

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF  
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

Dated August 4, 2015

by and between

J. Aron & Company ("Aron")

And

Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")

(each, a "Counterparty" or "Party B").

**SECTION 1. PURPOSES AND PROCEDURES**

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 definition of "Indebtedness Cross Default" in Section 2.23 shall be amended by adding the following sentence to the end of the Section:

"Notwithstanding the foregoing, a default shall not constitute an Indebtedness Cross Default if (i) the default was caused solely by error or omission of an administrative or operational nature; (ii) funds were available to enable the party to make the payment when due; and (iii) the payment is made within two Business Days of such party's receipt of written notice of its failure to pay."

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. With respect to Aron, Guarantor means The Goldman Sachs Group, Inc.

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 110% of 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 substantially in a form reasonably acceptable to the receiving party.

2.40 "Merger Event" means, with respect to a party (or its Guarantor), that such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of such party immediately prior to such action; provided, however in each case, that the phrase "materially weaker" means (i) the senior long-term debt of the resulting, surviving or transferee entity is rated less than Investment Grade (as hereinafter defined) by either Standard & Poor's Rating Group ("S&P") or Moody's Investor Service, Inc. ("Moody's"), (ii) 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 is rated less than Investment Grade For the purposes of this Contract "Investment Grade" means the rating then assigned to such entity is rated by S&P as "BBB-" or higher and by Moody's as "Baa3" or higher".

### 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 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:

- (i) in the first sentence delete the words "commercially acceptable";
- (ii) after the words "payment information" and before the word "shall" add "identified on the cover page under Accounting Information"; and
- (iii) 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 10.1 shall be amended by deleting the following phrase: "(including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable)".

Section 10.2 shall be amended as follows:

- (i) by deleting the phrase "48 hours but at least one Business Day" in subparagraph (vii) and replacing it with "two Business Days";
- (ii) Delete the word "or" following subsection (viii) and preceding subsection (ix); and
- (iii) Include the following provisions as new subsections following subsection (ix):

"(x) fails to comply or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document (as defined herein) if such failure is continuing after any applicable grace period has elapsed; or a party or its Guarantor shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Credit Support Document, (xi) be the subject of a Merger Event and shall fail to provide Eligible Collateral within two (2) Business Days of a request therefor. Such Eligible Collateral shall not exceed the amount that would be owed to the requesting party as a Net Settlement Amount (as such term is defined in Section 10.3.2 hereof), calculated as of the date of the demand, as if all Transactions had been terminated."

Section 10.2 shall be amended by adding the following after the last sentence thereof; "For the avoidance of doubt, the Non-Defaulting Party shall have the right to withhold payment from the time that the Non-Defaulting Party requests Adequate Assurance of Performance under Section 10.1 or gives notice of the Defaulting Party's failure to pay under Section 10.2(viii) until such assurances are provided or such payment is made."

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:

- (i) 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

- (ii) 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 10.3.2 (Bilateral Setoff Option), shall be amended as follows:

- (i) by adding the phrase "(whether or not then due and whether subject to any contingency)" after the word "parties" in the first line

## **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, up to two quotes for prices of Gas for the affected Day of a similar quality and that is most commercially relevant 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 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.

## SECTION 15. MISCELLANEOUS

In Section 15.1:

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

(ii) delete "or" before "(ii) transfer" in the sixth line;

add the following new subparagraph (iii): "or (iii) transfer this Contract pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, or reorganization, incorporation, reincorporation, or reconstitution into or as another entity and such entity's 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"; and

(iii) delete the last sentence of Section 15.1 and replace it with the following:

"Unless otherwise permitted hereunder, upon assignment, transfer and assumption without consent, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder."

Section 15.5 shall be amended by adding the following:



**Jurisdiction.** WITH RESPECT TO ANY ACTION, SUIT OR PROCEEDINGS RELATING TO THIS CONTRACT ("PROCEEDINGS"), EACH PARTY IRREVOCABLY: (I) SUBMITS TO THE EXCLUSIVE JURISDICTIONS OF THE COURTS OF THE STATE OF NEW YORK OR KENTUCKY AND THE UNITED STATES DISTRICT COURT LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK CITY OR LOUISVILLE, KENTUCKY, AND (II) EACH PARTY WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDINGS BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT SUCH PROCEEDINGS HAVE BEEN BROUGHT IN AN INCONVENIENT FORUM. AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDINGS, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THE CONTRACT PRECLUDES EITHER PARTY FROM BRINGING PROCEEDINGS IN ANY OTHER JURISDICTION IN ORDER TO ENFORCE ANY JUDGMENT OBTAINED IN ANY PROCEEDINGS REFERRED TO IN THE PRECEDING SENTENCE, NOR WILL THE BRINGING OF SUCH ENFORCEMENT PROCEEDINGS IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF ENFORCEMENT PROCEEDINGS IN ANY OTHER JURISDICTION.

In Section 15.10:

- (i) insert 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);
- (ii) the first sentence of Section 15.10 is hereby amended by adding "and of its Affiliates," in the third line after the word "party"; and
- (iii) in clause (i), the phrase "or regulatory, self-regulatory or legislative request" is inserted after the words "exchange rule".

Section 15.12 shall be amended by:

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, regulatory commission or similar body 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. In the absence of fraud or irregularity in the imaging or computer retention process relating to the agreement, 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 under the best evidence rule unless the original executed agreement, Confirmation or other related document is available. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

The following shall be added as new Sections 15.13, 15.14 and 15.15:

15.13 **Waiver of Trial by Jury.** Each party hereby irrevocably waives any and all right to trial by jury in any Proceedings in relation to this Contract.

15.14 Each party represents that (i) the creditworthiness of the counterparty is a material consideration for entering into this Contract and the transaction(s) contemplated in this Contract, (ii) by entering into this Contract and the transaction(s) contemplated in this Contract, each party shall rely solely upon its own judgment or that of its advisors, (iii) neither the counterparty, nor the counterparty's employees or agents, shall serve, or be deemed to have served, as its advisor regarding whether it should enter into this Contract or the transaction(s) contemplated by this Contract, and (iv) neither the counterparty, nor the counterparty's employees or agents, has acted as its fiduciary with respect to this Contract or the transaction(s) contemplated by this Contract and such counterparty shall not have any responsibility or liability with respect to any advice or information given or not given, or views expressed or not expressed, by the counterparty or the counterparty's employees or agents."

15.15 **Mobile-Sierra.** 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 Section 15.15 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 applicable case law?.

J.ARON & COMPANY

By: *Susan Rudov* *SR*  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
**Susan Rudov**  
**Attorney In Fact**

LOUISVILLE GAS AND ELECTRIC COMPANY

By: *David S. Sinclair* *JK*  
Name: David S. Sinclair  
Title: Vice President Energy Supply and Analysis

KENTUCKY UTILITIES COMPANY

By: *David S. Sinclair*  
Name: David S. Sinclair  
Title: Vice President Energy Supply and Analysis

STATE OF DELAWARE  
CERTIFICATE OF MERGER OF DOMESTIC CORPORATION AND FOREIGN  
LIMITED LIABILITY COMPANY

Pursuant to Title 8, Section 264(c), of the Delaware General Corporation Law, the undersigned limited liability company executed the following Certificate of Merger:

**FIRST:** The name of the surviving limited liability company is Exelon Generation Company, LLC, a Pennsylvania limited liability company, and the name of the corporation being merged into this surviving limited liability company is Constellation Energy Commodities Group, Inc., a Delaware corporation.

**SECOND:** The Agreement and Plan of Merger has been approved, adopted, certified, executed, and acknowledged by the surviving limited liability company and the merging corporation.

**THIRD:** The name of the surviving limited liability company is Exelon Generation Company, LLC, a Pennsylvania limited liability company.

**FOURTH:** The merger is to become effective at 12:01 am Eastern time on February 1, 2013.

**FIFTH:** The Agreement and Plan of Merger is on file at the place of business of the surviving limited liability company at: 300 Exelon Way, Kennett Square, Pennsylvania, 19348.

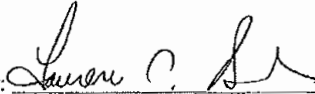
**SIXTH:** A copy of the Agreement and Plan of Merger will be furnished by the surviving limited liability company on request, without cost, to any member of the surviving limited liability company or stock holder of the merging corporation.

**SEVENTH:** The surviving limited liability company agrees that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of any constituent corporation or limited liability company of Delaware, as well as for enforcement of any obligation of the surviving limited liability company arising from this merger, including any suit or other proceeding to enforce the rights of any stockholders as determined in appraisal proceedings pursuant to the provisions of Section 262 of the Delaware General Corporation laws, and irrevocably appoints the Secretary of State of Delaware as its agent to accept service of process in any such suit or proceeding. The Secretary of State shall mail any such process to the surviving limited liability company at: 300 Exelon Way, Kennett Square, Pennsylvania, 19348.

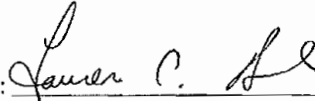
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IN WITNESS WHEREOF, each of the undersigned has caused this certificate to be signed by an authorized person as of the 24th day of January, 2013.

**Exelon Generation Company, LLC**

By:   
Name: Lawrence Bachman  
Title: Assistant Secretary

**Constellation Energy Commodities Group, Inc.**

By:   
Name: Lawrence Bachman  
Title: Assistant Secretary

506730-010 Kei  
Corporation Service Company

Entity #: 2979826  
Date Filed: 01/25/2013  
Effective Date: 02/01/2013  
Carol Atchele  
Secretary of the Commonwealth

PENNSYLVANIA DEPARTMENT OF STATE  
BUREAU OF CORPORATIONS AND CHARITABLE ORGANIZATIONS

Certificate of Merger or Consolidation  
Limited Liability Company  
(15 Pa. C.S. § 8958)

In compliance with the requirements of the 15 Pa.C.S. § 8958 (relating to articles of merger or consolidation), the undersigned limited liability company and the undersigned corporation, desiring to effect a merger, hereby state that:

1. The name of the limited liability company surviving the merger is: Exelon Generation Company, LLC, a Pennsylvania limited liability company.
2. The surviving limited liability company is a domestic limited liability company and the address of its current registered office in this Commonwealth is Corporate Creations Network Inc., whose address is 1001 State Street #1400, in the City of Erie, in the County of Erie, in the Commonwealth of Pennsylvania, 16501, United States.
3. The foreign corporation which is a party to the plan of merger is Constellation Energy Commodities Group, Inc., a Delaware corporation. The name and the address of the current commercial registered office provider in this Commonwealth and the county of venue of the foreign corporation which is a party to the plan of merger are as follows: Corporate Creations Network Inc., whose address is 1001 State Street #1400, in the City of Erie, in the County of Erie, in the Commonwealth of Pennsylvania, 16501, United States.
4. The plan of merger shall be effective at 12:01 am Eastern time on February 1, 2013.
5. The manner in which the plan of merger was adopted by the domestic limited liability company is as follows: Adopted by the sole member of Exelon Generation Company, LLC, pursuant to 15 Pa.C.S. § 8957(g).
6. The plan of merger was authorized, adopted, or approved, as the case may be, by the foreign corporation party to the plan of merger in accordance with the laws of the jurisdiction in which it is organized.
7. The plan of merger is set forth in full in Exhibit A attached hereto and made a part hereof.

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Commonwealth of Pennsylvania  
CERTIFICATE OF MERGER 7 Page(s)

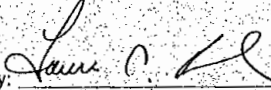


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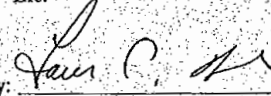
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PA DEPT OF STATE

IN TESTIMONY WHEREOF, each of the undersigned has caused this Certificate of Merger or Consolidation to be signed by a duly authorized officer thereof this 24th day of January, 2013.

**Exelon Generation Company, LLC**

By:   
Name: Lawrence Bachman  
Title: Assistant Secretary

**Constellation Energy Commodities Group,  
Inc.**

By:   
Name: Lawrence Bachman  
Title: Assistant Secretary

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER  
of  
CONSTELLATION ENERGY COMMODITIES GROUP, INC.,  
a Delaware corporation  
INTO  
EXELON GENERATION COMPANY, LLC,  
a Pennsylvania limited liability company

January 24, 2013

**AGREEMENT AND PLAN OF MERGER** dated as of January 24, 2013 ("**Agreement and Plan of Merger**"), by and between Constellation Energy Commodities Group, Inc., a corporation organized under the laws of the State of Delaware ("**CECG**"), and Exelon Generation Company, LLC, a limited liability company organized under the laws of the State of Pennsylvania ("**ExGen**"). CECG and ExGen are referred to individually as a "**Party**" and collectively as the "**Parties**."

**WHEREAS**, CECG and its sole stockholder and ExGen and its sole member deem it advisable and to the advantage, welfare, and best interests of said entities and their respective sole stockholder and sole member to merge CECG with and into ExGen (the "**Merger**") pursuant to the provisions of Section 8956 of the Limited Liability Company Law of 1994 of the Commonwealth of Pennsylvania, as amended (the "**PLLCL**"), and Title 8, Section 264(c) of the Delaware General Corporation Law, as amended ("**DGCL**"), upon the terms and conditions hereinafter set forth;

**WHEREAS**, immediately prior to the Merger, ExGen shall cause its wholly owned subsidiary, Constellation Holdings, LLC ("**CH**"), to distribute to ExGen all of the shares of CECG held by CH, constituting one hundred percent (100%) of the outstanding shares of CECG; and

**WHEREAS**, it is intended that, for U.S. federal income tax purposes, to the extent applicable, the Merger shall qualify as a tax-free transaction within the meaning of Section 332 of the Internal Revenue Code of 1986, as amended (the "**Code**"), and that this Agreement and Plan of Merger be adopted as a plan of liquidation within the meaning of such Section.

**NOW, THEREFORE**, in consideration of the premises and the mutual agreement of the parties hereto, the Parties hereby agree:

1. **The Merger.** CECG shall, pursuant to the provisions of the PLLCL and the DGCL, be merged with and into ExGen, and ExGen shall be the surviving company (the "**Surviving Company**") from and after the Effective Time specified below, and the Surviving Company shall continue to exist under its present name pursuant to the provisions of the PLLCL. The separate existence of CECG (the "**Terminating Corporation**") shall cease at the Effective Time in accordance with the provisions of the PLLCL and the DGCL.

2. **Effective Time.** Unless this Agreement shall have been terminated, the parties hereto shall cause the Merger to be consummated by filing certificates of merger as

contemplated by the laws of each party's respective jurisdiction of organization and the terms of this Agreement and Plan of Merger (the "Certificates of Merger"), together with any required related certificates, with the Secretary of State of each party's respective jurisdiction of organization, as appropriate, in such forms as required by, and executed in accordance with, the relevant provisions of applicable law. The Merger shall become effective (the "Effective Time") on 12:01 am Eastern time on February 1, 2013, provided that the Certificates of Merger shall have been duly filed on or prior to January 31, 2013.

3. Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Certificates of Merger, and the provisions of applicable law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, (i) all the property, privileges, powers, franchises, and other rights of the Terminating Corporation shall vest in the Surviving Company, (ii) all debts, liabilities, duties, and other obligations of the Terminating Corporation shall become the obligations of the Surviving Company, (iii) the Surviving Company shall be the legal successor to all of the rights and obligations of the Terminating Corporation, (iv) the Surviving Company shall assume all of the obligations of the Terminating Corporation, and (v) the separate existence of the Terminating Corporation shall cease and all issued and outstanding shares in the Terminating Corporation shall be cancelled.

4. Certificate of Organization and Limited Liability Company Agreement. At the Effective Time, the Certificate of Organization of the Surviving Company, as in effect immediately prior to the Effective Time (the "Certificate of Organization"), shall be the Certificate of Organization of the Surviving Company until thereafter amended as provided by law and such Certificate of Organization of the Surviving Company. At the Effective Time, the First Amended and Restated Operating Agreement of the Surviving Company (the "Limited Liability Company Agreement"), as now in force and effect, shall continue to be the Limited Liability Company Agreement of the Surviving Company and shall remain in full force and effect until amended in the manner prescribed by the provisions of the PLLCL.

5. Managers and Officers. No managers shall be appointed in connection with the Merger, and the officers in office of the Surviving Company at the Effective Time shall be the officers of the Surviving Company, all of whom shall hold their offices until the election and qualification of their respective successors or until their tenure is otherwise terminated in accordance with the Certificate of Organization and the Limited Liability Company Agreement of the Surviving Company.

6. Tax Consequences. The Parties intend that, for U.S. federal income tax purposes, to the extent applicable, the Merger shall qualify as a tax-free transaction within the meaning of Section 332 of the Code, and that this Agreement and Plan of Merger be adopted as a plan of liquidation within the meaning of such Section.

7. Authorization. Pursuant to the terms of the DGCL, this Agreement and Plan of Merger was authorized in respect of the Terminating Corporation by the sole stockholder of the Terminating Corporation in the manner prescribed by the provisions of the DGCL. Pursuant to the terms of the PLLCL, this Agreement and Plan of Merger was authorized in



respect of the Surviving Company by the sole member of the Surviving Company in the manner prescribed by the provisions of the PLLCL.

8. Taking of Necessary Action; Further Action. Each of the Terminating Corporation and the Surviving Company will take, and cause their affiliates to take, all such reasonable and lawful actions as may be necessary or appropriate in order to effectuate the Merger and the other transactions contemplated by this Agreement and Plan of Merger in accordance with this Agreement and Plan of Merger as promptly as possible. If, at any time after the Effective Time, any such further action is necessary or desirable to carry out the purposes of this Agreement, including to vest in the Surviving Company all rights of the Terminating Corporation, the officers and directors of the Terminating Corporation and the Surviving Company immediately prior to the Effective Time are fully authorized in the name of their respective companies to take, and will take, all such lawful and necessary action. The Terminating Corporation and the Surviving Company each hereby stipulate that they will cause to be executed and filed or recorded any document or documents prescribed by the laws of the Commonwealth of Pennsylvania and the State of Delaware, and that they will cause to be performed all necessary acts therein and elsewhere, to effectuate the Merger. The officers (acting singly) of the Terminating Corporation and the Surviving Company are hereby authorized, empowered, and directed to do any and all acts and things, and to make, execute, deliver, file, and record any and all instruments, papers, and documents which shall be or become necessary, proper, or convenient in any jurisdiction to carry out or put into effect any of the provisions of this Agreement and Plan of Merger or of the Merger provided herein.

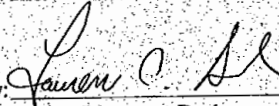
9. Termination of Merger. At any time after filing of the Certificates of Merger with the Secretary of State of each party's respective jurisdiction of organization, but prior to the Effective Time, the Parties may terminate the Merger by mutual agreement and the filing of certificates of termination in accordance with the laws of each Party's respective jurisdiction of organization.

10. Counterparts. This Agreement and Plan of Merger may be executed in any number of counterparts, including by electronic transmission thereof, all of which taken together shall constitute one and the same instrument.

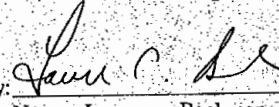
(signatures follow)

IN WITNESS WHEREOF, the undersigned have caused this Agreement and Plan of Merger to be signed by its authorized officer as of the date first written above.

**Constellation Energy Commodities Group,  
Inc.**

By:   
Name: Lawrence Bachman  
Title: Assistant Secretary

**Exelon Generation Company, LLC**

By:   
Name: Lawrence Bachman  
Title: Assistant Secretary

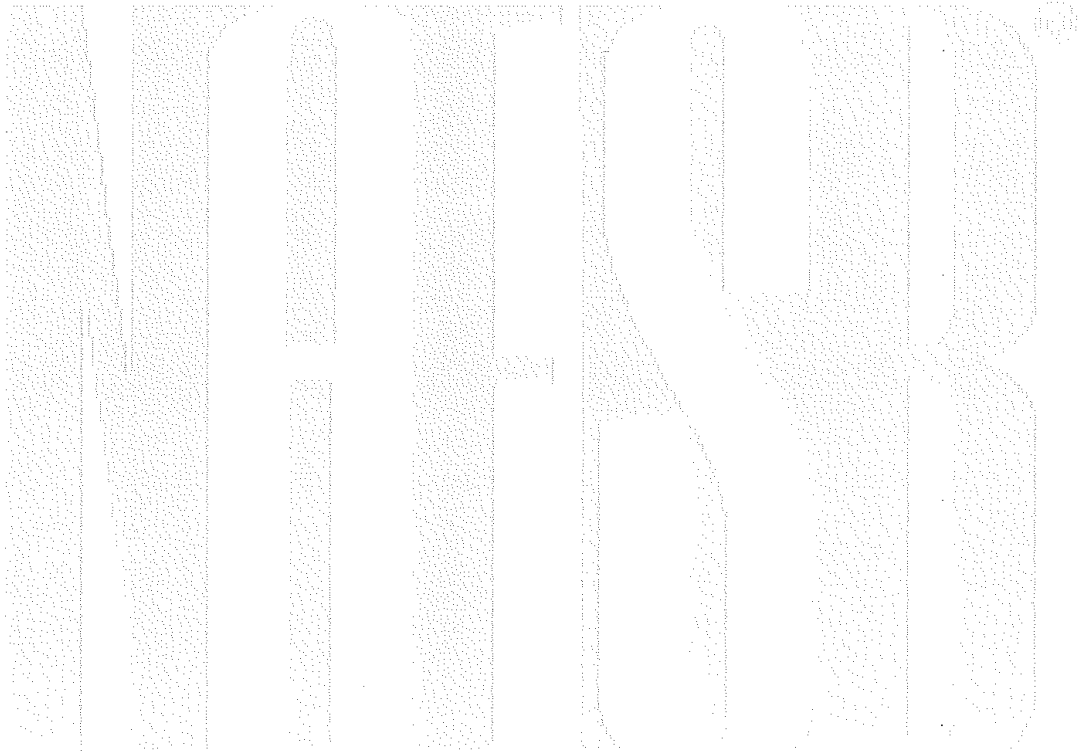
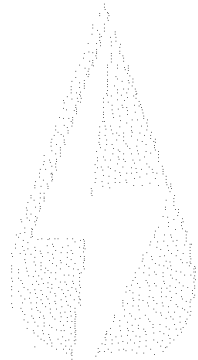
## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: May 28, 2013

The parties to this Base Contract are the following:

PARTY A Exelon Generation Company, LLC ("Exelon")	PARTY NAME	PARTY B Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")
100 Constellation Way, Suite 500C, Baltimore, MD 21202	ADDRESS	220 W Main St, 7 <sup>th</sup> FL Louisville KY 40202
www.exeloncorp.com	BUSINESS WEBSITE	www.lge-ku.com
	CONTRACT NUMBER	n/a
19-674-8938	D-U-N-S® NUMBER	LGE 00-694-5505 KU 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 23-2990190 <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGE 61-0264150/KU 61-0247570 <input type="checkbox"/> OTHER:
Pennsylvania	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: _____
n/a	GUARANTOR (IF APPLICABLE)	n/a
<b>CONTACT INFORMATION</b>		
ATTN: <u>Gas Desk</u> TEL#: <u>410-470-3500</u> FAX#: <u>443-213-3556</u> EMAIL: _____	▪ COMMERCIAL	LGE/KU ATTN: <u>Trading Manager Gas</u> TEL#: <u>502-627-4210</u> FAX#: <u>502-627-4655</u> EMAIL: _____
ATTN: <u>Gas Scheduling</u> TEL#: <u>410-470-3500</u> FAX#: <u>410-468-3540</u> EMAIL: <u>CCGGasSchedulingall@constellation.com</u>	▪ SCHEDULING	LGE/KU ATTN: <u>Gas Scheduling</u> TEL#: <u>502-627-3034</u> FAX#: <u>502-627-4655</u> EMAIL: _____
ATTN: <u>Contract Administration</u> TEL#: <u>410-470-3141</u> FAX#: <u>443-213-3556</u> EMAIL: _____	▪ 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#: <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: _____
ATTN: <u>Credit Department</u> TEL#: <u>410-470-3500</u> FAX#: <u>410-470-6200</u> EMAIL: <u>CCGCollateral@constellation.com</u>	▪ CREDIT	LGE/KU ATTN: <u>Manager Credit</u> TEL#: <u>502-627-4253</u> FAX#: <u>502-627-3950</u> EMAIL: _____
ATTN: <u>Confirmations Group</u> TEL#: <u>410-470-3738</u> FAX#: <u>410-468-3540</u> EMAIL: <u>constellationconfirmsdept@constellation.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: _____
<b>ACCOUNTING INFORMATION</b>		
ATTN: <u>Billings Group/Payments Group</u> TEL#: <u>410-470-3737</u> FAX#: <u>410-468-3540</u> EMAIL: <u>CCGGasAccounting@constellation.com</u>	▪ INVOICES ▪ PAYMENTS ▪ SETTLEMENTS	LGE/KU ATTN: <u>Gas Regulatory Accounting</u> TEL#: <u>502-627-3726</u> FAX#: <u>502-627-3800</u> EMAIL: _____
BANK: <u>M&amp;T Bank, Baltimore, MD</u> ABA: <u>0220-0004-6</u> ACCT: <u>191-9007-8</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>M&amp;T Bank, Baltimore, MD</u> ABA: <u>0220-0004-6</u> ACCT: <u>191-9007-8</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: _____

<b>ATTN:</b> _____ <b>ADDRESS:</b> _____ _____	<b>CHECKS</b> <i>(IF APPLICABLE)</i>	<b>LGE/KU_ATTN:</b> <i>Gas Regulatory Accounting</i> <b>ADDRESS:</b> <i>220 W Main St., 9th Fl</i> <i>Louisville KY 40202</i>



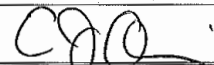
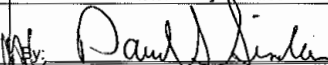
## Base Contract for Sale and Purchase of Natural Gas

(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"/> _____ Business Days after receipt</p>	
<p><b>Section 2.8</b> Confirming Party  <input type="checkbox"/> Seller (default)  OR  <input type="checkbox"/> Buyer  <input checked="" type="checkbox"/> Exelon Generation Company, LLC</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 2.3.1</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 checked="" 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: Five (5)  <input type="checkbox"/> Addendum(s): _____</p>	

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

EXELON GENERATION COMPANY, LLC	PARTY NAME	Louisville Gas and Electric Company Kentucky Utilities Company
By: 	SIGNATURE	By: 
EDWARD J. QUINN	PRINTED NAME	David S. Sinclair
SVP. WHOLESALE TRADING	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.

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; 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 (NAESB Standard 6.3.1 - SEPTEMBER**  
**5, 2006 Version) BETWEEN EXELON GENERATION COMPANY, LLC ("Exelon") AND**  
**Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")**  
**Dated May 28, 2013**

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**

2.2 Section 2.2 shall be amended by adding the following sentence at the end of the section: With respect to Constellation, Baltimore Gas & Electric Company, CNEGH Holdings, LLC, CNE Gas Holdings, Inc., CNEG Holdings, LLC, Constellation NewEnergy-Gas Division, LLC CNE Gas Supply, LLC, PECO Energy Company, and Commonwealth Edison Company shall not be considered an Affiliate.

2.10 Section 2.10 "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."

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 Section 2:*

2.37 "Costs" means all costs, expenses and losses which the Non-Defaulting Party may reasonably incur in terminating and liquidating under Section 10 any Terminated Transactions which cannot be avoided through the Non-Defaulting Party's reasonable efforts, including, without limitation, attorneys' and brokers fees and the costs, expenses and losses associated with transportation and other similar transaction costs and expenses incurred in maintaining, terminating and/or re-establishing any related arrangements which replace any Terminated Transaction, except for such amounts already included in the Net Settlement Amount.

**SECTION 5. QUALITY AND MEASUREMENT**

Section 5 shall be 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 6. TAXES**

Section 6 shall be amended by adding 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 unless proper exemption documentation is provided and remitted by Buyer and then remit such amounts to the taxing authority."

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

7.3 Section 7.3 shall be amended by adding the following language to the end of the first sentence after the phrase "amount was calculated":

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

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."

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**

*The following sections shall be amended as follows:*

8.1 Section 8.1 shall be amended 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 15.8" in the last sentence.

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

9.4 Section 9.4 shall be amended by:

- (a) in the first sentence delete the words "commercially acceptable"; and
- (b) delete "ten (10)" and replace with "two (2)".

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

*The following sections shall be amended as follows:*

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 "(ix)" in such Section; and (iii) adding the following immediately after the ";" in subclause (ix):

"(x) make any representation or warranty herein which is false or misleading in any material respect when made or when deemed made or repeated; (xi) 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 ten (10) Business Days after receipt of written Notice; (xii) 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; (xiii) sustain the occurrence and continuation of an Additional Event of Default; or (xiv) with respect to a party's Guarantor, (A) any event referenced in the above clauses (i) through (xiii) and (x) 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."

10.3 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");"

*The following sections shall be added to Section 10:*

"10.8 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; provided further, 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.."

#### **SECTION 11. FORCE MAJEURE**

Section 11 shall be amended by adding the following sections:

"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 (60) continuous days."

"11.8 During the event of Force Majeure, the Claiming Party, if it is Seller, must cease interruptible deliveries to other buyers receiving Gas at Delivery Point(s) affected by the Force Majeure event prior to suspending the performance obligations under a Firm Transaction affected by such Force Majeure event. 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

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 [Note: added timing in determining the floating price that is missing – similar to the ISDA – Is]

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; provided however that with respect to Exelon, non-Affiliates shall not include the companies listed in Section 2.2 of these Special Provisions: (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

*The following sections shall be amended as follows:*

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

15.5 Section 15.5 shall be deleted in its entirety and replaced with the following:

"15.5 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.**"

15.8 The following shall be added to the end of Section 15.8:

"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."

15.10 Section 15.10 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 subsection (v).

15.12 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 to Section 15:*

15.14 **UCC Section 2-609.** The parties agree to add the following new provision: The Base Contract, which includes these Special Provisions, set forth the entirety of the agreement of the parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the provisions contained in the Base Contract, neither party:

- a) has or will have any obligation to post cash, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or
- b) will have reasonable grounds for insecurity with respect to the creditworthiness of a party that is complying with the relevant provisions of this Base Contract;

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.



**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**  
**To the Base Contract for Short-Term Sale and Purchase of Natural Gas**  
**between**  
**Louisville Gas and Electric Company/Kentucky Utilities Company**  
**and**  
**Energy USA-TPC Corp.**  
**Dated June 1, 2001**

- A. Amend Section 1.3, the penultimate sentence, by adding the following after "Transaction Confirmation":
- "or in the absence of an effective Transaction Confirmation, the terms of the oral agreement"
- B. In Section 1.2 insert "*a recorded*" before the word *telephone* on the second line. Insert the word "*recorded*" before the word *telephonic* on the fifth line. Add the following sections as 1.4 and 1.5:
- 1.4 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 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 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. 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 (a) whether certain agreements are to be in writing or signed by the party to be thereby bound. or (b) the lack of authority of any employee of the party if the employee name is stated in the Transaction Tape (provided, however, if a Party provides the other Party with a list of those of its employees that are exclusively authorized by the Party to enter into a Transaction, then the Party shall be able to challenge the authority of any of its employees other than such listed employees).
- C. Replace Section 2.6 as follows:
- 2.6 "Contract" shall mean the legally binding relationship established by (i) the Base Contract, (ii) this Addendum and (iii) any executed (or deemed accepted) Transaction Confirmation.
- D. Delete "or alternate fuels" from Section 2.9 "Cover Standard"
- E. 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 Confirmation.

- 2.28 "Company" shall mean Louisville Gas and Electric Company/Kentucky Utilities Company ("Company").
- 2.29 "Contract Period" means the term of any particular Transaction agreed to by the parties as specified in the Transaction Confirmation.
- 2.30 "Counterparty" shall mean Energy USA-TPC Corp..
- 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 ("Credit Support Provider") or of the First Party in favor of the other party supporting any obligations of the first party under this Contract.
- 2.32 "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
- 2.33 "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 "Guarantor" means, as to as to Counterparty \_\_\_\_\_ (if applicable).
- 2.35 "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.
- 2.36 "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.
- 2.37 "NYMEX" shall mean the New York Mercantile Exchange.
- 2.38 "Price" shall mean the amount or pricing mechanism agreed to by the parties as specified in the Transaction Confirmation.
- 2.39 "Receipt/Delivery Obligation" shall mean one of EFP, Firm or Swing as set forth in the Transaction Confirmation for a particular Transaction.
- 2.40 "Seller" shall mean the party that agrees to sell Gas as evidenced by the Transaction Confirmation.
- 2.41 "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.
- 2.42 "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.
- 2.43 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by Company and/or the Counterparty for verification and/or evidentiary purposes.

F. Delete "or alternate fuels" from line four (4) of this section.



**G. The following paragraphs will be added to Section 5:**

- 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.

**H. 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.

**I. 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, 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.

**J. Add the following to the end of Section 7:**

- 7.5 The parties shall net all same currency amounts due and owing (and/or past due from prior billing periods, provided however, that any such past due amounts that are the subject of a bona fide dispute shall not be subject to this Section 7.5 until such dispute is resolved) arising out of the

transactions under this Contract such that the party owing the greater amount shall make a single payment of the net amount in accordance with Article 7 of this Contract, provided that, except as expressly provided in this Contract or any such credit support agreement (if any), no payment required to be made pursuant to the terms of any credit support agreement shall be subject to netting under this or any other provision of this Contract. In the event that the parties have executed a separate netting agreement, the terms and conditions therein shall prevail with respect to this Section 7.5.

- 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

**K. Add 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.

**L. Add the following language to the end of Section 9.1:**

Notices of interruption to Firm obligations may be provided verbally, effective immediately and, then shall be confirmed in writing as soon as reasonably possible

**M. Delete Section 10 in its entirety and replace with the following:**

- 10.1 Events of Default. In the event (each a "Default") either party (the "Defaulting Party")

- (i) enters into Bankruptcy whether voluntary or involuntary;
- (ii) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets;
- (iii) 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 to the Defaulting Party by the other party ("Non-Defaulting Party") and provided the payment is not the subject of a good faith dispute;
- (iv) fails to provide adequate assurance of its ability to perform all of its outstanding material obligations to the Non-Defaulting Party under the Contract or otherwise within a period not to exceed forty-eight (48) hours (but at least one (1) Business Day) of a demand therefore when the Non-Defaulting Party has reasonable grounds for insecurity;
- (v) fails to establish, maintain, extend or increase Eligible Collateral when required pursuant to this Contract; then the Non-Defaulting Party shall be entitled to exercise the remedies as set forth in this Section 10.
- (vi) suffers the occurrence of a Material Adverse Change; provided, such Material Adverse Change shall not be considered an Event of Default 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;



- (vii) or the Guarantor (if any) of the Defaulting Party fails to perform any covenant set forth in the 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.

the Non-Defaulting Party shall have the right to (a) immediately suspend delivery or payment and/or (b) liquidate and terminate all Transactions entered into pursuant to this Contract and then outstanding between the parties, in accordance with and subject to the provisions of Section 10.2 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.

- 10.2 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 Non-Defaulting Party receives knowledge the occurrence of an 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 all Transaction Confirmation(s) 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 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 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 10.2 "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 10.2 shall be determined by the Non-Defaulting Party in a commercially reasonable manner. The parties agree that this Contract and all Transaction Confirmations under this Section 10.2 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 10.2 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.).

**N. Add as Section 11.7:**

- 11.7 This Article 11 shall not apply to any Interruptible Transaction except for penalties as described in 11.1.
- 11.8 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 to 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.

**O. 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 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.

**Q. Replace Section 13.1 with the following:**

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 prior approval of the other party, provided that the creditworthiness of the successor entity is not materially weaker than the creditworthiness of the assigning party immediately prior to its assignment.

**R. The following paragraphs will be added to Section 13:**

- 13.9 Any controversy or claim arising out of or relating to this Contract or the breach thereof may be settled by binding arbitration.
- (a) For any controversy or claim arising out of or relating to this Contract or the breach thereof, and for which the aggregate notional value is less than one million dollars (\$1,000,000.00), such claim or controversy shall be submitted to binding arbitration. Such arbitration shall be submitted to one (1) arbitrator who has not previously been employed by either party or the subject matter of the arbitration, but who is recognized by both parties as experienced and knowledgeable in the industry. Such arbitrator shall either be as mutually agreed by the parties within thirty (30) days after written notice from either party requesting arbitration or failing agreement shall be selected under the expedited American Arbitration Association Commercial Arbitration ("AAACA") rules.
- (b) For any controversy or claim arising out of or relating to this Contract or the breach thereof, and for which the aggregate notional value is equal to or greater than one million dollars

(\$1,000,000.00), such claim or controversy may, by mutual agreement of the parties, be submitted to binding arbitration. Each party shall select one (1) arbitrator who is recognized as experienced and knowledgeable in the industry but who has not previously been employed by either party and does not have a direct or indirect interest in either party or the subject matter of the arbitration. The two (2) arbitrators shall then mutually agree upon and select a third arbitrator in the same manner as previously set forth in section (a) above, or failing an agreement, the third arbitrator shall then be selected under the expedited AAACA rules.

- (c) For any arbitration proceeding as set forth in (a) or (b) above:
- i) such arbitration shall be held in alternating locations of the home offices of the parties commencing with any mutually agreed upon location;
  - ii) both parties shall be afforded adequate opportunity to present information in support of its position on the dispute being arbitrated;
  - iii) the arbitrator(s) may request additional information from the parties but shall be bound by the terms of this Contract and may not amend or modify any of the terms hereof;
  - iv) the arbitrator(s) shall set forth a written reason for the decision;
  - v) the judgment rendered by the arbitrator(s) may be entered into and enforced by any court having jurisdiction over the subject matter and the parties;
  - vi) the costs awarded in any arbitration generally will not include attorney fees and expert costs of the parties; provided that in the event that the arbitrator(s) determine by taking into account the particular facts and circumstances of the case that there is sufficient evidence of bad faith, blatant disregard of the law or the terms of this Contract, or particularly egregious, outrageous or arbitrary behavior, then some or all of the attorney fees or expert costs may be awarded to a party or apportioned between the parties and provided further that in any action to collect an amount due under this Contract, the prevailing party shall be entitled to recover its reasonable attorney fees and collection costs and expenses as determined by arbitration under this Article 13 or by a court of competent jurisdiction;
  - vii) any judgment and reward of the arbitrator(s) may be appealed to any court of competent jurisdiction for errors of law and/or findings of fact that are not supported by substantial evidence in the dispute.
- d) Notwithstanding the foregoing or any provision to the contrary, in the event that a party (the "Non-Breaching Party") makes a good faith determination that a breach of the terms of this Contract (including but not limited to any breach of confidentiality pursuant to Section 13.12 below) by the other party is such that immediate injunctive or equitable relief is appropriate and necessary under the circumstances, the Non-Breaching Party may file a petition for such relief with any court of competent jurisdiction.

