Adequate assurance shall mean sufficient security in the form and for the term reasonably specified by the party demanding assurance, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset acceptable to the demanding party or a performance bond or guarantee by a creditworthy entity. In the event either party shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment obligation to the other party; (iii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); or (v) be unable to pay its debts as they fall due; then the other party shall have the right to either withhold and/or suspend deliveries or payment, or terminate the Contract without prior notice, in addition to any and all other remedies available hereunder. Seller may immediately suspend deliveries to Buyer hereunder in the event Buyer has not paid any amount due Seller hereunder on or before the second day following the date such payment is due.

10.2. Each party reserves to itself all rights, set-offs, counterclaims, and other defenses which it is or may be entitled to arising from the Contract.

## **SECTION 11. FORCE MAJEURE**

11.1. Except with regard to a party's obligation to make payment due under Section 7. 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 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; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulation 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. 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 entirely 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 notification with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notification of Force Majeure to the other party, the affected party will be relieved of its obligation 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.

## **SECTION 12. TERM**

This Contract may be terminated on 30 days' written notice, but shall remain in effect until the expiration of the latest Delivery Period of any Transaction Confirmation(s). The rights of either party pursuant to Section 7.4., 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 Confirmation.

## **SECTION 13. MISCELLANEOUS**

13.1. 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, which consent will not be unreasonably withheld or delayed; provided, either party may transfer its interest to any parent or affiliate by assignment, merger or

otherwise without the prior approval of the other party. Upon any transfer and assumption, the transferor shall not be relieved of or discharged from any obligations hereunder.

13.2. 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.

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

13.4. 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 Confirmation(s). This Contract may be amended only by a writing executed by both parties.

13.5. The interpretation and performance of this Contract shall be governed by the laws of the state specified by the parties in the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

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

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

13.8. 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.

TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

EXHIBIT A

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<b>Date:</b> <b>Transaction Confirmation #:</b>
--

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:	
<b>Contract Price:</b> \$ /MMBtu or		
<b>Delivery Period:</b> Begin: End:		
<b>Performance Obligation and Contract Quantity:</b> (Select One)		
<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>Delivery Point(s):</b> (If a pooling point is used, list a specific geographic and pipeline location):		
<b>Special Conditions:</b>		
<b>Seller:</b>  <b>By:</b>  <b>Title:</b>  <b>Date:</b>	<b>Buyer:</b>  <b>By:</b>  <b>Title:</b>  <b>Date:</b>	

## Special Provisions

Special Provisions to Base Contract for Short-Term Sale and Purchase of Natural Gas dated December 1, 2001, between WILLIAMS ENERGY MARKETING & TRADING COMPANY ("WEM&T"), for itself and on behalf of TRANSCO ENERGY MARKETING COMPANY ("TEMCO") and LOUISVILLE GAS AND ELECTRIC COMPANY/KENTUCKY UTILITIES COMPANY, both Kentucky corporations operating as one jointly dispatched utility ("LGE"/"KU"). WEM&T and TEMCO each individually are hereinafter referred to as "Williams".

1. In Section 1.2 insert the word "*u recorded*" before the word "*telephone*" in the second line and the fifth line.

2. Section 2.25 shall be deleted in its entirety and replaced with the following:

"Transaction Confirmation" shall mean the document or Electronic Record, substantially in the form of Exhibit A, setting forth the terms of a purchase and sale transaction formed pursuant to Section 1. for a particular Delivery Point.

3. Section 2.6 shall be deleted in its entirety and replaced with the following:

"2.6 "Contract" shall mean the legally binding relationship established by (i) the Base Contract, (ii) these Special Provisions and (iii) any effective Transaction Confirmation"

4. Delete "*or alternate fuels*" from Section 2.9 "Cover Standard"

5. The following shall be added to Section 2, Definitions:

2.27 "Buyer" shall mean the party that agrees to purchase Gas as evidenced by the Transaction Confirmation.

2.28 "Contract Period" means the term of any particular Transaction agreed to by the parties as specified in the Transaction Confirmation.

2.29 "Credit Support Document" Shall mean, as to a party ("the First Party"), a guaranty, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party ("Credit Support Provider") or of the First Party in favor of the other party supporting any obligations of the first party under this Contract.

2.30 "Eligible Collateral" shall mean (i) cash, (ii) a Letter of Credit from a financial institution acceptable by the ("Beneficiary Party"), or (iii) Guaranty from a Guarantor acceptable to the secured party

2.31 "Futures Contract" shall mean the standardized contract for the purchase or sale of Gas that is traded for future delivery under the applicable trading board's regulations.

2.32 "Electronic Record" shall mean a record created, stored, generated, received, or communicated by electronic means, including but not limited to the use of a, facsimile, telex, telecopy, or scanner.

2.33 "Firm Utilizing Released Firm or Secondary Firm Transportation" shall mean that Seller shall sell and Buyer shall purchase the Contract Quantity for the Delivery Period on a firm basis utilizing released firm or secondary firm transportation. In the event released firm transportation is recalled or secondary firm transportation is curtailed the obligation hereunder will become Interruptible. Failure to sell or purchase shall be a breach of Firm Obligation unless excused by an event of Force Majeure or such failure is a recall of released firm transportation or a curtailment of secondary firm transportation used to deliver the Gas.

2.34 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

2.34 "Material Adverse Change" shall mean a Party's credit rating falls below a Moody's rating of Baa or an S&P rating of BBB. Moody's shall mean Moody's Investor Services, Inc. or its successors. S&P shall mean the Standard & Poor's Rating Group (a division of McGraw-Hill Inc.) or its successors.

2.35 "NYMEX" shall mean the New York Mercantile Exchange.

2.36 "Price" shall mean the amount or pricing mechanism agreed to by the parties as specified in the Transaction Confirmation.

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2.37 "Receipt/Delivery Obligation" shall mean one of EFP, Firm or Swing as set forth in the Transaction Confirmation for a particular Transaction.

2.38 "Seller" shall mean the party that agrees to sell Gas as evidenced by the Transaction Confirmation.

2.38 "Tax" shall mean any tax levied, assessed or claimed to be due by any Federal, State, County, Tribal, or Municipal Government or any other governmental agency having jurisdiction to do so.

2.39 "Transaction" means a particular, specifically agreed-to purchase or sale of Gas for delivery or receipt to be performed under this Contract, as evidenced by a Transaction Confirmation or by a recorded oral telephone conversation where an offer was made by a party and accepted by the other party.

2.41 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by either party for verification and/or evidentiary purposes.

**6. The final sentence of Section 3.1 shall be replaced with the following:**

Sales and purchases will be on a Firm, Firm Utilizing Released Firm or Secondary Firm Transportation, or Interruptible basis, as specified in the Transaction Confirmation.

**7. Delete "or alternate fuels" from Section 3.2 "Cover Standard"**

**8. Sections 5.2 and 5.3 shall be added to the end of Section 5 as follows:**

5.2 All Gas delivered by Seller shall meet the quality and heat specification of the pipeline system and/or facilities which shall receive the Gas at the Delivery Point(s) set forth in the Transaction Confirmation. The unit of quantity measurements for purposes of this contract shall be one MMBtu Dry.

5.3 BTU and volume measurements shall be made at the pressure and temperature basis of the measuring pipeline in accordance with the provisions of such pipeline's then effective FERC Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such pipeline.

**9. The following shall be added after the first sentence of Section 6, designated as "Buyer Pays At and After Delivery Point"**

All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority

**10. The following shall be added to the end of Section 6:**

In the event a federal energy, BTU, consumption, or use tax shall be imposed, both Buyer and Seller shall work to reasonably apportion said Tax, taking into account the ability of either party to pass through all or a part of such tax. In the event that the parties are unable to reach an agreement with respect to the apportionment of any such Tax and such Tax would have a substantial adverse effect on any transaction with a forward delivery of six (6) months or greater of the party liable for such Tax (the "Affected Party") the Affected Party may declare an early termination with respect to any transactions then outstanding between the parties which are affected by such Tax ("the Affected Transactions"). The Affected Party shall provide the other party with thirty (30) days prior written notice of its intent to terminate the Affected Transactions. Such notification shall be made no later than thirty (30) days after the effective date of the Tax. Both parties shall calculate in a commercially reasonable manner their net Gain or net Loss (as defined below) resulting from the termination of the Affected Transactions without taking into effect the impact of the Tax. If both parties have a net Gain, the party with the greater net Gain shall pay to the other party fifty percent (50%) of the difference between the two net Gains. If both parties have a net Loss, the party with the lesser net Loss shall pay to the other party fifty percent (50%) of the difference between the two net Losses. If one party shall have a net Gain and the other party shall have a net Loss, the party with the net Gain shall pay to the other party fifty percent (50%) of the sum of the absolute value of the net Gain and the absolute value of the net Loss. Any such payments pursuant to this provision shall be made in accordance with Article 7. For purposes of this provision "Gains" shall mean, with respect to either party, an amount equal to the present value of the economic benefit to it, if any (exclusive of costs) resulting from the termination of the Affected Transactions, calculated in a commercially reasonable manner and in accordance with GAAP. "Losses" shall mean, with respect to either party, an amount equal to the present value of the economic loss to it, if any (exclusive of costs), resulting from the termination of the Affected Transactions, calculated in a commercially reasonable manner and in accordance with GAAP.

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11. The following shall be added to Section 7. Billing, Payment and Audit, as Sections 7.5 and 7.6:

7.5 Subject to Section 7.1 of this Agreement, in the event that buyer and Seller are each required to pay an amount in the same Month hereunder, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed. Netting under this agreement only applies to this agreement.

7.6 Upon either party's request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to completed transaction between the parties in order to determine the final settlement amount due for each production Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable production Month

12. The following shall be added to the end of Section 8.2:

"In the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction.

13. Replace Section 10.1 in its entirety with the following:

10.1 When reasonable grounds for insecurity of payment or title to Gas arise, either Party may demand adequate assurance of performance. Adequate assurance shall mean sufficient security in the form and for the term reasonably specified by the Party demanding assurance ("Demanding Party"), including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset acceptable to Demanding Party or a performance bond or guarantee by a creditworthy entity.

10.2 In the event either Party (the "Defaulting Party") (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (c) otherwise becomes bankrupt or insolvent (however evidenced); (d) fails to make, when due, any payment required pursuant to this Contract if such failure is not remedied within three (3) Business Days after written notice of such failure is given and provided the payment is not the subject of a good faith dispute; (e) fails to provide adequate assurance of its ability to perform all of its outstanding material obligations to the other party (the "Non-Defaulting Party") under this Contract or otherwise within a period not to exceed forty-eight (48) hours (but at least one (1) Business Day) of a demand therefore; (f) fails to establish, maintain, extend or increase Eligible Collateral when required pursuant to this Contract; (g) suffers a Material Adverse Change; provided such Material Adverse Change shall not be considered an event of default under this section 10.2 if the Defaulting Party establishes and maintains for so long as the Material Adverse Change is continuing, Eligible collateral to the Non-Defaulting Party in form and amount acceptable to the Non-Defaulting Party; (h) if the Guarantor (if any) of the Defaulting Party fails to perform any covenant set forth in a guaranty agreement it delivered in respect of this Contract, or if any representation or warranty made by such Guarantor in said Guaranty Agreement shall prove to have been false or misleading in any material respect when made or when deemed to be repeated; or if the Guaranty Agreement expires or is terminated or in any way ceases to guarantee the obligations of the Defaulting Party under this Contract; or if such Guarantor enters into Bankruptcy whether voluntary or involuntary; or (i) be unable to pay its debts as they fall due; then the Non-Defaulting Party shall have the right without prior notice to (a) withhold and/or suspend deliveries or payment, net and/or set off all Transactions outstanding between the Parties, use all rights, counterclaims and other defenses which it is or may be entitled to at law or arising from the Agreement, and/or (b) immediately liquidate and terminate all Transaction entered into pursuant to this Contract and then outstanding between the parties, in accordance with and subject to the provisions of Section 10.3 below. In no event shall amounts actually recovered by a Non-Defaulting Party under one subsection of this Article 10 be recovered under another subsection.

10.3 In the event a party terminates this Contract under Section 10.3 ("Non-Defaulting Party"), the Non-Defaulting Party shall designate an early termination date ("Early Termination Date"). Such Early Termination Date shall be designated within three (3) Business Days after the Non-Defaulting Party receives knowledge the occurrence of an event of default under Section 10.2 and the Non-Defaulting Party shall provide immediate notice of such date to the other party ("Defaulting Party"). Upon the Early Termination Date, the Non-Defaulting Party shall have the right to liquidate all Transaction(s) under this Contract (including any portion of a Transaction not yet fully delivered) then outstanding by: (i) Closing out each Transaction being liquidated at its Market Value (as defined below) so that each such Transaction is cancelled and a settlement payment in an amount equal to the difference between such Market Value and the Contract Value (as defined below) of such Transaction shall be due to the Buyer under the Transaction if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; (ii) Discounting each amount then due under clause (i) above to net present value in a commercially reasonable manner at the time of liquidation (to take

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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 Transaction); and (iii) Setting off or aggregating, as appropriate, any or all settlement payments (discounted as appropriate) and (at the election of the Non-Defaulting Party) any or all other amounts owing between the parties under this Contract so that all such amounts are aggregated and/or netted to a single liquidated amount payable by one party to the other. The net amount due under any such liquidation shall be paid by the close of business on the third Business Day following the Early Termination Date. For purposes of this Section 10.3 "Contract Value" means the amount of the Gas remaining to be delivered or purchased pursuant to a Transaction multiplied by the price per unit of gas stated in the applicable Transaction, and "Market Value" means the amount of Gas remaining to be delivered or purchased pursuant to a Transaction multiplied by the market price per unit determined by the Non-Defaulting Party in a commercially reasonable manner for the delivery or production area, as applicable. The rate of interest used in calculating net present value pursuant to (ii) of this Section 10.2 shall be determined by the Non-Defaulting Party in a commercially reasonable manner. The parties agree that this Contract and all Transaction under this Section 10.3 shall constitute a "forward contract" within the meaning of the U.S. Bankruptcy Code and any other applicable insolvency laws. The Non-Defaulting Party's rights under Section 10 and to those costs under Sections 3 and 4 accrued prior to the Early Termination Date are the sole and exclusive remedy of the Non-Defaulting Party. The Non-Defaulting Party shall give notice that a liquidation pursuant to this Section 10.3 has occurred to the Defaulting Party no later than the time specified above, provided that failure to give such notice shall not affect the validity or enforceability of liquidation nor give rise to any claim by the Defaulting Party against the Non-Defaulting Party. With respect to any Transaction, "the amount of the Gas remaining to be delivered or purchased" shall mean only quantities which the parties are obligated as of the Early Termination Date to sell and purchase on a Firm basis during the remaining portion of the Delivery Period, which shall include only the period of time to which the parties are definitely committed as of the Early Termination Date and shall not include any possible but not certain extensions of the term ("evergreen" provisions, etc.).

**14. The following shall be added to Section 11.2. Force Majeure:**

Force Majeure may, in the case of an EFP, also include the inability to transact relevant futures trading for any reason beyond the reasonable control of Buyer or Seller, including without limitation closing of the New York Mercantile Exchange ("NYMEX") or Kansas City Board of Trade ("KCBOT") or any refusal by the NYMEX or KCBOT to allow trading during trading hours; failure of telecommunications lines or of computers or other equipment utilized in trading broadly affecting other similar equipment in the same geographic area.

**15. The following shall be added to the end of Section 11.5:**

" Any party claiming Force Majeure (the "Claiming Party") as an excuse for performance shall provide the other party (the Non-claiming Party") a good faith estimate of the duration of the Force Majeure. Sales or purchases under this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party if such event continues for a period of thirty (30) continuous days."

**16. Section 12 shall be deleted in its entirety and replaced with the following:**

The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written notice by either party; provided, however, that the provisions hereof shall survive termination of this Contract and continue to apply to any Transactions entered into between Counterparty and Company prior to the date of termination of this Contract until such time as any and all such Transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment and provisions of Sections 1.5, 8.1, 8.2, 8.3, 8.4, 13.9, 13.10, 13.11, 13.12, 13.14, and 13.5 shall continue to apply.

**17. The following shall be added to Section 13. Miscellaneous, as Section 13.9:**

Notwithstanding the language of Paragraph 1.2, Oral Transaction Procedure, each of the parties hereto (i) consents to the recording of the telephone conversations of their respective employees in connection with this Contract and each party waives on its own and its employees' behalf further notice of such recording, and each party further commits to notify its employees of such recording and to obtain any necessary consent of such employees, (ii) in the absence of an effective Transaction Confirmation each party agrees such recording will constitute the Transaction Confirmation.

**18. The following shall be added to Section 13. Miscellaneous, as Section 13.10:**

DISCLAIMER OF WARRANTIES. EXCEPT FOR WARRANTIES MADE BY SELLER PURSUANT TO SECTIONS 5 AND 8, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

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19. The following shall be added to Section 13. Miscellaneous, as Section 13.11: Upon the effectiveness of this Agreement, unless otherwise agreed in writing by the parties to this Agreement, with respect to Transactions, all Transactions and their effective Transaction Confirmations whether fully-performed or then outstanding between the parties shall be subject to the terms hereof.

20. The following shall be added to Section 13. Miscellaneous, as Section 13.12:

Notwithstanding the language of Paragraph 1.2, Oral Transaction Procedure, and Paragraph 1.2, Written Transaction Procedure, any electronic signature, including but not limited to a "bit map" or digital signature, attached to or logically associated with a Transaction Confirmation or notice under this Contract shall be deemed to be a "signature" and satisfy any rule of law requiring a signature. The Parties agree not to contest or assert a defense to the validity or enforceability of an Electronic Record or an electronic signature, in accordance with this Contract, under laws relating to whether certain agreements are to be in writing or signed by the Party to be bound.

21. The following shall be added to Section 13. Miscellaneous, as Section 13.13:

Equipment and Electronic Record. Each party shall at its expense maintain equipment necessary to (a) regularly record Transactions on Transaction Tapes and retain Transaction Tapes and (b) generate and send the Transaction Confirmation (however evident) in such a manner as to protect its business records from improper access; provided, neither party shall be liable for any equipment malfunction or the operation thereof in respect of any Transaction WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. No Transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording, generating, sending, and/or storing of Transaction Tapes and Transaction Confirmations (however evident) of Transactions, and in such event, the Transaction shall be evidenced by the written and recorded records of the Parties concerning the Transaction made contemporaneously with the telephone conversation. The Electronic Record Transaction Confirmation generated by the Seller, as designated in the Transaction Confirmation, shall control in the event Transaction Confirmations are generated by both Parties.

22. The following shall be added to Section 13. Miscellaneous, as Section 13.14:

In the event a Party's Federal Employer Identification Number ("FEIN") or name changes as a result of a change in structure, operations or some other conversion or event, Party shall notify the other Party in writing of the Party's new name and/or FEIN within 30 days of such change.

23. The following shall be added to Section 13. Miscellaneous, as Section 13.15:

Neither party shall disclose the terms of this Contract, any Transaction Confirmation, and/or any information disclosed pursuant to Section 7.6 hereof to any third party absent written consent of the other party except where (i) disclosure is made to employees of the party or its affiliates, (ii) necessary to comply with any applicable law, order, regulation or exchange rule; provided, however, that each party shall notify the other party promptly upon receipt of any request to it in any proceeding that could result in an order requiring such disclosure and the party subject to such request shall use reasonable efforts to prevent or limit such disclosure; or (iii) necessary to effectuate transportation of Gas pursuant to this Contract. As a condition to conducting any audit and/or being provided with any support documentation pursuant to Sections 7.4 and 7.6 respectively, each party acknowledges that the documents and records provided might contain proprietary or competitively sensitive information, which the reviewing party shall treat as confidential. Each party acknowledges that any breach of any of its obligations with respect to confidentiality or use of the disclosing party's confidential information hereunder is likely to cause or threaten irreparable harm to the disclosing party, and accordingly the reviewing party agrees that in the event of such breach the disclosing party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to preliminary and permanent injunctive relief.

24. The following shall be added to Section 13. Miscellaneous, as Section 13.16:

UCC - Except as otherwise provided for herein, the provisions of the Uniform Commercial Code ("UCC") of the state whose laws shall govern this Contract shall be deemed to apply to all Transactions.

25. The following shall be added to Section 13. Miscellaneous, as Section 13.17:

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN, THE PARTIES HERETO WAIVE ANY AND ALL RIGHTS, CLAIMS OR CAUSES OF ACTION ARISING UNDER THIS AGREEMENT FOR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR FOR LOST PROFITS. THIS PROVISION SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

6/11/01

26. The following shall be added to Section 13 Miscellaneous, as Section 13.18:

No claim under this Contract shall be enforceable by either party unless it is the subject of a filed lawsuit or arbitration within two (2) years of the date that the cause of action occurred.

IN WITNESS WHEREOF, the parties have executed these Special Provisions to supplement and, where applicable, to modify and supersede the Base Contract by and between the parties.

WILLIAMS ENERGY MARKETING & TRADING COMPANY,  
for itself and on behalf of TRANSCO ENERGY MARKETING  
COMPANY

By: *Teri L. Eaton* *TE*  
Name: TERI L. EATON  
Title: MANAGER  
Date: 1-10-02

LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY

By: *M. Gallus* *SOR*  
Name: MARTYN GALLUS  
Title: SR. VICE PRESIDENT  
Date: LOUISVILLE GAS & ELECTRIC COMPANY  
KENTUCKY UTILITIES  
1-8-02

6/11/01

<b>BANK:</b> JPMorgan Chase Bank, New York <b>ABA:</b> 021000021 <b>ACCT:</b> 304920134 <b>OTHER DETAILS:</b> For Credit To Vitol Inc.	<b>WIRE TRANSFER NUMBERS (IF APPLICABLE)</b>	<b>BANK:</b> Bank of America, New York, NY. <b>ABA:</b> 0260-0959-3 <b>ACCT:</b> 3752099133 <b>OTHER DETAILS:</b> _____
<b>BANK:</b> _____ <b>ABA:</b> _____ <b>ACCT:</b> _____ <b>OTHER DETAILS:</b> _____	<b>ACH NUMBERS (IF APPLICABLE)</b>	<b>BANK:</b> Bank of America, Dallas TX <b>ABA:</b> 111000012 <b>ACCT:</b> 3752099133 <b>OTHER DETAILS:</b> N/A


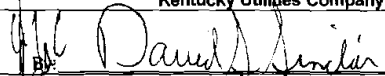
**Base Contract for Sale and Purchase of Natural Gas**

(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> Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default <input type="checkbox"/> No Additional Events of Default (default) <input checked="" type="checkbox"/> <b>Indebtedness Cross Default</b> <input checked="" type="checkbox"/> Party A and/or its Guarantor: \$100,000,000.00 <input checked="" type="checkbox"/> Party B: <u>Louisville Gas and Electric Company \$25,000,000.00 or</u> <u>Kentucky Utilities Company \$25,000,000.00</u> <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____
<b>Section 2.7</b> Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> _____ Business Days after receipt	
<b>Section 2.8</b> Confirming Party <input type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> <u>Vitol Inc.</u>	
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>	
<b>Section 2.31</b> Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____	<b>Section 10.3.2</b> Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> <b>Bilateral (default)</b> <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b> Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	
<b>Section 7.2</b> Payment Date <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 15.5</b> Choice Of Law <u>New York</u>
<b>Section 7.2</b> Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) <input type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	<b>Section 15.10</b> Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.7</b> Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply	
<input checked="" type="checkbox"/> Special Provisions Number of sheets attached: <u>27</u> Addendum(s): <u>None</u>	

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

<b>Vitol Inc.</b>	PARTY NAME	Louisville Gas and Electric Company / Kentucky Utilities Company
By: 	SIGNATURE	By: 

Name:	<b>M.A. Loya</b>	PRINTED NAME	David S. Sinclair
Title:	<b>President</b>	TITLE	Vice President Energy Marketing

**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**

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.

2.1. "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.

- 2.2. "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.
- 2.3. "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.
- 2.4. "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.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "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.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "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.
- 2.10. "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.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "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.
- 2.13. "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.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "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.
- 2.18. "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.
- 2.19. "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.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "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.
- 2.23. "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.

2.24. "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.

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

2.26. "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.

2.27. "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.

2.28. "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.

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

2.30. "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.

2.31. "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.

2.32. "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.

2.33. "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.

2.34. "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.

2.35. "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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____  By: _____  Title: _____  Date: _____	Buyer: _____  By: _____  Title: _____  Date: _____			

SPECIAL PROVISIONS  
ATTACHED TO BASE CONTRACT FOR SALE AND  
PURCHASE OF NATURAL GAS dated April 1, 2010  
between

Vitol Inc.  
("Party A")

and

LOUISVILLE GAS AND ELECTRIC COMPANY /  
KENTUCKY UTILITIES COMPANY ("LGE/KU")  
("Party B")

The following changes are made to the General Terms and Conditions

**SECTION 1. PURPOSES AND PROCEDURES**

1. The following sections shall be added to Section 1:

"1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a contract contemplated herein."

"1.6 Each party may, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, the negligence be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation."

**SECTION 2. DEFINITIONS**

2. Section 2.12 "Cover Standard" shall be amended by deleting "(or an alternate fuel if elected by Buyer and replacement Gas is not available)" from the definition.

3. The following definitions are hereby added to the Contract:

a. The following is added as Section 2.6.1: "Cash" means United States Dollars."

b. The following is added as Section 2.11.1: "Costs" means (a) losses associated with transmission/transportation costs related to the terminated transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party's reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a terminated transaction; and (c) commercially reasonable attorneys' fees and court costs, if any, incurred in connection with enforcing its rights in respect of the terminated transactions.

c. The following as added as Section 2.12.1: "Credit Rating" means with respect to any entity, the Credit Rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, or Moody's or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as its "corporate credit rating" assigned by S&P, or the "long-term issuer rating" assigned by Moody's

d. The following is added as Section 2.12.2: "Credit Support Default" shall mean, with respect to a Party or any Credit Support Provider (a "Defaulting Party"), the failure to make, when due, any Transfer required to be made, and such failure continues for one (1) Business Day after Notice of that failure is provided to the Defaulting Party. A Credit Support Default shall constitute and have the effect of an Event of Default as set forth in Section 10.2 (vi).

e. The following is added as Section 2.18.1: "Eligible Collateral" means Cash or a Letter of Credit, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to 120% of the Net Settlement Amount that would be owed if all transactions under the Contract were immediately liquidated)."

g. The following is added as Section 2.23.1: "Interest Amount" means the aggregate sum of the amounts of interest calculated for each day in an Interest Period on the principal amount of Cash held by the Secured Party on that day, determined for each such day as follows: (x) the amount of Cash on that day, multiplied by (y) the Interest Rate for that day, divided by (z) 360."

h. The following is added as Section 2.23.2: "Interest Period" means the period from (and including) the last Business Day on which an Interest Amount was Transferred (or if no Interest Amount has yet been Transferred, the Business Day on which Cash was Transferred to the Secured Party) to (but excluding) the Business Day on which the current Interest Amount is to be Transferred."

i. The following is added as Section 2.23.3: "Interest Rate" means the lower of the maximum lawful rate and the rate set forth for that day opposite the caption "Federal Funds (Effective)" in the weekly statistical release designated "H.15(519)", or any successor publication, published by the Board of Governors of the Federal Reserve System."

j. The following is added as Section 2.24.1: "Investment Grade Rating" shall mean a party's (or a party's Guarantor's) Credit Rating from Moody's is "Baa3" or higher and a Credit Rating from S&P is "BBB-" or higher.

k. The following is added as Section 2.24.1: "Letter of Credit" means an irrevocable, non-transferable, standby letter of credit, in an amount and for a term as reasonably acceptable to the Secured Party, and in a form as the issuing bank may require and as may be reasonably acceptable to the Secured Party, and issued by a major U.S. bank or the U.S. branch office of a major foreign bank, in either case, with a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity has a Credit Rating by both S&P and Moody's, or (b) "A-" by S&P or "A3" by Moody's, if such entity has a Credit Rating by S&P or Moody's but not both."

l. The following is added as Section 2.24.2: "Letter of Credit Default" means with respect to a Letter of Credit that is held by the Secured Party the occurrence of any of the following events: (i) the issuer of such Letter of Credit has any occurrence of an event analogous to an event specified in Section 10.2 (i), (ii), (iii), (iv) or (v) of this Contract; (ii) the issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) twenty (20) or fewer Business Days remain prior to the date such Letter of Credit shall expire or terminate; (v) such Letter of Credit shall fail or cease to

be in full force and effect (other than in accordance with the terms of this Contract) prior to the satisfaction of all obligations of the Pledging Party under each transaction to which such Letter of Credit shall relate and no replacement Eligible Collateral has been provided by the Pledging Party, or (vi) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's; provided however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Contract or acceptable replacement Eligible Collateral has been provided to the Secured Party."

m. The following is added as Section 2.25.1: "Material Adverse Change" shall mean a party's or its Guarantor's Credit Rating falls below an Investment Grade Rating or a party's or its Guarantor ceases to have a Credit Rating by either S&P or Moody's.

n. The following is added as Section 2.26.1: "Moody's" means Moody's Investor Services, Inc. or its successor."

o. The following is added as Section 2.26.2 "Notification Time" means 1:00 p.m. Eastern Prevailing Time, on any date of demand for Adequate Assurance of Performance under Section 10.1.

p. The following is added as Section 2.26.2: "NYMEX" shall mean the New York Mercantile Exchange, or its successor.

q. The following is added as Section 2.26.3: "Option" means a transaction in which, in exchange for the payment of the Premium by the Option Buyer, the Option Seller grants the Option Buyer the right to enter into a transaction on the agreed terms set forth in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which terms shall include, among other terms, which of the Option Buyer and the Option Seller is the Buyer and which is the Seller under such transaction.

r. The following is added as Section 2.26.4: "Option Buyer" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has acquired the right, upon exercise of the Option to receive Gas (if the Option Buyer is identified as "Buyer") or deliver Gas (if the Option Buyer is identified as "Seller").

s. The following is added as Section 2.26.5: "Option Seller" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has sold the Option. If the Option is exercised by the Option Buyer, the Option Seller will be obligated to deliver Gas (if the Option Buyer is identified as "Buyer") or receive Gas (if the Option Buyer is identified as "Seller").

t. The following is inserted as Section 2.27.1: "Posted Collateral" means (1) all Eligible Collateral and all proceeds thereof that have been Transferred to or received by the Secured Party hereunder and not Transferred to the Pledging Party or released by the Secured Party; (2) any Interest Amount or portion thereof held by the Secured Party and not Transferred; and (3) any Cash received and held by the Secured Party after drawing on any Letter of Credit."

u. The following is added as Section 2.27.2: "Pledging Party" means the party, when that party (i) receives a demand for or is required to Transfer Eligible Collateral or (ii) has Transferred Eligible Collateral.

v. The following is added as Section 2.27.3: "Premium" means the amount identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the amount payable by the Option Buyer to the Option Seller in exchange for an Option.

w. The following is added as Section 2.28.2: "S&P" means the Standard & Poor's Rating Group (a division of The McGraw-Hill Companies) or its successor."

x. The following is added as Section 2.29.1: "Secured Party" means the party other than the Pledging Party when that party (i) makes a demand for or is entitled to receive Eligible Collateral or (ii) holds or is deemed to hold Posted Collateral."

y. The following is added as Section 2.34.1: "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by Seller and/or the Buyer for verification and/or evidentiary purposes."

z. The following is added as Section 2.33.1: "Transfer" or "Transferred" means with respect to any Eligible Collateral, or Interest Amount in accordance with the instructions of the appropriate party pursuant to this Contract: (i) in the case of Cash, payment or delivery by wire transfer in immediately available funds; and (ii) in the case of Letters of Credit, delivery of the Letter of Credit, return of the Letter of Credit by the Secured Party to the Pledging Party, or delivery of an executed amendment to such Letter of Credit (extending the term or increasing the amount available to the Secured Party thereunder)

### **SECTION 3. PERFORMANCE OBLIGATION**

4. Add the following language to the Cover Standard in line 12 of Section 3.2 after the phrase "and no such replacement or sale is available" in (iii):

"or in the event that the non-breaching party elects, at its sole option, not to replace or re-sell to a third party the Gas not delivered"

### **SECTION 5. QUALITY AND MEASUREMENT**

5. Delete the existing paragraph under Section 5 in its entirety and replace with the following:

"All Gas delivered by Seller shall meet the pressure, quality and heat specification of the Receiving Transporter. BTU and volume measurements shall be made at the pressure and temperature basis of the Receiving Transporter in accordance with the provisions of such pipeline's then effective Federal Energy Regulatory Commission ("FERC") Gas Tariff, or in the event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such Receiving Transporter."

### **SECTION 7. BILLING, PAYMENT AND AUDIT**

6. Add the following language to the end of the first sentence in Section 7.3:

"and will include all supporting documentation acceptable in industry practice to support the amount charged"

7. Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ..." in its entirety and replacing with:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or

deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

8. Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).
9. Section 7.8 shall be added as follows:

"7.8 Upon either party's request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month."

#### **SECTION 8. TITLE, WARRANTY, AND INDEMNITY**

10. Section 8.2 shall be amended by inserting the phrase "SECTION 5" between "SECTION 8.2" and "AND IN SECTION 15.8" in the last sentence

#### **SECTION 9. NOTICES**

11. 9.4 shall be amended by:
  - (a) in the first sentence delete the words "commercially acceptable"; and
  - (b) after the words "payment information" and before the word "shall" add "identified on the cover page under Accounting Information"; and
  - (c) delete "ten (10)" and replace with "two (2)".

#### **SECTION 10. FINANCIAL RESPONSIBILITY**

12. Section 10.1 is hereby deleted in its entirety and replaced with the following: "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") or Y's Guarantor (including, without limitation, the occurrence of a Material Adverse Change of Y or Y's Guarantor, if applicable, X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean the provision of Eligible Collateral for term and from an issuer reasonably acceptable to X. 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"
13. Section 10.2 is amended by
  - (a) adding at the end before the "." in the last sentence of (ix): "provided that no suspension of performance shall continue for more than ten (10) Business Days unless an Early Termination Date has been declared and the Defaulting Party has given Notice thereof in accordance with Section 10.3.";
  - (b) deleting the word "or" before (ix) and replacing it with a comma; and
  - (c) adding the following as new section 10.2(x):

“(x) the failure to perform any material covenant or obligation set forth in this Contract (except to the extent constituting a separate Event of Default, and except for such party’s obligations to deliver or receive Gas, the exclusive remedy for which is provided in Section 3.2) if such failure is not remedied within three (3) Business Days after written Notice.”

14. Amend Section 10.3 by deleting from the sixth line the phrase “legally permissible” and replace with “practicable and not prohibited by applicable law”

15. Section 10.3.1 “Early Termination Damages Apply” shall be amended by:

(a) adding at the end of the last sentence of the second paragraph:

“(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or “LIBOR”); and

(b) adding the following as a third paragraph:

“In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions.”

16. The following is added at the end of Section 10.4:

“Notwithstanding anything herein to the contrary, if the Non-Defaulting Party owes the Net Settlement Amount to the Defaulting Party, the Non-Defaulting Party shall not be required to pay to the Defaulting Party the Net Settlement Amount, nor shall interest be owed on such amount until (i) the Non-Defaulting Party receives confirmation satisfactory to it, in its reasonable discretion (which may include an opinion of its counsel and which the Non-Defaulting Party agrees to use reasonable efforts to obtain), that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Contract and transactions hereunder, or any other agreement between the parties, which are due and payable as of the Early Termination Date, have been paid (or netted, set off, recouped, or the like) in full.”; and (ii) the Defaulting Party executes a release in a form reasonably satisfactory to the Non-Defaulting Party that acts as the final resolution of the transactions hereunder. To the extent that either party believes that bankruptcy court approval of the release is required, the Non-Defaulting Party may withhold payment of the Net Settlement Amount until such time as appropriate court approval has been obtained and is final and non-appealable.”

## **SECTION 11. FORCE MAJEURE**

17. Add the following to the end of Section 11:

“11.7 Any party claiming Force Majeure (the “Claiming Party”) as an excuse for non-performance shall provide the other party (the Non-claiming Party”) a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days.”

11.8 During the event of Force Majeure, the Claiming Party, if it is Seller, must cease interruptible deliveries to its counterparties at Delivery Point(s) affected by the Force Majeure prior to suspending the performance obligations under the Firm Transaction affected by such Force Majeure event. The Claiming Party, if it is Seller, must treat the other party equitably with its other Firm customers on a proportionate basis with regard to the remaining supply available for market.

## **SECTION 12. TERM**

18. Section 12 shall be deleted in its entirety and replaced with:

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NAESB Standard 6.3.1  
September 5, 2006

"The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written Notice by either party; provided, however, that, to the extent necessary, the provisions hereof including, without limitation, Section 7.6, Section 8, Section 10, Section 13, Section 15.10 and the obligations of the parties to make payment to each other and to indemnify each other shall survive termination of this Contract and remain in full force and effect with respect to any transactions entered into between Seller and Buyer prior to the date of termination of this Contract until such time as the obligations of both parties are fully performed and satisfied and the provisions lapse or expire in accordance with the respective time periods expressly stated therein."

#### SECTION 14. MARKET DISRUPTION

19. Section 14 shall be deleted in its entirety and replaced with the following:

Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.

(a) If a Market Disruption Event has occurred during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or 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 fifth 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-Affiliate 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. Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains two quotes and the other party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both parties each obtain one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one party is able to obtain a quote, the obtained quotation shall be utilized. For purposes of the foregoing sentence, if more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded.

Notwithstanding the forgoing, If the Price Source retrospectively issues a Floating Price, in respect of a Determination Period (a "Delayed Floating Price"), then, if the Delayed Floating Price is issued by the Price Source in respect of a Determination Period (i) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Determination Period or (ii) after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment notwithstanding any subsequent publication unless the Parties expressly agree otherwise.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction."

"Exchange" means in respect of a transaction, the exchange or principal trading market specified as applicable to the relevant transaction.

"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.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

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.

(b) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within one (1) year of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) calendar days after publication or announcement.

## SECTION 15. MISCELLANEOUS

20. Insert in Section 15.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line.

21. Section 15.12 shall be amended by:  
deleting the third sentence in its entirety and replacing with the following:  
"So long as the Imaged Agreement bears the signature of the party against whom enforcement is sought if there is a space or line for such signature on the Imaged Agreement, in the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the Imaged Agreement, and the original document(s) is/are unobtainable, neither party shall object to the introduction, acceptance and admissibility of the recording, the Transaction Confirmation or the Imaged Agreement as evidence in any proceeding between the Parties before any court, arbitration panel, regulatory commission or similar body on the basis that such recording, Transaction confirmation or Imaged Agreements were not original agreements, originated or maintained in documentary form or do not comply with the best evidence rule."

22. The following Sections shall be added:

15.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:

(a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.

(b) Seller recognizes that Buyer may verify title to the Gas purchased and sold hereunder and agrees to provide all information requested by Buyer for such verification within thirty (30) days of such request.

Subject to the other provisions of this Section, Buyer agrees to make payment to Seller while title is being verified. If Buyer requires a Division Order Title Opinion to verify Seller's title or right to receive payments due hereunder, Seller agrees to provide to Buyer upon written request, without cost to Buyer, a Division Order Title Opinion satisfactory to Buyer within three (3) months from Seller's receipt of Buyer's written request. In the event that Seller does not provide a Division Order Title Opinion to Buyer within this period, Buyer may withhold any payments due hereunder, without payment of interest, until Buyer has received a Division Order Title Opinion. Moreover, in the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction. Notwithstanding the foregoing, Seller acknowledges that Buyer may rely entirely on the information provided by Seller or as set out on any Transaction Confirmation in making payments due hereunder. Buyer assumes no responsibility to review or approve any title information provided by Seller or any title information reflected on any Transaction Confirmation or to audit, compare, or update any such information against any title opinion or other information furnished or acquired pursuant to incidental to this Contract.

(c) For purposes of this Section 15.15, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.

23. Section 15 is amended by inserting new Sections 15.13 through 15.20 that read as follows:

15.13 Waiver of Jury Trial. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THE CONTRACT OR ANY TRANSACTION CONFIRMATION.

15.14 Enforceability. Each Party hereby expressly waives all rights to, and expressly agrees not to contest, any transaction, or assert or otherwise raise any defenses or arguments related to any Transaction to the effect that such is not binding, valid or enforceable in accordance with the terms of this Contract based on either the employee(s) or representative(s) who entered into the transaction on behalf of a party, and who appeared to have the requisite authority to do so, did not, in fact, have such authority or because the provisions of certain applicable laws require the transaction to be in writing and/or executed by one or both parties.

15.15 Delivery of Adequate Assurance of Performance.

On any date on which (a) no Event of Default has occurred and is continuing with respect to the Secured Party, (b) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment obligations, and (c) the Pledging Party is required to Transfer Adequate Assurance of Performance to the Secured Party pursuant to Section 10.1, the Pledging Party shall, Transfer, or cause to be Transferred to the Secured Party, Adequate Assurance of Performance. Unless otherwise agreed in writing by the parties, (i) Adequate Assurance of Performance demanded of a Pledging Party on or before the Notification Time on a Business Day shall be provided by the close of business on the next Business Day for Cash, or on the second Business Day for a Letter of Credit; and (ii) Adequate Assurance of Performance demanded of a Pledging Party after the Notification Time on a Business Day shall be provided by the close of business on the second Business Day thereafter for Cash, or on the third Business Day for a Letter of Credit. Any Letter of Credit or other type of Adequate Assurance of Performance (other than Cash) shall be Transferred to such address as the Secured Party shall specify and any such demand made by the Secured Party pursuant to this Section 15.15 shall specify account information for the account to which Adequate Assurance of Performance in the form of Cash shall be Transferred.

15.16 Substitution and Reduction of Eligible Collateral.

(a) Substitution. On any Business Day the Pledging Party may substitute for Posted Collateral other Eligible Collateral of equal or greater value. Upon the Transfer to the Secured Party of the substitute Eligible Collateral, the Secured Party shall Transfer the relevant replaced Posted Collateral (as specified by the Pledging Party) to the Pledging Party by 6:00 p.m. EPT on the Business Day after such Transfer has been effected. Notwithstanding anything herein to the contrary, the Secured Party will not be obligated to effect such substitution unless: (i) as of the date the request is effected, no Credit Support Default or Event of Default with respect to the Pledging Party has occurred and is continuing; (ii) as of the date the request is effected, no Early Termination Date has occurred or been designated by the Secured Party for which there exist any unsatisfied payment obligation under the Base Contract; and (iii) the substitute Eligible Collateral is Transferred to the Secured Party prior to the release of the Posted Collateral to be returned to the Pledging Party and, if applicable, the security interest in, and lien upon, such substituted Eligible Collateral granted pursuant hereto in favor of the Secured Party shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon. All substituted Eligible Collateral shall be subject to and governed by the terms and conditions of this Contract, including without limitation and if applicable, the security interest in, general first lien on and right of offset against, such substituted Eligible Collateral granted in favor of the Secured Party.

(b) Reduction. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to Cash), a Pledging Party may request a reduction in the amount of Posted Collateral previously provided by the Pledging Party for the benefit of the Secured Party, provided that, after giving effect to the requested reduction in Posted Collateral, (i) the Pledging Party shall in fact have an Adequate Assurance of Performance amount that shall not be less than required by the Secured Party pursuant to Section 10.1; (ii) no Credit Support Default or Event of Default with respect to the Pledging Party shall have occurred and be continuing; and (iii) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment obligations. A permitted reduction in Posted Collateral may be effected by the Transfer of Cash to the Pledging Party or the reduction of the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party. The Pledging Party shall have the right to specify the means of effecting the reduction in Posted Collateral. In all cases, the cost and expense of reducing Posted Collateral (including, but not limited to, the reasonable costs, expenses, and attorneys' fees of the Secured Party) shall be borne by the party incurring such cost or expense. Unless otherwise agreed in writing by the Parties, (i) if the Pledging Party's reduction demand is made on or before the Notification Time on a Business Day, then the Secured Party shall have one (1) Business Day to effect a permitted reduction of Posted Collateral and (ii) if the Pledging Party's reduction demand is made after the Notification Time on a Local Business Day, then the Secured Party shall have two (2) Local Business Days to effect a permitted reduction in Posted Collateral, in each case, if such reduction is to be effected by the return of Cash to the Pledging Party. If a permitted reduction in Eligible Collateral is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party, the Secured Party shall within one Local Business Day of receipt of an amendment to the Letter of Credit take such action as is reasonably necessary to effectuate such reduction. A Transfer in accordance with this Section 15.16(b) shall be deemed a release by the Secured Party of its security interest, general first lien and right of offset only with respect to such returned Eligible Collateral.

15.17 Letter of Credit Default. Upon the occurrence of a Letter of Credit Default, the Pledging Party will Transfer to the Secured Party on or before the first Business Day or the fifth (5<sup>th</sup> Business Day after the occurrence thereof if only clause (vi) under the definition of Letter of Credit Default applies) after the occurrence thereof either a substitute Letter of Credit or other Eligible Collateral. Each Letter of Credit shall be maintained for the benefit of the Secured Party. The costs and expenses incurred by the Pledging Party to establish, renew, substitute, cancel, and/or increase the amount of a Letter of Credit shall be borne by the Pledging Party. Upon or at any time after the occurrence and continuation of a Credit Support Default or Event of Default with respect to the Pledging Party and/or the designation of an Early Termination Date by the Secured Party, the Secured Party may draw on the undrawn portion of any outstanding Letter(s) of Credit. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Adequate Assurance of

Performance and as security for the Pledging Party's obligations to the Secured Party and the Secured Party shall have the rights and remedies set forth in this Contract with respect to such Cash proceeds. The Secured Party shall either (y) apply the proceeds of the Posted Collateral realized upon the exercise of any such rights or remedies to reduce the Pledging Party's obligations under the Contract (the Pledging Party remaining liable for any amounts owing to the Secured Party after such application and for any failure to Transfer Adequate Assurance of Performance for the benefit of the Security Party), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full and/or (z) hold such proceeds as collateral security for the Pledging Party's obligations under the Contract, subject to the Secured Party's obligation to return the proceeds after such obligations are satisfied in full.

15.18 Use of Cash, Interest Payment on Cash and Care of Cash.

(a) Use of Cash. Notwithstanding the provisions of applicable law, if no Event of Default or Credit Support Default and no Early Termination Date with respect to the Secured Party has occurred and is continuing and/or been designated, then the Secured Party shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business any Cash it holds, free from any claim or right of any nature whatsoever of the Pledging Party, including any equity or right of redemption.

(b) Interest Payments on Cash. So long as no Event of Default or Credit Support Default with respect to the Pledging Party has occurred and is continuing, and no Early Termination Date (for which any unsatisfied payment obligations of the Pledging Party exist) has occurred or been designated as the result of an Event of Default with respect to the Pledging Party, the Secured Party will upon written request Transfer to the Pledging Party, in lieu of any interest or other amounts paid or deemed to have been paid with respect to the Cash (all of which may be retained by the Secured Party), the Interest Amount. The Pledging Party shall invoice the Secured Party monthly setting forth the calculation of the Interest Amount due, and the Secured Party shall make payment thereof by the later of (A) the third Business Day of the first month after the last month to which such invoice relates or (B) the third Business Day after the day on which such invoice is received. On or after the occurrence of an Event of Default or Credit Support Default with respect to the Pledging Party or an Early Termination Date as a result of an Event of Default or Credit Support Default with respect to the Pledging Party, the Secured Party shall retain any such Interest Amount as additional Eligible Collateral hereunder until the obligations of the Pledging Party under the Base Contract have been satisfied in the case of an Early Termination Date or for so long as such Event of Default or Credit Support Default is continuing. Any Party may dispute a Performance Assurance Interest Amount as provided for in Section 7.4 of the Contract."

(c) Care of Cash. Without limiting the Secured Party's rights hereunder, the Secured Party will exercise reasonable care to assure the safe custody of all Cash held by it as Posted Collateral to the extent required by applicable law, and in any event the Secured Party will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, the Secured Party will have no duty with respect to Cash, including, without limitation, any duty to enforce or preserve any rights pertaining thereto.

15.19 Credit Representations and Warranties. On each day on which Eligible Collateral is held by the Secured Party and/or its agent under this Contract, the Pledging Party represents and warrants that: (a) it has the power and authority under the law of the jurisdiction of its organization or incorporation and under its organizational and constituent documents to grant to the Secured Party a valid, enforceable, first-priority security interest in, and lien on, all Posted Collateral (other than Letters of Credit) that it Transfers as the Pledging Party, and has taken all necessary actions to authorize the granting and perfection of that security interest and lien; (b) as of each date on which it, as the Pledging Party, Transfers Eligible Collateral to the Secured Party or to any agent of the Secured Party for the benefit of the Secured Party (or, in the case of Posted Collateral, at the time the Secured Party or its agent acquires rights therein), it has title to, and will be the sole owner of such Eligible Collateral, free and clear of any security interest, lien, pledge, charge, encumbrance, or other interests or restrictions other than the security interest granted to the Secured Party hereby; (c) the Secured Party will have a valid and perfected first-priority security interest in, and lien on, all Posted Collateral (other than Letters of Credit) upon receipt thereof; and (d) the performance by it of its

obligations under this Contract will not result in the creation of any security interest, lien or other encumbrance on any Posted Collateral other than the security interest and lien granted pursuant to this Contract.

**15.20 Eligible Collateral Rights and Remedies.** If at any time (i) an Event of Default or Credit Support Default with respect to the Pledging Party has occurred and is continuing, or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party, then the Secured Party may do any one or more of the following: (x) exercise any of the rights and remedies of a Secured Party with respect to the Posted Collateral under this Contract, including any such rights and remedies under law then in effect; (y) exercise its rights of setoff against any and all Posted Collateral of the Pledging Party in the possession of the Secured Party or its agent; and (z) draw on any outstanding Letter of Credit issued for its benefit under its terms and this Contract. The Secured Party shall either (y) apply the proceeds of the Posted Collateral realized upon the exercise of any such rights or remedies to reduce the Pledging Party's obligations under the Contract (the Pledging Party remaining liable for any amounts owing to the Secured Party after such application and for any failure to Transfer Adequate Assurance of Performance for the benefit of the Security Party), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full and/or (z) hold such proceeds as collateral security for the Pledging Party's obligations under the Contract, subject to the Secured Party's obligation to return the proceeds after such obligations are satisfied in full. The Secured Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more right and remedies available hereunder.

If at any time an Early Termination Date has occurred or been designated as the result of an Event of Default with respect to the Secured Party, then the Pledging Party may do any one or more of the following: (i) exercise any of the rights and remedies of a pledgor with respect to the Posted Collateral under this Contract, including any such rights and remedies under law then in effect; (ii) setoff amounts payable by the Pledging Party to the Secured Party against the Posted Collateral held by the Secured Party or to the extent its rights to setoff are not exercised, withhold payment of any remaining amounts payable by the Pledging Party, up to the value of any remaining Posted Collateral held by the Secured Party, until the Posted Collateral is Transferred to the Pledging Party; and/or (iii) exercise rights and remedies available to the Pledging Party under the terms of any Letter of Credit.

**15.21 Disputed Calculations.**

(a) If the Pledging Party disputes the amount of Eligible Collateral requested by the Secured Party and such dispute relates to the amount of the Adequate Assurance of Performance pursuant to Section 10.1 claimed by the Secured Party, then the Pledging Party shall (i) notify the Secured Party of the existence and nature of the dispute not later than the Notification Time on the first Business Day following the date that the demand for Adequate Assurance of Performance is made by the Secured Party pursuant to Section 10.1 and (ii) provide Adequate Assurance of Performance to or for the benefit of the Secured Party in an amount equal to the Pledging Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Eligible Collateral requirement in accordance with Section 10.1. The parties shall in good faith negotiate to resolve the disputed amounts, and Pledging Party shall promptly Transfer additional Eligible Collateral to Secured Party, to the extent that further amounts are required.

(b) If the Secured Party disputes the amount of Adequate Assurance of Performance to be reduced by the Secured Party and such dispute relates to the amount of the Eligible Collateral requirement claimed by the Secured Party, then the Secured Party shall (i) notify the Pledging Party of the existence and nature of the dispute not later than the Notification Time on the first Business Day following the date that the demand to reduce Adequate Assurance of Performance is made by the Pledging Party pursuant to Section 15.16 (b), and (ii) effect the reduction of Adequate Performance of Assurance to or for the benefit of the Pledging Party in an amount equal to the Secured Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Eligible Collateral requirement in accordance with Section 10.1. The parties shall in good faith negotiate to resolve the disputed amounts, and Secured Party shall promptly Transfer additional Eligible Collateral to Pledging Party, to the extent that further amounts are required to be returned.

(c) In all cases, each Party shall pay its own costs and expenses in determining the Eligible Collateral requirement for the purpose of any disputed calculation under this Section 15.21. The determination made under this Section 15.21 shall be binding and conclusive on the Parties absent manifest error."

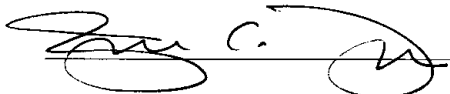
15.22 Indemnification. The Pledging Party shall pay on request and indemnify the Secured Party against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under this Contract as well as any penalties with respect thereto.

**SECTION 16. OPTION**

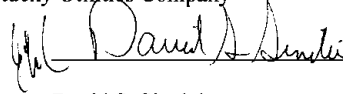
16.1 Notwithstanding anything in the Contract to the contrary, if the parties have agreed that a particular transaction under this Contract is an Option, then prior to the exercise of the Option by Option Buyer the sole obligation of Option Buyer under such transaction shall be to pay the Premium for such Option and Option Seller shall have no further obligation under such transaction, unless Buyer timely exercises the Option. Upon the timely exercise of an Option by Option Buyer, each of Option Buyer and Option Seller shall be obligated to perform and entitled to performance under the Contract in connection with such transaction as either Buyer or Seller as indicated in the Transaction Confirmation or the parties' oral or electronic agreement, as applicable."

IN WITNESS WHEREOF, the parties hereto have executed these Special Provisions to the Base Contract in duplicate, as of the date of the Base Contract.

VITOL INC.

By:   
Name: \_\_\_\_\_  
Title: **M.A. Loya**  
**President**

Louisville Gas and Electric Company /  
Kentucky Utilities Company

By:   
Name: David S. Sinclair  
Title: V.P., Energy Marketing

# 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 2.7.

**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. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

### SECTION 2. DEFINITIONS

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.

2.1. "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.

2.2. "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.

2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).

- 2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 2.5. "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.
- 2.6. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.7. "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.
- 2.8. "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.
- 2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.10. "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.
- 2.11. "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 an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.
- 2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.15. "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.
- 2.16. "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.
- 2.17. "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.
- 2.18. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.19. "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.
- 2.20. "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.
- 2.21. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.22. "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.
- 2.23. "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.
- 2.24. "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.
- 2.25. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.26. "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.

2.27. "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.

2.28. "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.

2.29. "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); 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); or (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, then the sole and exclusive remedy of the performing party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s). 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. 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 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 14.8, 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 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 or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. 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, payments 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 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.

## 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), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

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; or (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; 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 or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, 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:**

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 (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.

**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 owed to the Non-Defaulting Party against any margin or other collateral held by it 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 such 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 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 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; 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 Agreement; (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 and Section 10, 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. MISCELLANEOUS

14.1. 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.

14.2. 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.

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

14.4. 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.

14.5. 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.

14.6. 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.

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

14.8. 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.

14.9. 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.

14.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 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, or (iv) 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.

14.11 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.

**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; padding: 5px;"> <b>Firm (Fixed Quantity):</b>                      _____ MMBtus/day  <input type="checkbox"/> EFP                 </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> <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; padding: 5px;"> <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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____  By: _____  Title: _____  Date: _____	Buyer: _____  By: _____  Title: _____  Date: _____			

## Special Provision to the Base Contract

### SPECIAL PROVISIONS – U.S. NAESB

Special Provisions (“Special Provisions”) attached to and forming a part of that certain Base Contract for Short-Term Sale and Purchase of Natural Gas dated February 1, 2005 (the “Base Contract”) by and between: Louisville Gas & Electric Co./Kentucky Utilities Co. and United Energy Trading, LLC.

Capitalized terms used in these Special Provisions shall have the meanings ascribed to them in the Base Contract. Section references in these Special Provisions refer to a Section of the General Terms and Conditions of the Base Contract, unless stated otherwise.

#### SECTION 1. PURPOSES AND PROCEDURES

1. Section 1.2 “Oral Transaction Procedure” shall be amended by (a) inserting “a recorded” before “telephone” in the second line; and (b) inserting “recorded” before “telephonic” in the fifth line.
2. The following sections shall be added to Section 1:

“1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frands, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a contract contemplated herein.”

“1.6 Each party shall, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, the negligence be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation.”

#### SECTION 2. DEFINITIONS

3. Section 2.10 “Cover Standard” shall be amended by deleting “(or an alternate fuel if elected by Buyer and replacement Gas is not available)” from the definition.
4. The following Sections shall be added to the end of Section 2:

“2.30 “Costs” means (a) losses associated with transmission/transportation costs related to the terminated transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party’s reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a terminated transaction; and (c) commercially reasonable attorneys’ fees and court costs, if any, incurred in connection with enforcing its rights in respect of the terminated transactions.

2.31 “Credit Support Document” shall mean, as to a party (the “First Party”), a guaranty, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting



## Special Provision to the Base Contract

any obligations of the First Party under this Contract provided in each case that the issuer and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.32 "Eligible Collateral" shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.33 "Futures Contract" shall mean the standardized contract for the purchase or sale of Gas that is traded for future delivery under the applicable trading board's regulations.

2.34 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion issued directly from, or confirmed from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

2.35 "NYMEX" shall mean the New York Mercantile Exchange.

2.36 "Option" means a transaction in which, in exchange for the payment of the Premium by the Option Buyer, the Option Seller grants the Option Buyer the right to enter into a transaction on the agreed terms set forth in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which terms shall include, among other terms, which of the Option Buyer and the Option Seller is the Buyer and which is the Seller under such transaction.

2.37 "Option Buyer" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has acquired the right, upon exercise of the Option to receive Gas (if the Option Buyer is identified as "Buyer") or deliver Gas (if the Option Buyer is identified as "Seller").

2.38 "Option Seller" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has sold the Option. If the Option is exercised by the Option Buyer, the Option Seller will be obligated to deliver Gas (if the Option Buyer is identified as "Buyer") or receive Gas (if the Option Buyer is identified as "Seller").

2.39 "Premium" means the amount identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the amount payable by the Option Buyer to the Option Seller in exchange for an Option.

2.40 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by Seller and/or the Buyer for verification and/or evidentiary purposes."

### SECTION 3. PERFORMANCE OBLIGATION

5. Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase "and no such replacement or sale is available" in (iii):

"or in the event that the non-breaching party elects, at its sole option not to replace undelivered Gas or re-sell unaccepted Gas"

6. Add the following language to the end of Section 3.2

## Special Provision to the Base Contract

Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.

- A. Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by each Party obtaining a quote from a leading dealer in the relevant market; and the Floating Price shall be the arithmetic average of the two dealer quotes obtained.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction.

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

"Floating Price" means a Contract Price specified in a Transaction that is based upon a Price Source.

"Market Disruption Event" means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

- B. Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) calendar days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the

## Special Provision to the Base Contract

period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. **If a Party fails to give notice within thirty (30) calendar days after the publication or announcement of the correction that an amount is payable, then right to payment is waived for such correction.**

- C. Calculation of Floating Price. For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.

## SECTION 5. QUALITY AND MEASUREMENT

7. Delete the existing paragraph under Section 5 in its entirety and replace with the following:

"All Gas delivered by Seller shall meet the pressure, quality and heat specification of the pipeline system and/or facilities which shall receive the Gas at the Delivery Point(s) set forth in the transaction. The unit of quantity measurements for purposes of this Contract shall be one MMBtu Dry. BTU and volume measurements shall be made at the pressure and temperature basis of the measuring pipeline in accordance with the provisions of such pipeline's then effective Federal Energy Regulatory Commission ("FERC") Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such pipeline."

## SECTION 6. TAXES

8. Add the following language after the first sentence of Section 6 designated as *Buyer Pays At and After Delivery Point*:

"All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority."

9. Add as the last paragraph of Section 6:

"6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point ("Governmental Charge"), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s). Both Buyer and Seller shall work to reasonably apportion said Tax, taking into account the ability of either party to pass through all or a part of such tax, so long as neither party is materially adversely affected by such efforts."

## SECTION 7. BILLING, PAYMENT AND AUDIT

10. Add the following language to the end of Section 7.3:

"including all supporting documentation acceptable in industry practice to support the amount charged"

11. Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ..." in its entirety and replaced with:

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## Special Provision to the Base Contract

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

12. Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).

13. Section 7.8 shall be added as follows:

"7.8 Upon either party's request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month."

### SECTION 8. TITLE, WARRANTY, AND INDEMNITY

14. Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8" and "AND IN SECTION 14.8" in the last sentence.

15. Add the following to the end of Section 8:

"8.5 In the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction."

### SECTION 10. FINANCIAL RESPONSIBILITY

16. Delete the last sentence of Section 10.1 in its entirety and replace with the following:

"Adequate Assurance of Performance" shall mean the provision of Eligible Collateral."

17. Amend Section 10.2 as follows:

(a) insert "if any" after "guarantor" in the first (1<sup>st</sup>) line

18. Amend Section 10.3 by

(a) Inserting as the second sentence "Notwithstanding the following sentence, upon the occurrence of an Event of Default listed in items (ii), (iii) or (v) of Section 10.2 above, as it may apply to any party, this Contract shall automatically terminate, without notice, as if an

## Special Provision to the Base Contract

Early Termination Date has been immediately declared (in which case, the day of such automatic termination shall be the Early Termination Date).”

- (b) Delete from the second (2<sup>nd</sup>) sentence the phrase “or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate”
19. Section 10.3.1 “Early Termination Damages Apply” shall be amended by adding at the end of the last sentence of the second paragraph:

“(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or “LIBOR”)”

20. Add the following to the end of Section 10:

“10.8 In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions.”

“10.9 No suspension pursuant Section 10.2 shall continue for more than ten (10) Business Day unless an Early Termination Date has been declared and the Defaulting Party has been given notice thereof in accordance with Section 10.3.”

## SECTION 11. FORCE MAJEURE

21. The first sentence of Section 11.3 shall be amended by deleting the word “or” before item (v) and adding the following language at the end of item (v) but before the period at the end of that sentence:

“; (vi) notwithstanding 11.2 interruption of specific supply or markets at “pooling points” or “hubs” without the hub or pooling point operator claiming Force Majeure”.

22. Add the following shall be added to the end of Section 11

“11.7 Any party claiming Force Majeure (the “Claiming Party”) as an excuse for performance shall provide the other party (the Non-claiming Party”) a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days.”

## SECTION 12. TERM

23. Section 12 shall be deleted in its entirety and replaced with:

“The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written Notice by either party; provided, however, that the provisions hereof shall survive termination of this Contract and continue to apply to any transactions entered into between Seller and Buyer prior to the date of termination of this Contract until such time as any and all such transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment and provisions of Sections 1.6, 7.7, 8.1, 8.2, 8.3, 8.4, 13, 14.10, 14.13, and 14.14 shall continue to apply.”

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## Special Provision to the Base Contract

### SECTION 13. LIMITATIONS

24. Delete the phrase "UNLESS EXPRESSLY HEREIN PROVIDED," from the sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) lines.

### SECTION 14. MISCELLANEOUS:

25. Insert in Section 14.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4<sup>th</sup>) line.
26. Insert in Section 14.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).
27. The following Sections shall be added:
- 14.12 Each party agrees that the provisions of this Contract supersede and replace in their entirety any requirements of law relating to adequate assurance of future performance, including without limitation Article 2 of the Uniform Commercial Code, as enacted in New York.
- 14.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:
- (a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.
- (b) Seller recognizes that Buyer may verify title to the Gas purchased and sold hereunder and agrees to provide all information requested by Buyer for such verification within thirty (30) days of such request. Subject to the other provisions of this Section, Buyer agrees to make payment to Seller while title is being verified. If Buyer requires a Division Order Title Opinion to verify Seller's title or right to receive payments due hereunder, Seller agrees to provide to Buyer upon written request, without cost to Buyer, a Division Order Title Opinion satisfactory to Buyer within three (3) months from Seller's receipt of Buyer's written request. In the event that Seller does not provide a Division Order Title Opinion to Buyer within this period, Buyer may withhold any payments due hereunder, without payment of interest, until Buyer has received a Division Order Title Opinion. Moreover, in the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction. Notwithstanding the foregoing, Seller acknowledges that Buyer may rely entirely on the information provided by Seller or as set out on any Transaction Confirmation in making payments due hereunder. Buyer assumes no responsibility to review or approve any title information provided by Seller or any title information

## Special Provision to the Base Contract

reflected on any Transaction Confirmation or to audit, compare, or update any such information against any title opinion or other information furnished or acquired pursuant to incidental to this Contract.

(c) For purposes of this Section 14.15, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.

14.14 UCC - Except as otherwise provided for herein, the provisions of the Uniform Commercial Code ("UCC") of the state whose laws shall govern this Contract shall be deemed to apply to all transactions.

## SECTION 15. OPTION

15.1 Notwithstanding anything in the Contract to the contrary, if the parties have agreed that a particular transaction under this Contract is an Option, then prior to the exercise of the Option by Option Buyer the sole obligation of Option Buyer under such transaction shall be to pay the Premium for such Option and Option Seller shall have no obligation under such transaction. Upon the exercise of an Option by Option Buyer, each of Option Buyer and Option Seller shall be obligated to perform and entitled to performance under the Contract in connection with such transaction as either Buyer or Seller as indicated in the Transaction Confirmation or the parties' oral or electronic agreement, as applicable."

<b>BANK:</b> BNP Paribas <b>ABA:</b> 026007689 <b>ACCT:</b> 0020062108900150 <b>OTHER DETAILS:</b> <u>Twin Eagle Resource Management, LLC</u>	<b>ACH NUMBERS</b> <i>(IF APPLICABLE)</i>	<b>BANK:</b> Bank of America, Dallas TX <b>ABA:</b> 111000012 <b>ACCT:</b> 3752099133 <b>OTHER DETAILS:</b> <u>N/A</u>
<b>ATTN:</b> _____ <b>ADDRESS:</b> _____	<b>CHECKS</b> <i>(IF APPLICABLE)</i>	<b>LGEIKU ATTN:</b> <u>Gas Accounting</u> <b>ADDRESS:</b> <u>220 W Main St., 7th Fl</u> <u>Louisville KY 40202</u>



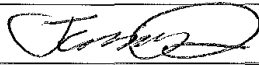
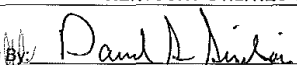
## Base Contract for Sale and Purchase of Natural Gas

(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> Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default <input checked="" type="checkbox"/> No Additional Events of Default (default) <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____
<b>Section 2.7</b> Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> 5 Business Days after receipt	
<b>Section 2.8</b> Confirming Party <input type="checkbox"/> Seller (default) OR <input checked="" type="checkbox"/> Buyer	
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>	
<b>Section 2.31</b> Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____	<b>Section 10.3.2</b> Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b> Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	
<b>Section 7.2</b> Payment Date <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 15.5</b> Choice Of Law _____ New York _____
<b>Section 7.2</b> Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) AND <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	<b>Section 15.10</b> Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.7</b> Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply	
<input checked="" type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: <u>5</u>	
<input type="checkbox"/> <b>Addendum(s):</b> _____	

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

TWIN EAGLE RESOURCE MANAGEMENT, LLC	PARTY NAME	LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY
By: 	SIGNATURE	By: 
Jeremy Davis EVP, Natural Gas	PRINTED NAME	David S. Sinclair
	TITLE	Vice President Energy Marketing

# 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

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.

2.1. "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.

2.2. "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.

- 2.3. "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.
- 2.4. "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.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "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.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "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.
- 2.10. "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.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "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.
- 2.13. "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.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "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.
- 2.18. "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.
- 2.19. "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.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "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.
- 2.23. "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.

- 2.24. "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.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "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.
- 2.27. "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.
- 2.28. "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.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "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.
- 2.31. "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.
- 2.32. "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.
- 2.33. "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.
- 2.34. "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.
- 2.35. "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.

<p><b>The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.</b></p> <p><b>Cover Standard:</b></p> <p>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.</p>
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**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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF  
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS  
Dated March 19, 2012**

**by and between  
Twin Eagle Resource Management, LLC ("TERM")  
And  
Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")**

**SECTION 1. PURPOSES AND PROCEDURES**

The following sections shall be added to Section 1:

"1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a contract contemplated herein."

"1.6 Each party may, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, the negligence be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for reording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation."