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.

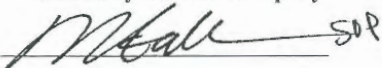
13.11 Neither party shall disclose the terms of this Contract, any Transaction Confirmation, and/or any information disclosed pursuant to Section 7.6 hereof to any third party absent written consent of the other party except where (i) disclosure is made to employees of the party or its affiliates, (ii) 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



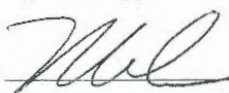
acknowledges that the documents and records provided might contain proprietary or competitively sensitive information, which the reviewing party shall treat as confidential. Each party acknowledges that any breach of any of its obligations with respect to confidentiality or use of the disclosing party's 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.

- 13.12 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
- 13.13 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.
- 13.14 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.
- 13.15 The parties agree to modify the Disclaimer, such that the Contract covers long-term transactions of unlimited duration.

Louisville Gas and Electric Company/  
Kentucky Utilities Company

By:  SR

EnergyUSA-Appalachian Corp.

By:  MB  
Rah  
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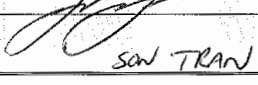
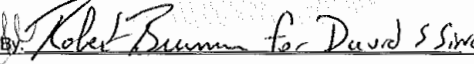
## Base Contract for Sale and Purchase of Natural Gas

(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:

<p><b>Section 1.2</b> <input checked="" type="checkbox"/> Oral (default) Transaction Procedure <input type="checkbox"/> OR <input type="checkbox"/> Written</p> <p><b>Section 2.7</b> <input checked="" type="checkbox"/> 2 Business Days after receipt (default) Confirm Deadline <input type="checkbox"/> OR <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"/> OR <input checked="" type="checkbox"/> Buyer</p> <p><b>Section 3.2</b> <input checked="" type="checkbox"/> Cover Standard (default) Performance Obligation <input type="checkbox"/> OR <input type="checkbox"/> Spot Price Standard</p> <p><b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b></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 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</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"/> OR <input type="checkbox"/> Day of Month following Month of delivery</p> <p><b>Section 7.2</b> <input checked="" type="checkbox"/> Wire transfer (default) AND <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) Method of Payment <input type="checkbox"/> OR <input type="checkbox"/> Check</p> <p><b>Section 7.7</b> <input checked="" type="checkbox"/> Netting applies (default) Netting <input type="checkbox"/> OR <input type="checkbox"/> Netting does not apply</p> <p><input checked="" type="checkbox"/> Special Provisions Number of sheets attached: <u>7</u> <input type="checkbox"/> Addendum(s): _____</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 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</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 15.5</b> _____ Choice Of Law <u>New York</u></p> <p><b>Section 15.10</b> <input checked="" type="checkbox"/> Confidentiality applies (default) Confidentiality <input type="checkbox"/> OR <input type="checkbox"/> Confidentiality does not apply</p>
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IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

<b>Energy America, LLC</b>	<i>PARTY NAME</i>	<b>LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY</b>
By: 	<i>SIGNATURE</i>	By: 
(Insert Name) <u>DIR &amp; SR COUNCIL</u>	<i>PRINTED NAME</i>	David S. Sinclair
(Insert Title) <u>ASST SEC.</u>	<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		
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: _____			



**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF  
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS  
Dated July 23, 2012**

**by and between  
Energy America LLC ("EA")**

**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 either in terminating any arrangement pursuant to which it has hedged its obligations or 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, 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 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.

Section 8.4 amended by adding the following to the end of that section:

"Provided, however, that: (i) in the event EA is the Seller for a particular transaction and if title to the Gas was taken outside the Customs Territory of the United States, EA represents and warrants that Direct Energy Marketing Inc. ("DEMI"), an Affiliate of EA, is the importer or record for all Gas entered and delivered into the United States, and DEMI 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. As between the parties, EA is responsible for the obligations under this Section 8.4, and in the event that DEMI or EA is the importer of record and either fails to fulfill its obligations and pay duties as required, then EA shall be responsible for any costs, expenses, fees, fines, penalties or other charges incurred with respect to the such failure."

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 "five (5)".

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

Section 10.1 is amended by:

- (i) Adding the following after the first sentence:

"The maximum value of Adequate Assurance of Performance that X may request shall not exceed the value of the Net Settlement Amount to which X would be entitled if an Early Termination Date had occurred and all transactions terminated."

(ii) Adding the following to the end of this Section:

"Except when (i) an Event of Default with respect to Y shall have 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 Y for which there exists any unsatisfied payment obligations, Y may substitute either cash or a Letter of Credit for all or a portion of the Adequate Assurance of Performance which has been given to X, upon one (1) Business Day's written notice (provided such Notice is received by X by 12:00 noon in X's time zone on a Business Day, otherwise the notification shall be deemed to have been given the next Business Day following) to X."

Section 10.2 shall be amended by - Section 10.2 (vii) and (viii) are deleted in their entirety and replaced with the following:

(a) (vii) fail to give Adequate Assurance of Performance under Section 10.1 by the end of the third Business Day following receipt of Notice of demand from the other party; (viii) fail to pay any amount due the other party hereunder on or before the end of the second Business Day following receipt of Notice from the other party that such payment is due;

(b) deleting "or" before "(ix)"; and

(c) inserting in the tenth line after the phrase "Additional Event of Default;" the phrase "or (x) suffer a Material Adverse Change; provided that, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party provides within 72 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

(d) adding at the end before the "." in the last sentence: "provided that no suspension of performance shall continue for more than twenty (20) Days unless an Early Termination Date has been declared and the Non-Defaulting Party has given Notice thereof in accordance with Section 10.3. If an Early Termination Date is not designated, then for each Day that deliveries or receipts of Firm Gas are suspended (up to the maximum of 20 Days), in addition to any other payments to which it may be entitled the Non-Defaulting Party shall be entitled to payments calculated in accordance with Section 3.2 as if the Defaulting Party had breached its Firm obligation to deliver or receive Gas, as applicable; provided however such other payments and payments calculated in accordance with Section 3.2 are made without duplication. Unless an Early Termination Date is designated, deliveries and receipts of Gas shall recommence upon one Business Days Notice to that effect from the Non-Defaulting Party."

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 shall be amended by adding the following to the end of the section :

"The parties agree and intend that

(A) This Contract (and any associated Eligible Collateral) is a "master netting agreement" as defined in the U.S. Bankruptcy Code (the "Code"), and this Contract and each Transaction hereunder is of a type set forth in Section 561(a)(1)-(5) of the Code;

(B) Each party is a "master netting agreement participant," a "forward contract merchant" and a "swap participant" as defined in the Code;

(C) The remedies provided herein, and in any Eligible Collateral or Adequate Assurance of Performance, are the remedies referred to in Section 561(a), Sections 362(b)(6), (7), (17) and (27), and Section 362(o) of the Code;

(D) All transfers of cash, securities or other property under or in connection with this Contract, any Eligible Collateral or any Transaction hereunder are "margin payments," "settlement payments" and "transfers" under Sections 546(e), (f), (g) or (j), and under Section 548(d)(2) of the Code; and

(E) Each obligation under this Contract, any Eligible Collateral or any Transaction hereunder is an obligation to make a "margin payment," "settlement payment" and "payment" within the meaning of Sections 362, 560 and 561 of the 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 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.

Add the following to the end of Section 15.5:

" , except if New York law has been indicated on the Base Contract, the parties agree not to exclude Section 5-1401 (choice of law) and Section 5-1402 (choice of forum) of Title 14 of the New York General Obligations Law. The parties agree to submit to the non-exclusive jurisdiction of the United States District Court of such indicated jurisdiction, including all appellate courts therein and therefrom, to determine such matters, but nothing in the foregoing shall prohibit a party from seeking enforcement of any judgment in any other jurisdiction. 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 this 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) 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.

Add the following as Section 15.13: 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),

(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.

Add the following as Section 15.14:

"15.14. 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 this Contract. 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.

#### 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."

ENERGY AMERICA LLC

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

Name: SON TRAN

Title: DIR & SR. COUNSEL, ASST. SEC

LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY

By: Robert Baum for 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 PROVISIONS FOR NAESB BASE CONTRACT  
FOR SALE AND PURCHASE OF NATURAL GAS**

These Special Provisions for Base Contract for Sale and Purchase of Natural Gas (these "Special Provisions") are incorporated into and made part of the following NAESB Base Contract for Sale and Purchase of Natural Gas (the "Base Contract"):

Contract #: \_\_\_\_\_

Date: January 1, 2004

**Parties: Enbridge Marketing (U.S.) L.P. and Louisville Gas and Electric Company/Kentucky Utilities Company ("LGE"/"KU")**

To facilitate use of these Special Provisions with the Base Contract and the General Terms and Conditions incorporated by reference therein, Section references herein correspond to Section references in the General Terms and Conditions. Where "NO ALTERATION" is stated after a Section reference in these Special Provisions, it means that such Section of the General Terms and Conditions is not modified by these Special Provisions except to the extent that a modification must result from the express modification of another Section pursuant to these Special Provisions.

**SECTION 1. PURPOSE AND PROCEDURES**

- If the terms of these Special Provisions and the other terms of the Base Contract conflict, the terms of these Special Provisions shall be paramount and shall govern to the extent of the conflict. In these Special Provisions, any terms defined in the Base Contract and not otherwise defined herein shall have the corresponding meaning. Any reference to a Section in these Special Provisions refers to a Section of the General Terms and Conditions of the Base Contract.

- 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."

"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 (1) a fully executed (or deemed agreed to) Transaction Confirmation or (2) in the event a Transaction Confirmation is not fully executed (or deemed agreed to) by both parties, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation."

**SECTION 2. DEFINITIONS**

- A new Section 2.9.1 is added as follows:

2.9.1 "Costs" shall mean all reasonable costs, legal fees and expenses incurred by the Non-Defaulting Party (i) to collect amounts owed under a transaction, including enforcement of any security taken to secure the payment or performance of obligations under a transaction or collection of amounts from a guarantor or issuer of a letter of credit, (ii) for losses associated with transmission/transportation costs related to a terminated transaction pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party's reasonable efforts, (iii) brokerage fees, commissions and other similar transaction costs and expenses to replace a Terminated Transaction which were reasonably incurred by the Non-Defaulting Party or (iv) in connection with termination of a transaction pursuant to Section 10, including reasonable costs, legal fees and expenses incurred by the Non-Defaulting Party in connection with any bankruptcy, insolvency, arrangement or similar proceeding relating to the Defaulting Party or its Credit Support Provider.

- A new Section 2.10.1 is added as follows:

2.10.1 "Credit Rating" means, with respect to a party or entity on any date of determination, the rating then assigned to its unsecured and senior unsubordinated long-term debt obligations (not supported by third party credit enhancement) by a Designated Rating Agency or, if the obligations of that party under the Contract are guaranteed by a Credit Support Provider, the rating then assigned to the Credit Support Provider's unsecured and senior unsubordinated long-term debt obligations (not supported by third party credit enhancement) by a Designated Rating Agency. If a party or its Credit Support Provider, if applicable, 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.

- New Sections 2.11.1 and 2.11.2 are added as follows:

2.11.1 "Credit Support Document" means, 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.

2.11.2 "Credit Support Provider" means a third party, acceptable to both parties, that has guaranteed the obligations of a party under the Contract on terms acceptable to the other party.

- A new Section 2.14.1 is added as follows:

2.14.1 "Designated Rating Agency" means Standard & Poor's Rating Group (a division of McGraw-Hill Inc.) ("S&P") or Moody's Investors Services, Inc. ("Moody's"), and any successors thereto.

- A new Section 2.16.1 is added as follows:

2.16.1 "Exposure Threshold" means, with respect to a party on any date of determination, the lesser of the following amounts:

- (a) if the obligations of that party under the Contract are not guaranteed by a Credit Support Provider on that date on an ongoing basis, the amount set forth in the table below opposite the lower of any applicable Credit Rating(s) for which the party qualifies on that date;
- (b) if the obligations of that party under the Contract are guaranteed by a Credit Support Provider on that date on an ongoing basis, the lesser of the following amounts: (i) the maximum liability of the Credit Support Provider under such guarantee(s) and (ii) the amount set forth in the table below opposite the Credit Ratings for which the party or its Credit Support Provider qualifies on that date, provided that if all of the Credit Ratings for the relevant entity are not in the same row of the following table,



then such amount shall be the amount set forth opposite the lower of the applicable Credit Ratings;  
 and

- (c) zero, if on that date (i) neither the party nor its Credit Support Provider qualify for a Credit Rating from at least one Designated Rating Agency, or (ii) an Event of Default with respect to such party or its Credit Support Provider has occurred that is still continuing.

CREDIT RATING		
	Standard & Poor's Corporation	Moody's Investors Services, Inc.
U.S. \$25,000,000	AA- to AAA	Aa3 to Aaa
U.S. \$15,000,000	A- to A+	A3 to A1
U.S. \$10,000,000	BBB+	Baa1
U.S. \$7,500,000	BBB	Baa2
U.S. \$5,000,000	BBB-	Baa3
\$0	below BBB-	below Baa3

- A new Section 2.18.1 is added as follows:

2.18.1 "Investment Grade Rating" shall mean a party's Credit Rating from Moody's of "Baa3" or higher and a rating from S&P of "BBB-" or higher.

- A new Section 2.20.1 is added as follows:

2.20.1 "Letter of Credit" means an irrevocable, transferable standby letter of credit in a form and an amount otherwise acceptable to the requesting party in its reasonable discretion, issued by a U.S. commercial bank or a Canadian chartered bank having a U.S. branch office, in each case, with such bank having a Credit Rating of at least A- from Standard & Poor's Corporation or A3 from Moody's Investors Services, Inc., or such other financial institution acceptable to the beneficiary party in its sole discretion.

- A new Section 2.20.2 is added as follows:

2.20.2 "Material Adverse Change" means, with respect to a party on any date of determination, that the Credit Rating applicable to such party is rated by Standard & Poor's Corporation below BBB- or by Moody's Investors Services, Inc. below Baa3.

- New Sections 2.22.1, 2.22.2, and 2.22.3 are added as follows:

2.22.1 "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.

2.22.2 "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").

2.22.3 "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").

- A new Section 2.23.1 is added as follows:

2.23.1 "Potential Event of Default" means any event or circumstance which would, with Notice, the passage of time, or both, constitute an Event of Default.

2.23.2 "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.

- A new Section 2.28.1 is added as follows:

### 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 undelivered Gas or re-sell 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, 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 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 4. TRANSPORTATION, NOMINATIONS AND IMBALANCES

#### NO ALTERATION



**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. 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**

- 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."

- A new Section 6.2 is added as follows:

6.2 In the event a federal, 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**

- 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 deleted in its entirety and replaced with the following:

"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. If the parties are able to resolve such dispute, any underpayments or overpayments shall be paid or refunded with accrued interest at the rate provided in Section 7.5 for the period until such payment or refund is made. 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).
- A new Section 7.8 is 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**

- 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.
- A new Section 8.5 is added as follows:

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 9. NOTICES**

- A new Section 9.4 is added as follows:

9.4 A party may, upon ten (10) Business Days' Notice to the other party, revise its banking information and payment instructions by delivering to the other party a Notice containing replacement banking information.

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

- Section 10.1 is amended by replacing the last sentence with the following:

"Adequate Assurance of Performance" shall mean either (i) cash or (ii) Letter(s) 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 terminated). Notwithstanding any other provision of the Contract, if the Net Settlement Amount that is or would be owed by a party (the "Non-Exposed Party") to the other party (the "Exposed Party") exceeds the Exposure Threshold applicable to the Non-Exposed Party at any time (whether or not a Notice of termination of transactions under the Contract has been served and whether or not an Event of Default or a Potential Event of Default has occurred), the Non-Exposed Party shall, within three (3) Business Days of receipt of a demand from the Exposed Party, obtain and deliver to the Exposed Party in cash or a Letter of Credit that names the Exposed Party as the beneficiary thereof and that is in each case an amount that is no less than the difference (rounded upwards to the next \$250,000) between (i) the sum of the amount of such Net Settlement Amount plus any amounts that the



Exposed Party would be entitled to receive under the Contract if such amounts had not been disputed by the Non-Exposed Party less (ii) the Exposure Threshold applicable to the Non-Exposed Party. So long as the aforesaid difference is positive, the Non-Exposed Party shall maintain such cash or Letter(s) of Credit and shall extend, increase or replace (as applicable) it in accordance with Section 10.1.1.

- The following is added as Sections 10.1.1 and 10.1.2:

10.1.1 All letters of credits shall state that they may be drawn if the Non-Exposed Party or Defaulting Party, as the case may be (the "Posting Party"), fails to make a payment when due under the Contract, the amount of such letter of credit is not increased within (3) Business Days of receipt by the Posting Party of a valid demand to do so or such letter of credit is not extended or replaced at least ten (10) Business Days prior to its expiry.

10.1.2 On any Business Day, that the Exposed Party may request that the Non-Exposed party provide additional Adequate Assurance of Performance (rounding upwards to the nearest \$250,000) equal to the Net Settlement Amount when the Net Settlement Amount that would be owed by the Non-Exposed party exceeds the sum of the Exposure Amount applicable to the Non-Exposed Party plus and Adequate Assurance of Performance in the form of cash or Letter(s) of Credit supplied by the Non-Exposed Party to the Exposed Party.

On any Business Day (but no more frequently than weekly with respect to Letters of Credit or daily with respect to cash), the Non-Exposed Party, at its sole expense, may request a reduction in the amount such Adequate Assurance of Performance equal to the excess (rounded downward to the nearest \$250,000) when the sum of the Net Settlement Amount that would be owed by the Non-Exposed Party plus any Adequate Assurance of Performance in the form of cash or Letter(s) of Credit supplied by the Non-Exposed Party to the Exposed Party is greater than Exposure Amount applicable to the Non-Exposed Party. The Exposed Party shall return such amount to the Non-Exposed Party within three (3) Business Days of such Exposed Party's receipt of an invoice for such amount.

- In Section 10.2 insert the phrase "if any" after the word "guarantor" in the first line.
- In Section 10.2, subsection (vi) is deleted and replaced with the following:

(vi) either (A) experience a Material Adverse Change, provided that a Material Adverse Change shall not be considered an Event of Default if the Defaulting Party obtains and delivers to the Non-Defaulting Party Adequate Assurance of Performance in the form of cash or a Letter of Credit (that names the Non-Defaulting Party as the beneficiary thereunder) that is maintained by the Defaulting Party so long as the Credit Rating applicable to it continues to be at or below the Credit Ratings described in the definition of Material Adverse Change and that is extended, increased or replaced in accordance with Section 10.1.1) in an amount that is no less than the sum (rounded upwards to the next \$250,000) of (1) the Net Settlement Amount that would be owed by the Defaulting Party plus (2) any amounts that the Non-Defaulting Party would have been entitled to receive under the Contract if such amounts had not been disputed by the Defaulting Party or (B) fail to establish, maintain, extend, increase or replace any Adequate Assurance of Performance as required by the Contract in each case within three (3) Business Days of written notice from the Non-Defaulting Party;



- In Section 10.2, the word "or" that is immediately before "(viii)" is deleted and the following is inserted after the words "that such payment is due;":  

(ix) not perform any other material obligation under the Contract within three (3) Business Days after receiving Notice thereof from the other party;
- In Section 10.3 Inserting the following 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)."
- 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"
- In the "Early Termination Damages Apply" alternative for Section 10.3.1, the words ", net of the Non-Defaulting Party's Costs," are added after the word "difference" in the second sentence.
- In the "Early Termination Damages Do Not Apply" alternative for Section 10.3.1, the words "and all of the Non-Defaulting Party's Costs" are added following the words "under Section 3.2".
- 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")"
- A new Section 10.8 is added as follows:  

10.8 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

- The following is added at the end of Section 11.2:  

"A party affected by Force Majeure shall allocate its available gas supply or markets, as the case may be, at the applicable Delivery Point such that the quantity of Gas supplied to or purchased from, as the case may be, the other party is not less than its *pro rata* share or markets at that Delivery Point of the affected party's gas supply (based on the daily Contract Quantity of all of the affected party's Firm contracts at that Delivery Point)."
- 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".
- A new Section 11.7 is added as follows:  

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**

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

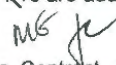
The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written Notice by either party; provided, however, that the provisions hereof shall survive termination of this Contract and continue to apply to any transactions entered into between Counterparty and Company 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 1.6, 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**

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

**SECTION 14. MISCELLANEOUS**

- Insert in Section 14.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4<sup>th</sup>) line.
- 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).
- New Sections 14.12, 14.13, 14.14 and ~~14.15~~ are added as follows:

14.12  Any original executed Base Contract, Transaction Confirmation, invoice or other related document may be photocopied and stored in an electronic format (an "Image"). An Image, if introduced as evidence on paper, documents received by facsimile machine or photocopies, if introduced as evidence on paper, the recordings of communications, if introduced as evidence in their original form or as transcribed onto paper, 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 business records maintained in documentary form. So long as the Image bears the signature of the party against whom enforcement is sought if there is a space of line for such signature on the agreement, in the absence of evidence of fraud or irregularity in the imaging or computer retention process related to the documents and the original document(s) is/are unobtainable, neither party shall object under any rule of evidence to the admissibility of the recordings, Images, photocopies, or facsimiles (or photocopies of the transcription of the recordings, Images or facsimiles) on the basis that such were not originated or maintained in documentary form, or do not comply with the best evidence rule.

- 14.13 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.
- 14.14 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.

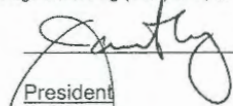
SECTION 15. OPTION

- 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."

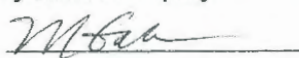
The undersigned hereby acknowledge and agree that the foregoing Special Provisions for NAESB Base Contract for Sale and Purchase of Natural Gas are incorporated into and made part of the Base Contract identified above. The undersigned further acknowledge and agree that the Base Contract, as amended and supplemented by such Special Provisions, is hereby ratified and confirmed.

Dated the 12<sup>th</sup> day of January, 2004.

**Enbridge Marketing (U.S.) L.P.**  
By Enbridge Marketing (U.S.) LLC, its general partner

By:   
Title: President

**Louisville Gas and Electric Company/  
Kentucky Utilities Company** <sup>SOP</sup>

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

<b>BANK:</b> <u>Wells Fargo, N.A.</u> <b>ABA:</b> <u>121000248</u> <b>ACCT:</b> <u>4121947964</u> <b>OTHER DETAILS:</b> _____	<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> _____
<b>ATTN:</b> _____ <b>ADDRESS:</b> _____	<b>CHECKS (IF APPLICABLE)</b>	<b>ATTN:</b> _____ <b>ADDRESS:</b> _____



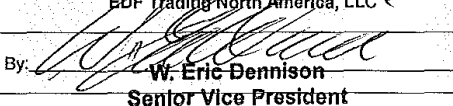
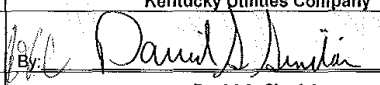

**Base Contract for Sale and Purchase of Natural Gas**

(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) <input type="checkbox"/> 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) <input type="checkbox"/> OR <input type="checkbox"/> _____ Business Days after receipt	
<b>Section 2.8</b> Confirming Party <input checked="" type="checkbox"/> Seller (default) <input type="checkbox"/> OR <input type="checkbox"/> Buyer <input type="checkbox"/> _____	
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) <input type="checkbox"/> 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) <input type="checkbox"/> 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) <input type="checkbox"/> 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 <input type="checkbox"/> 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) <input type="checkbox"/> 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) <input type="checkbox"/> 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) <input type="checkbox"/> OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.7</b> Netting <input checked="" type="checkbox"/> Netting applies (default) <input type="checkbox"/> OR <input type="checkbox"/> Netting does not apply	
<input checked="" type="checkbox"/> Special Provisions Number of sheets attached: 6 <input type="checkbox"/> Addendum(s): _____	

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

EDF Trading North America, LLC	PARTY NAME	Louisville Gas and Electric Company Kentucky Utilities Company
By: 	SIGNATURE	By: 
W. Eric Dennison Senior Vice President	PRINTED NAME	David S. Sinclair
LEGAL 	TITLE	Vice President Energy Marketing

CREDIT 

## 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 (i) 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 TO THE  
BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS  
BETWEEN**

**EDE Trading North America, LLC**  
("Party A")

AND

**Louisville Gas and Electric Company / Kentucky Utilities Company**  
("Party B")

**DATED AS OF  
August 13, 2012 ("Effective Date")**

As set forth herein, these Special Provisions amend the North American Energy Standards Board, Inc. ("NAESB") Base Contract for Sale and Purchase of Natural Gas and its accompanying General Terms and Conditions, as published September 5, 2006 (the "Base Contract", which, together with these Special Provisions, the Transaction Confirmations and any Credit Support Obligation form a single agreement between Party A and Party B) (collectively, the "Contract"). In the event of an inconsistency between the Base Contract, the General Terms and Conditions and the Special Provisions, these Special Provisions shall govern. Except as amended herein, the Base Contract and the General Terms and Conditions shall remain in full force and effect. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Base Contract.

**Amendment to 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."

**Amendment to 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 "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."

**Amendment to 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"

**Amendment to 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)."

**Amendment to 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.”

**Amendment to 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 “two (2)”.

**Amendment to 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 10.5 is amended by adding the following at the end thereof:

“In addition, each party represents and warrants to the other party, as of the date of the Base Contract and as of the date of each transaction thereunder, and as of each date of delivery of Gas in connection with such transaction, that:

- (a) **Status of Parties.** It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; and the other party is not acting as a fiduciary for or an adviser to it in respect of a transaction;
- (b) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into a transaction and as to whether a transaction 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 investment advice or as a recommendation to enter into a transaction, it being understood that information and explanations related to the terms and conditions of a transaction will not be considered investment advice or a recommendation to enter into a transaction; and no communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of a transaction;
- (c) **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 any transaction, is capable of assuming, and assumes, the risks of any transaction and acknowledges that the other party is not acting as a fiduciary for, or an advisor to, it in respect of this Contract or any transaction;

(d) **Safe Harbors.** Each party to this Agreement acknowledges that:

- (A) This Agreement (and any associated Credit Support Document) is a "master netting agreement" as defined in the U.S. Bankruptcy Code (the "Code"), and this Agreement and each Transaction hereunder is of a type set forth in Section 561(a)(1)-(5) of the Code;
- (B) Each party is a "master netting agreement participant," a "forward contract merchant" and a "swap participant" as defined in the Code;
- (C) The remedies provided herein, and in any Credit Support Document, are the remedies referred to in Section 561(a), Sections 362(b)(6), (7), (17) and (27), and Section 362(o) of the Code;
- (D) All transfers of cash, securities or other property under or in connection with this Agreement, any Credit Support Document or any Transaction hereunder are "margin payments," "settlement payments" and "transfers" under Sections 546(e), (f), (g) or (j), and under Section 548(d)(2) of the Code; and
- (E) Each obligation under this Agreement, any Credit Support Document or any Transaction hereunder is an obligation to make a "margin payment," "settlement payment" and "payment" within the meaning of Sections 362, 560 and 561 of the Code.

A new section shall be added as Section 10.8.

"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.

**Amendment to 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 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, 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 "

**Amendment to 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."

**Amendment to 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.

#### Amendment to 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.

Section 15 is amended by adding the following new sections to the end thereof:

"15.13. 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 proceedings relating to the Contract, these Special Provisions, the Base Contract, Transaction Confirmation or any transaction hereunder.";



"15.15. Mobile-Sierra. 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 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) ( the "Mobile-Sierra" doctrine).";

"15.16 Financial Documents and Tax Certificates. If requested by a party, the other party, or its Guarantor, if applicable, ("Delivering Party") 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 Delivering Party 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 Delivering Party. 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. The delivery of such financial statements shall be deemed to be a Credit Support Obligation. The parties shall also deliver to each other, upon the execution of this Contract, United States Internal Revenue Service Form W-9, or any successor form and Uniform Sales & Use Tax Certificate – Multijurisdiction or other similar applicable resale tax exemption certificates.

**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 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."

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed as of the Effective Date.

EDF TRADING NORTH AMERICA, LLC

LOUISVILLE GAS AND ELECTRIC COMPANY / KENTUCKY UTILITIES COMPANY

By: [Signature]

By: [Signature]

Name: W. Eric Dennison  
Senior Vice President

Name: David S. Sinclair

Title: \_\_\_\_\_ Title: Vice President Energy Marketing

LEGAL [Signature]  
CREDIT [Signature]  
SETTLEMENTS [Signature]

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>
BANK: <u>Bank of America</u> ABA: <u>026009593</u> ACCT: <u>4451088020</u> OTHER DETAILS: <u>Swift: BOFAUS3N</u>	CHECKS (IF APPLICABLE)	<u>LGE/KU</u> ATTN: <u>Gas Accounting</u> ADDRESS: <u>220 W Main St., 7<sup>th</sup> FL</u> 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 Party A: _____ 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 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 _____ <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>4</u> <input type="checkbox"/> Addendum(s): _____	

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

<b>ECO-ENERGY, LLC</b>	<i>PARTY NAME</i>	<b>LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY</b>
By: 	<i>SIGNATURE</i>	By: 
Brian Simpson	<i>PRINTED NAME</i>	David S. Sinclair
Vice President Commercial Development	<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.

<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 January 4<sup>th</sup>, 2016**

**by and between**

**Eco-Energy, LLC ("ECOENERGY")**

**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 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

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) 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.

ECO-ENERGY, LLC

By: 

Name: Brian Simpson

Title: Vice President Commercial Development

LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY

By: 

Name: David S. Sinclair

Title: Vice President Energy Supply and Analysis

(c) This Amendment may be signed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

(d) Any notice or other communication in respect of this Amendment will be governed by the terms of Section 12 of the Agreement.

**IN WITNESS WHEREOF**, the parties have executed this SCHEDULE to the ISDA MASTER AGREEMENT by their duly authorized officers as of the date specified on the first page of this document.

**DTE Energy Trading, Inc.**

Legal:  
CMV

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

By: Gregory V. Staton

Name: Gregory V. Staton

Title: Vice President

By: David S. Sinclair

Name: David S. Sinclair

Title: V.P. Energy Supply and Analysis

10/8/2015

(Multicurrency — Cross Border)

# ISDA<sup>®</sup>

International Swap Dealers Association, Inc.

## MASTER AGREEMENT

dated as of October 1, 2005

...DTE Energy Trading, Inc... and ...Louisville Gas and Electric Company/Kentucky Utilities Company... have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows: —

### 1. Interpretation

(a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.

(b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.

(c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

#### (a) General Conditions.

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

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(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

(i) in the same currency; and

(ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

(1) promptly notify the other party ("Y") of such requirement;

(2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;

(3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If: ---

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(c) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of an payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

### 3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:---

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)). proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event 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 Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated,

organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located (“Stamp Tax Jurisdiction”) and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party’s execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an “Event of Default”) with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If “Cross Default” is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however

described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party: —

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer: —

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or (2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event

Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:-

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party): —

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the “Burdened Party”) on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.



**6. Early Termination**

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) **Right to Terminate.** If: —

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then

continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) **Effect of Designation.**

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default: —

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the

Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss*. If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events**. If the Early Termination Date results from a Termination Event: —

(1) *One Affected Party*. If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties*. If there are two Affected Parties: —

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy**. In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate**. The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## 7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that: —

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

## 8. Contractual Currency

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term “rate of exchange” includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) **Separate Indemnities.** To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- (c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- (d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (e) **Counterparts and Confirmations.**
- (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
  - (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.
- (f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- (g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## 10. Offices; Multibranch Parties

- (a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.
- (b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.
- (c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

## 11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document

to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12 Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

## 13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in a inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any



reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

#### 14. Definitions

As used in this Agreement:—

**"Additional Termination Event"** has the meaning specified in Section 5(b).

**"Affected Party"** has the meaning specified in Section 5(b).

**"Affected Transactions"** means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

**"Affiliate"** means, subject to the Schedule, 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 a majority of the voting power of the entity or person.

**"Applicable Rate"** means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

**"Burdened Party"** has the meaning specified in Section 5(b).

**"Change in Tax Law"** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

**"consent"** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**"Credit Event Upon Merger"** has the meaning specified in Section 5(b).

**"Credit Support Document"** means any agreement or instrument that is specified as such in this Agreement.

**"Credit Support Provider"** has the meaning specified in the Schedule.

**"Default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**“Defaulting Party”** has the meaning specified in Section 6(a).

**“Early Termination Date”** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**“Event of Default”** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**“Illegality”** has the meaning specified in Section 5(b).

**“Indemnifiable Tax”** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**“law”** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and **“lawful”** and **“unlawful”** will be construed accordingly.

**“Local Business Day”** means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

**“Loss”** means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party’s legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

**“Market Quotation”** means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the “Replacement Transaction”) that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have

been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

**“Non-default Rate”** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**“Non-defaulting Party”** has the meaning specified in Section 6(a).

**“Office”** means a branch or office of a party, which may be such party's head or home office.

**“Potential Event of Default”** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**“Reference Market-makers”** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) 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 and (b) to the extent practicable, from among such dealers having an office in the same city.

**“Relevant Jurisdiction”** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**“Scheduled Payment Date”** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**“Set-off”** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**“Settlement Amount”** means, with respect to a party and any Early Termination Date, the sum of: ---

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**“Specified Entity”** has the meanings specified in the Schedule.

**"Specified Indebtedness"** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**"Specified Transaction"** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**"Stamp Tax"** means any stamp, registration, documentation or similar tax.

**"Tax"** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**"Tax Event"** has the meaning specified in Section 5(b).

**"Tax Event Upon Merger"** has the meaning specified in Section 5(b).

**"Terminated Transactions"** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

**"Termination Currency"** has the meaning specified in the Schedule.

**"Termination Currency Equivalent"** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

**"Termination Event"** means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**"Termination Rate"** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

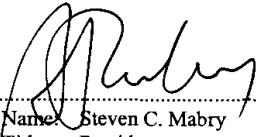
**"Unpaid Amounts"** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market


value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

C.S.  
DTE ENERGY TRADING, INC. 

LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY **SOP**

By:   
Name: Steven C. Mabry  
Title: President  
Date: 10-24-02

By:   
Name:  
Title: MARTYN GALLUS  
Date: SR. VICE PRESIDENT  
LOUISVILLE GAS & ELECTRIC COMPANY  
KENTUCKY UTILITIES  
10/31/05

**SCHEDULE  
to the ISDA Master Agreement  
(1992 Multi-Currency- Cross Border)**

**dated as of  
October 1, 2005  
Between**

**DTE Energy Trading, Inc.  
a Michigan corporation  
("Party A"),  
and**

**Louisville Gas and Electric Company, a Kentucky corporation /  
Kentucky Utilities Company, a Kentucky and Virginia corporation  
("Party B"),**

**Part 1  
Termination Provisions**

- (a) **"Specified Entity"** means in relation to Party A for the purpose of:

Section 5(a)(v)	(Default under Specified Transaction):	Not Applicable
Section 5(a)(vi)	(Cross Default):	Not Applicable
Section 5(a)(vii)	(Bankruptcy):	Not Applicable
Section 5(b)(iv)	(Credit Event Upon Merger):	Not Applicable

and in relation to Party B for the purpose of:

Section 5(a)(v)	(Default under Specified Transaction):	Not Applicable
Section 5(a)(vi)	(Cross Default):	Not Applicable
Section 5(a)(vii)	(Bankruptcy):	Not Applicable
Section 5(b)(iv)	(Credit Event Upon Merger):	Not Applicable

- (b) **"Specified Transaction"** has the meaning specified in Section 14 of this Agreement, except that such term is amended by adding on the eighth line after currency option the words “, agreement for the purchase, sale or transfer of any Commodity or any other commodity trading transaction, in each case provided that such purchase, sale, or transfer is transacted under this Agreement.” For this purpose, the term “Commodity” means any tangible or intangible commodity of any type or description (including, without limitation, electric power, electric power capacity, emission allowances, petroleum, crude oil, coal, natural gas, and byproducts thereof)..
- (c) The **"Cross Default"** provisions of Section 5(a)(vi), as amended, will apply to Party A and to Party B, in each case.
- (i) Section 5(a)(vi) is hereby amended by (i) deleting in the seventh line thereof the words “, or becoming capable at such time of being declared,” and (ii) adding the following



before the “;” at the end of the paragraph “, provided, however, that notwithstanding the foregoing, an Event of Default shall not occur under either (1) or (2) above if the default, Event of Default or other similar condition or event referred to in (1) or the failure to pay referred to in (2) is a failure to pay caused by an error or omission of an administrative or operational nature and funds were available to such party to enable it to make the relevant payment when due, provided that such error or omission is remedied within 5 Local Business Days of the non-paying party’s receipt of a notice, in writing, from the other party, specifying any such non-payment.”

**"Specified Indebtedness"** means any obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) in respect of borrowed money, but shall exclude (a) any obligation owed to trade creditors in respect of the purchase of goods in the ordinary course of business and (b) any obligation, liability for payment of which is being contested in good faith by the obligated party, provided that the obligated party demonstrates its clear ability to pay such amount within two (2) Local Business Days following any request from the other party and that such demonstration is satisfactory to the other party in its reasonable opinion. .”

**"Threshold Amount"** means with respect to Party A or Party A’s Credit Support Provider, \$50,000,000; and with respect to Louisville Gas and Electric Company, \$25,000,000 and with respect to Kentucky Utilities Company, \$25,000,000; provided, that such Threshold Amount shall apply individually and not collectively with respect to each entity set forth above notwithstanding anything to the contrary set forth in Section 5(a)(vi) of the Agreement.

- (d) Section 5(a)(viii) is hereby amended by deleting the introductory paragraph in its entirety and replacing it with the following:

"The party, or any Credit Support Provider as specified hereunder of such party, consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganizes or incorporates, into or as, another entity and at the time of such consolidation, amalgamation, merger, transfer, reorganization or incorporation:-"

Section 5(a)(viii) is hereby further amended in the first line of subparagraph (1) thereof and in the second line of subparagraph (2) thereof by replacing the word "or" with a comma (",") and after the word "transferee" adding the words ", reorganized or incorporated,".

- (e) The **"Credit Event Upon Merger"** provision of Section 5(b)(iv) will apply both to Party A and to Party B; *provided, however*, that “materially weaker” means (i) the Credit Rating of the resulting, surviving or transferee entity is less than BBB- by Standard & Poor’s, a division of The McGraw-Hill Companies, Inc. (“S&P”) or Baa3 by Moody’s Investors Service, Inc. (“Moody’s”), or (ii) in the event the resulting, surviving or transferee entity is not rated by at least one of the foregoing rating agencies, the Internal Policies (as defined below) in effect at the time of the party which is not the Affected Party, would lead such non-Affected Party, solely as a result of a change in the nature, character, identity or condition of the Affected Party from its state (as a party to the Agreement) prior to such consolidation, amalgamation, merger or transfer, to decline to make an extension of credit to, or enter into a Transaction with, the resulting, surviving or transferee entity. “Internal Policies” shall mean a party’s (1) internal credit limits applicable to individual entities, (2) other limits on doing business with entities domiciled in certain jurisdictions or engaging in certain activities, or (3) internal restrictions on doing business with entities with

whom such party has had prior adverse business relations.

“Credit Rating” means, with respect to an entity, the rating then assigned to such entity’s senior long-term unsecured debt unsupported by third party credit enhancement or if such entity does not have a rating for its senior long-term unsecured debt then the rating then assigned to such entity as an issuer credit rating (corporate credit rating) by S&P or issuer rating by Moody’s.

- (f) The "**Automatic Early Termination**" provision of Section 6(a) will not apply to Party A and will not apply to Party B.
- (g) **Payments on Early Termination.** For the purpose of Section 6(e) of this Agreement:
  - (i) Market Quotation will apply.
  - (ii) The Second Method will apply.
- (h) "**Termination Currency**" means United States Dollars (USD\$). "**Contractual Currency**" means United States Dollars (USD\$) unless otherwise specified in a Confirmation.
- (i) **Additional Termination Event.** The following will constitute an additional termination event for purposes of Section 5(b):

“(ix) **“Material Adverse Change”.** If at any time there shall occur a Material Adverse Change in respect of a party (“Affected Party”), then the other party (“Demanding Party”) may require the Affected Party to provide Adequate Assurance in an amount determined by the Demanding Party in a commercially reasonable manner. The Affected Party shall be required to provide such Adequate Assurance by the end of the second Business Day following receipt of notice. If the Affected Party fails to provide such Adequate Assurance as required hereunder then a Termination Event may be declared by the Demanding Party. A “Material Adverse Change” means: (i) a party or the Credit Support Provider (if any) of a party, as applicable, shall have a Credit Rating that is rated either by S&P below BBB-, or its equivalent, or by Moody’s below Baa3 or its equivalent, or (ii) if at any time a party ceases to be rated by either S&P nor Moody’s. “Adequate Assurance” shall mean security in the form of cash or standby irrevocable letter of credit, in an amount (which may be up to the amount equal to the Settlement Amount that would be owed) and term reasonably specified by the Demanding Party.

## **Part 2**

### **Tax Representations**

- (a) **Payer Representation.** For the purpose of Section 3(e) of this Agreement each of Party A and Party B make the following representations:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction to withholding for or on account of any Tax from any payment (other than interest under Sections 2(e), 6(d)(ii), or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on:

- (i) the accuracy of any representation made by the other party pursuant to Section 3(f) of this Agreement;

- (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement; and
- (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, provided that it shall not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(b) **Payee Representations.** For the purpose of Section 3(f) of this Agreement, Party A and Party B make the following representations specified below:

The following representation will apply in relation to Party A:

Party A is a corporation created or organized under the laws of the State of Michigan. Party A is a U.S. person within the meaning of Section 7701 of the Internal Revenue Code and its U.S. taxpayer identification number is 38-3323-526.

The following representation will apply in relation to Party B:

Louisville Gas and Electric Company ("LGE") is a corporation created or organized under the laws of the Commonwealth of Kentucky and Kentucky Utilities ("KU") is a corporation created or organized under the laws of the Commonwealths of Kentucky and Virginia. Party B is a U.S. person within the meaning of Section 7701 of the Internal Revenue Code and its U.S. taxpayer identification number for LGE is 61-264150 and for KU is 61-0247570.

**Part 3  
Agreement to Deliver Documents**

For the purpose of Sections 4(a)(i) and (ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

(a) Tax forms, documents or certificates to be delivered are: As soon as practicable after a demand by the other party, Party A and Party B each agree to complete (accurately and in a manner reasonably satisfactory to the other), execute and deliver such form or forms as are deemed necessary to permit a party to make payments free and clear of, or at a reduced rate of, any deduction or withholding for or on account of any present or future Tax.

(b) Other documents to be delivered are:

<b>Party Required to Deliver Document</b>	<b>Form/Document/Certificate</b>	<b>Date by Which to be Delivered</b>	<b>Covered by Section 3(d) Representation</b>
Party A and Party B	Certified copies of resolutions of authorized body authorizing execution, delivery, and performance of this Agreement	Execution of Agreement	Yes

Party A and Party B	Annual Report of the Party or its Credit Support Provider, if any, containing consolidated financial statements for the relevant year prepared in accordance with generally accepted accounting principles and certified by independent certified public accountants	If requested, and as soon as available and in any event within 75 days after the end of each fiscal year of the delivering party, if such statements are not available on "EDGAR" or such party's internet home page	Yes
Party A	Guarantee of Credit Support Provider	Execution of Agreement	Yes
Party A and Party B	Evidence of authority of signatories [see sample form attached as Exhibit A]	Execution of Agreement	Yes

**Part 4**  
**Miscellaneous**

(a) **Address for Notices.** For the purpose of Section 12(a) of this Agreement

Address for notices or communications (other than with respect to payments) to Party A:

Attention: Contract Administration

Address: **DTE Energy Trading, Inc.**  
414 S. Main Street, Suite 200  
Ann Arbor, MI 48104

Facsimile No: (734) 887-2235 Telephone: (734) 887-2042

With Additional Notice of Event of Default or Termination Event to:

Attention: General Counsel

Address **DTE Energy Trading, Inc.**  
414 S. Main Street, Suite 200  
Ann Arbor, MI 48104

Facsimile No.: (734) 887-2235 Telephone (734) 887-4097

Address for notices or communications (other than with respect to payments) to Party B:

Attention: Contract Administration

Address: **Louisville Gas and Electric Company**  
220 West Main Street, 7<sup>th</sup> Floor  
Louisville, KY 40202

Facsimile No.: (502) 627-4222 Telephone: (502) 627-4251

With Additional Notice of Event of Default or Termination Event to:

Attention: General Counsel

Address **Louisville Gas and Electric Company**  
220 West Main Street  
Louisville, KY 40202

Facsimile No.: (502) 627-4622

(b) **Process Agent.** For the purpose of Section 13(c) of this Agreement:

Party A appoints as its Process Agent: None

Party B appoints as its Process Agent: None

- (c) **Accounts.** If a Confirmation does not state the account to which United States Dollar payments are to be made, they shall be made by either Automated Clearing House ("ACH") or wire transfer as follows:

Party A

Pay: JPMorgan Chase Bank  
ABA: 072000326  
For the Account of: DTE Energy Trading, Inc.  
Account: 14379-63

Party B

Pay: Bank of America  
ABA: 111-0000-12  
For the Account of: Louisville Gas and Electric Company  
Account: 3752099133

- (d) **Offices.** The provisions of Section 10(a) of this Agreement will apply to this Agreement.
- (e) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:
- Party A is not a Multibranch Party.
- Party B is not a Multibranch Party.
- (f) **Credit Support Document.** Details of any Credit Support Document:
- (i) With respect to Party A and Party B, the Credit Support Annex, attached hereto as Annex A, which constitutes a Credit Support Document, is incorporated by reference in, and made part of, the Agreement and each Confirmation (unless provided otherwise in a Confirmation) as if set forth in full in the Agreement or such Confirmation.
- (ii) With respect to Party A, a Guaranty, in the form acceptable to Party B, executed by Party A's Credit Support Provider in favor of Party B.
- (g) **Credit Support Provider.**
- Credit Support Provider means in relation to Party A: DTE Energy Company.  
Credit Support Provider means in relation to Party B: Not Applicable.
- (h) **GOVERNING LAW. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICT OF LAWS. THE PARTIES AGREE THAT THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT IN ANY WAY APPLY TO, OR GOVERN, THIS AGREEMENT OR ANY TRANSACTION.**
- (i) **Netting of Payments.** The limitation set forth in Section 2(c)(ii) will not apply to Transactions



thus allowing the netting of Transactions. For avoidance of doubt, the parties hereby acknowledge and agree that the provisions of Section 2(c) shall not apply to any transaction or agreement not covered by this Agreement.

- (j) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement, except that with respect to Party A, The Detroit Edison Company and Michigan Consolidated Gas Company are hereby excluded for all purposes other than Confidentiality in Section 5(i) hereof. For the purposes of Section 3(c), with respect to Party A, the term "Affiliate" applies only to DTE Energy Company, Party A's Credit Support Provider and Party B will be deemed to have no Affiliates.

## **Part 5 Other Provisions**

- (a) **Confirmations and Procedures for Entering into Transactions.** No more than two (2) Local Business Days following the date on which the parties reach agreement on the terms of a Transaction as contemplated by Section 9(e)(i), Party A will send to Party B a Confirmation. Party B will promptly thereafter confirm the accuracy of (in the manner required by Section 9(e)(ii)), or request the correction of, such Confirmation (in the latter case, indicating how it believes the terms of such Confirmation should be correctly stated and such other terms which should be added to or deleted from such Confirmation to make it correct). If Party B has not accepted or disputed the Confirmation in the manner set forth above within two (2) Local Business Days after it was sent to Party B, the Confirmation shall be deemed binding as sent absent manifest error. If Party A fails to send a Confirmation within two (2) Local Business Days following the date on which the parties reach agreement on the terms of a Transaction, then Party A will promptly thereafter confirm the accuracy of (in the manner required by Section 9(e)(ii)), or request the correction of, any such Confirmation sent by Party B (in the latter case, indicating how it believed terms of such Confirmation should be correctly stated and such other terms with should be added or deleted from such Confirmation to make it correct). If Party A has not accepted or disputed such Confirmation in the manner set forth above within two (2) Local Business Days after it was sent by Party B, the Confirmation shall be deemed binding as sent absent manifest error. If any dispute shall arise as to whether an error exists in a Confirmation, the parties shall in good faith make reasonable efforts to resolve the dispute. When a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price, quantity), which modify or supplement the general terms and conditions of this Agreement (including without limitation Events of Default or Termination Events, or calculation of damages, settlement, netting, set-off or termination payments), any material changes to such terms shall not be deemed accepted as set forth above unless made in a writing that is signed by duly authorized representatives of both parties.
- (b) **Absence of Litigation.** Section 3(c) is hereby amended by (i) adding in the second line thereof after the word "governmental" the words "or regulatory" and (ii) adding the words "in any material respect" immediately prior to the end of the section.
- (c) **Accuracy of Specified Information.** Section 3(d) is hereby amended by adding in the third line thereof after the word "respect" and before the period the words "or, in the case of audited or unaudited financial statements, a fair presentation of the financial condition of the relevant party in accordance with generally accepted accounting principles, consistently applied."

(d) **Section 3 Representations.** Section 3 is hereby amended by adding at the end thereof the following Subparagraphs (g), (h) and (i):

(g) **Eligible Contract Participant.** It is an "eligible contract participant" within the meaning of Commodity Futures Modernization Act of 2000.

(h) **Standardization, Creditworthiness, and Transferability.** The economic terms of the Agreement, any Credit Support Document to which it is a party, and each Transaction have been individually tailored and negotiated by it; it has received and reviewed financial information concerning the other party and has had a reasonable opportunity to ask questions of and receive answers and information from the other party concerning such other party, this Agreement, such Credit Support Document, and such Transaction; the creditworthiness of the other party was a material consideration in its entering into or determining the terms of this Agreement, such Credit Support Document, and such Transaction; and the transferability of this Agreement, such Credit Support Document, and such Transaction is restricted as provided herein and therein.

(i) **Non-Reliance.** In connection with this Agreement, any Credit Support Document to which it is a party, and each Transaction: (A) It is acting for its own account (and not as agent or in any other capacity, fiduciary or otherwise), and has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary, and not upon any view expressed by the other party; (B) It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction; (C) No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected result of the Transaction; (D) 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. It is also capable of assuming, and assumes, the risks (economic or otherwise) of that Transaction; (E) The other party is not acting as a fiduciary for or an adviser to it in respect of the Transaction; and (F) all trading decisions have been the result of arm's length negotiations between the parties.

(e) **Set-off.** Any Early Termination Amount payable to one party by the other party, in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or an Additional Termination Event in respect of which all outstanding transactions are Affected Transactions has occurred, will, at the option of the Non-defaulting Party or Non-affected Party, as the case may be ("X") (and without prior notice to the Defaulting Party or Affected Party, as the case may be ("Y")) be reduced by X's set-off against any other amounts ("Other Amounts") due and owing by X or any Affiliate of X to Y (whether or not arising under this Agreement or any other agreement between the parties) and whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or place of booking of the obligation. If any obligation has not been ascertained, X may, in good faith estimate that obligation and setoff in respect the estimate, subject to X or Y, as the case may be, accounting to the other party when the obligation is ascertained. To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(f), provided that failure to give such notice shall not affect the validity of the setoff. Nothing in this paragraph shall be deemed to create

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a charge or other security interest.

- (f) **Settlement Amount.** The definition of "**Settlement Amount**" in Section 14 is hereby amended by deleting in the third and fourth lines of Subparagraph (b) thereof the words "or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result)".
- (g) **LIMITATION OF LIABILITY. WITH RESPECT TO CLAIMS UNDER THIS AGREEMENT, NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR EXEMPLARY, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY EXCEPT TO THE EXTENT THAT THE PAYMENTS REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT ARE DEEMED TO BE SUCH DAMAGES; PROVIDED, HOWEVER, THAT NOTHING IN THIS PROVISION SHALL AFFECT THE ENFORCEABILITY OF SECTION 6(e) OF THIS AGREEMENT. IF AND TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT IS INTENDED TO BE A REASONABLE APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES AND NOT A PENALTY.**
- (h) **Confidentiality.** The contents of this Agreement and all other instruments and documents relating to this Agreement (including but not limited to any Credit Support Documents and any Confirmations), and any information made available by one party or its Credit Support Provider (if any) to the other party or its Credit Support Provider (if any) with respect to the Agreement or any Transaction hereunder is confidential and shall not be discussed with or disclosed to any third party (nor shall any public announcement or press release be made by either party, except with the prior written consent of the other party hereto), 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, or ruling; provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure, (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 other party or its Credit Support Provider (if any) if making such disclosure, or (iv) as may be furnished to any person or entity who has a need to know such information (including, without limitation, that party's Affiliates, auditors, attorneys, advisors, or financial institutions) and with which the party has a written agreement or which are otherwise required to keep the information that is disclosed in confidence. With respect to information provided with respect to a Transaction, this obligation shall survive for a period of three (3) years following the expiration or termination of such Transaction. With respect to information provided with respect to this Agreement, this obligation shall survive for a period of three (3) years following the expiration or termination of this Agreement.
- (i) **Jurisdiction.** Section 13(b) of this Agreement is hereby deleted in its entirety and replaced with the following:

With respect to any suit, action, claim or proceedings relating to this Agreement ("Proceedings"), neither party waives any objection which it may have at any time to the laying of venue of any

Proceedings brought in any court, waives any claim that such Proceedings have been brought in an inconvenient forum, nor waives the right to object, with respect to such Proceedings, that a court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any jurisdiction, nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

The above provisions shall be subject to the following:

**WAIVER OF JURY TRIAL. EACH PARTY IRREVOCABLY 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 THIS AGREEMENT, ANY TRANSACTION, OR ANY CREDIT SUPPORT DOCUMENT. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY OR ANY CREDIT SUPPORT PROVIDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND PROVIDE FOR ANY CREDIT SUPPORT DOCUMENTS, AS APPLICABLE, BY AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

- (j) **Consent to Recording.** Each party consents, to the extent allowed by law, to the monitoring or recording of its trading and marketing personnel at any time and from time to time, by the other party of its traders and/or marketers regarding any and all communications concerning Transactions entered into hereunder.

The Parties agree to amend Section 9(e) by adding thereto the following subparagraph (iii) and (iv):

- (iii) Should the parties come to an understanding regarding a particular Transaction, the Transaction may be formed and effectuated by a recorded telephone conversation between the parties occurring on any Business Day whereby a bid or offer and acceptance shall constitute the agreement of the parties to a Transaction as evidenced by a tape recording of the conversation effectuated in accordance with this subparagraph ("Transaction Tape"). The parties shall be legally bound by each Transaction from the time they agree to its terms in accordance with this subparagraph and acknowledge that each party will rely thereon in doing business related to the Transaction. The Transaction Tape is adopted by the parties as a means by which a Transaction is reduced to tangible form, and the parties to a Transaction are identified and authenticate a Transaction. Any Transaction formed and effectuated pursuant to the foregoing shall be considered "writing" or "in writing" and to have been "signed" and any Transaction Tape shall be considered to constitute an "original" document evidencing the Transaction.
- (iv) The parties agree not to contest or assert a defense to the validity or enforceability of telephonic Transactions entered into in accordance with this Schedule under laws relating to (a) whether certain agreements are to be in writing or signed by the party to be

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thereby bound or (b) the authority of any employee of the party if the employee name is stated in the Transaction Tape. The Transaction Tape, and the terms and conditions described therein, if admissible, shall be controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed correct) by both Parties. Upon full execution (or deemed correctness) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Transaction Tape, or in the event of any conflict with this Agreement.

- (k) **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction in respect of any Transaction shall, as to such Transaction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Agreement or affecting the validity or enforceability of such provision as to any other jurisdiction or Transaction unless such severance shall substantially impair the benefits of the remaining portions of this Agreement or changes the reciprocal obligations of the parties. The parties hereto shall endeavor in good faith negotiations to replace the prohibited or unenforceable provision with a valid provision, the economic effect of which comes as close as possible to that of the prohibited or unenforceable provision.
- (l) **Reference Market Makers.** The definition of "Reference Market-makers" in Section 14 of this Agreement is hereby amended by: (i) deleting "(a)" from the second line thereof, (ii) deleting in the fourth line thereof after the word "credit" the words "and (b) to the extent practicable, from among such dealers having an office in the same city" and (iii) replacing such words with the words "or to enter into transactions similar in nature to Transactions."
- (m) **Limitation of Rate.** Notwithstanding any provision to the contrary contained in this Agreement, in no event shall the Default Rate, Non-default Rate, or Termination Rate exceed the Highest Lawful Rate. For purposes hereof, "Highest Lawful Rate" shall mean, with respect to each party, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged, or received on the subject indebtedness under the law applicable to such party which is presently in effect or, to the extent allowed by law, may hereafter be in effect and which allows a higher maximum non-usurious interest rate than applicable law presently allows.
- (n) **Default Rate.** The Default Rate means a rate of interest equal to the one-month London Interbank Interest Rate (LIBOR) determined daily as provided for under the heading "Money Rates" in the Wall Street Journal *plus [three] percent (3%)*. Interest at the Default Rate shall accrue and compound daily based on a 360-day year.
- (o) **Party B Liability.** Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") shall be severally but not jointly liable for liabilities and obligations under this Agreement. Particularly, each of LG&E and KU shall be liable for such liabilities and obligations only to the following extents: LG&E – 50% of all liabilities and obligations under this Agreement and KU – 50% of all liabilities and obligations under this Agreement

#### **Part 6 Additional Terms for Commodity Derivative Transactions**

- (a) **ISDA Definitions.** Unless otherwise specified in a Confirmation, this Agreement, each Confirmation, and each Transaction are subject to and governed by the 2000 ISDA Definitions

("2000 Definitions") and the 1993 ISDA Commodity Derivatives Definitions and the 2000 Supplement thereto ("Commodity Definitions"), in each case published by the International Swaps and Derivatives Association, Inc. ("ISDA") as each has been or may be amended, supplemented updated, or restated. The provisions of the 2000 Definitions and the Commodity Definitions are incorporated by reference in and made part of this Agreement and each Confirmation as if set forth in full in this Agreement and each Confirmation. In the event of any inconsistency between the 2000 Definitions and the Commodity Definitions and any provisions of this Agreement, the provisions of this Agreement shall prevail. In the event of any conflict between the various sets of definitions named above, the Commodity Definitions shall apply. The definitions incorporated into a Confirmation with respect to that particular Confirmation shall prevail over the provisions of this Agreement, the 2000 Definitions and the Commodity Derivative Definitions. For purposes of this Agreement, all references in the Definitions to "Swap Transaction" shall be deemed references to any Transaction under the Agreement.

(b) **Calculation Agent.** The Calculation Agent as defined in the Commodity Definitions is Party A, unless otherwise specified in a Confirmation in relation to the relevant Transaction; provided, however, if an Event of Default has occurred and is continuing with respect to Party A, the Calculation Agent shall be Party B until such time as Party A is no longer a Defaulting Party.

(c) **Commodity Definition Amendments.** Unless otherwise specified in a Confirmation, the Commodity Definitions are amended as follows:

(i) Section 7.5(e) is hereby deleted.

(ii) "Additional Market Disruption Events" shall apply only if so specified in the relevant Confirmation.

(ii) The following "Disruption Fallbacks" specified in Section 7.5(c) of the Commodity Definitions shall apply, in the following order, except as otherwise specified in the relevant Confirmation:

(1) "Fallback Reference Price" (if the relevant parties have specified an alternate Commodity Reference Price in the Confirmation);

(2) "Postponement", with five (5) Commodity Business Days as the Maximum Days of disruption;

(3) "Negotiated Fallback" (provided that the reference in Section 7.5(c)(ii) to "fifth Business Day" shall be amended to be "twelfth Business Day"); and

(4) "Commodity-Reference Dealers" will determine and calculate the Relevant Price as set forth in Section 7.1(c)(i), with each party selecting in good faith two Reference Dealers in the relevant market.

(d) **Trading Suspension.** Clause (ii) of Section 7.4(c) of the Commodity Definitions is hereby amended by the addition of the following:

For these purposes, a suspension of trading on any Commodity Business Day shall be deemed material in the event that: (i) as of each suspension, all trading in such contract on



such day is suspended for the entire day; or (ii) (A) as a result of such suspension, all trading in such contract opens, but ceases prior to, and does not recommence from the regularly scheduled close of trading in such contract, and (B) such suspension is announced less than one (1) hour preceding its commencement.

- (e) **Trading Limitation.** Clause (viii) of Section 7.4(c) of the Commodity definitions is hereby amended by the addition of the following:

For these purposes, a limitation of trading on any Commodity Business Day shall be deemed to be material in the event the relevant Exchange establishes, or has established, limits on the range within which the price of the relevant Futures Contract may fluctuate and the closing or settlement price of such Futures Contract on such day is at the upper or lower limit of that range.

**IN WITNESS WHEREOF**, the parties have executed this SCHEDULE to the ISDA MASTER AGREEMENT by their duly authorized officers as of the date specified on the first page of this document.

*C. D.*  
DTE ENERGY TRADING, INC. 

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

Name: Steven C. Mabry

Title: President

LOUISVILLE GAS AND ELECTRIC COMPANY /  
KENTUCKY UTILITIES COMPANY *SOE*

By: 

Name: MARTYN GALLUS

SR. VICE PRESIDENT

Title: LOUISVILLE GAS & ELECTRIC COMPANY

KENTUCKY UTILITIES

**EXHIBIT A**  
**SAMPLE**  
**INCUMBENCY AND SIGNATURE CERTIFICATE**

The undersigned, the [Assistant] Secretary of \_\_\_\_\_ (the "Counterparty"), a corporation [LLC, LP, GP, etc.] organized under the laws of the State of \_\_\_\_\_, hereby certifies that:

1. The ISDA Master Agreement dated as of \_\_\_\_\_, 2004, including the Schedule, Confirmation, and other exhibits, supplements, attachments and annexes thereto and documents incorporated by reference therein (collectively the "Agreement Documentation"), between DTE Energy Trading, Inc. and the Counterparty have been duly executed and delivered for, in the name of, and on behalf of the Counterparty by the following officer, whose title and signature appear below:

<u>NAME</u>	<u>TITLE</u>	<u>SIGNATURE</u>
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2. The foregoing officer who, on behalf of the Counterparty, executed and delivered the Agreement Documentation was at the date thereof and is now duly authorized as a signatory of the Counterparty and the signature of such person appearing on the Agreement Documentation is his/her genuine signature.

**IN WITNESS WHEREOF**, the undersigned has executed this certificate the \_\_\_ day of \_\_\_\_\_, 2004.

[NAME OF COUNTERPARTY]

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** [Assistant] Secretary

(Bilateral Form)

(ISDA Agreements subject to New York Law Only)

# ISDA<sup>®</sup>

International Swaps and Derivatives Association, Inc.

## CREDIT SUPPORT ANNEX

to the Schedule to the

ISDA Master Agreement

dated as of: October 1, 2005

between  
DTE Energy Trading, Inc. and Louisville Gas and Electric  
("Party A") and Company / Kentucky Utilities  
("Party B")

This Annex supplements, forms part of, and is subject to, the above-referenced Agreement, is part of its Schedule and is a Credit Support Document under this Agreement with respect to each party.

Accordingly, the parties agree as follows:—

### Paragraph 1. Interpretation

(a) **Definitions and Inconsistency.** Capitalized terms not otherwise defined herein or elsewhere in this Agreement have the meanings specified pursuant to Paragraph 12, and all references in this Annex to Paragraphs are to Paragraphs of this Annex. In the event of any inconsistency between this Annex and the other provisions of this Schedule, this Annex will prevail, and in the event of any inconsistency between Paragraph 13 and the other provisions of this Annex, Paragraph 13 will prevail.

(b) **Secured Party and Pledgor.** All references in this Annex to the "Secured Party" will be to either party when acting in that capacity and all corresponding references to the "Pledgor" will be to the other party when acting in that capacity; *provided, however*, that if Other Posted Support is held by a party to this Annex, all references herein to that party as the Secured Party with respect to that Other Posted Support will be to that party as the beneficiary thereof and will not subject that support or that party as the beneficiary thereof to provisions of law generally relating to security interests and secured parties.

### Paragraph 2. Security Interest

Each party, as the Pledgor, hereby pledges to the other party, as the Secured Party, as security for its Obligations, and grants to the Secured Party a first priority continuing security interest in, lien on and right of Set-off against all Posted Collateral Transferred to or received by the Secured Party hereunder. Upon the Transfer by the Secured Party to the Pledgor of Posted Collateral, the security interest and lien granted hereunder on that Posted Collateral will be released immediately and, to the extent possible, without any further action by either party.

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**Paragraph 3. Credit Support Obligations**

(a) **Delivery Amount.** Subject to Paragraphs 4 and 5, upon a demand made by the Secured Party on or promptly following a Valuation Date, if the Delivery Amount for that Valuation Date equals or exceeds the Pledgor's Minimum Transfer Amount, then the Pledgor will Transfer to the Secured Party Eligible Credit Support having a Value as of the date of Transfer at least equal to the applicable Delivery Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "Delivery Amount" applicable to the Pledgor for any Valuation Date will equal the amount by which:

- (i) the Credit Support Amount exceeds
- (ii) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party.

(b) **Return Amount.** Subject to Paragraphs 4 and 5, upon a demand made by the Pledgor on or promptly following a Valuation Date, if the Return Amount for that Valuation Date equals or exceeds the Secured Party's Minimum Transfer Amount, then the Secured Party will Transfer to the Pledgor Posted Credit Support specified by the Pledgor in that demand having a Value as of the date of Transfer as close as practicable to the applicable Return Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "Return Amount" applicable to the Secured Party for any Valuation Date will equal the amount by which:

- (i) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party exceeds
- (ii) the Credit Support Amount.

"Credit Support Amount" means, unless otherwise specified in Paragraph 13, for any Valuation Date (i) the Secured Party's Exposure for that Valuation Date plus (ii) the aggregate of all Independent Amounts applicable to the Pledgor, if any, minus (iii) all Independent Amounts applicable to the Secured Party, if any, minus (iv) the Pledgor's Threshold; *provided, however*, that the Credit Support Amount will be deemed to be zero whenever the calculation of Credit Support Amount yields a number less than zero.

**Paragraph 4. Conditions Precedent, Transfer Timing, Calculations and Substitutions**

(a) **Conditions Precedent.** Each Transfer obligation of the Pledgor under Paragraphs 3 and 5 and of the Secured Party under Paragraphs 3, 4(d)(ii), 5 and 6(d) is subject to the conditions precedent that:

- (i) no Event of Default, Potential Event of Default or Specified Condition has occurred and is continuing with respect to the other party; and
- (ii) no Early Termination Date for which any unsatisfied payment obligations exist has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the other party.

(b) **Transfer Timing.** Subject to Paragraphs 4(a) and 5 and unless otherwise specified, if a demand for the Transfer of Eligible Credit Support or Posted Credit Support is made by the Notification Time, then the relevant Transfer will be made not later than the close of business on the next Local Business Day; if a demand is made after the Notification Time, then the relevant Transfer will be made not later than the close of business on the second Local Business Day thereafter.

(c) **Calculations.** All calculations of Value and Exposure for purposes of Paragraphs 3 and 6(d) will be made by the Valuation Agent as of the Valuation Time. The Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) of its calculations not later than the Notification Time on the Local Business Day following the applicable Valuation Date (or in the case of Paragraph 6(d), following the date of calculation).

(d) **Substitutions.**

(i) Unless otherwise specified in Paragraph 13, upon notice to the Secured Party specifying the items of Posted Credit Support to be exchanged, the Pledgor may, on any Local Business Day, Transfer to the Secured Party substitute Eligible Credit Support (the "Substitute Credit Support"); and

(ii) subject to Paragraph 4(a), the Secured Party will Transfer to the Pledgor the items of Posted Credit Support specified by the Pledgor in its notice not later than the Local Business Day following the date on which the Secured Party receives the Substitute Credit Support, unless otherwise specified in Paragraph 13 (the "Substitution Date"); provided that the Secured Party will only be obligated to Transfer Posted Credit Support with a Value as of the date of Transfer of that Posted Credit Support equal to the Value as of that date of the Substitute Credit Support.

**Paragraph 5. Dispute Resolution**

If a party (a "Disputing Party") disputes (I) the Valuation Agent's calculation of a Delivery Amount or a Return Amount or (II) the Value of any Transfer of Eligible Credit Support or Posted Credit Support, then (1) the Disputing Party will notify the other party and the Valuation Agent (if the Valuation Agent is not the other party) not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (2) subject to Paragraph 4(a), the appropriate party will Transfer the undisputed amount to the other party not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (3) the parties will consult with each other in an attempt to resolve the dispute and (4) if they fail to resolve the dispute by the Resolution Time, then:

(i) In the case of a dispute involving a Delivery Amount or Return Amount, unless otherwise specified in Paragraph 13, the Valuation Agent will recalculate the Exposure and the Value as of the Recalculation Date by:

(A) utilizing any calculations of Exposure for the Transactions (or Swap Transactions) that the parties have agreed are not in dispute;

(B) calculating the Exposure for the Transactions (or Swap Transactions) in dispute by seeking four actual quotations at mid-market from Reference Market-makers for purposes of calculating Market Quotation, and taking the arithmetic average of those obtained; provided that if four quotations are not available for a particular Transaction (or Swap Transaction), then fewer than four quotations may be used for that Transaction (or Swap Transaction); and if no quotations are available for a particular Transaction (or Swap Transaction), then the Valuation Agent's original calculations will be used for that Transaction (or Swap Transaction); and

(C) utilizing the procedures specified in Paragraph 13 for calculating the Value, if disputed, of Posted Credit Support.

(ii) In the case of a dispute involving the Value of any Transfer of Eligible Credit Support or Posted Credit Support, the Valuation Agent will recalculate the Value as of the date of Transfer pursuant to Paragraph 13.

Following a recalculation pursuant to this Paragraph, the Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) not later than the Notification Time on the Local Business Day following the Resolution Time. The appropriate party will, upon demand following that notice by the Valuation Agent or a resolution pursuant to (3) above and subject to Paragraphs 4(a) and 4(b), make the appropriate Transfer.

**Paragraph 6. Holding and Using Posted Collateral**

(a) **Care of Posted Collateral.** Without limiting the Secured Party's rights under Paragraph 6(c), the Secured Party will exercise reasonable care to assure the safe custody of all 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 Posted Collateral, including, without limitation, any duty to collect any Distributions, or enforce or preserve any rights pertaining thereto.

(b) **Eligibility to Hold Posted Collateral, Custodians.**

(i) **General.** Subject to the satisfaction of any conditions specified in Paragraph 13 for holding Posted Collateral, the Secured Party will be entitled to hold Posted Collateral or to appoint an agent (a "Custodian") to hold Posted Collateral for the Secured Party. Upon notice by the Secured Party to the Pledgor of the appointment of a Custodian, the Pledgor's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Posted Collateral by a Custodian will be deemed to be the holding of that Posted Collateral by the Secured Party for which the Custodian is acting.

(ii) **Failure to Satisfy Conditions.** If the Secured Party or its Custodian fails to satisfy any conditions for holding Posted Collateral, then upon a demand made by the Pledgor, the Secured Party will, not later than five Local Business Days after the demand, Transfer or cause its Custodian to Transfer all Posted Collateral held by it to a Custodian that satisfies those conditions or to the Secured Party if it satisfies those conditions.

(iii) **Liability.** 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.

(c) **Use of Posted Collateral.** Unless otherwise specified in Paragraph 13 and without limiting the rights and obligations of the parties under Paragraphs 3, 4(d)(ii), 5, 6(d) and 8, if the Secured Party is not a Defaulting Party or an Affected Party with respect to a Specified Condition and no Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then the Secured Party will, notwithstanding Section 9-207 of the New York Uniform Commercial Code, have the right to:

(i) sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business any Posted Collateral it holds, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor; and

(ii) register any Posted Collateral in the name of the Secured Party, its Custodian or a nominee for either.

For purposes of the obligation to Transfer Eligible Credit Support or Posted Credit Support pursuant to Paragraphs 3 and 5 and any rights or remedies authorized under this Agreement, the Secured Party will be deemed to continue to hold all Posted Collateral and to receive Distributions made thereon, regardless of whether the Secured Party has exercised any rights with respect to any Posted Collateral pursuant to (i) or (ii) above.

(d) **Distributions and Interest Amount.**

(i) **Distributions.** Subject to Paragraph 4(a), if the Secured Party receives or is deemed to receive Distributions on a Local Business Day, it will Transfer to the Pledgor not later than the following Local Business Day any Distributions it receives or is deemed to receive to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose).



(ii) **Interest Amount.** Unless otherwise specified in Paragraph 13 and subject to Paragraph 4(a), in lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Posted Collateral in the form of Cash (all of which may be retained by the Secured Party), the Secured Party will Transfer to the Pledgor at the times specified in Paragraph 13 the Interest Amount to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose). The Interest Amount or portion thereof not Transferred pursuant to this Paragraph will constitute Posted Collateral in the form of Cash and will be subject to the security interest granted under Paragraph 2.

#### Paragraph 7. Events of Default

For purposes of Section 5(a)(iii)(1) of this Agreement, an Event of Default will exist with respect to a party if:

- (i) that party fails (or fails to cause its Custodian) to make, when due, any Transfer of Eligible Collateral, Posted Collateral or the Interest Amount, as applicable, required to be made by it and that failure continues for two Local Business Days after notice of that failure is given to that party;
- (ii) that party fails to comply with any restriction or prohibition specified in this Annex with respect to any of the rights specified in Paragraph 6(c) and that failure continues for five Local Business Days after notice of that failure is given to that party; or
- (iii) that party fails to comply with or perform any agreement or obligation other than those specified in Paragraphs 7(i) and 7(ii) and that failure continues for 30 days after notice of that failure is given to that party.

#### Paragraph 8. Certain Rights and Remedies

(a) **Secured Party's Rights and Remedies.** If at any time (1) an Event of Default or Specified Condition with respect to the Pledgor has occurred and is continuing or (2) an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Pledgor, then, unless the Pledgor has paid in full all of its Obligations that are then due, the Secured Party may exercise one or more of the following rights and remedies:

- (i) all rights and remedies available to a secured party under applicable law with respect to Posted Collateral held by the Secured Party;
- (ii) any other rights and remedies available to the Secured Party under the terms of Other Posted Support, if any;
- (iii) the right to Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and
- (iv) the right to liquidate any Posted Collateral held by the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required under applicable law, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor (with the Secured Party having the right to purchase any or all of the Posted Collateral to be sold) and to apply the proceeds (or the Cash equivalent thereof) from the liquidation of the Posted Collateral to any amounts payable by the Pledgor with respect to any Obligations in that order as the Secured Party may elect.

Each party acknowledges and agrees that Posted Collateral in the form of securities may decline speedily in value and is of a type customarily sold on a recognized market, and, accordingly, the Pledgor is not entitled to prior notice of any sale of that Posted Collateral by the Secured Party, except any notice that is required under applicable law and cannot be waived.

(b) **Pledgor's Rights and Remedies.** If at any time an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then (except in the case of an Early Termination Date relating to less than all Transactions (or Swap Transactions) where the Secured Party has paid in full all of its obligations that are then due under Section 6(e) of this Agreement):

(i) the Pledgor may exercise all rights and remedies available to a pledgor under applicable law with respect to Posted Collateral held by the Secured Party;

(ii) the Pledgor may exercise any other rights and remedies available to the Pledgor under the terms of Other Posted Support, if any;

(iii) the Secured Party will be obligated immediately to Transfer all Posted Collateral and the Interest Amount to the Pledgor; and

(iv) to the extent that Posted Collateral or the Interest Amount is not so Transferred pursuant to (iii) above, the Pledgor may:

(A) Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and

(B) to the extent that the Pledgor does not Set-off under (iv)(A) above, withhold payment of any remaining amounts payable by the Pledgor with respect to any Obligations, up to the Value of any remaining Posted Collateral held by the Secured Party, until that Posted Collateral is Transferred to the Pledgor.