**SECTION 2. DEFINITIONS**

Section 2.12 "Cover Standard" shall be amended by deleting "(or an alternate fuel if elected by Buyer and replacement Gas is not available)" from the definition.

The following Sections shall be added to the end of Section 2:

2.36 "Costs" means (a) losses associated with transmission/transportation costs related to the Terminated Transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party's reasonable efforts; (b) transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a Terminated Transaction; and (c) commercially reasonable attorneys' fees and court costs, if any, incurred in connection with enforcing its rights in respect of the Terminated Transactions.

2.37 "Credit Support Document" shall mean, as to a party (the "First Party"), a guaranty from a Guarantor, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer, amount and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.38 "Eligible Collateral" shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.39 "Futures Contract" shall mean the standardized contract for the purchase or sale of Gas that is traded for future delivery under the applicable trading board's regulations.

2.40 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

2.41 "NYMEX" shall mean the New York Mercantile Exchange.

2.42 "Option" means a transaction in which, in exchange for the payment of the Premium by the Option Buyer, the Option Seller grants the Option Buyer the right to enter into a transaction on the agreed terms set forth in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which terms shall include, among other terms, which of the Option Buyer and the Option Seller is the Buyer and which is the Seller under such transaction.

2.43 "Option Buyer" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has acquired the right, upon exercise of the Option to receive Gas (if the Option Buyer is identified as "Buyer") or deliver Gas (if the Option Buyer is identified as "Seller").

2.44 "Option Seller" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has sold the Option. If the Option is exercised by the Option Buyer, the Option Seller will be obligated to deliver Gas (if the Option Buyer is identified as "Buyer") or receive Gas (if the Option Buyer is identified as "Seller").

2.45 "Premium" means the amount identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the amount payable by the Option Buyer to the Option Seller in exchange for an Option.

2.46 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by Seller and/or the Buyer for verification and/or evidentiary purposes."

### SECTION 3. PERFORMANCE OBLIGATION

Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase "and no such replacement or sale is available" in (iii):

"or in the event that the non-breaching party elects, at its sole option, not to replace or re-sell to a third party the Gas not delivered"

### SECTION 5. QUALITY AND MEASUREMENT

Delete the existing paragraph under Section 5 in its entirety and replace with the following:

"All Gas delivered by Seller shall meet the pressure, quality and heat specification of the Receiving Transporter. BTU and volume measurements shall be made at the pressure and temperature basis of the Receiving Transporter in accordance with the provisions of such pipeline's then effective Federal Energy Regulatory Commission ("FERC") Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such Receiving Transporter."

### SECTION 6. TAXES

Add the following after the first sentence in Section 6 for "Buyer Pays At and After Delivery Point":

All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority."

Add as the last paragraph of Section 6:

"6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point ("Governmental Charge"), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s)."

### SECTION 7. BILLING, PAYMENT AND AUDIT

Add the following language to the end of Section 7.3:

"including all supporting documentation acceptable in industry practice to support the amount charged"

Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ..." in its entirety and replacing with:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).

Section 7.8 shall be added as follows:

"7.8 Upon either party's request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month."

## SECTION 8. TITLE, WARRANTY, AND INDEMNITY

Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8.2" and "AND IN SECTION 15.8" in the last sentence.

Add the following to the end of Section 8:

"8.6 In the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction."

## SECTION 9. NOTICES

9.4 shall be amended by:

- (a) in the first sentence delete the words "commercially acceptable";
- (b) after the words "payment information" and before the word "shall" add "identified on the cover page under Accounting Information"; and
- (c) delete "ten (10)" and replace with "two (2)".

## SECTION 10. FINANCIAL RESPONSIBILITY

Delete the second sentence of Section 10.1 in its entirety and replace with the following:  
"Adequate Assurance of Performance" shall mean the provision of Eligible Collateral."

Section 10.2 shall be amended by

- (a) deleting "or" before "(ix)"; and
- (b) adding at the end before the "." in the last sentence: "provided that no suspension of performance shall continue for more than ten (10) Business Days unless an Early Termination Date has been declared and the Non-Defaulting Party has given Notice thereof in accordance with Section 10.3."

Amend Section 10.3 by deleting from the sixth line the phrase "legally permissible" and replace with "practicable and not prohibited by applicable law"

Section 10.3.1 "Early Termination Damages Apply" shall be amended by:

- (a) adding at the end of the last sentence of the second paragraph:

"(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR");

and

- (b) adding the following as a third paragraph:

"In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions."

## SECTION 11. FORCE MAJEURE

Add the following to the end of Section 11:

"11.7 Any party claiming Force Majeure (the "Claiming Party") as an excuse for performance shall provide the other party (the Non-claiming Party) a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days."

11.8 During the event of Force Majeure, the Claiming Party, if it is Seller, shall, to the extent permitted by the Transporters, prorate all Firm obligations at the affected Delivery Point and shall give Firm obligations priority over all Interruptible obligations at the affected Delivery Point..

## SECTION 12. TERM

Section 12 shall be deleted in its entirety and replaced with:

Section 12 shall be amended by

The second sentence of Section 12 is hereby deleted and replaced with the following:

"The rights of either party pursuant to: (i) Section 7.6, (ii) Section 10, (iii) Section 13, (iv) Section 15, (v) the obligation to make payment hereunder, including Sections 7.4 and 7.7, and (vi) the obligation of either party to indemnify the other pursuant hereto, including Section 8.3, shall survive the termination of the Base Contract or any transaction."

#### SECTION 14. MARKET DISRUPTION

Section 14 shall be deleted in its entirety and replaced with the following:

Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.

(A) If a Market Disruption Event has occurred during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or 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 fifth 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-Affiliate 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. Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains two quotes and the other party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both parties each obtain one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one party is able to obtain a quote, the obtained quotation shall be utilized. For purposes of the foregoing sentence, if more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded.

Notwithstanding the foregoing, If the Price Source retrospectively issues a Floating Price, in respect of a Determination Period (a "Delayed Floating Price"), then, if the Delayed Floating Price is issued by the Price Source in respect of a Determination Period (i) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Determination Period or (ii) after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment notwithstanding any subsequent publication unless the Parties expressly agree otherwise.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction."

"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.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

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.

(B) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within thirty (30) days of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) calendar days after publication or announcement

#### SECTION 15. MISCELLANEOUS

Insert in Section 15.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line.

Insert in Section 15.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).

Section 15.12 shall be amended by:

- (a) adding in the second sentence the words "regulatory commission or similar body" after the word "mediation" and before the word "or";
- (b) Add the following to the beginning of the third sentence:



" In the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, and the original document(s) is/are unobtainable;  
(c) lower case "neither" in the third sentence; and  
(d) add the following to the end of the third sentence after the word "form" and before the "." "or do not comply with the best evidence rule.

The following Sections shall be added:

15.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:

(a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.

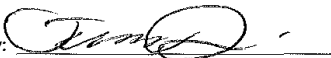
(b) Seller recognizes that Buyer may verify title to the Gas purchased and sold hereunder and agrees to provide all information requested by Buyer for such verification within thirty (30) days of such request. Subject to the other provisions of this Section, Buyer agrees to make payment to Seller while title is being verified. If Buyer requires a Division Order Title Opinion to verify Seller's title or right to receive payments due hereunder, Seller agrees to provide to Buyer upon written request, without cost to Buyer, a Division Order Title Opinion satisfactory to Buyer within three (3) months from Seller's receipt of Buyer's written request. In the event that Seller does not provide a Division Order Title Opinion to Buyer within this period, Buyer may withhold any payments due hereunder, without payment of interest, until Buyer has received a Division Order Title Opinion. Moreover, in the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction. Notwithstanding the foregoing, Seller acknowledges that Buyer may rely entirely on the information provided by Seller or as set out on any Transaction Confirmation in making payments due hereunder. Buyer assumes no responsibility to review or approve any title information provided by Seller or any title information reflected on any Transaction Confirmation or to audit, compare, or update any such information against any title opinion or other information furnished or acquired pursuant to incidental to this Contract.

(c) For purposes of this Section 15.15, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.

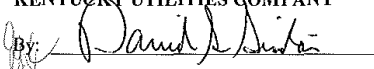
**SECTION 16. OPTION**

16.1 Notwithstanding anything in the Contract to the contrary, if the parties have agreed that a particular transaction under this Contract is an Option, then prior to the exercise of the Option by Option Buyer the sole obligation of Option Buyer under such transaction shall be to pay the Premium for such Option and Option Seller shall have no obligation under such transaction. Upon the exercise of an Option by Option Buyer, each of Option Buyer and Option Seller shall be obligated to perform and entitled to performance under the Contract in connection with such transaction as either Buyer or Seller as indicated in the Transaction Confirmation or the parties' oral or electronic agreement, as applicable."

TWIN EAGLE RESOURCE MANAGEMENT, LLC

B By:   
Name: Jeremy Davis  
Title: EVP, Natural Gas

LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY

By:   
Name: David S. Sinclair  
Title: Vice President Energy Marketing

# 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 2.7.

**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. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

### SECTION 2. DEFINITIONS

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.

2.1. "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.

2.2. "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.

2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).

- 2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 2.5. "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.
- 2.6. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.7. "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.
- 2.8. "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.
- 2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.10. "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.
- 2.11. "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 an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.
- 2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.15. "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.
- 2.16. "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.
- 2.17. "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.
- 2.18. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.19. "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.
- 2.20. "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.
- 2.21. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.22. "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.
- 2.23. "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.
- 2.24. "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.
- 2.25. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.26. "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.

2.27. "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.

2.28. "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.

2.29. "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); 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); or (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, then the sole and exclusive remedy of the performing party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s). 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. 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 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 14.8, 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 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 or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. 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, payments 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 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.

## 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), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

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; or (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; 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 or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, 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:**

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 (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.

**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 owed to the Non-Defaulting Party against any margin or other collateral held by it 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 such 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 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 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; 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 Agreement; (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 and Section 10, 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. MISCELLANEOUS

14.1. 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.

14.2. 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.

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

14.4. 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.

14.5. 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.

14.6. 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.

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

14.8. 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.

14.9. 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.

14.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 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, or (iv) 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.

14.11 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.

**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; padding: 5px;"> <b>Firm (Fixed Quantity):</b>                      _____ MMBtus/day  <input type="checkbox"/> EFP                 </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> <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; padding: 5px;"> <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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____  By: _____  Title: _____  Date: _____	Buyer: _____  By: _____  Title: _____  Date: _____			

## Special Provision to the Base Contract

### SPECIAL PROVISIONS – U.S. NAESB

Special Provisions (“Special Provisions”) attached to and forming a part of that certain Base Contract for Short-Term Sale and Purchase of Natural Gas dated December 1, 2003 (the “Base Contract”) by and between: Louisville Gas & Electric Co./Kentucky Utilities Co. and Tennessee Valley Authority.

Capitalized terms used in these Special Provisions shall have the meanings ascribed to them in the Base Contract. Section references in these Special Provisions refer to a Section of the General Terms and Conditions of the Base Contract, unless stated otherwise.

#### SECTION 1. PURPOSES AND PROCEDURES

1. Section 1.2 “Oral Transaction Procedure” shall be amended by (a) inserting “a recorded” before “telephone” in the second line; and (b) inserting “recorded” before “telephonic” in the fifth line.

2. The following sections shall be added to Section 1:

“1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a contract contemplated herein.”

“1.6 Each party shall, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, the negligence be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation.”

#### SECTION 2. DEFINITIONS

3. Section 2.10 “Cover Standard” shall be amended by deleting “(or an alternate fuel if elected by Buyer and replacement Gas is not available)” from the definition.

4. The following Sections shall be added to the end of Section 2:

“2.30 “Costs” means (a) losses associated with transmission/transportation costs related to the terminated transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party’s reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a terminated transaction; and (c) commercially reasonable attorneys’ fees and court costs, if any, incurred in connection with enforcing its rights in respect of the terminated transactions.

## Special Provision to the Base Contract

2.31 "Credit Support Document" shall mean, as to a party (the "First Party"), a guaranty, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.32 "Eligible Collateral" shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated), or (b) demonstration of an Investment Grade Rating.

2.33 "Futures Contract" shall mean the standardized contract for the purchase or sale of Gas that is traded for future delivery under the applicable trading board's regulations.

2.34 "Investment Grade Rating" shall mean a party's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) rating from Moody's of "Baa3" or higher and a rating from S&P of "BBB-" or higher. Moody's shall mean Moody's Investor Services, Inc. or its successors. S&P shall mean the Standard & Poor's Rating Group (a division of McGraw-Hill Inc.) or its successors.

2.35 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

2.36 "Material Adverse Change" shall mean a party's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) rating falls below an Investment Grade Rating.

2.37 "NYMEX" shall mean the New York Mercantile Exchange.

2.38 "Option" means a transaction in which, in exchange for the payment of the Premium by the Option Buyer, the Option Seller grants the Option Buyer the right to enter into a transaction on the agreed terms set forth in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which terms shall include, among other terms, which of the Option Buyer and the Option Seller is the Buyer and which is the Seller under such transaction.

2.39 "Option Buyer" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has acquired the right, upon exercise of the Option to receive Gas (if the Option Buyer is identified as "Buyer") or deliver Gas (if the Option Buyer is identified as "Seller").

2.40 "Option Seller" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has sold the Option. If the Option is exercised by the Option Buyer, the Option Seller will be obligated to deliver Gas (if the Option Buyer is identified as "Buyer") or receive Gas (if the Option Buyer is identified as "Seller").

2.41 "Premium" means the amount identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the amount payable by the Option Buyer to the Option Seller in exchange for an Option.

2.42 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by

## Special Provision to the Base Contract

Seller and/or the Buyer for verification and/or evidentiary purposes.”

### SECTION 3. PERFORMANCE OBLIGATION

5. Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase “and no such replacement or sale is available” in (iii):

‘or in the event that the non-breaching party elects, at its sole option not to replace undelivered Gas or re-sell unaccepted Gas”

6. Add the following language to the end of Section 3.2

“If any or all of the index prices used to determine the Contract Price are not available in the future for the determination of the Contract Price, and if the publication reporting such index price prior to its unavailability has suggested an alternate reference index or methodology for determining the index price, then the Contract Price shall be determined using the alternate reference index or methodology suggested by such publication. If none is suggested, then the Parties agree to promptly and in good faith negotiate an alternate reference index or methodology for determining the Contract Price. If the Parties do not agree on a substitute methodology or index by the end of the first month for which the Contract Price could not be determined, then the alternate reference index or methodology shall be determined by a third party mediator selected by the mutual agreement of both Parties from leading dealers in the relevant market. From and after the date the indices used to determine the Contract Price are no longer available (“Renegotiation Date”), until the alternate reference index or methodology is determined, the Contract Price shall be determined using the average of the index price(s) in effect during the twelve (12) months preceding the month in which the Renegotiation Date occurred, which Contract Price shall be effective until the effective date of the alternate reference index or methodology determined as set forth above. The cost of such mediation shall be equally split by the parties. Upon determination of a new alternate reference index or methodology, the Contract Price accordingly will be adjusted retroactively to the Renegotiation Date.”

### SECTION 5. QUALITY AND MEASUREMENT

7. Delete the existing paragraph under Section 5 in its entirety and replace with the following:

“All Gas delivered by Seller shall meet the pressure, quality and heat specification of the pipeline system and/or facilities which shall receive the Gas at the Delivery Point(s) set forth in the transaction. The unit of quantity measurements for purposes of this Contract shall be one MMBtu Dry. BTU and volume measurements shall be made at the pressure and temperature basis of the measuring pipeline in accordance with the provisions of such pipeline’s then effective Federal Energy Regulatory Commission (“FERC”) Gas Tariff, or in the event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such pipeline.”

### SECTION 6. TAXES

8. Add the following language after the first sentence of Section 6 designated as *Buyer Pays At and After Delivery Point*:

“All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority.”

## Special Provision to the Base Contract

9. Add as the last paragraph of Section 6:

"6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point ("Governmental Charge"), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s). Both Buyer and Seller shall work to reasonably apportion said Tax, taking into account the ability of either party to pass through all or a part of such tax, so long as neither party is materially adversely affected by such efforts."

## SECTION 7. BILLING, PAYMENT AND AUDIT

10. Add the following language to the end of Section 7.3:

"including all supporting documentation acceptable in industry practice to support the amount charged"

11. Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ..." in its entirety and replaced with:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in writing within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

12. Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).

13. Section 7.8 shall be added as follows:

"7.8 Upon either party's reasonable request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month."

## SECTION 8. TITLE, WARRANTY, AND INDEMNITY

14. Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8" and "AND IN SECTION 14.8" in the last sentence.

15. Add the following to the end of Section 8:

"8.5 In the event of any claim or litigation, at any time, concerning Seller's title to the leases,

## Special Provision to the Base Contract

wells, Gas produced or liquid hydrocarbons recovered from the Gas sold hereunder or the proceeds from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction."

### SECTION 10. FINANCIAL RESPONSIBILITY

16. Delete the last sentence of Section 10.1 in its entirety and replace with the following:  
"Adequate Assurance of Performance" shall mean the provision of Eligible Collateral."
17. Amend Section 10.2 as follows:
  - (a) insert "if any" after "guarantor" in the first (1<sup>st</sup>) line
  - (b) delete "or" before "(viii)"
  - (c) insert in the ninth line after the phrase "such payment is due" the phrase "or (ix) suffers a Material Adverse Change; provided that, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party provides within three (3) Business Days of receipt of written notice from the other party and maintains for so long as the Material Adverse Change is continuing Eligible Collateral to the other party"
18. Amend Section 10.3 by
  - (a) Inserting as the second sentence "Notwithstanding the following sentence, upon the occurrence of an Event of Default listed in items (ii), (iii) or (v) of Section 10.2 above, as it may apply to any party, this Contract shall automatically terminate, without notice, as if an Early Termination Date has been immediately declared (in which case, the day of such automatic termination shall be the Early Termination Date)."
  - (b) Delete from the second (2<sup>nd</sup>) sentence the phrase "or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate"
19. Section 10.3.1 "Early Termination Damages Apply" shall be amended by adding at the end of the last sentence of the second paragraph:  
"(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR")"
20. Add the following to the end of Section 10:  
"10.8 In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions."  
"10.9 No suspension pursuant Section 10.1 shall continue for more than ten (10) Business Day unless an Early Termination Date has been declared and the Defaulting Party has been given notice thereof in accordance with Section 10.3."

### SECTION 11. FORCE MAJEURE

21. The first sentence of Section 11.3 shall be amended by deleting the word "or" before item (v) and adding the following language at the end of item (v) but before the period at the end of that sentence:  
"; or (vi) notwithstanding Section 11.2 interruption of specific supply or markets at "pooling points" or "hubs" without the hub or pooling point operator claiming Force Majeure".

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## Special Provision to the Base Contract

22. Add the following shall be added to the end of Section 11

"11.7 Any party claiming Force Majeure (the "Claiming Party") as an excuse for performance shall provide the other party (the Non-claiming Party") a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days."

### SECTION 12. TERM

23. Section 12 shall be deleted in its entirety and replaced with:

"The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written Notice by either party; provided, however, that the provisions hereof shall survive termination of this Contract and continue to apply to any transactions entered into between Seller and Buyer prior to the date of termination of this Contract until such time as any and all such transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment and provisions of Sections 1.6, 7.7, 8.1, 8.2, 8.3, 8.4, 13, 14.10, 14.13, and 14.14 shall continue to apply."

### SECTION 13. LIMITATIONS

24. Delete the phrase "UNLESS EXPRESSLY HEREIN PROVIDED," from the sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) lines.

### SECTION 14. MISCELLANEOUS:

25. Insert in Section 14.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4<sup>th</sup>) line.
26. Insert in Section 14.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).
27. The following Sections shall be added:
- 14.12 Each party agrees that the provisions of this Contract supersede and replace in their entirety any requirements of law relating to adequate assurance of future performance, including without limitation Article 2 of the Uniform Commercial Code, as enacted in New York.
- 14.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:
- (a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of



## Special Provision to the Base Contract

such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.

(b) Seller recognizes that Buyer may verify title to the Gas purchased and sold hereunder and agrees to provide all information requested by Buyer for such verification within thirty (30) days of such request. Subject to the other provisions of this Section, Buyer agrees to make payment to Seller while title is being verified. If Buyer requires a Division Order Title Opinion to verify Seller's title or right to receive payments due hereunder, Seller agrees to provide to Buyer upon written request, without cost to Buyer, a Division Order Title Opinion satisfactory to Buyer within three (3) months from Seller's receipt of Buyer's written request. In the event that Seller does not provide a Division Order Title Opinion to Buyer within this period, Buyer may withhold any payments due hereunder, without payment of interest, until Buyer has received a Division Order Title Opinion. Moreover, in the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction. Notwithstanding the foregoing, Seller acknowledges that Buyer may rely entirely on the information provided by Seller or as set out on any Transaction Confirmation in making payments due hereunder. Buyer assumes no responsibility to review or approve any title information provided by Seller or any title information reflected on any Transaction Confirmation or to audit, compare, or update any such information against any title opinion or other information furnished or acquired pursuant to incidental to this Contract.

(c) For purposes of this Section 14.15, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.

14.14 UCC - Except to the extent inconsistent with Federal Law the provisions of the Uniform Commercial Code ("UCC") of the state whose laws shall govern this Contract shall be deemed to apply to all transactions.

## SECTION 15. OPTION

15.1 Notwithstanding anything in the Contract to the contrary, if the parties have agreed that a particular transaction under this Contract is an Option, then prior to the exercise of the Option by Option Buyer the sole obligation of Option Buyer under such transaction shall be to pay the Premium for such Option and Option Seller shall have no obligation under such transaction. Upon the exercise of an Option by Option Buyer, each of Option Buyer and Option Seller shall be obligated to perform and entitled to performance under the Contract in connection with such transaction as either Buyer or Seller as indicated in the Transaction Confirmation or the parties' oral or electronic agreement, as applicable."

ATTN: _____ ADDRESS: _____	CHECKS (IF APPLICABLE)	LGE/KU ATTN: <i>Gas Regulatory Accounting</i> ADDRESS: 220 W Main St., 9th Fl Louisville KY 40202
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## 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> Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default <input checked="" type="checkbox"/> No Additional Events of Default (default) <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____
<b>Section 2.7</b> Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> 5 Business Days after receipt	
<b>Section 2.8</b> Confirming Party <input type="checkbox"/> Seller (default) OR <input checked="" type="checkbox"/> Buyer	
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply
<i>Note: The following Spot Price Publication applies to both of the immediately preceding.</i>	
<b>Section 2.3.1</b> Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____	<b>Section 10.3.2</b> Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b> Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	
<b>Section 7.2</b> Payment Date <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 15.5</b> Choice Of Law <u>New York</u>
<b>Section 7.2</b> Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) AND <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	<b>Section 15.10</b> Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.7</b> Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply	
<input checked="" type="checkbox"/> Special Provisions Number of sheets attached: <u>5</u> <input type="checkbox"/> Addendum(s): _____	

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

<b>TRIAD HUNTER, LLC</b> <i>act</i>	<i>act</i>	<b>LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY</b>
By: <i>Jim Denny</i>	SIGNATURE	By: <i>David S. Sinclair</i>
Jim Denny	PRINTED NAME	David S. Sinclair
President	TITLE	Vice President Energy Supply and Analysis

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**

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.

2.1. "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.

2.2. "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.

- 2.3. "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.
- 2.4. "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.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "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.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "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.
- 2.10. "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.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "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.
- 2.13. "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.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "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.
- 2.18. "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.
- 2.19. "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.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "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.
- 2.23. "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.

- 2.24. "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.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "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.
- 2.27. "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.
- 2.28. "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.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "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.
- 2.31. "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.
- 2.32. "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.
- 2.33. "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.
- 2.34. "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.
- 2.35. "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.

<p><b>The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.</b></p> <p><b>Cover Standard:</b></p> <p>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.</p>
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**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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____  By: _____  Title: _____  Date: _____	Buyer: _____  By: _____  Title: _____  Date: _____			

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF  
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

Dated *2-19-2014*

by and between

Triad Hunter, LLC ("Triad")

And

Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")

**SECTION 1. PURPOSES AND PROCEDURES**

The following sections shall be added to Section 1:

"1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a transaction contemplated herein."

"1.6 Each party may, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, its negligence whether it be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation."

**SECTION 2. DEFINITIONS**

Section 2.12 "Cover Standard" shall be amended by deleting "(or an alternate fuel if elected by Buyer and replacement Gas is not available)" from the definition.

The following Sections shall be added to the end of Section 2:

2.36 "Costs" means (a) losses associated with transmission/transportation costs related to the Terminated Transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party's reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a Terminated Transaction; and (c) commercially reasonable attorneys' fees and court costs, if any, incurred in connection with enforcing its rights in respect of the Terminated Transactions.

2.37 "Credit Support Document" shall mean, as to a party (the "First Party"), a guaranty from a Guarantor, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer, amount and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.38 "Eligible Collateral" shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.39 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

**SECTION 3. PERFORMANCE OBLIGATION**

Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase "and no such replacement or sale is available" in (iii):

"or in the event that the non-breaching party elects, at its sole option, not to replace or re-sell to a third party the Gas not delivered"

#### SECTION 5. QUALITY AND MEASUREMENT

Delete the existing paragraph under Section 5 in its entirety and replace with the following:

"All Gas delivered by Seller shall meet the pressure, quality and heat specification of the Receiving Transporter. BTU and volume measurements shall be made at the pressure and temperature basis of the Receiving Transporter in accordance with the provisions of such pipeline's then effective Federal Energy Regulatory Commission ("FERC") Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such Receiving Transporter."

#### SECTION 6. TAXES

Add the following after the first sentence in Section 6 for "Buyer Pays At and After Delivery Point":

All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority."

Add as the last paragraph of Section 6:

"6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point ("Governmental Charge"), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s)."

#### SECTION 7. BILLING, PAYMENT AND AUDIT

Add the following language to the end of the first sentence of Section 7.3:

"including all supporting documentation acceptable in industry practice to support the amount charged"

Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ..." in its entirety and replacing with:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).

Section 7.8 shall be added as follows:

"7.8 Upon either party's request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month."

#### SECTION 8. TITLE, WARRANTY, AND INDEMNITY

Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8.2" and "AND IN SECTION 15.8" in the last sentence.

Add the following to the end of Section 8:

"8.6 In the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction."

#### SECTION 9. NOTICES

9.4 shall be amended by:

(a) in the first sentence delete the words "commercially acceptable";



- (b) after the words "payment information" and before the word "shall" add "identified on the cover page under Accounting Information"; and  
(c) delete "ten (10)" and replace with "two (2)".

#### SECTION 10. FINANCIAL RESPONSIBILITY

Delete the second sentence of Section 10.1 in its entirety and replace with the following:  
"Adequate Assurance of Performance" shall mean the provision of Eligible Collateral."

Amend Section 10.3 by deleting from the sixth line the phrase "legally permissible" and replace with "practicable and not prohibited by applicable law"

Section 10.3.1 "Early Termination Damages Apply" shall be amended by:

- (a) adding at the end of the last sentence of the second paragraph:

"(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR");  
and

- (b) adding the following as a third paragraph:

"In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions."

#### SECTION 11. FORCE MAJEURE

Add the following to the end of Section 11:

"11.7 Any party claiming Force Majeure (the "Claiming Party") as an excuse for performance shall provide the other party (the Non-claiming Party) a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days."

11.8 During the event of Force Majeure, the Claiming Party, if it is Seller, must cease interruptible deliveries to other markets prior to suspending the performance obligations under the Firm Transaction affected by such Force Majeure event. The Claiming Party, if it is Seller, must treat the other party equitably with its other Firm customers on a proportionate basis with regard to the remaining supply available for market.

#### SECTION 12. TERM

Section 12 shall be amended by

The second sentence of Section 12 is hereby deleted and replaced with the following:

"The rights of either party pursuant to: (i) Section 7.6, (ii) Section 10, (iii) Section 13, (iv) Section 15, (v) the obligation to make payment hereunder, including Sections 7.4 and 7.7, and (vi) the obligation of either party to indemnify the other pursuant hereto, including Section 8.3, shall survive the termination of the Base Contract or any transaction."

#### SECTION 14. MARKET DISRUPTION

Section 14 shall be deleted in its entirety and replaced with the following:

Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.

(A) If a Market Disruption Event has occurred during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or 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 fifth 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-Affiliate 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. Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains two quotes and the other party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both parties each obtain

one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one party is able to obtain a quote, the obtained quotation shall be utilized. For purposes of the foregoing sentence, if more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded.

Notwithstanding the forgoing, If the Price Source retrospectively issues a Floating Price, in respect of a Determination Period (a "Delayed Floating Price"), then, if the Delayed Floating Price is issued by the Price Source in respect of a Determination Period (i) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Determination Period or (ii) after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment notwithstanding any subsequent publication unless the Parties expressly agree otherwise.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction."

"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.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

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.

(B) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) calendar days after publication or announcement.

#### SECTION 15. MISCELLANEOUS

Insert in Section 15.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line.

Insert in Section 15.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).

Section 15.12 shall be amended by:

(a) adding in the second sentence the words "regulatory commission or similar body" after the word "mediation" and before the word "or";

(b) adding the following to the beginning of the third sentence:

"In the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, and the original document(s) is/are unobtainable,;

(c) lower case "neither" in the third sentence; and

(d) add the following to the end of the third sentence after the word "for" and before the "." "or do not comply with the best evidence rule.

The following Sections shall be added:

15.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:

(a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.

(b) Seller recognizes that Buyer may verify title to the Gas purchased and sold hereunder and agrees to provide all information requested by Buyer for such verification within thirty (30) days of such request. Subject to the other provisions of this Section, Buyer agrees to make payment to Seller while title is being verified. If Buyer requires a Division Order Title Opinion to verify Seller's title or right to receive payments due hereunder, Seller agrees to provide to Buyer upon written request, without cost to Buyer, a Division Order Title Opinion satisfactory to Buyer within three (3) months from Seller's receipt of Buyer's written request. In the event that Seller does not provide a Division Order Title Opinion to Buyer within this period, Buyer may withhold any payments due

hereunder, without payment of interest, until Buyer has received a Division Order Title Opinion. Moreover, in the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction, Notwithstanding the foregoing, Seller acknowledges that Buyer may rely entirely on the information provided by Seller or as set out on any Transaction Confirmation in making payments due hereunder. Buyer assumes no responsibility to review or approve any title information provided by Seller or any title information reflected on any Transaction Confirmation or to audit, compare, or update any such information against any title opinion or other information furnished or acquired pursuant to incidental to this Contract.

(c) For purposes of this Section 15.15, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.

TRIAD HUNTER, LLC

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

Name: Jim Denny

Title: President

Gas

*Jim Denny* DCK

LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY

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

Name: David S. Sinclair

Title: Vice President Energy Marketing

PSJ

*David S. Sinclair*

*Supply & Analysis*

# 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 2.7.

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. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

### SECTION 2. DEFINITIONS

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.

2.1. "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.

2.2. "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.

2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).

- 2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 2.5. "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.
- 2.6. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.7. "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.
- 2.8. "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.
- 2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.10. "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.
- 2.11. "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 an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.
- 2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.15. "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.
- 2.16. "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.
- 2.17. "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.
- 2.18. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.19. "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.
- 2.20. "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.
- 2.21. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.22. "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.
- 2.23. "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.
- 2.24. "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.
- 2.25. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.26. "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.

2.27. "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.

2.28. "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.

2.29. "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); 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); or (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, then the sole and exclusive remedy of the performing party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s). 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) and all Taxes after 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. 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 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 14.8, 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 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 or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. 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, payments 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 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.

## 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), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

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; or (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; 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 or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, 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:**

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 (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.

**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 owed to the Non-Defaulting Party against any margin or other collateral held by it 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 such 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 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 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; 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 Agreement; (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 and Section 10, 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. MISCELLANEOUS

14.1. 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.

14.2. 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.

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

14.4. 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.

14.5. 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.

14.6. 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.

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

14.8. 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.

14.9. 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.

14.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 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, or (iv) 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.

14.11 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.

**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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			

## SPECIAL PROVISIONS – U.S. NAESB

**Special Provisions (“Special Provisions”) attached to and forming a part of that certain Base Contract for Short-Term Sale and Purchase of Natural Gas dated effective December 1, 2007 (the “Base Contract”) by and between: Louisville Gas and Electric Co./Kentucky Utilities Co. (“LGE/KU”) and TOTAL GAS & POWER NORTH AMERICA, INC. (“TGPNA”)**

**Capitalized terms used in these Special Provisions shall have the meanings ascribed to them in the Base Contract. Section references in these Special Provisions refer to a Section of the General Terms and Conditions of the Base Contract, unless stated otherwise.**

### SECTION 1. PURPOSES AND PROCEDURES

**1. The following sections shall be added to Section 1:**

”1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. As to the introduction into evidence of recordings of Transactions between their commercial representatives, and between their commercial representatives and brokers, both parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of recorded conversations into evidence to prove a contract contemplated herein.”

”1.6 Each party may, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, if the negligence be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation.”

### SECTION 2. DEFINITIONS

**2. Section 2.10 “Cover Standard” shall be amended by deleting “(or an alternate fuel if elected by Buyer and replacement Gas is not available)” from the definition.**

**3. The following Sections shall be added to the end of Section 2:**

”2.30 “Costs” means (a) losses associated with transmission/transportation costs related to the terminated transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party’s reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a terminated transaction and (c) commercially reasonable attorneys’ fees and court costs, and expenses, if any, incurred in connection with enforcing its rights in respect of the terminated transactions.

2.31 “Futures Contract” shall mean the standardized contract for the purchase or sale of Gas that is traded for future delivery under the applicable trading board’s regulations.

2.32 “Investment Grade Rating” means:

(i) with respect to LGE/KU: such party’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) rating from Moody’s of “Baa3” or higher and a rating from S&P of “BBB-” or higher; or, if such entity does not have a rating for its senior unsecured long-term debt, then such rating then assigned to such entity as its “corporate credit rating” assigned by S&P, or the “issuer rating” assigned by Moody’s. Moody’s shall mean Moody’s Investor Services, Inc. or its successors. S&P shall mean the Standard & Poor’s Rating Group (a division of McGraw-Hill Inc.) or its successors, and

(ii) with respect to TGPNA, the following financial covenants made by TGPNA with respect to TOTAL Holdings USA, Inc. ("Total HUSA") the indirect parent company of TGPNA:

(a) on any date of determination, Total HUSA's Net Worth at any time shall not be less than \$250 Million (\$250,000,000.00). "Net Worth" means, at a particular date, all amounts which would be included under shareholders' equity for any Person and its consolidated subsidiaries determined in accordance with generally accepted accounting principles consistently applied.

(b) upon LGE/KU's request, TGPNA shall provide the annual audited consolidated financial statements of Total HUSA for most recently completed fiscal year as soon as available, certified by independent public accountants and prepared in accordance with generally accepted accounting principles consistently applied.

2.33 "letter of credit" as used in the General Terms and Conditions means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

2.34 "Material Adverse Change" shall mean (i) as to LGE/KU, LGE/KU's ratings fall below an Investment Grade Rating and (ii) as to TGPNA, TGPNA fails to adhere to either of the financial covenants stated in Investment Grade Rating.

2.35 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by Seller and/or the Buyer for verification and/or evidentiary purposes."

**4. The following Sections are amended from what currently appears in Section 2:**

2.7 "Contract" shall be amended to add the following clause before the final period: ", all of which shall form a single integrated agreement between the parties"

2.8 "Contract Price" shall be amended to add the following sentence at the end: "Contract Price includes reimbursement to Seller for all production, severance, and other such taxes imposed on the Gas prior to delivery at the Delivery Point."

**SECTION 6. TAXES**

**5. Add as the last paragraph of Section 6:**

"6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point ("Governmental Charge"), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s).

**SECTION 7. BILLING, PAYMENT AND AUDIT**

**6. Add the following language to the end of Section 7.3:**

"including all supporting documentation acceptable in industry practice to support the amount charged"

**7. Section 7.4 shall be amended by addition of the following text at the end of the Section:**

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months

after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

8. **Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).**

9. **Section 7.8 shall be added as follows:**

"7.8 Upon either party's reasonable request, Buyer and/or Seller shall provide support documentation related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price (by location) data for the applicable Month."

#### **SECTION 8. TITLE, WARRANTY, AND INDEMNITY**

10. **Section 8.1 shall be amended as follows:**

In the last sentence, insert the word "assume" between "and" and "any liability"; and insert the words "at and" between "Gas" and "after."

11. **Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8.2" and "AND IN SECTION 14.8" in the last sentence.**

12. **Section 8.3 shall be amended as follows:**

Insert in both sentences of Section 8.3, between the words "personal injury" and "or property damage", the following: "including any wrongful death action."

#### **SECTION 10. FINANCIAL RESPONSIBILITY**

13. **Amend Section 10.2 as follows:**

(a) insert "if any" after "guarantor" in the first (1<sup>st</sup>) line

(b) delete "or" before "(viii)"

(c) insert in the ninth line after the phrase "such payment is due" the phrase "or (ix) suffers a Material Adverse Change; provided that, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party provides Adequate Assurance of Performance to the requesting party within three (3) Business Days of receipt of written notice from the requesting party and maintains such Adequate Assurance of Performance for so long as the Material Adverse Change is continuing"

14. **Amend Section 10.3 as follows:**

Delete from the second (2<sup>nd</sup>) sentence the phrase "or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate.

15. **Section 10.3.1 "Early Termination Damages Apply" shall be amended by adding at the end of the last sentence of the second paragraph:**

"(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR")"

16. The parties intend that (i) all Transactions constitute a "forward contract" within the meaning of the United States Bankruptcy Code (the "Bankruptcy Code") or a "swap agreement" within the meaning of the Bankruptcy Code; (ii) all payments made or to be made by one party to the other party pursuant to this Contract constitute "settlement payments" within the meaning of the Bankruptcy Code; (iii) all transfers of Eligible Collateral by one party to the other party under this Contract constitute "margin payments" within the meaning of the Bankruptcy Code; and (iv) this Contract constitutes a "master netting agreement" within the meaning of the Bankruptcy Code.

**17. Add the following to the end of Section 10:**

“10.8 In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions.”

“10.9 No suspension pursuant to Section 10.2 shall continue for more than ten (10) Business Day unless an Early Termination Date has been declared and the Defaulting Party has been given notice thereof in accordance with Section 10.3.”

**SECTION 11. FORCE MAJEURE**

**18. Section 11.2 shall be amended to add the phrase “, or acts of terror” in subpart (v) following the words “insurrections or wars”.**

**19. Add the following to the end of Section 11**

“11.7 Any party claiming Force Majeure (the “Claiming Party”) as an excuse for performance shall provide the other party (the Non-claiming Party”) a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days.”

**SECTION 12. TERM**

**20. Section 12 shall be deleted in its entirety and replaced with:**

“This Contract may be terminated on thirty (30) days advance written Notice by either party; provided, however, that (i) this Contract shall remain in effect, to the extent necessary, until the expiration of the latest Delivery Period of any transaction outstanding at the effective date of such Termination, and (ii) notwithstanding any termination, subsequent to the effective date of such termination the obligation to make payment and provisions of Sections 1.6, 7.6, 7.7, 8.3 (indemnity obligations for Claims that arise or accrue prior to termination), 8.4 (liability obligations for Claims that arise or accrue prior to termination), 10, and 13 shall continue to apply.”

**SECTION 14. MISCELLANEOUS:**

**21. Insert in Section 14.1 the words “or conditioned” after the phrase “unreasonably withheld,” in the fourth (4<sup>th</sup>) line.**

**22. Insert in Section 14.10 the phrase “provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure” at the end of (i).**

**23. The following Sections shall be added:**

**14.12 Contract Governs Adequate Assurances.** Each party agrees that the provisions of this Contract supersede and replace in their entirety any requirements of law relating to adequate assurance of future performance, including without limitation Article 2 of the Uniform Commercial Code, as enacted in New York.

**14.13 UCC -** Except as otherwise provided for herein, the provisions of the Uniform Commercial Code (“UCC”) of the state whose laws shall govern this Contract shall be deemed to apply to all transactions.

**14.14 Index Transactions.** If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.



**A. Market Disruption.** If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the parties have not so agreed on or before the tenth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by each party obtaining a quote from a leading dealer in the relevant market; and the Floating Price shall be the arithmetic average of the two dealer quotes obtained.

**"Determination Period"** means each calendar month a part or all of which is within the Delivery Period of a Transaction.

**"Exchange"** means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

**"Floating Price"** means a Contract Price specified in a Transaction that is based upon a Price Source.

**"Market Disruption Event"** means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

**"Price Source"** means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

**"Trading Day"** means a day in respect of which the relevant Price Source published the Floating Price.

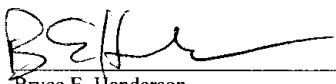
**B. Corrections to Published Prices.** For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either party may notify the other party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) calendar days after publication or announcement of that correction, a party gives notice that an amount is so payable, the party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other party that amount, together with interest at the interest rate set forth in Section 7.5 for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. If a party fails to give notice within thirty (30) calendar days after the publication or announcement of the correction that an amount is payable, then right to payment is waived for such correction.

**14.15 Calculation of Floating Price.** For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.

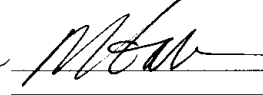
14.16 **Jointly and Severally Liable.** Louisville Gas and Electric Company and Kentucky Utilities Company shall be jointly and severally liable for their respective obligations under this Contract.

14.17 **Imaged Documents.** 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 evidenced 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. So long as the Imaged Agreement bears the signature of the party against whom enforcement is sought if there is a space or line for such signature on the agreement, in the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, and the original document(s) is/are unobtainable, neither party shall object to the introduction, acceptance and admissibility of the recording, the Transaction Confirmation or the Imaged Agreement as evidence in any proceeding between the parties before any court, arbitration panel, regulatory commission or similar body on the basis that such recording, Transaction confirmation or Imaged Agreements on the basis that such were not original agreements, originated or maintained in documentary form or do not comply with the best evidence rule. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

**TOTAL GAS & POWER  
NORTH AMERICA, INC.**


By:  **DAP**  
Bruce E. Henderson  
Its: President and General Manager

**Louisville Gas and Electric Co./  
Kentucky Utilities Co.**

By:   
Its: MARTYN GALLUS  
SR. VICE PRESIDENT  
LOUISVILLE GAS & ELECTRIC COMPANY  
KENTUCKY, KY

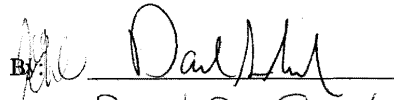
IN WITNESS WHEREOF, the Parties, by their respective authorized representatives, have executed this Amendment as of the date first above written.

TENASKA MARKETING VENTURES  
By: TMV Holdings, LLC  
Its Managing Partner

By:   
Name: JOHN OBERMILLER  
Title: Vice President, Finance

TMV-S-1211 and TMV-P-1080

LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY

By:   
Name: David S. Sinclair  
Title: Vice President, Energy Marketing

AMENDMENT TO  
BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS

This Amendment to Base Contract for Sale and Purchase of Natural Gas is made and entered into this 1<sup>st</sup> day of June, 2007 by and between Tenaska Marketing Ventures ("TMV") and Louisville Gas and Electric Company/Kentucky Utilities Company ("Counterparty"), (collectively the "Parties").

WHEREAS, TMV and Counterparty are parties to that certain Base Contract for Sale and Purchase of Natural Gas dated July 1, 2004 (the "Contract"); and

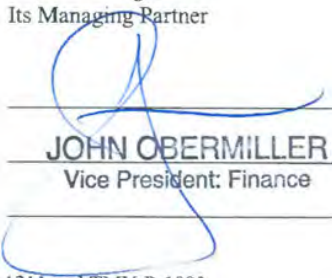
WHEREAS, the Parties now desire to amend the Contract as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 10.2 of the General Terms and Conditions of the Contract shall be amended by adding the following sentence to the end thereof:  
  
"For purposes of this Section 10.2, with respect to TMV, guarantor shall be limited to American International Group, Inc. and AIG Financial Products Corp. notwithstanding that Tenaska Energy, Inc. and Tenaska Energy Holdings, LLC are signatories to the Guarantee with AIG Financial Products Corp. provided to Counterparty on behalf of TMV."
2. Except as herein amended, the Contract shall remain in full force and effect. If there are any conflicts between this Amendment and the Contract, the terms of this Amendment shall govern.
3. All capitalized terms used herein, unless otherwise defined, shall have the meanings given to them in the Contract.
4. This Amendment may be executed in counterparts, all of which taken together shall constitute one and the same instrument.

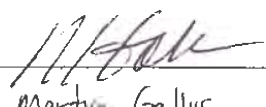
IN WITNESS WHEREOF, the Parties, by their respective authorized representatives, have executed this Amendment as of the date first above written.

TENASKA MARKETING VENTURES  
By: TMV Holdings, LLC  
Its Managing Partner

By:   
Name: JOHN OBERMILLER  
Vice President, Finance  
Title: \_\_\_\_\_

TMV-S-1211 and TMV-P-1080

LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY

By:   
Name: Martyn Gallus  
Title: Sr. Vice President

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: July 1, 2004. The parties to this Base Contract are the following:

Tenaska Marketing Ventures  
 11718 Nicholas Street Omaha, NE 68154  
 Duns Number: 62-424-0628  
 Contract Number: TMV-S-1111/TMV-P-0978  
 U.S. Federal Tax ID Number: 47-0741451

and Louisville Gas and Electric Company/Kentucky Utilities Company ("LGE"/"KU")  
 220 West Main St., 7<sup>th</sup> Floor Louisville, KY 40202  
 Duns Number: LGE 00-694-5505/KU 00-694-4938  
 Contract Number:  
 U.S. Federal Tax ID Number: LGE61-0264150/KU61-0247570

Notices:

11718 Nicholas Street Omaha, NE 68154  
 Attn: Manager, Contract Administration  
 Phone: 402-758-6135 Fax: 402-758-6250

220 West Main St., 7<sup>th</sup> Floor Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502-627-4251 or 4197 Fax: 502-627-4222

Confirmations:

11718 Nicholas Street Omaha, NE 68154  
 Attn: Contract Administration  
 Phone: 402-758-6100 Fax: 402-758-6250

220 West Main St., 7<sup>th</sup> Floor Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502-627-4197 or 4251 Fax: 502-627-4222

Invoices and Payments:

11718 Nicholas Street Omaha, NE 68154  
 Attn: Gas Accounting  
 Phone: 402-758-6124 Fax: 402-758-6253

220 West Main St., 7<sup>th</sup> Floor Louisville, KY 40202  
 Attn: Gas Accounting  
 Phone: 502-627-3627 Fax: 502-627-3800

Wire Transfer or ACH Numbers (if applicable):

BANK: First National Bank of Omaha - Omaha, NE  
 ABA: 104000016  
 ACCT: 24043917  
 Other Details:

BANK: Bank of America, Dallas, TX  
 ABA: 111-0000-12  
 ACCT: 3752099133  
 Other Details:

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 only one box from each section.

<b>Section 1.2</b> <input checked="" type="checkbox"/> Oral (default) Transaction <input type="checkbox"/> Written Procedure	<b>Section 7.2</b> <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) Payment Date <input type="checkbox"/> _____ Day of Month following Month of delivery
<b>Section 2.5</b> <input checked="" type="checkbox"/> 2 Business Days after receipt (default) Confirm <input type="checkbox"/> _____ Business Days after receipt Deadline	<b>Section 7.2</b> <input checked="" type="checkbox"/> Wire transfer (default) Method of <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) Payment <input type="checkbox"/> Check
<b>Section 2.6</b> <input type="checkbox"/> Seller (default) Confirming <input type="checkbox"/> Buyer Party <input checked="" type="checkbox"/> LGE KU	<b>Section 7.7</b> <input checked="" type="checkbox"/> Netting applies (default) Netting <input type="checkbox"/> Netting does not apply
<b>Section 3.2</b> <input checked="" type="checkbox"/> Cover Standard (default) Performance Spot Price Standard Obligation  <i>Note: The following Spot Price Publication applies to both of the immediately preceding.</i> <b>Section 2.26</b> <input checked="" type="checkbox"/> Gas Daily Midpoint (default) Spot Price <input type="checkbox"/> _____ Publication	<b>Section 10.3.1</b> <input checked="" type="checkbox"/> Early Termination Damages Apply (default) Early Termination Damages <input type="checkbox"/> Early Termination Damages Do Not Apply <b>Section 10.3.2</b> <input type="checkbox"/> Other Agreement Setoffs Apply (default) Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Do Not Apply <b>Section 14.5</b> Choice Of Law <b>New York</b>
<b>Section 6</b> <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) Taxes <input type="checkbox"/> Seller Pays Before and At Delivery Point	<b>Section 14.10</b> <input checked="" type="checkbox"/> Confidentiality applies (default) Confidentiality <input type="checkbox"/> Confidentiality does not apply
Special Provisions Number of sheets attached: Five Pages (5) Addendum(s):	

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

TENASKA MARKETING VENTURES  
 Party Name  
 By: Tenaska Marketing, Inc., Managing General Partner  
 By: [Signature]  
 Name:  
 Title:

LOUISVILLE GAS AND ELECTRIC CO. / KENTUCKY UTILITIES CO.  
 Party Name  
 By: [Signature]  
 Name: MARTYN GALLUS  
 Title: SR. VICE PRESIDENT

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LOUISVILLE GAS & ELECTRIC COMPANY  
 KENTUCKY UTILITIES  
NAESB Standard 6.3.1  
 April 19, 2002

# 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 2.7.

**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. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

### SECTION 2. DEFINITIONS

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.

2.1. "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.

2.2. "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.

2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).

- 2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 2.5. "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.
- 2.6. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.7. "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.
- 2.8. "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.
- 2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.10. "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.
- 2.11. "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 an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.
- 2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.15. "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.
- 2.16. "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.
- 2.17. "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.
- 2.18. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.19. "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.
- 2.20. "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.
- 2.21. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.22. "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.
- 2.23. "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.
- 2.24. "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.
- 2.25. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.26. "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.

2.27. "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.

2.28. "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.

2.29. "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); 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); or (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, then the sole and exclusive remedy of the performing party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s). 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. 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 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 14.8, 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 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 or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. 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, payments 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 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.

## 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), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

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; or (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; 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 or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, 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:**

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 (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.

**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 owed to the Non-Defaulting Party against any margin or other collateral held by it 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 such 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 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 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; 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 Agreement; (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 and Section 10, 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. MISCELLANEOUS

14.1. 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.

14.2. 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.

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

14.4. 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.

14.5. 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.

14.6. 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.

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

14.8. 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.

14.9. 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.

14.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 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, or (iv) 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.

14.11 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.

**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; padding: 5px;"> <b>Firm (Fixed Quantity):</b>                      _____ MMBtus/day  <input type="checkbox"/> EFP                 </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> <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; padding: 5px;"> <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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____  By: _____  Title: _____  Date: _____	Buyer: _____  By: _____  Title: _____  Date: _____			

## SPECIAL PROVISIONS

Special Provisions to Base Contract for Sale and Purchase of Natural Gas (NAESB) dated July 1, 2004, between Tenaska Marketing Ventures (TMV) and Louisville Gas and Electric Company/Kentucky Utilities Company (Company).

If the terms of these Special Provisions and the other terms of the Base Contract conflict, the terms of these Special Provisions shall govern. Any definitions used in the Base Contract, unless otherwise defined in these Special Provisions, shall have the same meaning in these Special Provisions.

Any references herein to "General Terms and Conditions" shall mean the document attached to and forming part of the Base Contract entitled "General Terms and Conditions Base Contract for Sale and Purchase of Natural Gas" and setting forth the General Terms and Conditions of the agreement between the parties.

Any reference to a Section in these Special Provisions refers to the same Section of the General Terms and Conditions to the Base Contract.

### SECTION 1 - PURPOSES AND PROCEDURES

Section 1.2 "Oral Transaction Procedure" shall be amended by (a) inserting "a recorded" before "telephone" in the second line; and (b) inserting "recorded" before "telephonic" in the fifth line.

The following sections shall be added to Section 1:

"1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers."

"1.6 Each party shall, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, negligence whether sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation."

### SECTION 2 - DEFINITIONS

2.10 "Cover Standard" shall be amended as follows: The words "*(or an alternate fuel if elected by Buyer and replacement Gas is not available)*" shall be deleted from Section 2.10(i).

The following Sections shall be added to the end of Section 2:

"2.30 "Costs" means (a) losses associated with transmission/transportation costs related to the Terminated Transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party's reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a Terminated Transaction; and (c) commercially reasonable attorneys' fees and court costs, if any, incurred in connection with enforcing its rights in respect of the Terminated Transactions.

2.31 "Credit Support Document" shall mean, as to a party (the "First Party"), a guaranty, hypothecation agreement, margin or security agreement or document, or any other document containing an

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obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.32 "Eligible Collateral" shall mean (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion which may be up to but may not exceed the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated.

2.33 "Letter of Credit" means one or more irrevocable, transferable, standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

2.34 "NYMEX" shall mean the New York Mercantile Exchange.

2.35 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by the parties for verification and/or evidentiary purposes."

### SECTION 3 PERFORMANCE OBLIGATION

Section 3.2 Cover Standard shall be amended by adding the following language to the Cover Standard in line 10 after the phrase "and no such replacement or sale is available" in (iii):

"or in the event that the non-breaching party elects, at its sole option not to replace undelivered Gas or resell unaccepted Gas"

Add the following language to the end of Section 3.2

"If any or all of the index prices used to determine the Contract Price are not available in the future for the determination of the Contract Price, then the parties agree promptly and in good faith to negotiate an alternate reference index or methodology for determining the Contract Price. If the parties do not agree on a substitute methodology or index by the end of the first month for which the Contract Price could not be determined, then the alternate reference index or methodology shall be determined by a third party mediator selected by the mutual agreement of both parties from leading dealers in the relevant market. From and after the date the indices used to determine the Contract Price are no longer available ("Renegotiation Date"), until the alternate reference index or methodology is determined, the Contract Price shall be deemed to be the average of the index price(s) in effect during the twelve (12) months preceding the month in which the Renegotiation Date occurred, which Contract Price shall be effective until the effective date of the alternate reference index or methodology determined as set forth above. Upon determination of a new alternate reference index or methodology, the Contract Price accordingly will be adjusted retroactively to the Renegotiation Date."

Section 3.4 shall be deleted in its entirety and replaced with the following Section 3.4:

"If either party fails to perform a Firm obligation to deliver any Contract Quantity (the "Affected Transaction(s)") in the case of the Seller or receive any Contract Quantity in the case of the Buyer, unless excused by the other party's non-performance or prevented by Force Majeure, and such failure is not remedied on or before the seventh (7) Day after notice of such failure is given to the failing party, then the non-failing party shall have the right to set a termination date (the "Early Termination Date") for liquidation of the Affected Transaction(s) no later than 5 days after such notice of failure was given. Upon termination such transaction(s) shall be deemed to be a Terminated Transaction and the Net Settlement Amount payable in connection with such transaction(s) shall be calculated in accordance with Section 10.3 below. In the event of an Early Termination, as described above, the non-failing party shall be entitled to the rights and remedies provided in Section 10, in addition to all other remedies available hereunder."

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## SECTION 5 - QUALITY AND MEASUREMENT

Section 5 shall be amended by deleting the existing paragraph in its entirety and replacing it with the following paragraph:

"All Gas delivered by Seller shall meet the pressure, quality and heat specification of the pipeline system and/or facilities which shall receive the Gas at the Delivery Point(s) set forth in the transaction. The unit of quantity measurements for purposes of this Contract shall be one MMBtu dry. BTU and volume measurements shall be made at the pressure and temperature basis of the measuring pipeline in accordance with the provisions of such pipeline's then effective Federal Energy Regulatory Commission ("FERC") Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such pipeline."

## SECTION 7 - BILLING, PAYMENT AND AUDIT

Section 7.3 shall be amended by adding the following language to the end

"including all supporting documentation acceptable in industry practice to support the amount charged"

Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ..." in its entirety and replaced with:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest as defined in Section 7.5 from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the party receiving such overpayment from subsequent payments, with interest accrued at rate of interest as defined in Section 7.5 from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4.

Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).

Section 7.8 shall be added as follows:

"7.8 Upon either party's request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each production Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable production Month."

## SECTION 8 - TITLE, WARRANTY, AND INDEMNITY

The following shall be added to the end of Section 8:

"8.5 In the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold hereunder or the proceeds from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction

## SECTION 10 - FINANCIAL RESPONSIBILITY

Section 10.1 shall be amended by deleting the last sentence in its entirety and replacing it with the following sentence:

"Adequate Assurance of Performance shall mean the provision of Eligible Collateral."

Section 10.2 shall be amended as follows:

- (a) insert "if any" after "guarantor" in the first (1<sup>st</sup>) line

Section 10.3 shall be amended as follows:

- (a) Inserting as the second sentence "Notwithstanding the following sentence, upon the occurrence of an Event of Default listed in items (ii), (iii) or (v) of Section 10.2 above, as it may apply to any party, this Contract shall automatically terminate, without Notice, as if an Early Termination Date has been immediately declared (in which case, the day of such automatic termination shall be the Early Termination Date)."
- (b) Delete from the second (2<sup>nd</sup>) sentence the phrase "or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate"
- (c) The last sentence of the second paragraph of Section 10.3.1 "Early Termination Damages Apply" shall be amended by adding at the end of this sentence the phrase "(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR")".

Add the following to the end of Section 10:

"10.8 In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions."

"10.9 No suspension pursuant to Section 10.2 shall continue for more than thirty (30) Business Days unless an Early Termination Date has been declared and the Defaulting Party has been given notice thereof in accordance with Section 10.3."

## SECTION 12 - TERM

Section 12 shall be deleted in its entirety and replaced with:

"The term of this Contract shall be month-to-month until terminated on thirty (30) Days advance written Notice by either party; provided, however, that the provisions hereof shall survive termination of this Contract and continue to apply to any transactions entered into between the parties prior to the date of termination of this Contract until such time as any and all such transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment and provisions of Sections 1.6, 7.7, , 8.3, 13, and 14.10, shall continue to apply."

## SECTION 13 - LIMITATIONS

Delete the phrase "UNLESS EXPRESSLY HEREIN PROVIDED," from the sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) lines.

**SECTION 14 - MISCELLANEOUS:**

**Section 14.1** shall be amended by inserting the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4<sup>th</sup>) line.

**Section 14.10** shall be amended by inserting the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).

**14.12 IN NO EVENT SHALL ANY SINGLE TRANSACTION ENTERED INTO PURSUANT TO THIS CONTRACT BE FOR A DELIVERY PERIOD OF GREATER THAN ONE (1) MONTH.**

**THE PARTIES DO HEREBY REPRESENT AND WARRANT THAT THE GENERAL TERMS AND CONDITIONS OF THE BASE CONTRACT HAVE NOT BEEN MODIFIED, ALTERED, OR AMENDED IN ANY RESPECT EXCEPT FOR THESE SPECIAL PROVISIONS WHICH ARE ATTACHED TO AND MADE A PART OF THE BASE CONTRACT.**

TENASKA MARKETING VENTURES

By: **Tenaska Marketing, Inc.,  
Managing General Partner**

By: 

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

LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY

SOP

By: 

Title: MARTYN GALLUS  
SR. VICE PRESIDENT  
LOUISVILLE GAS & ELECTRIC COMPANY  
KENTUCKY UTILITIES

# 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 2.7.

**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. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

### SECTION 2. DEFINITIONS

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.

2.1. "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.

2.2. "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.

2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).

- 2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 2.5. "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.
- 2.6. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.7. "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.
- 2.8. "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.
- 2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.10. "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.
- 2.11. "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 an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.
- 2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.15. "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.
- 2.16. "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.
- 2.17. "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.
- 2.18. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.19. "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.
- 2.20. "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.
- 2.21. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.22. "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.
- 2.23. "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.
- 2.24. "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.
- 2.25. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.26. "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.

2.27. "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.

2.28. "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.

2.29. "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); 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); or (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, then the sole and exclusive remedy of the performing party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s). 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. 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 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 14.8, 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 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 or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. 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, payments 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 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.

## 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), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

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; or (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; 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 or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, 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:**

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 (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.

**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 owed to the Non-Defaulting Party against any margin or other collateral held by it 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 such 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 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 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; 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 Agreement; (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 and Section 10, 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. MISCELLANEOUS

14.1. 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.

14.2. 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.

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

14.4. 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.

14.5. 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.

14.6. 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.

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

14.8. 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.

14.9. 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.

14.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 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, or (iv) 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.

14.11 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.

**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; padding: 5px;"> <b>Firm (Fixed Quantity):</b>                      _____ MMBtus/day  <input type="checkbox"/> EFP                 </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> <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; padding: 5px;"> <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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____  By: _____  Title: _____  Date: _____	Buyer: _____  By: _____  Title: _____  Date: _____			

Corporations Section  
P.O.Box 13697  
Austin, Texas 78711-3697



Coby Shorter, III  
Deputy Secretary of State

## Office of the Secretary of State

### CERTIFICATE OF CONVERSION

The undersigned, as Secretary of State of Texas, hereby certifies that a filing instrument for

Southwestern Energy Services Company  
File Number: 801982936

Converting it to

SWN Energy Services Company, LLC  
File Number: 802152125

has been received in this office and has been found to conform to law. ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing the acceptance and filing of the conversion on the date shown below.

Dated: 02/06/2015

Effective: 02/06/2015



A handwritten signature in cursive script that reads "Coby Shorter, III".

Coby Shorter, III  
Deputy Secretary of State

Phone: (512) 463-5555  
Prepared by: Mary Ann Conkel

Come visit us on the internet at <http://www.sos.state.tx.us/>  
Fax: (512) 463-5709  
TID: 10340

Dial: 7-1-1 for Relay Services  
Document: 590155030002

Corporations Section  
P.O.Box 13697  
Austin, Texas 78711-3697



Coby Shorter, III  
Deputy Secretary of State

**Office of the Secretary of State**

**CERTIFICATE OF FILING  
OF**

**SWN Energy Services Company, LLC**  
File Number: 802152125

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Limited Liability Company (LLC) has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY; the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 02/06/2015

Effective: 02/06/2015



A handwritten signature in cursive script that reads "Coby Shorter, III".

Coby Shorter, III  
Deputy Secretary of State

Phone: (512) 463-5555  
Prepared by: Mary Ann Conkel

*Come visit us on the internet at <http://www.sos.state.tx.us/>*

Fax: (512) 463-5709  
TID: 10306

Dial: 7-1-1 for Relay Services  
Document: 590337000001

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: August 1, 2007. The parties to this Base Contract are the following:

Louisville Gas and Electric Co./Kentucky Utilities Co. ("LGE"/"KU")  
220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Duns Number: LGE 00-694-5505/ KU 00-694-4398  
 Contract Number: Not Applicable  
 U.S. Federal Tax ID No: LGE 61-0264150/KU 61-0247570

and Southwestern Energy Services Company  
2350 N. Sam Houston Pkwy E., Ste. 125 Houston TX 77032  
 Duns Number: 96-777-0660  
 Contract Number: Not Applicable  
 U.S. Federal Tax ID No.: 71-0494468

**Notices:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502/627-4251 or 4197 Fax: 502/627-4222

2350 N. Sam Houston Pkwy E., Ste. 125 Houston TX 77032  
 Attn: Manager, Contract Administration  
 Phone: 281-618-7434 Fax: 281-618-7386

**Confirmations:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Contract Administration  
 Phone: 502/627-4197 or 4251 Fax: 502/627-4222

2350 N. Sam Houston Pkwy E., Ste. 125 Houston TX 77032  
 Attn: Manager, Contract Administration  
 Phone: 281-618-7434 Fax: 281-618-7386

**Invoices and Payments:**

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
 Attn: Gas Accounting  
 Phone: 502/627-4627 Fax: 502/627-3800

P.O.Box 13408, Fayetteville, AR 72703-1004  
 Attn: Gas Accounting  
 Phone: 479-521-1141 Fax: 479-521-0328

**Wire Transfer or ACH Numbers (if applicable):**

ACH ONLY:  
 BANK: Bank of America, Dallas, TX  
 ABA: 111-0000-12  
 ACCT: 3752099133  
 Other Details: \_\_\_\_\_

BANK: Arvest Bank – Fayetteville, AR  
 ABA: 0829-00872  
 ACCT: 6405902  
 Other Details: \_\_\_\_\_

WIRES ONLY:

BANK: Bank of America, New York, NY  
 ABA: 0260-0959-3  
 ACCT: 3752099133  
 Other Details: \_\_\_\_\_

BANK: Arvest Bank – Fayetteville, AR  
 ABA: 0829-00872  
 ACCT: 6405902  
 Other Details: \_\_\_\_\_

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 only one box from each section:

<b>Section 1.2</b> Transaction Procedure	<input checked="" type="checkbox"/> Oral (default) <input type="checkbox"/> Written	<b>Section 7.2</b> Payment Date	<input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) <input type="checkbox"/> _____ Day of Month following Month of delivery
<b>Section 2.5</b> Confirm Deadline	<input checked="" type="checkbox"/> 2 Business Days after receipt (default) <input type="checkbox"/> _____ Business Days after receipt	<b>Section 7.2</b> Method of Payment	<input checked="" type="checkbox"/> Wire transfer (default) AND <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check
<b>Section 2.6</b> Confirming Party	<input type="checkbox"/> Seller (default) <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> LGE/KU	<b>Section 7.7</b> Netting	<input checked="" type="checkbox"/> Netting applies (default) <input type="checkbox"/> Netting does not apply
<b>Section 3.2</b> Performance Obligation	<input checked="" type="checkbox"/> Cover Standard (default) <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages	<input checked="" type="checkbox"/> Early Termination Damages Apply (default) <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>		<b>Section 10.3.2</b> Other Agreement Setoffs	<input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 2.26</b> Spot Price Publication	<input checked="" type="checkbox"/> Gas Daily Midpoint (default) <input type="checkbox"/> _____	<b>Section 14.5</b> Choice Of Law	_____ <u>New York</u> _____
<b>Section 6</b> Taxes	<input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) <input type="checkbox"/> Seller Pays Before and At Delivery Point	<b>Section 14.10</b> Confidentiality	<input checked="" type="checkbox"/> Confidentiality applies (default) <input type="checkbox"/> Confidentiality does not apply
<input checked="" type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: <u>8</u>			
<input type="checkbox"/> <b>Addendum(s):</b> _____			

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

Louisville Gas and Electric Company/Kentucky Utilities Company  
Party Name

Southwestern Energy Services Company  
Party Name

ND

By  
Name:  
Title:



MARTYN GALLUS  
SR. VICE PRESIDENT  
LOUISVILLE GAS & ELECTRIC COMPANY  
KENTUCKY UTILITIES

By  
Name: Gene Hammons  
Title: President



GH





# 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 2.7.

**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. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

### SECTION 2. DEFINITIONS

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.

2.1. "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.

2.2. "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.

2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).

- 2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 2.5. "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.
- 2.6. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.7. "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.
- 2.8. "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.
- 2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.10. "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.
- 2.11. "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 an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.
- 2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.15. "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.
- 2.16. "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.
- 2.17. "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.
- 2.18. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.19. "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.
- 2.20. "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.
- 2.21. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.22. "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.
- 2.23. "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.
- 2.24. "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.
- 2.25. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.26. "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.

2.27. "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.

2.28. "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.

2.29. "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); 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); or (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, then the sole and exclusive remedy of the performing party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s). 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. 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 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 14.8, 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 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 or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. 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, payments 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 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.

## 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), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

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; or (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; 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 or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, 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:**

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 (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.

**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 owed to the Non-Defaulting Party against any margin or other collateral held by it 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 such 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 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 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; 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 Agreement; (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 and Section 10, 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. MISCELLANEOUS

14.1. 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.

14.2. 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.

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

14.4. 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.

14.5. 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.

14.6. 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.

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

14.8. 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.

14.9. 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.

14.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 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, or (iv) 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.

14.11 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.

**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; padding: 5px;"> <b>Firm (Fixed Quantity):</b>                      _____ MMBtus/day  <input type="checkbox"/> EFP                 </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> <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; padding: 5px;"> <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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____  By: _____  Title: _____  Date: _____	Buyer: _____  By: _____  Title: _____  Date: _____			

## Special Provision to the Base Contract

### SPECIAL PROVISIONS – U.S. NAESB

Special Provisions (“Special Provisions”) attached to and forming a part of that certain Base Contract for Short-Term Sale and Purchase of Natural Gas dated August 1, 2007 (the “Base Contract”) by and between: Louisville Gas and Electric Company/Kentucky Utilities Company and Southwestern Energy Services Company.

Capitalized terms used in these Special Provisions shall have the meanings ascribed to them in the Base Contract. Section references in these Special Provisions refer to a Section of the General Terms and Conditions of the Base Contract, unless stated otherwise.

#### SECTION 1. PURPOSES AND PROCEDURES

1. Section 1.2 “Oral Transaction Procedure” shall be amended by (a) inserting “a recorded” before “telephone” in the second line; and (b) inserting “recorded” before “telephonic” in the fifth line.

2. The following sections shall be added to Section 1:

“1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a contract contemplated herein.”

“1.6 Each party shall, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, the negligence of either party, whether it be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation.”

#### SECTION 2. DEFINITIONS

3. Section 2.10 “Cover Standard” shall be amended by deleting “(or an alternate fuel if elected by Buyer and replacement Gas is not available)” from the definition.

4. The following Sections shall be added to the end of Section 2:

2.30 “Costs” means (a) losses associated with transmission transportation costs related to the terminated transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party’s reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a terminated transaction; and (c) commercially reasonable attorneys’ fees and court costs, if any, incurred in connection with enforcing its rights in respect of the terminated transactions.

2.31 “Credit Support Document” shall mean, as to a party (the “First Party”), a guaranty, hypothecation agreement, margin or security agreement or document, or any other document

## Special Provision to the Base Contract

containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.32 "Eligible Collateral" shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.33 "Futures Contract" shall mean the standardized contract for the purchase or sale of Gas that is traded for future delivery under the applicable trading board's regulations.

2.34 "Investment Grade Rating" shall mean a party's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) rating from Moody's of "Baa3" or higher and a rating from S&P of "BBB-" or higher; or, if such entity does not have a rating for its senior unsecured long-term debt, then such rating then assigned to such entity as its "corporate credit rating" assigned by S&P, or the "long-term issuer rating" assigned by Moody's.

2.35 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

2.36 "Material Adverse Change" shall mean a party's rating falls below an Investment Grade Rating.

2.37 "Moody's" shall mean Moody's Investor Services, Inc. or its successors.

2.38 "NYMEX" shall mean the New York Mercantile Exchange.

2.39 "Option" means a transaction in which, in exchange for the payment of the Premium by the Option Buyer, the Option Seller grants the Option Buyer the right to enter into a transaction on the agreed terms set forth in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which terms shall include, among other terms, which of the Option Buyer and the Option Seller is the Buyer and which is the Seller under such transaction.

2.40 "Option Buyer" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has acquired the right, upon exercise of the Option to receive Gas (if the Option Buyer is identified as "Buyer") or deliver Gas (if the Option Buyer is identified as "Seller").

2.41 "Option Seller" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has sold the Option. If the Option is exercised by the Option Buyer, the Option Seller will be obligated to deliver Gas (if the Option Buyer is identified as "Buyer") or receive Gas (if the Option Buyer is identified as "Seller").

2.42 "Premium" means the amount identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the amount payable by the Option Buyer to the Option Seller in exchange for an Option.

2.43 "S&P" shall mean the Standard & Poor's Rating Group (a division of McGraw-Hill Inc.) or its successors.

## Special Provision to the Base Contract

2.44 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by Seller and/or the Buyer for verification and/or evidentiary purposes."

### SECTION 3. PERFORMANCE OBLIGATION

5. Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase "and no such replacement or sale is available" in (iii):

"or in the event that the non-breaching party elects, at its sole option not to replace undelivered Gas or re-sell unaccepted Gas"

### SECTION 5. QUALITY AND MEASUREMENT

6. Delete the existing paragraph under Section 5 in its entirety and replace with the following:

"All Gas delivered by Seller shall meet the pressure, quality and heat specifications of the pipeline system and/or facilities which shall receive the Gas at the Delivery Point(s) set forth in the transaction. The unit of quantity measurements for purposes of this Contract shall be one MMBtu dry. BTU and volume measurements shall be made at the pressure and temperature basis of the measuring pipeline in accordance with the provisions of such pipeline's then effective Federal Energy Regulatory Commission ("FERC") Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such pipeline."

### SECTION 6. TAXES

7. Add the following language after the first sentence of Section 6 designated as *Buyer Pays At and After Delivery Point*:

"All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority."

8. Add as the last paragraph of Section 6:

"6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point ("Governmental Charge"), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s)."

### SECTION 7. BILLING, PAYMENT AND AUDIT

9. Add the following language after "invoice" in line 1 of Section 7.3:

"(including all supporting documentation acceptable in industry practice to support the amount charged)"

10. Section 7.4 shall be amended by inserting the following language immediately before the last sentence in line 3 which begins "In the event the parties are unable ...":

## Special Provision to the Base Contract

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

11. Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).
12. Section 7.8 shall be added as follows:

"7.8 Upon either party's request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month."

## SECTION 8. TITLE, WARRANTY, AND INDEMNITY

13. Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8" and "AND IN SECTION 14.8" in the last sentence. SECTION 10. FINANCIAL RESPONSIBILITY
14. Delete the last sentence of Section 10.1 in its entirety and replace with the following:  
"Adequate Assurance of Performance" shall mean the provision of Eligible Collateral."
15. Amend Section 10.2 as follows:
  - (a) insert "if any" after "guarantor" in the first (1<sup>st</sup>) line
  - (b) delete "or" before "(viii)"
  - (c) insert in the ninth line after the phrase "such payment is due" the phrase "or (ix) suffers a Material Adverse Change; provided that, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party provides within three (3) Business Days of receipt of written notice from the other party, and maintains for so long as the Material Adverse Change is continuing, Eligible Collateral to the other party"
16. Amend Section 10.3 by
  - (a) Inserting as the second sentence "Notwithstanding the following sentence, upon the occurrence of an Event of Default listed in items (ii), (iii) or (v) of Section 10.2 above, as it may apply to any party, this Contract shall automatically terminate, without notice, as if an Early Termination Date has been immediately declared (in which case, the day of such automatic termination shall be the Early Termination Date)."
  - (b) Delete from the second (2<sup>nd</sup>) sentence the phrase "or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate"
17. Section 10.3.1 "Early Termination Damages Apply" shall be amended by adding at the end of the last sentence of the second paragraph:

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## Special Provision to the Base Contract

“(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or “LIBOR”)”

**18. Add the following to the end of Section 10:**

“10.8 In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions.”

“10.9 No suspension pursuant Section 10.2 shall continue for more than ten (10) Business Day unless an Early Termination Date has been declared and the Defaulting Party has been given notice thereof in accordance with Section 10.3.”

### SECTION 11. FORCE MAJEURE

**19. The first sentence of Section 11.3 shall be amended by deleting the word “or” before item (iii), and deleting the word “or” before item (v) and adding the following language at the end of item (v) but before the period at the end of that sentence:**

“; or (vi) notwithstanding Section 11.2 interruption of specific supply or markets at “pooling points” or “hubs” without the hub or pooling point operator claiming Force Majeure”.

**20. Add the following shall be added to the end of Section 11**

“11.7 Any party claiming Force Majeure (the “Claiming Party”) as an excuse for performance shall provide the other party (the “Non-claiming Party”) a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments or deliveries as described in Section 10.2) if such event continues for a period of thirty (30) consecutive days.”

### SECTION 12. TERM

**21. Section 12 shall be deleted in its entirety and replaced with:**

“The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written Notice by either party; provided, however, that the provisions hereof shall survive termination of this Contract and continue to apply to any transactions entered into between Seller and Buyer prior to the date of termination of this Contract until such time as any and all such transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment, the obligation of either party to indemnify the other party, and provisions of Sections 1.6, 7.6, 7.7, 8.1, 8.2, 8.3, 8.4, 10, 13, 14.10, 14.13, and 14.14 shall continue to apply.”

### SECTION 13. LIMITATIONS

**22. Delete the phrase “UNLESS EXPRESSLY HEREIN PROVIDED.” from the sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) lines.**

### SECTION 14. MISCELLANEOUS:

**23. Insert in Section 14.1 the word “conditioned” after the phrase “unreasonably withheld,” in the fourth (4<sup>th</sup>) line.**

## Special Provision to the Base Contract

24. Insert in Section 14.10 the phrase “provided, however, each party shall, to the extent practicable and not prohibited by applicable law, use reasonable efforts to prevent or limit the disclosure” at the end of (i).
25. The following Sections shall be added:
- 14.12 Each party agrees that the provisions of this Contract supersede and replace in their entirety any requirements of law relating to adequate assurance of future performance, including without limitation Article 2 of the Uniform Commercial Code, as enacted in New York.
- 14.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:
- (a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.
- (b) Seller recognizes that Buyer may verify title to the Gas purchased and sold hereunder and agrees to provide all information reasonably requested by Buyer in good faith for such verification within thirty (30) days of such request. Subject to the other provisions of this Section, Buyer agrees to make payment to Seller while title is being verified. Notwithstanding the foregoing, Seller acknowledges that Buyer may rely entirely on the information provided by Seller or as set out on any Transaction Confirmation in making payments due hereunder. Buyer assumes no responsibility to review or approve any title information provided by Seller or any title information reflected on any Transaction Confirmation or to audit, compare, or update any such information against any title opinion or other information furnished or acquired pursuant to incidental to this Contract.
- (c) For purposes of this Section 14.15, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.
- 14.14 UCC - Except as otherwise provided for herein, the provisions of the Uniform Commercial Code (“UCC”) of the state whose laws shall govern this Contract shall be deemed to apply to all transactions.
- 14.15 Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.
- A. Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the

## Special Provision to the Base Contract

Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by each Party obtaining a quote from a leading dealer in the relevant market; and the Floating Price shall be the arithmetic average of the two dealer quotes obtained.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction.

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

"Floating Price" means a Contract Price specified in a Transaction that is based upon a Price Source.

"Market Disruption Event" means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

- B. Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) calendar days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. **If a Party fails to give notice within thirty (30) calendar days after the publication or announcement of the correction that an amount is payable, then right to payment is waived for such correction.**

- 14.15 Calculation of Floating Price. For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1).



---

### Special Provision to the Base Contract

and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.

- 14.16 UCC - Except as otherwise provided for herein, the provisions of the Uniform Commercial Code ("UCC") of the state whose laws shall govern this Contract shall be deemed to apply to all transactions.
- 14.17 Louisville Gas and Electric Company and Kentucky Utilities Company shall be jointly and severally liable for their respective obligations under this Agreement.

### SECTION 15. OPTION

15.1 Notwithstanding anything in the Contract to the contrary, if the parties have agreed that a particular transaction under this Contract is an Option, then prior to the exercise of the Option by Option Buyer the sole obligation of Option Buyer under such transaction shall be to pay the Premium for such Option and Option Seller shall have no obligation under such transaction. Upon the exercise of an Option by Option Buyer, each of Option Buyer and Option Seller shall be obligated to perform and entitled to performance under the Contract in connection with such transaction as either Buyer or Seller as indicated in the Transaction Confirmation or the parties' oral or electronic agreement, as applicable."

**W-9**  
 (Rev. August 2013)  
 Department of the Treasury  
 Internal Revenue Service

**Request for Taxpayer  
 Identification Number and Certification**

Give Form to the requester. Do not send to the IRS.

Name (as shown on your income tax return)  
**Bank Halted LLC**

Business name (do not check unless you are a partner in a partnership)  
**Bank Halted LLC**

Check the appropriate box for correct tax classification:  
 Federal estate taxpayer  Corporation  S Corporation  Partnership  Trust/estate  
 Limited liability company. Enter the tax classification (if an organization) **Sole proprietorship**  **P**  
 Other (see instructions)

Address (include street, apt. or P.O. box no.)  
**2108 Citywest Blvd, Suite 100**  
 City, state, and ZIP code  
**Houston, TX 77042**

Business name and address (optional)

**Section 1 Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line in order for backup withholding to be withheld. If an individual, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see instructions for a TIN on page 3.

Note: If the account is in more than one name, see the instructions on page 8 for guidelines of whose number to enter.

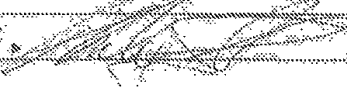
Social security number  
 Employer identification number  
**00-0023024**

**Section 2 Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be mailed to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report or deduct on this form, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (as defined below); and
- The FATCA section (b)(6) of this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification Instructions.** You must check one item in 2. above if you have been notified by the IRS that you are currently subject to backup withholding. Because you have filed to report an interest and dividend on your tax return. For real estate transactions, item 2. does not apply. For mortgage interest paid, acquisition or construction of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally payments other than interest and dividends, you are not required to sign this certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here  
 Signature of the person   
 Date **7/9/2014**

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Secretary of State 5/22/2014 2:39:43 PM PAGE 2/002 Fax Server

Corporations Section  
P.O. Box 13697  
Austin, Texas 78711-3697

Nandita Berry  
Secretary of State



Office of the Secretary of State

CERTIFICATE OF CONVERSION

The undersigned, as Secretary of State of Texas, hereby certifies that a filing instrument for

Spark Energy Gas, LP  
File Number: 14567110

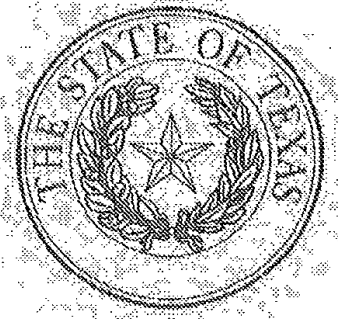
Converting it to

SPARK ENERGY GAS, LLC  
File Number: 80199548

has been received in this office and has been found to conform to law. ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing the acceptance and filing of the conversion on the date shown below.

Dated: 05/21/2014

Effective: 05/21/2014



*Nandita Berry*

Nandita Berry  
Secretary of State

Phone: (512) 463-5523  
Prepared by: Virginia Tobias

Can view us on the internet at <http://www.sos.state.tx.us>  
Fax: (512) 463-5769  
TDD: 10340

Dial: 7-1-1 for Relay Services  
Document: 54567393002

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Form 642  
(Revised 08/11)

This space reserved for office use.

Return in duplicate to:  
Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
512 463-5555  
FAX: 512 463-5709



**Certificate of Conversion  
of a  
Limited Partnership Converting  
to a  
Limited Liability Company**

Filing Fee: See instructions

**Converting Entity Information**

The name of the converting limited partnership is:  
Spark Energy Gas, L.P.

The jurisdiction of formation of the limited partnership is: Texas

The date of formation of the limited partnership is: 1/17/2001

The file number, if any, issued to the limited partnership by the secretary of state is: A4567110

**Converted Entity Information**

The limited partnership named above is converting to a limited liability company. The name of the limited liability company is:

Spark Energy Gas, LLC

The limited liability company will be formed under the laws of: Texas

**Plan of Conversion**

The plan of conversion is attached.

*If the plan of conversion is not attached, the following section must be completed.*

**Alternative Statements**

In lieu of providing the plan of conversion, the converting limited partnership certifies that:

1. A signed plan of conversion is on file at the principal place of business of the limited partnership, the converting entity. The address of the principal place of business of the limited partnership is:

Street or Mailing Address City State County Zip Code

2. A signed plan of conversion will be on file after the conversion at the principal place of business of the limited liability company, the converted entity. The address of the principal place of business of the limited liability company is:

Street or Mailing Address City State County Zip Code

3. A copy of the plan of conversion will be furnished on written request without cost by the converting entity before the conversion or by the converted entity after the conversion to any owner or member of the converting or converted entity.

Form 642

Certificate of Formation for the Converted Entity

If the converted entity is a Texas limited liability company, this certificate of formation of the Texas limited liability company must be attached to this certificate either as an attachment or exhibit to the plan of conversion, or as an attachment or exhibit to this certificate of conversion if the plan has not been attached to the certificate of conversion.

Approval of the Plan of Conversion

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

Effectiveness of Filing (Select either A, B, or C.)

A. [X] This document becomes effective when the document is accepted and filed by the secretary of state.

B. [ ] This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is:

C. [ ] This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is:

The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

[X] Attached hereto is a certificate from the comptroller of public accounts that certifies that the converting entity is in good standing for purposes of conversion.

[ ] In lieu of providing the tax certificate, the limited liability company, as the converted entity, is liable for the payment of any franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code to execute the filing instrument.

Date: July 20, 2014

Gil Melman on behalf of Spark Energy Gas, LP

[Handwritten Signature]

Signature of authorized person (see instructions)

Gil Melman, Vice President/General Counsel

Printed or typed name of authorized person

**ACTION BY WRITTEN CONSENT OF PARTNERS  
OF SPARK ENERGY GAS, LP**

Pursuant to the authority contained in the Texas Business Organizations Code, the undersigned, being all of the partners of Spark Energy Gas, LP, (the "Partnership"), a Texas limited partnership, hereby take and adopt the following actions in writing on behalf of the Partnership:

**Approval of Conversion**

WHEREAS, the partners of the Partnership have determined it is in the best interests of the Partnership to convert the Partnership into a Texas limited liability company;

NOW, THEREFORE, BE IT RESOLVED, that the Plan of Conversion of this Partnership from a Texas limited partnership to a Texas limited liability company, substantially in the form attached hereto as Exhibit A and incorporated herein for all purposes, be and it hereby is adopted and approved.

FURTHER RESOLVED, that the General Partner of this Partnership be, and it hereby is, authorized and directed to take such action as is necessary or desirable to implement the Plan of Conversion, including the preparation, execution and filing of a Certificate of Conversion with the Secretary of State of the State of Texas.

FURTHER RESOLVED, that the General Partner be, and it hereby is, authorized and directed on behalf of this Partnership to retain appropriate attorneys and others and to pay such fees and expenses and to make, execute and deliver, or cause to be made, executed and delivered, all such agreements, documents, instruments and other papers and to do or cause to be done all such acts and things, in the name and on behalf of this Partnership and under its seal or otherwise, as may be deemed necessary, appropriate or desirable to effectuate or carry out the purposes and intent of the foregoing resolutions.

.....  
.....  
.....

The undersigned direct that this consent be filed with the records of this Partnership.

Date: May 13, 2014

GENERAL PARTNER:

SPARK ENERGY HOLDINGS, LLC  
a Texas limited liability company

By: *[Signature]*  
Name: *Carl Melman*  
Title: *Vice President & General Counsel*

LIMITED PARTNER:

SPARK ENERGY VENTURES, LLC  
a Texas limited liability company

By: *[Signature]*  
Name: *Carl Melman*  
Title: *Vice President & General Counsel*





PLAN OF CONVERSION  
OF  
SPARK ENERGY GAS, LP

1. Adoption of Plan. SPARK ENERGY GAS, LP hereby adopts this plan of conversion in order to convert to a limited liability company named "SPARK ENERGY GAS, LLC."

2. Domestic Entities. The following are the domestic converting and converted entities that are a party to the conversion:

A. SPARK ENERGY GAS, LP, a Texas limited partnership (the "Converting Entity"); and

B. SPARK ENERGY GAS, LLC, a Texas limited liability company (the "Converted Entity").

3. Continuation of Existence. Upon the conversion, the Converting Entity shall continue in its existence in the organizational form of the Converted Entity, which shall be a Texas limited liability company organized under the Texas Business Organizations Code and all of the rights, privileges and powers of the Converting Entity, and all property, real, personal and mixed, and all debts due to the Converting Entity, as well as all other things and causes of action belonging to the Converting Entity, shall remain vested in the Converted Entity and shall be the property of the Converted Entity, and the title to any real property vested by deed or otherwise in the Converting Entity shall not revert or be in any way impaired by reason of this conversion, but all rights of creditors and all liens upon any property of the Converting Entity shall be preserved unimpaired, and all debts, liabilities and duties of the Converting Entity shall remain attached to the Converted Entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a Converted Entity. The conversion of the Converting Entity into the Converted Entity shall not be deemed to affect any obligations or liabilities of the Converting Entity incurred prior to its conversion to the Converted Entity, or the personal liability of any person incurred prior to such conversion.

4. Conversion of Ownership Interests. Upon the conversion, the limited partnership interest and the general partnership interest of the Converting Entity shall be exchanged and converted into the limited liability company membership interests in the Converted Entity in the same ratio between the limited and general partners of the Converting Entity and with the same beneficial ownership rights as in the Converting Entity as more fully reflected in the Agreement of Limited Partnership of the Converted Entity.

5. Certificate of Formation. Attached hereto as Exhibit A is the Certificate of Formation of the Converted Entity.

6. Effective Date. The conversion will become effective upon the filing of the Certificate of Conversion with the Secretary of State of the State of Texas.


TO : LGE-KU COMPANY :

From: Fax Server Page: 18/23 Date: 7/9/2014 3:24:11 AM

7. Tax Status. The Converted Entity shall be taxed as a partnership as provided under the U.S. Treasury Regulations, §301.7701-1 and §301.7701-2.

Dated: May 20, 2014.

SPARK ENERGY GAS, LP  
a Texas limited partnership

By:   
Name: Gil Melman  
Title: Vice President & General Counsel

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TO : LGE-KU COMPANY :

From: Fax Server Page: 19/23 Date: 7/9/2014 3:24:11 AM

EXHIBIT A

Certificate of Formation of Converted Entity

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.....  
.....  
.....



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Form 205  
(Revised 05/11)

This space reserved for office use

Submit in duplicate to:  
Secretary of State  
P.O. Box 11697  
Austin, TX 78711-3697  
512-463-5555  
FAX: 512-463-5709  
Filing Fee: \$300



Certificate of Formation  
Limited Liability Company

Article 1 - Entity Name and Type

The filing entity being formed is a limited liability company. The name of the entity is:

SPARK ENERGY GAS, LLC

The name must contain the words "limited liability company," "limited company," or an abbreviation of one of these phrases.

Article 2 - Registered Agent and Registered Office  
(See instructions. Select and complete either A or B and complete C.)

A. The initial registered agent is an organization (cannot be entity named above) by the name of:  
Corporation Services Company ("CSC")

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

First Name: \_\_\_\_\_ A.L.T. Last Name: \_\_\_\_\_ Suffix: \_\_\_\_\_

C. The business address of the registered agent and the registered office address is:

211 East 7th Street, Suite 620 Austin TX 78701  
Street address City State Zip Code

Article 3 - Governing Authority  
(Select and complete either A or B and provide the name and address of each governing person.)

A. The limited liability company will have managers. The name and address of each initial manager are set forth below.

B. The limited liability company will not have managers. The company will be governed by its members, and the name and address of each initial member are set forth below.

<b>GOVERNING PERSON 1</b>			
NAME (Indicate name of either an individual or an organization, but not both)			
<b>IF INDIVIDUAL</b>			
First Name	A.L.T.	Last Name	Suffix
OR			
<b>IF ORGANIZATION</b>			
SPARK ENERGY HOLDINGS, LLC			
Organization Name			
<b>ADDRESS</b>			
2105 CityWest Blvd, Suite 100	Houston	TX, USA	77042
Street or mailing Address	City	State	Country Zip Code

<b>GOVERNING PERSON 1</b>			
NAME (Enter the name of either an individual or an organization, but not both)			
IF INDIVIDUAL:			
First Name	M.I.	Last Name	Suffix
OR			
IF ORGANIZATION:			
Organization Name			
ADDRESS			
Street or Mailing Address		City	State / County / Zip Code
<b>GOVERNING PERSON 2</b>			
NAME (Enter the name of either an individual or an organization, but not both)			
IF INDIVIDUAL:			
First Name	M.I.	Last Name	Suffix
OR			
IF ORGANIZATION:			
Organization Name			
ADDRESS			
Street or Mailing Address		City	State / County / Zip Code

**Article 4 - Purpose**

The purpose for which the company is formed is for the transaction of any and all lawful purposes for which a limited liability company may be organized under the Texas Business Organizations Code.

**Supplemental Provisions/Information**

Text Area [The enclosed information, if any, is incorporated herein by reference.]

This entity is being formed pursuant to a Plan of Conversion, wherein Spark Energy Gas, L.P., a Texas limited partnership, filed with the Texas Secretary of State on January 17, 2001, whose principal place of business is 2105 CityWest Boulevard, Suite 100, Houston, Texas 77042, is requesting it be converted to Spark Energy Gas, LLC, a Texas limited liability company whose principal place of business will remain the same.

Organizer

The name and address of the organizer:

Gil Melman, Vice President & General Counsel

Name

2105 City West Blvd, Suite 100

Houston

TX 77042

Street or Mailing Address

City

State Zip Code

Effectiveness of Filing (Select one: A, B, or C.)

- A.  This document becomes effective when the document is filed by the secretary of state.
- B.  This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is:
- C.  This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90<sup>th</sup> day after the date of signing is:

The following event or fact will cause the document to take effect in the manner described below:

[Empty box for event or fact]

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute this filing instrument.

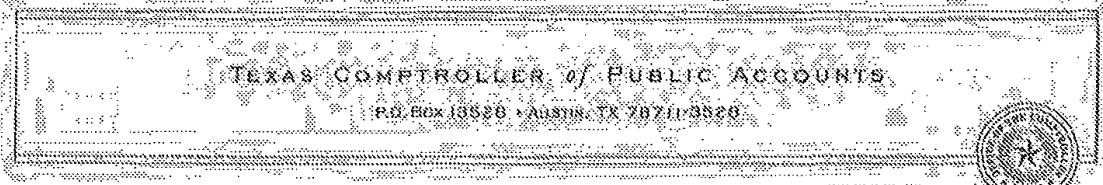
Date: May 20, 2014

[Handwritten signature of Gil Melman]

Signature of organizer

Gil Melman, Vice President & General Counsel

Printed or typed name of organizer



May 19, 2014

SPARK ENERGY GAS, LP  
 2105 CYPREST BLVD STE 100  
 HOUSTON TX 77042-2955

**CERTIFICATE OF ACCOUNT STATUS**

THE STATE OF TEXAS  
 COUNTY OF TRAVIS

I, Susan Combs, Comptroller of Public Accounts of the State of Texas, DO HEREBY CERTIFY that according to the records of this office

SPARK ENERGY GAS, LP

is, as of this date, in good standing with this office for the purpose of ending its existence, having filed the required franchise tax reports and having paid the franchise tax computed to be due through 12/31/2014.

GIVEN UNDER MY HAND AND  
 SEAL OF OFFICE in the City of  
 Austin, this 19th day of  
 May, 2014 A.D.

Susan Combs  
 Texas Comptroller

Taxpayer number: 3203609027  
 File number: 0014527110

NOTE: Failure by Texas entities to legally end existence with the Texas Secretary of State on or before the expiration of this certificate will result in additional franchise tax responsibilities. Texas entities not registered with the Texas Secretary of State and all out of state entities are responsible for franchise tax through the last date of business in this state.

Form 05-523 (Rev. 10/2011)

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: February 28<sup>th</sup>, 2011

The parties to this Base Contract are the following:

PARTY A <i>Spark Energy Gas, LP</i>	PARTY NAME	PARTY B Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")
2105 CityWest Place, Suite 100, Houston, Texas 77042	ADDRESS	220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
<u>www.sparkenergy.com</u>	BUSINESS WEBSITE	<u>www.lge-ku.com</u>
NA	CONTRACT NUMBER	N/A
016-200-607	D-U-N-S® NUMBER	LGE 00-694-5505 / KU 00-694-4398
<input checked="" type="checkbox"/> US FEDERAL: <input type="checkbox"/> OTHER: 76-0668204	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGÉ 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
Texas	JURISDICTION OF ORGANIZATION	
<input checked="" type="checkbox"/> Limited Partnership <input type="checkbox"/> LLC Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
	GUARANTOR (IF APPLICABLE)	
<b>CONTACT INFORMATION</b>		
2105 Citywest Blvd, Suite 100, Houston, TX 77042 ATTN: Gas Marketing TEL#: 832.200.3707    FAX#: 281.833.4818 EMAIL: <a href="mailto:jmccord@sparkenergy.com">jmccord@sparkenergy.com</a>	▪ COMMERCIAL	ATTN: <u>Trading Manager Gas</u> TEL#: 502-627-4259    FAX#: 502-627-4655 EMAIL: _____
2105 Citywest Blvd, Suite 100, Houston, TX 77042 ATTN: Gas Marketing TEL#: 832.200.3707    FAX#: 281.833.4818 EMAIL: <a href="mailto:jmccord@sparkenergy.com">jmccord@sparkenergy.com</a>	▪ SCHEDULING	ATTN: <u>Gas Scheduling</u> TEL#: 502-627-3034(502) 627-3034    FAX#: 502-627-4655 EMAIL: _____
2105 Citywest Blvd, Suite 100, Houston, TX 77042 ATTN: Contracts TEL#: 713.600.2616    FAX#: 281.833.4809 EMAIL: <a href="mailto:smiller@sparkenergy.com">smiller@sparkenergy.com</a>	▪ CONTRACT AND LEGAL NOTICES	LGE/KUATTN: <u>Contract Administration</u> 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 TEL#: 502-627-4197 or 4253    FAX#: 502-627-4222 With Add'l Notice of Default Attn: General Counsel, 15 <sup>th</sup> FL Add'l Notice of Default Fax# 502-627-3950 EMAIL: N/A
2105 Citywest Blvd, Suite 100, Houston, TX 77042 ATTN: Credit TEL#: 713.600.2654    FAX#: 281.833.4809 EMAIL: <a href="mailto:dvermette@sparkenergy.com">dvermette@sparkenergy.com</a>	▪ CREDIT	LGE/KU ATTN: <u>Manager Credit</u> TEL#: 502-627-4253    FAX#: 502-627-3950 EMAIL: N/A
2105 Citywest Blvd, Suite 100, Houston, TX 77042 ATTN: Confirmations TEL#: 713.977.5634    FAX#: 281.833.4829 EMAIL: <a href="mailto:gasconfirms@sparkenergy.com">gasconfirms@sparkenergy.com</a>	▪ TRANSACTION CONFIRMATIONS	LGE/KU ATTN: <u>Contract Administration</u> TEL#: 502-627-4197 or 2252    FAX#: 502-627-4222 EMAIL: N/A
<b>ACCOUNTING INFORMATION</b>		
2105 Citywest Blvd, Suite 100, Houston, TX 77042 ATTN: Gas Accounting TEL#: 832.977.5634    FAX#: 281.833.4804 EMAIL: <a href="mailto:marginacct@sparkenergy.com">marginacct@sparkenergy.com</a>	▪ INVOICES ▪ PAYMENTS ▪ SETTLEMENTS	LGE/KU ATTN: <u>Gas Accounting</u> TEL#: 502-627-3686    FAX#: 502-627-3800 EMAIL: N/A
BANK: Compass Bank, Houston, TX ABA: 113-010-547    ACCT: 87113329 OTHER DETAILS: For the Account of Spark Energy Gas, LP	WIRE TRANSFER NUMBERS (IF APPLICABLE)	BANK: Bank of America, New York, NY. ABA: 0260-0959-3    ACCT: 3752099133 OTHER DETAILS: _____
BANK: Compass Bank, Houston, TX ABA: 113-010-547    ACCT: 87113329 OTHER DETAILS: For the Account of Spark Energy Gas, LP	ACH NUMBERS (IF APPLICABLE)	BANK: Bank of America, Dallas TX ABA: 111000012    ACCT: 3752099133 OTHER DETAILS: N/A
2105 Citywest Blvd, Suite 100, Houston, TX 77042 ATTN: Gas Accounting	CHECKS (IF APPLICABLE)	ATTN: <u>Gas Accounting</u> ADDRESS: 220 W Main St., 7th Fl Louisville KY 40202



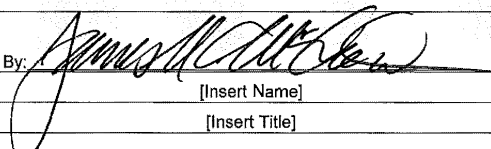
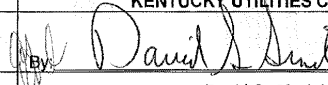
## Base Contract for Sale and Purchase of Natural Gas

(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> Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default <input checked="" type="checkbox"/> No Additional Events of Default (default) <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default Specified Transactions: _____ _____
<b>Section 2.7</b> Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> 5 Business Days after receipt	
<b>Section 2.8</b> Confirming Party <input checked="" type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer	
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply
<i>Note: The following Spot Price Publication applies to both of the immediately preceding.</i>	
<b>Section 2.31</b> Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____	<b>Section 10.3.2</b> Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b> Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	
<b>Section 7.2</b> Payment Date <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 15.5</b> Choice Of Law _____ New York _____
<b>Section 7.2</b> Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	<b>Section 15.10</b> Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.7</b> Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply	
<input checked="" type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: <b>5</b> <input type="checkbox"/> <b>Addendum(s):</b> _____	

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

SPARK ENERGY GAS, LP	PARTY NAME	LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY
By: 	SIGNATURE	By: 
[Insert Name]	PRINTED NAME	David S. Sinclair
[Insert Title]	TITLE	Vice President Energy Marketing

## 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

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.

2.1. "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.

2.2. "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.

- 2.3. "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.
- 2.4. "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.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "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.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "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.
- 2.10. "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.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "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.
- 2.13. "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.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "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.
- 2.18. "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.
- 2.19. "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.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "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.
- 2.23. "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.

- 2.24. "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.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "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.
- 2.27. "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.
- 2.28. "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.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "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.
- 2.31. "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.
- 2.32. "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.
- 2.33. "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.
- 2.34. "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.
- 2.35. "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.

<p><b>The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.</b></p> <p><b>Cover Standard:</b></p> <p>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.</p>
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**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 (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; 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>		
<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>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):		
<b>Special Conditions:</b> _____ _____ _____		
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____	

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF  
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

Dated \_\_\_\_\_

by and between

Spark Energy Gas, LP ("Spark")

And

Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")

**SECTION 1. PURPOSES AND PROCEDURES**

The following sections shall be added to Section 1:

"1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a contract contemplated herein."

"1.6 Each party may, in its sole discretion and at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, the negligence be it sole, joint, or concurrent, or active or passive and shall not be required to install such equipment. No transaction shall be invalidated should a party elect not to install equipment to record transactions or should a malfunction occur in equipment utilized for recording transactions or retaining Transaction Tapes or the operation thereof, if such equipment is so installed, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation."

**SECTION 2. DEFINITIONS**

Section 2.12 "Cover Standard" shall be amended by deleting "(or an alternate fuel if elected by Buyer and replacement Gas is not available)" from the definition.

The following Sections shall be added to the end of Section 2:

2.36 "Costs" means (a) losses associated with transmission/transportation costs related to the terminated transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party's reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a terminated transaction; and (c) commercially reasonable attorneys' fees and court costs, if any, incurred in connection with enforcing its rights in respect of the terminated transactions.

2.37 "Credit Support Document" shall mean, as to a party (the "First Party"), a guaranty from a Guarantor, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer, amount and the format of such document are reasonably acceptable to the requesting party in its reasonable discretion.

2.38 "Eligible Collateral" shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.39 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit in a form reasonably acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

2.40 "NYMEX" shall mean the New York Mercantile Exchange.

2.44 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings that may be maintained by Seller and/or the Buyer for verification and/or evidentiary purposes."

**SECTION 3. PERFORMANCE OBLIGATION**

Add the following language to the Cover Standard in line 12 of Section 3.2 after the phrase "and no such replacement or sale is available for all or any portion of the Contract Quantity of Gas " in (iii):

"or the non-breaching party elects, at its sole option, not to replace Gas or sell Gas, . . ."

#### **SECTION 5. QUALITY AND MEASUREMENT**

Delete the existing paragraph under Section 5 in its entirety and replace with the following:

“All Gas delivered by Seller shall meet the pressure, quality and heat specification of the Receiving Transporter. BTU and volume measurements shall be made at the pressure and temperature basis of the Receiving Transporter in accordance with the provisions of such pipeline’s then effective Federal Energy Regulatory Commission (“FERC”) Gas Tariff, or in the event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such Receiving Transporter.”

#### **SECTION 6. TAXES**

Add the following after the last sentence in Section 6 for “Buyer Pays At and After Delivery Point”:

“All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority.”

Add as the last paragraph of Section 6:

“6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point (“Governmental Charge”), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s).”

#### **SECTION 7. BILLING, PAYMENT AND AUDIT**

Add the following language to the end of Section 7.3:

“including all supporting documentation acceptable in industry practice to support the amount charged”

Section 7.4 shall be amended by deleting the last sentence “In the event the parties are unable ...” in its entirety and replacing with:

“Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made.”

Section 7.5 shall be amended by inserting “U.S.” between “then-effective” and “prime rate” in subsection (i).

Section 7.8 shall be added as follows:

“7.8 Upon either party’s request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month.”

#### **SECTION 8. TITLE, WARRANTY, AND INDEMNITY**

Section 8.2 shall be amended by inserting the phrase “SECTION 5,” between “SECTION 8.2” and “AND IN SECTION 15.8” in the last sentence.

#### **SECTION 9. NOTICES**

9.4 shall be amended by:

- (a) in the first sentence delete the words “commercially acceptable”;
- (b) after the words “payment information” and before the word “shall” add “identified on the cover page under Accounting Information”;
- and
- (c) delete “ten (10)” and replace with “five (5)”.

#### **SECTION 10. FINANCIAL RESPONSIBILITY**

Delete the second sentence of Section 10.1 in its entirety and replace with the following:

“Adequate Assurance of Performance shall mean the provision of Eligible Collateral.”

Section 10.2 shall be amended by

adding at the end before the “.” in the last sentence: “provided that no suspension of performance shall continue for more than ten (10) Business Days unless an Early Termination Date has been declared and the Defaulting Party has given Notice thereof in accordance with Section 10.3.”

Amend Section 10.3 by deleting from the sixth line the phrase “legally permissible” and replace with “practicable and not prohibited by applicable law”

Section 10.3.1 “Early Termination Damages Apply” shall be amended by:

(a) adding at the end of the last sentence of the second paragraph:

“(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or “LIBOR”);  
and

(b) adding the following as a third paragraph:

“In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions.”

## **SECTION 11. FORCE MAJEURE**

Add the following to the end of Section 11:

“11.7 Any party claiming Force Majeure (the “Claiming Party”) as an excuse for performance shall provide the other party (the Non-claiming Party”) a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days.”

“11.8 The Claiming Party, if it is Seller, must treat the other party equitably with its other Firm customers on a proportionate basis with regard to the remaining supply available for market at the location(s) affected by such Force Majeure.”

## **SECTION 12. TERM**

Section 12 shall be deleted in its entirety and replaced with:

“The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written Notice by either party; provided, however, that, to the extent necessary, the provisions hereof shall survive termination of this Contract and continue to apply to any transactions entered into between Seller and Buyer prior to the date of termination of this Contract until such time as any and all such transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment and provisions of Sections 1.6, 7.4, 7.6, 7.7, 8.3, 8.4, 10, 13 and 15 shall continue to apply.”

## **SECTION 14. MARKET DISRUPTION**

Section 14 shall be deleted in its entirety and replaced with the following:

Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.

(A) If a Market Disruption Event has occurred during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or 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 fifth 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-Affiliate 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. Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains two quotes and the other party only obtains one quote,

the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both parties each obtain one quote, the arithmetic mean of the two quotations shall be utilized; or (iv) if only one party is able to obtain a quote, the obtained quotation shall be utilized. For purposes of the foregoing sentence, if more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded.

Notwithstanding the forgoing, If the Price Source retrospectively issues a Floating Price, in respect of a Determination Period (a "Delayed Floating Price"), then, if the Delayed Floating Price is issued by the Price Source in respect of a Determination Period (i) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Determination Period or (ii) after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment notwithstanding any subsequent publication unless the Parties expressly agree otherwise.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction."

"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.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

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.

(B) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within six (6) months of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) calendar days after publication or announcement.

## SECTION 15. MISCELLANEOUS

Insert in Section 15.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line.

Insert in Section 15.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).

Section 15.12 shall be amended by deleting the third sentence in its entirety and replacing it with the following:

"So long as the Imaged Agreement bears the signature of the party against whom enforcement is sought if there is a space or line for such signature on the agreement, in the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, and the original document(s) is/are unobtainable, neither party shall object to the introduction, acceptance and admissibility of the recording, the Transaction Confirmation or the Imaged Agreement as evidence in any proceeding between the Parties before any court, arbitration panel, regulatory commission or similar body on the basis that such recording, Transaction confirmation or Imaged Agreements were not original agreements, originated or maintained in documentary form or do not comply with the best evidence rule."

The following sections shall be added after Section 15.12 thereof:

"15.13. **Mobile-Sierra.** Absent the agreement of all parties to the proposed change, the standard of review for changes to this Contract (including all transactions and Transaction Confirmations) proposed by a party, a non-party or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. \_\_\_ (2008) (the "Mobile-Sierra" doctrine). Each party irrevocably waives its rights, including its rights under §§ 4-5 of the Natural Gas Act, unilaterally to seek or support a change in the rate(s), charges, classifications, terms or conditions of any Gas transaction hereunder or any other agreements entered into in connection with Gas transactions under this Contract. By this provision, each party expressly waives its right to seek or support: (i) an order from the U.S. Federal Energy Regulatory Commission finding that the market-based rate(s), charges, classifications, terms or conditions agreed to by the parties under this Contract with respect to Gas transactions are unjust and



unreasonable; or (ii) any refund with respect thereto. Each party agrees not to make or support such a filing or request, and that these covenants and waivers shall be binding notwithstanding any regulatory or market changes that may occur hereafter.”

“15.14 This Base Contract and any Transaction Confirmation may be executed in several counterparts, and all such counterparts shall constitute one agreement binding on both parties hereto and shall have the same force and effect as an original instrument.”

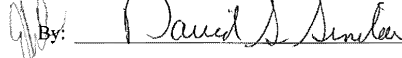
**SPARK ENERGY GAS, LP**

By: 

Name: James N. McCord

Title: Director of Asset Optimization

**LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY**

By: 

Name: David S. Sinclair

Title: Vice President Energy Marketing

## 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 2.7.

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. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

### SECTION 2. DEFINITIONS

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.

2.1. "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.

2.2. "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.

2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).

- 2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 2.5. "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.
- 2.6. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.7. "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.
- 2.8. "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.
- 2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.10. "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.
- 2.11. "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 an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.
- 2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.15. "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.
- 2.16. "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.
- 2.17. "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.
- 2.18. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.19. "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.
- 2.20. "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.
- 2.21. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.22. "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.
- 2.23. "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.
- 2.24. "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.
- 2.25. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.26. "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.

2.27. "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.

2.28. "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.

2.29. "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); 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); or (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, then the sole and exclusive remedy of the performing party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s). 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.
<b>Buyer Pays At and After Delivery Point:</b>
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.
<b>Seller Pays Before and At Delivery Point:</b>
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. 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 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 14.8, 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 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 or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. 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, payments 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 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.

## 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), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

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; or (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; 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 or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, 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:**

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 (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.

**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 owed to the Non-Defaulting Party against any margin or other collateral held by it 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 such 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 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 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; 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 Agreement; (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 and Section 10, 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.





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; padding: 5px;"> <b>Firm (Fixed Quantity):</b>                      _____ MMBtus/day  <input type="checkbox"/> EFP                 </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> <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; padding: 5px;"> <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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b> _____ _____ _____				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			

**SPECIAL PROVISIONS – U.S. NAESB**

Special Provisions ("Special Provisions") attached to and forming a part of that certain Base Contract for Short-Term Sale and Purchase of Natural Gas dated April 1, 2009 (the "Base Contract") by and between: Kentucky Utilities Co. / Louisville Gas and Electric Co. and Shell Energy North America (US), L.P.

Capitalized terms used in these Special Provisions shall have the meanings ascribed to them in the Base Contract. Section references in these Special Provisions refer to a Section of the General Terms and Conditions of the Base Contract, unless stated otherwise.

**SECTION 1. PURPOSES AND PROCEDURES**

**1. The following sections shall be added to Section 1:**

**"1.5** The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction subject to Section 1.4."

**"1.6** Confirming party shall, and the other party may, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, the negligence be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation."

**SECTION 2. DEFINITIONS**

**2. Section 2.10 "Cover Standard" shall be amended by deleting "(or an alternate fuel if elected by Buyer and replacement Gas is not available)" from the definition.**

**Section 2.11 "Credit Support Obligations" shall be amended by adding "or the Credit Support Addendum" after "Contract".**

**3. The following Sections shall be added to the end of Section 2:**

**2.27** At the end of the sentence add the phrase: "except for those transactions having a Delivery Period of less than one Month which may be documented solely by telephone recordings pursuant to Section 1.2."

**2.28** "Eligible Collateral" shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) other security, in each case (i), (ii) and (iii), in a form and amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated less any Performance Assurance being held by such Party under the under the Credit Support Addendum; unless such Performance Assurance held under the Collateral Annex has already been accounted for in the Termination Payment).

**2.29** "NYMEX" shall mean the New York Mercantile Exchange.

2.30 "Transaction Tape" shall be defined as electronic telephone recordings in whatever electronic format maintained by Seller and/or the Buyer for transaction verification and/or evidentiary purposes."

### SECTION 3. PERFORMANCE OBLIGATION

4. Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase "and no such replacement or sale is available" in (iii):

"or in the event that the non-breaching party elects, at its sole option not to replace undelivered Gas or re-sell unaccepted Gas"

### SECTION 7. BILLING, PAYMENT AND AUDIT

5. Add the following language to the end of Section 7.3:

"including all supporting documentation acceptable in industry practice to support the amount charged"

6. Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ..." in its entirety and replaced with:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments.

7. Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).

### SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8. Delete 2<sup>nd</sup> sentence of Section 8.2 and replace with the following sentence: "EXCEPT AS PROVIDED IN THIS SECTION 8.2, SECTION 5, AND IN SECTION 14.8, ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OR ARISING OUT OF STATUTE, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, ARE HEREBY DISCLAIMED AND NEGATED."

### SECTION 10. FINANCIAL RESPONSIBILITY

9. Section 10.1

(i) Delete the last sentence in its entirety and replace with the following:

"Adequate Assurance of Performance" shall mean the provision of Eligible Collateral."

The following provision is hereby added as Section 10.1.1:

Section 10.1.1 During the term of this Contract, the parties shall be required to meet and maintain the requirements contained in the Credit Support Addendum attached hereto as Exhibit B and incorporated herein and Eligible Collateral shall be held and administered pursuant to the provisions of the Credit Support Addendum".

10. **Amend Section 10.2 as follows:**
- (a) insert "if any" after "guarantor" in the first (1<sup>st</sup>) line
  - (b) insert "or Performance Assurance under 10.1.1" after "10.1" in (vii)
11. **Section 10.3.1 "Early Termination Damages Apply" shall be amended by adding at the end of the last sentence of the second paragraph:**
- "(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR")"
12. **Add the following to the end of Section 10:**
- "10.8** In calculating the Net Settlement Amount, the Non-Defaulting party may take into account its Costs incurred as a result of terminating transactions." "Costs" means (a) losses associated with transportation costs related to the terminated transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party's reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a terminated transaction; and (c) commercially reasonable attorneys' fees and court costs, if any, incurred in connection with enforcing its rights in respect of the terminated transactions.
- "10.9** No suspension pursuant to Section 10.2 shall continue for more than thirty (30) Business Days unless an Early Termination Date has been declared and the Defaulting Party has been given notice thereof in accordance with Section 10.3."

#### SECTION 11. FORCE MAJEURE

**Add the following sentence to the end of Section 11.2**

"In the event of a Force Majeure occurrence affecting seller's ability to deliver Gas under the Contract, Seller agrees to ratably curtail its firm sales to customers (including Buyer) based on any contractual provisions modifying or limiting one's ability to claim Force Majeure and the length of transaction term (i.e. short term transactions curtailed first) but without regard to the price paid or received for Gas during such Force Majeure event".

13. **Add the following shall be added to the end of Section 11**

11.7 Any party claiming Force Majeure (the "Claiming Party") as an excuse for non-performance shall provide the other party (the "Non-claiming Party") a good faith estimate of the duration of the event of Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for future performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days."

#### SECTION 12. TERM

14. **Delete the existing paragraph under Section 12 in its entirety and replace with the following:**

12.1 "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: (i) Section 1.6 (ii) Section 7.6, (iii) Section 7.7 (iv) Section 8,

Section 10, (v) Section 13, (vi) Section 14.10, (vii) 14.12, (viii) Waiver of Jury Trial provisions (if applicable), (ix) Arbitration provisions (if applicable), (x) the obligation to make payment hereunder, and (xi) the obligation of either party to indemnify the other pursuant hereto, shall survive the termination of the Base Contract or any transaction."

**SECTION 14. MISCELLANEOUS:**

15. Insert in Section 14.1 the word "conditioned" after the phrase "unreasonably withheld" in the fourth (4<sup>th</sup>) line.
16. Insert in Section 14.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).
17. The following Sections shall be added:

14.12 Each party agrees that the provisions of this Contract supersede and replace in their entirety any requirements of law relating to adequate assurance of future performance, including without limitation Section 2-609 of the Uniform Commercial Code, as enacted in New York.

14.13 UCC - Except as otherwise provided for herein, the provisions of the Uniform Commercial Code of the state whose laws shall govern this Contract shall be deemed to apply to all transactions.

14.14 Index Transactions. If the Contract Price for a transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such transaction.

Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by each Party obtaining a quote from a leading, non-affiliated dealer in the relevant market; and the Floating Price shall be the arithmetic average of the two dealer quotes obtained.

"Determination Period" means each calendar Month a part or all of which is within the Delivery Period of a transaction.

"Exchange" means, in respect of a transaction, the exchange or principal trading market specified in the relevant transaction.

"Floating Price" means a Contract Price specified in a transaction that is based upon a Price Source.

"Market Disruption Event" means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading

in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

"Price Source" means, in respect of a transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant transaction.

"Trading Day" means a Day in respect of which the relevant Price Source published the Floating Price.

Corrections to Published Prices. For purposes of determining a Floating Price for any Day, if the price published or announced on a given Day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either party may notify the other party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) calendar Days after publication or announcement of that correction, a party gives notice that an amount is so payable, the party that originally either received or retained such amount will, not later than five (5) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the Day of payment of the refund or payment resulting from that correction. If a party fails to give notice within thirty (30) calendar Days after the publication or announcement of the correction that an amount is payable, then right to payment is waived for such correction.

14.16 Kentucky Utilities Company and Louisville Gas and Electric Company shall be jointly and severally liable for any and all obligations under this Contract.

COUNTERPARTY	RWB
SHELL ENERGY	SW

**EXHIBIT B**  
**TO BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS Dated January 1, 2009**  
**BETWEEN**  
**SHELL ENERGY NORTH AMERICA (US), L.P. and KENTUCKY UTILITIES COMPANY / LOUISVILLE**  
**GAS AND ELECTRIC COMPANY**

**CREDIT SUPPORT ADDENDUM**

1. Credit Terms. Defined terms used in this Credit Support Addendum ("Addendum") and not defined in the Base Contract shall have the meaning set forth herein. . In the event of conflict between the terms of the Addendum and the terms of the Contract, the terms of this Addendum shall govern.

(a) Security Threshold. As used in this Addendum, "Security Threshold" means, on any date of determination, the lowest of (i) the amount set forth in the following table based on the lowest applicable Credit Rating for such Party or its Credit Support Provider, as applicable. With respect to 1(a)(i), the Security threshold specified for Kentucky Utilities Company and Louisville Gas and electric Company (collectively the Counterparty), who are jointly and severally liable for all obligations hereunder, the lower Credit Rating of either Kentucky Utilities Company or Louisville Gas and Electric Company shall be used for determining the applicable Security Threshold specified in the grid below. For the avoidance of any doubt, such Security threshold will not be doubled due to the fact that Counterparty consists of two entities, therefore, such specified Security Threshold shall apply to both entities collectively as the Counterparty; (ii) the amount of any dollar limit contained in a guaranty provided by a Party's Credit Support Provider pursuant to this Addendum; or (iii) zero if a Material Adverse Change or an Event of Default has occurred and is continuing with respect to that Party or its Credit Support Provider, as applicable.

<b>Party's or Credit Support Provider's Credit Rating</b>		
<b>Moody's</b>	<b>S&amp;P</b>	<b>Security Threshold</b>
Aa3 or above	AA- or above	\$25,000,000
A1, A2, A3	A+, A, A-	\$20,000,000
Baa1	BBB+	\$10,000,000
Baa2	BBB	\$7,500,000
Baa3	BBB-	\$5,000,000
Below Baa3 or unrated	Below BBB- or unrated	\$0

(b) "Material Adverse Change" means (i) the Credit Rating of a Party or its Credit Support Provider, as applicable, falls below BBB- by S&P or Baa3 by Moody's, or a Party or its Credit Support Provider, as applicable, is no longer rated by at least one of the foregoing rating agencies.

(c) Guaranties.

- (i) Shell Energy Guaranty: Not Applicable
- (ii) Counterparty Guaranty: Not Applicable



2. Credit Requirements.

(i) Delivery of Performance Assurance. If at any time, and from time to time, during the term of the Contract that no Early Termination Date has been designated, the Contract Exposure for a Party (the "Providing Party") exceeds such Party's Security Threshold, then the other Party (the "Requesting Party") may request that the Providing Party, at its sole cost and expense, provide Performance Assurance in an amount equal to the amount by which its Contract Exposure exceeds its Security Threshold. The amount of Performance Assurance being provided by the Providing Party shall be rounded upwards to the next multiple of one hundred thousand dollars (\$100,000). Unless otherwise agreed in writing by the Parties, (i) Performance Assurance demanded of a Pledging Party on or before the Notification Time on a Local Business Day, shall be provided by the close of business on the next Local Business Day and (ii) performance Assurance demanded of a Pledging Party after the Notification Time on a Local Business Day shall be provided by the close of business on the second Local Business Day thereafter.

(ii) Reduction and Substitution of Performance Assurance. On any Local Business Day that the Providing Party's Security Threshold, exceeds its Contract Exposure, taking into consideration any applicable rounding amount(s) (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), the Providing Party, at its sole cost and expense may request that the amount of Performance Assurance be reduced based upon a decrease in the Contract Exposure as calculated by the Requesting Party on such Local Business Day; provided that, after giving effect to the requested reduction in Performance Assurance, no Event of Default or Material Adverse Change with respect to the Providing Party shall have occurred and be continuing; and (ii) no Early Termination Date been designated with respect to the Providing Party. Unless otherwise agreed in writing by the Parties, (i) if the Providing Party's reduction demand is made on or before the Notification Time on a Local Business Day, then the Requesting Party shall have one (1) Local Business Day to effect a permitted reduction in Performance Assurance and (ii) if the Providing Party's reduction demand is made after the Notification Time on a Local Business Day, then the Requesting Party shall have two (2) Local Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to the Providing Party. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of the Requesting Party the Requesting Party shall within one Local Business Day of receipt of an amendment to the Letter of Credit take such action as is reasonably necessary to effectuate such reduction. The amount of Performance Assurance being provided by the Providing Party shall be rounded upwards to the next multiple of one hundred thousand dollars (\$100,000), and the amount of Performance Assurance being returned by the Requesting Party shall be rounded down to the next multiple of one hundred thousand dollars (\$100,000).

(iii) In all cases, each Party will pay its own costs and expenses with performing its obligations under this Addendum and neither Party will be liable for any costs and expenses incurred by the other Party in connection herewith.

3. Disputed Calculations. If a party (a "Disputing Party") disputes (a) the amount of Performance Assurance requested by the Requesting Party and such dispute relates to the amount of the Contract Exposure claimed by the Requesting Party or (b) the amount of Performance Assurance to be reduced by the Requesting Party and such dispute relates to the amount of the Contract Exposure claimed by the Requesting Party, then (i) the Disputing Party shall notify the other party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand for or reduction of Performance Assurance, as applicable, is made pursuant to Section 2, and (ii) the appropriate party shall provide or effect the reduction of Performance Assurance, as applicable, to or for the benefit of the Disputing Party in an amount equal to the Requesting Party's own estimate, made in good faith and in a commercially reasonable manner, of the Providing Party's collateral requirement in accordance with Section 2. In all such cases, the parties thereafter shall promptly consult with each other

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in order to reconcile the two conflicting amounts. If the parties have not been able to resolve their dispute on or before the second Business Day following the date that the demand is made by the Disputing Party, then the Requesting Party's Contract Exposure shall be recalculated by each party requesting quotations from one (1) each Party obtaining a quote from a leading, non-affiliated dealer in the relevant market; within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Contract Exposure provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Contract Exposure in respect of which the parties disagree as to the Contract Exposure thereof, and the Requesting Party shall inform the Providing Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

4. Distribution of Interest on Performance Assurance. A Party supplying Performance Assurance in the form of cash that is held by the other Party pursuant to this Addendum shall be entitled to interest at the Performance Assurance Interest Rate on such Performance Assurance. The "Performance Assurance Interest Rate" will be, for any day, the "Federal Funds Effective" rate in effect for such day (or if such day is not a Business Day, then the preceding Business Day), as published in the most recent weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System."

5. Transfer of Performance Assurance Interest Amount. On the first Local Business Day of each calendar month that Performance Assurance in the form of cash is held by a Party, any Party (the "First Party ") that is owed the Performance Assurance interest amount under this Addendum (the "Performance Assurance Interest Amount") shall determine the Performance Assurance Interest Amount due and owing from the other Party (the "Second Party ") as of the last day of the preceding calendar month that Performance Assurance in the form of cash is held by the Second Party. The Performance Assurance Interest Amount shall be calculated for each day that Performance Assurance in the form of cash is held by the Second Party as follows: (x) the principal amount of cash held as Performance Assurance by the Second Party; multiplied by (y) the Performance Assurance Interest Rate; divided by (z) 360. Such aggregate sum of the amounts of the Performance Assurance Interest Amount calculated for each day during such calendar month shall be the "Total Performance Assurance Interest Amount". The First Party shall issue an invoice (the "Performance Assurance Interest Invoice") to the Second Party setting forth the Total Performance Assurance Interest Amount that is owed under Section 4. The Second Party shall transfer the Total Performance Assurance Interest Amount to the First Party on the later of (i) the third Local Business Day of such calendar month; or (ii) two (2) Local Business Days after receipt of the Performance Assurance Interest Invoice; provided however that when Performance Assurance in the form of cash is returned to a Party the Performance Assurance Interest Amount calculations shall be performed on the same Local Business Day of such return and payment shall be due for such Total Performance Assurance Interest Invoice as set-forth in this Section 5 (ii). Any Party may dispute a Performance Assurance Interest Invoice as provided for in Section 7.4 of the Contract."

6. Grant of Security Interest; Remedies. To secure its obligations under the Contract, and to the extent it delivers Performance Assurance hereunder as the Providing Party, each Party hereby grants to the Requesting Party, as secured party, a present and continuing security interest in, first lien on, and right of setoff against, all Performance Assurance in the form of cash, and any and all proceeds resulting therefrom, held by or on behalf of the Requesting Party. The Providing Party agrees to take such further action as the Requesting Party may reasonably require in order to perfect, maintain and protect the Requesting Party's security interest in such collateral. Upon the occurrence and continuance of an Event of Default with respect to the Providing Party, then, unless the Providing Party has satisfied in full all of its payment and performance obligations under the Contract that are then due, the Requesting Party may (i) exercise any of the rights and remedies of a secured party under applicable law with respect to all Performance Assurance; (ii) exercise its right of setoff against any and all Performance Assurance; (iii) draw on any Letter of Credit issued for its benefit, and (iv) liquidate all Performance Assurance then held by the Requesting Party free from any claim or right of any nature whatsoever of the Providing Party. The

Requesting Party shall either apply the proceeds of the Performance Assurance realized upon exercise of such rights or remedies to reduce the Providing Party's obligations under the Contract, in such order as it elects, and the Providing Party shall remain liable for any amounts owing to the Requesting Party after such application, subject to the Requesting Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full, or hold such proceeds as collateral security for the Providing Party's obligations under the Contract.

7. Credit Events Of Default. The following events ("Credit Events") shall be additional Events of Default under Section 10.2 of the Contract and the Non-Defaulting Party shall have the right to exercise any of the remedies provided for under Section 10 of the Contract upon the occurrence of a Credit Event as provided herein:

- (i) the failure of the Defaulting Party to establish, maintain, extend, increase, or make when due, any transfer of Performance Assurance when required pursuant to this Addendum
- (ii) the failure of the Defaulting Party's Credit Support Provider, if any, to perform any covenant set forth in any guaranty agreement delivered pursuant to this Addendum; or
- (iii) the failure of the Defaulting Party or its Credit Support Provider, if any, to timely provide financial information as required in this Addendum, and such failure is not remedied within thirty (30) Days after written notice of such failure is given to the Defaulting Party.
- (iv) a Cross Default has occurred and is continuing;
- (v) With respect to such Party's Credit Support Provider, if any;
  - (a) any representation or warranty made by a Credit Support Provider in connection with the Contract is false or misleading in any material respect when made or when deemed made or repeated;
  - (b) the failure of a Credit Support Provider's guaranty to be in full force and effect for purposes of this Contract (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
  - (c) such Credit Support Provider shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty, provided by such Credit Support Provider, except as permitted under the terms of such guaranty.

8. Financial Information. Upon request, a Party or its Credit Support Provider, as applicable, shall deliver to the other Party (i) within one hundred twenty (120) Days following the end of its fiscal year, a copy of the audited consolidated financial statements for such fiscal year certified by independent certified public accountants and (ii) within ninety (90) Days after the end of each of the first three fiscal quarters of its fiscal year, a copy of the quarterly unaudited consolidated financial statements for such fiscal quarter, if such financial statement is not publicly available, such as on "EDGAR". Posting of financial information on EDGAR shall be deemed delivery of such information to the other party. In all cases, the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles consistently applied; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

9. Definitions. With respect to this Addendum, the following definitions shall apply:

"Contract Exposure" means (i) the net amount determined pursuant to Section 10.3.1 of the Contract that would be payable from the Providing Party to the Requesting Party, as if an Early Termination Date had been declared pursuant to Section 10.3 of the Contract (notwithstanding whether or not an Event of Default has occurred) and all transactions had been terminated less (ii) the amount of any Performance Assurance then held by the Requesting Party.

"Cross Default" As used herein, a default has occurred with respect to indebtedness for borrowed money of a Party or its Credit Support Provider, as applicable, that has resulted in an acceleration of such indebtedness in an aggregate amount in excess of its Cross Default Threshold. As used herein, "Cross-Default Threshold" means, with respect to Shell Energy fifty million dollars (\$50,000,000), and with respect to either Kentucky Utilities Company or Louisville Gas and Electric Company fifty million dollars (\$50,000,000).

"Counterparty" means collectively Kentucky Utilities Company / Louisville Gas and Electric Company. Pursuant to Section 14.16 of the Base Contract, Kentucky Utilities Company and Louisville Gas and Electric Company are jointly and severally liable for any and all obligations under this Contract.

"Credit Rating" means (i) with respect to a Party or its Credit Support Provider, as applicable, the lower of its long-term senior unsecured debt rating (not supported by third party credit enhancement), its underlying revenue bond rating, its issuer credit rating by the specified rating agency, or its corporate credit rating by the specified rating agency and (ii) with respect to a financial institution, the lower of its long-term senior unsecured debt rating (not supported by third party credit enhancement) or its deposit rating by the specified rating agency.

"Credit Support Provider" means a third party providing a guaranty for a Party pursuant to this Addendum, if applicable.

"Defaulting Party" has the meaning set forth in Section 10.2 of the Contract.

"Interest" means the Performance Assurance Interest Rate to be paid by the Requesting Party to the Providing Party as provided in Section 3.2 herein.

"Letter of Credit" means one or more irrevocable, transferable, standby letter(s) of credit from a Qualified Institution, in the form as the issuing bank may require and as may be acceptable to the beneficiary thereof in its reasonable discretion.

"Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events: (a) fails to satisfy the requirements of a Qualified Institution; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Contract, in any such case without replacement; or (e) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that in all cases, no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Addendum.

"Local Business Day" means, a day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is located and (b) in relation to any notice or other communication, in the city specified in the address for noticed provided by the recipient.

"Moody's" means Moody's Investors Service, Inc., or its successor.

"Non-Defaulting Party" has the meaning set forth in Section 10.2 of the Contract.

"Notification Time" means 1:00 P.M., New York time, on any Local Business Day.

"Party" means a party to the Contract, and collectively referred to as the "Parties".

"Performance Assurance" means collateral in the form of cash or Letters of Credit. If the Performance Assurance is in the form of cash, such cash shall be placed by the Requesting Party in a segregated, interest bearing account on deposit with a Qualified Institution and interest shall accrue to the Providing Party. The requirement to maintain a segregated account shall not apply if the Requesting Party or its Credit Support Provider, as applicable, is not a Defaulting Party and has a Credit Rating of at least BBB- by S&P or Baa3 by Moody's. Any guaranty agreement executed by a Credit Support Provider of a Party shall not constitute Performance Assurance hereunder. Any Letter of Credit experiencing a Letter of Credit Default shall not constitute Performance Assurance hereunder. For the avoidance of any doubt, if Performance Assurance is provided under this Contract by either Kentucky Utilities Company or Louisville Gas and Electric Company to Shell Energy, such Performance Assurance shall secure the obligations of both Kentucky Utilities Company and Louisville Gas and Electric Company since Kentucky Utilities Company and Louisville Gas and Electric Company are jointly and severally liable for any and all obligations under this Contract.

"Qualified Institution" means the domestic office of a commercial bank or trust company (which is not an affiliate of either Party) (i) organized under the laws of United States (or any state or a political subdivision thereof), (ii) having assets of at least ten billion dollars (\$10,000,000,000), and (iii) having a Credit Rating of at least (a) "A-" by S&P and at least "A3" by Moody's if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both.

"S&P" means Standard & Poor's Ratings Services (a division of McGraw-Hill, Inc.) or its successor.

"Shell Energy" means Shell Energy North America (US), L.P.

10. Successors. In the event of an assignment of the Contract by either Party as provided therein, the provisions of this Addendum shall not be applicable to any such assignee as provided in Section 14.1 of the Contract. In such event, an assignee will be required to meet the reasonable credit requirements of the other Party for the extension of unsecured credit before further deliveries of Gas are made.

11. Representations and Warranties.

(a) On each day on which Performance Assurance is held by the Requesting Party under the Contract and this Addendum, the Providing Party hereby represents and warrants that:

(i) the Providing Party has good title to and is the sole owner of such Performance Assurance, and the execution, delivery and performance of the covenants and agreements of this Addendum, do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation, the Performance Assurance, other than the security interests and liens created under the Contract and this Addendum; and

(ii) upon the transfer of Performance Assurance by the Providing Party to the Requesting Party, the Requesting Party shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances,

(iii) It is not and will not become a party to or otherwise be bound by any agreement, other than the Contract and this Addendum, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance with respect hereto.

(b) The Providing Party shall pay on request to the Requesting Party any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under this Addendum or the execution, delivery, performance or enforcement of the Contract and this Addendum.

COUNTERPARTY	<i>[Signature]</i>
SHELL ENERGY	<i>[Signature]</i>

**GENERAL TERMS AND CONDITIONS  
BASE CONTRACT FOR SHORT-TERM  
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 parties have selected either the "Oral" version or the "Written" version of transaction procedures 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. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party.

**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 non-conflicting Transaction Confirmation 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 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. The entire agreement between the parties shall be those provisions contained in both the Base Contract and any effective Transaction Confirmation. In the event of a conflict among the terms of (i) a Transaction Confirmation, (ii) the Base Contract, and (iii) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

**SECTION 2 DEFINITIONS**

2.1. "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.

2.2. "British thermal unit" or "Btu" shall have the meaning ascribed to it by the Receiving Transporter.

2.3. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.

2.4. "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.

2.5. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.

2.6. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract and (ii) the provisions contained in any effective Transaction Confirmation.

2.7. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu, as evidenced by the Contract Price on the Transaction Confirmation.

2.8. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as set forth in the Transaction Confirmation.

- 2.9. "Cover Standard", if applicable, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the non-defaulting party shall use commercially reasonable efforts to obtain Gas or alternate fuels, or sell Gas, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the defaulting 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 defaulting party.
- 2.10. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.11. "Delivery Period" shall be the period during which deliveries are to be made as set forth in the Transaction Confirmation.
- 2.12. "Delivery Point(s)" shall mean such point(s) as are mutually agreed upon between Seller and Buyer as set forth in the Transaction Confirmation.
- 2.13. "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.
- 2.14. "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".
- 2.15. "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.
- 2.16. "Gas" shall mean any mixture of hydrocarbons and non-combustible gases in a gaseous state consisting primarily of methane.
- 2.17. "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.
- 2.18. "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.
- 2.19. "MMBtu" shall mean one million British thermal units which is equivalent to one dekatherm.
- 2.20. "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.
- 2.21. "Payment Date" shall mean a date, selected by the parties in the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.22. "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.
- 2.23. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.24. "Spot Price" as referred in Section 3.2 shall mean the price listed in the publication specified by the parties in 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.
- 2.25. "Transaction Confirmation" shall mean the document, substantially in the form of Exhibit A, setting forth the terms of a purchase and sale transaction formed pursuant to Section 1. for a particular Delivery Period.
- 2.26. "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 Confirmation.