(c) **Deficiencies and Excess Proceeds.** The Secured Party will Transfer to the Pledgor any proceeds and Posted Credit Support remaining after liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b) after satisfaction in full of all amounts payable by the Pledgor with respect to any Obligations; the Pledgor in all events will remain liable for any amounts remaining unpaid after any liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b).

(d) **Final Returns.** When no amounts are or thereafter may become payable by the Pledgor with respect to any Obligations (except for any potential liability under Section 2(d) of this Agreement), the Secured Party will Transfer to the Pledgor all Posted Credit Support and the Interest Amount, if any.

#### **Paragraph 9. Representations**

Each party represents to the other party (which representations will be deemed to be repeated as of each date on which it, as the Pledgor, Transfers Eligible Collateral) that:

(i) it has the power to grant a security interest in and lien on any Eligible Collateral it Transfers as the Pledgor and has taken all necessary actions to authorize the granting of that security interest and lien;

(ii) it is the sole owner of or otherwise has the right to Transfer all Eligible Collateral it Transfers to the Secured Party hereunder, free and clear of any security interest, lien, encumbrance or other restrictions other than the security interest and lien granted under Paragraph 2;

(iii) upon the Transfer of any Eligible Collateral to the Secured Party under the terms of this Annex, the Secured Party will have a valid and perfected first priority security interest therein (assuming that any central clearing corporation or any third-party financial intermediary or other entity not within the control of the Pledgor involved in the Transfer of that Eligible Collateral gives the notices and takes the action required of it under applicable law for perfection of that interest); and

(iv) the performance by it of its obligations under this Annex 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 under Paragraph 2.

**Paragraph 10. Expenses**

- (a) **General.** Except as otherwise provided in Paragraphs 10(b) and 10(c), each party will pay its own costs and expenses in connection with performing its obligations under this Annex and neither party will be liable for any costs and expenses incurred by the other party in connection herewith.
- (b) **Posted Credit Support.** The Pledgor will promptly pay when due all taxes, assessments or charges of any nature that are imposed with respect to Posted Credit Support held by the Secured Party upon becoming aware of the same, regardless of whether any portion of that Posted Credit Support is subsequently disposed of under Paragraph 6(c), except for those taxes, assessments and charges that result from the exercise of the Secured Party's rights under Paragraph 6(c).
- (c) **Liquidation/Application of Posted Credit Support.** All reasonable costs and expenses incurred by or on behalf of the Secured Party or the Pledgor in connection with the liquidation and/or application of any Posted Credit Support under Paragraph 8 will be payable, on demand and pursuant to the Expenses Section of this Agreement, by the Defaulting Party or, if there is no Defaulting Party, equally by the parties.

**Paragraph 11. Miscellaneous**

- (a) **Default Interest.** A Secured Party that fails to make, when due, any Transfer of Posted Collateral or the Interest Amount will be obligated to pay the Pledgor (to the extent permitted under applicable law) an amount equal to interest at the Default Rate multiplied by the Value of the items of property that were required to be Transferred, from (and including) the date that Posted Collateral or Interest Amount was required to be Transferred to (but excluding) the date of Transfer of that Posted Collateral or Interest Amount. This interest will be calculated on the basis of daily compounding and the actual number of days elapsed.
- (b) **Further Assurances.** Promptly following a demand made by a party, the other party will execute, deliver, file and record any financing statement, specific assignment or other document and take any other action that may be necessary or desirable and reasonably requested by that party to create, preserve, perfect or validate any security interest or lien granted under Paragraph 2, to enable that party to exercise or enforce its rights under this Annex with respect to Posted Credit Support or an Interest Amount or to effect or document a release of a security interest on Posted Collateral or an Interest Amount.
- (c) **Further Protection.** The Pledgor will promptly give notice to the Secured Party of, and defend against, any suit, action, proceeding or lien that involves Posted Credit Support Transferred by the Pledgor or that could adversely affect the security interest and lien granted by it under Paragraph 2, unless that suit, action, proceeding or lien results from the exercise of the Secured Party's rights under Paragraph 6(c).
- (d) **Good Faith and Commercially Reasonable Manner.** Performance of all obligations under this Annex, including, but not limited to, all calculations, valuations and determinations made by either party, will be made in good faith and in a commercially reasonable manner.
- (e) **Demands and Notices.** All demands and notices made by a party under this Annex will be made as specified in the Notices Section of this Agreement, except as otherwise provided in Paragraph 13.
- (f) **Specifications of Certain Matters.** Anything referred to in this Annex as being specified in Paragraph 13 also may be specified in one or more Confirmations or other documents and this Annex will be construed accordingly.

**Paragraph 12. Definitions**

As used in this Annex:-

**"Cash"** means the lawful currency of the United States of America.

**"Credit Support Amount"** has the meaning specified in Paragraph 3.

**"Custodian"** has the meaning specified in Paragraphs 6(b)(i) and 13.

**"Delivery Amount"** has the meaning specified in Paragraph 3(a).

**"Disputing Party"** has the meaning specified in Paragraph 5.

**"Distributions"** means with respect to Posted Collateral other than Cash, all principal, interest and other payments and distributions of cash or other property with respect thereto, regardless of whether the Secured Party has disposed of that Posted Collateral under Paragraph 6(c). Distributions will not include any item of property acquired by the Secured Party upon any disposition or liquidation of Posted Collateral or, with respect to any Posted Collateral in the form of Cash, any distributions on that collateral, unless otherwise specified herein.

**"Eligible Collateral"** means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

**"Eligible Credit Support"** means Eligible Collateral and Other Eligible Support.

**"Exposure"** means for any Valuation Date or other date for which Exposure is calculated and subject to Paragraph 5 in the case of a dispute, the amount, if any, that would be payable to a party that is the Secured Party by the other party (expressed as a positive number) or by a party that is the Secured Party to the other party (expressed as a negative number) pursuant to Section 6(e)(ii)(2)(A) of this Agreement as if all Transactions (or Swap Transactions) were being terminated as of the relevant Valuation Time; provided that Market Quotation will be determined by the Valuation Agent using its estimates at mid-market of the amounts that would be paid for Replacement Transactions (as that term is defined in the definition of "Market Quotation").

**"Independent Amount"** means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

**"Interest Amount"** means, with respect to an Interest Period, the aggregate sum of the amounts of interest calculated for each day in that Interest Period on the principal amount of Posted Collateral in the form of Cash held by the Secured Party on that day, determined by the Secured Party for each such day as follows:

(x) the amount of that Cash on that day; multiplied by

(y) the Interest Rate in effect for that day; divided by

(z) 360.

**"Interest Period"** means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred (or, if no Interest Amount has yet been Transferred, the Local Business Day on which Posted Collateral in the form of Cash was Transferred to or received by the Secured Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

**"Interest Rate"** means the rate specified in Paragraph 13.

**"Local Business Day"**, unless otherwise specified in Paragraph 13, has the meaning specified in the Definitions Section of this Agreement, except that references to a payment in clause (b) thereof will be deemed to include a Transfer under this Annex.

**"Minimum Transfer Amount"** means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

**"Notification Time"** has the meaning specified in Paragraph 13.

**"Obligations"** means, with respect to a party, all present and future obligations of that party under this Agreement and any additional obligations specified for that party in Paragraph 13.

**"Other Eligible Support"** means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

**"Other Posted Support"** means all Other Eligible Support Transferred to the Secured Party that remains in effect for the benefit of that Secured Party.

**"Pledgor"** means either party, when that party (i) receives a demand for or is required to Transfer Eligible Credit Support under Paragraph 3(a) or (ii) has Transferred Eligible Credit Support under Paragraph 3(a).

**"Posted Collateral"** means all Eligible Collateral, other property, Distributions, and all proceeds thereof that have been Transferred to or received by the Secured Party under this Annex and not Transferred to the Pledgor pursuant to Paragraph 3(b), 4(d)(ii) or 6(d)(i) or released by the Secured Party under Paragraph 8. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(d)(ii) will constitute Posted Collateral in the form of Cash.

**"Posted Credit Support"** means Posted Collateral and Other Posted Support.

**"Recalculation Date"** means the Valuation Date that gives rise to the dispute under Paragraph 5; *provided, however*, that if a subsequent Valuation Date occurs under Paragraph 3 prior to the resolution of the dispute, then the "Recalculation Date" means the most recent Valuation Date under Paragraph 3.

**"Resolution Time"** has the meaning specified in Paragraph 13.

**"Return Amount"** has the meaning specified in Paragraph 3(b).

**"Secured Party"** means either party, when that party (i) makes a demand for or is entitled to receive Eligible Credit Support under Paragraph 3(a) or (ii) holds or is deemed to hold Posted Credit Support.

**"Specified Condition"** means, with respect to a party, any event specified as such for that party in Paragraph 13.

**"Substitute Credit Support"** has the meaning specified in Paragraph 4(d)(i).

**"Substitution Date"** has the meaning specified in Paragraph 4(d)(ii).

**"Threshold"** means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

**"Transfer"** means, with respect to any Eligible Credit Support, Posted Credit Support or Interest Amount, and in accordance with the instructions of the Secured Party, Pledgor or Custodian, as applicable:

- (i) in the case of Cash, payment or delivery by wire transfer into one or more bank accounts specified by the recipient;
- (ii) in the case of certificated securities that cannot be paid or delivered by book-entry, payment or delivery in appropriate physical form to the recipient or its account accompanied by any duly executed instruments of transfer, assignments in blank, transfer tax stamps and any other documents necessary to constitute a legally valid transfer to the recipient;
- (iii) in the case of securities that can be paid or delivered by book-entry, the giving of written instructions to the relevant depository institution or other entity specified by the recipient, together with a written copy thereof to the recipient, sufficient if complied with to result in a legally effective transfer of the relevant interest to the recipient; and
- (iv) in the case of Other Eligible Support or Other Posted Support, as specified in Paragraph 13.

**"Minimum Transfer Amount"** means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

**"Notification Time"** has the meaning specified in Paragraph 13.

**"Obligations"** means, with respect to a party, all present and future obligations of that party under this Agreement and any additional obligations specified for that party in Paragraph 13.

**"Other Eligible Support"** means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

**"Other Posted Support"** means all Other Eligible Support Transferred to the Secured Party that remains in effect for the benefit of that Secured Party.

**"Pledgor"** means either party, when that party (i) receives a demand for or is required to Transfer Eligible Credit Support under Paragraph 3(a) or (ii) has Transferred Eligible Credit Support under Paragraph 3(a).

**"Posted Collateral"** means all Eligible Collateral, other property, Distributions, and all proceeds thereof that have been Transferred to or received by the Secured Party under this Annex and not Transferred to the Pledgor pursuant to Paragraph 3(b), 4(d)(ii) or 6(d)(i) or released by the Secured Party under Paragraph 8. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(d)(ii) will constitute Posted Collateral in the form of Cash.

**"Posted Credit Support"** means Posted Collateral and Other Posted Support.

**"Recalculation Date"** means the Valuation Date that gives rise to the dispute under Paragraph 5; *provided, however*, that if a subsequent Valuation Date occurs under Paragraph 3 prior to the resolution of the dispute, then the "Recalculation Date" means the most recent Valuation Date under Paragraph 3.

**"Resolution Time"** has the meaning specified in Paragraph 13.

**"Return Amount"** has the meaning specified in Paragraph 3(b).

**"Secured Party"** means either party, when that party (i) makes a demand for or is entitled to receive Eligible Credit Support under Paragraph 3(a) or (ii) holds or is deemed to hold Posted Credit Support.

**"Specified Condition"** means, with respect to a party, any event specified as such for that party in Paragraph 13.

**"Substitute Credit Support"** has the meaning specified in Paragraph 4(d)(i).

**"Substitution Date"** has the meaning specified in Paragraph 4(d)(ii).

**"Threshold"** means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

**"Transfer"** means, with respect to any Eligible Credit Support, Posted Credit Support or Interest Amount, and in accordance with the instructions of the Secured Party, Pledgor or Custodian, as applicable:

(i) in the case of Cash, payment or delivery by wire transfer into one or more bank accounts specified by the recipient;

(ii) in the case of certificated securities that cannot be paid or delivered by book-entry, payment or delivery in appropriate physical form to the recipient or its account accompanied by any duly executed instruments of transfer, assignments in blank, transfer tax stamps and any other documents necessary to constitute a legally valid transfer to the recipient;

(iii) in the case of securities that can be paid or delivered by book-entry, the giving of written instructions to the relevant depository institution or other entity specified by the recipient, together with a written copy thereof to the recipient, sufficient if complied with to result in a legally effective transfer of the relevant interest to the recipient; and

(iv) in the case of Other Eligible Support or Other Posted Support, as specified in Paragraph 13.

**"Valuation Agent"** has the meaning specified in Paragraph 13.

**"Valuation Date"** means each date specified in or otherwise determined pursuant to Paragraph 13.

**"Valuation Percentage"** means, for any item of Eligible Collateral, the percentage specified in Paragraph 13.

**"Valuation Time"** has the meaning specified in Paragraph 13.

**"Value"** means for any Valuation Date or other date for which Value is calculated and subject to Paragraph 5 in the case of a dispute, with respect to:

- (i) Eligible Collateral or Posted Collateral that is:
  - (A) Cash, the amount thereof; and
  - (B) a security, the bid price obtained by the Valuation Agent multiplied by the applicable Valuation Percentage, if any;
- (ii) Posted Collateral that consists of items that are not specified as Eligible Collateral, zero; and
- (iii) Other Eligible Support and Other Posted Support, as specified in Paragraph 13.



**PARAGRAPH 13**  
**to the**  
**ISDA CREDIT SUPPORT ANNEX**  
**dated as of October 1, 2005**  
**between**  
**DTE Energy Trading, Inc. ("Party A")**  
**and**  
**Louisville Gas and Electric Company /**  
**Kentucky Utilities Company**  
**("Party B")**

**Paragraph 13. Elections and Variables**

- (a) **Security Interest for "Obligations".** The term "Obligations" as used in this Annex includes the following additional obligations:

With respect to Party A: <None>

With respect to Party B: <None>

- (b) **Credit Support Obligations.**

- (i) **Delivery Amount, Return Amount and Credit Support Amount.**

(A) "Delivery Amount" has the meaning specified in Paragraph 3(a).

(B) "Return Amount" has the meaning specified in Paragraph 3(b).

(C) "Credit Support Amount" has the meaning specified in Paragraph 3.

- (ii) **Eligible Collateral.** The following items will qualify as "Eligible Collateral" for the party specified:

		Party A	Party B	Valuation Percentage
(A)	Cash	[ X ]	[ X ]	100%

- (iii) **Other Eligible Support.** The following items will qualify as "Other Eligible Support" for the party specified:

		Party A	Party B	Valuation Percentage
(A)	Letters of Credit	[ X ]	[ X ]	[ * ]

\* 100% of the Value of the Other Eligible Support unless a default has occurred under the Letter of Credit in which case the Valuation Percentage shall be 0.

(iv) **Thresholds.**

(A) **“Independent Amount”** means with respect to A: <None>

**“Independent Amount”** means with respect to B: <None>

(B) **“Threshold”** means with respect to Party A: The lesser of: (1) the then current amount of the Guaranty provided by Party A’s Credit Support Provider in favor of Party B with respect to this Agreement, provided, however, that Party A’s Credit Support Provider shall be entitled to increase the amount of the Guaranty up to an amount not to exceed the amount specified below opposite the Credit Rating of Party A’s Credit Support Provider at that time and (2) the amount specified below opposite the Credit Rating of Party A’s Credit Support Provider at that time; provided, however, if an Event of Default, Credit Event Upon Merger or Additional Termination Event (where all Transactions are Affected Transactions) has occurred and is continuing with respect to Party A, the Threshold with respect to Party A shall be zero:

<b>S&amp;P Credit Rating</b>	<b>Moody’s Credit Rating</b>	<b>Margin Threshold</b>
AAA through AA-	Aaa through Aa3	\$15,000,000
A+ through A-	A1 through A3	\$12,000,000
BBB+ through BBB-	Baa1 through Baa3	\$ 8,000,000
BB+, lower or unrated	Ba1, lower or unrated	\$ 0

(B) **“Threshold”** means with respect to Party B: The amount specified below opposite the Credit Rating of Party B at that time; provided, however, if an Event of Default, Credit Event Upon Merger or Additional Termination Event (where all Transactions are Affected Transactions) has occurred and is continuing with respect to Party B, the Threshold with respect to Party B shall be zero:

<b>S&amp;P Credit Rating</b>	<b>Moody’s Credit Rating</b>	<b>Margin Threshold</b>
AAA through AA-	Aaa through Aa3	\$15,000,000
A+ through A-	A1 through A3	\$12,000,000
BBB+ through BBB-	Baa1 through Baa3	\$ 8,000,000
BB+, lower or unrated	Ba1, lower or unrated	\$ 0

(C) **“Minimum Transfer Amount”** means with respect to Party A: \$10,000, provided, however, that if an Event of Default has occurred and is continuing with respect to Party A, the Minimum Transfer Amount shall be zero 0.

**“Minimum Transfer Amount”** means with respect to Party B: \$10,000, provided, however, that if an Event of Default has occurred and is continuing with respect to Party A, the Minimum Transfer Amount shall be zero 0.

(D) **“Rounding.”** The Delivery Amount and the Return Amount will be rounded up and down to the nearest integral multiple of \$100,000, respectively.

(c) **Valuation and Timing.**

- (i) **“Valuation Agent”** means, for purposes of Paragraphs 3 and 5, the party making the demand under Paragraph 3, and, for purposes of Paragraph 6(d), the Secured Party receiving or deemed to receive the Distributions or the Interest Amount, as applicable; provided, however, that in all cases, if an Event of Default has occurred and is continuing with respect to the party designated as the Valuation Agent, then, in such case, and for so long as the Event of Default continues, the other party will be the Valuation Agent.
- (ii) **“Valuation Date”** means at the request of either party, any Local Business Day which, if treated as a Valuation Date, would result in a Delivery Amount or Return Amount.
- (iii) **“Valuation Time”** means the close of business on the Local Business Day before the Valuation Date or date of calculation; *provided* that the calculation of Value and Exposure will be made as of approximately the same time on the same date.
- (iv) **“Notification Time”** means 1:00 p.m., New York time, on a Local Business Day.

(d) **Conditions Precedent and Secured Party’s Rights and Remedies.** The following Termination Events(s) will be a **“Specified Condition”** for the party specified (that party being the Affected Party if the Termination Event occurs with respect to that party):

	<u>Party A</u>	<u>Party B</u>
Illegality	[ x ]	[ x ]
Tax Event	[ ]	[ ]
Tax Event Upon Merger	[ ]	[ ]
Credit Event Upon Merger	[ x ]	[ x ]
Additional Termination Event(s):		
Material Adverse Change	[ x ]	[ x ]

- (i) **“Conditions Precedent”** Paragraph 4(a)(i) shall be amended to delete the phrase “, Potential Event of Default”.

(e) **Substitution.**

- (i) **“Substitution Date”** has the meaning specified in Paragraph 4(d)(ii).
- (ii) **Consent.** If specified here as applicable, then the Pledgor must obtain the Secured Party’s consent for any substitution pursuant to paragraph 4(d): Not applicable.

(f) **Dispute Resolution.**

- (i) **“Resolution Time”** means 1:00 p.m., New York time, on the Local Business day following the date on which the notice is given that gives rise to a dispute under Paragraph 5.
- (ii) **Value.** For the purposes of Paragraphs 5(i)(C) and 5(ii), the Value of Posted Credit Support will be calculated as follows:

- (A) **Cash and Letters of Credit.** For purposes of Paragraph 5, (i) for cash collateral, the face value of cash collateral and (ii) for Letters of Credit, an amount equal to the value as calculated in Paragraph 13(j)(i).
- (iii) **Alternative.** The provisions of Paragraph 5 will apply, except to the following extent: pending the resolution of a dispute, Transfer of the undisputed Value of Eligible Credit Support or Posted Credit Support involved in the relevant demand will be due as provided in Paragraph 5 if the demand is made at or before the Notification Time but will be due on the second Local Business Day after the demand if the demand is made after the Notification Time.
- (iv) **Dispute Resolution.** Paragraph 5(i)(B) of the Annex is amended by replacing the words: “then the Valuation Agent’s original calculations will be used for that Transaction (or Swap Transaction); and;” with the words: “then the parties will appoint a mutually acceptable leading dealer in the relevant market to make such determination as substitute valuation agent and such determination will be used for that Transaction (or Swap Transaction). The cost of the substitute valuation agent shall be borne equally by the parties; provided that if the parties are unable to agree on a mutually acceptable leading dealer in the relevant market, then each party will appoint a leading dealer in the relevant market to make such determination, each a substitute valuation agent, and the arithmetic average of the two obtained determinations will be used for that Transaction (or Swap Transaction), with each party bearing the cost of its own appointed substitute valuation agent; and”.
- (g) **Holding and Using Posted Collateral.**
- (i) **Eligibility to Hold Posted Collateral; Custodians.** Party A will be entitled to hold Posted Collateral pursuant to Paragraph 6(b); *provided* that Party A is not a Defaulting Party and the Credit Ratings for Party A’s Credit Support Provider are at least BBB- from S&P and Baa3 from Moody’s. Posted Collateral may be held in the following jurisdictions: United States.
- Initially, the **Custodian** for Party A is: <None>
- Party B will be entitled to hold Posted Collateral pursuant to Paragraph 6(b); *provided* that Party B is not a Defaulting Party and the Credit Ratings for Party B are at least BBB- from S&P and Baa3 from Moody’s. Posted Collateral may be held only in the following jurisdictions: United States.
- Initially the **Custodian** for Party B is: <None>
- (ii) **Use of Posted Collateral.** The provisions of Paragraph 6(c) will apply to Party A and will apply to Party B.
- (h) **Distributions and Interest Amount.**
- (i) **Interest Rate.** Unless otherwise specified in this Agreement or the Schedule, the “**Interest Rate**” for any day (i) with respect to Cash held by a party will be, (a) the “Federal Funds Effective” rate in effect for such day as published by The Wall Street Journal (or any successor publication) under “Money Rates” for such day (or if such day is not a Business Day, then the preceding Business Day), or if such rate is not published

then (b) the Federal Funds Effective Rate, which is 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, and (ii) with respect to Cash held by a Custodian of a party, "Interest Rate" shall not apply but rather the provisions of Paragraph 13(h)(iii) shall apply.

- (ii) **Transfer of Interest Amount.** The Transfer of the Interest Amount will be made by the third Local Business Day following the end of each calendar month and on any Local Business Day that Posted Collateral in the form of Cash is transferred to the Pledgor pursuant to Paragraph 3(b).
  - (iii) **Alternative to Interest Rate.** The provision of Paragraph 6(d)(ii) will apply; provided, however, that with respect to Cash held by the Custodian of a party, the "Interest Amount" means the earnings, from time to time, of the investment and reinvestment of Eligible Collateral constituting Cash by the Custodian of the party in an interest-bearing account selected by the Secured Party and consented to by the Pledgor, such consent not to be unreasonably withheld, conditioned, or delayed.
- (i) **Additional Representation(s).** Not applicable
  - (j) **Other Eligible Support and Other Posted Support.**
    - (i) **"Value"** with respect to any Letter of Credit, the amount then available to be drawn by the Secured Party under the Letter of Credit; provided, that the Value of the Letter of Credit shall be zero from and after the occurrence of a Letter of Credit Devaluation Event as defined below or an Event of Default as specified under Paragraph 7(iv) or (v).
    - (ii) **"Transfer"** with respect to Letters of Credit, (a) for purposes of Paragraph 3(a), (i) delivery of the duly executed Letter of Credit to the Secured Party, at the address specified in the Notice Section of this Agreement, or (ii) delivery to the Secured Party of an amendment to such Letter of Credit, in form and substance satisfactory to the Secured Party, extending the term or increasing the amount available to the Secured Party thereunder, but only if the issuer of the Letter of Credit is a Qualified Institution at the time of the amendment, and (b) for purposes of Paragraph 3(b), return of the Letter of Credit by the Secured Party to the Pledgor, at the address specified in the Notice Section of this Agreement, or agreement by the Secured Party to an amendment of the Letter of Credit, in form and substance satisfactory to the Secured Party, reducing the amount available to the Secured Party thereunder. If a Transfer is to be effected by a reduction in the amount of an Letter of Credit previously issued for the benefit of the Secured Party, the Secured Party shall not unreasonably withhold, condition or delay its consent to commensurate reduction in the amount of such Letter of Credit and shall take such action as is reasonably necessary to effectuate such reduction.
    - (iii) **Letter of Credit Provisions.** Other Eligible Support and Other Posted Support provided in the form of a Letter of Credit (as defined in Paragraph 13(k) hereof) shall be subject to the following provisions:
      - (1) 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) that is equal to all amounts that are due and owing from the Pledgor 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. The Pledgor shall remain liable for any amounts due and owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.

(2) A Letter of Credit shall also provide that a drawing may be made of the entire, undrawn portion of such Letter of Credit if the Pledgor shall fail to renew or cause the renewal of each outstanding Letter of Credit at least twenty (20) Business Days prior to the expiration of the relevant Letter of Credit. A drawing may be made on the Letter of Credit in this instance upon submission to the bank issuing such Letter of Credit of one or more certificates that such failure has occurred in accordance with the specific requirements of the Letter of Credit. The cash proceeds from any such draw on a Letter of Credit shall be held by the Secured Party as Eligible Collateral under this Annex. Notwithstanding the foregoing, the Secured Party shall not be entitled to make such a drawing unless the Delivery Amount applicable to the Pledgor at such time equals or exceeds the Pledgor's Minimum Transfer Amount.

(3) As one method of providing Eligible Credit Support, the Pledgor may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(4) If a party's Credit Support Provider shall furnish a Letter of Credit hereunder, the amount otherwise required under such Letter of Credit may at the option of such Credit Support Provider be reduced by the amount of any Letter of Credit established by such party (but only for such time as such party's Letter of Credit shall be in effect). In the event a party shall be required to furnish a Letter of Credit hereunder, the amount otherwise required under such Letter of Credit may at the option of such party be reduced by the amount of any Letter of Credit established by such party's Credit Support Provider (but only for such time as such Credit Support Provider's Letter of Credit shall be in effect).

(5) Upon the occurrence of a Letter of Credit Devaluation Event, the Pledgor agrees to deliver a substitute Letter of Credit or other Eligible Credit Support to the Secured Party in an amount at least equal to that of the Letter of Credit to be replaced on or before the first (1st) Business Day after written demand by the Secured Party (or the fifth (5<sup>th</sup>) Business Day if only clause (i) under the definition of Letter of Credit Devaluation Event applies).

(iv) ***Certain Rights and Remedies.***

(A) ***"Secured Party's Rights and Remedies"*** For purposes of Paragraph 8(a)(ii), the Secured Party may draw on any outstanding Letter of Credit in an amount equal to any amounts payable by the Pledgor with respect to any Obligations.

(B) ***"Pledgor's Rights and Remedies"*** For purposes of Paragraph 8(b)(ii), (i) the Secured Party will be obligated immediately to Transfer any Letter of Credit to the Pledgor and (ii) the Pledgor may do any one or more of the following: (x) to

the extent that the Letter of Credit is not Transferred to the Pledgor as required pursuant to (a) above, Set-off any amounts payable by the Pledgor with respect to any Obligations against any such Letter of Credit held by the Secured Party and to the extent its rights to Set-off are not exercised, withhold payment of any remaining amounts payable by the Pledgor with respect to any Obligations, up to the Value of any remaining Posted Collateral and the Value of any Letter of Credit held by the Secured Party, until any such Posted Collateral and such Letter of Credit is Transferred to the Pledgor, and (y) exercise rights and remedies available to the Pledgor under the terms of the Letter of Credit.

(k) ***Demands and Notices.***

All demands, specifications and notices under this Annex will be made pursuant to the Notices Section of this Agreement, with additional notice specified here:

Party A	None		
Party B	220 West Main, 7 <sup>th</sup> Floor Louisville, KY 40202 Attn: Credit Manager	Telephone Facsimile	<b>502-627-4253</b> <b>502-627-3950</b>
	With Additional copy of demands to: Attn: General Counsel	Facsimile	<b>502-627-4622</b>

(l) ***Addresses for Transfers.*** Same as (k) above.

(m) ***Other Provisions.***

(i) **Events of Default.** Paragraph 7(i) is amended by deleting the words “Eligible Collateral” and replacing with the words “Eligible Credit Support.” The word, “or” at the end of subsection (ii) of Paragraph 7 shall be deleted. The period at the end of subsection (iii) shall be deleted and replaced by the following “; or” and the following subsections (iv) and (v) shall be added at the end of Paragraph 7:

“(iv) the issuer of a Letter of Credit provided by such party fails to honor a drawing under the Letter of Credit in accordance with its terms; or

“(v) the issuer of the Letter of Credit provided by such party fails to comply with or perform its obligations under such Letter of Credit and such failure continues after the lapse of any applicable grace period;

“provided, however, that (iv) and (v) shall not be Events of Default with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to the party providing such Letter of Credit in accordance with the terms of this Annex or other Eligible Credit Support meeting the requirements of this Agreement is provided to the other party.”

(ii) Notwithstanding Paragraph 10, in all cases, the costs and expenses incurred by the Pledgor in establishing, renewing, substituting, canceling, increasing, and reducing the



amount of (as the case may be) one or more Letters of Credit shall be borne by the Pledgor. The Pledgor shall be responsible for, and shall reimburse the Secured Party for, all transfer taxes and other costs involved in the transfer of Eligible Collateral from the Pledgor to the Secured Party or any agent for safekeeping of the Secured Party. If the Secured Party shall incur any loss by reason of the Pledgor's failure to pay any such taxes and costs, the Secured Party has the right, in accordance with Paragraph 8(a) hereof, to draw under any Letter of Credit or liquidate any Posted Collateral and apply the proceeds thereof to satisfy its claim against the Pledgor for such taxes and costs.

- (iii) **Certain Rights and Remedies.** Paragraph 8(b) is hereby amended by deleting subsections (iii) and (iv) thereunder and replacing them with the following:

“and (iii) the Secured Party will be obligated immediately to reduce the amount of the Posted Collateral in its possession to an amount equal to the Exposure of the Secured Party (notwithstanding the Rounding provisions hereof), whether by Transfer of Cash or a reduction in the amount of a Letter of Credit or otherwise.

On the Early Termination Date, the Pledgor shall be obligated to pay the amounts due as determined pursuant to Section 6(e) of the Agreement, which amounts may be deemed paid to the Secured Party by liquidation of the Posted Collateral held by the Secured Party.”

- (iv) This Credit Support Annex is a Security Agreement under the provisions of the Uniform Commercial Code of the State of New York.

(n) ***Additional Definitions.***

“***Credit Rating***” shall mean with respect to Party A, the lowest of the respective ratings then assigned to Party A's Credit Support Provider's unsecured, long-term, senior indebtedness not supported by third party credit enhancement by S&P or by Moody's or if Party A's Credit Support Provider does not have a rating for its senior long-term unsecured debt then the rating then assigned to such entity as an issuer credit rating (corporate credit rating) by S&P or issuer rating by Moody's.

“***Credit Rating***” shall mean with respect to Party B, the lowest of the respective ratings then assigned to either Louisville Gas and Electric Company or Kentucky Utilities Company for its unsecured, long-term, senior indebtedness not supported by third party credit enhancement by S&P or by Moody's or if such entities do not have a rating for its senior long-term unsecured debt then the rating then assigned to such entities as an issuer credit rating (corporate credit rating) by S&P or issuer rating by Moody's.

“***Letter of Credit***” shall mean an irrevocable, transferable, standby letter of credit, issued by a Qualified Institution substantially in the form set forth in Exhibit A attached hereto or in such form as may be required by the Qualified Institution, with such changes to the terms in that form as the Qualified Institution may require and as may be acceptable to the party in whose favor the letter of credit is issued.

“***Letter of Credit Devaluation Event***” shall mean the occurrence of any of the following events:

- (1) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of “A-” or higher by S&P or “A3” or higher by Moody's;

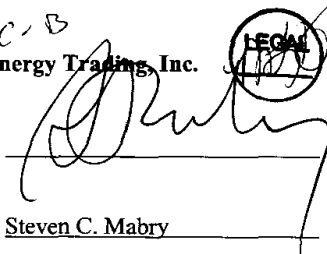

- (2) the issuer of such Letter of Credit disaffirms, disclaims, repudiates, or rejects in whole or in part, or challenges the validity of, such Letter of Credit;
- (3) the Letter of Credit expires or terminates or ceases to be in full force and effect at any time during the term of any outstanding Transaction;
- (4) any event analogous to an event specified in Section 5(a)(vii) of this Agreement occurs with respect to the issuer of such Letter of Credit;
- (5) twenty (20) Local Business Days prior to the expiration or termination date of a Letter of Credit, such Letter of Credit is not extended or replaced with a Letter of Credit for an amount at least equal to that of the Letter of Credit being replaced;
- (6) the issuer of a Letter of Credit provided by such party fails to honor a drawing under the Letter of Credit in accordance with its terms; or
- (7) the issuer of the Letter of Credit provided by such party fails to comply with or perform its obligations under such Letter of Credit and such failure continues after the lapse of any applicable grace period.

**"Moody's"** means Moody's Investors Service, Inc. or a successor (if any).

**"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 and Moody's, but not both, and (ii) having a capital and surplus of at least \$1,000,000,000.

**"S&P"** means Standard & Poor's, a division of The McGraw-Hill Companies, Inc. or a successor (if any).

IN WITNESS WHEREOF, the parties have executed this PARAGRAPH 13 to the ISDA CREDIT SUPPORT ANNEX by their duly authorized officers as of the date specified on the first page of this document.

<sup>C.B.</sup>  
**DTE Energy Trading, Inc.**    
 By: \_\_\_\_\_  
 Name: Steven C. Mabry  
 Title: President


**Louisville Gas and Electric Company /  
 Kentucky Utilities Company** <sup>SAR</sup>  
 By:   
 Name: MARTYN GALLUS  
SR. VICE PRESIDENT  
LOUISVILLE GAS AND ELECTRIC COMPANY /  
KENTUCKY UTILITIES  
 Title: \_\_\_\_\_

EXHIBIT A

LETTER OF CREDIT REQUIREMENTS AND FORM

- 1. Type if Letter of Credit (L/C): Irrevocable Standby L/C
- 2. Issuing Bank: *U.S.-domiciled institution approved by*  
DTE Energy Trading, Inc.  
Credit Risk Management  
414 South Main St., Suite 200  
Ann Arbor, Michigan 48104
- 3. Documents required for drawing:
  - a. Copy of invoice
  - b. Statement of delinquencies
- 4. All L/Cs are to be advised through <name of bank, city, State, to the attention of Letter of Credit Specialist - Telex No. \*\*\*\*\* or Swift Code \*\*\*\*\*. All banking charges should be for the account of applicant. L/Cs to be substantially in the following form:

IRREVOCABLE STANDBY LETTER OF CREDIT

TO: \_\_\_\_\_ DATE: \_\_\_\_\_

ATTENTION: \_\_\_\_\_

RE: Our Irrevocable Standby Letter of Credit No. \_\_\_\_\_  
In the approximate amount of U.S. \$ \_\_\_\_\_

Gentlemen:

We here issue our Irrevocable Standby Letter of Credit LC# \_\_\_\_\_ in the amount of USDLRS \$ \_\_\_\_\_ (U.S. DOLLARS \_\_\_\_\_ No/100) in favor of \_\_\_\_\_, <insert bank address> for the account of <Customer Name>. Available by draft(s) at sight drawn on <Bank Name>, bearing the clause "Drawn under <Bank Name>, <Bank Address>, standby Letter of Credit LC# \_\_\_\_\_" accompanied by a statement signed by a purported officer of \_\_\_\_\_ stating that:

\_\_\_\_\_ hereby certifies that the monies hereby drawn are due and payable.

This credit expires MO/DAY/YEAR/PLACE.

Special instructions:

- A. Partial drawings permitted.
- B. Invoices in excess of drawing are permitted.
- C. All Bank Advisory and amendment charges are for the account of applicant.
- D. This Letter of Credit should be advised through:

<we need to insert the appropriate Bank Name here>  
<insert the correct Department>  
<insert the Bank's Address>  
<insert the Bank's City, State, Zipcode>  
Attention: Letter of Credit Specialist, (\*\*\*) \*\*\*-\*\*\*\*

We hereby engage with beneficiary that drafts drawn in conformity with the terms of this credit will be duly honored on presentation at our office.

This credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 revision), International Chamber of Commerce, Publication Number 500.

\_\_\_\_\_  
Authorized Signature(s)

**FIRST AMENDMENT TO 1992 ISDA MASTER AGREEMENT**

**BETWEEN**

**DTE ENERGY TRADING, INC., A MICHIGAN CORPORATION (“PARTY A”)  
AND  
LOUISVILLE GAS AND ELECTRIC COMPANY, A KENTUCKY  
CORPORATION /KENTUCKY UTILITIES COMPANY, A KENTUCKY AND  
VIRGINIA CORPORATION (“PARTY B”)**

**This FIRST Amendment** to the 1992 ISDA Master Agreement dated October 1, 2005 (“Master Agreement”) is made and entered into effective as of July 1, 2006, by and between **DTE Energy Trading, Inc. (“Party A”)** and **Louisville Gas and Electric Company, a Kentucky Corporation /Kentucky Utilities Company, a Kentucky and Virginia Corporation (“Party B”)**. Any capitalized terms used in this First Amendment and not defined shall have the meaning assigned to such terms in the Master Agreement.

**WHEREAS**, Party A and Party B entered in to the Master Agreement and now wish to amend the Master Agreement to include the following terms and conditions relevant to physically delivered electricity.

**NOW, THEREFORE**, in consideration of the foregoing premises, and for other good and valuable consideration, the Parties agree as follows:

**Part 6. Physically Settled Power Transactions**

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

(i) **Power Transactions.** The provisions of this Part 6 shall apply solely to transactions between the parties for the purchase or sale of a Product (as defined below) on a spot or forward basis or as an option to purchase, sell or transfer a Product (collectively, “Power Transactions”). All Power Transactions will be deemed to have been entered into in accordance with the terms of this Agreement and shall be Transactions for the purposes hereof. A subsequent agreement between the parties to settle a Power Transaction without involving a physical delivery of a Product shall not affect such Power Transaction’s status as a Power Transaction under this Part 6. In the event of any inconsistency among or between the other provisions of this Agreement and this Part 6, this Part 6 will govern with respect to Power Transactions.