### 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 specified in the Transaction Confirmation.

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

**Cover Standard:**



3.2 In addition to any liability for Imbalance Charges, which shall not be recovered twice by the following remedy, the exclusive and sole remedy of the parties in the event of a breach of a Firm obligation 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 for replacement Gas or alternative fuels 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); 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); or (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, then the exclusive and sole remedy of the non-breaching party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s).

**Spot Price Standard:**

3.2 In addition to any liability for Imbalance Charges, which shall not be recovered twice by the following remedy, the exclusive and sole remedy of the parties in the event of a breach of a Firm obligation 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; (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.

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS CONTRACT, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.

## **SECTION 4. TRANSPORTATION, NOMINATIONS AND IMBALANCES**

4.1 Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s) and for delivering such Gas at a pressure sufficient to effect such delivery but not to exceed the maximum operating pressure of the Receiving Transporter. 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 actions or inactions (which shall include, but shall not be limited to, Buyer's failure to accept quantities of Gas equal to the Scheduled Gas), then Buyer shall pay for such Imbalance Charges, or reimburse Seller for such Imbalance Charges paid by Seller to the Transporter. If the Imbalance Charges were incurred as a result of Seller's actions or inactions (which shall include, but shall not be limited to, Seller's failure to deliver quantities of Gas equal to the Scheduled Gas), then Seller shall pay for such Imbalance Charges, or reimburse Buyer for such Imbalance Charges paid by Buyer to the Transporter.

## **SECTION 5. QUALITY AND MEASUREMENT**

All Gas delivered by Seller shall meet the 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 the "Buyer Pays At and After Delivery Point" version or the "Seller Pays Before and At Delivery Point" version 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 which 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 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. If Buyer fails to remit the full amount payable by it when due, interest on the unpaid portion shall accrue 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 from the date due until the date of payment; or (ii) the maximum applicable lawful interest rate. If Buyer, in good faith, disputes the amount of any such statement or any part thereof, Buyer will pay to Seller such amount as it concedes to be correct; provided, however, if Buyer disputes the amount due, Buyer must provide supporting documentation acceptable in industry practice to support the amount paid or disputed.

7.3. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with Section 7.2. above.

7.4. A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine the books and records 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 examination right 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 unless 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.

## **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.

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

8.4. 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, payments 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 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 two Business Days after mailing.

## **SECTION 10. FINANCIAL RESPONSIBILITY**

10.1. When reasonable grounds for insecurity of payment or title to the Gas arise, either party may demand adequate assurance of performance. Adequate assurance shall mean sufficient security in the form and for the term reasonably specified by the party demanding assurance, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset acceptable to the demanding party or a performance bond or guarantee by a creditworthy entity. In the event either party shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment obligation to the other party; (iii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); or (v) be unable to pay its debts as they fall due; then the other party shall have the right to either withhold and/or suspend deliveries or payment, or terminate the Contract without prior notice, in addition to any and all other remedies available hereunder. Seller may immediately suspend deliveries to Buyer hereunder in the event Buyer has not paid any amount due Seller hereunder on or before the second day following the date such payment is due.

10.2. Each party reserves to itself all rights, set-offs, counterclaims, and other defenses which it is or may be entitled to arising from the Contract.

## **SECTION 11. FORCE MAJEURE**

11.1. Except with regard to a party's obligation to make payment due under Section 7. 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 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; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulation 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. 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 entirely 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 notification with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notification of Force Majeure to the other party, the affected party will be relieved of its obligation 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.

## **SECTION 12. TERM**

This Contract may be terminated on 30 days' written notice, but shall remain in effect until the expiration of the latest Delivery Period of any Transaction Confirmation(s). The rights of either party pursuant to Section 7.4., 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 Confirmation.

## **SECTION 13. MISCELLANEOUS**

13.1. 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, which consent will not be unreasonably withheld or delayed; provided, either party may transfer its interest to any parent or affiliate by assignment, merger or

otherwise without the prior approval of the other party. Upon any transfer and assumption, the transferor shall not be relieved of or discharged from any obligations hereunder.

13.2. 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.

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

13.4. 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 Confirmation(s). This Contract may be amended only by a writing executed by both parties.

13.5. The interpretation and performance of this Contract shall be governed by the laws of the state specified by the parties in the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

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

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

13.8. 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.

TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

EXHIBIT A

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<b>Date:</b> <b>Transaction Confirmation #:</b>
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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:	
<b>Contract Price:</b> \$ /MMBtu or		
<b>Delivery Period:</b> Begin: End:		
<b>Performance Obligation and Contract Quantity:</b> (Select One)		
<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>Delivery Point(s):</b> (If a pooling point is used, list a specific geographic and pipeline location):		
<b>Special Conditions:</b>		
<b>Seller:</b>  <b>By:</b>  <b>Title:</b>  <b>Date:</b>	<b>Buyer:</b>  <b>By:</b>  <b>Title:</b>  <b>Date:</b>	

**SCHEDULE OF RIDERS  
TO GISB BASE CONTRACT FOR SHORT-TERM  
PURCHASE AND SALE OF NATURAL GAS  
AND APPENDIX A GENERAL TERMS AND CONDITIONS**

The following riders (the "Addendum") shall be incorporated as amendments to the GISB Base Contract for Short-Term Sale and Purchase of Natural Gas and the Appendix A General Terms and Condition (collectively, the "Base Contract") between SEQUENT ENERGY MANAGEMENT, L.P. and LOUISVILLE GAS AND ELECTRIC COMPANY/KENTUCKY UTILITIES COMPANY ("LGE"/"KU") dated **January 1, 2003**. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Base Contract.

**Rider 1. Sections 1.2 and 1.3 shall be revised as follows:**

In Section 1.2 "Oral Transaction Procedure, (i) insert "*a recorded*" before the word *telephone* in the second line; replace "." with "," in the sixth line following "*facsimile*"; and (iii) insert the word "*recorded*" before the word *telephonic* on the fifth line.

In Section 1.3, add "*binding*" before "*Transaction*" in the last sentence.

**Rider 2. Add new Sections 1.4 and 1.5 as follows:**

**1.4** "Each Party may, at its own discretion and at its expense, maintain equipment necessary to regularly record Transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither Party shall be liable for any malfunction of equipment or the operation thereof in respect of any Transaction WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, OR ACTIVE OR PASSIVE. No Transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording Transactions or retaining Transaction Tapes or the operation thereof, and in such event, the Transaction shall be evidenced by the written and computer records of the parties concerning the Transaction made contemporaneously with the telephone conversation."

**1.5** "Each party consents to the recording of the telephone conversations of their respective personnel in connection with this Contract. Each party waives on its own its employees' behalf, and each party further commits to notify its employees of such recording and to obtain any necessary consent of such employees. The parties agree not to contest or assert a defense to the validity or enforceability of telephonic Transactions entered into in accordance with this Contract under laws relating to whether certain agreements are to be in writing or signed by the party to be thereby bound."

**Rider 3. Replace Section 2.6 with the following:**

“2.6 “Contract” shall mean the legally binding relationship established by (i) the Base Contract, (ii) this Addendum and (iii) any binding Transaction Confirmation.”

**Rider 4. Delete “or alternate fuels” from Section 2.9 “Cover Standard”**

**Rider 5. Add the following at the end of Section 2:**

2.27 “Buyer” shall mean the party that agrees to purchase Gas as evidenced by the Transaction.

2.28 “Credit Support Document” shall mean, as to a party (the “First Party”), a guaranty, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided that in each case the issuer and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.29 “Eligible Collateral” shall mean (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may include an amount up to the Settlement Amount that would be owed).

2.30 “Futures Contract” shall mean the standardized contract for the purchase or sale of Gas that is traded for future delivery under the applicable trading board’s regulations.

2.31 “Letter of Credit” means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least “A-” from S&P or “A3” from Moody’s.

2.32 “NYMEX” shall mean the New York Mercantile Exchange.

2.33 “Price” shall mean the amount or pricing mechanism agreed to by the parties as specified in the Transaction.

2.34 “Receipt/Delivery Obligation” shall mean one of EFP, Firm or Non-Firm as set forth in the Transaction.

2.35 “Seller” shall mean the party that agrees to sell Gas as evidenced by the Transaction.

2.36 “Tax” shall mean any tax levied, assessed or claimed to be due by any federal, state, county, tribal, or municipal government or any other governmental agency having jurisdiction to do so.

2.37 "Transaction" means a particular, specifically agreed-to purchase or sale of Gas for delivery or receipt to be performed under this Contract, as evidenced by a Transaction Confirmation or by a recorded oral telephone conversation where an offer was made by a party and accepted by the other party.

2.38 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained for verification and/or evidentiary purposes.

**Rider 6. Delete "or alternate fuels" from line four (4) of Section 3.2 "Cover Standard"**

**Rider 7. Add the following language to the end of Section 6 as a new paragraph:**

"In the event a federal, energy, BTU, consumption, or use tax shall be imposed ("Governmental Charge"), each Party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s). Both Buyer and Seller shall work to reasonably apportion said Governmental Charge, taking into account the ability of either party to pass through all or a part of such tax, so long as neither Party is materially adversely affected by such efforts."

**Rider 8. Add new Section 7.5 as follows:**

"7.5. The parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract in the following manner in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any credit support obligations shall be subject to netting under this or any other provision of this Contract:

- (a) For each Month in which deliveries of Gas occur, each party shall determine the sales price for natural gas sold to the other party according to the respective pricing provisions contained in the Transaction Confirmations, in order to determine the total amount owed by such other party.
- (b) The Parties shall continue to issue invoices to each other in the normal course of business. Each Month, at least (3) Business Days prior to the Payment Date, the Parties shall confer by telephone and compare and confirm invoice amounts and total amounts owed by and/or to each other.
- (c) If both parties owe each other amounts pursuant to the Transaction Confirmations, the party that is owed the greater amount ("Creditor Party") shall set-off its obligations against the other party's ("Debtor Party") obligation. Specifically, the Debtor Party shall make payment, pursuant to the terms of the Contract, of the difference between amounts owed by the Creditor Party under the Contract and the amounts owed by the Debtor Party under the Contract. Payment of such difference shall be made on or before the Payment Date. If the amounts owed by each party to the other are equal, neither party shall make any payment. Moreover, if the purchase or sale Transaction under the Contract calls for



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payment based upon the Seller's best volume estimates, where actual volumes are not available, that shall be included in the amount owed and paid to the Creditor party. Upon either party's request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed Transaction between the parties in order to determine the final settlement amount due for each production Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable production Month.

- (d) Should the Debtor Party fail to make payment on or before the Payment Date, interest on the unpaid portion shall accrue at the interest rate set forth in Section 7.2. of the Base Contract. In the event that any invoice or portion of any invoice covered by the Contract is subject to dispute, the undisputed amount shall be paid when due; provided however, if the Debtor Party disputes the amount due or any portion thereof, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed. Disputed amounts shall be resolved by the parties in a mutually agreeable manner or if necessary through the exercise of rights and remedies available under the Contract or applicable law. Notwithstanding the preceding sentence, neither party may refuse to participate in the net-out process under the Contract because of a disputed billing statement or invoice. If any invoice is disputed, the invoiced party may require that only the amount not in dispute is the value due in the net-out process, pending resolution of the dispute. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 7.5 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.
- (e) If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith."

**Rider 9. Add the following to the end of Section 8.2:**

“In the event of any claim or litigation, at any time, concerning Seller’s title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer’s satisfaction.”

**Rider 10. Sections 10.1. and 10.2. shall be deleted in their entirety and replaced with the following:**

“**10.1.** Without limiting any other rights that may be available to the Non-Defaulting Party (as hereinafter defined) under the Contract, if the other party (the “Defaulting Party”):

- (a) is the subject of a bankruptcy, insolvency or similar proceeding;
- (b) fails to pay its debts generally as they become due;
- (c) makes an assignment for the benefit of its creditors;
- (d) applies for, seeks consent to or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official for all or a substantial portion of its assets;
- (e) fails to pay or perform, when due, any obligations to the other party (“Non-Defaulting Party”) within two (2) Business Days of a written demand for performance thereby; or
- (f) fails to establish, maintain, extend, or increase Eligible Collateral (in an amount which in the reasonable opinion of the Non-Defaulting Party is and which may be up to the amount that would be due to the Non-Defaulting Party assuming a termination under Section 10.2) supporting its (or its Guarantor’s if any) ability to perform all of its outstanding material obligations) to the Non-Defaulting Party under the Contract within two (2) Business Days of a demand thereof when the Non-Defaulting Party has reasonable grounds for insecurity,
- (g) suffers (or its guarantor suffers) a material change in creditworthiness, as determined by the Non-Defaulting Party in its reasonable discretion, and fails to supply Eligible Collateral (in an amount which in the reasonable opinion of the Non-Defaulting Party is adequate and which may be up to the Settlement Amount that would be due to the Non-Defaulting Party under the Contract) within a period not to exceed two (2) Business Days of the Non-Defaulting Party’s written demand thereof,
- (h) or the guarantor (if any) of the Defaulting Party fails to perform any covenant set

forth in a Credit Support Document it delivered in respect of this Contract; or if any representation or warranty made by such guarantor in said Credit Support Document shall prove to have been false or misleading in any material respect when made or when deemed to be repeated; or if the Credit Support Document expires or is terminated or in any way ceases to guarantee the obligations of the Defaulting Party under this Contract (provided in this particular instance that the Non-Defaulting party gives the Defaulting party notice of such expiration, termination, or other event and the Defaulting Party fails to renew such Credit Support Document or provide other Eligible Collateral within two (2) Business Days of such notice or if such guarantor enters into Bankruptcy whether voluntary or involuntary.

the Non-Defaulting Party shall have the right at any time as long as an event described in Section 10.1 above (the "Event of Default") is continuing, exercisable in its sole discretion, to (a) immediately suspend delivery or payment and/or (b) designate an Early Termination Date and thereby liquidate and terminate the Contract and all Transactions arising under the Contract, pursuant to Section 10.2.

**10.2.** If the Non-Defaulting Party is permitted to terminate in accordance with Section 10.1, the Non-Defaulting Party may (a) by notice to the Defaulting Party designate a date (which shall be not less than five (5) Business Days nor more than twenty (20) Business Days after the Non-Defaulting Party delivers notice) (the "Early Termination Date") on which all outstanding Transactions under the Contract shall terminate and (b) withhold any payments due to the Defaulting Party in respect of any Transactions under the Contract *provided, however*, if the Defaulting Party is the subject of a bankruptcy, insolvency or similar proceeding, all outstanding Transactions under the Contract shall automatically terminate, without notice or right to cure, and without any other action by either Party as if an Early Termination Date had been declared immediately prior to such event. If an Early Termination Date has been designated, the Non-Defaulting Party shall in good faith calculate its Gains, Losses and Costs (all as hereinafter defined) resulting from the occurrence of the Early Termination Date. The Non-Defaulting Party shall aggregate such Gains, Losses and Costs with respect to all Transactions under the Contract in a single net amount (the "Settlement Amount") and notify the Defaulting Party of the Settlement Amount and the basis of the calculation thereof, and any other amounts due or set-off in accordance with this Section 10. The Non-Defaulting Party shall set-off from the Settlement Amount and other amounts due to the Non-Defaulting Party pursuant to this Section 10 the present value of any amounts due or to become due from the Non-Defaulting Party to the Defaulting Party under any Transaction under the Contract. At its sole option and without prior notice to the Defaulting Party, the Non-Defaulting Party may set-off any Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held in connection with and Eligible Collateral relating to the Contract. As soon as practical after the liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Settlement Amount, and whether the 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 such 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 Settlement Amount shall be paid by the close of 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 Settlement Amount shall accrue from the date due until, by not including, the date of payment at the Interest Rate.

**10.3.** As used in this Section 10. (i) "Interest Rate" shall mean the lower of the then-effective prime interest rate published under "Money Rates" by The Wall Street Journal, plus two (2) percent per annum from the date due until, but not including, the date of payment or the maximum applicable lawful interest rate, whichever is less; (ii) "Costs" shall mean brokerage fees, commissions and other similar Transaction costs and expenses reasonably incurred by the Non-Defaulting Party in entering into new arrangements that replace a Transaction; and all reasonable attorney's fees and expenses incurred by the Non-Defaulting Party in connection with Transactions terminated pursuant to this Section 10.; (iii) "Losses" shall mean an amount equal to the present value of the economic loss (exclusive of Costs), if any, to the Non-Defaulting Party resulting from the termination of a Transaction determined in a commercially reasonable manner as of the Early Termination Date; and (iv) "Gains" shall mean an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to the Non-Defaulting Party resulting from the termination of Transaction determined in a commercially reasonable manner as of the Early Termination Date. To ascertain the present 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 contract 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. The rate of interest used in calculating net present value shall be the "London Interbank Offered Rate" interest rate for the relevant discount period, as quoted in the "Treasury Bond, Notes & Bills" section of the Wall Street Journal most recently published as of such date. A party shall not be required to enter into a replacement Transaction(s) in order to determine the present value of a terminated Transaction. Any extensions of the term of a Transaction under the Contract that are not binding on the parties as of the Early Termination Date (including, but not limited, to "evergreen" provisions and options to extend) shall not be considered in determining Losses or Gains from the termination thereof.

**10.4.** The Parties agree that a Transaction under the Contract shall constitute a "forward contract" within the meaning of the United States Bankruptcy Code.

**10.5** The Non-Defaulting Party's remedies under Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of Early Termination Date. The set-off/liquidation rights provided for in Sections 7.5 and 10 shall only apply to the specified obligations of the parties under the Base Contract and shall not apply to the obligations of any persons or corporation affiliated with the Parties which are not a party to the Contract. The set-off/liquidation rights provided for in Sections 7.5 and 10 shall not relieve any party's obligation to deliver or receive natural gas unless the Transaction Confirmation pertaining to such delivery or receipt is terminated as provided in Section 10.1, above. Each Party reserves to itself all rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract."

**Rider 11.** The last sentence of Section 11.3 shall be deleted and replaced with the following:

“In the event or to the extent that performance is affected by any or all of the circumstances listed above in this Section 11.3, the party whose performance is so affected shall not be excused from its responsibility for Imbalance Charges.”

**Rider 12.** The following paragraph replaces Section 12:

“The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written notice by either party; provided, however, that the provisions hereof shall survive termination of this Contract and continue to apply to any Transactions entered into between the parties prior to the date of termination of this Contract until such time as any and all such Transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment and provisions of Sections 1.5, 8.1, 8.2, 8.3, 8.4, 13.9, 13.10, 13.11, and 14 shall continue to apply.”

**Rider 13.** The following paragraphs will be added to Section 13:

**13.9** DISCLAIMER OF WARRANTIES EXCEPT FOR WARRANTIES MADE BY SELLER PURSUANT TO SECTIONS 5 AND 8, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**13.10** UCC - Except as otherwise provided for herein, the provisions of the Uniform Commercial Code (“UCC”) of the state whose laws shall govern this Contract shall be deemed to apply to all Transactions

**13.11** NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN, THE PARTIES HERETO WAIVE ANY AND ALL RIGHTS, CLAIMS OR CAUSES OF ACTION ARISING UNDER THIS AGREEMENT FOR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR FOR LOST PROFITS. THIS PROVISION SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

**Rider 14.** Add new Section 14, as follows:

**14. CONFIDENTIALITY**

**14.1** Neither party shall disclose the terms of this Contract, any Transaction Confirmation, and/or any information disclosed pursuant to Section 7.5 hereof to any third party absent written consent of the other party except where (i) disclosure is made to employees of the party or its affiliates, (ii) necessary to comply with any applicable law, order, regulation or exchange rule; provided, however, that each party shall notify the other party promptly upon receipt of any request to it in any proceeding that could result in an order requiring such disclosure and the party subject to such request shall use reasonable efforts to prevent

or limit such disclosure; or (iii) necessary to effectuate transportation of Gas pursuant to this Contract. As a condition to conducting any audit and/or being provided with any support documentation pursuant to Sections 7.4 and 7.5 respectively, each party acknowledges that the documents and records provided might contain proprietary or competitively sensitive information, which the reviewing party shall treat as confidential. Each party acknowledges that any breach of any of its obligations with respect to confidentiality or use of the disclosing party's confidential information hereunder is likely to cause or threaten irreparable harm to the disclosing party, and accordingly the reviewing party agrees that in the event of such breach the disclosing party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to preliminary and permanent injunctive relief.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Addendum to supplement and, where applicable, to modify and supersede the Base Contract by and between the parties.

SEQUENT ENERGY MANAGEMENT, L.P.

LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY *SDR*

By: *Robert M. Flavin*

By: *[Signature]*

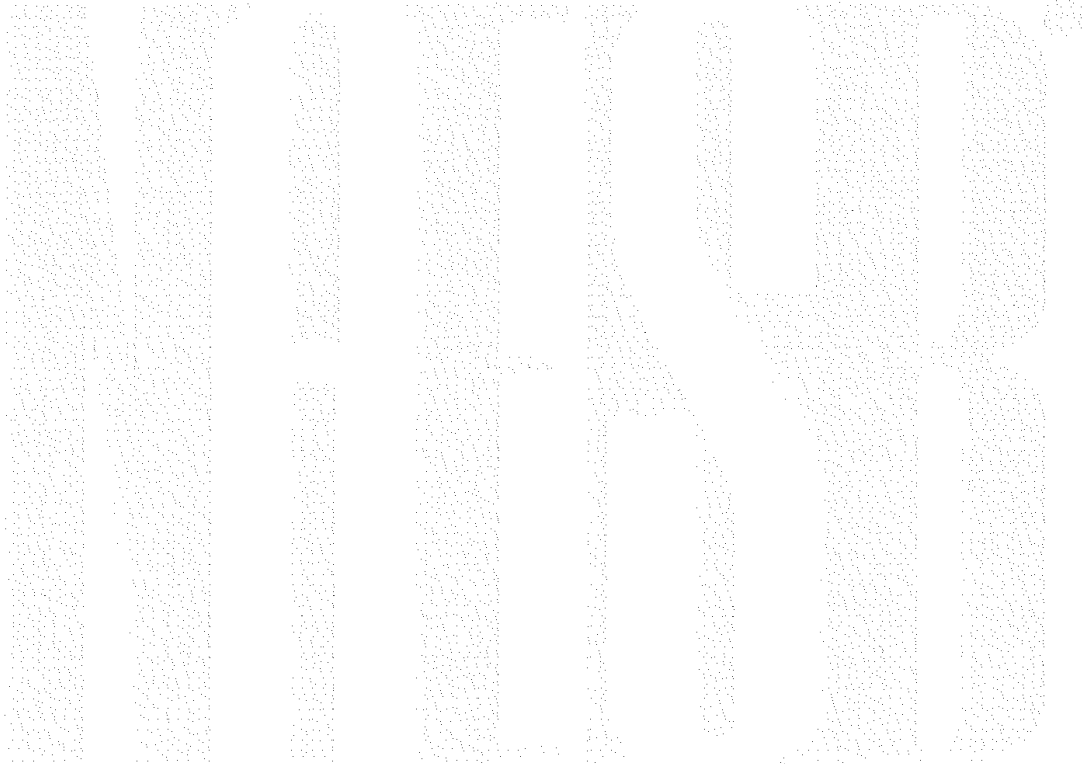
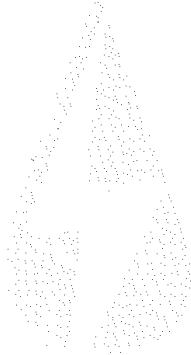
Name: Robert M. Flavin  
Title: Executive V.P. of Business  
Support & Development

Name: *[Signature]*  
Title: SR. VICE PRESIDENT

Date: 1/10/03 *[Signature]*

Date: LOUISVILLE GAS & ELECTRIC COMPANY  
KENTUCKY UTILITIES  
1-20-03

<b>BANK:</b> <b>ABA: ACCT:</b>	<b>ACH NUMBERS</b> <b>(IF APPLICABLE)</b>	<b>BANK:</b> Bank of America, Dallas TX <b>ABA:</b> 111000012 <b>ACCT:</b> 3752099133 <b>OTHER DETAILS:</b> <i>N/A</i>
<b>ATTN:</b> <b>ADDRESS:</b>	<b>CHECKS</b> <b>(IF APPLICABLE)</b>	<b>LGE/KU ATTN:</b> <u>Gas Regulatory Accounting</u> <b>ADDRESS:</b> <u>220 W Main St., 9th Fl</u> <u>Louisville KY 40202</u>



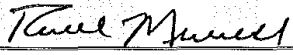
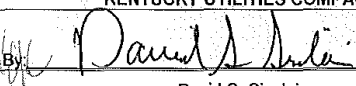
## Base Contract for Sale and Purchase of Natural Gas

(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:

<p><b>Section 1.2</b> Transaction Procedure  <input checked="" type="checkbox"/> Oral (default)  OR  <input type="checkbox"/> Written</p>	<p><b>Section 10.2</b> Additional Events of Default  <input checked="" type="checkbox"/> No Additional Events of Default (default)  <input type="checkbox"/> Indebtedness Cross Default  <input type="checkbox"/> Party A:  <input type="checkbox"/> Party B:  <input type="checkbox"/> Transactional Cross Default  <u>Specified Transactions:</u>  _____  _____</p>
<p><b>Section 2.7</b> Confirm Deadline  <input checked="" type="checkbox"/> 2 Business Days after receipt (default)  OR  <input type="checkbox"/> 5 Business Days after receipt</p>	
<p><b>Section 2.8</b> Confirming Party  <input checked="" type="checkbox"/> Seller (default)  OR  <input type="checkbox"/> Buyer</p>	
<p><b>Section 3.2</b> Performance Obligation  <input checked="" type="checkbox"/> Cover Standard (default)  OR  <input type="checkbox"/> Spot Price Standard</p>	<p><b>Section 10.3.1</b> Early Termination Damages  <input checked="" type="checkbox"/> Early Termination Damages Apply (default)  OR  <input type="checkbox"/> Early Termination Damages Do Not Apply</p>
<p><i>Note: The following Spot Price Publication applies to both of the immediately preceding.</i></p>	
<p><b>Section 2.31</b> Spot Price Publication  <input checked="" type="checkbox"/> Gas Daily Midpoint (default)  OR  <input type="checkbox"/> _____</p>	<p><b>Section 10.3.2</b> Other Agreement Setoffs  <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default)  <input checked="" type="checkbox"/> Bilateral (default)  <input type="checkbox"/> Triangular  OR  <input type="checkbox"/> Other Agreement Setoffs Do Not Apply</p>
<p><b>Section 6</b> Taxes  <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default)  OR  <input type="checkbox"/> Seller Pays Before and At Delivery Point</p>	
<p><b>Section 7.2</b> Payment Date  <input checked="" type="checkbox"/> 25<sup>th</sup> Day of Month following Month of delivery (default)  OR  <input type="checkbox"/> Day of Month following Month of delivery</p>	<p><b>Section 15.5</b> Choice Of Law  <u>New York</u></p>
<p><b>Section 7.2</b> Method of Payment  <input checked="" type="checkbox"/> Wire transfer (default)  <input type="checkbox"/> Automated Clearinghouse Credit (ACH)  <input type="checkbox"/> Check</p>	<p><b>Section 15.10</b> Confidentiality  <input checked="" type="checkbox"/> Confidentiality applies (default)  OR  <input type="checkbox"/> Confidentiality does not apply</p>
<p><b>Section 7.7</b> Netting  <input checked="" type="checkbox"/> Netting applies (default)  OR  <input type="checkbox"/> Netting does not apply</p>	
<p><input checked="" type="checkbox"/> Special Provisions Number of sheets attached: <u>6</u>  <input type="checkbox"/> Addendum(s): _____</p>	

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

SEMPRA MIDSTREAM SERVICES, INC.	PARTY NAME	LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY
By: 	SIGNATURE	By: 
Russell Murrell	PRINTED NAME	David S. Sinclair
Managing Director	TITLE	Vice President Energy Marketing



# 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

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.

2.1. "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.

2.2. "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.

- 2.3. "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.
- 2.4. "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.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "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.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "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.
- 2.10. "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.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "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.
- 2.13. "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.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "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.
- 2.18. "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.
- 2.19. "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.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "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.
- 2.23. "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.

- 2.24. "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.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "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.
- 2.27. "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.
- 2.28. "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.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "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.
- 2.31. "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.
- 2.32. "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.
- 2.33. "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.
- 2.34. "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.
- 2.35. "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>		
<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>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):		
<b>Special Conditions:</b> _____ _____ _____		
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____	

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF  
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS  
Dated July 2, 2012**

**by and between  
Sempra Midstream Services, Inc. ("SMSI")  
And**

**Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")**

**SECTION 1. PURPOSES AND PROCEDURES**

The following sections shall be added to Section 1:

"1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a contract contemplated herein."

"1.6 Each party may, at its option and expense, maintain equipment necessary to record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, the negligence be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated if no recording is made, or should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation."

"1.7 All Gas purchase and sale transactions are entered into in reliance on the fact that the Base Contract, all Credit Support Obligation(s) related to this Contract, each Gas purchase and sale transaction hereunder, and each Transaction Confirmation constitute a single agreement between the parties. Any physical gas transactions traded and confirmed through the Intercontinental Exchange, LLC, or any other similar electronic trading platform, shall be governed by the terms and conditions of this Base Contract, as may be amended from time to time.

**SECTION 2. DEFINITIONS**

Section 2.12 "Cover Standard" shall be amended by deleting "(or an alternate fuel if elected by Buyer and replacement Gas is not available)" from the definition.

The following Sections shall be added to the end of Section 2:

2.36 "Costs" means (a) losses associated with transmission/transportation costs related to the Terminated Transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party's reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a Terminated Transaction; and (c) commercially reasonable attorneys' fees and court costs, if any, incurred in connection with enforcing its rights in respect of the Terminated Transactions.

2.37 "Credit Support Document" shall mean, as to a party (the "First Party"), a guaranty from a Guarantor, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer, amount and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.38 "Bligible Collateral" shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.39 "Futures Contract" shall mean the standardized contract for the purchase or sale of Gas that is traded for future delivery under the applicable trading board's regulations.

2.40 "Investment Grade Rating" shall mean a party's, or such Party's Guarantor's, unsecured, senior long-term debt obligations (not supported by third party credit enhancements) rating from Moody's of "Baa3" or higher and a rating from S&P of "BBB-" or higher; or, if such entity does not have a rating for its senior unsecured long-term debt, then such rating then assigned to such entity as its "corporate credit rating" assigned by S&P, or the "long-term issuer rating" assigned by Moody's. Moody's shall mean Moody's Investor Services, Inc. or its successors. S&P shall mean the Standard & Poor's Rating Group (a division of The McGraw-Hill Companies) or its successors.

2.41 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

2.42 "Material Adverse Change" shall mean a party's, or such Party's Guarantor's, rating falls below an Investment Grade Rating.

2.43 "NYMEX" shall mean the New York Mercantile Exchange.

2.44 "Option" means a transaction in which, in exchange for the payment of the Premium by the Option Buyer, the Option Seller grants the Option Buyer the right to enter into a transaction on the agreed terms set forth in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which terms shall include, among other terms, which of the Option Buyer and the Option Seller is the Buyer and which is the Seller under such transaction.

2.45 "Option Buyer" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has acquired the right, upon exercise of the Option to receive Gas (if the Option Buyer is identified as "Buyer") or deliver Gas (if the Option Buyer is identified as "Seller").

2.46 "Option Seller" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has sold the Option. If the Option is exercised by the Option Buyer, the Option Seller will be obligated to deliver Gas (if the Option Buyer is identified as "Buyer") or receive Gas (if the Option Buyer is identified as "Seller").

2.47 "Premium" means the amount identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the amount payable by the Option Buyer to the Option Seller in exchange for an Option.

2.48 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by Seller and/or the Buyer for verification and/or evidentiary purposes."

### SECTION 3. PERFORMANCE OBLIGATION

Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase "and no such replacement or sale is available" in (iii):

"or in the event that the non-breaching party elects, at its sole option, not to replace or re-sell to a third party the Gas not delivered"

### SECTION 5. QUALITY AND MEASUREMENT

Delete the existing paragraph under Section 5 in its entirety and replace with the following:

"All Gas delivered by Seller shall meet the pressure, quality and heat specification of the Receiving Transporter. BTU and volume measurements shall be made at the pressure and temperature basis of the Receiving Transporter in accordance with the provisions of such pipeline's then effective Federal Energy Regulatory Commission ("FERC") Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such Receiving Transporter."

### SECTION 6. TAXES

Add the following after the first sentence in Section 6 for "Buyer Pays At and After Delivery Point":

All such taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority."

Add as the last paragraph of Section 6:

"6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point ("Governmental Charge"), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s)."

### SECTION 7. BILLING, PAYMENT AND AUDIT

Add the following language to the end of the first sentence of Section 7.3:

"including all supporting documentation acceptable in industry practice to support the amount charged."

Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ..." in its entirety and replacing with:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any

specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).

#### **SECTION 8. TITLE, WARRANTY, AND INDEMNITY**

Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8.2" and "AND IN SECTION 15.8" in the last sentence.

Add the following to the end of Section 8:

"8.6 In the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold hereunder or the proceeds from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction."

#### **SECTION 9. NOTICES**

9.4 shall be amended by:

- (a) in the first sentence delete the words "commercially acceptable";
- (b) after the words "payment information" and before the word "shall" add "identified on the cover page under Accounting Information"; and
- (c) delete "ten (10)" and replace with "five (5)".

#### **SECTION 10. FINANCIAL RESPONSIBILITY**

Delete the second sentence of Section 10.1 in its entirety and replace with the following:  
"Adequate Assurance of Performance" shall mean the provision of Eligible Collateral."

Section 10.2 shall be amended by

- (a) deleting "or" before "(ix)"; and
- (b) inserting in the tenth line after the phrase "Additional Event of Default;" the phrase "or (x) suffers a Material Adverse Change; provided that, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party provides within 48 hours but at least two (2) Business Days of receipt of written notice from the other party and maintains for so long as the Material Adverse Change is continuing Eligible Collateral to the other party"; and
- (c) adding at the end before the "." in the last sentence: "provided that no suspension of performance shall continue for more than ten (10) Business Days unless an Early Termination Date has been declared and the Non-Defaulting Party has given Notice thereof in accordance with Section 10.3."

Amend Section 10.3 by deleting from the sixth line the phrase "legally permissible" and replace with "practicable and not prohibited by applicable law"

Section 10.3.1 "Early Termination Damages Apply" shall be amended by:

- (a) adding at the end of the last sentence of the second paragraph:

"(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR");"

and

- (b) adding the following as a third paragraph:

"In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions."

#### **SECTION 11. FORCE MAJEURE**

Add the following to the end of Section 11:

"11.7 Any party claiming Force Majeure (the "Claiming Party") as an excuse for performance shall provide the other party (the Non-claiming Party) a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days."

11.8 During the event of Force Majeure, the Claiming Party, if it is Seller,\* must cease interruptible deliveries to other markets prior to suspending the performance obligations under the Firm Transaction affected by such Force Majeure event. The Claiming Party, if it is Seller, must treat the other party equitably with its other Firm customers on a proportionate basis with regard to the remaining supply available for market.

Insert in Section 15.10 the phrase “provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure” at the end of (i).

Section 15.12 shall be amended by:

- (a) adding in the second sentence the words “regulatory commission or similar body” after the word “mediation” and before the word “or”;
- (b) Add the following to the beginning of the third sentence:  
“ In the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, :
- (c) lower case “neither” in the third sentence; and
- (d) add the following to the end of the third sentence after the word “form” and before the “.” “or do not comply with the best evidence rule.

The following Sections shall be added:

15.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:

(a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.

(b) Seller recognizes that Buyer may verify title to the Gas purchased and sold hereunder and agrees to provide all information requested by Buyer for such verification within thirty (30) days of such request. Subject to the other provisions of this Section, Buyer agrees to make payment to Seller while title is being verified. If Buyer requires a Division Order Title Opinion to verify Seller’s title or right to receive payments due hereunder, Seller agrees to provide to Buyer upon written request, without cost to Buyer, a Division Order Title Opinion satisfactory to Buyer within three (3) months from Seller’s receipt of Buyer’s written request. In the event that Seller does not provide a Division Order Title Opinion to Buyer within this period, Buyer may withhold any payments due hereunder, without payment of interest, until Buyer has received a Division Order Title Opinion. Moreover, in the event of any claim or litigation, at any time, concerning Seller’s title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer’s satisfaction. Notwithstanding the foregoing, Seller acknowledges that Buyer may rely entirely on the information provided by Seller or as set out on any Transaction Confirmation in making payments due hereunder. Buyer assumes no responsibility to review or approve any title information provided by Seller or any title information reflected on any Transaction Confirmation or to audit, compare, or update any such information against any title opinion or other information furnished or acquired pursuant to incidental to this Contract.

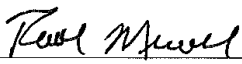
(c) For purposes of this Section 15.13, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.

15.14 To the extent, if any, that a transaction does not qualify as a “first sale” as defined by the Natural Gas Act and §§ 2 and 601 of the Natural Gas Policy Act, each party irrevocably waives its rights, including its rights under §§ 4-5 of the Natural Gas Act, unilaterally to seek or support a change in the rate(s), charges, classifications, terms or conditions of this Contract, any transaction hereunder or any other agreements entered into in connection with this Contract (collectively, the “Covered Agreements”). By this provision, each party expressly waives its right to seek or support: (i) an order from the U.S. Federal Energy Regulatory Commission (“FERC”) finding that the market-based rate(s), charges, classifications, terms or conditions agreed to by the parties under the Covered Agreements are unjust and unreasonable; or (ii) any refund with respect thereto. Each party agrees not to make or support such a filing or request, and that these covenants and waivers shall be binding notwithstanding any regulatory or market changes that may occur hereafter. Absent the agreement of both parties to the proposed change, the standard of review for changes to any section of the Covered Agreements proposed by a party (to the extent that any waiver as set forth in this Part 7(n)(ii) is unenforceable or ineffective as to such party), a non-party or FERC acting sua sponte, shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), or, if such standard is not available as a matter of law, the most stringent standard of review permissible under applicable law.

## SECTION 16. OPTION

16.1 Notwithstanding anything in the Contract to the contrary, if the parties have agreed that a particular transaction under this Contract is an Option, then prior to the exercise of the Option by Option Buyer the sole obligation of Option Buyer under such transaction shall be to pay the Premium for such Option and Option Seller shall have no obligation under such transaction. Upon the exercise of an Option by Option Buyer, each of Option Buyer and Option Seller shall be obligated to perform and entitled to performance under the Contract in connection with such transaction as either Buyer or Seller as indicated in the Transaction Confirmation or the parties’ oral or electronic agreement, as applicable.”

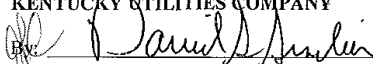
SEMPRA MIDSTREAM SERVICES, INC.

By: 

Name: Russell Murrell

Title: Managing Director

LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY

By: 

Name: David S. Sinclair

Title: Vice President Energy Marketing



SEMPRA MIDSTREAM SERVICES, INC.

By: *Russell Murrell*

Name: Russell Murrell

Title: Managing Director

LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY

*David S. Sinclair*

Name: David S. Sinclair

Title: Vice President Energy Marketing

DS  
JB

<b>BANK:</b> <b>ABA:</b> <b>ACCT:</b> <b>OTHER DETAILS:</b> For the Account of	<b>ACH NUMBERS</b> <b>(IF APPLICABLE)</b>	<b>BANK:</b> Bank of America, Dallas TX <b>ABA:</b> 111000012 <b>ACCT:</b> 3752099133 <b>OTHER DETAILS:</b> <u>N/A</u>
<b>ATTN:</b> _____ <b>ADDRESS:</b> _____	<b>CHECKS</b> <b>(IF APPLICABLE)</b>	<u>LGE/KU</u> <b>ATTN:</b> <u>Gas Regulatory Accounting</u> <b>ADDRESS:</b> <u>220 W Main St., 9th Fl</u> <u>Louisville KY 40202</u>

## 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> Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default <input checked="" type="checkbox"/> No Additional Events of Default (default) <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____
<b>Section 2.7</b> Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> 5 Business Days after receipt	<b>Section 10.3.1</b> Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Section 2.8</b> Confirming Party <input checked="" type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer <input type="checkbox"/>	<b>Section 10.3.2</b> Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
Note: The following Spot Price Publication applies to both of the immediately preceding.	
<b>Section 2.31</b> Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____	<b>Section 15.5</b> Choice Of Law _____ <u>New York</u> _____
<b>Section 6</b> Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	<b>Section 15.10</b> Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.2</b> Payment Date <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 7.7</b> Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply
<input checked="" type="checkbox"/> Special Provisions Number of sheets attached: <u>5</u> <input type="checkbox"/> Addendum(s): _____	

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

Range Resources – Appalachia, LLC	PARTY NAME	LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY
By:	SIGNATURE	By:
Gregory Davis	PRINTED NAME	David S. Sinclair
Vice President – Principal Marketing and Midstream Officer	TITLE	Vice President Energy Supply and Analysis

## 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

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.

2.1. "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.

2.2. "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.

- 2.3. "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.
- 2.4. "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.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "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.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "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.
- 2.10. "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.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "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.
- 2.13. "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.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "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.
- 2.18. "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.
- 2.19. "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.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "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.
- 2.23. "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.

- 2.24. "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.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "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.
- 2.27. "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.
- 2.28. "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.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "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.
- 2.31. "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.
- 2.32. "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.
- 2.33. "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.
- 2.34. "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.
- 2.35. "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.

<p><b>The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.</b></p> <p><b>Cover Standard:</b></p> <p>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.</p>
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**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>		
<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>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):		
<b>Special Conditions:</b> _____ _____		
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____	

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF  
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS  
Dated October 13, 2014**

**by and between  
Range Resources – Appalachia, LLC (“Range”)**

**And  
Louisville Gas and Electric Company and Kentucky Utilities Company (“LGE/KU”)**

**SECTION 1. PURPOSES AND PROCEDURES**

The following sections shall be added to Section 1:

“1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a transaction contemplated herein.”

“1.6 Each party may, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, its negligence whether it be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions and retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation.”

**SECTION 2. DEFINITIONS**

Section 2.12 “Cover Standard” shall be amended by deleting “(or an alternate fuel if elected by Buyer and replacement Gas is not available)” from the definition.

The following Sections shall be added to the end of Section 2:

2.36 “Costs” means (a) losses associated with transmission/transportation costs related to the Terminated Transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party’s reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a Terminated Transaction; and (c) commercially reasonable attorneys’ fees and court costs, if any, incurred in connection with enforcing its rights in respect of the Terminated Transactions.

2.37 “Credit Support Document” shall mean, as to a party (the “First Party”), a guaranty from a Guarantor, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer, amount and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.38 “Eligible Collateral” shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.39 “Letter of Credit” means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least “A-” from S&P or “A3” from Moody’s.

**SECTION 3. PERFORMANCE OBLIGATION**

Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase “and no such replacement or sale is available” in (iii):

“or in the event that the non-breaching party elects, at its sole option, not to replace or re-sell to a third party the Gas not delivered”

**SECTION 5. QUALITY AND MEASUREMENT**

Delete the existing paragraph under Section 5 in its entirety and replace with the following:

“All Gas delivered by Seller shall meet the pressure, quality and heat specification of the Receiving Transporter. BTU and volume measurements shall be made at the pressure and temperature basis of the Receiving Transporter in accordance with the provisions of such pipeline’s then effective Federal Energy Regulatory Commission (“FERC”) Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such Receiving Transporter.”

## SECTION 6. TAXES

Add the following after the first sentence in Section 6 for "Buyer Pays At and After Delivery Point":

All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority."

Add as the last paragraph of Section 6:

"6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point ("Governmental Charge"), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s)."

## SECTION 7. BILLING, PAYMENT AND AUDIT

Add the following language to the end of the first sentence of Section 7.3:

"including all supporting documentation acceptable in industry practice to support the amount charged"

Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ..." in its entirety and replacing with:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).

Section 7.8 shall be added as follows:

"7.8 Upon either party's request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month."

## SECTION 8. TITLE, WARRANTY, AND INDEMNITY

Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8.2" and "AND IN SECTION 15.8" in the last sentence.

Add the following to the end of Section 8:

"8.6 In the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction."

## SECTION 9. NOTICES

9.4 shall be amended by:

- (a) in the first sentence delete the words "commercially acceptable";
- (b) after the words "payment information" and before the word "shall" add "identified on the cover page under Accounting Information"; and
- (c) delete "ten (10)" and replace with "two (2)".

## SECTION 10. FINANCIAL RESPONSIBILITY

Delete the second sentence of Section 10.1 in its entirety and replace with the following:

"Adequate Assurance of Performance' shall mean the provision of Eligible Collateral."



Amend Section 10.3 by deleting from the sixth line the phrase "legally permissible" and replace with "practicable and not prohibited by applicable law"

Section 10.3.1 "Early Termination Damages Apply" shall be amended by:

(a) adding at the end of the last sentence of the second paragraph:

"(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR");  
and

(b) adding the following as a third paragraph:

"In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions."

## SECTION 11. FORCE MAJEURE

Add the following to the end of Section 11:

"11.7 Any party claiming Force Majeure (the "Claiming Party") as an excuse for performance shall provide the other party (the Non-claiming Party) a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days."

"11.8 During the event of Force Majeure, the Claiming Party, if it is Seller, must cease interruptible deliveries to other markets prior to suspending the performance obligations under the Firm Transaction affected by such Force Majeure event."

"11.9 It is expressly understood and agreed that, notwithstanding any term or provision of this Agreement or in the form of confirmation submitted by Counterparty and accepted by Range, each and every Transaction is subject to Force Majeure, as set forth under Section 11, in the event of any Force Majeure event affecting, preventing or limiting the production, processing, gathering or transportation of Range's gas."

## SECTION 12. TERM

Section 12 shall be amended by

The second sentence of Section 12 is hereby deleted and replaced with the following:

"The rights of either party pursuant to: (i) Section 7.6, (ii) Section 10, (iii) Section 13, (iv) Section 15, (v) the obligation to make payment hereunder, including Sections 7.4 and 7.7, and (vi) the obligation of either party to indemnify the other pursuant hereto, including Section 8.3, shall survive the termination of the Base Contract or any transaction."

## SECTION 14. MARKET DISRUPTION

Section 14 shall be deleted in its entirety and replaced with the following:

Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.

(A) If a Market Disruption Event has occurred during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or 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 fifth 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-Affiliate 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. Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains two quotes and the other party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both parties each obtain one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one party is able to obtain a quote, the obtained quotation shall be

utilized. For purposes of the foregoing sentence, if more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded.

Notwithstanding the foregoing, if the Price Source retrospectively issues a Floating Price, in respect of a Determination Period (a "Delayed Floating Price"), then, if the Delayed Floating Price is issued by the Price Source in respect of a Determination Period (i) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Determination Period or (ii) after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment notwithstanding any subsequent publication unless the Parties expressly agree otherwise.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction."

"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.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

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.

(B) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) calendar days after publication or announcement.

#### SECTION 15. MISCELLANEOUS

Insert in Section 15.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line.

Insert in Section 15.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).

Section 15.12 shall be amended by:

(a) adding in the second sentence the words "regulatory commission or similar body" after the word "mediation" and before the word "or";

(b) adding the following to the beginning of the third sentence:

"In the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, and the original document(s) is/are unobtainable;

(c) lower case "neither" in the third sentence; and

(d) add the following to the end of the third sentence after the word "form" and before the "." "or do not comply with the best evidence rule.

The following Sections shall be added:

15.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:

(a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.

(c) For purposes of this Section 15.15, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.

Range Resources – Appalachia, LLC

By: Gregory Davis

Name: Gregory Davis

Title: Vice President – Principal Marketing and Midstream Officer

LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY

By: David S. Sinclair

Name: David S. Sinclair

Title: Vice President Energy Marketing

# 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 2.7.

**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. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

### SECTION 2. DEFINITIONS

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.

2.1. "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.

2.2. "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.

2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).

- 2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 2.5. "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.
- 2.6. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.7. "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.
- 2.8. "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.
- 2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.10. "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.
- 2.11. "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 an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.
- 2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.15. "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.
- 2.16. "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.
- 2.17. "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.
- 2.18. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.19. "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.
- 2.20. "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.
- 2.21. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.22. "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.
- 2.23. "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.
- 2.24. "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.
- 2.25. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.26. "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.

2.27. "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.

2.28. "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.

2.29. "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); 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); or (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, then the sole and exclusive remedy of the performing party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s). 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. 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 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 14.8, 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 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 or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. 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, payments 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 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.

## 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), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

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; or (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; 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 or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, 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:**

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 (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.

**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 owed to the Non-Defaulting Party against any margin or other collateral held by it 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 such 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 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 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; 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 Agreement; (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 and Section 10, 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. MISCELLANEOUS

14.1. 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.

14.2. 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.

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

14.4. 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.

14.5. 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.

14.6. 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.

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

14.8. 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.

14.9. 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.

14.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 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, or (iv) 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.

14.11 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.

**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; padding: 5px;"> <b>Firm (Fixed Quantity):</b>                      _____ MMBtus/day  <input type="checkbox"/> EFP                 </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> <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; padding: 5px;"> <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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____  By: _____  Title: _____  Date: _____	Buyer: _____  By: _____  Title: _____  Date: _____			



## Special Provision to the Base Contract

### SPECIAL PROVISIONS – U.S. NAESB

Special Provisions (“Special Provisions”) attached to and forming a part of that certain Base Contract for Short-Term Sale and Purchase of Natural Gas dated April 1, 2009 (the “Base Contract”) by and between: Louisville Gas and Electric Co./Kentucky Utilities Co. (“LGE”/“KU”) and NJR Energy Services Company (“NJRES”).

The terms and conditions set forth in these Special Provisions shall supplement and form part of the Base Contract and shall govern with respect to any conflicting or inconsistent provision in the Base Contract. Except as amended herein, the Base Contract shall remain in full force and effect. Capitalized terms used in these Special Provisions shall have the meanings ascribed to them in the Base Contract. Section references in these Special Provisions refer to a Section of the General Terms and Conditions of the Base Contract, unless stated otherwise.

#### SECTION 1. PURPOSES AND PROCEDURES

1. Section 1.2 “Oral Transaction Procedure” shall be amended by (a) inserting “a recorded” before “telephone” in the second line; and (b) inserting “recorded” before “telephonic” in the fifth line.

2. The following sections shall be added to Section 1:

“1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a contract contemplated herein.”

“1.6 Each party shall, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, the negligence be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation.”

#### SECTION 2. DEFINITIONS

3. Section 2.10 “Cover Standard” shall be amended by deleting “(or an alternate fuel if elected by Buyer and replacement Gas is not available)” from the definition.

4. The following Sections shall be added to the end of Section 2:

“2.30 “Costs” means (a) losses associated with transmission/transportation costs related to the terminated transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party’s reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a terminated transaction; and (c) commercially reasonable attorneys’ fees and court costs, if any, incurred in connection with enforcing its rights in respect of the terminated transactions.

## Special Provision to the Base Contract

2.31 "Credit Support Document" shall mean, as to a party (the "First Party"), a guaranty, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.32 "Eligible Collateral" shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.33 "Futures Contract" shall mean the standardized contract for the purchase or sale of Gas that is traded for future delivery under the applicable trading board's regulations.

2.34 "Investment Grade Rating" shall mean:

For LGE/KU - its unsecured, senior long-term debt obligations (not supported by third party credit enhancements) rating from Moody's of "Baa3" or higher and a rating from S&P of "BBB-" or higher; or, if such entity does not have a rating for its senior unsecured long-term debt, then such rating then assigned to such entity as its "corporate credit rating" assigned by S&P, or the "long-term issuer rating" assigned by Moody's. Moody's shall mean Moody's Investor Services, Inc. or its successors. S&P shall mean the Standard & Poor's Rating Group (a division of McGraw-Hill Inc.) or its successors.

For NJRES - No definition since NJRES is not rated.

2.35 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's and has a combined capital surplus of at least USD10 billion.

2.36 "Material Adverse Change" shall mean (a) for LGE/KU that LGE/KU fails to maintain an Investment Grade Rating; and (b) for NJRES, that the Tangible Net Worth of New Jersey Resources Corporation falls below \$350 million.

2.37 "NYMEX" shall mean the New York Mercantile Exchange.

2.38 "Option" means a transaction in which, in exchange for the payment of the Premium by the Option Buyer, the Option Seller grants the Option Buyer the right to enter into a transaction on the agreed terms set forth in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which terms shall include, among other terms, which of the Option Buyer and the Option Seller is the Buyer and which is the Seller under such transaction.

2.39 "Option Buyer" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has acquired the right, upon exercise of the Option to receive Gas (if the Option Buyer is identified as "Buyer") or deliver Gas (if the Option Buyer is identified as "Seller").

2.40 "Option Seller" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has sold the Option. If the Option is exercised by the Option Buyer, the Option Seller will be obligated to deliver Gas (if the Option Buyer is identified as "Buyer") or receive Gas (if the Option Buyer is identified as "Seller").

## Special Provision to the Base Contract

2.41 "Premium" means the amount identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the amount payable by the Option Buyer to the Option Seller in exchange for an Option.

2.42 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by Seller and/or the Buyer for verification and/or evidentiary purposes."

2.43 "Tangible Net Worth" or "TNW" – Total assets less intangible assets and total liabilities calculated in accordance with generally accepted accounting principles in the United States. Intangible assets include, but are not limited to, assets such as goodwill, patents, copyrights, trademarks and other unidentified and illiquid assets. TNW will be based on the most recently published financial statements of New Jersey Resources Corporation as posted on [www.sec.gov](http://www.sec.gov) or [www.njliving.com](http://www.njliving.com).

### SECTION 3. PERFORMANCE OBLIGATION

5. Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase "and no such replacement or sale is available" in (iii):

"or in the event that the non-breaching party elects, at its sole option not to replace undelivered Gas or re-sell unaccepted Gas"

### SECTION 5. QUALITY AND MEASUREMENT

6. Delete the existing paragraph under Section 5 in its entirety and replace with the following:

"All Gas delivered by Seller shall meet the pressure, quality and heat specification of the Receiving Transporter. BTU and volume measurements shall be made at the pressure and temperature basis of the Receiving Transporter in accordance with the provisions of such pipeline's then effective Federal Energy Regulatory Commission ("FERC") Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such Receiving Transporter."

### SECTION 6. TAXES

7. Add the following language after the first sentence of Section 6 designated as *Buyer Pays At and After Delivery Point*:

"All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority."

8. Add as the last paragraph of Section 6:

"6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point ("Governmental Charge"), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s).

### SECTION 7. BILLING, PAYMENT AND AUDIT

9. Add the following language to the end of Section 7.3:



## Special Provision to the Base Contract

“including all supporting documentation acceptable in industry practice to support the amount charged”

10. Section 7.4 shall be amended by deleting the last sentence “In the event the parties are unable ...” in its entirety and replaced with:

“Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived.”

11. Section 7.5 shall be amended by inserting “U.S.” between “then-effective” and “prime rate” in subsection (i).

12. Section 7.7 is amended by adding the following clause after the clause “subject to netting under this Section” at the end of the first sentence:

“provided further, however, that the party due payment under Section 7.3 may, by agreement of the parties, net all sums due thereunder against any amounts payable by it when making payments under Section 7.”

13. Section 7.8 shall be added as follows:

“7.8 Upon either party’s request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month.”

## SECTION 8. TITLE, WARRANTY, AND INDEMNITY

14. Section 8.1 is hereby amended by adding the word “assume” after the word “and” on the third line thereof.

15. Section 8.2 shall be amended by inserting the phrase “SECTION 5,” between “SECTION 8.2” and “AND IN SECTION 14.8” in the last sentence.

16. Add the following to the end of Section 8:

“8.5 In the event of any claim or litigation, at any time, concerning Seller’s title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceeds from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer’s satisfaction.”

## SECTION 10. FINANCIAL RESPONSIBILITY

## Special Provision to the Base Contract

17. Delete the last sentence of Section 10.1 in its entirety and replace with the following:

“Adequate Assurance of Performance” shall mean the provision of Eligible Collateral

18. Amend Section 10.2 as follows:

(a) insert “if any” after “guarantor” in the first (1<sup>st</sup>) line

(b) delete “or” before “(viii)”

(c) insert in the ninth line after the phrase “such payment is due” the phrase “ (ix) suffers a Material Adverse Change; provided that, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party provides within 48 hour but at least one (1) Business Day of receipt of written notice from the other party and maintains for so long as the Material Adverse Change is continuing Eligible Collateral to the other party; “(x) repudiate, reject or challenge the validity of, this Contract or any applicable guaranty; (xi) transfer all or substantially all of its assets or merges into or consolidates with any entity (A) where the merging party’s obligations are not assumed by operation of law or written instrument or pursuant to an agreement reasonably satisfactory to the other party or (B) where the creditworthiness of the resulting entity is materially weaker than that of such party immediately before such transfer, merger or consolidation in the other party’s reasonable opinion; (xii) have made any representation or warranty herein or in any applicable guaranty which is false or misleading in any material respect when made or when deemed made or repeated; or (xiii) fail to perform any material covenant or obligation set forth in this Contract (except to the extent constituting a separate Event of Default, and except for such party’s obligations to deliver or receive Gas, the exclusive remedy for which is provided in Section 3) if such failure is not remedied within ten (10) Business Days after written notice thereof;”

19. Amend Section 10.3 by

deleting from the second (2<sup>nd</sup>) sentence the phrase “or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate”

20. Section 10.3.1 “Early Termination Damages Apply” shall be amended by adding at the end of the last sentence of the second paragraph:

“(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or “LIBOR”)”

21. Add the following to the end of Section 10:

“10.8 In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions.”

“10.9 No suspension pursuant Section 10.2 shall continue for more than ten (10) Business Days unless an Early Termination Date has been declared and the Defaulting Party has been given notice thereof in accordance with Section 10.3.”

## SECTION 11. FORCE MAJEURE

22. Add the following shall be added to the end of Section 11

“11.7 Any party claiming Force Majeure (the “Claiming Party”) as an excuse for performance shall provide the other party (the Non-claiming Party”) a good faith estimate of the duration of the Force Majeure.

11.8 During the event of Force Majeure, the Claiming Party, if it is Seller, must cease interruptible deliveries to other markets prior to suspending the performance obligations under the Firm transaction affected by such Force Majeure event, but only to the extent that the interruptible deliveries to those other markets can be used in a commercially

## Special Provision to the Base Contract

reasonable manner to satisfy Seller's Firm performance obligations hereunder. The Claiming Party, if it is Seller, must treat the Buyer equitably with its other Firm customers on a proportionate basis with regard to the remaining supply available for market.

### SECTION 12. TERM

23. **Section 12 shall be deleted in its entirety and replaced with:**

"The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written Notice by either party; provided, however, that, to the extent necessary, the provisions hereof shall survive termination of this Contract and continue to apply to any transactions entered into between Seller and Buyer prior to the date of termination of this Contract until such time as any and all such transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment and provisions of Sections 1.6, 7.6, 7.7, 8.3, 8.4, 10 and 13 shall continue to apply."

### SECTION 14. MISCELLANEOUS:

24. **Insert in Section 14.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4<sup>th</sup>) line.**

25. **Section 14.1 is amended by replacing subsection (ii) of the second sentence with the following:**

"(ii) transfer or assign this Contract to any affiliate or to any person or entity succeeding to all or substantially all of the transferring party's assets if (A) the transferring party or its guarantor, if any, agree in writing to remain liable for the obligations of the transferee or (B) the creditworthiness of the transferee is equal to or better than that of the transferring party or its guarantor (in the other parties reasonable opinion), if any, immediately preceding such transfer and the transferee agrees in writing to be bound by this Contract, and (C) in the case of either (A) or (B) the transfer has no adverse tax consequences to the non-assigning party, without the prior approval of the other party."

26. **Section 14.8 is hereby deleted in its entirety and replaced with the following:**

"On the date of this Base Contract and the date of entering into each transaction, each party represents and warrants to the other party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction in which a transaction will be performed by it; (ii) it has all regulatory authorizations necessary for it to legally enter into and perform its obligations under this Base Contract; (iii) the execution, delivery and performance of this Base Contract are within its powers, have been duly authorized by all necessary action and do not violate any terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, or the like applicable to it; (iv) each transaction when entered into in accordance with this Base Contract constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; (v) there are no bankruptcy proceedings pending or, to its knowledge, threatened against it which would result in it being or becoming bankrupt; (vi) there are no legal proceedings that could materially adversely affect its ability to perform its obligations under this Base Contract; (vii) it has knowledge and experience in financial matters and the gas industry that enable it to evaluate the merits and risks of entering into this Base Contract; and (viii) it is entering into this Base Contract as a principal and not as an agent for any party."

## Special Provision to the Base Contract

27. Insert in Section 14.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).

28. Section 14.11 is hereby deleted in its entirety and replaced with the following:

"EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY PROCEEDINGS RELATING TO THIS CONTRACT OR ANY TRANSACTION HEREUNDER. EACH PARTY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN NEW YORK CITY, BOROUGH OF MANHATTAN, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE EXCEPT NEW YORK GENERAL OBLIGATIONS LAW SECTIONS 5-1401 AND 5-1402. FOR ANY ACTION OR PROCEEDING RELATING TO THIS CONTRACT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM."

29. The following Sections shall be added:

14.12 Each party agrees that the provisions of this Contract supersede and replace in their entirety any requirements of law relating to adequate assurance of future performance, including without limitation Article 2 of the Uniform Commercial Code, as enacted in New York.

14.13 UCC - Except as otherwise provided for herein, the provisions of the Uniform Commercial Code ("UCC") of the state whose laws shall govern this Contract shall be deemed to apply to all transactions.

14.14 Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.

(A) Market Disruption. If a Market Disruption Event has occurred during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Delayed Floating Price (as defined below); provided however, if the Delayed Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, 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 fifth 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. Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains two quotes and the other party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both parties each obtain one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one party is able to obtain a quote, the obtained quotation shall be utilized. For purposes of the foregoing sentence, if more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only

## Special Provision to the Base Contract

one of the quotations shall be excluded. "Determination Period" means each calendar month during the term of the relevant transaction; provided that if the term of a transaction is less than one calendar month the Determination Period shall be the term of a transaction. "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.

Notwithstanding the forgoing, if the price source retrospectively issues a Floating Price, in respect of an affected Trading Day(s) (a "Delayed Floating Price"), then, if the Delayed Floating Price is issued by the Price Source in respect of a Determination Period (i) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Determination Period or (ii) after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment notwithstanding any subsequent publication unless the Parties expressly agree otherwise.

(B) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) calendar days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. **If a Party fails to give notice within thirty (30) calendar days after the publication or announcement of the correction that an amount is payable, then right to payment is waived for such correction.**

14.16 Each party hereby expressly waives all rights to, and expressly agrees not to contest, any transaction, or assert or otherwise raise any defenses or arguments related to any transaction under this Contract to the effect that such is not binding, valid or enforceable in accordance with its terms because either the employee(s) or representative(s) who entered into the transaction on behalf of a party, and who appeared to have the requisite authority to do so, did not, in fact, have such authority or because the provisions of certain applicable laws require the transaction to be in writing and/or executed by one or both parties."

## SECTION 15. OPTION

**Special Provision to the Base Contract**

15.1 Notwithstanding anything in the Contract to the contrary, if the parties have agreed that a particular transaction under this Contract is an Option, then prior to the exercise of the Option by Option Buyer the sole obligation of Option Buyer under such transaction shall be to pay the Premium for such Option and Option Seller shall have no obligation under such transaction. Upon the exercise of an Option by Option Buyer, each of Option Buyer and Option Seller shall be obligated to perform and entitled to performance under the Contract in connection with such transaction as either Buyer or Seller as indicated in the Transaction Confirmation or the parties' oral or electronic agreement, as applicable."

THE PARTIES DO HEREBY REPRESENT AND WARRANT THAT THE GENERAL TERMS AND CONDITIONS OF THE BASE CONTRACT HAVE NOT BEEN MODIFIED, ALTERED, OR AMENDED IN ANY RESPECT EXCEPT FOR THESE SPECIAL PROVISIONS WHICH ARE ATTACHED TO AND MADE A PART OF THE BASE CONTRACT.

IN WITNESS WHEREOF, the parties have executed these Special Provisions to supplement and, where applicable to modify and supersede the Base Contract between the parties.

LOUISVILLE GAS AND ELECTRIC CO./KENTUCKY UTILITIES CO.    NJR ENERGY SERVICES  
COMPANY

By David S. Sinclair 3/25/09  
Name: David S. Sinclair  
Title: Vice President – Energy Marketing

By Stephen Westhoven  
Name: Stephen Westhoven  
Title: Vice President, Energy Trading



September 24, 2015

Louisville Gas and Electric Co.  
Kentucky Utilities Co.  
220 West Main St.  
7<sup>th</sup> Floor  
Louisville, KY 40202  
Attn: Contract Administration  
Fax: (502) 627-4222

RE: Assignment of Base Contract for Sale and Purchase of Natural Gas between Louisville Gas and Electric Co. and Kentucky Utilities Co. (collectively, "you") and NET Holdings Management, LLC ("NET Holdings" or "we") dated October 1, 2007 (the "Contract") to NextEra Energy Power Marketing, LLC.

Dear Ladies and Gentlemen,

As you may be aware, NextEra Energy Partners, LP has agreed to wholly acquire NET Holdings. The acquisition will close in early October ("NET Acquisition Closing"). NET Holdings believes this combined platform will further strengthen our ability to serve our customers and we look forward to continuing our business relationship with you.

Upon the NET Acquisition Closing, NET Holdings will assign various contracts to the appropriate legal entities within the NextEra combined structure. Therefore, effective as of the NET Acquisition Closing, NET Holdings is assigning (the "Assignment") the Contract, including all confirmations and transactions thereunder, if any, to its affiliate, NextEra Energy Power Marketing, LLC, a Delaware limited liability company ("NEPM").

NextEra Energy Power Marketing is one of the nation's leading electricity and natural gas marketers and a key player in energy markets in the United States and Canada. NextEra Energy Power Marketing provides a wide range of electricity and gas commodity products as well as marketing and trading services. The size and scope of NEPM's operations and high creditworthiness, among the strongest anywhere in the industry, allow NEPM to deliver the highest quality products and services that can be relied on day after day, and year after year.

There will be no interruption or change in services, price or term regarding your contracts. This letter is merely notification of the Assignment described above. Your relationship points of contact will remain the same, therefore, if, at any point, you would like to discuss the Assignment or any other matter regarding the purchase, please do not hesitate to contact David Marye directly at 713-800-1974 or by email at davidmarye@netmidstream.com.

Upon the NET Acquisition Closing, the terms and conditions of the above referenced Contract, including all confirmations and transactions thereunder, if any, will be honored by NEPM, which will be your new contractual partner. The contact information for NEPM is as follows:

General:

700 Universe Blvd.  
Juno Beach, FL Zip: 33408  
Attn: Contracts/Legal Department  
Facsimile: (561) 625-7504  
Duns: NEPM : 05-448-1341  
Federal Tax ID Number: 65-0851428

*10-23-15  
CTS updated -  
cp*

Invoices:

Attn: Manager, NEPM Accounting  
Phone: (561) 304-5820  
Facsimile: (561) 625-7651

Confirmations:

Attn: Confirmation Desk  
Phone: (561) 691-2488  
Facsimile: (561) 625-7517  
Email: NextEra.Confirmations@NextEraEnergy.com

Scheduling:

Attn: Scheduling Desk  
Phone: (561) 625-7100  
Facsimile: (561) 625-7604

Payments:

Attn: Manager, NEPM Accounting  
Phone: (561) 304-5820  
Facsimile: (561) 625-7663

Wire Transfer:

Pay: Bank of America  
For the Account of: NextEra Energy Power Marketing, LLC  
Account No./CHIPS UID: 3751227650  
Fed. ABA No.: 026-00-9593

ACH Transfer:

Pay: Bank of America  
For the Account of: NextEra Energy Power Marketing, LLC  
Account No.: 3751227650  
Fed. ABA No.: 111-00-0012

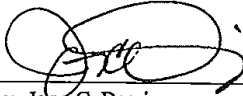
We value our business relationship with you and look forward to working together with you in the future.



*[Signature Page Follows]*

Sincerely,

NET HOLDINGS MANAGEMENT, LLC

By:   
Name: Jerry C. Dearing  
Title: Co-President

 **NET**  
HOLDINGS MANAGEMENT, LLC  
5847 San Felipe Street  
Suite 1910  
Houston, Texas 77057  
Main 713.800.1900  
Fax 713.871.0510  
netmidstream.com

September 8, 2015

Louisville Gas and Electric Co.  
Kentucky Utilities Co.  
220 West Main St.  
7<sup>th</sup> Floor  
Louisville, KY 40202  
Attn: Contract Administration  
Fax: (502) 627-4222

RE: Assignment of Base Contract for Sale and Purchase of Natural Gas between Louisville Gas and Electric Co. and Kentucky Utilities Co. (collectively, "you") and National Energy & Trade, LP ("NET LP" or "we") dated October 1, 2007 (the "Contract").