(ii) **Applicability to Outstanding Power Transactions.** If elected under clause (j) as being applicable: upon the effectiveness of this Part 6, all Power Transactions then outstanding (“Outstanding Power Transactions”) shall be Transactions for purposes of this Agreement and shall be governed by and subject to the terms and conditions of, this Agreement. All confirmations evidencing such Outstanding Power Transactions shall constitute “Confirmations” within the meaning of this Agreement that supplement, form part of and are subject to this Agreement. If any Confirmation issued or entered into in respect of one or more Outstanding Power Transactions was issued or entered into pursuant to the terms of a master agreement or in a

form that contains non-economic substantive provisions such as those relating to default and termination rights (such master agreement or the portion of such Confirmations containing such non-economic terms being referred to herein as the "Prior Master Agreement"), then the terms of the Schedule and the pre-printed form of this Agreement shall automatically supersede such Prior Master Agreement effective upon the execution of this Part 6.

(iii) **Credit Support Documents.** If elected under clause (j) as being applicable:

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

The parties further agree that with respect to any Outstanding Credit Support that (x) if the parties have entered into a Credit Support Document in connection with this Agreement that governs the provision of collateral, margin, performance assurance or other similar form of credit support (such Credit Support Document, an "Existing ISDA Credit Support Document") then the Outstanding Credit Support shall be deemed to constitute credit support provided under such Existing ISDA Credit Support Document and such Existing ISDA Credit Support Document shall automatically supercede any agreement between the parties pursuant to which the Outstanding Credit Support was provided (the "Outstanding Credit Support Document") effective upon the execution of this Part 6 and (y) if the parties have not entered into an Existing ISDA Credit Support Document, then the Outstanding Credit Support Document constitutes a Credit Support Document with respect to the party that provided such credit support.

(B) **Amendments/Guaranties.** The parties agree that they will enter into such amendments to any Outstanding Credit Support Document as may be necessary to give effect to the terms of this clause (a)(iii). To the extent that a guaranty was delivered in connection with a party's obligations under Outstanding Power Transactions or a Prior Master Agreement, that party represents and warrants that any amendments necessary to ensure that the guaranty would extend to Transactions subject to this Agreement have been made prior to the effectiveness of this Part 6 and agrees (x) that such guaranty constitutes a Credit Support Document with respect to the obligations of such party and (y) the guarantor under such guaranty constitutes a Credit Support Provider with respect to the obligations of such party.

**(b) Obligations and Deliveries**

(i) **Seller's and Buyer's Obligations.** With respect to each Power Transaction, Seller shall sell and deliver, or cause to be delivered, the Quantity of the Product to the Delivery Point. Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point and shall pay Seller the Contract Price. However, with respect to options, the obligations set forth in the preceding two sentences shall only arise if the option is exercised 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.

(ii) **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 Power Transactions, or in the absence thereof, in accordance with the practice of 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.

(iii) **Force Majeure.** To the extent either party is prevented by Force Majeure from carrying out, in whole or part, its obligations under any Power 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 Power 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. If the pre-printed form portion of this Agreement is the 2002 ISDA Master Agreement form, Section 5(b)(ii) of this Agreement shall not apply to any Power Transaction.

(c) **Remedies for Failure to Deliver or Receive; Limitation on Condition Precedent**

(i) **Seller Failure.** If Seller fails to Schedule and/or deliver all or part of the Product pursuant to a Power 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 in clause (j), within five (5) Local 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 (as defined below). The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

(ii) **Buyer Failure.** If Buyer fails to Schedule and/or receive all or part of the Product pursuant to a Power 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 in clause (j), within five (5) Local Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price (as defined below) from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

(iii) **Limitation on Condition Precedent.** Section 2(a)(iii) of this Agreement is hereby amended by adding the following phrase at the end of clause (1) immediately before the last comma of such phrase:

"(provided, however, that in relation to any Transaction that is a Power Transaction, if an Event of Default or a Potential Event of Default has occurred and is continuing for longer than ten (10) NERC Business Days without an Early Termination Date being designated, then the condition specified in this clause (1) shall cease to be a condition precedent to the obligations under Section 2(a)(i))."



**(d) Payment**

(i) **Billing Period.** Unless otherwise specifically agreed upon by the parties, the calendar month shall be the standard period for all payments pursuant to any Power Transaction under this Agreement (other than (x) payments due as a result of the designation of an Early Termination Date; (y) any option premium payments; or (z) if “Accelerated Payment of Damages” is specified as being applicable, payments due pursuant to clauses (c)(i) and (c)(ii)). 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.

(ii) **Timeliness of Payment.** The parties shall designate which of the following two options shall apply with respect to the timing of when payment obligations are due in relation to Power Transactions:

Option A: Unless otherwise agreed by the parties, all invoices for payment pursuant to a Power Transaction shall be due and payable in accordance with each party’s invoice instructions on or before the later of the fifth (5<sup>th</sup>) Local Business Day of each month, or the second (2<sup>nd</sup>) Local Business Day after receipt of the invoice.

Option B: Unless otherwise agreed by the parties, all invoices for payment pursuant to a Power Transaction shall be due and payable in accordance with each party’s invoice instructions on or before the later of the twentieth (20<sup>th</sup>) day of each month, or the tenth (10<sup>th</sup>) day after receipt of the invoice or, if such day is not a Local Business Day, then on the next Local 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 Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(iii) **Payment for Options.** The premium amount for the purchase of an option shall be paid within two (2) Local 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 the applicable provisions of clauses (d)(i) and (d)(ii).

(iv) **Power Transaction Netting.** If the parties enter into one or more Power Transactions, which in conjunction with one or more other outstanding Power Transactions, constitute Offsetting Power Transactions, then all such Offsetting Power Transactions may, by agreement of the parties, be netted into a single Power Transaction under which:

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

(B) the party owing the greater aggregate payment will pay the net difference owed between the parties.

Each single Power Transaction resulting under this clause shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Power Transaction occurs, outstanding obligations under the Offsetting Power Transactions which are satisfied by such offset shall terminate. For the purposes of this Part 6, “Offsetting Power Transaction” shall mean any two or more Power Transactions having the same or overlapping

Delivery Period(s) (as specified in the Power Transaction), Delivery Point and payment date, where under one or more of such Power Transactions, one party is the Seller and under the other such Power Transaction(s) the same party is the Buyer.

(e) **Limitation of Liability**

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

**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 POWER TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.**

(f) **Taxes**

(i) **Cooperation.** Each party shall use reasonable effort to implement the provisions of and to administer this Agreement insofar as it applies to Power Transactions in accordance with the intent of the parties to minimize all Taxes, so long as neither party is materially adversely affected by such efforts.

(ii) **Taxes.** Notwithstanding Section 2(d) of this Agreement, Seller shall pay or cause to be paid all Taxes imposed by any government authority on or with respect to the Product or a Power Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the Product or a Power 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 Taxes which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by law or regulation to remit or pay Taxes which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums due to Seller under this Agreement. Nothing shall obligate or cause a party to pay or be liable to pay any Taxes for which it is exempt under the law.

**(g) Title, Risk of Loss and Indemnity**

(i) **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.

(ii) **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 for herein. Each party shall indemnify, defend and hold harmless the other party against any Taxes for which such party is responsible.

**(h) Miscellaneous**

(i) **Tariff.** Seller agrees to provide service to Buyer, and Buyer agrees to pay Seller for such service, in accordance with Seller's Tariff, if any, and the terms of this Agreement. Each party agrees that if it seeks to amend any Tariff during the term of this Agreement, such amendment will not in any way affect outstanding Power 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. For the purposes of this Part 6, "FERC" shall mean the Federal Energy Regulatory Commission. Each of the Party A FERC Electric Tariff and the Party B FERC Electric Tariff is referred to herein as a "Tariff" and collectively as the "Tariffs", which Tariffs, to the extent applicable as set forth in clause (j), are incorporated herein.

(ii) **Severability.** If elected under clause (j) as being applicable with respect to Power Transactions only, any provision of this Agreement declared or rendered unlawful by any applicable court or law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events being referred to herein as a "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement. The parties agree that if a Regulatory Event occurs, they will use their best efforts to reform this Agreement with respect to Power Transactions only to give effect to the original intention of the parties; provided, however, that nothing in this provision shall affect the enforceability of Sections 5 or 6 of this Agreement with respect to Power Transactions or otherwise.

(iii) **FERC Standard of Review; Certain Covenants and Waivers.** If elected under clause (j) as being applicable:

(A) Absent the agreement of all parties to the proposed change, the standard of review for changes to any provision of this Agreement (including all Power Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the parties herein, whether proposed by a party, a non-party or FERC acting *sua sponte*, shall be the “public interest” 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).

(B) The parties, for themselves and their successors and assigns, (y) agree that this “public interest” standard of review shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the parties in connection with this Agreement and (z) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard, provided that this standard of review and the other provisions of this clause (h)(iii) shall only apply to proceedings before the FERC or appeals thereof.

(C) In addition, and notwithstanding the foregoing clauses (h)(iii)(A) and (B), 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 Sections 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 provision of this Agreement (including any applicable Power Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the parties, it being the express intent of the parties that, to the fullest extent permitted by applicable law, the “sanctity of contract” principles acknowledged by FERC in its Notice of Proposed Policy Statement (issued August 1, 2002) in Docket No. PL02-7-000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities (“NPPS”) shall prevail and neither of them shall unilaterally seek to obtain from FERC any relief changing the rate(s) and/or other material economic terms and conditions of their agreement(s), as set forth in this Agreement and in any Power Transactions or Confirmations, 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 clause (h)(iii) shall not apply, provided that, consistent with clause (h)(iii) neither party shall seek any such changes except under the “public interest” standard of review and otherwise as set forth in clauses (h)(iii)(A) and (B).

(D) In connection with the foregoing, the parties acknowledge that, pursuant to the NPPS, FERC has invited interested persons to submit comments with respect to the provisions thereof and therefore agree that, if and to the extent FERC adopts in a final or subsequent policy statement (“FPS”) the use of specific language which varies from that set out in clause (h)(iii)(A) above, then clause (h)(iii)(A) shall, without further action of either party, be deemed amended to reflect such specific language, provided that to the extent that the specific language adopted in an FPS is in any way inconsistent with the mutual intent of the parties in this regard as currently set forth in clauses (h)(iii)(A) and (B), then the parties agree to meet to attempt to negotiate in good faith an amendment to this clause (h)(iii) to address such inconsistencies, provided further that neither party shall be obligated in any way to agree to any such amendment if to do so would be

inconsistent with such current mutual intent as expressed herein or would expose such party in any way to greater risk of changes being ordered by FERC to the parties' agreement as set forth in this Agreement and any Power Transactions and/or Confirmations.

**(i) Certain Modifications to this Agreement**

(i) **Single Agreement: Section 1(c).** With respect to all Power Transactions, the words “, the Tariffs, if any” are hereby added immediately following “this Master Agreement” in Section 1(c) of this Agreement.

(ii) **Events of Default: Sections 5(a)(i) and 5(a)(ii)(1).**

(A) With respect to all Power Transaction, the words “or delivery” are hereby deleted in Section 5(a)(i) of this Agreement.

(B) With respect to all Power Transaction, the words “(or to deliver or receive the Product, the exclusive remedy for which is provided in clause (c) of Part 6 of the Schedule)” are hereby added at the end of the parenthetical of Section 5(a)(ii)(1) of this Agreement.

(iii) **Effect of Designating an Early Termination Date: Section 6(c)(i).** Section 6(c)(i) of this Agreement is hereby amended by adding the following phrase at the end of such section:

“(it being understood, that to the extent in the reasonable opinion of the Non-defaulting Party or the Non-Affected Party, as the case may be, any of the Terminated Transactions that are Power Transactions that are not liquidated and terminated under applicable law on the Early Termination Date, such Terminated Transactions shall be liquidated and terminated as soon as thereafter as is reasonably practicable)”.

(iv) **Definitions: Section 14.** Section 14 of this Agreement is hereby amended by adding the following definitions:

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

“**Claiming Party**” means the Party that is prevented by Force Majeure from carrying out, in whole or party, its obligations under the Power Transaction.

“**Contract Price**” means the price in U.S. Dollars (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in a Power Transaction.

“**Delivery Point**” means the point at which the Product will be delivered and received as specified in a Power Transaction.

“**Force Majeure**” means an event or circumstance which prevents the Claiming Party from performing its obligations under one or more Power Transactions, which event or circumstance was not anticipated as of the date the Power 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 the 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 Power Transaction is governed by the terms of the Products and the Related Definitions contained in Schedule P (defined below).

“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 place of business. The relevant party, in each instance unless otherwise specified, shall be the party to whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

“Product” means electric capacity, energy or other product(s) related thereto specified in a Power Transaction by reference to a Product listed in Schedule P (defined below), which is incorporated herein, or as otherwise specified by the parties in the Power Transaction.

“Quantity” means the 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 a Power Transaction.

“Replacement Price” means (A) the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Power 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, (B) 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.

“Sales Price” means (A) 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, (B) 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.

“Schedule” or “Scheduling” means the action 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.

“Schedule P” means “Schedule P: Products and Related Definitions” to the Master Power Purchase & Sale Agreement published and modified from time to time by the Edison Electric Institute.

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

“Transmission Provider” means any entity or entities transmitting or transporting Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Power Transaction.

**(j) Elective Provisions**

1. (a)(ii)  Applicability of Part 6 to Outstanding Power Transactions. If not checked, not applicable.
2. (a)(iii)  Applicability of Outstanding Credit Support held by a party in connection with Outstanding Power Transactions. If not checked, not applicable.
3. c)  Accelerated Payment Damages. If not checked, not applicable.
4. (d)(ii): Timeliness of Payment

Option A

Option B

If neither is checked, Option B shall be deemed to apply.

5. (h)(i): Wholesale Power Tariffs

Party A Electric Tariff. Tariff/Date/Docket: FERC Market Based Rate Schedule No. 1/ 10-1-97 / ER-97-3834-000.

Party B Electric Tariff. Tariff/Date/Docket FERC Electric Tariff Vol. No. 3/ March 1, 2002/ER02-1077

If not checked, not applicable.

6. (h)(ii)  Applicability of Severability provision. If not checked, not applicable.
7. (h)(iii)  Applicability of FERC Standard of Review and Certain Covenants and Waivers. If not checked, not applicable.



**(k) Contact Information:**

Name: DTE Energy Trading, Inc., a Michigan Corporation or "Party A"

All Notices:

Street: 414 S. Main Street, Suite 200

City: Ann Arbor, MI Zip: 48104

Attn: Contract Administration  
Phone: 734-887-2042 734-887-2048  
Facsimile: 734-887-2235  
Duns: 17-9989231  
Federal Tax ID Number: 38-3323526

**Invoices:**

Attn: Boyd Smith  
Phone: 734-887-2023  
Facsimile: 734-887-2140

**Confirmations:**

Phone: 734-887-2025  
Facsimile: 734-887-2140

**Scheduling:**

Attn: Scheduling Desk  
Phone: 734-887-2077  
Facsimile: 734-887-2092

**Payments:**

Attn: Boyd Smith  
Phone: 734-887-2023  
Facsimile: 734-887-2140

**Wire Transfer:**

BNK: JPMorgan Chase Bank  
ABA: 072000326  
ACCT: 14379-63

**Credit and Collections:**

Attn: Credit Management  
Phone: 734-887-4205  
Facsimile: 734-887-4065

**With additional Notices of an Event of Default to:**

Attn: General Counsel  
Phone: 734-887-4097  
Facsimile: 734-887-2235

Name: "Louisville Gas and Electric Company, a Kentucky corporation /Kentucky Utilities Company, a Kentucky an Virginia corporation" or "Party B" or "LGE"/"KU"

All Notices:

Street: 220 West Main Street, 7<sup>th</sup> Floor

City: Louisville, KY Zip: 40202

Attn: Contract Administration  
Phone: 502-627-4251 or 4197  
Facsimile: 502-627-4222  
Duns: LGE 006945505;KU 006944938  
Federal Tax ID Number: LGE 61-0264150; KU 61-0247

**Invoices:**

Attn: Energy Marketing Accounting  
Phone: 502-627-2922  
Facsimile: 502-627-3800

**Confirmations:**

Phone: 502-627-4197 or 2252  
Facsimile: 502-627-4222

**Scheduling:**

Attn: \_\_\_\_\_  
Phone: (502) 627-4880  
Facsimile: (502) 627-4655

**Payments:**

Attn: Energy Marketing Accounting  
Phone: : 502-627-2922  
Facsimile: 502-627-3800

**Wire Transfer:**

BNK: Bank of America, Dallas, TX  
ABA: 111-0000-12  
ACCT: 3752099133

**Credit and Collections:**

Attn: Credit Manager  
Phone: (502) 627-4253  
Facsimile: (502) 627-3950

**With additional Notices of an Event of Default to:**

Attn: General Counsel  
Phone: (502) 627-3665  
Facsimile: (502) 627-3950

(l) **Other Changes to the ISDA Power Annex: Physically Settled Power Transactions:**

1. All referenced to “Part 6” shall be replaced with references to “Part 7”.
2. Section (a)(ii) **Applicability to Outstanding Power Transactions** shall be revised by inserting the phrase “, as listed on Exhibit A,” prior to the phrase (“Outstanding Power Transactions”) in the first sentence thereof.
3. Section (b)(iii) **Force Majeure** shall be deleted in its entirety and replaced with the new section (b) (iii):

(iii) **Force Majeure.** To the extent either party is prevented by Force Majeure from carrying out, in whole or part, its obligations under any Power 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 Power 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 Power Transaction(s) pursuant to this 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 Power Transactions (including without limitation for any payments as described in Section 6(e) of the Agreement) if such event of Force Majeure continues for a period of thirty (30) 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 the Force Majeure is no longer in effect. Notices given by telephone under the provision hereunder shall be confirmed in writing as soon as reasonably possible.

4. Section (c)(iii) **Limitation of Condition Precedent** shall be amended by deleting the phrase “or a Potential Event of Default” from the fifth line.
5. Section (d)(ii) **Timeliness of Payment** – Option B shall be amended by replacing the words “Default Rate” with the words “Interest Rate” in the second paragraph.
6. Insert the following as new Sections (d)(v), (d)(vi), and new Section (d)(vii):

“(v) **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 **Part 7** 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 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 *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.

(vi) **Correction 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 the 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) Local 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 the 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.

(vii) **Rounding.** For the purposes of the calculation of a Floating Price under this Power Annex, 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.”

7. Section (e) **Limitation of Liability** shall be amended by adding the phrase “EXCEPT AS SET FORTH HEREIN,” to the beginning of the second paragraph.
8. Section (f)(ii) **Taxes** shall be amended by inserting the phrase “under clause (d) hereunder and” after the word “Seller” in the tenth (10<sup>th</sup>) line.
9. Section (g)(ii) **Indemnity** shall be amended by adding the phrase “under clause (f) hereunder” to the end of this section.
10. Section (h) (iii) **FERC Standard of Review; Certain Covenants and Waivers** shall be amended by (a) inserting in Paragraph (A) the phrase “for Power Transactions” to the end of the parenthetical and deleting the phrase “specifying the rate(s)...parties herein” after the

parenthetical and (b) in Paragraph (C) inserting the phrase “for Power Transactions” to the end of the parenthetical in the eighth (8<sup>th</sup>) line.

11. Section (h) *Miscellaneous* shall be amended by adding following new subsections:

(iv) “**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.”

(v) **Bankruptcy - Utility Clause.** 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.”

(vi) **Price Release.** Nothing herein shall prevent either Party from disclosing simple price and volume terms to a third party solely for the purposes of it being used in conjunction with other similar information for establishing electric price indices by a qualified independent entity provided that such information is only published in aggregate form with other data such that it cannot be used to identify the parties to a Transaction.

(vii) **Forward Contracts.** The Parties acknowledge and agree that all Power Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

(viii) **Audits.** 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 Part 7. 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.

12. Section (i)(iii) is deleted in its entirety and replaced with the following

“(iii) Effect of Designating an Early Termination Date: Section 6(c)(i). Section 6(c)(i) of this Agreement is hereby amended by adding the following phrase at the end of such section:

“(it being understood, that to the extent in the reasonable opinion of the Non-defaulting Party or the Non-Affected Party, as the case may be, any of the Terminated Transactions that are Power Transactions may not be liquidated and terminated under applicable law on the Early Termination Date, then such Terminated Transactions shall be liquidated and terminated as soon as thereafter as is reasonably practicable)”. Notwithstanding any other provision of this Part 7, if an Event of Default shall have occurred and be continuing, the Non-Affected Party, upon written notice to the Affected Party, shall have the right (i) to suspend performance under any or all Power Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Power Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 6 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. “

13. Section (i)(iv) **Definitions: Section 14** shall be amended by

- (a) Deleting the definition of “Claiming Party”;
- (b) Revising the definition of “Force Majeure” to delete the phrase “(iii) the loss or failure of Seller’s supply” in the seventh line and replace it with “(iii) the loss, failure, or increase in cost of Seller’s supply”;
- (c) Adding the following definition for “Interest Rate”: “**Interest Rate**” means, for any day, (a) the “Federal Funds Effective” rate in effect for such day, as published by The Wall Street Journal under “U.S. Money Rates” for such day (or if such day is not a Business Day, then the preceding Business Day) or if such rate is not published, then (b) the “Federal Funds Effective” rate in effect for such 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”.
- (d) Replacing the definitions of “Replacement Price” and “Sales Price” with the following definitions:

““**Replacement Price**” means (A) the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Power 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, (B) 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

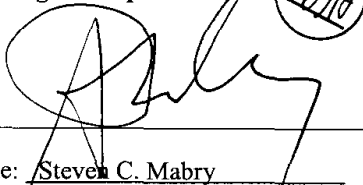
change its utilization of its owned or controlled assets or market positions to replace any Product specified in a Transaction but not delivered by Seller, then the Replacement Price shall be determined with reference to the market price at the Delivery Point for such Product not delivered as determined 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.

“Sales Price” means (A) 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 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.”

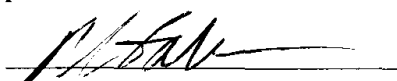
Except as expressly amended herein, the Master Agreement shall continue in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, Party A and Party B have each caused this First Amendment to be executed by their respective authorized representatives as of the date first written above.

**DTE ENERGY TRADING, INC.**  
a Michigan Corporation

By:   
Name: Steven C. Mabry  
Title: President

**Louisville Gas and Electric Company, a** <sup>SOP</sup>  
**Kentucky corporation /Kentucky Utilities**  
**Company, a Kentucky and Virginia**  
**corporation**

By:   
Name: MARTYN GALLUS  
SR. VICE PRESIDENT  
Title: LOUISVILLE GAS & ELECTRIC COMPANY

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**EXHIBIT A**  
**TO THE**  
**FIRST AMENDMENT TO 1992 ISDA MASTER AGREEMENT**  
**BETWEEN**  
**DTE ENERGY TRADING, INC. (“PARTY A”)**  
**AND**  
**LOUISVILLE GAS AND ELECTRIC COMPANY, A KENTUCKY**  
**CORPORATION /KENTUCKY UTILITIES COMPANY, A KENTUCKY AND**  
**VIRGINIA CORPORATION (“PARTY B”)**

**1. THERE ARE NO TRANSACTIONS BETWEEN THE PARTIES THAT SHALL BE IDENTIFIED AS “OUTSTANDING TRANSACTIONS” FOR THE PURPOSE OF THIS EXHIBIT A.**



**DTE ENERGY TRADING, INC.**

**CORPORATE RESOLUTIONS**

**CERTIFICATE OF ASSISTANT CORPORATE SECRETARY**


I, Susan E. Riske, Assistant Corporate Secretary of DTE Energy Trading, Inc. ("DTEET"), hereby certify that the following resolutions were duly adopted by the Board of Directors of the Company on December 22, 1997, and that no action has been taken to rescind or amend such resolutions and such are now in full force and effect:

RESOLVED, that the officers of this Company be and they hereby are authorized to enter into Master Sales/Buy Agreements, with such Master Sales Agreements(s) to be in substantially the form presented to this meeting with such a changes as the President or any Vice President may approve, with the advice and assistance of counsel, provided that the aggregate amount and type of such agreements may not exceed parameters set by the Risk Management committee; and the Corporate Secretary is hereby directed to file a copy of the preliminary form of such Master Sales Agreements with the minutes of this meeting; and further

RESOLVED, that the President or any Vice President of this Company be and they hereby are authorized to enter into trading products, including swaps, caps and collars, and to execute amendments thereto, all to be in a form approved by such officer, with the advice and assistance of counsel, provided that the aggregate amount and type of such agreements may not exceed parameters set by the Risk Management Committee; and further

RESOLVED, that these resolutions are to be construed as a liberal grant of authority to the officers of this Company, with full authority to permit the officers to enter into amendments to the documents herein authorized with the parameters of the authority herein granted, and with the authority to deliver and all documents and do all such acts and deeds, related to the matters herein approved.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 18th day of October, 2005.

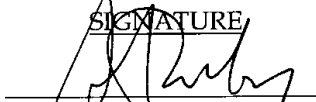
  
Name: Susan E. Riske  
Title: Assistant Corporate Secretary

DTE ENERGY TRADING, INC.

INCUMBENCY AND SIGNATURE CERTIFICATE

The undersigned, Assistant Corporate Secretary of DTE Energy Trading, Inc. ("DTEET"), a Michigan corporation, hereby certifies that:

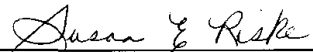
1. The ISDA Master Agreement dated as of October 1<sup>st</sup> 2005, including the Schedule, Confirmation, and other exhibits, supplements, attachments and annexes thereto and documents incorporated by reference therein (collectively the "Agreement Documentation"), between Louisville Gas & Electric / Kentucky Utilities and DTEET have been duly executed and delivered for, in the name of, and on behalf of DTEET by the following officer, whose title and signature appear below:

<u>NAME</u>	<u>TITLE</u>	<u>SIGNATURE</u>
Steven C. Mabry	President	

2. The foregoing officer who, on behalf of DTEET, executed and delivered the Agreement Documentation was at the date thereof and is now duly authorized as a signatory for DTEET and duly authorized to perform such acts at the respective times of such acts, and the signature of such person(s) appearing on the Agreement Documentation is his/her genuine signature.

IN WITNESS WHEREOF, the undersigned has executed this certificate the 18<sup>th</sup> day of October, 2005.

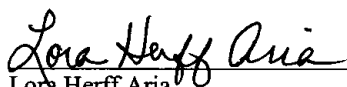
DTE Energy Trading, Inc.

By:   
Name: Susan E. Riske  
Title: Assistant Corporate Secretary

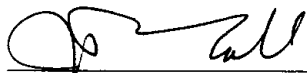
**INCUMBENCY CERTIFICATE**

The undersigned, John R. McCall, hereby certifies that he is the Executive Vice President, General Counsel and Corporate Secretary of Louisville Gas and Electric Company, a Kentucky corporation, (the "Company"); and that as such, has access to all original records of the Company, and further certifies that Martyn Gallus has been duly elected to and now holds the office of Senior Vice President – Energy Marketing of the Company and is now serving as such, and that in his capacity as Senior Vice President, he has full power and authority to execute the ISDA Master Agreement with DTE Energy Trading, Inc. (the "ISDA"), with his signature specimen. I further certify that Lora Herff Aria as Manager, Contract Administration, has the authority to execute Transaction Confirmation Letters associated with the ISDA with her signature specimen. I further certify that the following are specimens of their respective signatures.

  
\_\_\_\_\_  
Martyn Gallus

  
\_\_\_\_\_  
Lora Herff Aria

IN WITNESS WHEREOF, I have signed this Incumbency Certificate this \_\_\_\_ day of  
September 2005.

  
\_\_\_\_\_  
John R. McCall  
Executive Vice President, General Counsel  
And Corporate Secretary

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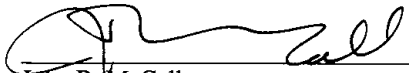
**INCUMBENCY CERTIFICATE**

The undersigned, John R. McCall, hereby certifies that he is the Executive Vice President, General Counsel and Corporate Secretary of Kentucky Utilities Company, a Kentucky corporation, (the "Company"); and that as such, has access to all original records of the Company, and further certifies that Martyn Gallus has been duly elected to and now holds the office of Senior Vice President – Energy Marketing of the Company and is now serving as such, and that in his capacity as Senior Vice President, he has full power and authority to execute the ISDA Master Agreement with DTE Energy Trading, Inc. (the "ISDA"), with his signature specimen. I further certify that Lora Herff Aria as Manager, Contract Administration, has the authority to execute Transaction Confirmation Letters associated with the ISDA with her signature specimen. I further certify that the following are specimens of their respective signatures.

  
\_\_\_\_\_  
Martyn Gallus

  
\_\_\_\_\_  
Lora Herff Aria

IN WITNESS WHEREOF, I have signed this Incumbency Certificate this \_\_\_\_ day of September 2005.

  
\_\_\_\_\_  
John R. McCall  
Executive Vice President, General Counsel  
And Corporate Secretary

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**FIRST AMENDMENT TO 1992 ISDA MASTER AGREEMENT**

**BETWEEN**

**DTE ENERGY TRADING, INC., A MICHIGAN CORPORATION (“PARTY A”)  
AND  
LOUISVILLE GAS AND ELECTRIC COMPANY, A KENTUCKY  
CORPORATION /KENTUCKY UTILITIES COMPANY, A KENTUCKY AND  
VIRGINIA CORPORATION (“PARTY B”)**

**This FIRST Amendment** to the 1992 ISDA Master Agreement dated October 1, 2005 (“Master Agreement”) is made and entered into effective as of July 1, 2006, by and between **DTE Energy Trading, Inc. (“Party A”)** and **Louisville Gas and Electric Company, a Kentucky Corporation /Kentucky Utilities Company, a Kentucky and Virginia Corporation (“Party B”)**. Any capitalized terms used in this First Amendment and not defined shall have the meaning assigned to such terms in the Master Agreement.

**WHEREAS**, Party A and Party B entered in to the Master Agreement and now wish to amend the Master Agreement to include the following terms and conditions relevant to physically delivered electricity.

**NOW, THEREFORE**, in consideration of the foregoing premises, and for other good and valuable consideration, the Parties agree as follows:

**Part 6. Physically Settled Power Transactions**

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

(i) **Power Transactions.** The provisions of this Part 6 shall apply solely to transactions between the parties for the purchase or sale of a Product (as defined below) on a spot or forward basis or as an option to purchase, sell or transfer a Product (collectively, “Power Transactions”). All Power Transactions will be deemed to have been entered into in accordance with the terms of this Agreement and shall be Transactions for the purposes hereof. A subsequent agreement between the parties to settle a Power Transaction without involving a physical delivery of a Product shall not affect such Power Transaction’s status as a Power Transaction under this Part 6. In the event of any inconsistency among or between the other provisions of this Agreement and this Part 6, this Part 6 will govern with respect to Power Transactions.

(ii) **Applicability to Outstanding Power Transactions.** If elected under clause (j) as being applicable: upon the effectiveness of this Part 6, all Power Transactions then outstanding (“Outstanding Power Transactions”) shall be Transactions for purposes of this Agreement and shall be governed by and subject to the terms and conditions of, this Agreement. All confirmations evidencing such Outstanding Power Transactions shall constitute “Confirmations” within the meaning of this Agreement that supplement, form part of and are subject to this Agreement. If any Confirmation issued or entered into in respect of one or more Outstanding Power Transactions was issued or entered into pursuant to the terms of a master agreement or in a

form that contains non-economic substantive provisions such as those relating to default and termination rights (such master agreement or the portion of such Confirmations containing such non-economic terms being referred to herein as the "Prior Master Agreement"), then the terms of the Schedule and the pre-printed form of this Agreement shall automatically supersede such Prior Master Agreement effective upon the execution of this Part 6.

(iii) **Credit Support Documents.** If elected under clause (j) as being applicable:

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

The parties further agree that with respect to any Outstanding Credit Support that (x) if the parties have entered into a Credit Support Document in connection with this Agreement that governs the provision of collateral, margin, performance assurance or other similar form of credit support (such Credit Support Document, an "Existing ISDA Credit Support Document") then the Outstanding Credit Support shall be deemed to constitute credit support provided under such Existing ISDA Credit Support Document and such Existing ISDA Credit Support Document shall automatically supercede any agreement between the parties pursuant to which the Outstanding Credit Support was provided (the "Outstanding Credit Support Document") effective upon the execution of this Part 6 and (y) if the parties have not entered into an Existing ISDA Credit Support Document, then the Outstanding Credit Support Document constitutes a Credit Support Document with respect to the party that provided such credit support.

(B) **Amendments/Guaranties.** The parties agree that they will enter into such amendments to any Outstanding Credit Support Document as may be necessary to give effect to the terms of this clause (a)(iii). To the extent that a guaranty was delivered in connection with a party's obligations under Outstanding Power Transactions or a Prior Master Agreement, that party represents and warrants that any amendments necessary to ensure that the guaranty would extend to Transactions subject to this Agreement have been made prior to the effectiveness of this Part 6 and agrees (x) that such guaranty constitutes a Credit Support Document with respect to the obligations of such party and (y) the guarantor under such guaranty constitutes a Credit Support Provider with respect to the obligations of such party.

**(b) Obligations and Deliveries**

(i) **Seller's and Buyer's Obligations.** With respect to each Power Transaction, Seller shall sell and deliver, or cause to be delivered, the Quantity of the Product to the Delivery Point. Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point and shall pay Seller the Contract Price. However, with respect to options, the obligations set forth in the preceding two sentences shall only arise if the option is exercised 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.

(ii) **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 Power Transactions, or in the absence thereof, in accordance with the practice of 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.

(iii) **Force Majeure.** To the extent either party is prevented by Force Majeure from carrying out, in whole or part, its obligations under any Power 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 Power 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. If the pre-printed form portion of this Agreement is the 2002 ISDA Master Agreement form, Section 5(b)(ii) of this Agreement shall not apply to any Power Transaction.

(c) **Remedies for Failure to Deliver or Receive; Limitation on Condition Precedent**

(i) **Seller Failure.** If Seller fails to Schedule and/or deliver all or part of the Product pursuant to a Power 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 in clause (j), within five (5) Local 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 (as defined below). The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

(ii) **Buyer Failure.** If Buyer fails to Schedule and/or receive all or part of the Product pursuant to a Power 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 in clause (j), within five (5) Local Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price (as defined below) from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

(iii) **Limitation on Condition Precedent.** Section 2(a)(iii) of this Agreement is hereby amended by adding the following phrase at the end of clause (1) immediately before the last comma of such phrase:

"(provided, however, that in relation to any Transaction that is a Power Transaction, if an Event of Default or a Potential Event of Default has occurred and is continuing for longer than ten (10) NERC Business Days without an Early Termination Date being designated, then the condition specified in this clause (1) shall cease to be a condition precedent to the obligations under Section 2(a)(i))."



**(d) Payment**

(i) **Billing Period.** Unless otherwise specifically agreed upon by the parties, the calendar month shall be the standard period for all payments pursuant to any Power Transaction under this Agreement (other than (x) payments due as a result of the designation of an Early Termination Date; (y) any option premium payments; or (z) if “Accelerated Payment of Damages” is specified as being applicable, payments due pursuant to clauses (c)(i) and (c)(ii)). 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.

(ii) **Timeliness of Payment.** The parties shall designate which of the following two options shall apply with respect to the timing of when payment obligations are due in relation to Power Transactions:

Option A: Unless otherwise agreed by the parties, all invoices for payment pursuant to a Power Transaction shall be due and payable in accordance with each party’s invoice instructions on or before the later of the fifth (5<sup>th</sup>) Local Business Day of each month, or the second (2<sup>nd</sup>) Local Business Day after receipt of the invoice.

Option B: Unless otherwise agreed by the parties, all invoices for payment pursuant to a Power Transaction shall be due and payable in accordance with each party’s invoice instructions on or before the later of the twentieth (20<sup>th</sup>) day of each month, or the tenth (10<sup>th</sup>) day after receipt of the invoice or, if such day is not a Local Business Day, then on the next Local 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 Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(iii) **Payment for Options.** The premium amount for the purchase of an option shall be paid within two (2) Local 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 the applicable provisions of clauses (d)(i) and (d)(ii).

(iv) **Power Transaction Netting.** If the parties enter into one or more Power Transactions, which in conjunction with one or more other outstanding Power Transactions, constitute Offsetting Power Transactions, then all such Offsetting Power Transactions may, by agreement of the parties, be netted into a single Power Transaction under which:

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

(B) the party owing the greater aggregate payment will pay the net difference owed between the parties.

Each single Power Transaction resulting under this clause shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Power Transaction occurs, outstanding obligations under the Offsetting Power Transactions which are satisfied by such offset shall terminate. For the purposes of this Part 6, “Offsetting Power Transaction” shall mean any two or more Power Transactions having the same or overlapping

Delivery Period(s) (as specified in the Power Transaction), Delivery Point and payment date, where under one or more of such Power Transactions, one party is the Seller and under the other such Power Transaction(s) the same party is the Buyer.

(e) **Limitation of Liability**

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

**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 POWER TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.**

(f) **Taxes**

(i) **Cooperation.** Each party shall use reasonable effort to implement the provisions of and to administer this Agreement insofar as it applies to Power Transactions in accordance with the intent of the parties to minimize all Taxes, so long as neither party is materially adversely affected by such efforts.

(ii) **Taxes.** Notwithstanding Section 2(d) of this Agreement, Seller shall pay or cause to be paid all Taxes imposed by any government authority on or with respect to the Product or a Power Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the Product or a Power 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 Taxes which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by law or regulation to remit or pay Taxes which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums due to Seller under this Agreement. Nothing shall obligate or cause a party to pay or be liable to pay any Taxes for which it is exempt under the law.

(g) **Title, Risk of Loss and Indemnity**

(i) **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.

(ii) **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 for herein. Each party shall indemnify, defend and hold harmless the other party against any Taxes for which such party is responsible.