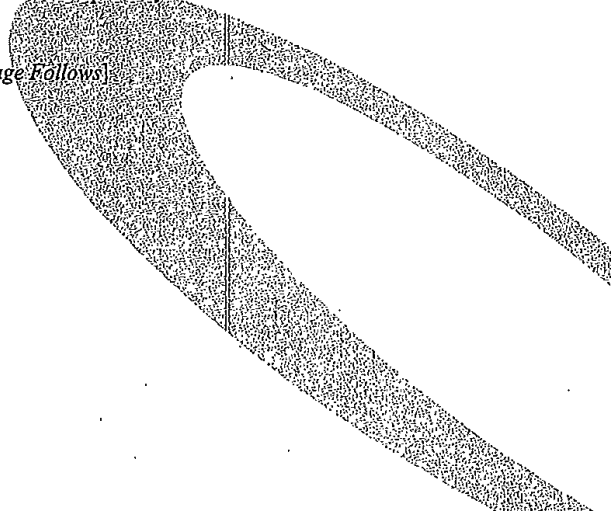
Dear Ladies and Gentlemen,

NET LP is assigning (the "Assignment") the Contract, including all confirmations and transactions thereunder, if any, listed above to its affiliate, NET Holdings Management LLC ("NET Holdings"). NET Holdings is NET LP's parent entity. The Assignment will be effective as of September 1, 2015.

There will be no interruption or change in services, price or term regarding your contracts. This letter is merely notification of the Assignment described above.

If, at any point, you would like to discuss the Assignment or any other matter referenced herein, please do not hesitate to contact David Marye directly at (713) 800-1974 or by email at davidmarye@netmidstream.com. We value, and look forward to continuing, our business relationship with you.

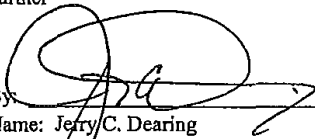
[Signature Page Follows]



NY\7291064.1

Sincerely,

NATIONAL ENERGY & TRADE, LP  
By: NET General Partners, LLC, its general  
partner

By:  DM  
Name: Jerry C. Dearing  
Title: Vice President

**Request for Taxpayer  
 Identification Number and Certification**

Give Form to the  
 requester. Do not  
 send to the IRS.

Name (as shown on your income tax return)  
**NET Holdings Management, LLC**

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:  
 Individual/sole proprietor     C Corporation     S Corporation     Partnership     Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ **P**     Exempt payee

Other (see instructions) ▶

Address (number, street, and apt. or suite no.)  
**5847 San Felipe, Suite 1910**

City, state, and ZIP code  
**Houston, TX 77057**

List account number(s) here (optional)

Requester's name and address (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Social security number**

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**Employer identification number**

2	0	-	8	6	0	5	9	3	7
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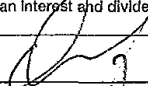
**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

**Sign Here**    Signature of U.S. person ▶     Date ▶ **9/10/15**

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "NET HOLDINGS MANAGEMENT, LLC", FILED IN THIS OFFICE ON THE SEVENTH DAY OF MARCH, A.D. 2007, AT 1:05 O'CLOCK P.M.

4307915 8100

070290089



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5486763

DATE: 03-07-07

**CERTIFICATE OF FORMATION**

**OF**

**NET HOLDINGS MANAGEMENT, LLC**

This Certificate of Formation, dated as of March 7, 2007, has been duly executed and is filed pursuant to Sections 18-201 and 18-204 of the Delaware Limited Liability Company Act (the "Act") to form a limited liability company (the "Company") under the Act.

1. *Name.* The name of the Company is "NET Holdings Management, LLC".

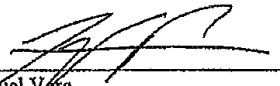
2. *Registered Office; Registered Agent.* The address of the registered office required to be maintained by Section 18-104 of the Act is:

Corporation Trust Center  
1209 Orange Street  
Wilmington, Delaware 19801

The name and address of the registered agent for service of process required to be maintained by Section 18-104 of the Act are:

The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, Delaware 19801

EXECUTED as of the date written first above.

By:   
Name: Manuel Vera  
Title: Organizer

HOUSTON2048494.1

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: October 1, 2007. The parties to this Base Contract are the following:

Louisville Gas and Electric Co./Kentucky Utilities Co. ("LGE"/"KU") and 220 West Main St., 7 <sup>th</sup> Floor, Louisville, KY 40202 Duns Number: LGE 00-694-5505/ KU 00-694-4398 Contract Number: Not Applicable U.S. Federal Tax ID Number: LGE 61-0264150/ KU 61-0247570	National Energy & Trade, LP 5847 San Felipe Street, Suite 1910 Houston TX 77057 Duns Number: 036411387 Contract Number: U.S. Federal Tax ID Number: 76-0508683
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<b>Notices:</b> 220 West Main St., 7 <sup>th</sup> Floor, Louisville, KY 40202 Attn: Contract Administration Phone: 502/627-4251 or 4251 Fax: 502/627-4222	5847 San Felipe Street, Suite 1910 Houston TX 77057 Attn: Contract Administration Phone: (713) 800-1958 Fax: (713) 800-0510
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<b>Confirmations:</b> 220 West Main St., 7 <sup>th</sup> Floor, Louisville, KY 40202 Attn: Contract Administration Phone: 502/627-4197 or 4251 Fax: 502/627-4222	5847 San Felipe Street, Suite 1910 Houston TX 77057 Attn: Contract Administration Phone: (713) 800-1958 Fax: (713) 800-0510
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<b>Invoices and Payments:</b> 220 West Main St., 7 <sup>th</sup> Floor, Louisville, KY 40202 Attn: Gas Accounting Phone: 502/627-4627 Fax: 502/627-3800	5847 San Felipe Street, Suite 1910 Houston TX 77057 Attn: Gas Accounting Phone: (713) 800-1959 Fax: (713) 800-0510
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**Wire Transfer or ACH Numbers (if applicable):**  
**WIRES ONLY:**  
 BANK: Bank of America, New York, NY  
 ABA: 0260-0959-3  
 ACCT: 3752099133  
 Other Details:

BNP Paribas, New York, NY  
 026007689  
 200-102272-001-11

**ACH ONLY:**  
 BANK: Bank of America, Dallas TX  
 ABA: 111-0000-12  
 ACCT: 3752099133  
 Other Details:

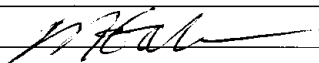
**BANK OF NEW YORK**  
 021-000-018  
 BNP Paribas NY  
 Ref: National Energy & Trade, LP

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 only one box from each section:

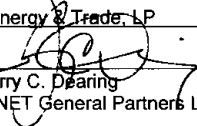
<b>Section 1.2</b> <input checked="" type="checkbox"/> Oral (default) Transaction <input type="checkbox"/> Written Procedure	<b>Section 7.2</b> <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) Payment Date <input type="checkbox"/> _____ Day of Month following Month of delivery
<b>Section 2.5</b> <input checked="" type="checkbox"/> 2 Business Days after receipt (default) Confirm <input type="checkbox"/> _____ Business Days after receipt Deadline	<b>Section 7.2</b> <input checked="" type="checkbox"/> Wire transfer (default) Method of <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) Payment <input type="checkbox"/> Check
<b>Section 2.6</b> <input type="checkbox"/> Seller (default) Confirming <input type="checkbox"/> Buyer Party <input checked="" type="checkbox"/> LGE/KU	<b>Section 7.7</b> <input checked="" type="checkbox"/> Netting applies (default) Netting <input type="checkbox"/> Netting does not apply
<b>Section 3.2</b> <input checked="" type="checkbox"/> Cover Standard (default) Performance <input type="checkbox"/> Spot Price Standard Obligation	<b>Section 10.3.1</b> <input checked="" type="checkbox"/> Early Termination Damages Apply (default) Early Termination Damages <input type="checkbox"/> Early Termination Damages Do Not Apply
Note: The following Spot Price Publication applies to both of the immediately preceding. <b>Section 2.26</b> <input checked="" type="checkbox"/> Gas Daily Midpoint (default) Spot Price <input type="checkbox"/> _____ Publication	<b>Section 10.3.2</b> <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) Other Agreement Setoffs <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b> <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) Taxes <input type="checkbox"/> Seller Pays Before and At Delivery Point	<b>Section 14.5</b> Choice Of Law <b>New York</b> <b>Section 14.10</b> <input checked="" type="checkbox"/> Confidentiality applies (default) Confidentiality <input type="checkbox"/> Confidentiality does not apply
Special Provisions Number of sheets attached: Six (6) Addendum(s):	



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

By  *etc*  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MARTYN GALLUS  
SR. VICE PRESIDENT  
LOUISVILLE GAS & ELECTRIC COMPANY  
KENTUCKY UTILITIES**

National Energy & Trade, LP  
By  *VS*  
Name: Jerry C. Dearing  
Title: VP NET General Partners LLC *602*

# 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 2.7.

**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. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

### SECTION 2. DEFINITIONS

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.

2.1. "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.

2.2. "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.

2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).

- 2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 2.5. "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.
- 2.6. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.7. "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.
- 2.8. "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.
- 2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.10. "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.
- 2.11. "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 an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.
- 2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.15. "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.
- 2.16. "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.
- 2.17. "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.
- 2.18. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.19. "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.
- 2.20. "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.
- 2.21. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.22. "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.
- 2.23. "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.
- 2.24. "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.
- 2.25. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.26. "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.

2.27. "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.

2.28. "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.

2.29. "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); 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); or (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, then the sole and exclusive remedy of the performing party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s). 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. 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 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 14.8, 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 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 or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. 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, payments 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 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.

## 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), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

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; or (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; 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 or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, 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:**

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 (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.

**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 owed to the Non-Defaulting Party against any margin or other collateral held by it 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 such 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 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 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; 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 Agreement; (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 and Section 10, 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. MISCELLANEOUS

14.1. 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.

14.2. 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.

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

14.4. 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.

14.5. 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.

14.6. 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.

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

14.8. 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.

14.9. 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.

14.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 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, or (iv) 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.

14.11 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.

**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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____  By: _____  Title: _____  Date: _____	Buyer: _____  By: _____  Title: _____  Date: _____			

## Special Provisions to the Base Contract

### SPECIAL PROVISIONS – U.S. NAESB

Special Provisions (“Special Provisions”) attached to and forming a part of that certain Base Contract for Short-Term Sale and Purchase of Natural Gas dated October 1, 2007 (the “Base Contract”) by and between: Louisville Gas and Electric Co./Kentucky Utilities Co. and National Energy & Trade, LP.

Capitalized terms used in these Special Provisions shall have the meanings ascribed to them in the Base Contract. Section references in these Special Provisions refer to a Section of the General Terms and Conditions of the Base Contract, unless stated otherwise.

#### SECTION 1. PURPOSES AND PROCEDURES

1. Section 1.2 “Oral Transaction Procedure” shall be amended by (a) inserting “a recorded” before “telephone” in the second line; and (b) inserting “recorded” before “telephonic” in the fifth line.

2. The following sections shall be added to Section 1:

“1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a contract contemplated herein.”

“1.6 Each party shall, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, the negligence be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation.”

#### SECTION 2. DEFINITIONS

3. Section 2.10 “Cover Standard” shall be amended by deleting “(or an alternate fuel if elected by Buyer and replacement Gas is not available)” from the definition.

4. The following Sections shall be added to the end of Section 2:

”2.30 “Costs” means (a) losses associated with transmission/transportation costs related to the terminated transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party’s reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a terminated transaction; and (c) commercially reasonable attorneys’ fees and court costs, if any, incurred in connection with enforcing its rights in respect of the terminated transactions.

2.31 “Credit Support Document” shall mean, as to a party (the “First Party”), a guaranty, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting

## Special Provisions to the Base Contract

any obligations of the First Party under this Contract provided in each case that the issuer and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.32 "Eligible Collateral" shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.33 "Futures Contract" shall mean the standardized contract for the purchase or sale of Gas that is traded for future delivery under the applicable trading board's regulations.

2.34 "Investment Grade Rating" shall mean a party's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) rating from Moody's of "Baa3" or higher and a rating from S&P of "BBB-" or higher; or, if such entity does not have a rating for its senior unsecured long-term debt, then such rating then assigned to such entity as its "corporate credit rating" assigned by S&P, or the "long-term issuer rating" assigned by Moody's. Moody's shall mean Moody's Investor Services, Inc. or its successors. S&P shall mean the Standard & Poor's Rating Group (a division of McGraw-Hill Inc.) or its successors.

2.35 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

2.36 "Material Adverse Change" shall mean a party's rating falls below an Investment Grade Rating.

2.37 "NYMEX" shall mean the New York Mercantile Exchange.

2.38 "Option" means a transaction in which, in exchange for the payment of the Premium by the Option Buyer, the Option Seller grants the Option Buyer the right to enter into a transaction on the agreed terms set forth in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which terms shall include, among other terms, which of the Option Buyer and the Option Seller is the Buyer and which is the Seller under such transaction.

2.39 "Option Buyer" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has acquired the right, upon exercise of the Option to receive Gas (if the Option Buyer is identified as "Buyer") or deliver Gas (if the Option Buyer is identified as "Seller").

2.40 "Option Seller" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has sold the Option. If the Option is exercised by the Option Buyer, the Option Seller will be obligated to deliver Gas (if the Option Buyer is identified as "Buyer") or receive Gas (if the Option Buyer is identified as "Seller").

2.41 "Premium" means the amount identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the amount payable by the Option Buyer to the Option Seller in exchange for an Option.

2.42 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by Seller and/or the Buyer for verification and/or evidentiary purposes."

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

### **SECTION 3. PERFORMANCE OBLIGATION**

5. **Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase “and no such replacement or sale is available” in (iii):**

“or in the event that the non-breaching party elects, at its sole option not to replace undelivered Gas or re-sell unaccepted Gas”

### **SECTION 5. QUALITY AND MEASUREMENT**

6. **Delete the existing paragraph under Section 5 in its entirety and replace with the following:**

“All Gas delivered by Seller shall meet the pressure, quality and heat specification of the pipeline system and/or facilities which shall receive the Gas at the Delivery Point(s) set forth in the transaction. The unit of quantity measurement for purposes of this Contract shall be one MMBtu Dry. BTU and volume measurements shall be made at the pressure and temperature basis of the measuring pipeline in accordance with the provisions of such pipeline’s then effective Federal Energy Regulatory Commission (“FERC”) Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such pipeline.”

### **SECTION 7. BILLING, PAYMENT AND AUDIT**

7. **Add the following language to the end of Section 7.3:**

“including all supporting documentation acceptable in industry practice to support the amount charged.”

8. **Section 7.4 shall be amended by deleting the last sentence “In the event the parties are unable ...” in its entirety and replaced with:**

“Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived.”

9. **Section 7.5 shall be amended by inserting “U.S.” between “then-effective” and “prime rate” in subsection (i).**

10. **Section 7.8 shall be added as follows:**

“7.8 Upon either party’s request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month.”

### **SECTION 8. TITLE, WARRANTY, AND INDEMNITY**

## Special Provisions to the Base Contract

11. Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8.2" and "AND IN SECTION 14.8" in the last sentence.

### SECTION 10. FINANCIAL RESPONSIBILITY

12. Delete the last sentence of Section 10.1 in its entirety and replace with the following:  
"Adequate Assurance of Performance" shall mean the provision of Eligible Collateral."
13. Amend Section 10.2 as follows:
- (a) insert ",if any," after "guarantor" in the first (1<sup>st</sup>) line
  - (b) delete "or" before "(viii)"
  - (c) insert in the ninth line after the phrase "such payment is due" the phrase "or (ix) suffers a Material Adverse Change; provided that, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party provides, within three (3) Business Days of receipt of written notice from the other party and maintains for so long as the Material Adverse Change is continuing, Eligible Collateral to the other party"
14. Amend Section 10.3 by  
Delete from the second (2<sup>nd</sup>) sentence the phrase "or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate"
15. Section 10.3.1 "Early Termination Damages Apply" shall be amended by adding at the end of the last sentence of the second paragraph:  
"(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR")"
16. Add the following to the end of Section 10:
- "10.8 In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions."
- "10.9 No suspension pursuant to Section 10.2 shall continue for more than ten (10) Business Days unless an Early Termination Date has been declared and the Defaulting Party has been given notice thereof in accordance with Section 10.3."

### SECTION 11. FORCE MAJEURE

17. The following shall be added to the end of Section 11
- "11.7 Any party claiming Force Majeure (the "Claiming Party") as an excuse for performance shall provide the other party (the Non-claiming Party") a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days."

### SECTION 12. TERM

18. Section 12 shall be deleted in its entirety and replaced with:

## Special Provisions to the Base Contract

"The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written Notice by either party; provided, however, that, to the extent necessary, the provisions hereof shall survive termination of this Contract and continue to apply to any transactions entered into between Seller and Buyer prior to the date of termination of this Contract until such time as any and all such transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment and provisions of Sections 1.6, 7.7, 8.3, 8.4, 10, and 13 shall continue to apply."

### SECTION 13. LIMITATIONS

19. Delete the phrase "UNLESS EXPRESSLY HEREIN PROVIDED," from the sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) lines.

### SECTION 14. MISCELLANEOUS:

20. Insert in Section 14.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4<sup>th</sup>) line.
21. Insert in Section 14.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).
22. The following Sections shall be added:
  - 14.12 Each party agrees that the provisions of this Contract supersede and replace in their entirety any requirements of law relating to adequate assurance of future performance, including without limitation Article 2 of the Uniform Commercial Code, as enacted in New York.
  - 14.13 UCC - Except as otherwise provided for herein, the provisions of the Uniform Commercial Code ("UCC") of the state whose laws shall govern this Contract shall be deemed to apply to all transactions.
  - 14.14 Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction

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 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 (2) 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 (3) decimal places. If the fourth

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

(4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1) and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.

14.15 Louisville Gas and Electric Company and Kentucky Utilities Company shall be jointly and severally liable for their respective obligations under this Agreement; provided, however, that Louisville Gas and Electric Company and Kentucky Utilities Company together shall not be liable for more than 100% of the total obligation.



<i>ATTN: Gas Accounting</i> <i>ADDRESS: 301 E Ocean Blvd Suite 1100</i> <i>Long Beach, CA 90802</i>	<i>CHECKS</i> <i>(IF APPLICABLE)</i>	<i>ATTN: Gas Accounting</i> <i>ADDRESS: 220 West Main St. 7<sup>th</sup> Fl</i> <i>Louisville KY 40202</i>
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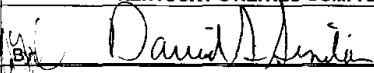
## Base Contract for Sale and Purchase of Natural Gas

(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> Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default <input checked="" type="checkbox"/> No Additional Events of Default (default) <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____
<b>Section 2.7</b> Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> 5 Business Days after receipt	
<b>Section 2.8</b> Confirming Party <input type="checkbox"/> Seller (default) OR <input checked="" type="checkbox"/> Buyer	
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding:</b>	
<b>Section 2.3.1</b> Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____	<b>Section 10.3.2</b> Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b> Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	
<b>Section 7.2</b> Payment Date <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 15.5</b> Choice Of Law <p style="text-align: center;">_____ <u>New York</u> _____</p>
<b>Section 7.2</b> Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) AND <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	<b>Section 15.10</b> Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.7</b> Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply	
<input checked="" type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: 5 <input type="checkbox"/> <b>Addendum(s):</b> _____	

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

<b>MIECO Inc.</b>	<i>PARTY NAME</i>	<b>LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY</b>
By: 	<i>SIGNATURE</i>	By: 
David Engbrock	<i>PRINTED NAME</i>	David S. Sinclair
General Manager, Denver Division	<i>TITLE</i>	Vice President Energy Marketing

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF  
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

Dated 12-1-2009

by and between  
MIECO Inc.

And

Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")

**SECTION 1. PURPOSES AND PROCEDURES**

The following sections shall be added to Section 1:

"1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a contract contemplated herein."

"1.6 Each party shall, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, the negligence be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation."

**SECTION 2. DEFINITIONS**

Section 2.12 "Cover Standard" shall be amended by deleting "(or an alternate fuel if elected by Buyer and replacement Gas is not available)" from the definition.

The following Sections shall be added to the end of Section 2:

2.36 "Costs" means (a) losses associated with transmission/transportation costs related to the terminated transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party's reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a terminated transaction; and (c) commercially reasonable attorneys' fees and court costs, if any, incurred in connection with enforcing its rights in respect of the terminated transactions.

2.37 "Credit Support Document" shall mean, as to a party (the "First Party"), a guaranty from a Guarantor, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer, amount and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.38 "Eligible Collateral" shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.39 "Futures Contract" shall mean the standardized contract for the purchase or sale of Gas that is traded for future delivery under the applicable trading board's regulations.

2.40 "Investment Grade Rating" shall mean a party's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) rating from Moody's of "Baa3" or higher and a rating from S&P of "BBB-" or higher; or, if such entity does not have a rating for its senior unsecured long-term debt, then such rating then assigned to such entity as its "corporate credit rating" assigned by S&P, or the "long-term issuer rating" assigned by Moody's. Moody's shall mean Moody's Investor Services, Inc. or its successors. S&P shall mean the Standard & Poor's Rating Group (a division of The McGraw-Hill Companies) or its successors.

2.41 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

2.42 "Material Adverse Change" shall mean a party's rating falls below an Investment Grade Rating.

2.43 "NYMEX" shall mean the New York Mercantile Exchange.

2006 NAESB

2.44 "Option" means a transaction in which, in exchange for the payment of the Premium by the Option Buyer, the Option Seller grants the Option Buyer the right to enter into a transaction on the agreed terms set forth in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which terms shall include, among other terms, which of the Option Buyer and the Option Seller is the Buyer and which is the Seller under such transaction.

2.45 "Option Buyer" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has acquired the right, upon exercise of the Option to receive Gas (if the Option Buyer is identified as "Buyer") or deliver Gas (if the Option Buyer is identified as "Seller").

2.46 "Option Seller" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has sold the Option. If the Option is exercised by the Option Buyer, the Option Seller will be obligated to deliver Gas (if the Option Buyer is identified as "Buyer") or receive Gas (if the Option Buyer is identified as "Seller").

2.47 "Premium" means the amount identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the amount payable by the Option Buyer to the Option Seller in exchange for an Option.

2.48 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by Seller and/or the Buyer for verification and/or evidentiary purposes."

### **SECTION 3. PERFORMANCE OBLIGATION**

Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase "and no such replacement or sale is available" in (iii):

"or in the event that the non-breaching party elects, at its sole option, not to replace or re-sell to a third party the Gas not delivered"

### **SECTION 5. QUALITY AND MEASUREMENT**

Delete the existing paragraph under Section 5 in its entirety and replace with the following:

"All Gas delivered by Seller shall meet the pressure, quality and heat specification of the Receiving Transporter. BTU and volume measurements shall be made at the pressure and temperature basis of the Receiving Transporter in accordance with the provisions of such pipeline's then effective Federal Energy Regulatory Commission ("FERC") Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such Receiving Transporter."

### **SECTION 6. TAXES**

Add the following after the last sentence in Section 6 for "Buyer Pays At and After Delivery Point":

All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority."

Add as the last paragraph of Section 6:

"6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point ("Governmental Charge"), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s)."

### **SECTION 7. BILLING, PAYMENT AND AUDIT**

Add the following language to the end of Section 7.3:

"including all supporting documentation acceptable in industry practice to support the amount charged"

Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ..." in its entirety and replacing with:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).

Section 7.8 shall be added as follows:

"7.8 Upon either party's request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month."

#### **SECTION 8. TITLE, WARRANTY, AND INDEMNITY**

Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8.2" and "AND IN SECTION 15.8" in the last sentence.

Add the following to the end of Section 8:

"8.6 In the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction."

#### **SECTION 9. NOTICES**

9.4 shall be amended by:

- (a) in the first sentence delete the words "commercially acceptable";
- (b) after the words "payment information" and before the word "shall" add "identified on the cover page under Accounting Information"; and
- (c) delete "ten (10)" and replace with "two (2)".

#### **SECTION 10. FINANCIAL RESPONSIBILITY**

Delete the second sentence of Section 10.1 in its entirety and replace with the following:  
"Adequate Assurance of Performance" shall mean the provision of Eligible Collateral."

Section 10.2 shall be amended by

- (a) deleting "or" before "(ix)"; and
- (b) inserting in the tenth line after the phrase "Addtinal Event of Default;" the phrase "or (x) suffers a Material Adverse Change; provided that, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party provides within 48 hours but at least one (1) Business Day of receipt of written notice from the other party and maintains for so long as the Material Adverse Change is continuing Eligible Collateral to the other party"; and
- (c) adding at the end before the "." in the last sentence: "provided that no suspension of performance shall continue for more than ten (10) Business Days unless an Early Termination Date has been declared and the Defaulting Party given Notice thereof in accordance with Section 10.3."

Amend Section 10.3 by deleting from the sixth line the phrase "legally permissible" and replace with "practicable and not prohibited by applicable law"

Section 10.3.1 "Early Termination Damages Apply" shall be amended by:

- (a) adding at the end of the last sentence of the second paragraph:

"(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR");  
and

- (b) adding the following as a third paragraph:

"In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions."

#### **SECTION 11. FORCE MAJEURE**

Add the following to the end of Section 11:

"11.7 Any party claiming Force Majeure (the "Claiming Party") as an excuse for performance shall provide the other party (the Non-claiming Party) a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days."

11.8 During the event of Force Majeure, the Claiming Party, if it is Seller, must cease interruptible deliveries to other markets prior to suspending the performance obligations under the Firm Transaction affected by such Force Majeure event. The Claiming Party, if it is Seller, must treat the other party equitably with its other Firm customers on a proportionate basis with regard to the remaining supply available for market.

## **SECTION 12. TERM**

Section 12 shall be deleted in its entirety and replaced with:

"The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written Notice by either party; provided, however, that, to the extent necessary, the provisions hereof shall survive termination of this Contract and continue to apply to any transactions entered into between Seller and Buyer prior to the date of termination of this Contract until such time as any and all such transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment and provisions of Sections 1.6, 7.6, 7.7, 8.3, 8.4, 10 and 13 shall continue to apply."

## **SECTION 14. MARKET DISRUPTION**

Section 14 shall be deleted in its entirety and replaced with the following:

Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.

(A) If a Market Disruption Event has occurred during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or 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 fifth 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-Affiliate 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. Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains two quotes and the other party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both parties each obtain one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one party is able to obtain a quote, the obtained quotation shall be utilized. For purposes of the foregoing sentence, if more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded.

Notwithstanding the foregoing, if the Price Source retrospectively issues a Floating Price, in respect of a Determination Period (a "Delayed Floating Price"), then, if the Delayed Floating Price is issued by the Price Source in respect of a Determination Period (i) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Determination Period or (ii) after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment notwithstanding any subsequent publication unless the Parties expressly agree otherwise.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction."

"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.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

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.

(B) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) calendar days after publication or announcement.

**SECTION 15. MISCELLANEOUS**

Insert in Section 15.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line.

Insert in Section 15.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).

Section 15.12 shall be amended by:

deleting the third sentence in its entirety and replacing with the following:

"So long as the Imaged Agreement bears the signature of the party against whom enforcement is sought if there is a space or line for such signature on the agreement, in the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, and the original document(s) is/are unobtainable, neither party shall object to the introduction, acceptance and admissibility of the recording, the Transaction Confirmation or the Imaged Agreement as evidence in any proceeding between the Parties before any court, arbitration panel, regulatory commission or similar body on the basis that such recording, Transaction confirmation or Imaged Agreements were not original agreements, originated or maintained in documentary form or do not comply with the best evidence rule."

The following Sections shall be added:

15.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:

(a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.

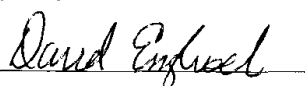
(b) Seller recognizes that Buyer may verify title to the Gas purchased and sold hereunder and agrees to provide all information requested by Buyer for such verification within thirty (30) days of such request. Subject to the other provisions of this Section, Buyer agrees to make payment to Seller while title is being verified. If Buyer requires a Division Order Title Opinion to verify Seller's title or right to receive payments due hereunder, Seller agrees to provide to Buyer upon written request, without cost to Buyer, a Division Order Title Opinion satisfactory to Buyer within three (3) months from Seller's receipt of Buyer's written request. In the event that Seller does not provide a Division Order Title Opinion to Buyer within this period, Buyer may withhold any payments due hereunder, without payment of interest, until Buyer has received a Division Order Title Opinion. Moreover, in the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction. Notwithstanding the foregoing, Seller acknowledges that Buyer may rely entirely on the information provided by Seller or as set out on any Transaction Confirmation in making payments due hereunder. Buyer assumes no responsibility to review or approve any title information provided by Seller or any title information reflected on any Transaction Confirmation or to audit, compare, or update any such information against any title opinion or other information furnished or acquired pursuant to incidental to this Contract.

(c) For purposes of this Section 15.15, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.

**SECTION 16. OPTION**

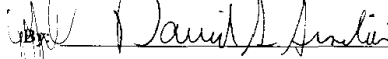
16.1 Notwithstanding anything in the Contract to the contrary, if the parties have agreed that a particular transaction under this Contract is an Option, then prior to the exercise of the Option by Option Buyer the sole obligation of Option Buyer under such transaction shall be to pay the Premium for such Option and Option Seller shall have no obligation under such transaction. Upon the exercise of an Option by Option Buyer, each of Option Buyer and Option Seller shall be obligated to perform and entitled to performance under the Contract in connection with such transaction as either Buyer or Seller as indicated in the Transaction Confirmation or the parties' oral or electronic agreement, as applicable."

**MIECO INC.**

By: 

Name: David Engbrock  
Title: General Manager, Denver Division

**LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY**

By: 

Name: David S. Sinclair  
Title: Vice President Energy Marketing

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date:                     , 2016

The parties to this Base Contract are the following:

PARTY A	PARTY NAME	PARTY B
	<b>ADDRESS</b>	Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU") 220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
	<b>BUSINESS WEBSITE</b>	www.lge-ku.com
	<b>CONTRACT NUMBER</b>	N/A
	<b>D-U-N-S® NUMBER</b>	LGE 00-694-5505 KU 00-694-4938
<input type="checkbox"/> US FEDERAL: <input type="checkbox"/> OTHER:	<b>TAX ID NUMBERS</b>	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150 KU 61-0247570 <input type="checkbox"/> OTHER:
	<b>JURISDICTION OF ORGANIZATION</b>	Kentucky
<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: _____	<b>COMPANY TYPE</b>	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
Eco-Energy Global Biofuels LLC	<b>GUARANTOR (IF APPLICABLE)</b>	N/A
<b>CONTACT INFORMATION</b>		
<b>ATTN:</b> <b>TEL#:</b> <b>FAX#:</b>	▪ <b>COMMERCIAL</b>	<b>LGE/KU</b> <b>ATTN:</b> <u>Trading Manager Gas</u> <b>TEL#:</b> <u>502-627-4259</u> <b>FAX#:</b> <u>502-627-4655</u> <b>EMAIL:</b> _____
<b>ATTN:</b> <b>TEL#:</b> <b>FAX#:</b>	▪ <b>SCHEDULING</b>	<b>LGE/KU ATTN:</b> <u>Gas Scheduling</u> <b>TEL#:</b> <u>502-627-3034</u> <b>FAX#:</b> <u>502-627-4655</u> <b>EMAIL:</b> _____
<b>ATTN:</b> <b>TEL#:</b> <b>FAX#:</b>	▪ <b>CONTRACT AND LEGAL NOTICES</b>	<b>LGE/KU ATTN:</b> <u>Contract Administration</u> <u>220 W Main St., 7<sup>th</sup> FL, Louisville KY 40202</u> <b>TEL#:</b> <u>502-627-4197 or 4253</u> <b>FAX#:</b> <u>502-627-4222</u> <b>With Add'l Notice of Default Attn: General Counsel, 15<sup>th</sup> FL</b> <b>Add'l Notice of Default Fax# 502-627-3950</b> <b>EMAIL:</b> <u>N/A</u>
<b>ATTN:</b> <b>TEL#:</b> <b>FAX#:</b>	▪ <b>CREDIT</b>	<b>LGE/KU</b> <b>ATTN:</b> <u>Manager Credit</u> <b>TEL#:</b> <u>502-627-4253</u> <b>FAX#:</b> <u>502-627-3950</u> <b>EMAIL:</b> <u>N/A</u>
<b>ATTN:</b> <b>TEL#:</b> <b>FAX#:</b>	▪ <b>TRANSACTION CONFIRMATIONS</b>	<b>LGE/KU</b> <b>ATTN:</b> <u>Contract Administration</u> <b>TEL#:</b> <u>502-627-4197 or 2252</u> <b>FAX#:</b> <u>502-627-4222</u> <b>EMAIL:</b> <u>ContractAdmin@lge-ku.com</u>
<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>LGE/KU</b> <b>ATTN:</b> <u>Gas Accounting</u> <b>TEL#:</b> <u>502-627-3731</u> <b>FAX#:</b> <u>502-217-2204</u> <b>EMAIL:</b> <u>Gas.Accounting@lge-ku.com</u>
<b>BANK:</b> <b>ABA:</b> <b>ACCT:</b> <b>OTHER DETAILS:</b> _____	<b>WIRE TRANSFER NUMBERS (IF APPLICABLE)</b>	<b>BANK:</b> <u>Bank of America, New York, NY</u> <b>ABA:</b> <u>0260-0959-3</u> <b>ACCT:</b> <u>3752099133</u> <b>OTHER DETAILS:</b> _____
<b>BANK:</b> <b>ABA:</b> <b>ACCT:</b> <b>OTHER DETAILS:</b> For the Account of	<b>ACH NUMBERS (IF APPLICABLE)</b>	<b>BANK:</b> <u>Bank of America, Dallas TX</u> <b>ABA:</b> <u>111000012</u> <b>ACCT:</b> <u>3752099133</u> <b>OTHER DETAILS:</b> <u>N/A</u>



<p>BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____</p>	<p>CHECKS (IF APPLICABLE)</p>	<p>LGE/KU ATTN: <i>Gas Accounting</i> ADDRESS: <u>220 W Main St., 7<sup>th</sup> FL</u> Louisville KY 40202</p>
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## 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 checked="" type="checkbox"/> Oral (default) Transaction Procedure <input type="checkbox"/> Written	<b>Section 10.2</b> <input checked="" type="checkbox"/> No Additional Events of Default (default) Additional Events of Default <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____
<b>Section 2.7</b> <input checked="" type="checkbox"/> 2 Business Days after receipt (default) Confirm Deadline <input type="checkbox"/> OR <u>5</u> Business Days after receipt	
<b>Section 2.8</b> <input type="checkbox"/> Seller (default) Confirming Party <input type="checkbox"/> OR <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> LGE/KU	
<b>Section 3.2</b> <input checked="" type="checkbox"/> Cover Standard (default) Performance Obligation <input type="checkbox"/> OR <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> <input checked="" type="checkbox"/> Early Termination Damages Apply (default) Early Termination Damages <input type="checkbox"/> OR <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>	
<b>Section 2.31</b> <input checked="" type="checkbox"/> Gas Daily Midpoint (default) Spot Price Publication <input type="checkbox"/> _____	<b>Section 10.3.2</b> <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) Other Agreement Setoffs <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b> <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) Taxes <input type="checkbox"/> OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	
<b>Section 7.2</b> <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) Payment Date <input type="checkbox"/> OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 15.5</b> _____ Choice Of Law <span style="float: right;">New York</span>
<b>Section 7.2</b> <input checked="" type="checkbox"/> Wire transfer (default) AND Method of Payment <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	<b>Section 15.10</b> <input checked="" type="checkbox"/> Confidentiality applies (default) Confidentiality <input type="checkbox"/> OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.7</b> <input checked="" type="checkbox"/> Netting applies (default) Netting <input type="checkbox"/> OR <input type="checkbox"/> Netting does not apply	
<input checked="" 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>	<b>LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY</b>
By: _____	<i>SIGNATURE</i>	By: _____
[Insert Name]	<i>PRINTED NAME</i>	David S. Sinclair
[Insert Title]	<i>TITLE</i>	Vice President Energy Supply and Analysis

# 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

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.

2.1. "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.

2.2. "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.

- 2.3. "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.
- 2.4. "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.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "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.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "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.
- 2.10. "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.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "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.
- 2.13. "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.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "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.
- 2.18. "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.
- 2.19. "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.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "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.
- 2.23. "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.

- 2.24. "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.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "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.
- 2.27. "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.
- 2.28. "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.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "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.
- 2.31. "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.
- 2.32. "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.
- 2.33. "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.
- 2.34. "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.
- 2.35. "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 OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE, WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE. 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; padding: 5px;"> <b>Firm (Fixed Quantity):</b>                      _____ MMBtus/day  <input type="checkbox"/> EFP                 </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> <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; padding: 5px;"> <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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>   				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			



**Contact and Banking Information**

**Entity:** Mercuria Energy America, Inc.  
**Principal Address:** 20 E. Greenway Plaza, Suite 650, Houston, TX 77046  
**U.S. Federal Tax ID No.:** 61-1600209  
**DUNS Number:** 83-1749127  
**CFTC-CICI Number:** 549300HTEFBFZ6Y7VF41

**NOTICES AND CORRESPONDENCE:**

**Mailing Address:** Mercuria Energy America, Inc.  
20 E. Greenway Plaza, Suite 650  
Houston, Texas 77046  
**Attention:** Contract Administration  
**Telephone No.:** (832) 209-2400  
**Facsimile No.:** (832) 209-2401

**With a copy to:**  
**Mailing Address:** Mercuria Energy America, Inc.  
20 E. Greenway Plaza, Suite 650  
Houston, Texas 77046  
**Attention:** Legal Department  
**Telephone No.:** (832) 209-2400  
**Facsimile No.:** (832) 209-2401

**SCHEDULING:**

**Mailing Address:** Mercuria Energy America, Inc.  
20 E. Greenway Plaza, Suite 650  
Houston, Texas 77046

**East Desk:**  
**Attention:** Joe Casas  
**Telephone No.:** (832) 531-7565  
**Email:** [jcasas@mercuria.com](mailto:jcasas@mercuria.com)

**West Desk:**  
**Attention:** Karen Glenny  
**Telephone No.:** (832) 531-7587  
**Email:** [kglenny@mercuria.com](mailto:kglenny@mercuria.com)

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20 E. GREENWAY PLAZA, SUITE 650, HOUSTON, TX 77046, USA T +1 832 209 2400, F +1 832 209 2401



**CONFIRMATIONS**

Mailing Address: Mercuria Energy America, Inc.  
20 E. Greenway Plaza, Suite 650  
Houston, Texas 77046  
Attention: Confirmations  
Email: [PhysConfirmsNA@mercuria.com](mailto:PhysConfirmsNA@mercuria.com)  
Phone: (832) 209-2495  
FAX: (832) 209-2421

**INVOICE & SETTLEMENTS:**

Invoices:

Physical:

Address: Mercuria Energy America, Inc.  
20 E. Greenway Plaza, Suite 650  
Houston, TX 77046  
Attention: Physical Settlements  
Email: [physsettlementsna@mercuria.com](mailto:physsettlementsna@mercuria.com)  
Facsimile No.: (832) 209-2401  
Telephone No.: (832) 209-2494

Financial:

Address: Mercuria Energy America, Inc.  
20 E. Greenway Plaza, Suite 650  
Houston, TX 77046  
Attention: Financial Settlements  
Email: [finsettlementsna@mercuria.com](mailto:finsettlementsna@mercuria.com)  
Facsimile No.: (832) 209-2401  
Telephone No.: (832) 209-2494

Bank Account/  
Wire transfer:

Bank of America, N.A.  
One Bryant Park  
NY1-100-34-05  
New York, NY 10036  
Swift#BOFAUS3N  
ABA: 026009593  
Account: 4451085942  
Other Details: Credit to Mercuria Energy America, Inc.

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20 E. GREENWAY PLAZA, SUITE 650, HOUSTON, TX 77046, USA T +1 832 209 2400, F +1 832 209 2401

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"MERCURIA ENERGY GAS TRADING LLC", A DELAWARE LIMITED LIABILITY COMPANY,

WITH AND INTO "MERCURIA ENERGY AMERICA, INC." UNDER THE NAME OF "MERCURIA ENERGY AMERICA, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE ON THE TWENTY-FOURTH DAY OF MAY, A.D. 2016, AT 5:08 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE FIRST DAY OF AUGUST, A.D. 2016.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



4703679 8100M  
SR# 20163677334

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Handwritten signature of Jeffrey W. Bullock in black ink, written over a horizontal line.

Jeffrey W. Bullock, Secretary of State

Authentication: 202376940  
Date: 05-24-16



**STATE OF DELAWARE  
CERTIFICATE OF MERGER OF  
DOMESTIC LIMITED LIABILITY COMPANY  
INTO A  
DOMESTIC CORPORATION**

Pursuant to Title 8, Section 264(c) of the Delaware General Corporation Law and Title 6, Section 18-209 of the Delaware Limited Liability Company Act, the undersigned corporation executed the following Certificate of Merger:

**FIRST:** The name of the surviving corporation is Mercuria Energy America, Inc., a Delaware Corporation, and the name of the limited liability company being merged into this surviving corporation is Mercuria Energy Gas Trading LLC.

**SECOND:** The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by the surviving corporation and the merging limited liability company.

**THIRD:** The name of the surviving corporation is Mercuria Energy America, Inc.

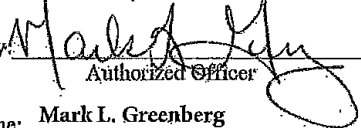
**FOURTH:** The merger is to become effective on August 1, 2016.

**FIFTH:** The Agreement of Merger is on file at 20 E. Greenway Plaza, Suite 650 Houston, Texas 77046, the place of business of the surviving corporation.

**SIXTH:** A copy of the Agreement of Merger will be furnished by the corporation on request, without cost, to any stockholder of any constituent corporation or member of any constituent limited liability company.

**SEVENTH:** The Certificate of Incorporation of the surviving corporation shall be its Certificate of Incorporation

IN WITNESS WHEREOF, said Corporation has caused this certificate to be signed by an authorized officer, the 24th day of May, A.D., 2016.

By:   
Authorized Officer

Name: Mark L. Greenberg  
Print or Type  
Title: Secretary

# Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "MERCURIA ENERGY AMERICA, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-FIRST DAY OF APRIL, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "MERCURIA ENERGY AMERICA, INC." WAS INCORPORATED ON THE TWENTY-SIXTH DAY OF JUNE, A.D. 2009.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.



4703679 8300  
SR# 20162461167

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature in black ink, appearing to read "JBULLOCK", written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Jeffrey W. Bullock, Secretary of State

Authentication: 202188426

Date: 04-21-16

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "MERCURIA ENERGY GAS TRADING LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-FIRST DAY OF APRIL, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "MERCURIA ENERGY GAS TRADING LLC" WAS FORMED ON THE ELEVENTH DAY OF JULY, A.D. 2014.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



5564679 8300

SR# 20162461167

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature in black ink, appearing to read "JBULLOCK", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Authentication: 202188422

Date: 04-21-16

## Request for Taxpayer Identification Number and Certification

**Give Form to the  
 requester. Do not  
 send to the IRS.**

**1** Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.  
**Mercuria Energy America, Inc.**

**2** Business name/disregarded entity name, if different from above

**3** Check appropriate box for federal tax classification; check only one of the following seven boxes:  
 Individual/sole proprietor or single-member LLC  
 C Corporation  S Corporation  Partnership  Trust/estate  
 Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ \_\_\_\_\_  
 Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.  
 Other (see instructions) ▶ \_\_\_\_\_

**4** Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  
 Exempt payee code (if any) \_\_\_\_\_  
 Exemption from FATCA reporting code (if any) \_\_\_\_\_  
*(Applies to accounts maintained outside the U.S.)*

**5** Address (number, street, and apt. or suite no.)  
**20 E. Greenway Plaza, Suite 650**

**6** City, state, and ZIP code  
**Houston, Texas 77046**

**7** List account number(s) here (optional)

Requester's name and address (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

<b>Social security number</b>									
or									
<b>Employer identification number</b>									
6	1	-	1	6	0	0	2	0	9

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

**Sign Here**      Signature of U.S. person      Date ▶ 5/25/14

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.*

By signing the filled-out form, you:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

## UNIFORM SALES & USE TAX CERTIFICATE—MULTIJURISDICTION

The below-listed states have indicated that this form of certificate is acceptable, subject to the notes on pages 2-4. The issuer and the recipient have the responsibility of determining the proper use of this certificate under applicable laws in each state, as these may change from time to time.

Issued to Seller: \_\_\_\_\_

Address: \_\_\_\_\_

I certify that:

Name of Firm (Buyer): Mercuria Energy America Inc.

Address: \_\_\_\_\_

20 E Greenway Plaza, Suite 650  
Houston, TX 77046

is engaged as a registered

- Wholesaler
- Retailer
- Manufacturer
- Seller (California)
- Lessor (see notes on pages 2-4)
- Other (Specify) \_\_\_\_\_

and is registered with the below listed states and cities within which your firm would deliver purchases to us and that any such purchases are for wholesale, resale, ingredients or components of a new product or service to be resold, leased, or rented in the normal course of business. We are in the business of wholesaling, retailing, manufacturing, leasing (renting) the following:

Description of Business: Wholesaler of energy related commodities

General description of tangible property or taxable services to be purchased from the seller: Natural gas and power

State	State Registration, Seller's Permit, or ID Number of Purchaser	State	State Registration, Seller's Permit, or ID Number of Purchaser
AL <sup>1</sup>		MO <sup>16</sup>	
AR		NE <sup>17</sup>	
AZ <sup>2</sup>	21043400	NV	1017426481-001
CA <sup>3</sup>		NJ	010-196-760/000
CO <sup>4</sup>		NM <sup>6,18</sup>	03-302934-00-2
CT <sup>5</sup>	56491715-001	NC <sup>19</sup>	
DC <sup>6</sup>	350000082585	ND	
FL <sup>7</sup>	78-8016576550-0	OH <sup>20</sup>	
GA <sup>8</sup>	175-845942	OK <sup>21</sup>	
HI <sup>4,9</sup>		PA <sup>22</sup>	67500322
ID		RJ <sup>23</sup>	
IL <sup>4,10</sup>		SC	
IA		SD <sup>24</sup>	
KS		TN	107028717
KY <sup>11</sup>		TX <sup>25</sup>	32039881571
ME <sup>12</sup>		UT	
MD <sup>13</sup>	14758902	VT	450-611600209F-01
MI <sup>14</sup>		WA <sup>26</sup>	603440829
MN <sup>15</sup>		WI <sup>27</sup>	

I further certify that if any property or service so purchased tax free is used or consumed by the firm as to make it subject to a Sales or use Tax we will pay the tax due directly to the proper taxing authority when state law so provides or inform the seller for added tax billing. This certificate shall be a part of each order which we may hereafter give to you, unless otherwise specified, and shall be valid until canceled by us in writing or revoked by the city or state.

Under penalties of perjury, I swear or affirm that the information on this form is true and correct as to every material matter.

 Authorized Signature: \_\_\_\_\_  
(Owner, Partner or Corporate Officer)

Title: VP- Controller

Date: 4/21/15

Revised 10/22/2009  
Page 1 of 4



New York State Department of Taxation and Finance  
**New York State and Local Sales and Use Tax**  
**Resale Certificate**

**ST-120**  
(1/11)

Name of seller			Name of purchaser MERCURIA ENERGY AMERICA, INC.		
Street address			Street address 20 E GREENWAY PLAZA, SUITE 650		
City	State	ZIP code	City	State	ZIP code
			HOUSTON	TX	77048

Mark an **X** in the appropriate box:  Single-use certificate  Blanket certificate  
 Temporary vendors must issue a single-use certificate.

**To the purchaser:**  
 You may not use this certificate to purchase items or services that are not for resale. If you purchase tangible personal property or services for resale, but use or consume the tangible personal property or services yourself in New York State, you must report and pay the unpaid tax directly to New York State. Any misuse of this certificate will result in tax liabilities and substantial penalty and interest.

**Purchaser information** — please type or print  
 I am engaged in the business of commodity wholesaling and principally sell power  
 (Contractors may not use this certificate to purchase materials and supplies.)

**Part 1 — To be completed by registered New York State sales tax vendors**

I certify that I am:

- a New York State vendor (including a hotel operator or a dues or admissions recipient), show vendor or entertainment vendor. My valid *Certificate of Authority* number is 61-1600209
- a New York State temporary vendor. My valid *Certificate of Authority* number is \_\_\_\_\_ and expires on \_\_\_\_\_

I am purchasing:

- A.** Tangible personal property (other than motor fuel or diesel motor fuel)
  - for resale in its present form or for resale as a physical component part of tangible personal property;
  - for use in performing taxable services where the property will become a physical component part of the property upon which the services will be performed, or the property will actually be transferred to the purchaser of the taxable service in conjunction with the performance of the service; or
- B.** A service for resale, including the servicing of tangible personal property held for sale.

**Part 2 — To be completed by non-New York State purchasers**

I certify that I am not registered nor am I required to be registered as a New York State sales tax vendor. I am registered to collect sales tax or value added tax (VAT) in the following state/jurisdiction \_\_\_\_\_ and have been issued the following registration number \_\_\_\_\_ (If sales tax or VAT registration is not required and a registration number is not issued by your home jurisdiction, indicate the location of your business and write **not applicable** on the line requesting the registration number.)

I am purchasing:

- C.** Tangible personal property (other than motor fuel or diesel motor fuel) for resale, and it is being delivered directly by the seller to my customer or to an unaffiliated fulfillment services provider in New York State.
- D.** Tangible personal property for resale that will be resold from a business located outside New York State.

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Type or print name and title of owner, partner, or authorized person of purchaser Veronica Parker, Tax Manager	
Signature of owner, partner, or authorized person of purchaser 	Date prepared 8/19/15

Substantial penalties will result from misuse of this certificate.

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: April 20<sup>th</sup> 2015

The parties to this Base Contract are the following:

PARTY A <b>MERCURIA ENERGY GAS TRADING LLC</b>	PARTY NAME	PARTY B <b>LOUISVILLE GAS AND ELECTRIC COMPANY- KENTUCKY UTILITIES COMPANY</b>
20 East Greenway Plaza, Suite 650 Houston, Texas 77046 Attn: Legal Department	ADDRESS	220 West Main Street, 7th FL Louisville, KY 40202
<a href="http://www.mercuria.com">www.mercuria.com</a>	BUSINESS WEBSITE	<a href="http://www.lge-ku.com">www.lge-ku.com</a>
	CONTRACT NUMBER	N/A
079486733	D-U-N-S® NUMBER	LGE 00-694-5505 KU 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 47-1372646  <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150 / KU 61-0247570  <input type="checkbox"/> OTHER:
Delaware	JURISDICTION OF ORGANIZATION	Kentucky
<input type="checkbox"/> Corporation <input checked="" type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
Mercuria Energy Group Limited	GUARANTOR (IF APPLICABLE)	N/A
<b>CONTACT INFORMATION</b>		
20 East Greenway Plaza, Suite 650 Houston, TX 77046 ATTN: <u>Jason Koy</u> TEL#: (832) 209-2400      FAX#: (832) 209-2401 EMAIL: <a href="mailto:jkoy@mercuria.com">jkoy@mercuria.com</a>	▪ <b>COMMERCIAL</b>	LGE/KU ATTN: <u>Trading Manager Gas</u> TEL#: 502-627-4259      FAX#: 502-627-4655 EMAIL: _____
20 East Greenway Plaza, Suite 650 Houston, TX 77046 ATTN: <u>East-Gas Scheduling (Molly Sumrow)</u> TEL#: ((832) 531-7636      FAX#: (832) 209-2401 EMAIL: <a href="mailto:msumrow@mercuria.com">msumrow@mercuria.com</a> ATTN: <u>West-Gas Scheduling (Karen Glenn)</u> TEL#: ((832) 531-7587      FAX#: (832) 209-2401 EMAIL: <a href="mailto:kglenny@mercuria.com">kglenny@mercuria.com</a>	▪ <b>SCHEDULING</b>	LGE/KU ATTN: <u>Gas Scheduling</u> TEL#: 502-627-3034      FAX#: 502-627-4655 EMAIL: _____
20 East Greenway Plaza, Suite 650 Houston, TX 77046 ATTN: <u>Contract Administration</u> TEL#: (832) 209-2391      FAX#: (832) 209-2401 EMAIL: <a href="mailto:mflores@mercuria.com">mflores@mercuria.com</a>	▪ <b>CONTRACT AND LEGAL NOTICES</b>	LGE/KU 220 W Main St., 7 <sup>th</sup> FL, Louisville KY 40202 ATTN: <u>Contract Administration</u> TEL#: 502-627-4197 or 4253 FAX#: 502-627-4222 With Add'l Notice of Default Attn: <u>General Counsel, 15<sup>th</sup> FL</u> Add'l Notice of Default Fax# <u>502-627-3950</u> EMAIL: _____
20 East Greenway Plaza, Suite 650 Houston, TX 77046 ATTN: <u>Credit Department</u> TEL#: (832) 209-2400      FAX#: (832) 209-2401 EMAIL: <a href="mailto:aplskin@mercuria.com">aplskin@mercuria.com</a>	▪ <b>CREDIT</b>	LGE/KU ATTN: <u>Manager Credit</u> TEL#: 502-627-4253      FAX#: 502-627-3950 EMAIL: _____
20 East Greenway Plaza, Suite 650 Houston, TX 77046 ATTN: <u>Physical Confirmations</u> TEL#: (832) 209-2495      FAX#: (832) 209-2421 EMAIL: <a href="mailto:physconfirmsna@mercuria.com">physconfirmsna@mercuria.com</a>	▪ <b>TRANSACTION CONFIRMATIONS</b>	LGE/KU ATTN: <u>Contract Administration</u> TEL#: 502-627-4197 or 2252 FAX#: 502-627-4222 EMAIL: <a href="mailto:ContractAdmin@lge-ku.com">ContractAdmin@lge-ku.com</a>
<b>ACCOUNTING INFORMATION</b>		
20 East Greenway Plaza, Suite 650 Houston, TX 77046 ATTN: <u>Physical Settlements</u> TEL#: (832) 209-2494      FAX#: (832) 209-2401 EMAIL: <a href="mailto:physsettlementsna@mercuria.com">physsettlementsna@mercuria.com</a>	▪ <b>INVOICES</b> ▪ <b>PAYMENTS</b> ▪ <b>SETTLEMENTS</b>	LGE/KU ATTN: <u>Tracey Washburn</u> TEL#: 502-627-3731      FAX#: 502-217-2204 EMAIL: <a href="mailto:Gas.Accounting@lge-ku.com">Gas.Accounting@lge-ku.com</a>

<b>BANK:</b> Societe Generale, New York Branch <b>ABA:</b> 026004226 <b>ACCT:</b> 293376 <b>OTHER DETAILS:</b> CHIPS: 422 SWIFT: SOGEUS33	<b>WIRE TRANSFER NUMBERS (IF APPLICABLE)</b>	<b>BANK:</b> Bank of America, New York, NY. <b>ABA:</b> 0260-0959-3 <b>ACCT:</b> 3752099133 <b>OTHER DETAILS:</b>
<b>BANK:</b> <b>ABA:</b> <b>ACCT:</b> <b>OTHER DETAILS:</b>	<b>ACH NUMBERS (IF APPLICABLE)</b>	<b>BANK:</b> Bank of America, Dallas TX <b>ABA:</b> 111000012 <b>ACCT:</b> 3752099133 <b>OTHER DETAILS:</b> <u>N/A</u>
<b>ATTN:</b> <b>ADDRESS:</b>	<b>CHECKS (IF APPLICABLE)</b>	<b>ATTN:</b> <b>ADDRESS:</b>



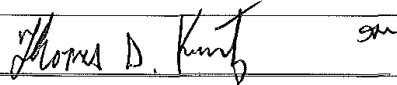

**Base Contract for Sale and Purchase of Natural Gas**

(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> Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default <input checked="" type="checkbox"/> No Additional Events of Default (default) <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: \$ _____ <input type="checkbox"/> Party B: \$ _____ <input type="checkbox"/> Transactional Cross Default Specified Transactions:
<b>Section 2.7</b> Confirm Deadline <input type="checkbox"/> <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> 3 Business Days after receipt	
<b>Section 2.8</b> Confirming Party <input checked="" type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer <input type="checkbox"/>	
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply
<i>Note: The following Spot Price Publication applies to both of the immediately preceding.</i>	
<b>Section 2.31</b> Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____	<b>Section 10.3.2</b> Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular  OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b> Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	
<b>Section 7.2</b> Payment Date <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 15.5</b> Choice Of Law <u>NEW YORK</u>
<b>Section 7.2</b> Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) <input type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	<b>Section 15.10</b> Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.7</b> Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply	
<input checked="" type="checkbox"/> Special Provisions Number of sheets attached: <u>6</u> <input type="checkbox"/> Addendum(s): _____	

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

MERCURIA ENERGY GAS TRADING LLC	PARTY NAME	LOUISVILLE GAS AND ELECTRIC COMPANY-KENTUCKY UTILITIES COMPANY
By: 	SIGNATURE	By: 
Thomas Kurtz	PRINTED NAME	David S. Sinclair
Northeast US Gas Head	TITLE	V.P. Energy Supply and Analysis

# 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

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.

2.1. "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.

- 2.2. "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.
- 2.3. "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.
- 2.4. "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.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "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.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "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.
- 2.10. "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.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "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.
- 2.13. "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.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "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.
- 2.18. "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.
- 2.19. "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.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "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.

- 2.23. "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.
- 2.24. "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.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "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.
- 2.27. "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.
- 2.28. "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.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "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.
- 2.31. "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.
- 2.32. "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.
- 2.33. "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.
- 2.34. "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.
- 2.35. "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.

<p><b>The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.</b></p> <p><b>Cover Standard:</b></p> <p>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</p>
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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 7.8, 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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			

**Base Contract for Sale and Purchase of Natural Gas  
NAESB Standard 6.3.1, September 5, 2006**

**Exhibit B – Special Provisions – Base Contract**

The following Special Provisions shall govern and control over the foregoing provisions of this Base Contract between Mercuria Energy Gas Trading LLC (“Party A”) and Louisville Gas and Electric Company – Kentucky Utilities Company (“Party B”) dated April 20<sup>th</sup> 2015 and shall be considered incorporated therein for all purposes. Any reference to this Base Contract shall include the following Special Provisions.

**SECTION 1. PURPOSES AND PROCEDURES**

**Section 1.3.** Section 1.3 is hereby amended by the deletion of the third sentence thereof and the substitution of the following therefor: “If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then the oral agreement reached under Section 1.2 that clearly resolves the differences in the Transaction Confirmations shall be controlling and satisfy the statute of frauds, howsoever evidenced by the parties.” In addition, Section 1.3 is amended by deleting the fourth sentence and replacing it with “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) electronic agreement formed on a third party electronic trading system (“ETS”) which may be evidenced by an electronic confirmation from such ETS, (iii) the Special Provisions, (iv) the Base Contract, and (v) the General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.”

The following sections shall be added to Section 1:

“1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a transaction contemplated herein.”

“1.6 Each party may, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, its negligence whether it be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation.”

**SECTION 2. DEFINITIONS**

**Section 2.12** “Cover Standard” shall be amended by deleting “(or an alternate fuel if elected by Buyer and replacement Gas is not available)” from the definition.

**Section 2.13.** Section 2.13 is amended by adding the following at the end thereof: “For the avoidance of doubt, the following also shall be Credit Support Obligations under the Contract: the guaranty issued by Party A’s Guarantor for the benefit of Party B”

The following Sections shall be added to the end of Section 2:

2.36 “Costs” means (a) losses associated with transportation costs related to the Terminated Transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party’s reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a Terminated Transaction; and (c) commercially reasonable attorneys’ fees and court costs, if any, incurred in connection with enforcing its rights in respect of the Terminated Transactions.

2.37 “Credit Support Document” shall mean, as to a party (the “First Party”), a guaranty from a Guarantor, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer, amount and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.38 “Eligible Collateral” shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.39 “Letter of Credit” means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least “A-” from S&P or “A3” from Moody’s.

**SECTION 5. QUALITY AND MEASUREMENT**

Delete the existing paragraph under Section 5 in its entirety and replace with the following:

"All Gas delivered by Seller shall meet the pressure, quality and heat specification of the Receiving Transporter. BTU and volume measurements shall be made at the pressure and temperature basis of the Receiving Transporter in accordance with the provisions of such pipeline's then effective Federal Energy Regulatory Commission ("FERC") Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such Receiving Transporter."

**SECTION 6. TAXES**

Add as the last paragraph of Section 6:

"In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point ("Governmental Charge"), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s)."

**SECTION 7. BILLING, PAYMENT AND AUDIT**

Section 7.2. Section 7.2 is amended by inserting the following phrase at the beginning of the first sentence:

"Subject to the netting provisions in Section 7.7 of this Contract,"

Section 7.3. Add the following language to the end of the first sentence of Section 7.3:

"including all supporting documentation acceptable in industry practice to support the amount charged"

Section 7.4. Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ..." in its entirety and replacing with:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

Section 7.5. Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i)"

**SECTION 8. TITLE, WARRANTY, AND INDEMNITY**

Section 8.2. Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8.2" and "AND IN SECTION 15.8" in the last sentence.

Add the following to the end of Section 8:

"8.6 In the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction."

## SECTION 9. NOTICES

Section 9.4. 9.4 shall be amended by:

- (a) in the first sentence delete the words "commercially acceptable"; and
- (b) delete "ten (10)" and replace with "five (5)".

## SECTION 10. FINANCIAL RESPONSIBILITY

Section 10.1. Delete the second sentence of Section 10.1 in its entirety and replace with the following:

"Adequate Assurance of Performance" shall mean the provision of Eligible Collateral."

Section 10.2. Section 10.2 is amended by:

- a) inserting "repudiate, withdraw or" immediately following "(vi)" in the sixth line; and
- b) deleting the word "or" before "(ix)" in the ninth line, and adding the following as new Sections 10.2 (x), after the word "Default;" in the tenth line:  
"(x) have made any representation or warranty which is false or misleading in any material respect when made or when deemed made or repeated;"

Section 10.3. Section 10.3 is amended by deleting from the sixth line the phrase "legally permissible" and replace with "practicable and not prohibited by applicable law"

Section 10.3.1. Section 10.3.1 "Early Termination Damages Apply" shall be amended by:

- (a) adding at the end of the last sentence of the second paragraph:

"(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR"); and

- (b) adding the following as a third paragraph:

"In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions."

Section 10.8. The following provision is added as Section 10.8:

"Upon request, each Party shall deliver to the other Party documentation reasonably requested to evidence the authority and power of such Party and/or its Guarantor, as the case may be, to enter into this Base Contract or any guaranty, as the case may be, which may include, without limitation, a certification of the signature and authority of the individual(s) executing this Agreement or such guaranty, as the case may be and to the extent applicable and requested certificates, documents or other evidence sufficient to confirm the sales tax exempt status of such Party for each jurisdiction in which the purchase, sale and/or delivery of any physical commodity takes place under this Agreement, such that the other party will bear no obligation in relation to such purchase, sale and/or delivery for charging, collecting or remitting sales, use or other excise taxes to any local, municipal, state or federal taxing authority or agency.

## SECTION 11. FORCE MAJEURE

Add the following to the end of Section 11:

"11.7 Any party claiming Force Majeure (the "Claiming Party") as an excuse for performance shall provide the other party (the Non-claiming Party") a good faith estimate of the duration of the Force Majeure."

11.8 During the event of Force Majeure, the Claiming Party, if it is Seller, must cease interruptible deliveries to other markets prior to suspending the performance obligations under the Firm Transaction affected by such Force Majeure event. The Claiming Party, if it is Seller, must treat the other party equitably with its other Firm customers on a proportionate basis with regard to the remaining supply available for market.

## SECTION 12. TERM

Section 12 shall be amended by

The second sentence of Section 12 is hereby deleted and replaced with the following:

"The rights of either party pursuant to: (i) Section 7.6, (ii) Section 10, (iii) Section 13, (iv) Section 15, (v) the obligation to make payment hereunder, including Sections 7.4 and 7.7, and (vi) the obligation of either party to indemnify the other pursuant hereto, including Section 8.3, shall survive the termination of the Base Contract or any transaction."

## SECTION 14. MARKET DISRUPTION

Section 14 shall be deleted in its entirety and replaced with the following:

Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.

(A) If a Market Disruption Event has occurred during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or 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 fifth 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-Affiliate 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. Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains two quotes and the other party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both parties each obtain one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one party is able to obtain a quote, the obtained quotation shall be utilized. For purposes of the foregoing sentence, if more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded.

Notwithstanding the foregoing, If the Price Source retrospectively issues a Floating Price, in respect of a Determination Period (a "Delayed Floating Price"), then, if the Delayed Floating Price is issued by the Price Source in respect of a Determination Period (i) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Determination Period or (ii) after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment notwithstanding any subsequent publication unless the Parties expressly agree otherwise.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction."

"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.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

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.

(B) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) calendar days after publication or announcement.

## SECTION 15. MISCELLANEOUS

Section 15.1 Insert in Section 15.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line.

Section 15.5. Section 15.5 is hereby amended by the deletion thereof and the substitution of the following provisions therefor:

"This Base Contract, all transactions and Transaction Confirmations and the rights and duties of the parties arising therefrom shall be governed by, interpreted and construed in accordance with the laws of the State of New York (without reference to choice of law doctrine as provided in Section 5-1401 and 5-1402 of the New York General Obligations Law). With respect to any suit, action or



proceedings relating to the foregoing ("Proceedings") each party irrevocably submits to the non-exclusive jurisdiction of the federal and state courts located in the Borough of Manhattan in the City of New York, waives any objection which it may have to the laying of venue of any Proceedings brought in any such court, and waives any claim that any such Proceedings have been brought in an inconvenient forum. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS BASE CONTRACT OR ANY TRANSACTION AND ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS BASE CONTRACT.**

**Section 15.8.** Section 15.8 is hereby amended by inserting at the end thereof the following:

"Each party will be deemed to represent to the other party on the date on which it enters into a transaction or Transaction Confirmation that (absent a written agreement between the Parties that expressly imposes affirmative obligations to the contrary for that transaction or Transaction Confirmation):

(i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that transaction and Transaction Confirmation and as to whether that transaction and Transaction Confirmation is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as a recommendation to enter into that transaction or Transaction Confirmation; it being understood that information and explanations related to the terms and conditions of a transaction and Transaction Confirmation shall not be considered a recommendation to enter into that transaction or Transaction Confirmation. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that transaction or Transaction Confirmation.

(ii) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms, conditions and risks of that transaction and Transaction Confirmation. It is also capable of assuming, and assumes, the risks of that transaction and Transaction Confirmation.

(iii) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of that transaction or Transaction Confirmation. Each party understands and acknowledges that the other party may, either in connection with entering into a transaction or from time to time thereafter, engage in open market transactions that are designed to hedge or reduce the risks incurred by it in connection with such transaction and that the effect of such open market transactions may be to affect or reduce the value of such transaction.

(iv) **Eligible Contract Participant.** Each party represents to the other (which representation will be deemed to be repeated by each party on the date on which a Transaction is entered into) that it is an "eligible contract participant" as defined in Sections 1a(18) of the Commodity Exchange Act, as amended.

**Section 15.10.** Insert in Section 15.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).

Section 15.12 shall be amended by:

(a) adding in the second sentence the words "regulatory commission or similar body" after the word "mediation" and before the word "or";

(b) adding the following to the beginning of the third sentence:

" In the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, and the original document(s) is/are unobtainable,;

(c) lower case "neither" in the third sentence; and

(d) add the following to the end of the third sentence after the word "form" and before the "." "or do not comply with the best evidence rule.

The following Sections shall be added:

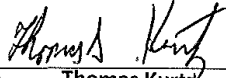
15.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:

(a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.


(b) For purposes of this Section 15.15, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.

IN WITNESS WHEREOF, the parties hereto agree to the terms and conditions set forth herein and have executed this Special Provisions in duplicate.