(h) **Miscellaneous**

(i) **Tariff.** Seller agrees to provide service to Buyer, and Buyer agrees to pay Seller for such service, in accordance with Seller's Tariff, if any, and the terms of this Agreement. Each party agrees that if it seeks to amend any Tariff during the term of this Agreement, such amendment will not in any way affect outstanding Power 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. For the purposes of this Part 6, "FERC" shall mean the Federal Energy Regulatory Commission. Each of the Party A FERC Electric Tariff and the Party B FERC Electric Tariff is referred to herein as a "Tariff" and collectively as the "Tariffs", which Tariffs, to the extent applicable as set forth in clause (j), are incorporated herein.

(ii) **Severability.** If elected under clause (j) as being applicable with respect to Power Transactions only, any provision of this Agreement declared or rendered unlawful by any applicable court or law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events being referred to herein as a "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement. The parties agree that if a Regulatory Event occurs, they will use their best efforts to reform this Agreement with respect to Power Transactions only to give effect to the original intention of the parties; provided, however, that nothing in this provision shall affect the enforceability of Sections 5 or 6 of this Agreement with respect to Power Transactions or otherwise.

(iii) **FERC Standard of Review; Certain Covenants and Waivers.** If elected under clause (j) as being applicable:

(A) Absent the agreement of all parties to the proposed change, the standard of review for changes to any provision of this Agreement (including all Power Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the parties herein, whether proposed by a party, a non-party or FERC acting *sua sponte*, shall be the “public interest” 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).

(B) The parties, for themselves and their successors and assigns, (y) agree that this “public interest” standard of review shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the parties in connection with this Agreement and (z) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard, provided that this standard of review and the other provisions of this clause (h)(iii) shall only apply to proceedings before the FERC or appeals thereof.

(C) In addition, and notwithstanding the foregoing clauses (h)(iii)(A) and (B), 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 Sections 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 provision of this Agreement (including any applicable Power Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the parties, it being the express intent of the parties that, to the fullest extent permitted by applicable law, the “sanctity of contract” principles acknowledged by FERC in its Notice of Proposed Policy Statement (issued August 1, 2002) in Docket No. PL02-7-000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities (“NPPS”) shall prevail and neither of them shall unilaterally seek to obtain from FERC any relief changing the rate(s) and/or other material economic terms and conditions of their agreement(s), as set forth in this Agreement and in any Power Transactions or Confirmations, 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 clause (h)(iii) shall not apply, provided that, consistent with clause (h)(iii) neither party shall seek any such changes except under the “public interest” standard of review and otherwise as set forth in clauses (h)(iii)(A) and (B).

(D) In connection with the foregoing, the parties acknowledge that, pursuant to the NPPS, FERC has invited interested persons to submit comments with respect to the provisions thereof and therefore agree that, if and to the extent FERC adopts in a final or subsequent policy statement (“FPS”) the use of specific language which varies from that set out in clause (h)(iii)(A) above, then clause (h)(iii)(A) shall, without further action of either party, be deemed amended to reflect such specific language, provided that to the extent that the specific language adopted in an FPS is in any way inconsistent with the mutual intent of the parties in this regard as currently set forth in clauses (h)(iii)(A) and (B), then the parties agree to meet to attempt to negotiate in good faith an amendment to this clause (h)(iii) to address such inconsistencies, provided further that neither party shall be obligated in any way to agree to any such amendment if to do so would be

inconsistent with such current mutual intent as expressed herein or would expose such party in any way to greater risk of changes being ordered by FERC to the parties' agreement as set forth in this Agreement and any Power Transactions and/or Confirmations.

(i) **Certain Modifications to this Agreement**

(i) **Single Agreement: Section 1(c).** With respect to all Power Transactions, the words “, the Tariffs, if any” are hereby added immediately following “this Master Agreement” in Section 1(c) of this Agreement.

(ii) **Events of Default: Sections 5(a)(i) and 5(a)(ii)(1).**

(A) With respect to all Power Transaction, the words “or delivery” are hereby deleted in Section 5(a)(i) of this Agreement.

(B) With respect to all Power Transaction, the words “(or to deliver or receive the Product, the exclusive remedy for which is provided in clause (c) of Part 6 of the Schedule)” are hereby added at the end of the parenthetical of Section 5(a)(ii)(1) of this Agreement.

(iii) **Effect of Designating an Early Termination Date: Section 6(c)(i).** Section 6(c)(i) of this Agreement is hereby amended by adding the following phrase at the end of such section:

“(it being understood, that to the extent in the reasonable opinion of the Non-defaulting Party or the Non-Affected Party, as the case may be, any of the Terminated Transactions that are Power Transactions that are not liquidated and terminated under applicable law on the Early Termination Date, such Terminated Transactions shall be liquidated and terminated as soon as thereafter as is reasonably practicable)”.

(iv) **Definitions: Section 14.** Section 14 of this Agreement is hereby amended by adding the following definitions:

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

“Claiming Party” means the Party that is prevented by Force Majeure from carrying out, in whole or party, its obligations under the Power Transaction.

“Contract Price” means the price in U.S. Dollars (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in a Power Transaction.

“Delivery Point” means the point at which the Product will be delivered and received as specified in a Power Transaction.

“Force Majeure” means an event or circumstance which prevents the Claiming Party from performing its obligations under one or more Power Transactions, which event or circumstance was not anticipated as of the date the Power 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 the 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 Power Transaction is governed by the terms of the Products and the Related Definitions contained in Schedule P (defined below).

“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 place of business. The relevant party, in each instance unless otherwise specified, shall be the party to whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

“Product” means electric capacity, energy or other product(s) related thereto specified in a Power Transaction by reference to a Product listed in Schedule P (defined below), which is incorporated herein, or as otherwise specified by the parties in the Power Transaction.

“Quantity” means the 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 a Power Transaction.

“Replacement Price” means (A) the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Power 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, (B) 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.

“Sales Price” means (A) 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, (B) 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.

“Schedule” or “Scheduling” means the action 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.

“Schedule P” means “Schedule P: Products and Related Definitions” to the Master Power Purchase & Sale Agreement published and modified from time to time by the Edison Electric Institute.

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

“Transmission Provider” means any entity or entities transmitting or transporting Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Power Transaction.

**(j) Elective Provisions**

1. (a)(ii)  Applicability of Part 6 to Outstanding Power Transactions. If not checked, not applicable.
2. (a)(iii)  Applicability of Outstanding Credit Support held by a party in connection with Outstanding Power Transactions. If not checked, not applicable.
3. c)  Accelerated Payment Damages. If not checked, not applicable.
4. (d)(ii): Timeliness of Payment  
 Option A  
 Option B  
If neither is checked, Option B shall be deemed to apply.
5. (h)(i): Wholesale Power Tariffs  
 Party A Electric Tariff. Tariff/Date/Docket: FERC Market Based Rate Schedule No. 1/ 10-1-97 / ER-97-3834-000.  
 Party B Electric Tariff. Tariff/Date/Docket FERC Electric Tariff Vol. No. 3/ March 1, 2002/ER02-1077  
If not checked, not applicable.
6. (h)(ii)  Applicability of Severability provision. If not checked, not applicable.
7. (h)(iii)  Applicability of FERC Standard of Review and Certain Covenants and Waivers. If not checked, not applicable.

**(k) Contact Information:**

Name: DTE Energy Trading, Inc., a Michigan Corporation or "Party A"

All Notices:

Street: 414 S. Main Street, Suite 200

City: Ann Arbor, MI Zip: 48104

Attn: Contract Administration  
Phone: 734-887-2042 734-887-2048  
Facsimile: 734-887-2235  
Duns: 17-9989231  
Federal Tax ID Number: 38-3323526

**Invoices:**

Attn: Boyd Smith  
Phone: 734-887-2023  
Facsimile: 734-887-2140

**Confirmations:**

Phone: 734-887-2025  
Facsimile: 734-887-2140

**Scheduling:**

Attn: Scheduling Desk  
Phone: 734-887-2077  
Facsimile: 734-887-2092

**Payments:**

Attn: Boyd Smith  
Phone: 734-887-2023  
Facsimile: 734-887-2140

**Wire Transfer:**

BNK: JPMorgan Chase Bank  
ABA: 072000326  
ACCT: 14379-63

**Credit and Collections:**

Attn: Credit Management  
Phone: 734-887-4205  
Facsimile: 734-887-4065

**With additional Notices of an Event of Default to:**

Attn: General Counsel  
Phone: 734-887-4097  
Facsimile: 734-887-2235

Name: "Louisville Gas and Electric Company, a Kentucky corporation /Kentucky Utilities Company, a Kentucky an Virginia corporation" or "Party B" or "LGE"/"KU"

All Notices:

Street: 220 West Main Street, 7<sup>th</sup> Floor

City: Louisville, KY Zip: 40202

Attn: Contract Administration  
Phone: 502-627-4251 or 4197  
Facsimile: 502-627-4222  
Duns: LGE 006945505;KU 006944938  
Federal Tax ID Number: LGE 61-0264150; KU 61-0247

**Invoices:**

Attn: Energy Marketing Accounting  
Phone: 502-627-2922  
Facsimile: 502-627-3800

**Confirmations:**

Phone: 502-627-4197 or 2252  
Facsimile: 502-627-4222

**Scheduling:**

Attn: \_\_\_\_\_  
Phone: (502) 627-4880  
Facsimile: (502) 627-4655

**Payments:**

Attn: Energy Marketing Accounting  
Phone: : 502-627-2922  
Facsimile: 502-627-3800

**Wire Transfer:**

BNK: Bank of America, Dallas, TX  
ABA: 111-0000-12  
ACCT: 3752099133

**Credit and Collections:**

Attn: Credit Manager  
Phone: (502) 627-4253  
Facsimile: (502) 627-3950

**With additional Notices of an Event of Default to:**

Attn: General Counsel  
Phone: (502) 627-3665  
Facsimile: (502) 627-3950



**(I) Other Changes to the ISDA Power Annex: Physically Settled Power Transactions:**

1. All referenced to “Part 6” shall be replaced with references to “Part 7”.
2. Section (a)(ii) *Applicability to Outstanding Power Transactions* shall be revised by inserting the phrase “, as listed on Exhibit A,” prior to the phrase “(“Outstanding Power Transactions”)” in the first sentence thereof.
3. Section (b)(iii) *Force Majeure* shall be deleted in its entirety and replaced with the new section (b) (iii):

(iii) *Force Majeure.* To the extent either party is prevented by Force Majeure from carrying out, in whole or part, its obligations under any Power 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 Power 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 Power Transaction(s) pursuant to this 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 Power Transactions (including without limitation for any payments as described in Section 6(e) of the Agreement) if such event of Force Majeure continues for a period of thirty (30) 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 the Force Majeure is no longer in effect. Notices given by telephone under the provision hereunder shall be confirmed in writing as soon as reasonably possible.

4. Section (c)(iii) *Limitation of Condition Precedent* shall be amended by deleting the phrase “or a Potential Event of Default” from the fifth line.
5. Section (d)(ii) *Timeliness of Payment* – Option B shall be amended by replacing the words “Default Rate” with the words “Interest Rate” in the second paragraph.
6. Insert the following as new Sections (d)(v), (d)(vi), and new Section (d)(vii):

“(v) *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 **Part 7** 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 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 *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.

(vi) **Correction 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 the 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) Local 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 the 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.

(vii) **Rounding.** For the purposes of the calculation of a Floating Price under this Power Annex, 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.”

7. Section (e) **Limitation of Liability** shall be amended by adding the phrase “EXCEPT AS SET FORTH HEREIN,” to the beginning of the second paragraph.
8. Section (f)(ii) **Taxes** shall be amended by inserting the phrase “under clause (d) hereunder and” after the word “Seller” in the tenth (10<sup>th</sup>) line.
9. Section (g)(ii) **Indemnity** shall be amended by adding the phrase “under clause (f) hereunder” to the end of this section.
10. Section (h) (iii) **FERC Standard of Review; Certain Covenants and Waivers** shall be amended by (a) inserting in Paragraph (A) the phrase “for Power Transactions” to the end of the parenthetical and deleting the phrase “specifying the rate(s)...parties herein” after the

parenthetical and (b) in Paragraph (C) inserting the phrase “for Power Transactions” to the end of the parenthetical in the eighth (8<sup>th</sup>) line.

11. Section (h) *Miscellaneous* shall be amended by adding following new subsections:

(iv) **“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.”

(v) **Bankruptcy - Utility Clause.** 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.”

(vi) **Price Release.** Nothing herein shall prevent either Party from disclosing simple price and volume terms to a third party solely for the purposes of it being used in conjunction with other similar information for establishing electric price indices by a qualified independent entity provided that such information is only published in aggregate form with other data such that it cannot be used to identify the parties to a Transaction.

(vii) **Forward Contracts.** The Parties acknowledge and agree that all Power Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

(viii) **Audits.** 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 Part 7. 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.

12. Section (i)(iii) is deleted in its entirety and replaced with the following

“(iii) Effect of Designating an Early Termination Date: Section 6(c)(i). Section 6(c)(i) of this Agreement is hereby amended by adding the following phrase at the end of such section:

“(it being understood, that to the extent in the reasonable opinion of the Non-defaulting Party or the Non-Affected Party, as the case may be, any of the Terminated Transactions that are Power Transactions may not be liquidated and terminated under applicable law on the Early Termination Date, then such Terminated Transactions shall be liquidated and terminated as soon as thereafter as is reasonably practicable)”. Notwithstanding any other provision of this Part 7, if an Event of Default shall have occurred and be continuing, the Non-Affected Party, upon written notice to the Affected Party, shall have the right (i) to suspend performance under any or all Power Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Power Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 6 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. “

13. Section (i)(iv) **Definitions: Section 14** shall be amended by

- (a) Deleting the definition of “Claiming Party”;
- (b) Revising the definition of “Force Majeure” to delete the phrase “(iii) the loss or failure of Seller’s supply” in the seventh line and replace it with “(iii) the loss, failure, or increase in cost of Seller’s supply”;
- (c) Adding the following definition for “Interest Rate”: “Interest Rate” means, for any day, (a) the “Federal Funds Effective” rate in effect for such day, as published by The Wall Street Journal under “U.S. Money Rates” for such day (or if such day is not a Business Day, then the preceding Business Day) or if such rate is not published, then (b) the “Federal Funds Effective” rate in effect for such 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”.
- (d) Replacing the definitions of “Replacement Price” and “Sales Price” with the following definitions:

““Replacement Price” means (A) the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Power 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, (B) 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

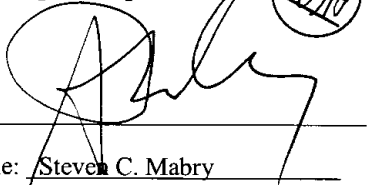
change its utilization of its owned or controlled assets or market positions to replace any Product specified in a Transaction but not delivered by Seller, then the Replacement Price shall be determined with reference to the market price at the Delivery Point for such Product not delivered as determined 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.

“Sales Price” means (A) 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 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.”

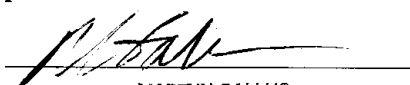
Except as expressly amended herein, the Master Agreement shall continue in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, Party A and Party B have each caused this First Amendment to be executed by their respective authorized representatives as of the date first written above.

**DTE ENERGY TRADING, INC.**  
a Michigan Corporation

By:   
Name: Steven C. Mabry  
Title: President

**Louisville Gas and Electric Company, a** *SOE*  
**Kentucky corporation /Kentucky Utilities**  
**Company, a Kentucky and Virginia**  
**corporation**

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

**EXHIBIT A**  
**TO THE**  
**FIRST AMENDMENT TO 1992 ISDA MASTER AGREEMENT**  
**BETWEEN**  
**DTE ENERGY TRADING, INC. (“PARTY A”)**  
**AND**  
**LOUISVILLE GAS AND ELECTRIC COMPANY, A KENTUCKY**  
**CORPORATION /KENTUCKY UTILITIES COMPANY, A KENTUCKY AND**  
**VIRGINIA CORPORATION (“PARTY B”)**

**1. THERE ARE NO TRANSACTIONS BETWEEN THE PARTIES THAT SHALL BE IDENTIFIED AS “OUTSTANDING TRANSACTIONS” FOR THE PURPOSE OF THIS EXHIBIT A.**

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

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

THIS SECOND AMENDMENT is dated as of February 25<sup>th</sup>, 2014 (the "Amendment") and made between DTE Energy Trading, Inc. ("Party A") and Louisville Gas and Electric Company/Kentucky Utilities Company ("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, and amended on July 1, 2006 (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.**

(a) Part 4(i) "Netting of Payments" shall be deleted and replaced with the following:

"(i) **Netting of Payments.** The provisions for Netting of Payments in Part 4(i) of the Schedule shall be deleted in its entirety and replaced with the following:

*"Subparagraph (ii) of Section 2(c) of this Agreement will not apply to any Transactions; provided, however, that the following groups of Transactions shall be netted as grouped by commodity, unless otherwise agreed by the parties: (1) financial commodity Transactions, (2) physical power Transactions, and (3) physical gas Transactions."*

For the avoidance of doubt, the parties hereby acknowledge and agree that the provisions of Section 2 (c) shall not apply to any transaction or agreement not covered by this Agreement

(b) Part 4(j) "Affiliate" shall be deleted and replaced with the following:

"(j) For the purposes of Section 3 (c), Party A and Party B will be deemed to have no Affiliates.

(c) Part 5 "Other Provisions". The following shall be added as a new subsection "(p)":

(p) **Bankruptcy Matters.** Bankruptcy Matters Paragraph (1) is deleted in its entirety and replaced with the following:

“(1) Without limiting the applicability of any other provision of the Bankruptcy Code (including, without limitation, Sections 362, 546, 548, 553, 556, 560, 561 and 562 thereof and the applicable definitions in Section 101 thereof), the parties acknowledge and agree that: (i) this Agreement and all Transactions entered into hereunder constitute “forward contracts” and/or “swap agreements” and this Agreement constitutes a “master netting agreement” as defined in section 101 of the Bankruptcy Code; (ii) each party is a “master netting agreement participant,” a “forward contract merchant” and/or a “swap participant” as defined in the Bankruptcy Code; (iii) all payments made or to be made by one party to the other party pursuant to this Agreement constitute “settlement payments” and “payment” within the meaning of the United States Bankruptcy Code; (iv) the rights of the parties with respect to every Transaction constitute “contractual rights” to liquidate, terminate or accelerate, as applicable, this Agreement and the Transactions entered into hereunder; (v) any margin or collateral (including any Letter of Credit provided for herein, any funds on deposit or adequate assurance of performance that has been posted) provided hereunder, or under any margin, collateral, security, or similar agreement related hereto and all payment obligations of any party to the other hereunder constitute a “margin payment”, “transfers” or a “settlement payment” as defined in section 101 of the Bankruptcy Code; (vi) each party’s rights under Section 6, “Early Termination”, of this Agreement constitutes a “contractual right to liquidate” the Transactions within the meaning of the United States Bankruptcy Code and (vii) the parties are entitled to the rights under, and protections afforded by, Sections 362, 546, 548, 553, 556, 560, 561 and 562 of the Bankruptcy Code. As used herein, “Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended.”

(d) Part 6(a) “Additional Terms for Commodity Derivative Transactions” shall be deleted in its entirety and replaced with the following:

“(a) **ISDA Definitions.** This Agreement, each Confirmation, and each Transaction are subject to the 2006 ISDA Definitions (the “Swap Definitions”), the 2005 ISDA Commodity Definitions (the “Commodity Definitions”) each as published by the International Swaps and Derivatives Association, Inc. (collectively the “ISDA Definitions”). The ISDA Definitions are incorporated by reference herein, and made part of, this Agreement and each Confirmation as if set forth in full in this Agreement and such Confirmations. Unless otherwise specified in a Confirmation, any capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed to them in the Swap Definitions, and the Commodity Definitions (except that references to “Swap Transactions” in the definitions will be deemed to be references to “Transactions”). In the event of any inconsistency between the provisions of the Swap Definitions and the Commodity Definitions, the Commodity Definitions will prevail. In the event of any inconsistency between the provisions of this Agreement and the ISDA Definitions, this Agreement will prevail. In the event of any inconsistency between the provisions of the Credit Support Documents, if any, and the ISDA Definitions, the Credit Support Documents will prevail. Subject to Section 1(b) of this Agreement, in the event of any inconsistency between the provisions of any Confirmation and this Agreement or the ISDA Definitions, the Confirmation will prevail for the purpose of the relevant Transaction; provided however, if a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price, quantity), which modify or supplement the general terms and conditions of this Agreement (including without limitation Events of Default or Termination Events, or calculation of damages, settlement, netting, set-off or termination



payments), any material changes to such terms shall not be deemed accepted unless such Confirmation is signed by an officer of both Parties.”

- (e) Reference to “Part 6. Physically Settled Power Transactions” shall be amended by replacing “Part 6” with “Part 7”.
- (f) Part 7(h)(iii) “FERC Standard of Review; Certain Covenants and Waivers” is deleted in its entirety and replaced with the following:

“(iii) **FERC Standard of Review; Mobile Sierra Waiver.** If elected under clause (j) as being applicable:

(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 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. \_\_\_ (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 solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).”

**2. Party A and Party B agree to amend the Agreement to include the following new Part 8:**

**“PART 8. PHYSICALLY SETTLED GAS TRANSACTIONS (“GAS ANNEX”)”**

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

(i) *Physical Gas Transactions under this Agreement.* The provisions of this Gas Annex shall apply solely to transactions between the parties for the purchase or sale of physical Gas with delivery points in North America on a Firm or Interruptible basis on a spot or forward basis or as an option to purchase or sell Gas (collectively, “Gas Transactions”). All Gas Transactions will be deemed to have been entered into in accordance with the terms of this Agreement and shall be Transactions for all purposes

of this Agreement. A subsequent agreement between the parties to settle a Gas Transaction without involving a physical delivery of Gas shall not affect such Gas Transaction's status as a Gas Transaction under this Gas Annex. In the event of any inconsistency among or between the other provisions of this Agreement and this Gas Annex, this Gas Annex will govern with respect to Gas Transactions. In the event of any inconsistency between the Confirmation for a Gas Transaction and this Gas Annex, the Confirmation will govern with respect to such Gas Transaction, except as provided in clause (a)(ii) with respect to Outstanding Gas Transactions.

(ii) *Applicability to Outstanding Gas Transactions.* Gas Transactions executed by the parties prior to the effectiveness of this Gas Annex and selected under clause (1)(1) ("Outstanding Gas Transactions") shall be Transactions and shall be subject to the terms and conditions of this Agreement upon effectiveness of this Gas Annex, unless otherwise agreed in writing by the parties with respect to one or more specific Outstanding Gas Transactions. All confirmations evidencing such Outstanding Gas Transactions shall constitute "Confirmations" within the meaning of this Agreement that supplement, form part of and are subject to this Agreement. If any confirmation issued or entered into with respect to one or more Outstanding Gas Transactions pursuant to the terms of a master agreement or in a form that contains provisions that are not directly related to the commercial terms of the Transaction and that are inconsistent with or duplicative of the terms and conditions of this Agreement (such master agreement or the portion of such Confirmation containing such non-commercial terms being referred to herein as the "Prior Master Agreement"), then, notwithstanding any provision of this Agreement to the contrary, the terms of the Schedule and the pre-printed form of this Agreement shall automatically supersede such Prior Master Agreement effective upon the effectiveness of this Gas Annex.

(iii) *Credit Support Documents.* If elected under clause (1) as being applicable:

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

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

(B) *Amendments/Guaranties.* The parties agree that they will enter into such amendments to any Outstanding Gas Credit Support Document as may be necessary to

give effect to the terms of this clause (a)(iii). To the extent that a guaranty was delivered in connection with a party's obligations under Outstanding Gas Transactions or a Prior Master Agreement, that party represents and warrants that any amendments necessary to ensure that the guaranty would extend to Transactions subject to this Agreement have been made prior to the effectiveness of this Gas Annex and agrees (x) that such guaranty constitutes a Credit Support Document with respect to the obligations of such party and (y) the guarantor under such guaranty constitutes a Credit Support Provider with respect to the obligations of such party.

**(b) Performance Obligation**

(i) Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular Gas Transaction in accordance with the terms of this Gas Annex. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a Gas Transaction.

(ii) The remedy for the breach of a Firm obligation by a party shall be determined pursuant to the option below that the parties select in clause (1)(3):

Option A: *Cover Standard*: 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 clause (b)(ii), but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in clause (c)(iii) of this Gas Annex. The amount of such unfavorable difference shall be payable five Local Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

Option B: *Spot Price Standard*: 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 clause (b)(ii), but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in clause (c)(iii) of this Gas Annex. The amount of such unfavorable difference shall be payable five Local Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

(iii) Notwithstanding clause (b)(ii) of this Gas Annex, the parties may agree to Alternative Damages in a Confirmation executed in writing by both parties.

**(c) Transportation, Nominations and Imbalances**

(i) 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).

(ii) 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 Gas 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.

(iii) 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. "Unpaid Amounts" as defined in Section 14 of this Agreement shall include unpaid Imbalance Charges, if any.

**(d) 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 Gas Transactions shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

**(e) Taxes**

The Taxes payable by a party shall be determined pursuant to the option below that the parties select in clause (1)(4):

Option A: *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.

Option B: *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.

**(f) Billing, Payment and Audit**

(i) 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.

(ii) Buyer shall remit the amount due under clause (f)(i) of this Gas Annex, in immediately available funds to the account specified from time to time by Seller, on or before the Payment Date elected in clause (1)(5) of this Gas Annex. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this clause (f)(ii).

(iii) In the event payments become due pursuant to clauses (b)(ii) or (b)(iii) of this Gas Annex, 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 Local Business Days after receipt of invoice.

(iv) 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 clause (f).

(v) 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 this Gas Annex. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to Gas Transactions under this Gas Annex. 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 clause (f) of this Gas Annex shall be paid in full by the party owing payment within 30 Days of notice and substantiation of such inaccuracy.

**(g) Title, Warranty and Indemnity**

(i) 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).

(ii) 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 CLAUSE (g)(ii), ALL OTHER WARRANTIES WITH RESPECT TO GAS, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

(iii) 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.

(iv) Notwithstanding the other provisions of this clause (g) of this Gas Annex, 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 clause (d) of this Gas Annex.

**(h) Force Majeure**

(i) Except with regard to a party's obligation to make payment(s) due under clause (f) of this Gas Annex, Section 6 (e) of this Agreement and Imbalance Charges under clause (c)(iii) of this Gas Annex, 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 clause (h)(ii) of this Gas Annex.

(ii) Force Majeure shall include, but not be limited to, the following: (A) 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; (B) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (C) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (D) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (E) 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.

(iii) 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: (A) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (B) the party claiming excuse failed to remedy the

condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (C) 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; (D) 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 clause (h)(ii) of this Gas Annex; (E) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in clause (h)(ii) of this Gas Annex. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

(iv) 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.

(v) 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.

(vi) Notwithstanding clauses (h)(ii) and (h)(iii) of this Gas Annex, the parties may agree to alternative Force Majeure provisions in a Confirmation executed in writing by both parties.

If the pre-printed form portion of this Agreement is the 2002 ISDA Master Agreement form, Section 5(b)(ii) of this Agreement shall not apply to any Gas Transaction.

**(i) Limitation of Liability**

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 GAS 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.

**(j) Certain Amendments to this Agreement for Gas Transactions**

(i) *Section 5(a)(i)*. With respect to all Gas Transactions, the words "or delivery under Section 2(a)(i) or 2(e)" in the second line of Section 5(a)(i) of this Agreement and, if the pre-printed form portion of this Agreement is the 2002 ISDA Master Agreement form, the words "or the first Local Delivery Day in the case of any such delivery" and ", in each case," in the third and fourth lines of Section 5(a)(i) of this Agreement, are hereby deleted.

(ii) *Section 5(a)(ii)*. With respect to all Gas Transactions, the words "or delivery under Section 2(a)(i) or 2(e)" in the second line of Section 5(a)(ii) are hereby deleted and the words "or to deliver or receive Gas, the exclusive remedy for which is provided in clause (b)(ii) of the Gas Annex to the Schedule" are hereby added at the end of the parenthetical of Section 5(a)(ii) if the pre-printed form portion of this Agreement is the 1992 ISDA Master Agreement form or Section 5(a)(ii)(1) if the pre-printed form portion of this Agreement is the 2002 ISDA Master Agreement form.

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

**(k) Definitions.** For purposes of this Gas Annex, the following definitions apply:

(i) "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.

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

(iii) "Buyer" shall mean the party receiving Gas under a Gas Transaction.

(iv) "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 Gas Transaction.

(v) "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a Gas Transaction.

(vi) "Cover Standard" shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Gas Annex, 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.

(vii) "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.

(viii) "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a Gas Transaction.

(ix) "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a Gas Transaction.

(x) "EFP" shall mean, when used in a Confirmation of a Gas Transaction, 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 U.S. Commodity Exchange Act (7 U.S. Code 1, as amended).

(xi) "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 clause (c)(iii) of this Gas Annex 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.

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

(xiii) "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.

(xiv) "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 clause (c)(iii) of this Gas Annex 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.

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

(xvi) "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.

(xvii) "Payment Date" shall mean the payment date for Gas Transactions under this Gas Annex, as specified in clause (1)(5) of this Gas Annex.

(xviii) "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.

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

(xx) "Seller" means the party delivering Gas under a Gas Transaction.

(xxi) "Spot Price" as referred to in clause (b)(ii) of this Gas Annex shall mean the price published as the Spot Price Index for the relevant Day; provided, if there is no single price published as the Spot Price Index 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.

(xxii) "Spot Price Index" shall mean, with respect to a Gas Transaction, unless otherwise specified in the Confirmation for that Transaction, 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 or, if an alternative index or price is specified in clause (1)(6) below, such alternative index or price.

(xxiii) "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 Gas Transaction.

**(I) Elective Provisions**

1. (a)(ii) - **Outstanding Gas Transactions.** This Gas Annex shall apply to the following pre-existing Gas Transactions pursuant to clause (a)(ii):

Option A: All Gas Transactions outstanding between the parties as of the date this Gas Annex becomes effective.

Option B: The Gas Transactions listed in Schedule I to this Gas Annex.

Option C: None of the Gas Transactions between the parties that were executed prior to the date this Gas Annex becomes effective.

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

2. (a)(iii) - **Outstanding Gas Credit Support**

Outstanding Gas Credit Support held by a party in connection with Outstanding Gas Transactions shall be deemed to have been delivered under and in connection with this Agreement pursuant to clause (a)(iii).

If not checked, not applicable.

3. **(b)(ii) - Performance Obligation** (remedy for breach of Firm obligation)

Option A: Cover Standard

Option B: Spot Price Standard

If neither option is selected, Option A shall apply.

4. **(e) - Taxes**

Option A: Buyer Pays At and After Delivery Point

Option B: Seller Pays Before and At Deliver Point

If neither option is selected, Option A shall apply.

5. **(f)(ii) - Payment Date**

Option A: the later of the 25th Day of Month following Month of delivery or 10 Days after receipt of the invoice by Buyer (provided that if the Payment Date is not a Local Business Day, payment is due on the next Local Business Day following that date).

Option B: the later of the - Day of Month following Month of delivery or 10 Days after receipt of the invoice by Buyer (provided that if the Payment Date is not a Local Business Day, payment is due on the next Local Business Day following that date).

Option C: Notwithstanding anything to the contrary in the Schedule, payments with respect to both Gas Transactions and Power Transactions (as defined separately in the Schedule) will be netted and payable on or before the later of the 20th Day of Month following Month of delivery or 10 Days after receipt of the invoice by Buyer (provided that if the Payment Date is not a Local Business Day, payment is due on the next Local Business Day following that date).

Option D: Notwithstanding anything to the contrary in the Schedule, payments with respect to both Gas Transactions and Power Transactions (as defined separately in the Schedule) will be netted and payable on or before the later of the 25th Day of Month following Month of delivery or 10 Days after receipt of the invoice by Buyer (provided that if the Payment Date is not a Local Business Day, payment is due on the next Local Business Day following that date).

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

6. **(k)(xxii) - Alternative to Spot Price Index.** The parties have selected the following alternative index as the Spot Price Index: \_\_\_\_\_. If no index is specified, the Spot Price Index specified in clause (k)(xxii) applies.

**(m) Notices for Gas Transactions**

**PARTY A**

**PARTY B**

**Invoices:**

**Invoices:**

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

Attn: Accounting  
Phone: (734) 887-4005  
Fax: (734) 887-2140  
Email:  
DTE\_GAS\_STLMTS@dteenergy.com

**Nominations:**

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

Attn: Margo Pardi, Director of Gas Operations  
Phone: (734) 887-4015  
Fax: (734) 887-4060  
Email: pardim@dteenergy.com  
24-hr (800) 506-9857

**Confirmations:**

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

Attn: Fran Casadei, Deal Assistant  
Phone: (734) 887-4035  
Fax: (734) 887-4062  
Email: DTE\_CONFIRMS@dteenergy.com

**Option Exercise:**

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

Attn:  
Phone:  
Fax:  
Email:

Wire Transfer - or -  ACH (check one box):

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

Bank: JPMorgan Chase Bank, N.A.  
ABA: 072000326  
Account: 1437963  
Other Details: \_\_\_\_\_

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

Attn:  
Phone:  
Fax:

**Nominations:**

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

Attn: Gas Regulatory Accounting  
Phone: 502-627-3726  
Fax: 502-627-3800

**Confirmations:**

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

Attn: Contract Administration  
Phone: 502-627-4197  
Fax: 502-627-4222

**Option Exercise:**

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

Attn:  
Phone:  
Fax:

Wire Transfer - or -  ACH (check one box):

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

Bank: \_\_\_\_\_  
ABA: \_\_\_\_\_  
Account: \_\_\_\_\_  
Other Details: \_\_\_\_\_

(ii) **Other Provisions/Modifications to this Gas Annex.**

**(i) Amendments to Clause (b): Performance Obligation**

- (a) Clause (iii) is deleted in its entirety.

**(ii) Amendments to Clause (f): Billing, Payment and Audit**

- (a) Clause (f)(iii) 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”.

- (b) Clause (f)(iv) shall be amended by

- (i) deleting the last sentence “In the event the parties are unable...this clause (f)(iv).” in its entirety and adding the following:

“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 this clause (f)(iii) 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 this clause (f)(iii) 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 Clause (f)(iv) 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.”; and

- (ii) adding the following new paragraph at the end thereof:

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, for any day, that is 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 them most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

**(iv) Amendments to Clause (g): Title, Warranty and Indemnity:**

- (a) Clause (g)(ii) shall be amended by:

x) inserting the phrase “HEREUNDER AND” between the words “PROVIDED and “IN”; and

(z) adding the following as a new section (v):

Section (g) Title, Warranty and Indemnity shall be amended by adding the following new subclause (v) at the end thereof:

“In the event Seller owned title to Gas under a Gas Transaction 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. In the event that Seller sells Gas under a Gas Transaction outside the Customs Territory of the United States to the Buyer, Seller agrees to provide to Buyer within two Business Days of the sale a fully executed North American Free Trade Agreement Certificate of Origin.”

**(v) Amendments to Clause (h): Force Majeure**

Clause (h) is amended by:

(a) adding the following paragraph to the end of (h)(v):

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, if any.

(b) Clause (vi) is deleted in its entirety.

**(vi) Amendments to Clause (j): Certain Amendments to this Agreement for Gas Transactions**

(a) Clause (j) is amended by adding the following at the end thereof:

(iv) *Section 6(c)(i)*. Section 6(c)(i) of this Agreement is hereby deleted in its entirety and replaced with the following

“(iii) Effect of Designating an Early Termination Date: Section 6(c)(i). Section 6(c)(i) of this Agreement is hereby amended by adding the following phrase at the end of such section: “(it being understood, that to the extent in the reasonable opinion of the Non-defaulting Party or the Non-Affected Party, as the case may be, any of the Terminated Transactions that are Gas Transactions may not be liquidated and terminated under applicable law on the Early Termination Date, then such Terminated Transactions shall be liquidated and terminated as soon as thereafter as is reasonably practicable) and further provided, that such Terminated Transactions actual termination date shall be the Early Termination Date for purposes of Section 6(a). Notwithstanding any other provision of this

Part 8, if an Event of Default shall have occurred and be continuing, the Non-Affected Party, upon written notice to the Affected Party, shall have the right (i) to suspend performance under all Gas Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) Local Business Days with respect to the Gas Transactions unless an early Termination Date shall have been declared and notice thereof pursuant to Section 6 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.”

**(vii) Amendments to Clause (k): Definitions.**

- (a) (vi) Cover Standard is amended to delete the parenthetical phrase “(or an alternate fuel if elected by Buyer and replacement Gas is not available”).

The Parties agree to add the following new provision for purposes of this Part 8:

The Schedule to the Master (the “Schedule”), the Credit Support Annex (the “Annex”) and Paragraph 13 of this Agreement, set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the provisions contained in the Schedule, the Annex and Paragraph 13 credit provisions, neither Party:

- a) has or will have any obligation to post Cash, provide Letters of Credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

**(3) 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.
- (c) This Amendment may be signed in any number of counterparts. All counterparts together will be taken to constitute one instrument.
- (d) Any notice or other communication in respect of this Amendment will be governed by the terms of Section 12 of the Agreement.

**IN WITNESS WHEREOF**, the parties have executed this SCHEDULE to the ISDA MASTER AGREEMENT by their duly authorized officers as of the date specified on the first page of this document.

DTE Energy Trading, Inc.

Legal:  
CMK

Louisville Gas and Electric Company/  
Kentucky Utilities Company

By: Gregory V. Staton

Name: Gregory V. Staton

Title: Vice President and General Counsel  
2/28/2014

By: David S. Sinclair

Name: David S. Sinclair

Title: V.P. Energy Supply and Analysis





Exhibit A

Entity: Hess Energy Marketing, LLC, a Delaware limited liability company

U.S. Federal Tax ID Number: 80-0909818

Duns Number: 07-879-0103

CICI/Legal Entity Identifier: 5493006UGLYIS8QNHC14

Electric Tariff: Market-Based Rate Tariff, 0.0.0 / Order Date: May 23, 2013 / FERC Docket ER13-1192, as such Tariff may be amended, modified, superseded or replaced from time to time.

Principal Address: One Hess Plaza, Woodbridge, NJ 07095

<i>Notices:</i>	<i>Confirmations:</i>
<p><u>Hess Energy Marketing, LLC</u> One Hess Plaza Woodbridge, NJ 07095 Attn: John Schultz <u>Phone: 732-750-6197</u> <u>Fax: 732-750-7139</u></p> <p>For legal notices, with a copy to:</p> <p><u>Hess Energy Marketing, LLC</u> One Hess Plaza Woodbridge, NJ 07095 Attn: Energy Marketing (Trading) – Legal</p>	<p><u>Hess Energy Marketing, LLC</u> Attn: Trade Operations <u>Phone: 732-750-7111</u> <u>Fax: 866-730-5094</u></p>



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

<p><u>Natural Gas Trading &amp; Operations:</u>  <u>Hess Energy Marketing, LLC</u></p> <p><u>Steve Dixon (General)</u>  <u>Phone: 732-750-6240</u>  <u>Fax: 732-750-7139</u></p> <p>James Tinsley (Forward Desk)  <u>Phone: 732-750-6908</u>  <u>Fax: 732-750-7139</u></p> <p>Rob Gallo (Spot Desk)  <u>Phone: 732-750-6451</u>  <u>Fax: 732-750-7139</u></p> <p>Jim Maguire (Scheduling)  <u>Phone: 732-750-6014</u>  <u>Fax: 732-750-7139</u></p>	<p><u>Power Trading &amp; Operations:</u>  <u>Hess Energy Marketing, LLC</u></p> <p><u>Tom Chamberlin (General)</u>  <u>Phone: 732-750-6566</u>  <u>Fax: 732-750-6359</u></p> <p>Brian Krall (Forward Desk)  <u>Phone: 732-750-6148</u>  <u>Fax: 732-750-6359</u></p> <p>Michael Cordaro (Spot Desk)  <u>Phone: 732-750-6808</u>  <u>Fax: 732-750-6359</u></p> <p>Jack Philips (Scheduling)  <u>Phone: 732-750-6302</u>  <u>Fax: 732-750-6359</u></p>
<p><u>Invoices and Payments:</u></p> <p><u>Hess Energy Marketing, LLC</u>          Attn: Carol Rouxel (Natural Gas)                Cesar Vargas (Power)                David Greenspan (General/Other)          Phone: 732-750-6711 (Natural Gas)                732-750-6503 (Power)                732-750-6756 (General/Other)</p> <p>Fax: 877-539-7580 (Natural Gas)                732-750-6361 (Power)                732-750-6361 (General/Other)</p>	<p><u>Wire Transfer or ACH Numbers:</u></p> <p>BANK: J.P. Morgan/Chase Manhattan          ABA: 021-000021          ACCT: 323-271979  <u>Other Details:</u> Hess Energy Marketing, LLC</p>
<p><u>Credit:</u></p> <p><u>Hess Energy Marketing, LLC</u>          Attn: Jan Plumaker          Phone: 732-750-6047          Fax: 732-750-6670</p>	



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

March 19, 2014

David S. Sinclair  
Louisville Gas and Electric Company and Kentucky Utilities Company  
220 West Main Street, 7<sup>th</sup> Floor  
Louisville, KY 40202  
Email: glenn.flood@lge-ku.com

Re: Consent Agreement (the "Consent Agreement") for the agreements specified on Schedule I attached hereto (the "Contract") between Hess Corporation ("Hess") and Louisville Gas and Electric Company and Kentucky Utilities Company (together, "You")

Dear Mr. Sinclair:

**Sale of Hess' Energy Marketing Business**

Direct Energy Business, LLC ("Direct Energy"), a North American subsidiary of Centrica plc, and Hess have completed the sale of Hess' Energy Marketing business to Direct Energy (the "Transaction"), which business now resides in Hess Energy Marketing, LLC ("HEM"). HEM is a wholly-owned subsidiary of Direct Energy.

The Transaction, which closed on November 1, 2013, is an exciting step forward for customers of both Direct Energy and the Energy Marketing business. The combined businesses will provide customers across all of our markets with access to a full suite of electricity, natural gas, and energy solutions offerings, as well as the benefits that come from our collective operational expertise and assets.

**Consent to Assignment**

We are writing to notify You of the Transaction, and to request Your consent to assign the Contract from Hess to HEM and to effect certain related amendments to the Contract. HEM will notify You when the assignment and amendment of the Contract will become effective (the "Assignment Effective Date").

On the Assignment Effective Date, Hess will assign and transfer to HEM, the Contract and all of Hess' rights and obligations thereunder, and HEM will assume the performance of all such rights and obligations under the Contract, including those arising prior to the Assignment Effective Date and those arising after the Assignment Effective Date. HEM's payment obligations under the Contract will be guaranteed by Centrica pursuant to the form of Guaranty attached to this Consent Agreement as Exhibit A (the "Parent Guaranty"), an executed copy of which Direct Energy will cause Centrica to deliver to You upon full execution of this Consent Agreement.

Subject to the delivery to You of the Parent Guaranty on or before the Assignment Effective Date, You hereby (i) consent to the assignment by Hess of Hess' right, title and interest in the Contract to HEM effective on the Assignment Effective Date, and accept HEM as the counterparty under the Contract in place of Hess, (ii) consent to HEM ceasing to be a subsidiary of Hess and becoming a subsidiary of Direct Energy upon consummation of the Transaction, (iii) effective on the Assignment Effective Date, release Hess from all claims, obligations (excluding the obligation to return Financial Assurances described below) or liabilities arising out of or relating to the Contract, (iv) confirm that the assignment contemplated herein shall not affect Your obligations with respect to the Contract, and subject to the amendments contained in this Consent Agreement, confirm such obligations, and (v) consent to the

disclosure of information concerning Your account, including account details and historical usage data, to Direct Energy and HEM, provided any of HEM's affiliates that have a legitimate need to know the information agree in writing in advance to abide by the confidentiality provisions set forth in Section 15.10 of the Base Contract.

#### **Financial Assurances**

For the avoidance of doubt, nothing in this Consent Agreement shall relieve You or HEM from your respective obligations, if any, on and after the Assignment Effective Date to provide financial assurances as and to the extent required in the Contract (as amended pursuant to this Consent Agreement).

#### **Amendment to Contract**

Consistent with the above, the Contract will be amended as follows upon the Assignment Effective Date:

- (a) References to "Hess Corporation" or "HESS" or phrases of similar import shall be replaced with the appropriate references to "Hess Energy Marketing, LLC" or "HEM", respectively.
- (b) The notice information for invoices, payments and other communications, banking details, tariff information, legal entity type, tax-identification number and other information in the Contract is, as appropriate, deleted and replaced with the respective information specified on Exhibit B attached to this Consent Agreement.
- (c) Any specific references in the Contract to Hess Energy Trading Company, LLC and/or any other affiliate or subsidiary of Hess Corporation or Hess Energy Trading Company, LLC, whether in any provision or definition referring to an 'affiliate', 'specified entity', 'specified transaction', 'set-off', 'cross-default', other similar provision or otherwise, shall be deemed amended and restated as appropriate to refer only to the following: "affiliates of Hess Energy Marketing, LLC that are incorporated or organized under the laws of a jurisdiction within Canada or the United States".
- (d) Any specific references in the Contract to any credit, debt or similar ratings requirement or threshold (however so defined) (the "Credit Rating"), which in accordance with their respective terms would have applied a Credit Rating to Hess or HEM, shall be deemed amended and restated as appropriate to apply the Credit Rating to "Centrica plc".
- (e) Where applicable in cases where a corporate guarantee is provided by Centrica plc for the obligations of HEM, for purposes of the applicable provisions of the Contract, Centrica plc shall be deemed the "credit support provider" and "guarantor" of HEM in the guaranteed amount provided in such guarantee. Furthermore, any obligation of HEM in the Contract to provide financial statements shall be deemed amended and restated as appropriate to instead require the semi-annual unaudited financial statements and annual audited financial statements of Centrica plc prepared in accordance with GAAP and made available as part of its public filings.
- (f) The Cover Page to the Contract shall be amended by:
  - (i) amending the "Guarantor" by deleting "N/A" and replacing with Centrica, plc;
  - (ii) Amending Section 10.2 by deleting "Conditioned Transactional Cross Default".

(g) The Special Provisions Attached to and Forming Part of the Contract, dated March 15, 2013, shall be amended by:

- (i) Deleting Section 1.3 in its entirety and replacing with Section 1.3 “[Intentionally Blank]”;
- (ii) Amending Section 2.43 by adding between the word “entity” and the comma “,” the parentical “(or its Guarantor, if applicable)”; and
- (iii) Deleting Section 17. Conditional Provisions in its entirety.

(h) Capitalized terms used in this Consent Agreement but not defined herein shall have the meanings given such terms in the Contract.

**Miscellaneous**

Each party agrees from time to time but without further consideration to deliver all such further documents as shall be reasonably required in order to fully perform and carry out the terms of this Consent Agreement. This Consent Agreement may be executed in several counterparts, including by facsimile or electronic mail, each of which is an original and all of which constitute one and the same instrument.

This Consent Agreement shall be governed by and construed in accordance with and governed by the laws of the State of New York, without giving effect to principles of conflict of law. This Consent Agreement, together with the Contract, constitutes the entire agreement between You on the one hand, and Hess, HEM and Direct Energy on the other, with respect to the subject matter of this Consent Agreement, and supersedes all prior understandings and agreements with respect to such subject matter, whether written or oral.

Please evidence your agreement with the foregoing by signing below and returning a fully executed copy to Dawn Marie Mulvey (HEM Wholesale Consent), One Hess Plaza, Woodbridge, New Jersey 07095 or via email to [HEMwholesaleconsent@hess.com](mailto:HEMwholesaleconsent@hess.com).

For assistance with routing of Centrica plc guarantee inquiries, please contact Jan Plumaker, Senior Manager Credit Risk Controls, 732-750-6047.

[SIGNATURES FOLLOW ON NEXT PAGE]

Very truly yours,

DIRECT ENERGY BUSINESS, LLC

By: Shawnie McBride  
Name: Shawnie McBride  
Title: Chief Risk Officer

HESS ENERGY MARKETING, LLC

By: John Schultz  
Name: John Schultz  
Title: Vice President

Agreed and accepted this  
\_\_ day of \_\_\_\_\_, 2014

LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY

By: \_\_\_\_\_  
Name: David S. Sinclair  
Title: Vice President Energy Supply and Analysis

HESS CORPORATION

By: Stuart Steigerwald  
Name: Stuart Steigerwald  
Title: Vice President, M&R Financial Controls

Very truly yours,

DIRECT ENERGY BUSINESS, LLC

HESS CORPORATION

By: \_\_\_\_\_  
Name:  
Title:


By: \_\_\_\_\_  
Name:  
Title:

HESS ENERGY MARKETING, LLC

By: \_\_\_\_\_  
Name:  
Title:

Agreed and accepted this  
21 day of March, 2014

LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY

By:   
Name: David S. Sinclair  
Title: Vice President Energy Supply and Analysis

*AKS (signing  
on behalf  
of ELF)*

Schedule I

The following agreements between Hess Corporation and Louisville Gas and Electric Company and Kentucky Utilities Company constitute the Contract(s):

Base Contract for Sale and Purchase of Natural Gas, dated as of 3/15/2013 (together with any schedules or attachments thereto, all transactions thereunder, and as amended from time to time).



Exhibit A

**CENTRICA PLC**

**Guarantee**

This Guarantee (this "**Guarantee**") is dated [ ] and made and entered into between

1. Centrica plc (registered number 3033654) whose registered office is Millstream, Maidenhead Road, Windsor, Berkshire SL4 5GD ("**Guarantor**"); and
2. <<Company Name>> whose place of business is <<Customer Street>>, <<Customer City>>, <<Customer State>>, <<Customer Zip>> ("**Contract Party**").

**WHEREAS**

- (A) On November 1, 2013, Direct Energy Business, LLC ("**Direct Energy**"), a North American subsidiary of Guarantor, acquired the energy marketing business of Hess Corporation ("**Hess**"), which business now resides in Hess Energy Marketing, LLC ("**Obligor**"), a wholly owned subsidiary of Direct Energy.
- (B) Obligor, upon assignment by Hess, and Contract Party are parties to that certain [INSERT DESCRIPTION OF MASTER AGREEMENT] dated [DATE] (collectively with any confirmations or ancillary agreements related thereto, and as amended from time to time, the "**Transactions**").
- (C) Guarantor will directly or indirectly benefit from the Transactions; and
- (D) Contract Party has required that, Guarantor unconditionally guarantee to Contract Party all payment obligations of Obligor under the Transactions.

NOW THEREFORE, to induce Contract Party to enter into the Transactions, Guarantor agrees as follows:

**PAYMENT GUARANTEE**

1. Guarantor absolutely, irrevocably and unconditionally guarantees to Contract Party all payment obligations of Obligor set forth in the Transactions (the "**Obligations**") up to an aggregate amount that shall not exceed US\$ <<AMOUNT>> (<<AMOUNT IN WORDS>> United States dollars). This Guarantee is a continuing guarantee of payment (and not of collection or performance) effective during the term of the Transactions.
2. Guarantor WAIVES any right to require as a condition to its obligations hereunder that:
  - (i) presentment or demand be made upon Obligor; and
  - (ii) action be brought against Obligor or any other person or entity except Guarantor,should Contract Party seek to enforce the obligations of Guarantor. Specifically, without limitation, Guarantor WAIVES any right to require, substantively or procedurally, that:

- (a) a judgment previously be rendered against Obligor or any other person or entity except Guarantor;
  - (b) Obligor or any other person or entity be joined in any action against Guarantor; or
  - (c) an action separate from one against Guarantor be brought against Obligor or any other person or entity.
- 3. The obligations of Guarantor are several from those of Obligor or any other person or entity, including, without limitation, any other surety for Obligor, and are primary payment obligations concerning which Guarantor is the principal obligor.
- 4. The obligations of Guarantor hereunder shall in no way be affected or impaired by reason, and Guarantor WAIVES its right to prior notice, of the happening from time to time of any of the following:
  - (i) extensions (whether or not material) of the time for performance of all or any portion of the Obligations.
  - (ii) the modification or amendment in any manner (whether or not material) of the Transactions or the Obligations;
  - (iii) any failure, delay or lack of diligence on the part of a Contract Party, or any other person or entity to enforce, assert or exercise any right, privilege, power or remedy conferred on a Contract Party or any other person or entity under the Transactions or at law, or any action on the part of a Contract Party or such other person or entity granting indulgence or extension of any kind;
  - (iv) the settlement or compromise of any Obligations; and
  - (v) a change of status, composition, structure or name of Obligor, including, without limitation, by reason of bankruptcy, liquidation, insolvency, merger, dissolution, consolidation or reorganisation.
- 5. With the prior written consent of Contract Party, which consent shall not be unreasonably withheld, this Guarantee may be replaced by a guarantee or guarantees in substantially similar form made by a guarantor of equal or better creditworthiness, provided that this Guarantee shall continue to apply to all obligations of the Guarantor under this Guarantee in respect of Transactions entered into prior to the time of such replacement and the replacement guarantee shall apply only to those Obligations incurred in respect of Transactions entered into after its execution and delivery.
- 6. The Guarantor may terminate this Guarantee by giving written notice of such termination to the Contract Party. No such terminations shall be effective until five (5) business days after receipt by Contract Party of such termination notice. No such termination shall affect the obligations of the Guarantor under this Guarantee in respect of Transactions entered into prior to such termination notice becoming effective.

**RESERVATION OF DEFENCES**

7. Without limiting the defences and rights of Guarantor not expressly waived in this Guarantee, Guarantor expressly reserves unto itself all rights, counterclaims and other defences of Obligor relating to the Obligations, except those arising out of the bankruptcy, insolvency, dissolution or liquidation of Obligor.

**NOTICE**

8. All notices and communications made pursuant to this Guarantee shall be in writing and delivered personally or mailed recorded delivery, postage prepaid, or sent by facsimile, as follows:

To Guarantor:

Centrica plc  
Millstream  
Maidenhead Road  
Windsor  
Berkshire SL4 5GD  
United Kingdom  
Attn: Group General Counsel and Company Secretary  
Facsimile: 01753 494602

To Contract Party:

<<Company Name>>  
<<Customer Street>>,  
<<Customer City>>, <<Customer State>>, <<Customer Zip>>

9. Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by facsimile shall be effective upon actual receipt if received during recipient's normal business hours or at the beginning of recipient's next business day after receipt if not received during recipient's normal business hours. Any party may change its address to which notice is to be given hereunder by providing notice of the same in accordance with Clause 9.

**MISCELLANEOUS**

10. This Guarantee shall in all respects be governed by, and construed in accordance with, the laws of the State of New York and the parties hereby submit to the exclusive jurisdiction of the courts of the State of New York.
11. Except for increasing the value of the Obligations figure in Clause 1 above, no term or provision of this Guarantee shall be amended, modified, altered, waived, supplemented or terminated except in writing signed by the parties hereto.
12. Neither Guarantor nor Contract Party may assign or transfer (whether by way of security or otherwise) this Guarantee or any interest or obligation in or under this Guarantee without the prior written consent of Contract Party or Guarantor respectively. Any purported transfer or assignment that is not in accordance with this Clause 12 shall be void. Subject to the foregoing this Guarantee shall be binding upon and enure to the benefit of and be enforceable by the respective successors, permitted assigns and transferees of Guarantor and Contract Party.
13. This Guarantee embodies the entire agreement and understanding between Guarantor and Contract Party and supersedes all prior agreements and understandings relating to the subject matter hereof.

14. The headings in this Guarantee are for purposes of reference only, and shall not affect the meaning hereof. References to Clauses are to clauses of this Guarantee.
15. This Guarantee may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one document.
16. Guarantor shall make payment in United States dollars and without deductions to Contract Party in immediately available funds of all sums due hereunder within ten (10) business days of written demand for the same by Contract Party (which demand shall set forth the basis and the calculation of the amount for which demand is made and which shall in the absence of manifest error be conclusive).
17. Guarantor warrants that this Guarantee is its legally binding obligation enforceable in accordance with its terms (except as the enforceability of this Guarantee may be limited by any applicable bankruptcy, insolvency, reorganisation, moratorium or similar laws affecting creditors' rights generally and by general principles of equity), and further warrants that all necessary consents and authorisations for the giving and implementation of this Guarantee have been obtained.
18. Until all amounts which may be or become payable under the Transactions have been irrevocably paid in full, Guarantor shall not by virtue of this Guarantee be subrogated to any rights of Contract Party or claim in competition with Contract Party against Obligor in connection with any matter relating to or arising from the Obligations or this Guarantee.

Guarantor has caused this Guarantee to be executed as a deed and Contract Party has signed the same as of the day and year first above written.

Executed and delivered as a deed as of the day and year first above written.

**CENTRICA PLC**

Signed as a deed by \_\_\_\_\_ as attorney  
for Centrica plc  
under a power of attorney dated \_\_\_\_\_  
in the presence of:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
as attorney for Centrica plc

WITNESS:

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

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

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

Address: \_\_\_\_\_

<<Company Name>>

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

Title:

Exhibit B

Entity: Hess Energy Marketing, LLC, a Delaware limited liability company

Business Website:

U.S. Federal Tax ID Number: 80-0909818

Duns Number: 07-879-0103

CICI/Legal Entity Identifier: 5493006UGLYIS8QNH14

Electric Tariff: Market-Based Rate Tariff, 0.0.0 / Order Date: May 23, 2013 / FERC Docket ER13-1192, as such Tariff may be amended, modified, superseded or replaced from time to time.

Principal Address: One Hess Plaza, Woodbridge, NJ 07095

<u>Notices:</u>	<u>Confirmations:</u>
<u>Hess Energy Marketing, LLC</u> One Hess Plaza Woodbridge, NJ 07095 Attn: John Schultz <u>Phone: 732-750-6197</u> <u>Fax: 732-750-7139</u>	<u>Hess Energy Marketing, LLC</u> Attn: Trade Operations <u>Phone: 732-750-7111</u> <u>Fax: 866-730-5094</u>
For legal notices, with a copy to:  <u>Hess Energy Marketing, LLC</u> One Hess Plaza Woodbridge, NJ 07095 Attn: Energy Marketing (Trading) - Legal	

<p><u>Natural Gas Trading &amp; Operations:</u>  <u>Hess Energy Marketing, LLC</u></p> <p><u>Steve Dixon (General)</u>  <u>Phone: 732-750-6240</u>  <u>Fax: 732-750-7139</u></p> <p>James Tinsley (Forward Desk)  <u>Phone: 732-750-6908</u>  <u>Fax: 732-750-7139</u></p> <p>Rob Gallo (Spot Desk)  <u>Phone: 732-750-6451</u>  <u>Fax: 732-750-7139</u></p> <p>Jim Maguire (Scheduling)  <u>Phone: 732-750-6014</u>  <u>Fax: 732-750-7139</u></p>	<p><u>Power Trading &amp; Operations:</u>  <u>Hess Energy Marketing, LLC</u></p> <p><u>Tom Chamberlin (General)</u>  <u>Phone: 732-750-6566</u>  <u>Fax: 732-750-6359</u></p> <p>Brian Krall (Forward Desk)  <u>Phone: 732-750-6148</u>  <u>Fax: 732-750-6359</u></p> <p>Michael Cordaro (Spot Desk)  <u>Phone: 732-750-6808</u>  <u>Fax: 732-750-6359</u></p> <p>Jack Philips (Scheduling)  <u>Phone: 732-750-6302</u>  <u>Fax: 732-750-6359</u></p>
<p><u>Invoices and Payments:</u></p> <p><u>Hess Energy Marketing, LLC</u>  Attn: Carol Rouxel (Natural Gas)  Cesar Vargas (Power)  David Greenspan (General/Other)  Phone: 732-750-6711 (Natural Gas)  732-750-6503 (Power)  732-750-6756 (General/Other)</p> <p>Fax: 877-539-7580 (Natural Gas)  732-750-6361 (Power)  732-750-6361 (General/Other)</p>	<p><u>Wire Transfer or ACH Numbers:</u></p> <p>BANK: J.P. Morgan/Chase Manhattan  ABA: 021-000021  ACCT: 323-271979  <u>Other Details:</u> Hess Energy Marketing, LLC</p>
<p><u>Credit:</u></p> <p><u>Hess Energy Marketing, LLC</u>  Attn: Jan Plumaker  Phone: 732-750-6047  Fax: 732-750-6670</p>	

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: **March 16, 2013**

The parties to this Base Contract are the following:

PARTY A HESS CORPORATION	PARTY NAME	PARTY B Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")
1185 Avenue of the Americas New York, NY 10036	ADDRESS	220 West Main Street, 7 <sup>th</sup> FL Louisville, KY 40202
<a href="http://www.hess.com">www.hess.com</a>	BUSINESS WEBSITE	<a href="http://www.lge-ku.com">www.lge-ku.com</a>
N/A	CONTRACT NUMBER	N/A
00-697-9785	D-U-N-S# NUMBER	LGE 00-694-5505 KU 00-694-4938
<input checked="" type="checkbox"/> US FEDERAL: 13-492-1002 <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: LGE 01-0204150/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:
N/A	GUARANTOR (IF APPLICABLE)	
CONTACT INFORMATION		
<i>As per the applicable Transaction Confirmation</i>	• COMMERCIAL	LGE/KU ATTN: <u>Trading Manager Gas</u> TEL#: 602-627-4210    FAX#: 602-627-4866 EMAIL:
<i>Same address as above</i> ATTN: <u>Natural Gas Operations</u> TEL#: (732) 760-8014    FAX#: (732) 760-6352 EMAIL: <u>NatGasOps@hess.com</u>	• SCHEDULING	LGE/KU ATTN: <u>Gas Scheduling</u> TEL#: 602-627-3034    FAX#: 602-627-4866 EMAIL:
<u>1185 Avenue of the Americas, New York, NY 10036</u> ATTN: <u>Associate General Counsel - Trading</u> TEL#: 212-636-8631    FAX#: (888) 741-1814 EMAIL: <u>LawDepartmentTrading@hess.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#: 602-627-4197 or 4263    FAX#: 602-627-4222 With Add'l Notice of Default Attn: General Counsel, 15 <sup>th</sup> FL Add'l Notice of Default Fax# 602-627-4263 EMAIL: <u>N/A</u>
<i>Same address as above</i> ATTN: <u>Credit Manager</u> TEL#: 732-760-6947    FAX#: 732-760-8151 EMAIL: <u>EnergyMarketingCreditControls@hess.com</u>	• CREDIT	LGE/KU ATTN: <u>Manager Credit</u> TEL#: 602-627-4263    FAX#: 602-627-3860 EMAIL: <u>N/A</u>
<i>Same address as above</i> ATTN: <u>Energy Marketing Division - Middle Office</u> TEL#: (732) 760-7111    FAX#: (888) 730-5094 EMAIL: <u>EnergyMarketingMiddleOffice@hess.com</u>	• TRANSACTION CONFIRMATIONS	LGE/KU ATTN: <u>Contract Administration</u> TEL#: 602-627-4197 or 1262    FAX#: 602-627-4222 EMAIL: <u>N/A</u>
ACCOUNTING INFORMATION		
<i>Same address as above</i> ATTN: <u>Carol Rouxel</u> TEL#: (732) 760-8711    FAX#: (732) 760-6384 EMAIL: <u>CRouxel@hess.com</u>	• INVOICES • PAYMENTS • SETTLEMENTS	LGE/KU ATTN: <u>Regulatory Gas Accounting &amp; Analysis, 10<sup>th</sup> FL</u> TEL#: 602-627-3726    FAX#: 602-627-3800 EMAIL: <u>N/A</u>
BANK: <u>JPMorgan Chase</u> ABA: 021-00-0021 ACCT: 323-271-879 OTHER DETAILS: <u>Hess Corporation, Energy Marketing Division</u>	WIRE TRANSFER NUMBERS (IF APPLICABLE)	BANK: <u>Bank of America, New York, NY</u> ABA: 0260-0959-3    ACCT: 3762099133 OTHER DETAILS:
N/A	ACH NUMBERS (IF APPLICABLE)	BANK: <u>Bank of America, Dallas TX</u> ABA: 114000012    ACCT: 3762099133 OTHER DETAILS: <u>N/A</u>



N/A	CHECKS (IF APPLICABLE)	LGE/KU ATTN: Regulatory Gas Accounting & Analysis, 10 <sup>th</sup> Fl. ADDRESS: 220 W Main St., 7th 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:

<p><b>Section 1.2</b> <input checked="" type="checkbox"/> Oral (default) Transaction Procedure <input type="checkbox"/> OR <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: 3% of Shareholder Equity <input checked="" type="checkbox"/> Party B: 3% of Shareholder Equity <input type="checkbox"/> Transactional Cross Default: <input checked="" type="checkbox"/> Conditioned Transactional Cross Default: as set forth in Section 17.</p>
<p><b>Section 2.7</b> <input checked="" type="checkbox"/> 2 Business Days after receipt (default) Confirm Deadline <input type="checkbox"/> OR <input checked="" type="checkbox"/> 5 Business Days after receipt</p>	
<p><b>Section 2.8</b> <input type="checkbox"/> Seller (default) Confirming Party <input type="checkbox"/> OR <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Hess Corporation</p>	
<p><b>Section 3.2</b> <input checked="" type="checkbox"/> Cover Standard (default) Performance Obligation <input type="checkbox"/> OR <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"/> 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> <input checked="" type="checkbox"/> Gas Daily Midpoint (default) Spot Price Publication <input type="checkbox"/> OR <input type="checkbox"/> _____</p>	<p><b>Section 10.3.2</b> <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) Other Agreement Setoffs <input type="checkbox"/> Bilateral <input checked="" type="checkbox"/> Triangular. With respect to LGE/KU, "Affiliates" means none for purposes of this Section 10.3.2. 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"/> OR <input type="checkbox"/> Seller Pays Before and At Delivery Point</p>	
<p><b>Section 7.2</b> <input checked="" type="checkbox"/> 26<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</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 <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) Method of Payment <input type="checkbox"/> OR <input type="checkbox"/> Check</p>	<p><b>Section 15.10</b> <input checked="" type="checkbox"/> Confidentiality applies (default) Confidentiality <input type="checkbox"/> OR <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"/> OR <input type="checkbox"/> Netting does not apply</p>	
<p><input checked="" type="checkbox"/> Special Provisions Number of sheets attached: seven (7) <input type="checkbox"/> Addendum(s):</p>	

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

<p><b>HESS CORPORATION</b> <sup>DC</sup></p>	<p>PARTY NAME</p>	<p><b>LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY</b></p>
<p>By: </p>	<p>SIGNATURE</p>	<p></p>
	<p>PRINTED NAME</p>	<p>David S. Sinclair</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 6:00 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 settling 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 6.

## 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 15, 2013**

**by and between  
Hess Corporation ("Hess")**

**And  
Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")**

**SECTION 1. PURPOSES AND PROCEDURES**

Section 1.3 is amended by adding to the end thereof: "Hess may from time to time conclude transactions in the name of one of its divisions, in which case the Transaction Confirmation for any such transaction will refer to that division. Notwithstanding the foregoing, all Transaction Confirmations shall be with Hess and Hess shall be liable and responsible for all obligations and liabilities under such Transaction Confirmations no matter the name of the division."

The following shall be added to Section 1:

"1.5 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, the negligence of the 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" has the meaning as specified in Section 10.3(c).

2.37 "Loss" means with respect to any Terminated Transaction, and a party, the U.S. dollar amount that party reasonably determines in good faith to be its total losses and Costs (or gain) in connection with the termination of such Terminated Transaction, including, without limitation, any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or Cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and Costs (or gains) in respect of any payment required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made. A party will determine its Loss as of the date specified in Section 10.3.1 or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to Relevant Data.

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 "Relevant Data" means (i) relevant rates (including, without limitation, bid side and offer side rates), prices (including, without limitation, bid side and offer side prices), forward curves, yields, yield curves, volatilities, spreads, correlations and relevant market data provided by one or more third parties, and/or other commercially reasonable sources, (ii) quotations (either firm or indicative) for replacement transactions provided by one or more third parties and/or other commercially reasonable sources, (iii) estimates of Gas production, usage and transportation availability, including, without limitation, any usage plans, reports or projections prepared with respect to any Terminated Transaction; (iv) industry publications, and (v) historical data relating to a party's Gas usage, including, without limitation, such parties performance and Gas usage under any Terminated Transaction."

2.43 "Shareholder's Equity" means with respect to an entity, at any time, the sum (as shown in the most recent annual audited financial statements of such entity) of (i) its capital stock (including preferred stock) outstanding, taken at par value, (ii) its capital surplus and (iii) its retained earnings, minus (iv) treasury stock and (v) any intangible assets, each to be determined in accordance with generally accepted accounting principles of the United States.

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

Add the following language to 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

Section 6 is deleted in its entirety and replaced with the following:

"Buyer is responsible for paying any Taxes associated with the Gas sold under this Contract that may become due at and after the Delivery Point. Seller is responsible for paying any Taxes associated with the Gas sold under this Contract that may become due prior to the Delivery Point. The Contract Price does not include Taxes that are or may be the responsibility of Buyer, unless such inclusion is required by law. If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for paying for such Taxes shall promptly reimburse the other party (the "non-responsible party") for such Taxes, and will indemnify, defend and hold the non-responsible party harmless from any liability against all such Taxes. Any party entitled to an exemption from any Taxes shall furnish the other party any necessary documentation therefor, and will be liable for any Taxes assessed against the other party because of its failure to timely provide or properly complete any such documentation. "Taxes" means all applicable federal, state and local taxes, including any fees, levies, licenses, royalties, charges, associated penalties and interest or charges imposed by any governmental authority and any new taxes imposed in the future during the term of this Contract."

### SECTION 7. BILLING, PAYMENT AND AUDIT

Section 7.1 is amended by inserting the words "by the fifteenth (15th) day of each Month" in the first sentence immediately after "Seller shall invoice Buyer" and before "for Gas delivered and received".

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 Day 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 7.7 is amended by deleting the words "or pursuant to Section 7.3" from the first sentence thereof.

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 (which, for purposes of this Contract, shall be limited to volumes) related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Except with respect to transporter statements or where

otherwise appropriate, 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

Section 10.1 is amended as follows:

- (A) By adding the words "or a physical asset" after the words "in the form of cash" in the third sentence thereof; and

(B) By adding the following as a new paragraph to such Section: "If requested by a party, throughout the term of the Contract, 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, and otherwise promptly following a reasonable request therefor, in each case fairly presenting the financial condition of the applicable entity or entities (which such providing party hereby represents and warrants as such) and certified by the chief financial officer of the applicable entity; 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 financial statements and the foregoing obligation and certifications to deliver financial statements shall not apply to such party; 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."

Section 10.2 shall be amended as follows:

- (a) The phrase "second Business Day" in Section 10.2 (viii) is deleted and replaced with "first Business Day"; and
- (b) Deleting "or" immediately before "(ix)" and adding the following new clauses (x)-(xii) immediately after clause (ix):

"(x) consolidate or amalgamate with, or merge with or into, or transfer all or substantially all of its assets to, another entity (such party ("X") and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity ("Y") fails to assume all the obligations of "X" under this Contract to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party ("Non-Affected Party") or that the Policies (as defined below) in effect at the time, of the Non-Affected Party, would lead such Non-Affected Party, solely as a result of a change in the nature, character, identity or condition of the Y from its state (as a party to the Contract) prior to such consolidation, amalgamation, merger or transfer, to decline to make an extension of credit to, or enter into a Transaction with Y. For purposes of this Section 10.2(xi), "Policies" means a party's (1) internal credit limits applicable to individual entities, (2) other limits on doing business with entities domiciled in certain jurisdictions or engaging in certain activities, or (3) internal restrictions on doing business with entities with whom such party has had prior adverse business relations; or

(xi) make a representation or repeat or be deemed to repeat a representation in this Contract (or if applicable, any guaranty of a party's Guarantor in respect of obligations arising from or relating to this Contract) which proves to have been incorrect or misleading in any material respect when made or repeated, or deemed to have been made or repeated; or

(xii) fail to perform any other material covenant or obligation set forth in this Contract and not expressly covered by this Section 10.2 (but for the avoidance of doubt, excluding a breach of a Firm obligation to deliver or receive Gas for which a remedy is provided under Section 3.2), if such failure is not remedied within three (3) Business Days after written Notice;"

Section 10.3 is amended as follows:

- (a) Deleting from the sixth line the phrase "legally permissible" and replace with "practicable and not prohibited by applicable law";



(b) Deleting in its entirety, the third sentence of Section 10.3 beginning with "With respect to" and ending with "Section 10.3.1."; and

(c) Adding the following new paragraph at the end of such Section:

"In addition, the Non-Defaulting Party shall be entitled to collect from the Defaulting Party, without limitation, all reasonable costs, fees and expenses, including, without limitation, attorneys' fees and disbursements, incurred by the Non-Defaulting Party, which cannot be avoided through the Non-Defaulting Party's reasonable efforts (i) to collect amounts owed under this Contract, including, without limitation, enforcement of any security taken to secure the payment or performance of obligations under a transaction or collection of amounts from a guarantor or issuer of a letter of credit; (ii) to replace a Terminated Transaction; or (iii) in connection with or related to termination of a transaction pursuant to Section 10 or an Event of Default ("Costs")."

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

(a) Deleting from the second paragraph: "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" and replacing with: "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 on the basis of quotations from four leading dealers in the relevant market 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"; and

(b) Deleting the second sentence from the second paragraph in its entirety

(c) 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

(d) Adding to the end of the second paragraph and adding additional paragraphs:

"; provided however, that if fewer than three market quotations are provided, it will be deemed that the Market Value in respect of such Terminated Transaction(s) or Excluded Transactions cannot be determined, in which event, the Non-Defaulting Party shall have the right, acting in good faith and in a commercially reasonable manner, to determine such Market Value in accordance with the following procedures using a Loss calculation for each Terminated Transaction or Excluded Transaction (without duplication of amounts calculated pursuant to this Section 10.3.1).

If the Market Value cannot be obtained as provided above and the Non-Defaulting Party chooses to use the Loss methodology, then 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 Non-Defaulting Party's Loss with respect to each Terminated Transaction, which Loss is due to the Non-Defaulting Party (except that if a gain, then such amount is due to the Defaulting Party).

A party shall not be required to enter into a replacement transaction(s), or to terminate, liquidate, obtain or reestablish any hedge or relating trading position, in order to determine Loss. 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 Loss. 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 Loss. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

The parties agree that the use of Relevant Data for a Loss calculation as permitted hereunder may be necessary because of the difficulty of fixing and ascertaining the exact amount of certain damages which the Non-Defaulting Party will sustain as a result of the occurrence of an Event of Default with respect to the Defaulting Party. The parties agree that the use of Relevant Data, as provided for herein, if any, is not intended to be a penalty, but rather an attempt by the parties, in advance, to provide a mechanism to aid in the determination of certain damages that the Non-Defaulting Party would suffer as a result of the occurrence of an Event of Default with respect to the Defaulting Party. The parties further agree that the use of Relevant Data is reasonable for purposes of determining the Non-Defaulting Party's Loss.

Notwithstanding the foregoing, if a transaction is an Excluded Transaction, such transaction shall be liquidated and terminated as of the actual date of liquidation and termination of such Excluded Transaction.

In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs (without duplication) incurred as a result of terminating transactions."

The following is added at the end of Section 10.5:

"Each party to this Contract acknowledges that:

(A) This Contract (and any associated credit support document) is a "master netting agreement" as defined in the U.S. Bankruptcy Code (the "Code"), and this Contract and each Transaction hereunder is of a type set forth in Section 561(a)(1)-(5) of the Code;

- (B) Each party is a "master netting agreement participant," a "forward contract merchant" and a "swap participant" as defined in the Code;
- (C) The remedies provided herein, and in any credit support document, are the remedies referred to in Section 561(a), Sections 362(b)(6), (7), (17) and (27), and Section 362(o) of the Code;
- (D) All transfers of cash, securities or other property under or in connection with this Contract, any credit support document or any Transaction hereunder are "margin payments," "settlement payments" and "transfers" under Sections 546(e), (f), (g) or (j), and under Section 548(d)(2) of the Code; and
- (E) Each obligation under this Contract, any credit support document or any Transaction hereunder is an obligation to make a "margin payment," "settlement payment" and "payment" within the meaning of Sections 362, 560 and 561 of the Code.
- (F) Each party 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 any transaction is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other party hereto 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.
- (G) The parties agree that neither party is a "utility" as such term is used in the Code."