MERCURIA ENERGY GAS TRADING LLC

By:   
Name: Thomas Kurtz  
Title: Northeast US Gas Head  
Date: 4-16-15

LOUISVILLE GAS AND ELECTRIC COMPANY-KENTUCKY  
UTILITIES COMPANY

By:   
Name: David S. Sinclair  
Title: V.P. Energy Supply and Analysis  
Date: 4-20-15

<b>ATTN:</b> <u>Contact Accounting Department</u> <b>ADDRESS:</b> _____	<b>CHECKS</b> <b>(IF APPLICABLE)</b>	<b>ATTN:</b> <u>Gas Accounting</u> <b>ADDRESS:</b> <u>220 W Main St., 7th Fl</u> <u>Louisville KY 40202</u>
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## 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> Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default <input checked="" type="checkbox"/> No Additional Events of Default (default) <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____
<b>Section 2.7</b> Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> _____ Business Days after receipt	
<b>Section 2.8</b> Confirming Party <input checked="" type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer <input type="checkbox"/> _____	
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>	
<b>Section 2.31</b> Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____	<b>Section 10.3.2</b> Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b> Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	
<b>Section 7.2</b> Payment Date <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 15.5</b> Choice Of Law <u>New York</u>
<b>Section 7.2</b> Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	<b>Section 15.10</b> Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.7</b> Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply	
<input checked="" type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: <u>Six (6)</u> <input type="checkbox"/> <b>Addendum(s):</b> _____	

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

<b>MARATHON PETROLEUM COMPANY LP</b>	<i>PARTY NAME</i>	<b>LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY</b>
By: MPC Investment LLC, its general partner <i>Laddie E. Weems</i>	<i>SIGNATURE</i>	By: <i>David S. Sinclair</i>
Laddie E. Weems	<i>PRINTED NAME</i>	David S. Sinclair
Manager, Crude Oil Supply & Trading	<i>TITLE</i>	Vice President Energy Marketing

# 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

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.

2.1. "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.

2.2. "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.

- 2.3. "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.
- 2.4. "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.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "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.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "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.
- 2.10. "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.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "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.
- 2.13. "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.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "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.
- 2.18. "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.
- 2.19. "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.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "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.
- 2.23. "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.

- 2.24. "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.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "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.
- 2.27. "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.
- 2.28. "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.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "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.
- 2.31. "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.
- 2.32. "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.
- 2.33. "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.
- 2.34. "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.
- 2.35. "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.

<p>The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.</p> <p><b>Cover Standard:</b></p> <p>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.</p>
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**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		
Delivery Point(s): _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____  By: _____  Title: _____  Date: _____	Buyer: _____  By: _____  Title: _____  Date: _____			

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**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF  
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

Dated September 1, 2011

by and between

Marathon Petroleum Company LP ("Marathon")

And

Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")

**SECTION 1. PURPOSES AND PROCEDURES**

The following sections shall be added to Section 1:

"1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a contract contemplated herein."

"1.6 Each party may, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, the negligence be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation.

**SECTION 2. DEFINITIONS**

Section 2.12 "Cover Standard" shall be amended by deleting "(or an alternate fuel if elected by Buyer and replacement Gas is not available)" from the definition.

The following Sections shall be added to the end of Section 2:

2.36 "Costs" means (a) losses associated with transmission/transportation costs related to the Terminated Transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party's reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a Terminated Transaction; and (c) commercially reasonable attorneys' fees and court costs, if any, incurred in connection with enforcing its rights in respect of the Terminated Transactions.

2.37 "Credit Support Document" shall mean, as to a party (the "First Party"), a guaranty from a Guarantor, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer, amount and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.38 "Eligible Collateral" shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.39 "Futures Contract" shall mean the standardized contract for the purchase or sale of Gas that is traded for future delivery under the applicable trading board's regulations.

2.40 "Investment Grade Rating" shall mean a party's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) rating from Moody's of "Baa3" or higher and a rating from S&P of "BBB-" or higher; or, if such entity does not have a rating for its senior unsecured long-term debt, then such rating then assigned to such entity as its "corporate credit rating" assigned by S&P, or the "long-term issuer rating" assigned by Moody's. Moody's shall mean Moody's Investor Services, Inc. or its successors. S&P shall mean the Standard & Poor's Rating Group (a division of The McGraw-Hill Companies) or its successors.

2.41 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.



- 2.42 "Material Adverse Change" shall mean a party's rating falls below an Investment Grade Rating.
- 2.43 "NYMEX" shall mean the New York Mercantile Exchange.
- 2.44 "Option" means a transaction in which, in exchange for the payment of the Premium by the Option Buyer, the Option Seller grants the Option Buyer the right to enter into a transaction on the agreed terms set forth in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which terms shall include, among other terms, which of the Option Buyer and the Option Seller is the Buyer and which is the Seller under such transaction.
- 2.45 "Option Buyer" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has acquired the right, upon exercise of the Option to receive Gas (if the Option Buyer is identified as "Buyer") or deliver Gas (if the Option Buyer is identified as "Seller").
- 2.46 "Option Seller" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has sold the Option. If the Option is exercised by the Option Buyer, the Option Seller will be obligated to deliver Gas (if the Option Buyer is identified as "Buyer") or receive Gas (if the Option Buyer is identified as "Seller").
- 2.47 "Premium" means the amount identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the amount payable by the Option Buyer to the Option Seller in exchange for an Option.
- 2.48 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by Seller and/or the Buyer for verification and/or evidentiary purposes."

### **SECTION 3. PERFORMANCE OBLIGATION**

Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase "and no such replacement or sale is available" in (iii):

"or in the event that the non-breaching party elects, at its sole option, not to replace or re-sell to a third party the Gas not delivered"

### **SECTION 5. QUALITY AND MEASUREMENT**

Delete the existing paragraph under Section 5 in its entirety and replace with the following:

"All Gas delivered by Seller shall meet the pressure, quality and heat specification of the Receiving Transporter. BTU and volume measurements shall be made at the pressure and temperature basis of the Receiving Transporter in accordance with the provisions of such pipeline's then effective Federal Energy Regulatory Commission ("FERC") Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such Receiving Transporter."

### **SECTION 6. TAXES**

Add the following after the first sentence in Section 6 for "Buyer Pays At and After Delivery Point":

All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority."

Add as the last paragraph of Section 6:

"6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point ("Governmental Charge"), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s)."

### **SECTION 7. BILLING, PAYMENT AND AUDIT**

Add the following language to the end of Section 7.3:

"including all supporting documentation acceptable in industry practice to support the amount charged"

Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ..." in its entirety and replacing with:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).

Section 7.8 shall be added as follows:

"7.8 Upon either party's request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month."

#### **SECTION 8. TITLE, WARRANTY, AND INDEMNITY**

Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8.2" and "AND IN SECTION 15.8" in the last sentence.

Add the following to the end of Section 8:

"8.6 In the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction."

#### **SECTION 9. NOTICES**

9.4 shall be amended by:

- (a) in the first sentence delete the words "commercially acceptable"; and
- (b) after the words "payment information" and before the word "shall" add "identified on the cover page under Accounting Information"; and
- (c) delete "ten (10)" and replace with "five (5)".

#### **SECTION 10. FINANCIAL RESPONSIBILITY**

Delete the second sentence of Section 10.1 in its entirety and replace with the following:  
"Adequate Assurance of Performance" shall mean the provision of Eligible Collateral."

Section 10.2 shall be amended by

- (a) deleting "or" before "(ix)"; and
- (b) inserting in the tenth line after the phrase "Additional Event of Default;" the phrase "or (x) suffers a Material Adverse Change; provided that, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party provides within 48 hours but at least one (1) Business Day of receipt of written notice from the other party and maintains for so long as the Material Adverse Change is continuing Eligible Collateral to the other party"; and
- (c) adding at the end before the "." in the last sentence: "provided that no suspension of performance shall continue for more than ten (10) Business Days unless an Early Termination Date has been declared and the Defaulting Party has given Notice thereof in accordance with Section 10.3."

Amend Section 10.3 by deleting from the sixth line the phrase "legally permissible" and replace with "practicable and not prohibited by applicable law"

Section 10.3.1 "Early Termination Damages Apply" shall be amended by:

(a) adding at the end of the last sentence of the second paragraph:

“(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or “LIBOR”); and

(b) adding the following as a third paragraph:

“In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions.”

Section 10.5 is deleted in its entirety and replaced with the following:

Each party agrees that the transactions hereunder constitute a “forward contract” within the meaning of the United States Bankruptcy Code and each party agrees it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

#### **SECTION 11. FORCE MAJEURE**

Add the following to the end of Section 11:

“11.7 Any party claiming Force Majeure (the “Claiming Party”) as an excuse for performance shall provide the other party (the Non-claiming Party”) a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days.”

11.8 During the event of Force Majeure, the Claiming Party, if it is Seller, must cease interruptible deliveries to other markets prior to suspending the performance obligations under the Firm Transaction affected by such Force Majeure event. The Claiming Party, if it is Seller, must treat the other party equitably with its other Firm customers on a proportionate basis with regard to the remaining supply available for market.

#### **SECTION 12. TERM**

Section 12 shall be deleted in its entirety and replaced with:

“The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written Notice by either party; provided, however, that, to the extent necessary, the provisions hereof shall survive termination of this Contract and continue to apply to any transactions entered into between Seller and Buyer prior to the date of termination of this Contract until such time as any and all such transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment and provisions of Sections 1.6, 7.4, 7.6, 7.7, 8.3, 8.4, 10, 13 and 15 shall continue to apply.”

#### **SECTION 14. MARKET DISRUPTION**

Section 14 shall be deleted in its entirety and replaced with the following:

Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.

(A) If a Market Disruption Event has occurred during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or 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 fifth 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-Affiliate 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. Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains two quotes and the other party only obtains one quote, the highest and lowest

values shall be excluded and the remaining quotation shall be utilized; (iii) if both parties each obtain one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one party is able to obtain a quote, the obtained quotation shall be utilized. For purposes of the foregoing sentence, if more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded.

Notwithstanding the forgoing, If the Price Source retrospectively issues a Floating Price, in respect of a Determination Period (a "Delayed Floating Price"), then, if the Delayed Floating Price is issued by the Price Source in respect of a Determination Period (i) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Determination Period or (ii) after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment notwithstanding any subsequent publication unless the Parties expressly agree otherwise.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction."

"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.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

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.

(B) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within ninety (90) days of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction, so long as such notification is made not later than ninety (90) calendar days after publication or announcement of that correction.

#### SECTION 15. MISCELLANEOUS

Insert in Section 15.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line.

Insert in Section 15.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).

Section 15.12 shall be amended by:

deleting the third sentence in its entirety and replacing with the following:

"So long as the Imaged Agreement bears the signature of the party against whom enforcement is sought if there is a space or line for such signature on the agreement, in the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, and the original document(s) is/are unavailable, neither party shall object to the introduction, acceptance and admissibility of the recording, the Transaction Confirmation or the Imaged Agreement as evidence in any proceeding between the Parties before any court, arbitration panel, regulatory commission or similar body on the basis that such recording, Transaction confirmation or Imaged Agreements were not original agreements, originated or maintained in documentary form or do not comply with the best evidence rule."

The following Sections shall be added:

15.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:

(a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for

remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.

(b) Seller recognizes that Buyer may verify title to the Gas purchased and sold hereunder and agrees to provide all information requested by Buyer for such verification within thirty (30) days of such request. Subject to the other provisions of this Section, Buyer agrees to make payment to Seller while title is being verified. If Buyer requires a Division Order Title Opinion to verify Seller's title or right to receive payments due hereunder, Seller agrees to provide to Buyer upon written request, without cost to Buyer, a Division Order Title Opinion satisfactory to Buyer within three (3) months from Seller's receipt of Buyer's written request. In the event that Seller does not provide a Division Order Title Opinion to Buyer within this period, Buyer may withhold any payments due hereunder, without payment of interest, until Buyer has received a Division Order Title Opinion. Moreover, in the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction. Notwithstanding the foregoing, Seller acknowledges that Buyer may rely entirely on the information provided by Seller or as set out on any Transaction Confirmation in making payments due hereunder. Buyer assumes no responsibility to review or approve any title information provided by Seller or any title information reflected on any Transaction Confirmation or to audit, compare, or update any such information against any title opinion or other information furnished or acquired pursuant to or incidental to this Contract.

(c) For purposes of this Section 15.13, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.

#### SECTION 16. OPTION

16.1 Notwithstanding anything in the Contract to the contrary, if the parties have agreed that a particular transaction under this Contract is an Option, then prior to the exercise of the Option by Option Buyer the sole obligation of Option Buyer under such transaction shall be to pay the Premium for such Option and Option Seller shall have no obligation under such transaction. Upon the exercise of an Option by Option Buyer, each of Option Buyer and Option Seller shall be obligated to perform and entitled to performance under the Contract in connection with such transaction as either Buyer or Seller as indicated in the Transaction Confirmation or the parties' oral or electronic agreement, as applicable."

Marathon Petroleum Company LP

By: MPC Investment LLC, its general partner

By: Laddie E. Weems

Name: Laddie E. Weems

Title: Manager, Crude Oil Supply & Trading



LOUISVILLE GAS AND ELECTRIC COMPANY  
AND KENTUCKY UTILITIES COMPANY

By: David S. Sinclair

Name: David S. Sinclair

Title: Vice President Energy Marketing

**GENERAL TERMS AND CONDITIONS  
BASE CONTRACT FOR SHORT-TERM  
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 parties have selected either the "Oral" version or the "Written" version of transaction procedures 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. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party.

**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 non-conflicting Transaction Confirmation 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 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. The entire agreement between the parties shall be those provisions contained in both the Base Contract and any effective Transaction Confirmation. In the event of a conflict among the terms of (i) a Transaction Confirmation, (ii) the Base Contract, and (iii) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

**SECTION 2 DEFINITIONS**

2.1. "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.

2.2. "British thermal unit" or "Btu" shall have the meaning ascribed to it by the Receiving Transporter.

2.3. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.

2.4. "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.

2.5. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.

2.6. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract and (ii) the provisions contained in any effective Transaction Confirmation.

2.7. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu, as evidenced by the Contract Price on the Transaction Confirmation.

2.8. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as set forth in the Transaction Confirmation.

- 2.9. "Cover Standard", if applicable, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the non-defaulting party shall use commercially reasonable efforts to obtain Gas or alternate fuels, or sell Gas, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the defaulting 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 defaulting party.
- 2.10. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.11. "Delivery Period" shall be the period during which deliveries are to be made as set forth in the Transaction Confirmation.
- 2.12. "Delivery Point(s)" shall mean such point(s) as are mutually agreed upon between Seller and Buyer as set forth in the Transaction Confirmation.
- 2.13. "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.
- 2.14. "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".
- 2.15. "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.
- 2.16. "Gas" shall mean any mixture of hydrocarbons and non-combustible gases in a gaseous state consisting primarily of methane.
- 2.17. "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.
- 2.18. "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.
- 2.19. "MMBtu" shall mean one million British thermal units which is equivalent to one dekatherm.
- 2.20. "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.
- 2.21. "Payment Date" shall mean a date, selected by the parties in the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.22. "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.
- 2.23. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.24. "Spot Price" as referred in Section 3.2 shall mean the price listed in the publication specified by the parties in 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.
- 2.25. "Transaction Confirmation" shall mean the document, substantially in the form of Exhibit A, setting forth the terms of a purchase and sale transaction formed pursuant to Section 1. for a particular Delivery Period.
- 2.26. "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 Confirmation.

### 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 specified in the Transaction Confirmation.

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

**Cover Standard:**

3.2 In addition to any liability for Imbalance Charges, which shall not be recovered twice by the following remedy, the exclusive and sole remedy of the parties in the event of a breach of a Firm obligation 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 for replacement Gas or alternative fuels 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); 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); or (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, then the exclusive and sole remedy of the non-breaching party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s).

**Spot Price Standard:**

3.2 In addition to any liability for Imbalance Charges, which shall not be recovered twice by the following remedy, the exclusive and sole remedy of the parties in the event of a breach of a Firm obligation 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; (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.

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS CONTRACT, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.

## **SECTION 4. TRANSPORTATION, NOMINATIONS AND IMBALANCES**

4.1 Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s) and for delivering such Gas at a pressure sufficient to effect such delivery but not to exceed the maximum operating pressure of the Receiving Transporter. 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 actions or inactions (which shall include, but shall not be limited to, Buyer's failure to accept quantities of Gas equal to the Scheduled Gas), then Buyer shall pay for such Imbalance Charges, or reimburse Seller for such Imbalance Charges paid by Seller to the Transporter. If the Imbalance Charges were incurred as a result of Seller's actions or inactions (which shall include, but shall not be limited to, Seller's failure to deliver quantities of Gas equal to the Scheduled Gas), then Seller shall pay for such Imbalance Charges, or reimburse Buyer for such Imbalance Charges paid by Buyer to the Transporter.

## **SECTION 5. QUALITY AND MEASUREMENT**

All Gas delivered by Seller shall meet the 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 the "Buyer Pays At and After Delivery Point" version or the "Seller Pays Before and At Delivery Point" version 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 which 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 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. If Buyer fails to remit the full amount payable by it when due, interest on the unpaid portion shall accrue 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 from the date due until the date of payment; or (ii) the maximum applicable lawful interest rate. If Buyer, in good faith, disputes the amount of any such statement or any part thereof, Buyer will pay to Seller such amount as it concedes to be correct; provided, however, if Buyer disputes the amount due, Buyer must provide supporting documentation acceptable in industry practice to support the amount paid or disputed.

7.3. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with Section 7.2. above.

7.4. A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine the books and records 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 examination right 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 unless 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.

**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.

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

8.4. 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, payments 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 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 two Business Days after mailing.

## **SECTION 10. FINANCIAL RESPONSIBILITY**

10.1. When reasonable grounds for insecurity of payment or title to the Gas arise, either party may demand adequate assurance of performance. Adequate assurance shall mean sufficient security in the form and for the term reasonably specified by the party demanding assurance, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset acceptable to the demanding party or a performance bond or guarantee by a creditworthy entity. In the event either party shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment obligation to the other party; (iii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); or (v) be unable to pay its debts as they fall due; then the other party shall have the right to either withhold and/or suspend deliveries or payment, or terminate the Contract without prior notice, in addition to any and all other remedies available hereunder. Seller may immediately suspend deliveries to Buyer hereunder in the event Buyer has not paid any amount due Seller hereunder on or before the second day following the date such payment is due.

10.2. Each party reserves to itself all rights, set-offs, counterclaims, and other defenses which it is or may be entitled to arising from the Contract.

## **SECTION 11. FORCE MAJEURE**

11.1. Except with regard to a party's obligation to make payment due under Section 7. 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 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; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulation 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. 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 entirely 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 notification with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notification of Force Majeure to the other party, the affected party will be relieved of its obligation 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.

## **SECTION 12. TERM**

This Contract may be terminated on 30 days' written notice, but shall remain in effect until the expiration of the latest Delivery Period of any Transaction Confirmation(s). The rights of either party pursuant to Section 7.4., 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 Confirmation.

## **SECTION 13. MISCELLANEOUS**

13.1. 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, which consent will not be unreasonably withheld or delayed; provided, either party may transfer its interest to any parent or affiliate by assignment, merger or

otherwise without the prior approval of the other party. Upon any transfer and assumption, the transferor shall not be relieved of or discharged from any obligations hereunder.

13.2. 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.

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

13.4. 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 Confirmation(s). This Contract may be amended only by a writing executed by both parties.

13.5. The interpretation and performance of this Contract shall be governed by the laws of the state specified by the parties in the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

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

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

13.8. 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.

TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

EXHIBIT A

--

<b>Date:</b> <b>Transaction Confirmation #:</b>
--

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:	
<b>Contract Price:</b> \$ /MMBtu or		
<b>Delivery Period:</b> Begin: End:		
<b>Performance Obligation and Contract Quantity:</b> (Select One)		
<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>Delivery Point(s):</b> (If a pooling point is used, list a specific geographic and pipeline location):		
<b>Special Conditions:</b>		
<b>Seller:</b>  <b>By:</b>  <b>Title:</b>  <b>Date:</b>	<b>Buyer:</b>  <b>By:</b>  <b>Title:</b>  <b>Date:</b>	

**ADDENDUM**  
**to the Base Contract for Short-Term**  
**Sale and Purchase of Natural Gas**  
**between Louisville Gas and Electric Company/Kentucky Utilities Company**  
**and Marathon Oil Company**  
**dated March 1, 2001**

1. The following shall be added to "Section 7. Billing, Payment and Audit" as section 7.5 to the Contract:

Upon request, the Seller shall provide to the Buyer or the Buyer shall provide to the Seller, copies of any and all transporter statement related to any completed transaction between the parties.

2. The following shall be added to "Section 10. FINANCIAL RESPONSIBILITY" as Section 10.3 to the Contract:

In the event a party terminates this Contract under Section 10.1 ("Non-Defaulting Party"), the Non-Defaulting Party shall designate an early termination date ("Early Termination Date"). Such Early Termination Date shall be designated within three (3) Business Days after the event of default under Section 10.1 and the Non-Defaulting Party shall provide immediate notice of such date to the other party ("Defaulting Party"). Upon the Early Termination Date, the Non-Defaulting Party shall have the right to liquidate any and all Transaction Confirmation under this Contract (including any portion of a Transaction Confirmation not yet fully delivered) then outstanding by: (i) Closing out each Transaction Confirmation being liquidated at its Market Value (as defined below) so that each such Transaction Confirmation is canceled and a settlement payment in an amount equal to the difference between such Market Value and the Contract Value (as defined below) of such Transaction Confirmation shall be due to the Buyer under the Transaction Confirmation if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; (ii) Discounting each amount then due under clause (i) above to net present value in a commercially reasonable manner at the time of liquidation (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 Transaction Confirmation); and (iii) Setting off or aggregating, as appropriate, any or all settlement payments (discounted as appropriate) and (at the election of the Non-Defaulting Party) any or all other amounts owing between the parties under this Contract so that all such amounts are aggregated and/or netted to a single liquidated amount payable by one party to the other. The net amount due under any such liquidation shall be paid by the close of business on the third Business Day following the Early Termination Date. For purposes of this Section 10.3 "Contract Value" means the amount of the Gas remaining to be delivered or purchased pursuant to a Transaction Confirmation multiplied by the price per unit of gas stated in the applicable Transaction Confirmation, and "Market Value" means the amount of Gas remaining to be delivered or purchased pursuant to a Transaction Confirmation multiplied by the market price per unit determined by the Non-Defaulting Party in a commercially reasonable manner for the delivery or production area, as applicable. The rate of interest used in calculating net present value pursuant to (ii) of this Section 10.3 shall be determined by the Non-Defaulting Party in a commercially reasonable manner. The parties agree that a Transaction Confirmation under this Section 10.3 shall constitute a "forward contract" within the meaning of the U.S. Bankruptcy Code and any other applicable insolvency laws. The Non-Defaulting Party's rights under Section 10 and to those costs under Sections 3 and 4 accrued prior to the Early Termination Date are the sole and exclusive remedy of the Non-Defaulting Party. The Non-Defaulting Party shall give notice that a liquidation pursuant to this Section 10 has occurred to the Defaulting Party no later than the time specified above, provided that failure to give such notice shall not affect the validity or enforceability of liquidation nor give rise to any claim by the Defaulting Party against the Non-Defaulting Party. With respect to any Transaction Confirmation, "the amount of the Gas remaining to be delivered or purchased" shall mean only quantities which the parties are obligated as of the Early Termination Date to sell and purchase on a Firm basis during the remaining portion of the Delivery Period, which shall include only the period of time to which the parties are definitely committed as of the Early Termination Date and shall not include any possible but not certain extensions of the term ("evergreen" provisions, etc.).

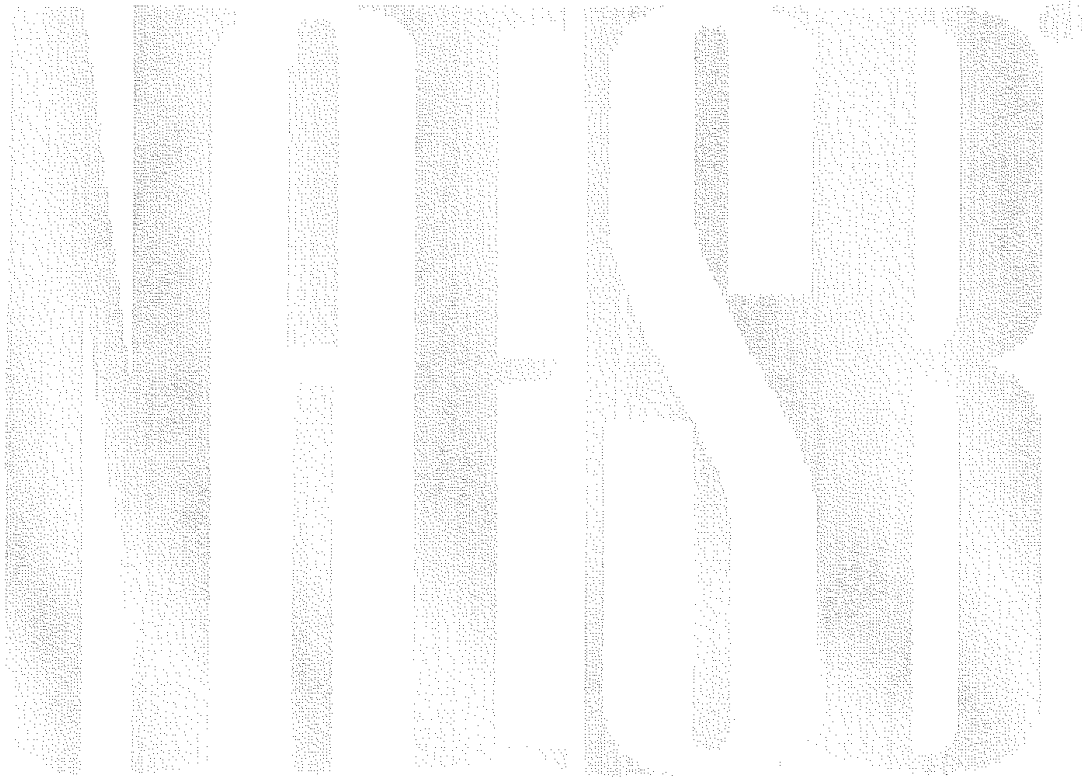
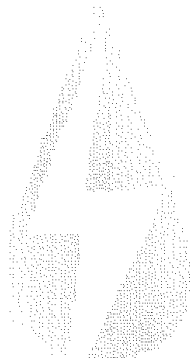
3. The following shall be added to "Section 13. MISCELLANEOUS" as Section 13.9 to the Contract:

Each of the both parties (i) consents to the recording of the telephone conversations of their respective trading and marketing personnel in connection with this Contract, and (ii) agrees that any such electronic recordings may be submitted in evidence in any suit, action or other proceedings in relation to this Contract.

ATTN: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

CHECKS  
(IF APPLICABLE)

LGE/KU ATTN: *Gas Regulatory Accounting*  
ADDRESS: 220 W Main St., 9th Fl  
Louisville KY 40202



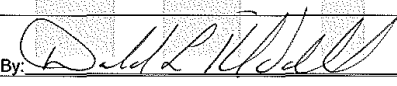
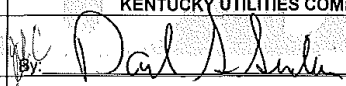
## Base Contract for Sale and Purchase of Natural Gas

(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:

<p><b>Section 1.2</b> <input checked="" type="checkbox"/> Oral (default) Transaction Procedure <input type="checkbox"/> Written</p>	<p><b>Section 10.2</b> <input checked="" type="checkbox"/> No Additional Events of Default (default) Additional Events of Default <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default Specified Transactions: _____</p>
<p><b>Section 2.7</b> <input checked="" type="checkbox"/> 2 Business Days after receipt (default) Confirm Deadline <input type="checkbox"/> 5 Business Days after receipt</p>	
<p><b>Section 2.8</b> <input type="checkbox"/> Seller (default) Confirming Party <input checked="" type="checkbox"/> Buyer</p>	
<p><b>Section 3.2</b> <input checked="" type="checkbox"/> Cover Standard (default) Performance Obligation <input type="checkbox"/> Spot Price Standard</p>	<p><b>Section 10.3.1</b> <input checked="" type="checkbox"/> Early Termination Damages Apply (default) Early Termination Damages <input type="checkbox"/> Early Termination Damages Do Not Apply</p>
<p><i>Note: The following Spot Price Publication applies to both of the immediately preceding.</i></p>	
<p><b>Section 2.31</b> <input checked="" type="checkbox"/> Gas Daily Midpoint (default) Spot Price Publication <input type="checkbox"/> _____</p>	<p><b>Section 10.3.2</b> <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) Other Agreement Setoffs <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply</p>
<p><b>Section 6</b> <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) Taxes <input type="checkbox"/> Seller Pays Before and At Delivery Point</p>	
<p><b>Section 7.2</b> <input checked="" type="checkbox"/> 25<sup>th</sup> Day of Month following Month of delivery (default) Payment Date <input type="checkbox"/> Day of Month following Month of delivery</p>	<p><b>Section 15.5</b> _____ Choice Of Law <span style="float: right;">New York</span></p>
<p><b>Section 7.2</b> <input checked="" type="checkbox"/> Wire transfer (default) AND Method of Payment <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check</p>	<p><b>Section 15.10</b> <input checked="" type="checkbox"/> Confidentiality applies (default) Confidentiality <input type="checkbox"/> Confidentiality does not apply</p>
<p><b>Section 7.7</b> <input checked="" type="checkbox"/> Netting applies (default) Netting <input type="checkbox"/> Netting does not apply</p>	
<p><input checked="" type="checkbox"/> Special Provisions Number of sheets attached: <u>5</u> <input type="checkbox"/> Addendum(s): _____</p>	

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

<p>Magnum Hunter Marketing, LLC <i>GR</i></p>	<p>PARTY NAME</p>	<p>LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY</p>
<p>By: </p>	<p>SIGNATURE</p>	<p>By: </p>
<p>Don Kirkendall</p>	<p>PRINTED NAME</p>	<p>David S. Sinclair</p>
<p>Senior Vice President</p>	<p>TITLE</p>	<p>Vice President Energy Supply and Analysis</p>

**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**

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.

2.1. "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.

2.2. "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.



- 2.3. "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.
- 2.4. "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.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "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.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "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.
- 2.10. "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.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "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.
- 2.13. "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.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "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.
- 2.18. "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.
- 2.19. "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.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "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.
- 2.23. "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.

- 2.24. "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.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "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.
- 2.27. "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.
- 2.28. "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.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "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.
- 2.31. "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.
- 2.32. "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.
- 2.33. "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.
- 2.34. "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.
- 2.35. "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.

<p><b>The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.</b></p> <p><b>Cover Standard:</b></p> <p>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.</p>
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**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 (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; 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 discontinuance 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,

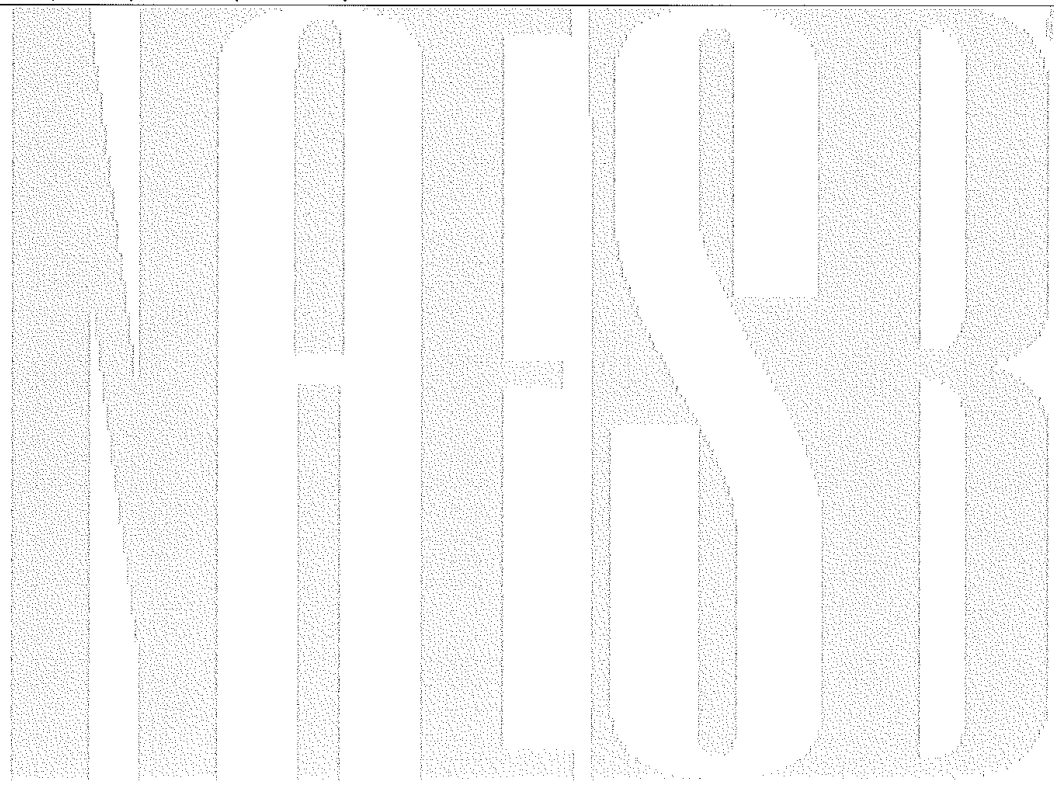


and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

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>		
<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>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):		
<b>Special Conditions:</b> _____ _____		
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____	

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF  
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

Dated 2.19.2014

by and between

Magnum Hunter Marketing, LLC ("MHM")

And

Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")

**SECTION 1. PURPOSES AND PROCEDURES**

The following sections shall be added to Section 1:

"1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a transaction contemplated herein."

"1.6 Each party may, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, its negligence whether it be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation."

**SECTION 2. DEFINITIONS**

Section 2.12 "Cover Standard" shall be amended by deleting "(or an alternate fuel if elected by Buyer and replacement Gas is not available)" from the definition.

The following Sections shall be added to the end of Section 2:

2.36 "Costs" means (a) losses associated with transmission/transportation costs related to the Terminated Transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party's reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a Terminated Transaction; and (c) commercially reasonable attorneys' fees and court costs, if any, incurred in connection with enforcing its rights in respect of the Terminated Transactions.

2.37 "Credit Support Document" shall mean, as to a party (the "First Party"), a guaranty from a Guarantor, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer, amount and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.38 "Eligible Collateral" shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.39 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

**SECTION 3. PERFORMANCE OBLIGATION**

Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase "and no such replacement or sale is available" in (iii):

"or in the event that the non-breaching party elects, at its sole option, not to replace or re-sell to a third party the Gas not delivered"

#### **SECTION 5. QUALITY AND MEASUREMENT**

Delete the existing paragraph under Section 5 in its entirety and replace with the following:

"All Gas delivered by Seller shall meet the pressure, quality and heat specification of the Receiving Transporter. BTU and volume measurements shall be made at the pressure and temperature basis of the Receiving Transporter in accordance with the provisions of such pipeline's then effective Federal Energy Regulatory Commission ("FERC") Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such Receiving Transporter."

#### **SECTION 6. TAXES**

Add the following after the first sentence in Section 6 for "Buyer Pays At and After Delivery Point":

All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority."

Add as the last paragraph of Section 6:

"6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point ("Governmental Charge"), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s)."

#### **SECTION 7. BILLING, PAYMENT AND AUDIT**

Add the following language to the end of the first sentence of Section 7.3:

"including all supporting documentation acceptable in industry practice to support the amount charged"

Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ..." in its entirety and replacing with:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).

Section 7.8 shall be added as follows:

"7.8 Upon either party's request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month."

#### **SECTION 8. TITLE, WARRANTY, AND INDEMNITY**

Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8.2" and "AND IN SECTION 15.8" in the last sentence.

Add the following to the end of Section 8:

"8.6 In the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction."

#### **SECTION 9. NOTICES**

9.4 shall be amended by:

(a) in the first sentence delete the words "commercially acceptable";

- (b) after the words "payment information" and before the word "shall" add "identified on the cover page under Accounting Information"; and  
(c) delete "ten (10)" and replace with "two (2)".

#### SECTION 10. FINANCIAL RESPONSIBILITY

Delete the second sentence of Section 10.1 in its entirety and replace with the following:  
"Adequate Assurance of Performance" shall mean the provision of Eligible Collateral."

Amend Section 10.3 by deleting from the sixth line the phrase "legally permissible" and replace with "practicable and not prohibited by applicable law"

Section 10.3.1 "Early Termination Damages Apply" shall be amended by:

- (a) adding at the end of the last sentence of the second paragraph:

"(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR");  
and

- (b) adding the following as a third paragraph:

"In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions."

#### SECTION 11. FORCE MAJEURE

Add the following to the end of Section 11:

11.7 Any party claiming Force Majeure (the "Claiming Party") as an excuse for performance shall provide the other party (the Non-claiming Party) a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days."

11.8 During the event of Force Majeure, the Claiming Party, if it is Seller, must cease interruptible deliveries to other markets prior to suspending the performance obligations under the Firm Transaction affected by such Force Majeure event. The Claiming Party, if it is Seller, must treat the other party equitably with its other Firm customers on a proportionate basis with regard to the remaining supply available for market.

#### SECTION 12. TERM

Section 12 shall be amended by

The second sentence of Section 12 is hereby deleted and replaced with the following:

"The rights of either party pursuant to: (i) Section 7.6, (ii) Section 10, (iii) Section 13, (iv) Section 15, (v) the obligation to make payment hereunder, including Sections 7.4 and 7.7, and (vi) the obligation of either party to indemnify the other pursuant hereto, including Section 8.3, shall survive the termination of the Base Contract or any transaction."

#### SECTION 14. MARKET DISRUPTION

Section 14 shall be deleted in its entirety and replaced with the following:

Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.

(A) If a Market Disruption Event has occurred during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or 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 fifth 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-Affiliate 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. Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains two quotes and the other party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both parties each obtain

one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one party is able to obtain a quote, the obtained quotation shall be utilized. For purposes of the foregoing sentence, if more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded.

Notwithstanding the forgoing, If the Price Source retrospectively issues a Floating Price, in respect of a Determination Period (a "Delayed Floating Price"), then, if the Delayed Floating Price is issued by the Price Source in respect of a Determination Period (i) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Determination Period or (ii) after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment notwithstanding any subsequent publication unless the Parties expressly agree otherwise.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction."

"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.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

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.

(B) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) calendar days after publication or announcement.

#### SECTION 15. MISCELLANEOUS

Insert in Section 15.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line.

Insert in Section 15.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).

Section 15.12 shall be amended by:

- (a) adding in the second sentence the words "regulatory commission or similar body" after the word "mediation" and before the word "or" ;
- (b) adding the following to the beginning of the third sentence:  
" In the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, and the original document(s) is/are unobtainable,;
- (c) lower case "neither" in the third sentence; and
- (d) add the following to the end of the third sentence after the word "form" and before the "." "or do not comply with the best evidence rule.

The following Sections shall be added:

15.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:

(a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.

(b) Seller recognizes that Buyer may verify title to the Gas purchased and sold hereunder and agrees to provide all information requested by Buyer for such verification within thirty (30) days of such request. Subject to the other provisions of this Section, Buyer agrees to make payment to Seller while title is being verified. If Buyer requires a Division Order Title Opinion to verify Seller's title or right to receive payments due hereunder, Seller agrees to provide to Buyer upon written request, without cost to Buyer, a Division Order Title Opinion satisfactory to Buyer within three (3) months from Seller's receipt of Buyer's written request. In the event that Seller does not provide a Division Order Title Opinion to Buyer within this period, Buyer may withhold any payments due

hereunder, without payment of interest, until Buyer has received a Division Order Title Opinion. Moreover, in the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction, Notwithstanding the foregoing, Seller acknowledges that Buyer may rely entirely on the information provided by Seller or as set out on any Transaction Confirmation in making payments due hereunder. Buyer assumes no responsibility to review or approve any title information provided by Seller or any title information reflected on any Transaction Confirmation or to audit, compare, or update any such information against any title opinion or other information furnished or acquired pursuant to incidental to this Contract.

(c) For purposes of this Section 15.15, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.

MAGNUM HUNTER MARKETING, LLC *BK*

By: 

Name: Don Kirkendall

Title: Senior Vice President

LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY

By: 

Name: David S. Sinclair

Title: Vice President Energy Marketing *WSS*  
*Supply & Analysis*

500 Dallas Street  
Suite 3100  
Houston, TX 77002

Telephone 1 (713) 275 6100  
Facsimile 1 (713) 369 3916

PLEASE DISTRIBUTE TO APPROPRIATE PERSONNEL



January 11, 2010

RE: Notice of Merger and Name Change

We are pleased to advise that effective February 1, 2010, we will have merged the operations of Macquarie Cook Energy, LLC, our natural gas marketing and trading business, with Macquarie Cook Power Inc., our electric marketing and trading business.

The most noticeable result of the merger will be that Macquarie will have a single offering and brand in the marketplace as "Macquarie Energy." The new legal entity, Macquarie Energy LLC, will have the combined resources of both the gas and power teams. Together, these teams form a compelling energy platform offering a wide spectrum of energy products and services to better serve your needs.

While our name has changed, our commitment to customer service and innovative energy solutions has not. Our goal is to make this transition period seamless and expect no impact to our business. Enclosed is a legal notice of the merger and name change, supporting documentation for the merger and name changes, updated settlement instructions, and a copy of the press release that provides more information on the merger as well as a factsheet on Macquarie Energy.

Should you have any questions or would like to discuss future opportunities with Macquarie Energy, please do not hesitate to contact us.

We look forward to the opportunity to grow our business relationship with you.

Yours sincerely,

Nicholas O'Kane  
Global Head, Energy Markets Division  
Fixed Income, Currencies and Commodities

Macquarie Cook Power Inc., Macquarie Cook Energy Canada Ltd., Macquarie Cook Energy, LLC and, effective February 1, 2010, Macquarie Energy LLC and Macquarie Energy Canada Ltd. (collectively, "Macquarie Energy") are members of the Macquarie Group of Companies. However, Macquarie Energy is not an authorized deposit-taking institution for the purposes of the Australian Banking Act 1959 and Macquarie Energy's obligations do not represent deposits or other liabilities of Macquarie Bank Limited. Unless agreed in writing between Macquarie Bank Limited and a party, Macquarie Bank Limited does not guarantee or otherwise provide assurance in respect of the obligations of Macquarie Energy.



500 Dallas Street  
Suite 3100  
Houston, TX 77002

Telephone 1 (713) 275 6100  
Facsimile 1 (713) 369 3918

January 11, 2010

**Re: Legal Notice of Reorganization of Macquarie Cook Entities**



We are pleased to announce that, effective February 1, 2010, the following will occur:

- Macquarie Cook Power Inc. will merge into Macquarie Cook Energy, LLC, with Macquarie Cook Energy, LLC as the surviving entity;
- Macquarie Cook Energy, LLC will change its name to **Macquarie Energy LLC**; and
- Macquarie Cook Energy Canada Ltd. will change its name to **Macquarie Energy Canada Ltd.**

We are making these changes to combine the resources of our gas and power teams in order to better provide a wide spectrum of energy offerings.

Contracts and transactions with Macquarie Cook Energy, LLC, Macquarie Cook Energy Canada Ltd. and Macquarie Cook Power Inc. will all remain in full force and effect. However, effective February 1, 2010, contracts and transactions with Macquarie Cook Energy, LLC and Macquarie Cook Power Inc. will automatically be in the name of Macquarie Energy LLC and contracts and transactions with Macquarie Cook Energy Canada Ltd. will automatically be in the name of Macquarie Energy Canada Ltd.

Macquarie Energy LLC's DUNS number will be 79-884-6036, which is Macquarie Cook Energy, LLC's current DUNS number.

Macquarie Energy Canada Ltd.'s DUNS number will be 79-999-9419, which is Macquarie Cook Energy Canada Ltd.'s current DUNS number.

Updated settlement instructions are attached, along with supporting documentation for the merger and name changes.

Further information about Macquarie, the merger and the name changes is available at [www.macquarie.com/energymerger](http://www.macquarie.com/energymerger).

If you have any questions, please contact the following:

Credit: [ficcemdmcecredit@macquarie.com](mailto:ficcemdmcecredit@macquarie.com)  
Legal: [ficcemdmcelegal@macquarie.com](mailto:ficcemdmcelegal@macquarie.com)  
Settlements: [CAGSettlementsHouston@macquarie.com](mailto:CAGSettlementsHouston@macquarie.com)  
Customer Due Diligence: [ficccomphs@macquarie.com](mailto:ficccomphs@macquarie.com)

We value your continued business and remain committed to providing you with exceptional customer service.

Kind regards,

Nicholas O'Kane  
Global Head, Energy Markets Division  
Fixed Income, Currencies and Commodities

Macquarie Cook Power Inc., Macquarie Cook Energy Canada Ltd., Macquarie Cook Energy, LLC and, effective February 1, 2010, Macquarie Energy LLC and Macquarie Energy Canada Ltd. (collectively, "Macquarie Energy") are members of the Macquarie Group of Companies. However, Macquarie Energy is not an authorized deposit-taking institution for the purposes of the Australian Banking Act 1959 and Macquarie Energy's obligations do not represent deposits or other liabilities of Macquarie Bank Limited. Unless agreed in writing between Macquarie Bank Limited and a party, Macquarie Bank Limited does not guarantee or otherwise provide assurance in respect of the obligations of Macquarie Energy.



February 13, 2009

LOUISVILLE GAS AND ELECTRIC CO/KENTUCKY UTILITIES COMPANY  
220 WEST MAIN STREET  
LOUISVILLE, KY 40232

Re: NAESB-BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS Dated 11/19/2007

To Whom It May Concern:

Please be advised that on February 3, 2009 Constellation Energy Commodities Group, Inc. ("CCG") entered into a purchase and sale agreement with Macquarie Cook Energy, LLC ("MCE") pursuant to which MCE has agreed to acquire certain contracts relating to physical and financial gas transactions from CCG, including any related storage and transportation contracts related thereto ("PSA Transaction"). The referenced agreement that CCG currently has with your company are among the contracts that CCG has agreed to transfer to MCE (the "Agreement"). The transfer and assignment of the Agreement to MCE is contingent upon a number of factors, including approval of the transfer of certain jurisdictional transport and storage capacity contracts by the Federal Energy Regulatory Commission. Accordingly, CCG and MCE are requesting that you execute this consent to the assignment of the Agreement prior to the closing of the PSA Transaction. Upon receipt of this consent to assign, receipt of other approvals and satisfaction of other conditions to the closing of the PSA Transaction, you will be notified of the effective date of the assignment of the Agreement ("the Effective Date").

By executing a copy of this letter, CCG, MCE, and Counterparty, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

**1. Assignment and Acceptance.**

- (a) Effective as of the Effective Date, CCG hereby irrevocably assigns and transfers to MCE all of its right in, title to and obligations under the Agreement (the "Assignment").
- (b) Effective as of the Effective Date, MCE hereby accepts such Assignment, subject to the terms hereof.
- (c) Counterparty hereby consents to such Assignment, and accepts MCE as the party to perform the obligations formerly to be performed by CCG, and benefit from the rights formerly accruing to CCG, under the Agreement on and after the Effective Date. Upon the Effective Date, Counterparty hereby releases CCG from its performance and payment obligations under the Agreement (if any), except for all obligations arising or accruing under the Agreement that may have accrued but which have not been performed, satisfied or paid as of the Effective Date.

2. **Reconfirmation of Transactions.** If any transactions are outstanding under the Agreement on the Effective Date, the parties to this letter agreement will, promptly following the Effective Date, agree to a schedule, in a mutually agreeable form, of the outstanding transactions that have been assigned and transferred with the Agreement as of the Effective Date. The parties agree to act promptly and in good faith to resolve any dispute or discrepancy between their respective books and records concerning the details of the transactions assigned and transferred.
3. **Return of Collateral.** Counterparty agrees to release and return within one (1) business day of the Effective Date any collateral, guarantees, letters of credit, comfort letters, "keep whole" agreements, bonds or other financial security arrangements or other credit support arrangements (including for the provision and maintenance of cash collateral) of any type or kind whatsoever, whether or not accrued, absolute, contingent or otherwise, provided by CCG (or its credit support provider) in respect of the Agreement.
4. **Documents to Deliver.** Counterparty and MCE each agree to deliver, promptly following reasonable request from the other party, (a) annual audited, consolidated financial statements for it or its credit support provider (which may be provided subject to execution of a confidentiality agreement), (b) a duly completed multi-jurisdiction sales and use tax certificate or any other certificate reasonably requested to permit payment of amounts due under the Agreement free of any tax or charge or at a reduced rate of the tax, and (c) standard settlement instructions, on the party's letterhead and executed by an authorized signatory, detailing the party's bank account for payments under the Agreement.
5. **Mutual Representations and Warranties.** Each party to this letter agreement shall be deemed to repeat the representations and warranties set forth in the Agreement on the date the party signs this letter and on the Effective Date. Each party to this letter agreement represents and warrants, as of the date the party signs this letter and on the Effective Date, that: (a) it has full capacity, power and authority to enter into this letter agreement, and (b) no event has occurred or is continuing with respect to the party that would constitute an event of default or potential event of default (however described) under the Agreement, and no circumstances exist that would entitle the other party to terminate transactions under the Agreement early.
6. **Further Assurances.** CCG and Counterparty each agree that it shall, from time to time and at all times hereafter, execute such further assurances and do all such acts and things as may be reasonably required, including the transference or reissuance of any collateral held by CCG to MCE, for the purpose of vesting in MCE the rights and obligations of CCG in the Agreement.

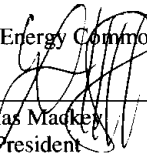

As time is of the essence, we kindly request that you execute two (2) original copies of this letter and forward them in the enclosed envelopes no later than February 25, 2009.

McDermott Will & Emery LLP  
600 Thirteenth Street, N.W.  
Washington, DC 20005  
Attn: Stephen S. Smith, Jr.  
Facsimile No.: 202-756-8087

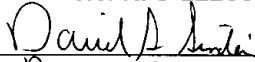
If you have any questions, please do not hesitate to contact Michele McLendon - CCG at (713) 369-3651 (or at [michele.mclendon@constellation.com](mailto:michele.mclendon@constellation.com)) or Angela Jones - MCE at (310) 789-3900 (or at [angela.jones@macquarie.com](mailto:angela.jones@macquarie.com)) or TCGCMDMCE-LRM@macquarie.com. This letter agreement may be executed in counterparts and shall be governed by the laws of the State of New York, without regards to the conflicts of law provisions. Any judicial action arising out of, resulting from, or in any way relating to this Agreement shall be brought only in a state or federal court of competent jurisdiction located in the state,



county and city of New York, and all parties to this Agreement submit themselves to the jurisdiction of such court and waive any right to trial by jury in such action. In the event such judicial proceedings are instituted by any party hereto, the prevailing party or parties shall be entitled to award of costs and attorneys' fees incurred in connection with such proceedings.

Sincerely,

Constellation Energy Commodities Group, Inc.  
By:  \_\_\_\_\_   
Name: Douglas Mackey  
Title: Vice President

ACKNOWLEDGED AND AGREED:

LOUISVILLE GAS AND ELECTRIC CO/KENTUCKY UTILITIES COMPANY  
By:  \_\_\_\_\_  
Name: David S. Sinclair  
Title: VP Energy Marketing  
Date: 3-5-09

Macquarie Cook Energy, LLC  
By:  \_\_\_\_\_   
Name: Cindy Khok  
Title: Division Director  
Date: 2/27/09

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: November 19, 2007. The parties to this Base Contract are the following:

Constellation Energy Commodities Group, Inc. ("Constellation") and  
111 Market Place, Suite 500, Baltimore, MD 21202  
Duns Number: 01-563-5220  
Contract Number: Not Applicable  
U.S. Federal Tax ID Number: 52-2019332

Louisville Gas and Electric Co./Kentucky Utilities Co. ("LGE"/"KU")  
220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
Duns Number: LGE 00-694-5505/ KU 00-694-4398  
Contract Number: Not Applicable  
U.S. Federal Tax ID Number: LGE 61-0264150/KU 61-0247570

**Notices:**

500 Dallas Street, Suite 3300, Houston, TX 77002-4800  
Attn: Contracts Manager  
Phone: (713) 369-4300 Fax: (713) 344-2901

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
Attn: Contract Administration  
Phone: 502/627-4251 or 4197 Fax: 502/627-4222

**Confirmations:**

111 Market Place, Suite 500, Baltimore, MD 21202  
Attn: Operations  
Phone: (410) 468-3620 Fax: (410) 468-3540

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
Attn: Contract Administration  
Phone: 502/627-4197 or 2252 Fax: 502/627-4222

**Invoices and Payments:**

111 Market Place, Suite 500, Baltimore, MD 21202  
Attn: Operations  
Phone: (410) 468-3620 Fax: (410) 468-3540

220 West Main St., 7<sup>th</sup> Floor, Louisville, KY 40202  
Attn: Gas Accounting  
Phone: 502/627-4627 Fax: 502/627-3800

**Wire Transfer or ACH Numbers (if applicable):**

BANK: M&T Bank, Baltimore, MD  
ABA: 0220-0004-6  
ACCT: 191-9007-8  
Other Details: Not Applicable

**ACH ONLY:**  
BANK: Bank of America, Dallas, TX  
ACCT: 111-0000-12 ACCT: 3752099133  
**WIRES ONLY:**  
BANK: Bank of America, New York, NY  
ABA: 0260-0959-3 ACCT: 3752099133

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 only one box from each section:**

<p><b>Section 1.2</b> <input checked="" type="checkbox"/> Oral (default)                  Transaction Procedure <input type="checkbox"/> Written</p>	<p><b>Section 7.2</b> <input checked="" type="checkbox"/> 25<sup>th</sup> Day of Month following Month of delivery (default)                  Payment Date <input type="checkbox"/> _____ Day of Month following Month of delivery</p>
<p><b>Section 2.5</b> <input checked="" type="checkbox"/> 2 Business Days after receipt (default)                  Confirm Deadline <input type="checkbox"/> _____ Business Days after receipt</p>	<p><b>Section 7.2</b> <input checked="" type="checkbox"/> Wire transfer (default)                  Method of Payment <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH)  <input type="checkbox"/> Check</p>
<p><b>Section 2.6</b> <input checked="" type="checkbox"/> Seller (default)                  Confirming Party <input type="checkbox"/> Buyer  <input type="checkbox"/> Constellation</p>	<p><b>Section 7.7</b> <input checked="" type="checkbox"/> Netting applies (default)                  Netting <input type="checkbox"/> Netting does not apply</p>
<p><b>Section 3.2</b> <input checked="" type="checkbox"/> Cover Standard (default)                  Performance Obligation <input type="checkbox"/> Spot Price Standard</p> <p><i>Note: The following Spot Price Publication applies to both of the immediately preceding.</i></p> <p><b>Section 2.26</b> <input checked="" type="checkbox"/> Gas Daily Midpoint (default)                  Spot Price Publication <input type="checkbox"/> _____</p>	<p><b>Section 10.3.1</b> <input checked="" type="checkbox"/> Early Termination Damages Apply (default)                  Early Termination Damages <input type="checkbox"/> Early Termination Damages Do Not Apply</p> <p><b>Section 10.3.2</b> <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default)                  Other Agreement Setoffs <input type="checkbox"/> Other Agreement Setoffs Do Not Apply</p> <p><b>Section 14.5</b>                  Choice Of Law <span style="float: right;">New York</span></p>
<p><b>Section 6</b> <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default)                  Taxes <input type="checkbox"/> Seller Pays Before and At Delivery Point</p>	<p><b>Section 14.10</b> <input checked="" type="checkbox"/> Confidentiality applies (default)                  Confidentiality <input type="checkbox"/> Confidentiality does not apply</p>
<p><input checked="" type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: Four (4)                  Addendum(s):</p>	

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

Constellation Energy Commodities Group, Inc.

Louisville Gas and Electric Co./Kentucky Utilities Co.

By:   
 Name:  
 Title:

KAP  
11/15/07  
RPO  
11/18/07

By:   
 Name: MARTYN GALLUS  
 Title: SR. VICE PRESIDENT

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**LOUISVILLE GAS & ELECTRIC COMPANY**  
 KENTUCKY UTILITIES

Standard 6.3.1  
 April 19, 2002

## 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 2.7.

**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. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

### SECTION 2. DEFINITIONS

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.

2.1. "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.

- 2.2. "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.
- 2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 2.5. "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.
- 2.6. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.7. "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.
- 2.8. "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.
- 2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.10. "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.
- 2.11. "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 an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.
- 2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.15. "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.
- 2.16. "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.
- 2.17. "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.
- 2.18. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.19. "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.
- 2.20. "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.
- 2.21. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.22. "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.
- 2.23. "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.
- 2.24. "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.

- 2.25. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.26. "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.
- 2.27. "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.
- 2.28. "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.
- 2.29. "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); 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); or (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, then the sole and exclusive remedy of the performing party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s). 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.
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<b>Buyer Pays At and After Delivery Point:</b>
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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.
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<b>Seller Pays Before and At Delivery Point:</b>
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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.
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## 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. 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 7.9 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 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 14.8, 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 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 or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. 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, payments 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 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.

## 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), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

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; or (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; 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 or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must

be liquidated and terminated as soon thereafter as is reasonably practicable, 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:**

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 (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.

**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 owed to the Non-Defaulting Party against any margin or other collateral held by it 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 such 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 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 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; 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 Agreement; (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 and Section 10, 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. MISCELLANEOUS

14.1. 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.

14.2. 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.

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

14.4. 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.

14.5. 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.

14.6. 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.

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

14.8. 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.

14.9. 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.

14.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 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, or (iv) 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.

14.11 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.

**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; padding: 5px;"> <b>Firm (Fixed Quantity):</b>                      _____ MMBtus/day  <input type="checkbox"/> EFP                 </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> <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; padding: 5px;"> <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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____  By: _____  Title: _____  Date: _____	Buyer: _____  By: _____  Title: _____  Date: _____			

**SPECIAL PROVISIONS  
TO THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS  
BETWEEN CONSTELLATION ENERGY COMMODITIES GROUP, INC. ("Constellation") AND  
LOUISVILLE GAS & ELECTRIC COMPANY/KENTUCKY UTILITIES ("LG&E/KU")  
Dated November 19, 2007**

The following special provisions to the Base Contract shall supplement and form part of the Base Contract between the parties. In the event of any conflict or inconsistency between such special provisions and the Base Contract, the special provisions shall govern.

**SECTION 2. DEFINITIONS**

2.8 Section 2.8 "Contract Price" shall be amended by adding the following at the end of the section: "The Contract Price includes reimbursement to Seller for any production, severance, ad valorem or other Taxes owed with respect to Gas prior to delivery to Buyer, all of which Taxes shall be borne and paid exclusively by Seller, unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority."

*The following sections shall be added to Section 2:*

2.30 "Costs" means all costs and losses which the Non-Defaulting Party may reasonably incur in terminating and liquidating under Section 10 any Terminated Transactions, including, without limitation, attorneys' and brokers fees; costs and losses associated with transportation which cannot be avoided through the Non-Defaulting Party's reasonable efforts; and any costs and expenses reasonably incurred by the Non-Defaulting Party in entering into new arrangements which replace any Terminated Transaction, except for such amounts already included in the Net Settlement Amount.

2.31 "Cross Default" means a default, event of default or other similar event in respect of such party under either (i) one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than \$100,000,000, with respect to Constellation (or its guarantor, as applicable), and not less than \$ 50,000,000, with respect to Counterparty (or its guarantor, as applicable), which results in such indebtedness becoming immediately due and payable."

**SECTION 5. QUALITY AND MEASUREMENT**

*Section 5 shall be deleted in its entirety and replace with the following:*

"All Gas delivered by Seller shall meet the pressure, quality and heat specification of the pipeline system and/or facilities which shall receive the Gas at the Delivery Point(s) set forth in the transaction. The unit of quantity measurements for purposes of this Contract shall be one MMBtu Dry. BTU and volume measurements shall be made at the pressure and temperature basis of the measuring pipeline in accordance with the provisions of such pipeline's then effective Federal Energy Regulatory Commission ("FERC") Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such pipeline."

**SECTION 7. BILLING, PAYMENT AND AUDIT**

7.3 Section 7.3 shall be amended by adding the phrase "including all supporting documentation acceptable in industry practice to support the amount charged" at the end of the first sentence after the phrase "amount was calculated".

7.4 Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ... this Section." in its entirety and adding the following to end of this Section 7.4:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at



the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

7.5 Section 7.5(i) shall be amended by inserting "U.S." between "then-effective" and "prime rate".

## SECTION 8. TITLE, WARRANTY, AND INDEMNITY

*The following sections shall be amended as follows:*

8.1 Section 8.1 shall be amended by inserting the word "assume" between "and" and "any liability"; and by inserting the words "at and" between "Gas" and "after" in the last sentence.

8.2 Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8.2" and "AND IN SECTION 14.8" in the last sentence.

10.2 Section 10.2 shall be amended by (i) deleting the words "or its guarantor" in the first line of such Section; (ii) deleting the word "or" before "(viii)" in such Section; and (iii) adding the following immediately after the ";" in subclause (viii):

"(ix) make any representation or warranty herein which is false or misleading in any material respect when made or when deemed made or repeated; (x) fail to perform any material covenant or obligation set forth in this Contract (except to the extent such failure constitutes a separate Event of Default, and except for such party's obligations to deliver or receive Gas (the exclusive remedy for which is provided in Section 3)) if such failure is not remedied within seven (7) Business Days after receipt of written notice; (xi) consolidate or amalgamate with, or merge with or into, or transfer all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such party under this Contract or any guaranty thereof, as applicable, by operation of law or pursuant to an agreement reasonably satisfactory to the other party; (xii) sustain the occurrence and continuation of a Cross Default; or (xiii) with respect to a party's guarantor (if any), (A) any event referenced in the above clauses (i) through (xii) shall have occurred with respect to such guarantor in connection with this Contract or its guaranty; (B) the failure of such guarantor's guaranty to be in full force and effect prior to the satisfaction of all obligations of such party under this Contract and each transaction; or (C) such guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of its guaranty,"

Section 10.2 shall further be amended by adding the following immediately before the "." at the end of such Section:

"~~provided, that~~ no suspension shall continue for more than ten (10) Business Days unless an Early Termination Date has been declared and the Defaulting Party given notice thereof in accordance with Section 10.3."

Section 10.3 shall be amended by deleting from the second (2<sup>nd</sup>) sentence the phrase "or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate"

*The following sections shall be added to Section 10:*

"10.3 In calculating early termination damages pursuant to Section 10.3.1, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions."

"10.9 Throughout the term of the Contract and if requested by the other party, each party will provide the other party with its or its guarantor's, as applicable, annual audited financial statements prepared in accordance with generally accepted accounting principles ("GAAP") and quarterly unaudited consolidated financial statements prepared in accordance with GAAP (subject to normal year-end adjustments and the omission of footnotes) within 120 days after the end of each fiscal year and 60 days after the end of each fiscal quarter, as applicable, in each case fairly presenting the financial condition of the applicable entity or entities; provided, however, in the event such

entity is required to make its annual audited and quarterly unaudited financial statements available to the public, then the other party shall use public sources to obtain such information."

**Section 12 shall be deleted in its entirety and replaced with:**

"The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written Notice by either party; provided, however, that the provisions hereof shall survive termination of this Contract and continue to apply to any transactions entered into between Seller and Buyer prior to the date of termination of this Contract until such time as any and all such transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment and provisions of Sections 7.7, 8.3 (indemnity obligations for Claims that arise or accrue prior to termination), 8.4 (liability obligations for Claims that arise or accrue prior to termination), 10, 13, shall continue to apply."

#### **SECTION 13. LIMITATIONS**

**Section 13 shall be amended by deleting the phrase "UNLESS EXPRESSLY HEREIN PROVIDED," from the sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) lines.**

#### **SECTION 14. MISCELLANEOUS**

14.1 Section 14.1 shall be amended by inserting the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4<sup>th</sup>) line.

*The following sections shall be amended as follows:*

14.8 The following shall be added to the end of Section 14.8:

"On the effective date and the date of entering into each transaction, each party represents and warrants that: (i) no Event of Default with respect to it has occurred and is continuing and no such event would occur as a result of its entering into or performing its obligations under this Contract and each transaction; (ii) it is acting for its own account, has made its own independent decision to enter into this Contract and each transaction and as to whether this Contract and each transaction is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Contract and each transaction; and (iii) it is an "eligible contract participant" as that term is defined in Section 1a(12) of the Commodity Exchange Act, as amended. The parties agree that this Contract constitutes a "qualified financial contract" as that term is defined in N.Y.G.O.L. §5-701(b) and a "master netting agreement" as defined in 11 U.S.C. 101(38A) or any successor provisions."

14.10 Section 14.10 is amended by adding the words "and such party's affiliates" after the word "party" in the third line of such Section and by adding the parenthetical "(excluding the name of the other party)" after the word "information" in the sub-section (iv).

14.11 Section 14.11 shall be deleted in its entirety and replaced with the following:

"14.11 This Contract, and the rights and duties of the parties arising therefrom, shall be governed by, and interpreted and construed in accordance with, the law of the State of New York (without reference to choice of law doctrine). With respect to any suit, action or proceeding relating to the foregoing ("Proceeding") each party irrevocably submits to the non-exclusive jurisdiction of the State and Federal Courts located in New York City, Borough of Manhattan, New York and any appellate court therefrom, and waives any objection to the laying of venue of any Proceeding brought in any such court, waives any claim that any Proceeding has been brought in an inconvenient forum and waives claim of sovereign immunity. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS CONTRACT.**"

*The following sections shall be added to Section 14:*

"14.12 **Imaged Agreement.** 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.

**14.13 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, no more than 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 obtained quotes. If either party fails to provide at least one quote then the average of the other party's quote(s) 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."

<sup>14.18</sup> ~~14.18~~ UCC - Except as otherwise provided for herein, the provisions of the Uniform Commercial Code ("UCC") of the state New York shall be deemed to apply to all transactions. Each party further agrees that the provisions of this Contract supersede and replace in their entirety any requirements of law relating to adequate assurance of future performance, including without limitation Article 2 of the Uniform Commercial Code, as enacted in New York.

IN WITNESS WHEREOF, the parties hereto have executed these Special Provisions in duplicate.

Constellation Energy Commodities Group, Inc.

Louisville Gas and Electric Company/  
Kentucky Utilities Company

By:   
Name: Stu Rubenstein  
Title: Chief Operating Officer

By:   
Name:   
Title:

KAR  
11/19/07  
RPO  
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SR. VICE PRES.  
LOUISVILLE GAS & ELECTRIC  
KENTUCKY UTILITIES

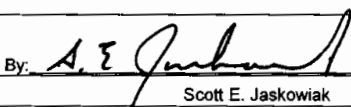
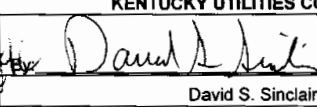
## Base Contract for Sale and Purchase of Natural Gas

(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> Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default <input checked="" type="checkbox"/> No Additional Events of Default (default) <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default Specified Transactions: _____ _____ _____
<b>Section 2.7</b> Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> 5 Business Days after receipt	
<b>Section 2.8</b> Confirming Party <input checked="" type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer _____	
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>	
<b>Section 2.31</b> Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____	<b>Section 10.3.2</b> Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b> Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	
<b>Section 7.2</b> Payment Date <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 15.5</b> Choice Of Law _____ <b>New York</b> _____
<b>Section 7.2</b> Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) AND <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	<b>Section 15.10</b> Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.7</b> Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply	
<input checked="" type="checkbox"/> <b>Special Provisions</b> Six sheets attached: <input type="checkbox"/> <b>Addendum(s):</b> _____	

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

<b>LACLEDE ENERGY RESOURCES, INC</b>	<i>PARTY NAME</i>	<b>LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY</b>
By: 	<i>SIGNATURE</i>	
Scott E. Jaskowiak	<i>PRINTED NAME</i>	David S. Sinclair
Vice President and General Manager	<i>TITLE</i>	Vice President – Energy Marketing

# 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

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.

2.1. "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.

2.2. "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.

- 2.3. "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.
- 2.4. "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.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "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.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "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.
- 2.10. "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.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "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.
- 2.13. "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.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "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.
- 2.18. "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.
- 2.19. "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.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "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.
- 2.23. "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.

- 2.24. "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.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "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.
- 2.27. "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.
- 2.28. "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.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "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.
- 2.31. "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.
- 2.32. "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.
- 2.33. "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.
- 2.34. "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.
- 2.35. "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.

<p><b>The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.</b></p> <p><b>Cover Standard:</b></p> <p>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.</p>
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**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 (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; 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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF  
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS  
Dated October 1, 2010**

**by and between  
Laclede Energy Resources Inc. ("LACLEDE")  
And  
Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")**

**SECTION 1. PURPOSES AND PROCEDURES**

The following sections shall be added to Section 1:

"1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a contract contemplated herein."

"1.6 Each party shall, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, the negligence be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation."

**SECTION 2. DEFINITIONS**

Section 2.12 "Cover Standard" shall be amended by deleting "(or an alternate fuel if elected by Buyer and replacement Gas is not available)" from the definition.

The following Sections shall be added to the end of Section 2:

2.36 "Credit Support Document" shall mean, as to a party (the "First Party"), a guaranty from a Guarantor, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer, amount and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.37 "Eligible Collateral" shall mean either (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.38 "Futures Contract" shall mean the standardized contract for the purchase or sale of Gas that is traded for future delivery under the applicable trading board's regulations.

2.39 "Investment Grade Rating" shall mean a party's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) rating from Moody's of "Baa3" or higher and a rating from S&P of "BBB-" or higher; or, if such entity does not have a rating for its senior unsecured long-term debt, then such rating then assigned to such entity as its "corporate credit rating" assigned by S&P, or the "long-term issuer rating" assigned by Moody's. Moody's shall mean Moody's Investors Service, Inc. or its successors. S&P shall mean the Standard & Poor's Rating Group (a division of The McGraw-Hill Companies) or its successors.

2.40 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

2.41 "Material Adverse Change" shall mean a party or its Guarantor's rating falls below an Investment Grade Rating.

2.42 "NYMEX" shall mean the New York Mercantile Exchange.

2.43 "Option" means a transaction in which, in exchange for the payment of the Premium by the Option Buyer, the Option Seller grants the Option Buyer the right to enter into a transaction on the agreed terms set forth in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which terms shall include, among other terms, which of the Option Buyer and the Option Seller is the Buyer and which is the Seller under such transaction.

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2.44 "Option Buyer" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has acquired the right, upon exercise of the Option to receive Gas (if the Option Buyer is identified as "Buyer") or deliver Gas (if the Option Buyer is identified as "Seller").

2.45 "Option Seller" with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the party that has sold the Option. If the Option is exercised by the Option Buyer, the Option Seller will be obligated to deliver Gas (if the Option Buyer is identified as "Buyer") or receive Gas (if the Option Buyer is identified as "Seller").

2.46 "Premium" means the amount identified as such in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which is the amount payable by the Option Buyer to the Option Seller in exchange for an Option.

2.47 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by Seller and/or the Buyer for verification and/or evidentiary purposes."

### **SECTION 3. PERFORMANCE OBLIGATION**

Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase "and no such replacement or sale is available" in (iii):

"or in the event that the non-breaching party elects, at its sole option, not to replace or re-sell to a third party the Gas not delivered"

### **SECTION 5. QUALITY AND MEASUREMENT**

Delete the existing paragraph under Section 5 in its entirety and replace with the following:

"All Gas delivered by Seller shall meet the pressure, quality and heat specification of the Receiving Transporter. BTU and volume measurements shall be made at the pressure and temperature basis of the Receiving Transporter in accordance with the provisions of such pipeline's then effective Federal Energy Regulatory Commission ("FERC") Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such Receiving Transporter."

### **SECTION 6. TAXES**

Add the following after the last sentence in Section 6 for "Buyer Pays At and After Delivery Point":

All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority."

Add as the last paragraph of Section 6:

"6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point ("Governmental Charge"), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s)."

### **SECTION 7. BILLING, PAYMENT AND AUDIT**

Add the following language to the end of Section 7.3:

"including all supporting documentation acceptable in industry practice to support the amount charged"

Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ..." in its entirety and replacing with:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).

Section 7.8 shall be added as follows:

"7.8 Upon either party's request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month."

#### **SECTION 8. TITLE, WARRANTY, AND INDEMNITY**

Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8.2" and "AND IN SECTION 15.8" in the last sentence.

Add the following to the end of Section 8:

"8.6 In the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction."

#### **SECTION 9. NOTICES**

9.4 shall be amended by:

- (a) in the first sentence delete the words "commercially acceptable";
- (b) after the words "payment information" and before the word "shall" add "identified on the cover page under Accounting Information"; and
- (c) delete "ten (10)" and replace with "two (2)".

#### **SECTION 10. FINANCIAL RESPONSIBILITY**

Section 10.1 shall be amended by adding the following to the end of the first sentence after the phrase "Adequate Assurance of Performance" and before the ".": "provided, further, that if the financial responsibility of either party becomes unsatisfactory because of a reasonably verifiable material adverse change in the financial condition or creditworthiness of either party (including, but not limited to a Material Adverse Change), Adequate Assurance of Performance shall be given by the party experiencing such material adverse changes to the other party upon written request.

Delete the second sentence of Section 10.1 in its entirety and replace with the following:  
"Adequate Assurance of Performance" shall mean the provision of Eligible Collateral."

Section 10.2 shall be amended by

- (a) deleting "or" before "(ix)"; and
- (b) inserting in the tenth line after the phrase "Additional Event of Default;" the phrase "or (x) suffers a Material Adverse Change; provided that, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party provides within (3) Business Days of receipt of written notice from the other party and maintains for so long as the Material Adverse Change is continuing Eligible Collateral to the other party"; and
- (c) adding at the end before the "." in the last sentence: "provided that no suspension of performance shall continue for more than ten (10) Business Days unless an Early Termination Date has been declared and the Defaulting Party given Notice thereof in accordance with Section 10.3."

Amend Section 10.3 by deleting from the sixth line the phrase "legally permissible" and replace with "practicable and not prohibited by applicable law"

Section 10.3.1 "Early Termination Damages Apply" shall be amended by adding the following:

- (a) "The Non-Defaulting Party may also aggregate the costs that the Non-Defaulting Party reasonably incurs in liquidating and accelerating each Terminated Transaction, or otherwise settling obligations arising from the cancellation and termination of each Terminated Transaction, including, but not limited to, brokerage fees, commissions, and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party including costs associated with hedging its obligations, transaction costs associated with obtaining replacement suppliers or markets (e.g. brokerage fees, or other similar transaction payments), additional transmission costs which cannot be avoided through the Non-Defaulting Party's reasonable efforts, and commercially reasonable attorneys' fees and other commercially reasonable litigation costs incurred in connection with enforcing its rights under this Contract (collectively "Costs") and such Costs shall be due to the Non-Defaulting Party."; and
- (b) adding at the end of the last sentence of the second paragraph:

"(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR")";

Delete Section 10.5 in its entirety and replace with the following:

"The parties specifically agree that (i) this Contract and all transactions pursuant hereto are "forward contracts" as such term is defined in the United States Bankruptcy Code (the "Bankruptcy Code") or a "swap agreement" within the meaning of the Bankruptcy Code; (ii) all payments made or to be made by one party to the other party pursuant to this Contract constitute "settlement payments" within the meaning of the Bankruptcy Code; (iii) all transfers of Eligible Collateral by one party to the other party under this contract constitute "margin payments" within the meaning of the Bankruptcy Code; and (iv) this Contract constitutes a "master netting agreement" within the meaning of the Bankruptcy Code; and (v) that Seller is a "forward contract merchant" as such term is defined in the United States Bankruptcy Code. Each party further agrees that the other party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each party agrees to waive and not to assert against the other party the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding involving such party."

#### **SECTION 11. FORCE MAJEURE**

Add the following to the end of Section 11:

"11.7 Any party claiming Force Majeure (the "Claiming Party") as an excuse for performance shall provide the other party (the Non-claiming Party") a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days."

11.8 During the event of Force Majeure, the Claiming Party, if it is Seller, must cease interruptible deliveries to other markets prior to suspending the performance obligations under the Firm Transaction affected by such Force Majeure event. The Claiming Party, if it is Seller, must treat the other party equitably with its other Firm customers on a proportionate basis with regard to the remaining supply available for market.

#### **SECTION 12. TERM**

Section 12 shall be deleted in its entirety and replaced with:

"The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written Notice by either party; provided, however, that, to the extent necessary, the provisions hereof shall survive termination of this Contract and continue to apply to any transactions entered into between Seller and Buyer prior to the date of termination of this Contract until such time as any and all such transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment and provisions of Sections 1.6, 7.6, 7.7, 8.3, 8.4, 10 and 13 shall continue to apply."

#### **SECTION 14. MARKET DISRUPTION**

**Section 14 shall be deleted in its entirety and replaced with the following:**

Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.

(A) If a Market Disruption Event has occurred during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or 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 fifth 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-Affiliate 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. Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains two quotes and the other party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both parties each obtain one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one party is able to obtain a quote, the obtained quotation shall be utilized. For purposes of the foregoing sentence, if more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded.

Notwithstanding the forgoing, If the Price Source retrospectively issues a Floating Price, in respect of a Determination Period (a "Delayed Floating Price"), then, if the Delayed Floating Price is issued by the Price Source in respect of a Determination Period (i) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Determination Period or (ii) after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment notwithstanding any subsequent publication unless the Parties expressly agree otherwise.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction."

"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.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

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.

(B) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) calendar days after publication or announcement.

#### SECTION 15. MISCELLANEOUS

Insert in Section 15.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line.

The following language shall be added to the end of Section 15.1 after the word "hereunder":

"and shall provide prompt written notice to the other party of any such assignment, transfer and assumption."

Section 15.8 shall be amended by adding the following to the end thereof:

"The parties represent that all information supplied to each other is correct and that they are validly existing, financially able to continue their business, and neither is aware of any situation which would alter its financial abilities and has not in the past filed, planned to file or have had filed against it any bankruptcy or reorganization plan or proceeding."

Insert in Section 15.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).

Section 15.12 shall be amended by:

deleting the third sentence in its entirety and replacing with the following:

"So long as the Imaged Agreement bears the signature of the party against whom enforcement is sought if there is a space or line for such signature on the agreement, in the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, and the original document(s) is/are unobtainable, neither party shall object to the introduction, acceptance and admissibility of the recording, the Transaction Confirmation or the Imaged Agreement as evidence in any proceeding between the Parties before any court, arbitration panel, regulatory commission or similar body on the basis that such recording, Transaction confirmation or Imaged Agreements were not original agreements, originated or maintained in documentary form or do not comply with the best evidence rule."

The following Sections shall be added:

15.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:

(a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.

(b) Seller recognizes that Buyer may verify title to the Gas purchased and sold hereunder and agrees to provide all information requested by Buyer for such verification within thirty (30) days of such request. Subject to the other provisions of this Section, Buyer agrees to make payment to Seller while title is being verified. If Buyer requires a Division Order Title Opinion to verify Seller's title or right to receive payments due hereunder, Seller agrees to provide to Buyer upon written request, without cost to Buyer, a Division Order Title Opinion satisfactory to Buyer within three (3) months from Seller's receipt of Buyer's written request. In the event that Seller does not provide a Division Order Title Opinion to Buyer within this period, Buyer may withhold any payments due hereunder, without payment of interest, until Buyer has received a Division Order Title Opinion. Moreover, in the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof,

Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction, Notwithstanding the foregoing, Seller acknowledges that Buyer may rely entirely on the information provided by Seller or as set out on any Transaction Confirmation in making payments due hereunder. Buyer assumes no responsibility to review or approve any title information provided by Seller or any title information reflected on any Transaction Confirmation or to audit, compare, or update any such information against any title opinion or other information furnished or acquired pursuant to incidental to this Contract.

(c) For purposes of this Section 15.15, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.

Section 15.16

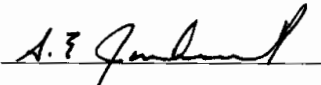
Add the following as Section 15.16:

"This Contract shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the manner in which this Contract was negotiated, prepared, drafted or executed."

**SECTION 16. OPTION**

16.1 Notwithstanding anything in the Contract to the contrary, if the parties have agreed that a particular transaction under this Contract is an Option, then prior to the exercise of the Option by Option Buyer the sole obligation of Option Buyer under such transaction shall be to pay the Premium for such Option and Option Seller shall have no obligation under such transaction. Upon the exercise of an Option by Option Buyer, each of Option Buyer and Option Seller shall be obligated to perform and entitled to performance under the Contract in connection with such transaction as either Buyer or Seller as indicated in the Transaction Confirmation or the parties' oral or electronic agreement, as applicable."

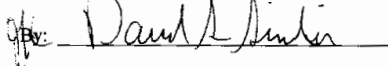
LACLEDE ENERGY RESOURCES, INC

By: 

Name: Scott E. Jaskowiak

Title: Vice President and General Manager

LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY

By: 

Name: David S. Sinclair

Title: Vice President – Energy Marketing

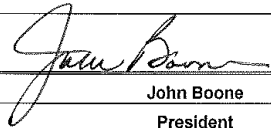
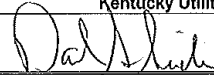
## Base Contract for Sale and Purchase of Natural Gas

(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:

<p><b>Section 1.2</b> <input checked="" type="checkbox"/> Oral (default) Transaction Procedure <input type="checkbox"/> Written</p>	<p><b>Section 10.2</b> <input checked="" type="checkbox"/> No Additional Events of Default (default) Additional Events of Default <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____</p>
<p><b>Section 2.7</b> <input checked="" type="checkbox"/> 2 Business Days after receipt (default) Confirm Deadline <input type="checkbox"/> _____ Business Days after receipt</p>	
<p><b>Section 2.8</b> <input type="checkbox"/> Seller (default) Confirming Party <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> LGE/KU</p>	
<p><b>Section 3.2</b> <input checked="" type="checkbox"/> Cover Standard (default) Performance Obligation <input type="checkbox"/> Spot Price Standard</p>	<p><b>Section 10.3.1</b> <input checked="" type="checkbox"/> Early Termination Damages Apply (default) Early Termination Damages <input type="checkbox"/> Early Termination Damages Do Not Apply</p>
<p><i>Note: The following Spot Price Publication applies to both of the immediately preceding.</i></p>	
<p><b>Section 2.31</b> <input checked="" type="checkbox"/> Gas Daily Midpoint (default) Spot Price Publication <input type="checkbox"/> _____</p>	<p><b>Section 10.3.2</b> <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) Other Agreement Setoffs <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply</p>
<p><b>Section 6</b> <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) Taxes <input type="checkbox"/> Seller Pays Before and At Delivery Point</p>	
<p><b>Section 7.2</b> <input checked="" type="checkbox"/> 25<sup>th</sup> Day of Month following Month of delivery (default) Payment Date <input type="checkbox"/> Day of Month following Month of delivery</p>	<p><b>Section 15.5</b> _____ <b>NEW YORK</b> Choice Of Law</p>
<p><b>Section 7.2</b> <input checked="" type="checkbox"/> Wire transfer (default) Method of Payment <input type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check</p>	<p><b>Section 16.10</b> <input checked="" type="checkbox"/> Confidentiality applies (default) Confidentiality <input type="checkbox"/> Confidentiality does not apply</p>
<p><b>Section 7.7</b> <input checked="" type="checkbox"/> Netting applies (default) Netting <input type="checkbox"/> Netting does not apply</p>	
<p><input checked="" type="checkbox"/> Special Provisions Number of sheets attached: <u>6</u> <input type="checkbox"/> Addendum(s): _____</p>	

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

Kaiser Marketing Northeast, LLC	<i>PARTY NAME</i>	Louisville Gas and Electric Company and Kentucky Utilities Company
By: 	<i>SIGNATURE</i>	By: 
John Boone	<i>PRINTED NAME</i>	David S. Sinclair
President	<i>TITLE</i>	Vice President Energy Supply and Analysis

## 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

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.

2.1. "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.

2.2. "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.

- 2.3. "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.
- 2.4. "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.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "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.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "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.
- 2.10. "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.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "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.
- 2.13. "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.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "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.
- 2.18. "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.
- 2.19. "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.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "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.
- 2.23. "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.



- 2.24. "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.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "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.
- 2.27. "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.
- 2.28. "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.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "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.
- 2.31. "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.
- 2.32. "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.
- 2.33. "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.
- 2.34. "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.
- 2.35. "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.

<b>The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.</b>
<b>Cover Standard:</b>
<p>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.</p>

**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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  <div style="border: 1px solid black; height: 40px; width: 100%;"></div>				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF  
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

Dated March 2, 2015

by and between

**Kaiser Marketing Northeast, LLC ("KAISERNORTHEAST")**

And

Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")

**SECTION 1. PURPOSES AND PROCEDURES**

The following sections shall be added to Section 1:

"1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a transaction contemplated herein."

"1.6 Each party may, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, its negligence whether it be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation."

**SECTION 2. DEFINITIONS**

Section 2.2 "Affiliate" shall be amended by deleting the period (".") at the end of the first sentence and inserting the following:

"; provided, however, BOK Financial Corporation, BOKF, NA, and their respective subsidiaries and affiliates (as such terms are defined in 12 U.S.C. § 1841 and the regulations thereunder) shall not be "Affiliates" of Kaiser Marketing Northeast, LLC.

Section 2.12 "Cover Standard" shall be amended by deleting "(or an alternate fuel if elected by Buyer and replacement Gas is not available)" from the definition.

The following Sections shall be added to the end of Section 2:

2.36 "Costs" means any of the following, but only to the extent they are reasonable, direct and actual: (a) costs and expenses associated with transmission/transportation costs related to the Terminated Transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party's reasonable efforts; (b) brokerage fees, unwinding costs, commissions and other similar transaction costs and expenses incurred by the Non-Defaulting Party either in (i) terminating any Firm obligation, to the extent the Non-Defaulting Party has hedged such obligations or (ii) entering into new arrangements which replace the Terminated Transactions that were hedged; and (c) commercially reasonable attorneys' fees and court costs, if any, incurred by the Non-Defaulting Party in connection with enforcing its rights in respect of the Terminated Transactions."

2.37 "Credit Support Document" shall mean, as to a party (the "First Party"), a guaranty from a Guarantor, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer, amount and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.38 "Eligible Collateral" shall mean (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to, but not greater than, the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.39 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

**SECTION 3. PERFORMANCE OBLIGATION**

Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase "and no such replacement or sale is available" in (iii):

"or in the event that the non-breaching party elects, at its sole option, not to replace or re-sell to a third party the Gas not delivered"

#### **SECTION 6. TAXES**

Add the following after the first sentence in Section 6 for "Buyer Pays At and After Delivery Point":

"All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority."

Add as the last paragraph of Section 6:

"6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point ("Governmental Charge"), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s). To the extent that any such tax is imposed, the party responsible for such tax under the relevant statute or regulation shall be responsible for paying or remitting such tax and the amount of such tax and the costs associated therewith shall be the account of the responsible party."

#### **SECTION 7. BILLING, PAYMENT AND AUDIT**

Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ..." in its entirety and replacing with:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned to the paying Party or deducted by the Party receiving such overpayment from subsequent payments, as requested by the paying Party, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

Section 7.5 shall be amended by inserting "U.S." between "then-effective" and "prime rate" in subsection (i).

#### **SECTION 8. TITLE, WARRANTY, AND INDEMNITY**

Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8.2" and "AND IN SECTION 15.8" in the last sentence.

#### **SECTION 9. NOTICES**

9.4 shall be amended by:

- (a) in the first sentence delete the words "commercially acceptable";
- (b) after the words "payment information" and before the word "shall" add "identified on the cover page under Accounting Information"; and
- (c) delete "ten (10)" and replace with "seven (7)".

#### **SECTION 10. FINANCIAL RESPONSIBILITY**

Delete the second sentence of Section 10.1 in its entirety and replace with the following:  
" 'Adequate Assurance of Performance' shall mean the provision of Eligible Collateral."

Section 10.2 shall be amended by:

- (a) deleting the word "or" before "(ix)" in the ninth line and adding the following immediately after the word "Default" in the tenth line:

"(x) have made any representation or warranty which is false or misleading in any material respect when made or when deemed made or repeated;"

(b) inserting in the third to last line between "payments upon Notice" and "and/or terminate and liquidate":

"(provided, however, that the right to withhold and/or suspend deliveries or payments shall be limited to a single ten (10) day period, unless the Non-Defaulting Party shall have designated an Early Termination Date in the manner provided in Section 10.3 (in which event the withholding or suspension of deliveries or payments may continue until such Early Termination Date)); and

Amend Section 10.3 by deleting from the sixth line the phrase "legally permissible" and replace with "practicable and not prohibited by applicable law"

Section 10.3.1 "Early Termination Damages Apply" shall be amended by:

(a) adding at the end of the last sentence of the second paragraph:

"(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR"); and

(b) adding the following as a third paragraph:

"In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions."

#### SECTION 11. FORCE MAJEURE

Add the following to the end of Section 11:

"11.7 Any party claiming Force Majeure (the "Claiming Party") as an excuse for performance shall provide the other party (the Non-claiming Party") a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days."

"11.8 The Claiming Party, if it is Seller, must treat the other party equitably with its other similiary situated Firm customers on a proportionate basis with regard to the remaining supply available for market."

#### SECTION 12. TERM

The second sentence of Section 12 is hereby deleted and replaced with the following:

"The rights of either party pursuant to: (i) Section 7.6, (ii) Section 10, (iii) Section 13, (iv) Section 15 ,(v) the obligation to make payment hereunder, including Sections 7.4 and 7.7, and (vi) the obligation of either party to indemnify the other pursuant hereto, including Section 8.3, shall survive the termination of the Base Contract or any transaction."

#### SECTION 14. MARKET DISRUPTION

Section 14 shall be deleted in its entirety and replaced with the following:

Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.

(A) If a Market Disruption Event has occurred during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or 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 fifth 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-Affiliate 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. Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains two quotes and the other party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both parties each obtain one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one party is able to obtain a quote, the obtained quotation shall be utilized. For purposes of the foregoing sentence, if

more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded.

Notwithstanding the forgoing, If the Price Source retrospectively issues a Floating Price, in respect of a Determination Period (a "Delayed Floating Price"), then, if the Delayed Floating Price is issued by the Price Source in respect of a Determination Period (i) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Determination Period or (ii) after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment notwithstanding any subsequent publication unless the Parties expressly agree otherwise.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction."

"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.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

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.

(B) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction; provided, such notification must be given not later than thirty (30) calendar days after the publication or announcement.

#### SECTION 15. MISCELLANEOUS

Insert in Section 15.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line.

Section 15.5 is hereby deleted in its entirety and replaced with the following:

"15.5 This Base Contract, all transactions and Transaction Confirmations and the rights and duties of the parties arising therefrom shall be governed by, interpreted and construed in accordance with the laws of the State of New York (without reference to choice of law doctrine or principles as provided in Section 5-1401 and 5-1402 of the New York General Obligations Law). With respect to any suit, action or proceedings relating to the foregoing ("Proceedings"), each party irrevocably submits to the non-exclusive jurisdiction of the federal or state courts located in the County of New York, Borough of Manhattan, State of New York, waives any objection which it may have to the laying of venue of Proceedings brought in any such court, and waives any claim that any such Proceedings have been brought in an inconvenient forum. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS BASE CONTRACT OR ANY TRANSACTION AND ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS BASE CONTRACT."

Insert in Section 15.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).

Section 15.12 shall be amended by:

- (a) adding in the second sentence the words "regulatory commission or similar body" after the word "mediation" and before the word "or";
- (b) adding the following to the beginning of the third sentence:

“ In the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, and the original document(s) is/are unobtainable,;  
(c) lower case “neither” in the third sentence; and  
(d) add the following to the end of the third sentence after the word “form” and before the “.” “or do not comply with the best evidence rule.

The following Sections shall be added:

15.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:

(a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.

(b) For purposes of this Section 15.13, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.

15.14 To the extent, if any, that a transaction does not qualify as a “first sale” as defined by the Natural Gas Act and §§ 2 and 601 of the Natural Gas Policy Act, each party irrevocably waives its rights, including its rights under §§ 4-5 of the Natural Gas Act, unilaterally to seek or support a change in the rate(s), charges, classifications, terms or conditions of this Contract and any transaction hereunder (collectively, the “Agreements”). By this provision, each party expressly waives its right to seek or support: (i) an order from the U.S. Federal Energy Regulatory Commission (“FERC”) finding that the market-based rate(s), charges, classifications, terms or conditions agreed to by the parties under the Agreements are unjust and unreasonable; or (ii) any refund with respect thereto. Each party agrees not to make or support such a filing or request, and that these covenants and waivers shall be binding notwithstanding any regulatory or market changes that may occur hereafter. Absent the agreement of both parties to the proposed change, the standard of review for changes in the rate, charge, classification, term or condition of the Agreements proposed by a party (to the extent that any waiver as set forth herein is unenforceable or ineffective as to such party), a non-party or FERC acting sua sponte, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

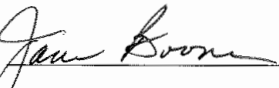
15.15 Each party represents and warrants, and will be deemed to represent and warrant on each date on which it enters into a transaction subject to this Base Contract, to the other party that:

- (a) it regularly makes or takes delivery of the commodity that is the subject of the transactions that are entered into subject to this Base Contract in the ordinary course of its business and any transaction it enters into subject to this Base Contract is entered into in connection with such business;
- (b) it intends to make or take physical delivery of the commodity that is the subject of any transaction it enters into subject to this Base Contract in accordance with the terms and provisions of the applicable Transaction Confirmation, this Base Contract and the overall Contract of which the applicable Transaction Confirmation and this Base Contract are a part;
- (c) to the extent any transaction entered into subject to this Base Contract contains an embedded option, then either:
  - (i) it is a producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of such transaction, or the products or byproducts thereof (“Commercial Participant”), the embedded option cannot be severed and marketed separately, and the factors determining the exercise or non-exercise of such option are based primarily on physical factors or regulatory requirements beyond the control of the exercising party and therefore such transaction is a forward contract; or
  - (ii) such transaction is a “Commodity Option Transaction” (as defined in section 1.3 (hh) of the regulations of the Commodity Futures Trading Commission (“CFTC”)) and (A) if it is the offeree of such option, it is a Commercial Participant and it is entering into the transaction solely for purposes related to its business as such, and (B) if it is the offeror of such option, it is either a Commercial Participant and it is entering into the transaction solely for purposes related to its business as such or it is an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act (the “CEA”);
- (d) to the extent it determines a transaction to constitute a Commodity Option Transaction, it will treat each such transaction as having been entered into pursuant to the Trade Option exemption under section 32.3(a) of the CFTC regulations and, unless one of the parties is a swap dealer or a major swap participant, it will report any such transaction as an unreported Trade Option that must be reported by each party on Form TO in accordance with section 32.3(b)(2) of the CFTC regulations;
- (e) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (f) it has all governmental authorizations necessary for it to legally enter into and perform its obligations under this Base Contract and each transaction;
- (g) the execution, delivery and performance of this Base Contract and each transaction hereunder is within its powers, have been duly authorized by all necessary action and do not violate any terms and conditions in its governing documents, any contracts to which it is a party or any law applicable to it;
- (h) this Base Contract, and each transaction when entered into, constitute its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;
- (i) there are no bankruptcy proceedings being contemplated by it or, to its knowledge, threatened against it;
- (j) there are no legal proceedings pending or, to its knowledge, threatened against it that, if unfavorably resolved, would materially adversely affect its ability to perform its obligations under this Base Contract or any transactions entered into; and
- (k) it is entering into this Base Contract and each transaction as a principal and not as an agent for any party.

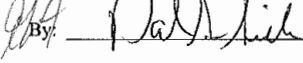
The foregoing mutual representations should be read in conjunction with, and to the greatest extent possible not in conflict with, the other provisions of this Base Contract and any Transaction Confirmation subject to this Base Contract, such that these mutual representations and such Base Contract and Transaction Confirmation provisions are read together to give the broadest possible construction of their terms in furtherance of the parties' intent to ensure each party's compliance with applicable law and regulation.

**KAISER MARKETING NORTHEAST, LLC  
AND**

By:   
 Name: John Boone  
 Title: President

**LOUISVILLE GAS AND ELECTRIC COMPANY**

**KENTUCKY UTILITIES COMPANY**

By:   
 Name: David S. Sinclair  
 Title: Vice President Energy Supply and Analysis

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

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

Kaiser Marketing Appalachian, LLC	PARTY NAME	Louisville Gas and Electric Company and Kentucky Utilities Company
By:	SIGNATURE	By:
John Boone	PRINTED NAME	David S. Sinclair
President	TITLE	Vice President Energy Supply and Analysis



**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**

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.

2.1. "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.

2.2. "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.

- 2.3. "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.
- 2.4. "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.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "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.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "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.
- 2.10. "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.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "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.
- 2.13. "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.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "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.
- 2.18. "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.
- 2.19. "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.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "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.
- 2.23. "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.

- 2.24. "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.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "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.
- 2.27. "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.
- 2.28. "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.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "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.
- 2.31. "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.
- 2.32. "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.
- 2.33. "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.
- 2.34. "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.
- 2.35. "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.

<p><b>The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.</b></p> <p><b>Cover Standard:</b></p> <p>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.</p>
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**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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>  _____  _____				
Seller: _____  By: _____  Title: _____  Date: _____	Buyer: _____  By: _____  Title: _____  Date: _____			

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF  
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS  
Dated March 2, 2015**

by and between  
**Kaiser Marketing Appalachian, LLC (“KAISERAPPALACHIAN”)**  
And

Louisville Gas and Electric Company and Kentucky Utilities Company (“LGE/KU”)

**SECTION 1. PURPOSES AND PROCEDURES**

The following sections shall be added to Section 1:

“1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a transaction contemplated herein.”

“1.6 Each party may, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, its negligence whether it be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation.”

**SECTION 2. DEFINITIONS**

Section 2.2 “Affiliate” shall be amended by deleting the period (“.”) at the end of the first sentence and inserting the following:

“; provided, however, BOK Financial Corporation, BOKF, NA, and their respective subsidiaries and affiliates (as such terms are defined in 12 U.S.C. § 1841 and the regulations thereunder) shall not be “Affiliates” of Kaiser Marketing Northeast, LLC.

Section 2.12 “Cover Standard” shall be amended by deleting “(or an alternate fuel if elected by Buyer and replacement Gas is not available)” from the definition.

The following Sections shall be added to the end of Section 2:

2.36 “Costs” means any of the following, but only to the extent they are reasonable, direct and actual: (a) costs and expenses associated with transmission/transportation costs related to the Terminated Transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party’s reasonable efforts; (b) brokerage fees, unwinding costs, commissions and other similar transaction costs and expenses incurred by the Non-Defaulting Party either in (i) terminating any Firm obligation, to the extent the Non-Defaulting Party has hedged such obligations or (ii) entering into new arrangements which replace the Terminated Transactions that were hedged; and (c) commercially reasonable attorneys’ fees and court costs, if any, incurred by the Non-Defaulting Party in connection with enforcing its rights in respect of the Terminated Transactions.”

2.37 “Credit Support Document” shall mean, as to a party (the “First Party”), a guaranty from a Guarantor, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer, amount and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.38 “Eligible Collateral” shall mean- (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to, but not greater than, the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.39 “Letter of Credit” means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least “A-” from S&P or “A3” from Moody’s.

**SECTION 3. PERFORMANCE OBLIGATION**

Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase “and no such replacement or sale is available” in (iii):

“or in the event that the non-breaching party elects, at its sole option, not to replace or re-sell to a third party the Gas not delivered”

#### **SECTION 6. TAXES**

Add the following after the first sentence in Section 6 for “Buyer Pays At and After Delivery Point”:

“All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority.”

Add as the last paragraph of Section 6:

“6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point (“Governmental Charge”), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s). To the extent that any such tax is imposed, the party responsible for such tax under the relevant statute or regulation shall be responsible for paying or remitting such tax and the amount of such tax and the costs associated therewith shall be the account of the responsible party.”

#### **SECTION 7. BILLING, PAYMENT AND AUDIT**

Section 7.4 shall be amended by deleting the last sentence “In the event the parties are unable ...” in its entirety and replacing with:

“Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned to the paying Party or deducted by the Party receiving such overpayment from subsequent payments, as requested by the paying Party, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived.”

Section 7.5 shall be amended by inserting “U.S.” between “then-effective” and “prime rate” in subsection (i).

#### **SECTION 8. TITLE, WARRANTY, AND INDEMNITY**

Section 8.2 shall be amended by inserting the phrase “SECTION 5,” between “SECTION 8.2” and “AND IN SECTION 15.8” in the last sentence.

#### **SECTION 9. NOTICES**

9.4 shall be amended by:

- (a) in the first sentence delete the words “commercially acceptable”;
- (b) after the words “payment information” and before the word “shall” add “identified on the cover page under Accounting Information”; and
- (c) delete “ten (10)” and replace with “seven (7)”.

#### **SECTION 10. FINANCIAL RESPONSIBILITY**

Delete the second sentence of Section 10.1 in its entirety and replace with the following:  
“ ‘Adequate Assurance of Performance’ shall mean the provision of Eligible Collateral.”

Section 10.2 shall be amended by:

- (a) deleting the word “or” before “(ix)” in the ninth line and adding the following immediately after the word “Default” in the tenth line:

“(x) have made any representation or warranty which is false or misleading in any material respect when made or when deemed made or repeated;”

(b) inserting in the third to last line between "payments upon Notice" and "and/or terminate and liquidate":

"(provided, however, that the right to withhold and/or suspend deliveries or payments shall be limited to a single ten (10) day period, unless the Non-Defaulting Party shall have designated an Early Termination Date in the manner provided in Section 10.3 (in which event the withholding or suspension of deliveries or payments may continue until such Early Termination Date));" and

Amend Section 10.3 by deleting from the sixth line the phrase "legally permissible" and replace with "practicable and not prohibited by applicable law"

Section 10.3.1 "Early Termination Damages Apply" shall be amended by:

(a) adding at the end of the last sentence of the second paragraph:

"(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR");" and

(b) adding the following as a third paragraph:

"In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions."

#### **SECTION 11. FORCE MAJEURE**

Add the following to the end of Section 11:

"11.7 Any party claiming Force Majeure (the "Claiming Party") as an excuse for performance shall provide the other party (the Non-claiming Party) a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days."

"11.8 The Claiming Party, if it is Seller, must treat the other party equitably with its other similarly situated Firm customers on a proportionate basis with regard to the remaining supply available for market."

#### **SECTION 12. TERM**

The second sentence of Section 12 is hereby deleted and replaced with the following:

"The rights of either party pursuant to: (i) Section 7.6, (ii) Section 10, (iii) Section 13, (iv) Section 15, (v) the obligation to make payment hereunder, including Sections 7.4 and 7.7, and (vi) the obligation of either party to indemnify the other pursuant hereto, including Section 8.3, shall survive the termination of the Base Contract or any transaction."

#### **SECTION 14. MARKET DISRUPTION**

Section 14 shall be deleted in its entirety and replaced with the following:

Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.

(A) If a Market Disruption Event has occurred during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or 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 fifth 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-Affiliate 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. Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains two quotes and the other party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both parties each obtain one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one party is able to obtain a quote, the obtained quotation shall be utilized. For purposes of the foregoing sentence, if

more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded.

Notwithstanding the forgoing, If the Price Source retrospectively issues a Floating Price, in respect of a Determination Period (a "Delayed Floating Price"), then, if the Delayed Floating Price is issued by the Price Source in respect of a Determination Period (i) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Determination Period or (ii) after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment notwithstanding any subsequent publication unless the Parties expressly agree otherwise.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction."

"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.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

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.

(B) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction; provided, such notification must be given not later than thirty (30) calendar days after the publication or announcement.

#### SECTION 15. MISCELLANEOUS

Insert in Section 15.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line.

Section 15.5 is hereby deleted in its entirety and replaced with the following:

"15.5 This Base Contract, all transactions and Transaction Confirmations and the rights and duties of the parties arising therefrom shall be governed by, interpreted and construed in accordance with the laws of the State of New York (without reference to choice of law doctrine or principles as provided in Section 5-1401 and 5-1402 of the New York General Obligations Law). With respect to any suit, action or proceedings relating to the foregoing ("Proceedings"), each party irrevocably submits to the non-exclusive jurisdiction of the federal or state courts located in the County of New York, Borough of Manhattan, State of New York, waives any objection which it may have to the laying of venue of Proceedings brought in any such court, and waives any claim that any such Proceedings have been brought in an inconvenient forum. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS BASE CONTRACT OR ANY TRANSACTION AND ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS BASE CONTRACT."

Insert in Section 15.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).

Section 15.12 shall be amended by:

- (a) adding in the second sentence the words "regulatory commission or similar body" after the word "mediation" and before the word "or";
- (b) adding the following to the beginning of the third sentence:

“ In the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, and the original document(s) is/are unobtainable;  
(c) lower case “neither” in the third sentence; and  
(d) add the following to the end of the third sentence after the word “form” and before the “.” “or do not comply with the best evidence rule.

The following Sections shall be added:

15.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:

(a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.

(b) For purposes of this Section 15.13, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.

15.14 To the extent, if any, that a transaction does not qualify as a "first sale" as defined by the Natural Gas Act and §§ 2 and 601 of the Natural Gas Policy Act, each party irrevocably waives its rights, including its rights under §§ 4-5 of the Natural Gas Act, unilaterally to seek or support a change in the rate(s), charges, classifications, terms or conditions of this Contract and any transaction hereunder (collectively, the "Agreements"). By this provision, each party expressly waives its right to seek or support: (i) an order from the U.S. Federal Energy Regulatory Commission ("FERC") finding that the market-based rate(s), charges, classifications, terms or conditions agreed to by the parties under the Agreements are unjust and unreasonable; or (ii) any refund with respect thereto. Each party agrees not to make or support such a filing or request, and that these covenants and waivers shall be binding notwithstanding any regulatory or market changes that may occur hereafter. Absent the agreement of both parties to the proposed change, the standard of review for changes in the rate, charge, classification, term or condition of the Agreements proposed by a party (to the extent that any waiver as set forth herein is unenforceable or ineffective as to such party), a non-party or FERC acting sua sponte, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

15.15 Each party represents and warrants, and will be deemed to represent and warrant on each date on which it enters into a transaction subject to this Base Contract, to the other party that:

- (a) it regularly makes or takes delivery of the commodity that is the subject of the transactions that are entered into subject to this Base Contract in the ordinary course of its business and any transaction it enters into subject to this Base Contract is entered into in connection with such business;
- (b) it intends to make or take physical delivery of the commodity that is the subject of any transaction it enters into subject to this Base Contract in accordance with the terms and provisions of the applicable Transaction Confirmation, this Base Contract and the overall Contract of which the applicable Transaction Confirmation and this Base Contract are a part;
- (c) to the extent any transaction entered into subject to this Base Contract contains an embedded option, then either:
  - (i) it is a producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of such transaction, or the products or byproducts thereof ("Commercial Participant"), the embedded option cannot be severed and marketed separately, and the factors determining the exercise or non-exercise of such option are based primarily on physical factors or regulatory requirements beyond the control of the exercising party and therefore such transaction is a forward contract; or
  - (ii) such transaction is a "Commodity Option Transaction" (as defined in section 1.3 (hh) of the regulations of the Commodity Futures Trading Commission ("CFTC") and (A) if it is the offeree of such option, it is a Commercial Participant and it is entering into the transaction solely for purposes related to its business as such, and (B) if it is the offeror of such option, it is either a Commercial Participant and it is entering into the transaction solely for purposes related to its business as such or it is an "eligible contract participant" as defined in Section 1a(18) of the Commodity Exchange Act (the "CEA");
- (d) to the extent it determines a transaction to constitute a Commodity Option Transaction, it will treat each such transaction as having been entered into pursuant to the Trade Option exemption under section 32.3(a) of the CFTC regulations and, unless one of the parties is a swap dealer or a major swap participant, it will report any such transaction as an unreported Trade Option that must be reported by each party on Form TO in accordance with section 32.3(b)(2) of the CFTC regulations;
- (e) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;



- (f) it has all governmental authorizations necessary for it to legally enter into and perform its obligations under this Base Contract and each transaction;
- (g) the execution, delivery and performance of this Base Contract and each transaction hereunder is within its powers, have been duly authorized by all necessary action and do not violate any terms and conditions in its governing documents, any contracts to which it is a party or any law applicable to it;
- (h) this Base Contract, and each transaction when entered into, constitute its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;
- (i) there are no bankruptcy proceedings being contemplated by it or, to its knowledge, threatened against it;
- (j) there are no legal proceedings pending or, to its knowledge, threatened against it that, if unfavorably resolved, would materially adversely affect its ability to perform its obligations under this Base Contract or any transactions entered into; and
- (k) it is entering into this Base Contract and each transaction as a principal and not as an agent for any party.

The foregoing mutual representations should be read in conjunction with, and to the greatest extent possible not in conflict with, the other provisions of this Base Contract and any Transaction Confirmation subject to this Base Contract, such that these mutual representations and such Base Contract and Transaction Confirmation provisions are read together to give the broadest possible construction of their terms in furtherance of the parties' intent to ensure each party's compliance with applicable law and regulation.

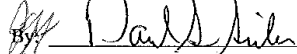
**KAISER MARKETING APPALACHIAN, LLC**

By: 

Name: John Boone

Title: President

**LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY**

By: 

Name: David S. Sinclair

Title: Vice President Energy Supply and Analysis

MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("Master Agreement") is made as of the following date: July 23, 2012 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name **LOUISVILLE GAS AND ELECTRIC COMPANY/KENTUCKY UTILITIES COMPANY** ("LGE"/"KU" or "Party A")

Name **J.P. MORGAN VENTURES ENERGY CORPORATION**, a corporation organized under the laws of the State of Delaware ("Counterparty" or "Party B")

All Notices:

All Notices:

Street: 220 West Main Street, 7<sup>th</sup> Floor

J.P. Morgan Ventures Energy Corporation

Street: 270 Park Avenue, Floor 40

City: Louisville, KY Zip: 40202

City: New York, New York Zip: 10017

Attn: Contract Administration  
Phone: (502) 627-4197 or 4253  
Facsimile: (502) 627-4222  
Duns: LGE 00-694-5505/ KU 00-694-4938

Attn: Energy Legal Dept.  
Phone: N/A  
Facsimile: (646) 534-6393  
Duns: 602667201  
Federal Tax ID Number: 13-3804817

Federal Tax ID Number: LGE 61-0264150/  
KU 61-0247570

**Confirmations:**

Attn: Contract Administration  
Phone: (502) 627-2252 or 4197  
Facsimile: (502) 627-4222

**Confirmations:**

Attn: Commodity Confirmations  
Phone: (212) 623-8225  
Facsimile: (212) 383-6600  
Email: NA.Energy.Confirmations@jpmorgan.com

**Invoices:**

Attn: EL: Revenue Accounting & Analysis NG:  
Regulatory NG Accounting:  
Phone: EL (502) 627-3627 NG 3239  
Facsimile: (502) 627-3800

**Invoices:**

Attn: Physical Settlements  
Phone: (713) 236-5200  
Facsimile: (713) 236-3399  
Email : na.energy.settlements.physical@jpmorgan.com

**Scheduling:**

Attn:  
Phone: (502) 627-4747  
Facsimile: (502) 627-4655

**Scheduling:**

Attn: Power Scheduling  
Phone: (713) 236-5090  
Facsimile: (713) 236-5000

**Payments:**

Attn : EL: Revenue Accounting & Analysis NG:  
Regulatory NG Accounting:  
Phone: EL(502) 627-3627 NG 3239  
Facsimile: (502) 627-3800

**Payments:**

Attn: Physical Settlements  
Phone: (713) 236-5200  
Facsimile: (713) 236-3399  
Email: na.energy.settlements.physical@jpmorgan.com

*Execution copy*

**ACH Transfer:**

BNK: Bank of America, Dallas, TX  
ABA: 111-0000-12  
ACCT: 3752099133

**Wire Transfer:**

BNK: Bank of America, New York, NY  
ABA: 0260-0959-3  
ACCT: 3752099133

**Credit and Collections:**

Attn: Credit Manager  
Phone: (502) 627-4253  
Facsimile: (502) 627-3950

**Wire Transfer:**

BNK: JPMorgan Chase Bank  
ABA: 021 0000 21  
ACCT: 304289361

Note: Please include "North America – Power Trading"  
on all payments.

**Credit and Collections:**

Attn: Collateral Middle Office Americas 3/OPS2  
500 Stanton Christiana Road  
Newark, Delaware 19713  
Phone: (302) 634-3191  
Facsimile: (302) 634-3270

**With additional Notices of an Event of Default**

Attn: General Counsel  
Phone: (502) 627-3665  
Facsimile: (502) 627-3950

**With additional Notices of an Event of Default or  
Potential Event of Default to:**

Attn: Energy Legal Department  
Phone:  
Facsimile: (646) 534-6393

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff: MBRT Short Form Tariff effective: 05/02/2011 Docket No.: ER11-3009-000 as may be amended from time to time current eTariff available on FERC website at: <http://etariff.ferc.gov/TariffBrowser.aspx?tid=1391>

Party B Tariff FERC Dated: 09/20/2005 Docket Number: ER05-1232-000, current eTariff available on FERC website at: <http://etariff.ferc.gov/TariffBrowser.aspx?tid=1391>

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**Article Two**

Transaction Terms and Conditions  Optional provision in Section 2.4. If not checked, inapplicable.

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**Article Four**

Remedies for Failure to Deliver or Receive  Accelerated Payment of Damages. If not checked, inapplicable.

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**Article Five**

Events of Default; Remedies

Cross Default for Party A:

Party A: Louisville Gas and Electric Company; or

Kentucky Utilities Company, as applicable

Other Entity

Cross Default for Party B:

Cross Default Amount means an amount equal to three percent (3%) of the shareholders' equity of LGE and KU determined in accordance with generally accepted accounting principles, consistently applied, as at the end of LGE's most recently completed fiscal year.

*Execution copy*

Party B: Cross Default Amount means an amount equal to three percent (3%) of the shareholders' equity of Party B's Guarantor determined in accordance with generally accepted accounting principles, consistently applied, as at the end of such Guarantor's most recently completed fiscal year.

Other Entity: JPMorgan Chase & Co. Cross Default Amount means an amount equal to three percent (3%) of the shareholders' equity of Party B's Guarantor determined in accordance with generally accepted accounting principles, consistently applied, as at the end of such Guarantor's most recently completed fiscal year.

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_
- Option C (No Setoff)

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**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

- (a) Financial Information:
  - Option A
  - Option B Specify: JPMorgan Chase & Co.
  - Option C Specify: \_\_\_\_\_
- (b) Credit Assurances:
  - Not Applicable
  - Applicable
- (c) Collateral Threshold:
  - Not Applicable
  - Applicable

If applicable, the provisions in Section 8.1(c) of the Agreement shall be replaced by the provisions of the Collateral Annex attached hereto and made a part hereof

- (d) Downgrade Event:
  - Not Applicable
  - Applicable

*Execution copy*

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party B is not rated by either S&P or Moody's
- Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party B: JPMorgan Chase & Co.

Guarantee Amount: \$10,000,000

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: \_\_\_\_\_
- Option C Specify: Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Louisville Gas and Electric Company's and of Kentucky Utilities Company's audited consolidated financial statement for such fiscal year, if such financial statement is not publicly available, such as on "EDGAR" and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Louisville Gas and Electric Company's and of Kentucky Utilities Company's quarterly report containing unaudited consolidated financial statements for such fiscal quarter; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles.

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, the provisions in Section 8.1(c) of the Agreement shall be replaced by the provisions of the Collateral Annex attached hereto and made a part hereof.

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below \_\_\_\_ from S&P or \_\_\_\_ from Moody's or if Party A is not rated by either S&P or Moody's

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

(e) Guarantor for Party A: N/A

Guarantee Amount: \_\_\_\_\_

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**Article 10**

Confidentiality  Confidentiality Applicable      If not checked, inapplicable.

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**Schedule M**

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

**Other Changes**      Specify, if any: See Below \_\_\_\_\_

1. Replace Section 1.12 Credit Rating with the following:

"Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, or Moody's or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as its "corporate credit rating" assigned by S&P, or the "long-term issuer rating" assigned by Moody's.

2. In Section 1.23 "Force Majeure" replace (iii) of the second sentence with the following:

"(iii) the loss, failure, or increase in cost of Seller's supply;"

3. Section 1.24 "Gains" and Sections 1.28 "Losses" shall be amended by adding the following sentence at the end thereof:

"(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or "LIBOR")"

4. Replace Section 1.27 "Letter of Credit" with the following:

"1.27 "Letter of Credit" shall have the meaning set forth in the Collateral Annex attached hereto, as amended."

5. Add at the end of Section 1.45 after "Requesting Party" the phrase "in its reasonable discretion".

6. Replace in Section 1.50 the reference to "Section 2.4" with "Section 2.5".

7. Replace Section 1.51 "Replacement Price" with the following:

"1.51 Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or if Buyer elects not to make such a purchase as described above, the



market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability and further provided that, if Buyer at its sole option, elects to utilize or change its utilization of its owned or controlled assets or market positions to replace any Product specified in a Transaction but not delivered by Seller, then the Replacement Price shall be determined with reference to the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner, instead of the actual purchase price. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point."

8. Replace Section 1.53 "Sales Price" with the following:

"1.53 Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or to the extent Seller does not resell any product (a) if Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0) or (b) if Seller otherwise does not resell (including without limitation by electing to not resell) the Sales Price shall be the market price at the Delivery Point for such product as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability and further provided that, if Seller at its sole option, elects to utilize or change its utilization of its owned or controlled assets or market positions to deliver any Product specified in a Transaction but not received by Buyer, then the Sales Price shall be determined with reference to the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner, instead of the actual sales price. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point."
9. The following definition is added as Section 1.65: "Specified Transaction" means any agreement between Party A and Party B (or Guarantor of Party B) under any forward contract, swap agreement, in each case as defined in the United States Bankruptcy Code.
10. The following shall be added to the end of Section 2.2 Governing Terms:

"If the Parties agree to enter into a Transaction for or relating to a service level/product that is defined by reference to a different agreement (e.g., the MAPP Restated Agreement, the WSPP Agreement or any other like agreement), then, unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply, then this Agreement shall govern such Transaction; provided, however, that to the extent reference is made to a service level/product that is not defined by this Agreement and is defined by such other agreement, such reference to a service level/product shall be as defined by such other agreement, including if applicable, the regional reliability requirements and guidelines as well as the specific excuses for performance, Force Majeure, Uncontrollable Forces, or other excuses applicable to such other agreement."
11. Section 2.3 Confirmation shall be replaced by the following:

"2.3 Confirmation. Either Party (the "Sending Party") may confirm a Transaction by forwarding to the other (the "Receiving Party") by facsimile within three (3) Business Days after the Transaction is entered into a confirmation ("Confirmation") substantially in the form of Exhibit A. If the Receiving Party objects to any term(s) of such Confirmation, the Receiving

Party shall notify the Sending Party in writing of such objections within two (2) Business Days of the Receiving Party's receipt thereof, failing which the Receiving Party shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties."

12. Delete the following from the first line of Section 2.5 Recording:  
"Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation,"
13. Replace Section 3.3 Force Majeure with the following:  
"3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party (the "Non-Claiming Party") as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure) while such Force Majeure is in effect. The Claiming Party shall remedy the Force Majeure with all reasonable dispatch and promptly respond to any request by the Non-Claiming Party for information related to the cause and duration of the Force Majeure. When the Force Majeure ceases, the Claiming Party shall give prompt notice thereof to the Non-Claiming Party. Any Transaction(s) pursuant to this Master Agreement and affected by an event of Force Majeure may be terminated by the Non-Claiming Party without either Party having further liability to the other for unaccrued performance obligations under such Transactions (including without limitation for any payments as described in Section 5.3) if such event of Force Majeure continues for a period of sixty (60) continuous days. The Non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure, but the Non-Claiming Party shall resume performance when the Claiming Party notifies the Non-Claiming Party that Force Majeure is no longer in effect. Notices given by telephone under the provision of this Section 3.3 shall be confirmed in writing as soon as reasonably possible."
14. Insert in Section 5.1(c) the phrase "by such Party" between "the failure" and "to perform" in the first line.
15. **Events of Default.**
  - (a) Section 5.1(a) is amended by deleting "three (3) Business Days" and adding in its place "one (1) Business Day".
  - (b) The following are added as additional Events of Default under Section 5.1:
    - (i) an event of default occurs (howsoever determined) with respect to a Party under any agreement between Party A and Party B (or any Guarantor of Party B) under any Specified Transaction and there occurs a liquidation of, an acceleration of obligations under, or an early termination of all transactions thereunder or the agreement; or
    - (j) such Party or its Guarantor consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity is Materially Weaker from a credit perspective as determined by the other Party acting in good faith and in a commercially reasonable manner. For purpose of above, the term "Materially Weaker"

shall mean that if the applicable Party or its Guarantor has a Credit Rating, then (i) the Credit Rating of such Party (or, if applicable, the Guarantor of such Party) shall be rated lower than Baa3 by Moody's, or lower than BBB- by S&P, (ii) in the event that there is no Credit Rating by either Moody's or S&P applicable to such Party (or, if applicable, the Guarantor of such Party), but such Party (or, if applicable, the Guarantor of such Party) has a Credit Rating from any other internationally recognized rating agency (a "Rating Agency"), lower than a rating equivalent to the foregoing by such Rating Agency, or (iii) there is no Credit Rating by S&P, Moody's or a Rating Agency applicable to such Party (or, if applicable, the Guarantor of such Party) ."

16. Section 5.2 is amended to delete the following phrase from the last two lines: "under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable)."

The following shall be added to the end of Section 5.2: "under applicable law on the Early Termination Date, then each such Transaction (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains, Losses and Costs for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains, Losses and Costs by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information."

17. Insert in the sixth line of Section 5.3 Net Out of Settlement Amounts the phrase "plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party pursuant to Article Eight," between the phrases "that are due to the Non-Defaulting Party," and "plus any and all other amounts, "
18. Section 5.4 Notice of Payment of Termination shall be amended by (a) inserting the following between "as practicable" and "after a liquidation" in the first sentence "but no later than ten (10) Business Days" .
19. Closeout Setoffs. Section 5.6, Option A is amended to delete the Section entirely and replace it with the following: " Upon the occurrence of an Event of Default with respect to a Party ("X"), the other Party ("Y") will have the right (but not be obliged) without prior notice to X or any other person to set-off or apply any obligation of X owed to Y (or any Affiliate of Y, if Y is Party B) (whether or not matured or contingent and whether or not arising under this Agreement, and regardless of the currency, place of payment or booking office of the obligation) against any obligation of Y (or any Affiliate of Y, if Y is Party B) owed to X (whether or not matured or contingent and whether or not arising under this Agreement, and regardless of the currency, place of payment or booking office of the obligation). Y will give notice to the other Party of any set-off effected hereunder. To the extent that foregoing right of set-off is prohibited, unenforceable or stayed by a court of competent jurisdiction in whole or in part, the parties agree that the phrase "(or any Affiliate of Y, if Y is Party B)" shall be deemed deleted each time it appears in this Section 5.6 if the right of set-off set forth herein shall be deemed enforceable with such modification.

Amounts (or the relevant portion of such amounts) subject to set-off may be converted by Y into United States dollars at the rate of exchange at which such Party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency. If any obligation is unascertained, Y may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant Party accounting to the other when the obligation is ascertained. Nothing herein shall be deemed to create a charge or other security interest. This provision shall be without prejudice and in addition to any right of set-off, combination of

accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).”

20. Replace Section 6.3 Disputes and Adjustments of Invoices with the following:
- “6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed in good faith, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Provided that the Party disputing the invoice complies with the foregoing requirements, payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.”
21. Limitation of Remedies, Liability and Damages. The fifteenth line of Section 7.1 is amended to delete the phrase "UNLESS EXPRESSLY HEREIN PROVIDED,".
22. 10.2 Representations and Warranties
- (i) Insert at the beginning of Section 10.2 Representations and Warranties subsection (vi) the following phrase:
- “except for those legal proceedings that have been disclosed by a Party or its Affiliates in any of its filings with the Securities and Exchange Commission”
- (ii) Section 10.2 (ix) is amended to read in its entirety as follows: “(ix) (1) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; (2) it is an “eligible contract participant” as such term is defined in the Commodity Exchange Act, as amended 7 U.S.C. § 1 (a) (12); and (3) it is an “eligible commercial entity” as such term is defined in the Commodity Exchange Act, as amended 7 U.S.C. § 1 (a) (11).”
- (iii) The following are added as additional representations:
- “(xiii) the other Party is not acting as a fiduciary for or an adviser to it in respect of any Transaction;
- (xiv) it understands and acknowledges that the other Party may, either in connection with entering into a Transaction or from time to time thereafter, engage in open market transactions that are designed to hedge or reduce the risks incurred by it in connection with such Transaction and that the effect of such open market transactions may be to affect or reduce the value of such Transaction.”
23. Replace Section 10.5 Assignment with the following:
- “10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, either Party may, without the consent of but upon advance notice to the other Party (and without relieving itself from liability hereunder), (i)

transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party in the other Party's reasonable opinion, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party in the other Party's reasonable opinion; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request."

24. Replace in Section 10.9 the phrase " twelve (12) months" with "twenty-four (24) months".
25. Add the following to the end of Section 10.10:  
"Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort."
26. Notices. Section 10.7 is amended to add the phrase "or option exercise notices which may be given orally" immediately after the phrase "scheduling requests" in the parenthetical in the second line.
27. Confidentiality. Section 10.11 is amended to read in its entirety as follows: "If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, the contents of this Agreement, all Transactions and all other documents relating to this Agreement, and any information made available by one Party or its Guarantor to the other Party or its Guarantor with respect to this Agreement is confidential and shall not be disclosed to any third Party (nor shall any public announcement relating to this Agreement be made by either Party), except for such information (i) as may become generally available to the public, (ii) as may be required or appropriate in response to any summons, subpoena, or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, any exchange, control area or independent system operator rule or accounting disclosure rule or standard, (iii) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing Party or its Guarantor in making such disclosure, (iv) as is required to be disclosed to regulators or examiners, or (v) as may be furnished to the disclosing Party's Affiliates, and to each of such person's auditors, employees, attorneys, advisors or lenders that have a need to know which are required to keep the information that is disclosed in confidence and provided, further, that a Party may disclose any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index; provided, however, each Party shall, in each case, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. 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. With respect to information provided with respect to a Transaction, this obligation shall survive for a period of one (1) year following the expiration or termination of such Transaction. With respect to information made available pursuant to this Agreement, this obligation shall survive for a period of one (1) year following the delivery of such information. With respect to the contents of this Agreement, this obligation shall survive for a period of one (1) year following the expiration or termination of this Agreement.
28. Venue. The following provision is added as Section 10.12:  
"10.12 Venue. Each Party hereto irrevocably (i) submits to the non-exclusive jurisdiction of the federal and state courts located in the borough of Manhattan in New York State; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum."

29. Add the following as Section 10.13:

"10.13 Compliance with Law and Other Requirements. Each Party shall be responsible for its own compliance with all applicable laws and regulations, including those relating to the environment, and each Party shall hold the other Party harmless from any liability, loss, cost, or expense arising out of its failure to comply with such laws and regulations. Each Party shall adhere to accepted electric industry practice and without limiting the foregoing, to the applicable operating policies, criteria, and/or guidelines of the North American Electric Reliability Council ("NERC") and any regional or sub regional requirements."

30. Add the following as Section 10.14:

"10.14 Imaged Agreement. The Parties acknowledge and agree that either Party may maintain this executed Master Agreement and any executed Confirmation as "imaged agreements" in an electronic format, and that, so long as the imaged agreement bears the signature of the Party against whom enforcement is sought if there is a space or line for such signature on the agreement, in the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, and the original document(s) is/are unobtainable, neither Party will object to the introduction and acceptance of such imaged agreements as evidence in any proceeding between the Parties before any court, arbitration panel, regulatory commission or similar body on the basis that such imaged agreements are not original agreements or do not comply with the best evidence rule."

31. Add the following as Section 10.15:

"10.15 FERC Standard of Review; Mobile-Sierra Waiver.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. (2008) (the "Mobile-Sierra" doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a)."

32. Add the following as Section 10.15:

"Index Transactions. If the Contract Price for a Transaction is determined by reference to a Price Source, then:

(a) **Market Disruption.** If a Market Disruption Event occurs on any one or more days during a Determination Period (each day, a "Disrupted Day"), then:

- The fallback Floating Price, if any, specified by the Parties in the relevant Confirmation shall be the Floating Price for each Disrupted Day.
- If the Parties have not specified a fallback Floating Price, then the Parties will endeavor, in good faith and using commercially reasonable efforts, to agree on a substitute Floating Price, taking into consideration, without limitation, guidance, protocols or other recommendations or conventions issued or employed by trade organizations or industry groups in response to the Market Disruption Event and other prices published by the Price Source or alternative price sources with respect to the Delivery Point or comparable Delivery Points that may permit the Parties to derive the Floating Price based on historical differentials.
- If the Price Source retrospectively issues a Floating Price in respect of a Disrupted Day (a "Delayed Floating Price") before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Disrupted Day. If a Delayed Price is issued by the Price Source in respect of a Disrupted Day after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment unless the Parties expressly agree otherwise.
- If the Parties cannot agree on a substitute Floating Price and the Price Source does not retrospectively publish or announce a Floating Price, in each case, on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event first occurred or existed, then the Floating Price for each Disrupted Day shall be determined by taking the arithmetic mean of quotations requested from four leading dealers in the relevant market that are unaffiliated with either Party and mutually agreed upon by the Parties ("Specified Dealers"), without regard to the quotations with the highest and lowest values, subject to the following qualifications:
  - If exactly three quotations are obtained, the Floating Price for each such Disrupted Day will be the quotation that remains after disregarding the quotations having the highest and lowest values.
  - If fewer than three quotations are obtained, the Floating Price for each such Disrupted Day will be the average of the quotations obtained.
  - If the Parties cannot agree upon four Specified Dealers within two (2) Business Days, then each of the Parties will, acting in good faith and in a commercially reasonable manner, select up to two Specified Dealers separately, and those selected dealers shall be the Specified Dealers.
  - Unless otherwise agreed, if at any time the Parties agree on a substitute Floating Price for any Disrupted Day, then such substitute Floating Price shall be the Floating Price for such Disrupted Day, notwithstanding the subsequent publication or announcement of a Delayed Floating Price by the relevant Price Source or any quotations obtained from Specified Dealers.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction.

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified as applicable to the relevant Transaction.

"Floating Price" means a Contract Price specified in a Transaction that is based upon a Price Source.

"Market Disruption Event" means, with respect to any Price Source, any of the following events:

- (a) the failure of the Price Source to announce, publish or make available the specified Floating Price or information necessary for determining the Floating Price for a particular day;
- (b) the failure of trading to commence on a particular day or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange, RTO or in the market specified for determining a Floating Price;
- (c) the temporary or permanent discontinuance or unavailability of the Price Source;
- (d) the temporary or permanent closing of any Exchange or RTO specified for determining a Floating Price; or
- (e) a material change in the formula for or the method of determining the Floating Price by the Price Source or a material change in the composition of the Product.

"Price Source" means, in respect of a Transaction, a publication or such other origin of reference, including an Exchange or RTO, containing or reporting or making generally available to market participants (including by electronic means) a price, or prices or information from which a price is determined, as specified in the relevant Transaction.

"RTO" means any regional transmission operator or independent system operator.

"RTO Transaction" means a Transaction in which the Price Source is an RTO.

"Trading Day" means a day in respect of which the relevant Price Source ordinarily would announce, publish or make available the Floating Price.

(b) **Corrections to Published Prices.** If the Floating Price published, announced or made available on a given day and used or to be used to determine a relevant price is subsequently corrected by the relevant Price Source (i) within thirty (30) days of the original publication, announcement or availability, or (ii) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO's procedures and guidelines, then either Party may notify the other Party of that correction and the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after such notice is effective, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. Notwithstanding the foregoing, corrections shall not be made to any Floating Prices agreed upon by the Parties or determined based on quotations from Specified Dealers pursuant to paragraph (a) above unless the Parties expressly agree otherwise.

(c) **Calculation of Floating Price.** For the purpose of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4<sup>th</sup>) decimal number is five (5) or greater, then the third (3<sup>rd</sup>) decimal number shall be increased by one (1), and if the fourth (4<sup>th</sup>) decimal number is less than five (5), then the third (3<sup>rd</sup>) decimal number shall remain unchanged."

33. Insert into the related definition of "Firm Transmission Contingent – Contract Path" of Schedule P: Products and Related Definitions the word "only" between "excuse performance" and "for the duration" in the last sentence.

34. Add the following to the end of Schedule P: Products and Related Definitions:

"**RTO Transaction**" Unless otherwise agreed, Seller and Buyer agree to schedule and settle a RTO Transaction through the RTO market system"

**"Regional Transmission Organization ("RTO") and Additional Assumptions.** The Parties acknowledge that neither the creation of regional transmission organizations or similar bodies to operate or otherwise control electricity transmission facilities nor the implementation of new governing laws and other rules related to electricity transmission (a "Transmission Assumption Change") shall operate to void, terminate or cancel any Transaction entered into between the Parties, be deemed to impair the performance of any obligation under this Master Agreement, or provide a basis for the suspension of performance by either Party under this Master Agreement. However, following the effectiveness of a Transmission Assumption Change that has a material effect on the obligations of the Parties or creates a material ambiguity about the obligations of the Parties as to outstanding Transactions, the Parties hereto agree to diligently negotiate in good faith to modify the definitions of the Products for such Transactions with a goal of preserving an economic result for each of the Parties as close as possible to that existing prior to the effectiveness of such change; provided, however, that until such mutually agreed modification is effective this Master Agreement and any outstanding Transactions shall remain in full force and effect in accordance with their terms."



35. Other Documentation. The following provision is added as Section 10.12:

"10.12 Upon reasonable request, each Party shall deliver to the other Party documentation reasonably requested to evidence the authority and power of such Party and/or its Guarantor, as the case may be, to enter into this Agreement or any guaranty, as the case may be, which may include, without limitation, certified resolutions and a certification of the signature and authority of the individual(s) executing this Agreement or such guaranty, as the case may be and to the extent applicable and requested certificates, documents or other evidence sufficient to confirm the sales tax exempt status of such Party for each jurisdiction in which the purchase, sale and/or delivery of any physical commodity takes place under this Agreement, such that the other party will bear no obligation in relation to such purchase, sale and/or delivery for charging, collecting or remitting sales, use or other excise taxes to any local, municipal, state or federal taxing authority or agency."

For purposes of this Agreement, each of KU and LGE collectively shall be deemed to be "Party A" and any reference in this Agreement to Party A shall be deemed to refer jointly to the foregoing entities except as otherwise specifically noted. For the avoidance of doubt, in the case of any Event of Default where, under the terms of this Agreement, Party A is the Defaulting Party, Party B may exercise its remedies (whether under this Agreement, in contract, at law or in equity) against any individual Party A or any combination thereof.

Each of the entities comprising Party A shall be liable for the full amount of any and all obligations and liabilities of each and every other entity comprising Party A arising under this Agreement. Party B may bring an action under this Agreement against any one or more of the entities comprising Party A and, if judgment is rendered in favor of Party B, may collect the full amount of such judgment from one or any combination of such entities. Each entity comprising Party A waives the right to assert as a defense to the collection of such judgment (1) the inability to obtain, or the right to first seek, contribution from the other entities comprising Party A and (2) the failure to join one or more entities comprising Party A as a defendant or defendants; provided, however, that nothing herein shall prevent such entity from asserting such rights of contribution against the other entities comprising Party A after Party B has been paid in full. Any payments by Party B to either LGE or KU under this Agreement shall constitute and be construed as direct payments to the relevant Party A entities. Notwithstanding the forgoing, LG&E and KU together shall not be liable for more than 100% of the total obligation under this Agreement.

*Execution copy*

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A: LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY

By: David Sinclair  
Name: David Sinclair  
Title: VP, Energy marketing

Party B: J.P. MORGAN VENTURES ENERGY CORPORATION

By: Karen Harrington  
Name: Karen Harrington  
Title: Vice President

## GENERAL TERMS AND CONDITIONS

### ARTICLE ONE: GENERAL DEFINITIONS

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

1.2 "Agreement" has the meaning set forth in the Cover Sheet.

1.3 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 "Buyer" means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 "Call Option" means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 "Claiming Party" has the meaning set forth in Section 3.3.

1.8 "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 "Confirmation" has the meaning set forth in Section 2.3.

1.10 "Contract Price" means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 "Cross Default Amount" means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 "Defaulting Party" has the meaning set forth in Section 5.1.

1.15 "Delivery Period" means the period of delivery for a Transaction, as specified in the Transaction.

1.16 "Delivery Point" means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 "Downgrade Event" has the meaning set forth on the Cover Sheet.

1.18 "Early Termination Date" has the meaning set forth in Section 5.2.

1.19 "Effective Date" has the meaning set forth on the Cover Sheet.

1.20 "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 "Event of Default" has the meaning set forth in Section 5.1.

1.22 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.23 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

- 1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.
- 1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.
- 1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.
- 1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.
- 1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.
- 1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.
- 1.39 “Party A Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party A.
- 1.40 “Party B Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party B.
- 1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.
- 1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.
- 1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.
- 1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.
- 1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.
- 1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.
- 1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 "Put Option" means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 "Quantity" means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 "Recording" has the meaning set forth in Section 2.4.

1.51 "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer's option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 "Schedule" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 "Seller" means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 "Settlement Amount" means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 "Strike Price" means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 "Terminated Transaction" has the meaning set forth in Section 5.2.

1.59 "Termination Payment" has the meaning set forth in Section 5.3.

1.60 "Transaction" means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

## ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation ("Confirmation") substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller's receipt thereof, failing



which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

### **ARTICLE THREE: OBLIGATIONS AND DELIVERIES**

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

#### **ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE**

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

#### **ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES**

5.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
  - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
  - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

#### 5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

### **ARTICLE SIX: PAYMENT AND NETTING**

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if "Accelerated Payment of Damages" is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

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

#### ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. 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.

#### **ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS**

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.



(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) (“Party A Performance Assurance”), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

#### **ARTICLE NINE: GOVERNMENTAL CHARGES**

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

#### **ARTICLE TEN: MISCELLANEOUS**

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. 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.



**SCHEDULE M**

**(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)**

- A. The Parties agree to add the following definitions in Article One.

“Act” means \_\_\_\_\_.<sup>1</sup>

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

- B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

- C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

<sup>1</sup> Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

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respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF \_\_\_\_\_<sup>2</sup> SHALL APPLY.

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<sup>2</sup> Insert relevant state for Governmental Entity or Public Power System.

## SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into \_\_\_\_\_ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.



4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this "Into Product" (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

"Native Load" means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

"Non-Firm" means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

"System Firm" means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the "System") with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller's failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer's failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system's, or the control area's, or reliability council's reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller's performance. Buyer's failure to receive shall be excused (i) by Force Majeure; (ii) by Seller's failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer's performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

"Transmission Contingent" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller's proposed generating source to the Buyer's proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Article 1.23 to the contrary.

"Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller's failure to deliver under a "Unit Firm" Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

**EXHIBIT A**

**MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on \_\_\_\_\_, \_\_\_\_\_  
between \_\_\_\_\_ ("Party A") and \_\_\_\_\_ ("Party B")  
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: \_\_\_\_\_

Buyer: \_\_\_\_\_

Product:

- Into \_\_\_\_\_, Seller's Daily Choice
- Firm (LD)
- Firm (No Force Majeure)
- System Firm  
(Specify System: \_\_\_\_\_)
- Unit Firm  
(Specify Unit(s): \_\_\_\_\_)
- Other \_\_\_\_\_
- Transmission Contingency (If not marked, no transmission contingency)
  - FT-Contract Path Contingency       Seller       Buyer
  - FT-Delivery Point Contingency       Seller       Buyer
  - Transmission Contingent       Seller       Buyer
  - Other transmission contingency  
(Specify: \_\_\_\_\_)

Contract Quantity: \_\_\_\_\_

Delivery Point: \_\_\_\_\_

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

Energy Price: \_\_\_\_\_

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

Delivery Period: \_\_\_\_\_  
Special Conditions: \_\_\_\_\_  
Scheduling: \_\_\_\_\_  
Option Buyer: \_\_\_\_\_  
Option Seller: \_\_\_\_\_  
Type of Option: \_\_\_\_\_  
Strike Price: \_\_\_\_\_  
Premium: \_\_\_\_\_  
Exercise Period: \_\_\_\_\_

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated \_\_\_\_\_ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_

# Gas Annex to the EEI Master Power Purchase & Sale Agreement

Version 1.1  
7/7/05

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

**GAS ANNEX ELECTIONS COVER SHEET**

**Paragraph 4. Elections and Variables**

**Name: Louisville Gas and Electric Company/Kentucky Utilities Company (“LGE”/“KU” or “Party A”)**

**Name: J.P. Morgan Ventures Energy Corporation (“Party B”)**

**Effective Date of EEI Master Agreement between Party A and Party B: July 23, 2012**

**All Notices:**

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

Street:

City:

Attn:

Phone:

Facsimile:

Duns:

**Invoices:**

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

Email :

Phone:

Facsimile:

**Nominations:**

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

**All Notices:**

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

Street:

City

Phone:

Facsimile:

Duns:

Federal Tax ID Number:

**Invoices:**

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

Phone:

Facsimile:

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

-502-627-3034  
502-627-4655

Attn: Gas Scheduling  
Email: N/A  
Phone: (713) 236-5027  
Facsimile: (713) 236-4100

**Confirmations:**

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

Attn:

Phone:

Facsimile:

**Confirmations:**

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

Attn:

Phone:

Facsimile:

**Option Exercise:**

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

Attn:

Phone:

Facsimile:

Email:

Wire Transfer - or -  ACH (check one box):

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

**Option Exercise:**

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

Attn:

Phone:

Facsimile:

Wire Transfer - or -  ACH (check one box):

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

BNK: JPMorgan Chase Bank  
ABA: 021 0000 21  
ACCT: 304289361

Note: Please include "North America – Gas Trading" on all payments.

**Elections for Paragraph Two**

2.5 Payment Netting

Option A (Payment Netting with Payment on the 25<sup>th</sup>) - If neither Option A nor Option B is checked, Option A shall be applicable.

Option B (No Payment Netting)

2.6 Seller Pays Before and At Delivery Point

Paragraph 2.6 is applicable. If not checked, inapplicable.



**Elections for Paragraph Three****3.3 Remedies For Failure to Deliver or Receive**

- Option A – Spot Price Standard – If neither Option A nor Option B is checked, Option B shall be applicable.
- Other Index Applicable to Spot Price Standard, if any:
- Option B – Cover Standard

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

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

WHEREAS, the Parties desire to enter into this Gas Annex to the EEI Master Agreement to provide for the terms and conditions under which the Parties may enter into Transactions relating to the purchase and sale of natural gas and products related thereto;

NOW, THEREFORE, the Parties agree as follows:

**PARAGRAPH ONE: GENERAL TERMS**

1.1 **Scope of Agreement.** The Parties agree that they are entering into this Gas Annex to the EEI Master Agreement (this “EEI Gas Annex”) in order to provide for the terms and conditions pursuant to which the Parties may enter into Transactions for Gas Products (as defined below). For purposes of this EEI Gas Annex, “NAESB Gas Contract” shall mean the NAESB Base Contract for Sale and Purchase of Natural Gas, NAESB Standard 6.3.1, dated April 19, 2002. This EEI Gas Annex, together with the Paragraph 4 Gas Annex Elections Cover Sheet (“Paragraph 4 Cover Sheet”), supplements, forms a part of, and is incorporated into, the EEI Master Agreement. Capitalized terms used in this EEI Gas Annex but not defined herein shall have the meanings given such terms in the EEI Master Agreement.

It is intended that the terms set forth in the EEI Master Agreement and this EEI Gas Annex apply to those Transactions that relate to Gas Products (each such Transaction, a “Gas Products Transaction”). Unless otherwise expressly amended pursuant to this EEI Gas Annex, all of the terms and conditions set forth in the EEI Master Agreement shall be applicable to Gas Products Transactions entered into between the Parties. The term “Transaction” as used in the EEI Master Agreement means both Transactions relating to Power Products and Gas Products and except as otherwise provided in this EEI Gas Annex, the EEI Master Agreement shall apply equally to all such Transactions without differentiation. By way of example only, the Parties intend that the occurrence of an Event of Default under Section 5.1 would enable the Non-Defaulting Party to

exercise any or all of the rights in Article Five with respect to all Transactions notwithstanding whether such Transactions are for Gas Products and/or Power Products; and that the collateral provisions agreed to by the Parties in the Collateral Annex to the EEI Master Agreement, if any, shall apply to all Transactions notwithstanding whether such Transactions are for Gas Products and/or Power Products. In the event of any inconsistency among or between the EEI Master Agreement and this EEI Gas Annex, this EEI Gas Annex will govern with respect to Gas Products Transactions only.

**PARAGRAPH TWO: AMENDMENTS TO THE EEI MASTER AGREEMENT**

2.1 Definitions. Article One of the EEI Master Agreement is amended as set forth below:

(a) Section 1.15 is amended in its entirety to read as follows:

1.15 With respect to Power Products, “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction. With respect to Gas Products, “Delivery Period” has the meaning in Section 2.13 of the NAESB Gas Contract.

(b) Section 1.23 is amended to add the following sentence at the end of the Section:

This definition of Force Majeure in Section 1.23 shall not apply to Gas Products. In respect of Gas Products, “Force Majeure” has the meaning in Section 11.1 of the NAESB Gas Contract.

(c) Section 1.47 is amended in its entirety to read as follows:

1.47 “Product” or “Products” means, as the case may require, either or both the Power Products and/or the Gas Products. “Power Product” or “Power Products” mean electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction. “Gas Product” or “Gas Products” mean products involving Gas (as defined in Section 2.18 of the NAESB Gas Contract) or as otherwise specified by the Parties in the Transaction.

(d) Sections 1.43, 1.44, 1.51 and 1.53 shall be applicable only to Power Products and shall not be applicable to Gas Products.

(e) Section 1.54 is amended in its entirety to read as follows:

1.54 With respect to Power Products, “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point. With respect to Gas Products, Gas shall be deemed to have been Scheduled or to be Scheduled Gas when the provisions in Section 2.25 of the NAESB Gas Contract have been satisfied.

(f) Section 1.61 is amended to add “or Transporter” after “Transmission Provider”.

- (g) The definitions of “Master Agreement” and “Agreement” on the Cover Page to the EEI Master Power Purchase & Sale Agreement shall include this EEI Gas Annex. References to the Tariffs of Party A and Party B in the Agreement shall only apply to Power Products. Further, after all references to “Article Four” in the EEI Master Agreement shall be added the words “or in respect of Gas Products, Section 3.3 of this EEI Gas Annex.”

2.2 Confirmation. The first sentence of Section 2.3 of the EEI Master Agreement shall be modified by the addition of the following at the end thereof: “with respect to Power Transactions and substantially in the form of Exhibit A to the NAESB Gas Contract with respect to Gas Transactions.”

2.3 Obligations and Deliveries. Sections 3.2 and 3.3 of the EEI Master Agreement shall be applicable only to Power Products. The applicable Transportation, Scheduling and Force Majeure provisions with respect to Gas Products are set forth in Paragraph Three below.

2.4 Remedies For Failure to Deliver/Receive. Sections 4.1 and 4.2 of the EEI Master Agreement shall be applicable only to Power Products. The applicable provisions with respect to Gas Products are set forth in Paragraph Three below.

2.5 Payment and Netting. If neither Option A nor Option B is specified on the Paragraph 4 Cover Sheet as applicable, Option A of this Paragraph 2.5 shall apply.

Option A: Payment Netting with Payment for Power and Gas Transactions on the 25<sup>th</sup>.

Section 6.2 of the EEI Master Agreement is amended to delete the words “twentieth (20<sup>th</sup>) day” in the third line thereof and replace such words with the words: “twenty-fifth (25<sup>th</sup>) day”. Section 6.2, as amended by the preceding sentence, of the EEI Master Agreement shall be applicable to Power Products and Gas Products, it being the intent of the Parties that monthly payments for Power Products shall be netted with monthly payments for Gas Products, all in accordance with Article 6 of the EEI Master Agreement, including without limitation Section 6.4 thereof. For further clarity, it is expressly agreed that, in addition to the netting of monthly payments in respect of Gas Products and Power Products, if an Early Termination Date is declared by the Non-Defaulting Party pursuant to Article 5 of the EEI Master Agreement, then all Settlement Amounts and any other payments for all Transactions whether for Power Products and/or Gas Products shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3.

Option B: No Payment Netting with Payment for Gas Transactions on the 25<sup>th</sup>.

The first sentence of Section 6.2 of the EEI Master Agreement shall be applicable only to Power Products. With respect to Gas Products only, the first sentence of Section 6.2 shall be replaced with the following sentence: “Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement for Gas Products shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the 25<sup>th</sup> day of the month following the month of delivery, or the 10<sup>th</sup> day after receipt of the invoice by Buyer or, if such day is not a Business Day, then on the next Business Day.”

Section 6.4 of the EEI Master Agreement shall be applicable to both Power Products and Gas Products; provided, however, for this limited purpose only, monthly payments for

Power Products shall be netted only with monthly payments for other Power Products and monthly payments for Gas Products shall be netted only with monthly payments for other Gas Products. For clarity, it is expressly agreed that if an Early Termination Date is declared by the Non-Defaulting Party, then all Settlement Amounts and any other payments for all Transactions whether for Power Products and/or Gas Products shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3.

2.6 Seller Pays Before and At the Delivery Point. If the Parties have elected on the Paragraph 4 Cover Sheet to make this Paragraph 2.6 applicable, the first two sentences of Section 9.2 of the EEI Master Agreement shall be applicable only to Power Products, and Section 6, “Seller Pays Before and At Delivery Point”, of the NAESB Gas Contract shall be applicable with respect to Gas Products.

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

The following provisions are applicable with respect to Gas Products only.

3.1 Definitions. The following definitional sections of the NAESB Gas Contract are incorporated by reference into Article One of the EEI Master Agreement with respect to Gas Products only: Sections 2.3, 2.8, 2.9, 2.10, 2.12, 2.14, 2.16 through 2.26 and 2.28 through 2.29; provided, however, that (i) the definition of “Payment Date” in Section 2.23 of the NAESB Gas Contract shall be revised to delete the phrase “, as indicated on the Base Contract,” in the first line thereof and replace such phrase with the following: “, as indicated in this EEI Gas Annex,” and (ii) the definition of “Spot Price” in Section 2.26 of the NAESB Gas Contract shall be revised to delete the phrase “indicated on the Base Contract” in the first line thereof and replace such phrase with the following: “indicated in this EEI Gas Annex”.

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

3.4 Force Majeure. Sections 11.1 through 11.6 of the NAESB Gas Contract are incorporated herein in their entirety; provided, however, that in Section 11.1 of the NAESB Gas Contract the phrase “payment(s) due under Section 7, Section 10.4 and Imbalance Charges under Section 4,” shall be deleted and replaced with the following phrase: “payment(s) due under Article 6, Section 5.3, Article 8 and Imbalance Charges under Section 3.5.”.

3.5 Transportation, Nominations and Imbalances. Sections 4.1, 4.2 and 4.3 of the NAESB Gas Contract are incorporated herein in their entirety.

3.6 Quality and Measurement. Section 5 of the NAESB Gas Contract is incorporated herein in its entirety.

3.7 Warranty. Sections 8.2 and 14.8 of the NAESB Gas Contract are incorporated herein in their entirety.

3.3 Remedies for Failure to Deliver/Receive. The following Sections are added to Article Four of the EEI Master Agreement with respect to Firm Gas Products only. If neither Option A

nor Option B is specified on the Paragraph 4 Cover Sheet as applicable, Option B of this Paragraph 3.3 shall apply.

Option A: Spot Price Standard.

4.3 Spot Price Standard. The Spot Price Standard portion of Section 3.2 of the NAESB Gas Contract is incorporated herein in its entirety with respect to Firm Gas Products only, with the following language added after the last sentence:

“If the Parties fail to specify an index applicable to the Spot Price Standard either in the Paragraph 4 Gas Annex Cover Sheet or as otherwise agreed by the Parties in connection with a particular Gas Product Transaction, the applicable index shall be the “Daily Midpoint” price set forth in Gas Daily (published by Platts), or any successor publication, in the column “Daily Price Survey” under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day.”

Option B: Cover Standard.

4.3 Cover Standard. The Cover Standard portion of Section 3.2 of the NAESB Gas Contract is incorporated herein in its entirety with respect to Firm Gas Products only.

3.4 Payment and Netting. The following Section is added to Article Six of the EEI Master Agreement with respect to Gas Products only:

6.9 Invoicing for Gas Products. Section 7.1 of the NAESB Gas Contract is incorporated herein in its entirety.

3.5 Miscellaneous. The following Sections are added to Article Ten of the EEI Master Agreement with respect to Gas Products only:

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

10.13 UCC. Each Party agrees that notwithstanding any provisions of law relating to adequate assurance of future performance, including without limitation Article 2-609 of the UCC, the Parties shall only be entitled to request adequate assurance as specifically provided in the EEI Master Agreement, including the Collateral Annex thereto. For purposes of the foregoing, UCC means the Uniform Commercial Code as adopted by the jurisdiction governing the Parties and the Transactions. Section references are to the Model Uniform Commercial Code and are intended to correspond to the same substantive provisions contained in the specific codes adopted in the controlling jurisdictions, to the extent that section references differ.

## Other changes:

## • 3.1 Definitions:

Section 2.10 “Cover Standard” of the NAESB Gas Contract shall be amended by deleting “(or an alternate fuel if elected by Buyer and replacement Gas is not available)” from the definition.

• 3.2 Obligations and Deliveries:

Section 3.4 Force Majeure is further amended by adding the following with respect to Gas Transactions:

During an event of Force Majeure, Seller must cease interruptible deliveries to other markets in the region from which a Firm transaction is sourced, to the extent it would be commercially practicable in Seller’s reasonable discretion to use such supplies from those markets to meet Seller’s obligations to Buyer hereunder, prior to suspending the performance obligations under the Firm transaction affected by such Force Majeure event. In the event of a Force Majeure occurrence affecting Seller’s ability to deliver Gas under the Contract or Buyer’s ability to receive Gas under the Contract, then as applicable, Seller agrees to ratably curtail its firm sales to Buyer on the same basis as similarly situated buyers and Buyer agrees to ratably curtail its firm purchases from Seller on the same basis as similarly situated sellers (in each case, taking into consideration, without limitation, contractual provisions modifying or limiting one’s ability to claim Force Majeure and the length of transaction term (i.e. short term transactions curtailed first) but without regard to the price paid or received for Gas during such Force Majeure event), and in any event only to the extent contractually permitted by the applicable Party’s third party purchase or sales contracts.

Section 3.6 Quality and Measurement. is replaced in its entirety with the following: Section 5 of the NAESB Gas Contract is deleted in its entirety and replaced with the following:


“All Gas delivered by Seller shall meet the pressure, quality and heat specification of the Receiving Transporter. BTU and volume measurements shall be made at the pressure and temperature basis of the Receiving Transporter in accordance with the provisions of such pipeline’s then effective Federal Energy Regulatory Commission (“FERC”) Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such Receiving Transporter.”

Section 3.7 Warranty is further amended as follows:


Section 8.2 of the NAESB Gas Contract shall be amended by inserting the phrase “SECTION 5,” between “SECTION 8.2” and “AND IN SECTION 14.8” in the last sentence.

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

Party A: **LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY**

By:   
Name: David Sinclair  
Title: VP, Energy marketing

Party B: **J.P. MORGAN VENTURES ENERGY CORPORATION**

By:   
Name: Karen Harrington  
Title: Vice President

# Collateral Annex

Version 1.0  
2/21/02

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### COLLATERAL ANNEX

This Collateral Annex, together with the Paragraph 10 Elections, (the "Collateral Annex") supplements, forms a part of, and is subject to, the EEI Master Power Purchase and Sale Agreement, dated July 23, 2012, including the Cover Sheet and any other annexes thereto between LOUISVILLE GAS AND ELECTRIC COMPANY/KENTUCKY UTILITIES COMPANY ("Party A") and J.P. MORGAN VENTURES ENERGY CORPORATION ("Party B"). Capitalized terms used in this Collateral Annex but not defined herein shall have the meanings given such terms in the Agreement.

The obligations of each Party under the Agreement shall be secured in accordance with the provisions of this Collateral Annex, which, except as provided below, sets forth the exclusive conditions under which a Party will be required to Transfer Performance Assurance in the form of Cash, a Letter of Credit or other property as agreed to by the Parties, as well as the exclusive conditions under which a Party will release such Performance Assurance. This Collateral Annex supercedes and replaces in its entirety Sections 8.1(c), 8.2(c) and 8.3 of the Agreement and the defined terms used therein to the extent that such terms are otherwise defined and used in this Collateral Annex. In addition, to the extent that the Parties have specified on the Cover Sheet that Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement are applicable, then the definition of Performance Assurance as used in this Collateral Annex shall apply and Paragraphs 2, 6, 7 and 9 of this Collateral Annex shall apply to any such Performance Assurance posted under such provisions, it being understood that nothing contained in this Collateral Annex shall change any election that the Parties have specified on the Cover Sheet with respect to Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement, which provisions require a Party to Transfer Performance Assurance under certain circumstances not contemplated by this Collateral Annex.

#### Paragraph 1. Definitions.

For purposes of this Collateral Annex, the following terms have the respective definitions set forth below:

"Calculation Date" means any Local Business Day on which a Party chooses or is requested by the other Party to make the determinations referred to in Paragraphs 3, 4, 5 or 8 of this Collateral Annex.

"Cash" means U.S. dollars held by or on behalf of a Party as Performance Assurance hereunder.

"Collateral Account" shall have the meaning attributed to it in Paragraph 6(a)(ii)(B).

"Paragraph 10 Cover Sheet" means the Cover Sheet attached to this Collateral Annex setting forth certain elections governing this Collateral Annex.

"Collateral Requirement" shall have the meaning attributed to it in Paragraph 3(b).

"Collateral Threshold" means, with respect to a Party, the collateral threshold, if any, set forth in the Paragraph 10 Cover Sheet for a Party.

"Collateral Value" means (a) with respect to Cash, the face amount thereof; (b) with respect to Letters of Credit, the Valuation Percentage multiplied by the stated amount then available under the Letter of Credit to be unconditionally drawn by the beneficiary thereof; and (c) with respect to other forms of Performance Assurance, the Valuation Percentage multiplied by the fair market value on any Calculation Date of each item of Performance Assurance on deposit with, or held by or for the benefit of, a Party pursuant to this Collateral Annex as determined by such Party in a commercially reasonable manner.

"Credit Rating" means with respect to any entity, on any date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody's or other specified rating agency or agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its "corporate credit rating" by S&P.

"Credit Rating Event" shall have the meaning attributed to it in Paragraph 6(a)(iii).

"Current Mark-to-Market Value" of an outstanding Transaction, on any Calculation Date, means the amount, as calculated in good faith and in a commercially reasonable manner, which a Party to the Agreement would pay to (a negative Current Mark-to-Market Value) or receive from (a positive Current Mark-to-Market Value) the other Party as the Settlement Amount (calculated at the mid-point between the bid price and the offer price) for such Transaction.

"Custodian" shall have the meaning attributed to it in Paragraph 6(a)(i).

"Downgraded Party" shall have the meaning attributed to it in Paragraph 6(a)(i).

"Eligible Collateral" means, with respect to a Party, the Performance Assurance specified for such Party on the Paragraph 10 Cover Sheet.

"Exposure" of one Party ("Party X") to the other Party ("Party Y") for each Transaction means (without duplication) as of any Calculation Date the sum of the following:

- (a) the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Party X and that remain unpaid as of such Calculation Date minus the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or

could be invoiced) to Party Y and that remain unpaid as of such Calculation Date;  
plus

(b) the Current Mark-to-Market Value of such Transaction to Party X.

"Exposure Amount" shall have the meaning set forth in Paragraph 3(a).

"Independent Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party (which amount, if designated, shall either be a Fixed Independent Amount, a Full Floating Independent Amount or a Partial Floating Independent Amount, in each case, as designated on the Paragraph 10 Cover Sheet), or if no amount is specified, zero, or with respect to either Party, an additional or reduced amount agreed to as such for that Party in respect of a Transaction.

"Interest Amount" means with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (a) the amount of Cash held by such Party on that day; multiplied by (b) the Interest Rate for that day, divided by (c) 360.

"Interest Period" means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred by a Party (or if no Interest Amount has yet been Transferred by such Party, the Local Business Day on which Cash was Transferred to such Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

"Interest Rate" means, in respect of a Party holding Cash, the rate specified for such Party in the Paragraph 10 Cover Sheet.

"Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, substantially in the form set forth in Schedule 1 attached hereto, with such changes to the terms in that form as the issuing bank may require and as may be acceptable to the beneficiary thereof.

"Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (i) "A-" by S&P or "A3" by Moody's, if such issuer is rated by both S&P and Moody's, (ii) "A-" by S&P, if such issuer is rated only by S&P, or (iii) "A3" by Moody's, if such issuer is rated only by Moody's; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any such case without replacement; or (e) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that no Letter

of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Collateral Annex.

"Local Business Day" means, a day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is located and (b) in relation to any notice or other communication, in the city specified in the address for notice provided by the recipient.

"Minimum Transfer Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

"Net Exposure" shall have the meaning attributed to it in Paragraph 3(a).

"Notification Time" means 11:00, New York time, on any Calculation Date or any different time specified in the Paragraph 10 Cover Sheet.

"Obligations" shall have the meaning attributed to it in Paragraph 2.

"Performance Assurance" means all Eligible Collateral, all other property acceptable to the Party to which it is Transferred, and all proceeds thereof, that has been Transferred to or received by a Party hereunder and not subsequently Transferred to the other Party pursuant to Paragraph 5 or otherwise received by the other Party. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(a)(iv) and any Cash received and held by a Party after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash, until all or any portion of such Cash is applied against Obligations owing to such Party pursuant to the provisions of this Collateral Annex. Any guaranty agreement executed by a Guarantor of a Party shall not constitute Performance Assurance hereunder.

"Pledging Party" shall have the meaning attributed to it in Paragraph 3(b).

"Qualified Institution" means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital and surplus of at least \$1,000,000,000.

"Reference Market-maker" means a leading dealer in the relevant market selected by a Party determining its Exposure in good faith from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

"Rounding Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

"Secured Party" shall have the meaning attributed to it in Paragraph 3(b).

"Transfer" means, with respect to any Performance Assurance or Interest Amount, and in accordance with the instructions of the Party entitled thereto:

- (a) in the case of Cash, payment or transfer by wire transfer into one or more bank accounts specified by the recipient;
- (b) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the recipient; and
- (c) in the case of any other type of Performance Assurance, delivery thereof as specified by the recipient.

"Valuation Percentage" means, with respect to any Performance Assurance designated as Eligible Collateral on the Paragraph 10 Cover Sheet, the Valuation Percentage specified for such Performance Assurance on the Paragraph 10 Cover Sheet.

Paragraph 2. Encumbrance; Grant of Security Interest.

As security for the prompt and complete payment of all amounts due or that may now or hereafter become due from a Party to the other Party and the performance by a Party of all covenants and obligations to be performed by it pursuant to this Collateral Annex, the Agreement, all outstanding Transactions and any other documents, instruments or agreements executed in connection therewith (collectively, the "Obligations"), each Party hereby pledges, assigns, conveys and transfers to the other Party, and hereby grants to the other Party a present and continuing security interest in and to, and a general first lien upon and right of set off against, all Performance Assurance which has been or may in the future be Transferred to, or received by, the other Party and/or its Custodian, and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing and each Party agrees to take such action as the other Party reasonably requests in order to perfect the other Party's continuing security interest in, and lien on (and right of setoff against), such Performance Assurance.

Paragraph 3. Calculations of Collateral Requirement.

(a) On any Calculation Date, the "Exposure Amount" for each Party shall be calculated for all Transactions for which there are any Obligations remaining unpaid or unperformed, by calculating each Party's Exposure to the other Party in respect of each such Transaction and determining the net aggregate sum of all Exposures for all Transactions for each Party. The Party having the greater Exposure Amount at any time (the "Secured Party") shall be deemed to have a "Net Exposure" to the other Party equal to the Secured Party's Exposure Amount.

(b) The "Collateral Requirement" for a Party (the "Pledging Party") means the Secured Party's Net Exposure minus the sum of:

- (1) the Pledging Party's Collateral Threshold; plus
- (2) the amount of Cash previously Transferred to the Secured Party, the amount of Cash held by the Secured Party as Performance Assurance as a result of drawing under any Letter of Credit, and any Interest Amount that has not yet been Transferred to the Pledging Party; plus
- (3) the Collateral Value of each Letter of Credit and any other form of Performance Assurance (other than Cash) maintained by the Pledging Party for the benefit of the Secured Party; provided, however, that, the Collateral Requirement of a Party will be deemed to be zero (0) whenever the calculation of such Party's Collateral Requirement yields a number less than zero (0).

Paragraph 4. Delivery of Performance Assurance.

On any Calculation Date on which (a) no Event of Default or Potential Event of Default has occurred and is continuing with respect to the Secured Party, (b) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, and (c) the Pledging Party's Collateral Requirement equals or exceeds its Minimum Transfer Amount, then the Secured Party may demand that the Pledging Party Transfer to the Secured Party, and the Pledging Party shall, after receiving such notice from the Secured Party, Transfer, or cause to be Transferred to the Secured Party, Performance Assurance for the benefit of the Secured Party, having a Collateral Value at least equal to the Pledging Party's Collateral Requirement. The amount of Performance Assurance required to be Transferred hereunder shall be rounded up to the nearest integral multiple of the Rounding Amount. Unless otherwise agreed in writing by the Parties, (i) Performance Assurance demanded of a Pledging Party on or before the Notification Time on a Local Business Day shall be provided by the close of business on the next Local Business Day and (ii) Performance Assurance demanded of a Pledging Party after the Notification Time on a Local Business Day shall be provided by the close of business on the second Local Business Day thereafter. Any Letter of Credit or other type of Performance Assurance (other than Cash) shall be Transferred to such address as the Secured Party shall specify and any such demand made by the Secured Party pursuant to this Paragraph 4 shall specify account information for the account to which Performance Assurance in the form of Cash shall be Transferred.

Paragraph 5. Reduction and Substitution of Performance Assurance.

(a) On any Local Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to Cash), a Pledging Party may request a reduction in the amount of Performance Assurance previously provided by the Pledging Party for the benefit of the Secured Party, provided that, after giving effect to the requested reduction in Performance Assurance, (i) the Pledging Party shall in fact have a Collateral Requirement of zero; (ii) no Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing; and (iii) no Early Termination Date has occurred or been designated as a result of an Event of

Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations. A permitted reduction in Performance Assurance may be effected by the Transfer of Cash to the Pledging Party or the reduction of the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party. The amount of Performance Assurance required to be reduced hereunder shall be rounded down to the nearest integral multiple of the Rounding Amount. The Pledging Party shall have the right to specify the means of effecting the reduction in Performance Assurance. In all cases, the cost and expense of reducing Performance Assurance (including, but not limited to, the reasonable costs, expenses, and attorneys' fees of the Secured Party) shall be borne by the Pledging Party. Unless otherwise agreed in writing by the Parties, (i) if the Pledging Party's reduction demand is made on or before the Notification Time on a Business Day, then the Secured Party shall have one (1) Local Business Day to effect a permitted reduction in Performance Assurance and (ii) if the Pledging Party's reduction demand is made after the Notification Time on a Local Business Day, then the Secured Party shall have two (2) Local Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to the Pledging Party. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party, the Secured Party shall promptly take such action as is reasonably necessary to effectuate such reduction.

(b) Except when (i) an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations, the Pledging Party may substitute Performance Assurance for other existing Performance Assurance of equal Collateral Value upon one (1) Local Business Day's written notice (provided such notice is made on or before the Notification Time, otherwise the notification period shall be two (2) Local Business Days) to the Secured Party; provided, however, that if such substitute Performance Assurance is of a type not otherwise approved by this Collateral Annex, then the Secured Party must consent to such substitution. Upon the Transfer to the Secured Party and/or its Custodian of the substitute Performance Assurance, the Secured Party and/or its Custodian shall Transfer the relevant replaced Performance Assurance to the Pledging Party within two (2) Local Business Days. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Performance Assurance is Transferred simultaneously or has been Transferred to the Secured Party and/or its Custodian prior to the release of the Performance Assurance to be returned to the Pledging Party and the security interest in, and general first lien upon, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the Collateral Value of such substitute Performance Assurance shall equal the greater of the Pledging Party's Collateral Requirement or the Pledging Party's Minimum Transfer Amount. Each substitution of Performance Assurance shall constitute a representation and warranty by the Pledging Party that the substituted Performance Assurance shall be

subject to and governed by the terms and conditions of this Collateral Annex, including without limitation the security interest in, general first lien on and right of offset against, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party pursuant to Paragraph 2.

(c) The Transfer of any Performance Assurance by the Secured Party and/or its Custodian in accordance with this Paragraph 5 shall be deemed a release by the Secured Party of its security interest, general first lien and right of offset granted pursuant to Paragraph 2 hereof only with respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Paragraph 5, the Pledging Party will, upon request of the Secured Party, execute a receipt showing the Performance Assurance Transferred to it.

Paragraph 6. Administration of Performance Assurance.

(a) Cash. Performance Assurance provided in the form of Cash to a Party that is the Secured Party shall be subject to the following provisions.

(i) If such Party is entitled to hold Cash, then it will be entitled to hold Cash or to appoint an agent which is a Qualified Institution (a "Custodian") to hold Cash for it provided that the conditions for holding Cash that are set forth on the Paragraph 10 Cover Sheet for such Party are satisfied. If such Party is not entitled to hold Cash, then the provisions of Paragraph 6(a)(ii) shall not apply with respect to such Party and Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B). Upon notice by the Secured Party to the Pledging Party of the appointment of a Custodian, the Pledging Party's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Cash by a Custodian will be deemed to be the holding of Cash by the Secured Party for which the Custodian is acting. If the Secured Party or its Custodian fails to satisfy any conditions for holding Cash as set forth above or in the Paragraph 10 Cover Sheet or if the Secured Party is not entitled to hold Cash at any time, then the Secured Party will Transfer, or cause its Custodian to Transfer, the Cash to a Qualified Institution and the Cash shall be maintained in accordance with Paragraph 6(a)(ii)(B), with the Party not eligible to hold Cash being considered the "Downgraded Party" (as defined below). Except as set forth in Paragraph 6(c), the Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(ii) Use of Cash. Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to the Secured Party and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, then the Secured Party shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of the Pledging Party, including any equity or right of redemption by the Pledging Party; provided, however, that if a Party or its Custodian is not eligible to hold Cash pursuant to



Paragraph 6(a) (such Party shall be the "Downgraded Party" and the event that caused it or its Custodian to be ineligible to hold Cash shall be a "Credit Rating Event") then:

(A) the provisions of this Paragraph 6(a)(ii) will not apply with respect to the Downgraded Party; and

(B) the Downgraded Party shall be required to Transfer (or cause to be Transferred) not later than the close of business on the next Local Business Day following such Credit Rating Event all Cash in its possession or held on its behalf to a Qualified Institution approved by the non-Downgraded Party (which approval shall not be unreasonably withheld), to a segregated, safekeeping or custody account (the "Collateral Account") within such Qualified Institution with the title of the account indicating that the property contained therein is being held as Cash for the Downgraded Party. The Qualified Institution shall serve as Custodian with respect to the Cash in the Collateral Account, and shall hold such Cash in accordance with the terms of this Collateral Annex and for the security interest of the Downgraded Party and execute such account control agreements as are necessary or applicable to perfect the security interest of the Non-Downgraded Party therein pursuant to Section 9-314 of the Uniform Commercial Code or otherwise, and subject to such security interest, for the ownership and benefit of the non-Downgraded Party. The Qualified Institution holding the Cash will invest and reinvest or procure the investment and reinvestment of the Cash in accordance with the written instructions of the Pledging Party, subject to the approval of such instructions by the Downgraded Party (which approval shall not be unreasonably withheld), provided that the Qualified Institution shall not be required to so invest or reinvest or procure such investment or reinvestment if an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing. The Downgraded Party shall have no responsibility for any losses resulting from any investment or reinvestment effected in accordance with the Pledging Party's instructions.

(iii) Interest Payments on Cash. So long as no Event of Default or Potential Event of Default with respect to the Pledging Party has occurred and is continuing, and no Early Termination Date for which any unsatisfied payment Obligations of the Pledging Party exist has occurred or been designated as the result of an Event of Default with respect to the Pledging Party, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that the Secured Party or its Custodian is holding Cash, the Secured Party will Transfer (or caused to be Transferred) to the Pledging Party, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by the Secured Party or its Custodian), the Interest Amount. The Pledging Party shall invoice the Secured Party monthly setting forth the calculation of the Interest Amount due, and the Secured Party shall make payment thereof by the later of (A) the third Local Business Day of the first month after the last month to which such invoice relates or (B) the third Local Business Day after the day on which such invoice is received. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to the Pledging Party or an Early Termination Date as a result of an Event of Default with respect to the Pledging Party, the Secured Party or its Custodian shall retain any such Interest Amount as additional Performance Assurance hereunder

until the obligations of the Pledging Party under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions.

(i) Unless otherwise agreed to in writing by the parties, each Letter of Credit shall be provided in accordance with Paragraph 4, and each Letter of Credit shall be maintained for the benefit of the Secured Party. The Pledging Party shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or other Eligible Collateral, in each case at least twenty (20) Local Business Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank issuing a Letter of Credit shall fail to honor the Secured Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Secured Party either a substitute Letter of Credit that is issued by a bank acceptable to the Secured Party or other Eligible Collateral, in each case within one (1) Local Business Day after such refusal, provided that, as a result of the Pledging Party's failure to perform in accordance with (A), (B), or (C) above, the Pledging Party's Collateral Requirement would be greater than zero.

(ii) As one method of providing Performance Assurance, the Pledging Party may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(iii) Upon the occurrence of a Letter of Credit Default, the Pledging Party agrees to Transfer to the Secured Party either a substitute Letter of Credit or other Eligible Collateral, in each case on or before the first Local Business Day after the occurrence thereof (or the fifth (5th) Local Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).

(iv) (A) Upon or at any time after the occurrence and continuation of an Event of Default with respect to the Pledging Party, or (B) if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations, then the Secured Party may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Pledging Party's obligations to the Secured Party and the Secured Party shall have the rights and remedies set forth in Paragraph 7 with respect to such cash proceeds. Notwithstanding the Secured Party's receipt of Cash proceeds of a drawing under the Letter of Credit, the Pledging Party shall remain liable (y) for any failure to Transfer sufficient Performance Assurance or (z) for

any amounts owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.

(v) In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys' fees of the Secured Party) of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by the Pledging Party.

(c) Care of Performance Assurance. Except as otherwise provided in Paragraph 6(a)(iii) and beyond the exercise of reasonable care in the custody thereof, the Secured Party shall have no duty as to any Performance Assurance in its possession or control or in the possession or control of any Custodian or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession, and/or in the possession of its agent for safekeeping, if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, by reason of the act or omission of any Custodian selected by the Secured Party in good faith except to the extent such loss or damage is the result of such agent's willful misconduct or negligence. Unless held by a Custodian, the Secured Party shall at all times retain possession or control of any Performance Assurance Transferred to it. The holding of Performance Assurance by a Custodian for the benefit of the Secured Party shall be deemed to be the holding and possession of such Performance Assurance by the Secured Party for the purpose of perfecting the security interest in the Performance Assurance. Except as otherwise provided in Paragraph 6(a)(ii), nothing in this Collateral Annex shall be construed as requiring the Secured Party to select a Custodian for the keeping of Performance Assurance for its benefit.

Paragraph 7. Exercise of Rights Against Performance Assurance.

(a) In the event that (i) an Event of Default with respect to the Pledging Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party, the Secured Party may exercise any one or more of the rights and remedies provided under the Agreement, in this Collateral Annex or as otherwise available under applicable law. Without limiting the foregoing, if at any time (i) an Event of Default with respect to the Pledging Party has occurred and is continuing, or (ii) an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to the Pledging Party, then the Secured Party may, in its sole discretion, exercise any one or more of the following rights and remedies:

- (i) all rights and remedies available to a secured party under the Uniform Commercial Code and any other applicable jurisdiction and other applicable laws with respect to the Performance Assurance held by or for the benefit of the Secured Party;

- (ii) the right to set off any Performance Assurance held by or for the benefit of the Secured Party against and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations;
- (iii) the right to draw on any outstanding Letter of Credit issued for its benefit; and/or
- (iv) the right to liquidate any Performance Assurance held by or for the benefit of the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required by applicable law, free from any claim or right of any nature whatsoever of the Pledging Party, including any right of equity or redemption by the Pledging Party (with the Secured Party having the right to purchase any or all of the Performance Assurance to be sold) and to apply the proceeds from the liquidation of such Performance Assurance to and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations in such order as the Secured Party may elect.

(b) The Pledging Party hereby irrevocably constitutes and appoints the Secured Party and any officer or agent thereof, with full power of substitution, as the Pledging Party's true and lawful attorney-in-fact with full irrevocable power and authority to act in the name, place and stead of the Pledging Party or in the Secured Party's own name, from time to time in the Secured Party's discretion, for the purpose of taking any and all action and executing and delivering any and all documents or instruments which may be necessary or desirable to accomplish the purposes of Paragraph 7(a).

(c) Secured Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. The Pledging Party shall in all events remain liable to the Secured Party for any amount payable by the Pledging Party in respect of any of its Obligations remaining unpaid after any such liquidation, application and set off.

(d) In addition to the provisions of Paragraph 7(a), if at any time (i) an Event of Default with respect to the Secured Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party, then:

- (1) the Secured Party will be obligated immediately to Transfer all Performance Assurance (including any Letter of Credit) and the Interest Amount, if any, to the Pledging Party;
- (2) the Pledging Party may do any one or more of the following: (x) exercise any of the rights and remedies of a pledgor with respect to the Performance Assurance, including any such rights and remedies under law then in effect; (y) to the extent that the Performance Assurance or the Interest Amount is not Transferred to the Pledging Party as required in (1) above, setoff amounts payable to the Secured Party against

the Performance Assurance (other than Letters of Credit) held by the Secured Party or to the extent its rights to setoff are not exercised, withhold payment of any remaining amounts payable by the Pledging Party, up to the value of any remaining Performance Assurance held by the Secured Party, until the Performance Assurance is Transferred to the Pledging Party; and (z) exercise rights and remedies available to the Pledging Party under the terms of any Letter of Credit; and

(3) the Secured Party shall be prohibited from drawing on any Letter of Credit that has been posted by the Pledging Party for its benefit.

Paragraph 8. Disputed Calculations

(a) If the Pledging Party disputes the amount of Performance Assurance requested by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Pledging Party shall (i) notify the Secured Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand for Performance Assurance is made by the Secured Party pursuant to Paragraph 4, and (ii) provide Performance Assurance to or for the benefit of the Secured Party in an amount equal to the Pledging Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 4. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Business Day following the date that the demand is made by the Secured Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

(b) If the Secured Party disputes the amount of Performance Assurance to be reduced by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Secured Party shall (i) notify the Pledging Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand to reduce Performance Assurance is made by the Pledging Party pursuant to Paragraph 5(a), and (ii) effect the reduction of Performance Assurance to or for the benefit of the Pledging Party in an amount equal to the Secured Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 5(a). In all such cases, the Parties thereafter shall promptly consult with each other in

order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Local Business Day following the date that the demand is made by the Pledging Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

Paragraph 9. Covenants; Representations and Warranties; Miscellaneous.

(a) The Pledging Party will execute and deliver to the Secured Party (and to the extent permitted by applicable law, the Pledging Party hereby authorizes the Secured Party to execute and deliver, in the name of the Pledging Party or otherwise) such financing statements, assignments and other documents and do such other things relating to the Performance Assurance and the security interest granted under this Collateral Annex, including any action the Secured Party may deem necessary or appropriate to perfect or maintain perfection of its security interest in the Performance Assurance, and the Pledging Party shall pay all costs relating to its Transfer of Performance Assurance and the maintenance and perfection of the security interest therein.

(b) On each day on which Performance Assurance is held by the Secured Party and/or its Custodian under the Agreement and this Collateral Annex, the Pledging Party hereby represents and warrants that:

(i) the Pledging Party has good title to and is the sole owner of such Performance Assurance, and the execution, delivery and performance of the covenants and agreements of this Collateral Annex, do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation, the Performance Assurance, other than the security interests and liens created under the Agreement and this Collateral Annex;

(ii) upon the Transfer of Performance Assurance by the Pledging Party to the Secured Party and/or its Custodian, the Secured Party shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and

(iii) it is not and will not become a party to or otherwise be bound by any agreement, other than the Agreement and this Collateral Annex, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance with respect hereto.

(c) This Collateral Annex has been and is made solely for the benefit of the Parties and their permitted successors and assigns, and no other person, partnership, association, corporation or other entity shall acquire or have any right under or by virtue of this Collateral Annex.

(d) The Pledging Party shall pay on request and indemnify the Secured Party against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under this Collateral Annex or the execution, delivery, performance or enforcement of the Agreement and this Collateral Annex, as well as any penalties with respect thereto (including, without limitation costs and reasonable fees and disbursements of counsel). The Parties each agree to pay the other Party for all reasonable expenses (including without limitation, court costs and reasonable fees and disbursements of counsel) incurred by the other in connection with the enforcement of, or suing for or collecting any amounts payable by it under, the Agreement and this Collateral Annex.

(e) No failure or delay by either Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

(f) The headings in this Collateral Annex are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof.

SCHEDULE 1 to Collateral Annex

## IRREVOCABLE STANDBY LETTER OF CREDIT FORMAT

DATE OF ISSUANCE: \_\_\_\_\_

[Address]

Re: Credit No. \_\_\_\_\_

We hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of \_\_\_\_\_ (the "Account Party"), for the aggregate amount not exceeding \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_), available to you at sight upon demand at our counters at (Location) on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by a representative of the beneficiary:

1. "An Event of Default (as defined in the Master Purchase and Sale Agreement dated as of \_\_\_\_\_ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit"; or
2. "An Early Termination Date (as defined in the Master Purchase and Sale Agreement dated as of \_\_\_\_\_ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit".

This Letter of Credit shall expire on \_\_\_\_\_.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through the Issuing Bank referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 13(b) and 17 of the UCP, in which case the terms of this Letter of Credit shall govern.



With respect to Article 13(b) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed three (3) banking days following the date of its receipt of documents from the beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform the beneficiary accordingly.

In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

This Letter of Credit is transferable, and we hereby consent to such transfer, but otherwise may not be amended, changed or modified without the express written consent of the beneficiary, the Issuing Bank and the Account Party.

[BANK SIGNATURE]

**PARAGRAPH 10**  
**to the**  
**COLLATERAL ANNEX**  
**to the**  
**EEI MASTER POWER PURCHASE AND SALE AGREEMENT**

**between**

**Louisville Gas and Electric Company/Kentucky Utilities Company (“LGE”/”KU” or “Party A”)**

**and**

**J.P. Morgan Ventures Energy Corporation (“Party B”)**

**CREDIT ELECTIONS COVER SHEET**

**Paragraph 10. Elections and Variables**

**I. Collateral Threshold.**

**A. Party A Collateral Threshold.**

- \$ \_\_\_\_\_ (the “Threshold Amount”); provided, however, that the Collateral Threshold for Party A shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party A; and provided further that, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.
  
- (a) The amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for [Party A][Party A’s Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.
  
- (a) The amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for either Party A on the relevant date of determination, and if either Party A’s Credit Ratings shall not be equivalent, the lower Credit Rating for either Party A shall govern or (b) zero if on the relevant date of determination either Party A does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default with respect to either Party A has occurred and is continuing.

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<u>Party A Collateral Threshold</u>	<u>S&amp;P Credit Rating</u>	<u>Moody's Credit Rating</u>
\$ 25,000,000	AA- (or above)	Aa3 (or above)
\$ 15,000,000	A+, A, A-	A1, A2, A3
\$ 10,000,000	BBB+	Baa1
\$ 7,500,000	BBB	Baa2
\$ 5,000,000	BBB-	Baa3
\$ -0-	BB+ (or below or unrated)	Ba1 (or below or unrated)

- The amount of the Guaranty Agreement dated \_\_\_\_\_ from \_\_\_\_\_, as amended from time to time but in no event shall Party A's Collateral Threshold be greater than \$\_\_\_\_\_.
- Other – see attached threshold terms

**B. Party B Collateral Threshold.**

- \$ \_\_\_\_\_ (the "Threshold Amount"); provided, however, that the Collateral Threshold for Party B shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party B; and provided further that, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand.
- (a) The amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for [Party B][Party B's Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party B][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand:
- (a) The lesser of (a) the amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the lowest Credit Rating for Party B's Guarantor on the relevant date of determination, or (b) the then current amount of the Guaranty provided by Party A's Guarantor in favor of Party B; provided however, that if the amount of the Guaranty issued by Party B's Guarantor is more than the applicable Threshold Amount, Party B's Threshold Amount shall not be greater than such applicable Threshold Amount. The Threshold Amount for Party B shall be zero ("0") if at any time (a) there is no Guaranty in effect from Party B's Guarantor or (b) on the relevant date of determination Party B's Guarantor does not have a Credit Rating from the rating agency(ies) specified below or (c) an Event of Default with respect to Party B has occurred and is continuing:

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<u>Party B Collateral Threshold</u>	<u>S&amp;P Credit Rating</u>	<u>Moody's Credit Rating</u>
\$ 25,000,000	AA- (or above)	Aa3 (or above)
\$ 15,000,000	A+, A, A-	A1, A2, A3
\$ 10,000,000	BBB+	Baa1
\$ 7,500,000	BBB	Baa2
\$ 5,000,000	BBB-	Baa3
\$ -0-	BB+ (or below or unrated)	Ba1 (or below or unrated)

- The amount of the Guaranty Agreement dated \_\_\_\_\_ from \_\_\_\_\_, as amended from time to time but in no event shall Party B's Collateral Threshold be greater than \$\_\_\_\_\_.
- Other – see attached threshold terms

**II. Eligible Collateral and Valuation Percentage.**

The following items will qualify as "Eligible Collateral" for the Party specified:

	<u>Party A</u>	<u>Party B</u>	<u>Valuation Percentage</u>
(A) Cash	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	100%
(B) Letters of Credit	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be zero (0).
(C) Other	<input type="checkbox"/>	<input type="checkbox"/>	_____ %

**III. Independent Amount.**

**A. Party A Independent Amount.**

- Party A shall have a Fixed Independent Amount of \$\_\_\_\_\_. If the Fixed Independent Amount option is selected for Party A, then Party A (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party B (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party A's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- Party A shall have a Full Floating Independent Amount of \$\_\_\_\_\_. If the Full Floating Independent Amount option is selected for Party A, then for purposes of calculating Party A's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party A shall be added by Party B to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.

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- Party A shall have a Partial Floating Independent Amount of \$ \_\_\_\_\_. If the Partial Floating Independent Amount option is selected for Party A, then Party A will be required to Transfer or cause to be Transferred to Party B Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party A otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced so long as Party A has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

**B. Party B Independent Amount.**

- Party B shall have a Fixed Independent Amount of \$ \_\_\_\_\_. If the Fixed Independent Amount Option is selected for Party B, then Party B (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party A (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party B's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- Party B shall have a Full Floating Independent Amount of \$ \_\_\_\_\_. If the Full Floating Independent Amount Option is selected for Party B then for purposes of calculating Party B's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- Party B shall have a Partial Floating Independent Amount of \$ \_\_\_\_\_. If the Partial Floating Independent Amount option is selected for Party B, then Party B will be required to Transfer or cause to be Transferred to Party A Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party B otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced for so long as Party B has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

**IV. Minimum Transfer Amount.**

- A. Party A Minimum Transfer Amount: \$1
- B. Party B Minimum Transfer Amount: \$1

V. Rounding Amount.

- A. Party A Rounding Amount: \$250,000  
B. Party B Rounding Amount: \$250,000

VI. Administration of Cash Collateral.

A. Party A Eligibility to Hold Cash.

- Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party A shall pay to Party B in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party B.
- Party A shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2), Party A has a Credit Rating from S&P and Moody's of not less than BBB- or Baa3 or higher from S&P or Moody's respectively; and (3) Cash shall be held only in any jurisdiction within the United States. In addition, each time that Performance Assurance in the form of Cash is posted by Party B to Party A to be held by Party A, Party A shall deposit such Performance Assurance with a Bank (as defined in the Federal Deposit Insurance Act) whose Credit Rating is at least BBB+ by S&P or Baa1 by Moody's. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

Party A Interest Rate.

- Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- Other: The "Federal Funds Effective" rate in effect for such day (or if such day is not a Business Day, then the preceding Business Day), as published in the most recent weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

B. Party B Eligibility to Hold Cash.

- Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party B shall pay to Party A in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party A.
- Party B shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2) Party B's Guarantor has a Credit Rating from S&P and Moody's of not less than BBB- or Baa3 or higher from S&P or Moody's respectively; and (3) Cash shall be held only in any jurisdiction within the United States. In addition, each time that

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Performance Assurance in the form of Cash is posted by Party A to Party B to be held by Party B, Party B shall deposit such Performance Assurance with a Bank (as defined in the Federal Deposit Insurance Act) whose Credit Rating is at least BBB+ by S&P or Baa1 by Moody's. To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

**Party B Interest Rate.**

- Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- Other: The "Federal Funds Effective" rate in effect for such day (or if such day is not a Business Day, then the preceding Business Day), as published in the most recent weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

**VII. Notification Time.**

- Other – "Notification Time" means by 1:00 p.m., New York time, on a Local Business Day.

**VIII. General.**

With respect to the Collateral Threshold, Independent Amount, Minimum Transfer Amount and Rounding Amount, if no selection is made in this Cover Sheet with respect to a Party, then the applicable amount in each case for such Party shall be zero (0). In addition, with respect to the "Administration of Cash Collateral" section of this Paragraph 10, if no selection is made with respect to a Party, then such Party shall not be entitled to hold Performance Assurance in the form of Cash and such Cash, if any, shall be held in a Qualified Institution pursuant to Paragraph 6(a)(ii)(B) of the Collateral Annex. If a Party is eligible to hold Cash pursuant to a selection in this Paragraph 10 but no Interest Rate is selected, then the Interest Rate for such Party shall be the Federal Funds Effective Rate as defined in Section VI of this Paragraph 10.

**VIX. Other Changes.**

Paragraph 1, Definitions, shall be amended by:

- (i) The definition of "Credit Rating" shall be deleted in its entirety and replaced with the following language: "Credit Rating" shall have the meaning ascribed to such term in the Agreement."
- (ii) Replace the words "Paragraph 6(a)(iii)" with the words "Paragraph 6(a)(ii)" in the definition of Credit Rating Event;
- (iii) Replace the words "Paragraph 6(a)(i)" with the words "Paragraph 6(a)(ii)" in the definition of Downgraded Party;
- (iv) The definition of "Interest Amount" shall be amended by inserting the phrase "holding Cash" after the phrase "a Party" in the first line.
- (v) The definition of "Letter of Credit" shall be deleted in its entirety and replaced with the the following: "Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or a U.S. branch office of a foreign bank with a Credit Rating of at least "A" by S&P or "A2" by Moody's, which bank is not an affiliate of the Pledging Party and which bank is otherwise reasonably acceptable to the Party in whose favor such letter of credit is issued, the

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Parties having already agreed that Bank of America, N.A. is acceptable so long as it meets the Credit Rating requirement, substantially in the form as the issuing bank may require and as may be acceptable to the Party in whose favor such letter of credit is issued in its reasonable discretion and subject to the provisions as set forth in Appendix A attached hereto.”

- (vi) The definition of “Notification Time” shall be amended by inserting deleting “11:00” and replacing with 1:00 pm.
- (vii) The definition of “Performance Assurance” shall be amended by (a) inserting “, in its sole discretion” after the phrase “the Party” in the second line; (b) replacing “(iv)” with “(iii)” in the fifth line; and (c) replacing the word “hereunder” at the end of the sentence with the phrase “under this Collateral Annex”.
- (viii) Replace the words “thereof, with (i) a Credit Rating” in line 2 of the definition of Qualified Institution with the words “thereof, (i) with a Credit Rating”;
- (ix) The definition “Qualified Institution” shall be amended by deleting “capital and surplus” and replace with “capital surplus” from the last line.
- (x) The definition of “Reference Market-maker” shall be amended by deleting the phrase “of the highest credit standing” from the second line.
- (xi) Replace the words “Paragraph 3(b)” with the words “Paragraph 3(a)” in the definition of Secured Party.
- (xii) The following language shall be added to the end of Paragraph 1: “For the purposes of this Collateral Annex, “setoff”, “set off” and “offset” shall have the same meaning.”
- (xiii) Delete the word “or” in the third line of the definition of “Letter of Credit Default” and replace it with the word “and”.
- (xiv) In the definitions of “Letter of Credit Default” and “Qualified Institution”, replace every reference to “A-” with an “A” and replace every reference to “A3” with an “A2”.

Paragraph 3, Calculation of Collateral Requirement, shall be amended by:

- (i) Paragraph 3, Calculations of Collateral Requirement, Section (b)(2) shall be amended by adding the words “that has not been returned to the Pledging Party pursuant to this Collateral Annex,” after the words “the Secured Party” in line 1 and after the words “Letter of Credit” in line 3;
- (ii) Paragraph 3(b) shall be amended by inserting a line break after “Secured Party” and creating a separate paragraph that begins with the phrase “provided, however,” in section (3).

Paragraph 4, Delivery of Performance Assurance, shall be amended shall be amended by deleting the words “or Potential Event of Default” from the first sentence.

Paragraph 5, Reduction and Substitution of Performance Assurance, shall be amended by:

- (i) Paragraph 5(a) shall be amended by deleting the words “or Potential Event of Default” from the first sentence and by deleting the word “Pledging” from the fifth sentence and adding the phrase “incurring such cost or expense” to the end of the fifth sentence” and deleting “before the Notification Time on a Business Day” in Paragraph 5(a) and replacing it with “before the Notification Time on a Local Business Day” and amending the last sentence to read “If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party, or other Eligible Collateral listed in Paragraph 10 to the Collateral Annex, the Secured Party shall within one Local Business Day of receipt of an amendment to the Letter of Credit take such action as is reasonably necessary to effectuate such reduction.”.



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- (ii) Paragraph 5(b) shall be amended by deleting the words “or Potential Event of Default” from the first sentence and deleting the phrase “is Transferred simultaneously or” from subpart (i) of the third sentence.

Paragraph 6, Administration of Performance Assurance, Section (a) Cash, shall be amended by:

- (i) Paragraph 6(a)(i) shall be amended by inserting the phrase “(other than Paragraph 6(a)(ii)(B))” after the phrase “6(a)(ii)” in the second sentence.
- (ii) Paragraph 6(a)(ii)(A) shall be amended by inserting “(other than subsection (B), below)” after the phrase “Paragraph 6(a)(ii)”.
- (iii) Paragraph 6(a)(ii)(B) shall be amended by (a) deleting “approved by the non-Downgraded Party (which approval shall not be unreasonably withheld)” from the first sentence; (b) insert the phrase “, conditioned or delayed” after the word “withheld” in the sixteenth line; and (c) deleting “Non-Downgraded Party” in the eleventh line and replace it with “Downgraded Party”; and (d) deleting the words “or Potential Event of Default” from the penultimate sentence.
- (iv) Paragraph 6(a)(iii) shall be amended by deleting the words “or Potential Event of Default” from the first sentence and last sentence, capitalizing the word “obligations” in the last sentence and adding the following as the new last sentence: “Any Party may dispute a Performance Assurance Interest Amount as provided for in Section 6.3 of the Agreement.”

Paragraph 6, Administration of Performance Assurance, Section (b), Letters of Credit, shall be amended by:

- (i) capitalizing the word “parties” in the first sentence of (i);
- (ii) replacing the words “agrees to” with the word “shall” in line 1 of sub-section (iii);
- (iii) adding a new first, second and third sentence to subsection (iv): “A Letter of Credit shall provide that a drawing may be made on the Letter of Credit in an amount (up to the face amount for which the Letter of Credit has been issued, less any drawing previously made, if any,) that is equal to all amounts that are due and owing from the Pledging Party but have not been paid to the Secured Party within the time allowed for such payments under this Agreement (including any related notice or grace period or both). A drawing may be made on the Letter of Credit in this instance upon submission to the bank issuing the Letter of Credit of one or more certificates specifying the amounts due and owing to the Secured Party in accordance with the specific requirements of the Letter of Credit. Partial drawing and multiple drawings shall be allowed.”
- (iv) adding the words “(as required by the Letter of Credit),” after the word “certificates” in the first sentence of sub-section (iv);
- (v) deleting the “or” in the second line and adding the following after “Obligations,” in the fourth line of subsection (iv): “or (C) if the Pledging Party shall fail to renew or cause the renewal of each outstanding Letter of Credit at least twenty (20) Local Business Days prior to the expiration of the relevant Letter of Credit”;
- (vi) replacing the words “or Early Termination Date has occurred and is continuing” in lines 6-7 of sub-section (iv) with the words “has occurred and is continuing or that such Early Termination Date has occurred or been designated or such failure to renew has occurred”;
- (vii) capitalizing the word “obligations” in line 8 and “cash” in line 10 of sub-section (iv); and
- (viii) replacing subsections (y) and (z) of Section 6(b)(iv) with the following: “y) for any failure to Transfer Performance Assurance for the benefit of the Secured Party, having a Collateral Value equal to the greater of the Pledging Party’s Collateral Requirement or the Pledging Party’s Minimum Transfer Amount or (z) for any

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Obligations owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.”

Paragraph 6, Administration of Performance Assurance, Section (c), Care of Performance Assurance, shall be amended by replacing the words “Unless held by a Custodian, the Secured Party shall at all times retain possession or control of any Performance Assurance transferred to it,” beginning in line 11, with the words “For purposes of any obligation to Transfer Performance Assurance pursuant to this Collateral Annex, the Secured Party will be deemed at all times to continue to hold and possess all Performance Assurance Transferred to it or its Custodian pursuant to this Collateral Annex regardless of whether the Secured Party has exercised any rights it may have, or have had, with respect to any such Performance Assurance in the form of Cash pursuant to Paragraph 6(a)(ii) of this Collateral Annex.”

Paragraph 7, Exercise of Rights Against Performance Assurance, shall be amended by:

- (i) Paragraph 7(a)(i) shall be amended by replacing the phrase “and any other applicable jurisdiction” with the phrase “(as adopted by the applicable jurisdiction)”.
- (ii) Paragraph 7(c) shall be amended by adding the word “The” to the beginning of the first sentence.

Paragraph 8, Disputed Calculations, is amended by the following:

- (i) Section 8(a) is amended by replacing the words “Pledging Party’s” where it first appears in subsection (ii) with the words “Secured Party’s”.
- (ii) The following is added as a new Paragraph 8(c): “In all cases, each Party shall pay its own costs and expenses in determining the Net Exposure for the purpose of any disputed calculation under this Paragraph 8. The determination made under this Paragraph 8 shall be binding and conclusive on the Parties absent manifest error.”

Paragraph 9, Covenants; Representations and Warranties; Miscellaneous, shall be amended by:

- (i) adding the following as a new Section (e) after Section (d): “Except as otherwise provided in this Collateral Annex, each Party will pay its own costs and expenses with performing its obligations under this Collateral Annex and neither Party will be liable for any costs and expenses incurred by the other Party in connection herewith.”

Amendment to Schedule 1 to Collateral Annex:

Schedule 1 to the Collateral Annex is deleted in its entirety

Party A: LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY

By: David Sinclair  
Name: David Sinclair  
Title: VP Energy marketing

Party B: J.P. MORGAN VENTURES ENERGY CORPORATION

By: Karen Harrington  
Name: Karen Harrington  
Title: Vice President

APPENDIX A

The Letter of Credit shall include the following terms, or their substantial equivalents.

- (a) "We hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of (the "Account Party"), for the aggregate amount not exceeding \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_), available to you at sight upon demand at our counters at (Location) on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by your representative."
  - (b) Draws under the Irrevocable Transferable Standby Letter of Credit must include one or more of the following statements, dated and signed by your representative:
    - 1. "An Event of Default (as defined in the Master Purchase and Sale Agreement dated as of \_\_\_\_\_ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the following amount which is due and payable under the Master Agreement"; or
    - 2. "An Early Termination Date (as defined in the Master Purchase and Sale Agreement dated as of \_\_\_\_\_ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the following amount which is due and payable under the Master Agreement"; or
    - 3. This Letter of Credit No. [\_\_\_\_\_] will expire in twenty (20) or fewer Local Business Days, and beneficiary has not received an extension of said Letter of Credit or other acceptable replacement collateral in accordance with the terms of the [name of Contract(s)] dated as of \_\_\_\_\_ between Account Party and beneficiary. Wherefore, undersigned hereby demands payment of the entire undrawn amount available under Letter of Credit No. [\_\_\_\_\_]".
- (c) The amount which may be drawn by you under this Irrevocable Transferable Standby Letter of Credit shall be automatically reduced by the amount of any drawings previously paid by us hereunder. Partial drawings are permitted hereunder.
- (d) The Irrevocable Transferable Standby Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600 (the "UCP"), as amended and restated from time to time, and as to matters not covered therein, be governed by the laws of the State of New York (without reference to its choice of law doctrine), including, without limitation, the Uniform Commercial Code as in effect in such state, except to the extent that the terms hereof are inconsistent with the provisions of the UCP, in which case the terms of this Letter of Credit shall govern.

<b>BANK:</b> _____ <b>ABA:</b> _____ <b>ACCT:</b> _____ <b>OTHER DETAILS:</b> _____	<b>ACH NUMBERS</b> <b>(IF APPLICABLE)</b>	<b>BANK:</b> <u>Bank of America, Dallas TX</u> <b>ABA:</b> <u>111000012</u> <b>ACCT:</b> <u>3752099133</u> <b>OTHER DETAILS:</b> <u>N/A</u>
<b>ATTN:</b> _____ <b>ADDRESS:</b> _____	<b>CHECKS</b> <b>(IF APPLICABLE)</b>	<b>ATTN:</b> <u>Gas Regulatory Accounting</u> <b>ADDRESS:</b> <u>220 W Main St., 9th FL</u> <u>Louisville KY 40202</u>

## 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:

<p><b>Section 1.2</b> <input checked="" type="checkbox"/> Oral (default) Transaction Procedure <input type="checkbox"/> Written</p>	<p><b>Section 10.2</b> <input type="checkbox"/> No Additional Events of Default (default) Additional Events of Default <input checked="" type="checkbox"/> Indebtedness Cross Default <input checked="" type="checkbox"/> Party A: US\$50,000,000 <input checked="" type="checkbox"/> Party B: US\$50,000,000 <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____</p>
<p><b>Section 2.7</b> <input checked="" type="checkbox"/> 2 Business Days after receipt (default) Confirm Deadline <input type="checkbox"/> 5 Business Days after receipt</p>	
<p><b>Section 2.8</b> <input type="checkbox"/> Seller (default) Confirming Party <input type="checkbox"/> Aron</p>	
<p><b>Section 3.2</b> <input checked="" type="checkbox"/> Cover Standard (default) Performance Obligation <input type="checkbox"/> Spot Price Standard</p>	<p><b>Section 10.3.1</b> <input checked="" type="checkbox"/> Early Termination Damages Apply (default) Early Termination Damages <input type="checkbox"/> Early Termination Damages Do Not Apply</p>
<p><i>Note: The following Spot Price Publication applies to both of the immediately preceding.</i></p>	
<p><b>Section 2.31</b> <input checked="" type="checkbox"/> Gas Daily Midpoint (default) Spot Price Publication <input type="checkbox"/> _____</p>	<p><b>Section 10.3.2</b> <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) Other Agreement Setoffs <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply</p>
<p><b>Section 6</b> <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) Taxes <input type="checkbox"/> Seller Pays Before and At Delivery Point</p>	
<p><b>Section 7.2</b> <input checked="" type="checkbox"/> 25<sup>th</sup> Day of Month following Month of delivery (default) Payment Date <input type="checkbox"/> Day of Month following Month of delivery</p>	<p><b>Section 15.5</b> <u>New York</u> Choice Of Law</p>
<p><b>Section 7.2</b> <input checked="" type="checkbox"/> Wire transfer (default) AND Method of Payment <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check</p>	<p><b>Section 15.10</b> <input checked="" type="checkbox"/> Confidentiality applies (default) Confidentiality <input type="checkbox"/> Confidentiality does not apply</p>
<p><b>Section 7.7</b> <input checked="" type="checkbox"/> Netting applies (default) Netting <input type="checkbox"/> Netting does not apply</p>	
<p><input checked="" type="checkbox"/> Special Provisions Number of sheets attached: <u>6</u> <input type="checkbox"/> Addendum(s): _____</p>	

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

J. ARON & COMPANY	PARTY NAME	LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY
By: <i>Susan Rudov</i>	SIGNATURE	By: <i>David S. Sinclair</i>
<b>Susan Rudov</b> Attorney In Fact	PRINTED NAME	David S. Sinclair
	TITLE	Vice President Energy Supply and Analysis

## 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

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.

2.1. "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.

2.2. "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.

- 2.3. "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.
- 2.4. "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.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "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.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "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.
- 2.10. "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.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "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.
- 2.13. "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.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "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.
- 2.18. "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.
- 2.19. "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.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "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.
- 2.23. "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.

- 2.24. "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.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "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.
- 2.27. "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.
- 2.28. "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.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "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.
- 2.31. "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.
- 2.32. "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.
- 2.33. "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.
- 2.34. "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.
- 2.35. "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.

<p><b>The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.</b></p> <p><b>Cover Standard:</b></p> <p>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.</p>
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**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 (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; 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; padding: 5px;"> <b>Firm (Fixed Quantity):</b>            _____ MMBtus/day  <input type="checkbox"/> EFP         </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> <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; padding: 5px;"> <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		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>           				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			