#### 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 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.

#### SECTION 15. MISCELLANEOUS

Insert in Section 15.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line. Section 15.1 is further amended by adding the following after the last sentence thereof: "The surviving party shall deliver any tax, know-your-customer, anti-money laundering, assignment or other documents as may be reasonably requested by the non-assigning party in connection with any assignment."

Section 15.5 is amended by adding the following at the end thereof: "Each party hereby submits to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in New York."

Section 15.10 is amended by adding the words "or to a rating agency in connection with such party's credit rating but only Transaction data in an aggregate form unless more specific data is required from such rating agency" before the period at the end of the first sentence. In addition, in the first sentence of the second paragraph thereof, the words "requested or" are added before the word "required" and the words "regulator, court, agency, authority," are added before the words "governmental body".

Section 15.11 is deleted in its entirety and replaced with the following:

"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."

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) replace Capitalized "Neither" with a lower case "neither" in the third sentence; and

(d) add the following to the end of the third sentence after the word "forms" and before the "." "or do not comply with the best evidence rule".

The following are added as new Sections 15.13 and 15.14:

15.13 **Mobile-Sierra.** 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. Each party further agrees that the waivers made herein are made knowingly and intentionally, that the terms of this and related agreements were the result of arms-length negotiations, and that should any review of the terms of this or other related agreements be required by law (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, then the standard of review applicable to such review shall solely be the "public interest" application of the "just and reasonable" standard of review, as set out 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) (the "Mobile-Sierra" doctrine).

15.14 Joint and Several Liability: Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") shall be jointly and severally liable for their obligations for Gas Transactions under this Contract, provided, however, that LG&E and KU together shall not be liable for more than 100% of the total obligation, and further provided that payments made by either LG&E or KU shall be applicable to the then-outstanding amount due from both such companies.

**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."

**SECTION 17. CONDITIONAL PROVISIONS**

Conditioned Transactional Cross Default: means Transactional Cross Default shall not apply, provided, however, that if an event of default as set forth in Section 10.2(1), (ii), (iii), (iv) and/or (v) has occurred and is continuing with respect to either party, then the parties agree that Transactional Cross Default will apply and the following amendments shall automatically apply to this Contract:

(a) Section 2.30 is hereby deleted in its entirety and replaced with the following: "Specified Transaction(s)" shall mean any other transaction or agreement between the parties, and with respect to Hess Corporation, its affiliates, including the guarantors (if applicable) of each party, which is not a transaction under this Contract, for the purchase, sale or exchange of physical Gas, and any other forward contract, swap agreement, in each case as defined in the United States Bankruptcy Code, as amended from time to time (hereinafter, the "Bankruptcy Code"); and

(b) Section 10.2 shall be amended by adding the following immediately after (xii): "or (xiii) (1) default (other than by failing to make a delivery) under a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction; (2) default, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, a Specified Transaction (or, if there is no applicable notice requirement or grace period, such default continues for at least three (3) Business Days); or (3) default in making any delivery due under (including any delivery due on the last delivery or exchange date of) a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to that Specified Transaction; ; or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf)."

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ex*

HESS CORPORATION <sup>DF</sup>  
By: [Signature]  
Name: Jonathan Stein  
Title: Vice President Chief Risk Officer

LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY  
[Signature]  
Name: David S. Sinclair  
Title: Vice President Energy Marketing

<u>LGE/KU</u> <i>ATTN: Gas Accounting</i> ADDRESS: 220 W Main St., 7th Fl Louisville KY 40202	CHECKS (IF APPLICABLE)	ATTN: _____ ADDRESS: _____ _____
	VERIFICATION OF CHANGE IN BANKING INSTRUCTIONS (IF APPLICABLE)	ATTN: _____ ADDRESS: _____ _____ _____

## 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    <input type="checkbox"/> Written Procedure</p>	<p><b>Section 10.2</b>    <input checked="" type="checkbox"/> No Additional Events of Default (default) Additional    <input type="checkbox"/> Indebtedness Cross Default Events of    <input type="checkbox"/> Party A: _____ Default      <input type="checkbox"/> Party B: _____  <input type="checkbox"/> Transactional Cross Default                   <u>Specified Transactions:</u> _____</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"/></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>Section 10.3.1</b>    <input checked="" type="checkbox"/> Early Termination Damages Apply (default) Early                <input type="checkbox"/> Early Termination Damages Do Not Apply Termination Damages</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         <input type="checkbox"/> _____ Publication</p>	<p><b>Section 10.3.2</b>    <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) Other                <input checked="" type="checkbox"/> Bilateral (default) Agreement         <input type="checkbox"/> Triangular Setoffs  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 Payment Date      (default)                           <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>    <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 15.18</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>2</u> <input type="checkbox"/> Addendum(s): _____</p>	

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

<p><b>LOUISVILLE GAS AND ELECTRIC COMPANY / KENTUCKY UTILITIES COMPANY</b></p>	<p><i>PARTY NAME</i></p>	<p><b>CROSS TIMBERS ENERGY SERVICES, INC.</b></p>
<p>By:  31c</p>	<p><i>SIGNATURE</i></p>	<p>By: </p>
<p>David S. Sinclair</p>	<p><i>PRINTED NAME</i></p>	<p>James Hunsaker</p>
<p>Title: Vice President Energy Supply and Analysis</p>	<p><i>TITLE</i></p>	<p>Title: President of Cross Timbers Energy Services, Inc.</p>



- 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>



**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: 25%; vertical-align: top;"> <b>Firm (Fixed Quantity):</b>                      _____ MMBtus/day  <input type="checkbox"/> EFP                 </td> <td style="width: 25%; 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: 25%; vertical-align: top;"> <b>Firm (Formula-Based Quantity):</b>                      _____                      (specify formula) _____                      _____ MMBtus/day                 </td> <td style="width: 25%; 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>Firm (Formula-Based Quantity):</b> _____ (specify formula) _____ _____ MMBtus/day	<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>Firm (Formula-Based Quantity):</b> _____ (specify formula) _____ _____ MMBtus/day	<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: _____				



**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF  
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

Dated July 1, 2015

by and between

Cross Timbers Energy Services, 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 LGE/KU 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 LGE/KU shall not 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.

2.40 "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**

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 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 upon request or deducted by the Party receiving such overpayment from subsequent payments 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 8.5," between "SECTION 8.2" and "AND IN SECTION 15.8" in the last sentence.

**SECTION 9. NOTICES**

9.4 shall be amended by deleting the words "commercially acceptable" in the first sentence.

**SECTION 10. FINANCIAL RESPONSIBILITY**

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 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 15. MISCELLANEOUS

Insert in Section 15.1 “conditioned” after the phrase “unreasonably withheld” in the fourth (4th) line.

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

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.

CROSS TIMBERS ENERGY SERVICES, INC.

By: 

Name: James Hunsaker

Title: President of Cross Timbers Energy Services, Inc.

LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY

By: 

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 2.7.

**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 May 1, 2003 (the “Base Contract”) by and between: Louisville Gas & Electric Co./Kentucky Utilities Co., and ConocoPhillips 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 sentence is added to the end of Section 1.2: “Notwithstanding the other provisions hereof, neither party will be obligated to send a written Transaction Confirmation to the other party for transactions with a Delivery Period less than one month; provided, however, that if either party sends a Transaction Confirmation for such transaction(s), such Transaction Confirmation(s) shall become effective to the extent provided in Sections 1.2 and 1.3.”
3. 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

4. The following sentence is added to the end of the Section 2.8: “The Contract Price shall be deemed to already include reimbursement to Seller for any production or severance taxes owed by Seller with respect to Gas delivered hereunder.”
5. The following new paragraph is added to Section 2.8:

“If any or all of the reference 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 reference price prior to its unavailability has suggested an alternate reference price or methodology for determining the market price, then the Contract Price shall be determined using the alternate reference price or methodology suggested by such publication. If none is suggested, then the



## Special Provision to the Base Contract

Parties agree to promptly and in good faith negotiate an alternate reference price or methodology for determining the Contract Price. If the Parties do not agree on a substitute methodology or reference price by the end of the first month for which the Contract Price could not be determined, then the alternate reference price 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 reference price(s) used to determine the Contract Price is/are no longer available ("Renegotiation Date"), until the alternate reference price or methodology is determined, the Contract Price shall be deemed to be the average of the indicated reference price(s) in effect during the 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 price or methodology determined as set forth above. Upon determination of a new alternate reference price or methodology, the Contract Price accordingly will be adjusted retroactively to the Renegotiation Date."

6. 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.

7. 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 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 "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.

2.34 "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 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 "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.

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

## Special Provision to the Base Contract

2.37 "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.

2.38 "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").

2.39 "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").

2.40 "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.

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

### SECTION 3. PERFORMANCE OBLIGATION

8. 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

9. 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 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

10. 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

## Special Provision to the Base Contract

an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority.”

**11. Add as the last paragraph of Section 6:**

“6.2 In the event a federal, 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

**12. Add the following language to the end of Section 7.3:**

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

**13. 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 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 7.4 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.”

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

**15. 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.”

**16. 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.**

**17. 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)



## Special Provision to the Base Contract

any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction."

### SECTION 10. FINANCIAL RESPONSIBILITY

18. 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."

19. 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 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"

20. 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"

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 10.1 shall continue for more than 20 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. 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 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 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, 8.1, 8.2, 8.3, 8.4, 13, 14.10, and 14.13 shall continue to apply."



## Special Provision to the Base Contract

### 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. 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).
26. 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.

### 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."

# 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 15, 2003 (the “Base Contract”) by and between: Louisville Gas & Electric Co./Kentucky Utilities Co. and Concord Energy 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 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.

"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 Company and/or the Counterparty for verification and/or evidentiary purposes."

## Special Provision 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"

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 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 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:

## Special Provision to the Base Contract

"6.2 In the event a federal, 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 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 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, WARRENTY, 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



## Special Provision to the Base Contract

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 to Section 10.1 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

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".

## 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 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 1.6, 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 such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything

## Special Provision to the Base Contract

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 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."



# 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 June 9, 2003 (the “Base Contract”) by and between: Louisville Gas and Electric Co./Kentucky Utilities Co. and Colonial Energy, Inc. .

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. 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 sole option 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 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.

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; and (b) 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 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.

## Special Provision to the Base Contract

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.

"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 "Transaction Tape" shall be defined as electronic tape(s) of telephone recordings maintained by Company and/or the Counterparty for 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"

5. 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 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



## Special Provision to the Base Contract

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 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 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 a federal, 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

9. Add the following language to the end 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 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

## Special Provision to the Base Contract

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 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, WARRENTY, 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.**
14. **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

15. **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."
16. **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"
17. **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)."

## Special Provision to the Base Contract

- (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”
18. **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”)”
19. **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

20. **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”.
21. **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

22. **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 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 1.6, 7.7, 8.1, 8.2, 8.3, 8.4, 13, 14.10, 14.13, and 14.14 shall continue to apply.”



## Special Provision to the Base Contract

### SECTION 13. LIMITATIONS

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

### 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. 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).
26. 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 the Commonwealth of Kentucky.
  - 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.

IN WITNESS WHEREOF, the Parties have caused these Special Provisions to be duly executed as of the date first above written.

Louisville Gas and Electric Company/  
Kentucky Utilities Company

*SAR*

Colonial Energy, Inc.

*ab  
Cop*

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

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

**Point(s) of Receipt into Columbia Gas of Kentucky, Inc.** (Please "x" applicable Receipt Points)

Point(s) of Receipt with INTERstate Pipelines

- 1) Columbia Gas Transmission Corporation
- 2) Other
- 3) Other

INTRAsate Receipt Points

- 1) Class 90
- 2) Other
- 3) Other

Facility and Volume Detail: TO BE COMPLETED BY COLUMBIA GAS REPRESENTATIVE

Service Address	Deliver Service Rate Sched.	Max. Day Transp. (Mcf)	Annual Transp. (Mcf)	Daily Standby (Mcf)	Annual Standby (Mcf)
1587 Baumann Dr	TS	14000	136,150	-	-

PCID No. (Cust. Acct. No.) 12986498 001 0 PSID No. 100449311

Monthly Bank Tolerance 5 % 607 MCF (% x annual transportation)

Capacity Assigned MCF/Day \_\_\_\_\_ MCF  
 Alternate Fuel: Type and (%): No.2 100%

Daily Metering Service Yes \_\_\_\_\_ No \_\_\_\_\_

**Notices - Customer**

Kentucky Utilities Co Inc  
 220 West Main Street  
 P.O. Box 32010  
 Louisville, Kentucky 40232  
 Attn: Gerhard Haimberger  
 Title: Director, Fuels Management  
 Telephone # (502) 627-2367

**Notices - Columbia:**

Columbia Gas of Kentucky, Inc.  
 P.O. Box 14241  
 2001 Mercer Road  
 Lexington, KY 40512-4241  
 Attn: Mrs. Kimra Cole  
 Director, Marketing and Sales

IN WITNESS WHEREOF, the parties hereto have accordingly and duly executed this Agreement as of the date hereinabove first mentioned.

**KENTUCKY UTILITIES CO., INC.**  
 Customer  
 By: Gerhard Haimberger  
 Title: Director of Fuels Management

**COLUMBIA GAS OF KENTUCKY, INC.**  
 By: Kimra Cole  
 Director, Marketing and Sales

DO NOT WRITE BELOW THIS LINE—For Columbia Personnel Only

NEW CUSTOMER <input checked="" type="checkbox"/>	REPLACEMENT <input type="checkbox"/>	MARKET AREA #	TCO ZONE # <u>18-12</u>
OR EXISTING CUSTOMER ADDING NEW FACILITY(S) <input type="checkbox"/>	AMENDMENT <input type="checkbox"/>	AREA OFF. # (4 DIGITS)	POD #
Line Pressure: L <input type="checkbox"/> H <input checked="" type="checkbox"/>	GMB Account Number: <u>12986498-001</u>	DIS (Meter Read Sched.) Unit Book	Combined Invoice <input type="checkbox"/> Separate Invoices <input checked="" type="checkbox"/>

APPROVALS: Shank DATE: September 30/12  
 Comments: \_\_\_\_\_

P.S.C. Ky. No. 5  
Cancels P.S.C. Ky. No. 4

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**COLUMBIA GAS OF KENTUCKY, INC.**  
**OF**  
**LEXINGTON, KENTUCKY**

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**RATES, RULES AND REGULATIONS FOR FURNISHING**

**NATURAL GAS**

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

**for the**

SEP 1 1993

PURSUANT TO 807 KAR 5:011,  
SECTION 9 (1)

**Entire Service Area of the Company** BY: *Alanna Helle*  
PUBLIC SERVICE COMMISSION MANAGER

**Filed with PUBLIC SERVICE COMMISSION OF**  
**KENTUCKY**

---

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ISSUED June 1, 1993 EFFECTIVE September 1, 1993

ISSUED BY Columbia Gas of Kentucky, Inc.

BY *Alan P. Bowman*  
Vice President

---


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**COLUMBIA GAS OF KENTUCKY, INC.**

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**PUBLIC SERVICE COMMISSION  
 OF KENTUCKY**  
 EFFECTIVE  
 8/29/2007  
 PURSUANT TO 807 KAR 5:011  
 SECTION 9 (1)

By  resident  
 Executive Director

**DATE OF ISSUE:** September 10, 2007

**DATE EFFECTIVE:** August 29, 2007

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

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**PUBLIC SERVICE COMMISSION  
 OF KENTUCKY**  
 EFFECTIVE  
 8/29/2007  
 PURSUANT TO 807 KAR 5:011  
 SECTION 9 (1)

By  resident  
 Executive Director

DATE EFFECTIVE: August 29, 2007

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**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

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**DATE OF ISSUE:** September 10, 2007

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**PUBLIC SERVICE COMMISSION  
 OF KENTUCKY  
 EFFECTIVE  
 8/29/2007  
 PURSUANT TO 807 KAR 5:011  
 SECTION 2(1)**

**DATE EFFECTIVE:** August 29, 2007

By  President

By  President

**COLUMBIA GAS OF KENTUCKY, INC.**

**RESERVED FOR FUTURE USE**

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

SEP 1 1993

PURSUANT TO 807 KAR 5:011,  
SECTION 9 (1)

BY: *Shawn Holley*  
PUBLIC SERVICE COMMISSION MANAGER

**DATE OF ISSUE:** June 1, 1993

**DATE EFFECTIVE:** September 1, 1993

**Issued by:** *Alan P. Bowman*

Vice President - Regulatory Services





COLUMBIA GAS OF KENTUCKY, INC.

P.S.C. Ky. No. 5

**CURRENTLY EFFECTIVE BILLING RATES**

(Continued)

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**PUBLIC SERVICE COMMISSION  
OF KENTUCKY**

**EFFECTIVE**

**8/29/2007**

**PURSUANT TO 807 KAR 5:011**

**SECTION 9 (1)**

**DATE EFFECTIVE:** August 29, 2007

**DATE OF ISSUE:** September 10, 2007

**ISSUED BY:** Herbert A. Miller, Jr.

By \_\_\_\_\_

**Executive Director**

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007



COLUMBIA GAS OF KENTUCKY, INC.

P.S.C. Ky. No. 5

<b>CURRENTLY EFFECTIVE BILLING RATES</b>	
<u>RATE SCHEDULE SVGTS</u>	<u>Billing Rate</u>
	\$
<u>General Service Residential</u>	
Customer Charge per billing period	9.30
Delivery Charge per Mcf	1.8715
<u>General Service Other - Commercial or Industrial</u>	
Customer Charge per billing period	23.96
Delivery Charge per Mcf -	
First 50 Mcf or less per billing period	1.8715
Next 350 Mcf per billing period	1.8153
Next 600 Mcf per billing period	1.7296
Over 1,000 Mcf per billing period	1.5802
<u>Intrastate Utility Service</u>	
Customer Charge per billing period	255.00
Delivery Charge per Mcf	\$ 0.5905
<u>Actual Gas Cost Adjustment <sup>1/</sup></u>	
For all volumes per billing period per Mcf	(\$ 2.7108)
<u>Rate Schedule SVAS</u>	
Balancing Charge – per Mcf	\$ 1.0976
<p>1/ The Gas Cost Adjustment is applicable to a customer who is receiving service under Rate Schedule SVGTS and received service under Rate Schedule GS or IUS for only those months of the prior twelve months during which they were served under Rate Schedule GS or IUS.</p>	


DATE OF ISSUE: August 27, 2009

ISSUED BY: Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 09-0001, filed August 18, 2009

DATE EFFECTIVE: August 27, 2009

September 2009 Billing Cycle  
 PURSUANT TO 607 KAR 5:011  
 SECTION 9 (1)

By  Executive Director

PUBLIC SERVICE COMMISSION  
 OF KENTUCKY

EFFECTIVE

8/27/2009

President

By

18 August

Executive Director

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL STATEMENT OF TERRITORY SERVED  
BY COLUMBIA GAS OF KENTUCKY, INC.**

**APPLICABLE TO ALL RATE SCHEDULES**

The service area of Company includes the following Kentucky communities:

Ashland	Greenup	Raceland
Bellefonte	Hindman	Ravenna
Catlettsburg	Inez	Russell
Cynthiana	Irvine	South Williamson
Flatwoods	Lexington	Versailles
Foster	Louisa	Warfield
Frankfort	Maysville	Washington
Fullerton	Midway	Winchester
Georgetown	Mt. Sterling	Worthington
Germantown	Paris	

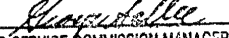
and rural communities and areas served by Company in the Kentucky counties of:

Bath	Harrison	Menifee
Bourbon	Jessamine	Montgomery
Boyd	Johnson	Morgan
Bracken	Knott	Nicholas
Carter	Lawrence	Owsley
Clark	Lee	Pendleton
Clay	Letcher	Perry
Estill	Lewis	Pike
Fayette	Madison	Robertson
Floyd	Magoffin	Scott
Franklin	Martin	Woodford
Greenup	Mason	

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE**

**SEP 1 1993**

**PURSUANT TO 807 KAR 5.011,  
SECTION 9 (1)**

BY:   
**PUBLIC SERVICE COMMISSION MANAGER**

**DATE OF ISSUE: June 1, 1993**

**DATE EFFECTIVE: September 1, 1993**

Issued by:



Vice President - Regulatory Services



**COLUMBIA GAS OF KENTUCKY, INC.**

**ORIGINAL SHEET NOS. 9 and 10  
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PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

SEP 1 1993

PURSUANT TO 807 KAR 5:011,  
SECTION 9 (1)

BY: *Alvin P. Bowman*  
PUBLIC SERVICE COMMISSION MANAGER

**DATE OF ISSUE:** June 1, 1993

**DATE EFFECTIVE:** September 1, 1993

**Issued by:**

*Alvin P. Bowman*

Vice President - Regulatory Services

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL SERVICE (GS) AND GENERAL PROPANE SERVICE (GPS)  
SALES SERVICE RATE SCHEDULES**

**APPLICABILITY**

Entire service territory of Company. See Sheet 8 for a list of communities.

**AVAILABILITY OF SERVICE**

Available to residential, commercial and industrial sales service customers.

See Sheet Nos. 53 through 56 for Temporary Volumetric Limitations and Curtailment provisions.

**BASE RATES**

<u>Residential</u>	
Customer Charge per billing period	@ \$9.30
Delivery Charge per Mcf	@ \$1.8715 per Mcf
<u>Commercial or Industrial</u>	
Customer Charge per billing period	@ \$23.96
Delivery Charge per Mcf -	
First 50 or less Mcf per billing period	@ \$ 1.8715 per Mcf
Next 350 Mcf per billing period	@ \$ 1.8153 per Mcf
Next 600 Mcf per billing period	@ \$ 1.7296 per Mcf
Over 1,000 Mcf per billing period	@ \$ 1.5802 per Mcf

**MINIMUM CHARGE**

The minimum charge per billing period shall be the applicable Customer Charge. If the meter reading or calculated consumption for the billing period is greater than zero then the minimum charge shall be increased by the Delivery Charge for a minimum of one Mcf per billing period.

**GAS COST ADJUSTMENT**

Gas sold under this rate schedule and rates as prescribed herein are subject to a Gas Cost Adjustment as stated on currently effective Sheet Nos. 48 through 51 of this tariff which are hereby incorporated into this rate schedule.

The charges set forth herein, exclusive of those pertaining to the minimum charge, shall be subject to a Gas Cost Adjustment, as shown on Sheet 5 of this tariff.

**RIDER FOR NATURAL GAS RESEARCH & DEVELOPMENT**

Volumes delivered to customers under this rate schedule are subject to a Rider for Natural Gas Research and Development as stated on Sheet No. 51c.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE**

**8/29/2007**

**PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**

**DATE OF ISSUE:** September 10, 2007

**DATE EFFECTIVE:** August 29, 2007

**Issued by:** Herbert A Miller, Jr.

By  resident  
**Executive Director**

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL SERVICE (GS) AND GENERAL PROPANE SERVICE (GPS)  
RATE SCHEDULES  
(Continued)**

**WEATHER NORMALIZATION ADJUSTMENT**

Gas sold to Residential and Commercial Customers under this rate schedule is subject to a Weather Normalization Adjustment as stated on currently effective Sheet No. 51a of this tariff which is hereby incorporated into this rate schedule.

**ENERGY ASSISTANCE PROGRAM SURCHARGE**

Gas sold to Residential Customers under this rate schedule and rates prescribed herein is subject to a Energy Assistance Program Surcharge as stated on currently effective Sheet No. 51b of this tariff which is hereby incorporated into this rate schedule.

**LOCAL FRANCHISE FEE OR TAX**

The above rates and minimum charge are subject to Local Franchise Fee or Tax as set forth on Sheet No. 52.

**LATE PAYMENT PENALTY**

Refer to the General Terms, Conditions, Rules and Regulations, Section 25.

**OTHER PROVISIONS**

Where a Customer has installed a gas light(s) for continuous street or outdoor lighting in lighting devices approved by Company and the gas used by such light(s) is unmetered, the gas consumed by such light(s) shall be assumed to be two thousand (2,000) cubic feet per month when the Btu/hour input rating for such light(s) is 2,700 or less. For each additional 1,350 Btu/hour input or fraction thereof, the assumed consumption shall be increased by one thousand (1,000) cubic feet per month. Such assumed consumption shall be billed under the rates contained herein or, if in combination with metered usage under this rate schedule, shall be added to the Customer's metered usage and the total billed under the rates contained herein.

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS**

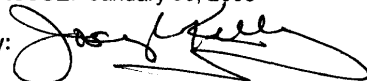
Service furnished under this rate schedule is subject to Company's Rules and Regulations and to all applicable rate schedules.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE


MAR 01 2003

DATE OF ISSUE: January 30, 2003

issued by:



issued by authority of an Order of the Public Service Commission in Case No. 2002-00145 dated December 13, 2002

PURSUANT TO 807 KAR 5:011  
SECTION 9(1)  
DATE EFFECTIVE: **March 1, 2003**  
BY   
EXECUTIVE VICE PRESIDENT

**COLUMBIA GAS OF KENTUCKY, INC.**

**INTERRUPTIBLE SERVICE (IS)  
SALES SERVICE RATE SCHEDULE**

**APPLICABILITY**

Entire service territory of Company. See Sheet No. 8 for a list of communities.

**AVAILABILITY OF SERVICE**

This interruptible sales service rate schedule is available in the territory served by Company to any Customer having normal annual usage of not less than 25,000 Mcf at any location when:

- (1) Company's existing facilities are sufficient to provide the quantities of gas requested by said Customer, and
- (2) Customer executes a Sales Agreement for the purchase of:
  - (a) a specified Daily Firm Volume, contracted for under Firm Service, which shall be 0 - 100% of the Customer's Maximum Daily Volume requirements, and
  - (b) a specified Daily Interruptible Volume, and
  - (c) Customer has signed a statement acknowledging the fact that its service, not specified in (a) above, is subject to interruption and that Customer is aware that Company has no obligation to serve during times of interruption.

See Sheet Nos. 53 through 56 for Temporary Volumetric Limitations and Curtailment provisions.

**CHARACTER OF SERVICE**

Firm Service -The Daily Firm Volume of Customer will be contracted for by Company from its supplier(s) and no curtailment of this firm volume is planned, considering availability thereof from its supplier(s). However, in the event of emergencies, shortages of gas, or force majeure, Company reserves the right to curtail the Daily Firm Volume of Customer without incurring any liability for any loss, cost, damage, injury or expenses that may be sustained by Customer by reason of any such curtailment. It is understood that Company's primary obligation is to its domestic markets.

The Daily Interruptible Volume shall be on an interruptible basis only and Company shall have the right to interrupt deliveries of gas hereunder whenever, and to the extent needed, such action is, in its sole judgment, necessary to protect the Maximum Daily Volume of delivery currently contracted for by Company, as available from its supplier(s) or to protect the integrity of Company's natural gas distribution system. The Company shall give the Customer as much advance notice as possible of interruption hereunder. It is understood that the Company will not include in any contractual commitment with its supplier(s) any volumes required to supply Customer's Daily Interruptible Volume.

Customer may enter into a full sales agreement with the Company under this rate schedule, with the

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE**

**8/29/2007**

**PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**

**DATE OF ISSUE:** September 10, 2007

**DATE EFFECTIVE:** August 29, 2007

**Issued by:** Herbert A. Miller, Jr.

By  **Executive Director**

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007



**COLUMBIA GAS OF KENTUCKY, INC.**

**INTERRUPTIBLE SERVICE (IS)**

**RATE SCHEDULE**

(Continued)

**CHARACTER OF SERVICE** (continued)

provision that the Customer may not concurrently contract with the Company for Delivery Service under Rate DS. The full sales agreement is subject to a minimum contract period of one (1) year as set forth in the General Terms, Conditions, Rules and Regulations, Section 34.

**BASE RATES**

Customer Charge

\$547.37 per billing period

Delivery Charge per Mcf -

First 30,000 Mcf per billing period

@ \$ 0.5467 per Mcf

Over 30,000 Mcf over billing period

@ \$ 0.2905 per Mcf

**MINIMUM CHARGE**

The minimum charge each billing period for gas delivered or the right of the Customer to receive same shall be the sum of the Customer Charge of \$547.37, plus the Customer Demand Charge as contracted for under Firm Service. (Daily Firm Volume as specified in the Customer's service agreement multiplied by the demand rate (See Sheet No. 5).

In the event of monthly, seasonal or annual curtailment due to gas supply shortage, the demand charge shall be waived when the volume made available is less than 110% of the Daily Firm Volume multiplied by thirty (30). In no event will the minimum charge be less than the Customer charge.

If the delivery of firm volumes of gas by Company is reduced, due to peak day interruption in the delivery of gas by Company or complete or partial suspension of operations by Customer resulting from force majeure, the Minimum Charge shall be reduced in direct proportion to the ratio which the number of days of curtailed service and complete or partial suspension of Customer's operation bears to the total number of days in the billing period. Provided, however, that in cases of Customer's force majeure, the Minimum Charge shall not be reduced to less than the Customer Charge.

**RIDER FOR NATURAL GAS RESEARCH & DEVELOPMENT**

Volumes delivered to customers under this rate schedule are subject to a Rider for Natural Gas Research and Development as stated on Sheet No. 51c.

**GAS COST ADJUSTMENT**

Except as otherwise provided herein, gas sold under this rate schedule and rates as prescribed herein are subject to the Gas Cost Adjustment, including the Commodity and Demand components, as stated on currently effective Sheet Nos. 48 through 51 herein, which are hereby incorporated into this rate schedule.

For a Customer who enters into a full sales agreement under this rate schedule after September 1, 1996, the Gas Cost Adjustment shall consist of the Expected Commodity Cost of Gas, as defined in

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/29/2007**

**PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**

**DATE OF ISSUE:** September 10, 2007

**DATE EFFECTIVE:** August 29, 2007

**Issued by:** Herbert A. Miller, Jr.

By  esident

**Executive Director**

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

**INTERRUPTIBLE SERVICE (IS)**

**RATE SCHEDULE**

**(Continued)**

**GAS COST ADJUSTMENT** (Continued)

paragraph 1 (a) of Sheet No. 48 herein, and shall not be adjusted to reflect the supplier Refund Adjustment (RA), the Actual Cost Adjustment (ACA), or the Balancing Adjustment (BA) for a period of one year from the effective date of the Customer's agreement. At the end of that one-year period, any gas purchased by the Customer under that agreement shall be subject to the Commodity Cost of Gas, including all appropriate adjustments, as defined in Sheet Nos. 48 and 49.

Gas Sales purchased under this rate schedule that are within the Customer's specified Daily Firm Volume as contracted for under Firm Service are subject to the Commodity Cost of Gas, including all appropriate adjustments, as stated on currently effective Sheet Nos. 48 through 51 herein.

The charges set forth herein, exclusive of those pertaining to Customer charges, shall be subject to a Gas Cost Adjustment as shown on Sheet No. 5 of this tariff.

**LOCAL FRANCHISE FEE OR TAX**

The monthly bill to Customers served under this rate schedule is subject to the Local Franchise Fee or Tax as set forth on Sheet No. 52.

**LATE PAYMENT PENALTY**

Refer to the General Terms, Conditions, Rules and Regulations, Section 25.

**PENALTY CHARGE FOR FAILURE TO INTERRUPT**

On any day when Customer has been given timely notice by Company to interrupt, any quantity of gas taken in excess of the quantity specified to be made available on that day shall be subject to a charge of twenty-five dollars (\$25) per Mcf for all volumes taken in excess of one hundred three percent (103%) of the volumes specified to be made available on such day by Company. The penalty charge for failure to interrupt shall be in addition to the charges specified in this rate schedule. Customer shall be liable for any personal injury or damage to the property of Company or third parties which results from Customer's failure to interrupt, and Customer shall indemnify and hold Company harmless with respect to such injuries or damages.

**PAYMENT FOR UNAUTHORIZED TAKES**

Gas taken on any day in excess of one hundred three percent (103%) of the specified Maximum Daily Volume set forth in the Sales Agreement shall constitute unauthorized takes unless prior approval for additional volumes has been granted by Company. The sum of all such unauthorized takes in a billing month shall be billed at the rate of twenty-five dollars (\$25) per Mcf for gas so taken. Payment for such unauthorized takes shall be in addition to the charges specified in this rate schedule. Customer

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/29/2007  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**

**DATE OF ISSUE:** September 10, 2007

**DATE**  9, 2007

**Issued by:** Herbert A. Miller, Jr.

**By**  **Executive Director**

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00006 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

**INTERRUPTIBLE SERVICE (IS)  
RATE SCHEDULE  
(Continued)**

**PAYMENT FOR UNAUTHORIZED TAKES** (Continued)

shall be liable for any personal injury or damage to the property of Company or third parties which results from Customer's unauthorized takes, and shall indemnify and hold Company harmless with respect to such injuries or damages. Company reserves the right, for good cause shown, to waive the penalty payment of twenty-five dollars (\$25) per Mcf for unauthorized takes. Should Customer wish to take gas in excess of its authorized Maximum Daily Volume and avoid penalty payment, Customer shall request permission for a specified volume from Company at least twenty - four (24) hours in advance of the beginning of the day such volumes are needed. Company reserves the right to grant permission to Customer giving less than twenty - four (24) hour advance notice for a specified volume from Company.

**RE-ENTRY FEE**

Company will impose a Re-entry Fee, subject to Commission approval, for any IS Customer who has terminated tariff service and wishes to reestablish service within twelve months of termination. The Re-entry Fee will be equivalent to the charges Company incurred to make firm service available to Customer. Upon showing of good cause, Company may waive this fee.

**AVAILABILITY OF EXCESS GAS**

In the event Customer shall desire to purchase on any day gas in excess of Customer's specified Maximum Daily Volume, Customer shall inform Company and if Company is able to provide such excess gas required by Customer, Company shall make such excess gas available at the Base Rate Commodity Charge plus applicable gas cost.

If such excess gas cannot be made available to Customer from Company's own operations, Company may, on advance notice from Customer received twenty-four (24) hours prior to the beginning of the day the excess gas is needed, comply with such request to the extent that excess gas is temporarily available from Company's gas supplier(s). Such excess volume taken shall be paid for at Company's supplier's appropriate excess rate plus Company's Base Rate Commodity Charge.

When Customer has been notified to interrupt deliveries, Customer may request excess gas and to the extent gas can be obtained from Company's supplier, Customer shall pay the Company's supplier's appropriate excess rate plus Company's base rate commodity charge for all such volume. Public Service Commission of Kentucky Effective

**MEASUREMENT BASE**

Refer to the General Terms, Conditions, Rules and Regulations, Section 17.

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS**

Service furnished under this rate schedule is subject to Company's Rules and Regulations and to all applicable rate schedules.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

NOV 01 1994

PURSUANT TO 807 KAR 5011,  
SECTION 9(1)

BY: *[Signature]*  
FOR THE PUBLIC SERVICE COMMISSION

**DATE OF ISSUE:** November 10, 1994

**DATE EFFECTIVE:** November 1, 1994

**Issued by:** K. I. Shroyer

**Vice President - Regulatory Services**

Issued by authority of an Order of the Public Service Commission in Case No. 94-179, dated November 1, 1994.

**COLUMBIA GAS OF KENTUCKY, INC.**

**STANDBY SERVICE (SS)  
RATE SCHEDULE**

**APPLICABILITY**

Entire service territory of Company. See Sheet No. 8 for a list of communities.

**AVAILABILITY OF SERVICE**

This rate schedule is available to any Customer throughout the territory served by Company provided:

- (1) Customer is taking service under Rate Schedule DS (including GDS and IUDS) or MLDS,
- (2) Customer has executed a Delivery Service Agreement or an Addendum to its Delivery Service Agreement providing for the purchase of a specified level of Standby Service volumes,
- (3) The Company's distribution facilities have sufficient capacity and the Company has adequate gas supply to provide the quantities of gas requested by the Customer, and
- (4) Gas sold under this Rate Schedule shall not be resold or used off the Customer's premises.

See Sheet Nos. 53 through 56 for Temporary Volumetric Limitations and Curtailment provisions.

**CHARACTER OF SERVICE**

The Standby Service volume of Customer will be contracted for by Company from its supplier(s) and no curtailment of this firm volume is planned, considering availability thereof from its supplier(s). However, in the event of emergencies, shortages of gas, or force majeure, company reserves the right to curtail the Standby Service volume of Customer without incurring any liability for any loss, cost, damage, injury or expenses that may be sustained by Customer by reason of any such curtailment. It is understood that the Company's primary obligation is to its domestic markets.

The Company retains the right to refuse the requested Standby Service volume if the Company determines, in its sole discretion, that it does not have adequate gas supplies or transportation capacity to provide the service over the life of the contract.

**STANDBY SERVICE RATES**

Demand Charge - The Standby Service volume is subject to the Standby Service Demand Charge as shown on Sheet No. 6.

Commodity Charge - All Standby Service volumes delivered to Customer under this rate schedule that are within the Customer's specified Standby Service volume under this rate schedule will be billed at the Commodity Cost of Gas, including all appropriate adjustments, as stated on Sheet No. 6 of this tariff.

Customer shall also pay the applicable delivery charge on all Standby Service volumes delivered as shown on Sheet No. 6.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE**

8/29/2007

**PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**

**DATE EFFECTIVE:** August 29, 2007

**DATE OF ISSUE:** September 10, 2007

**Issued by:** Herbert A. Miller, Jr.

By  esident

**Executive Director**

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

**STANDBY SERVICE (SS)  
RATE SCHEDULE  
(Continued)**

**LOCAL FRANCHISE FEE OR TAX**

The monthly bill to Customers served under this rate schedule is subject to the local Franchise Fee or Tax as set forth on Sheet No. 52.

**LATE PAYMENT PENALTY**

Refer to the General Terms, conditions, Rules and Regulations, Section 25.

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS**

Service furnished under this rate schedule is subject to Company's Rules and Regulations and to all applicable rate schedules.

**DATE OF ISSUE:** September 10, 2007

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/29/2007  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**  
**DATE EFFECTIVE:** August 29, 2007  
By  resident  
**Executive Director**

COLUMBIA GAS OF KENTUCKY, INC.

**FIRST REVISED SHEET NOS. 19 THROUGH 21  
RESERVED FOR FUTURE USE**

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PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
  
NOV 01 1994  
  
PURSUANT TO 807 KAR 5:011.  
SECTION 9 (1)  
BY: Phyllis Linnin  
DIRECTOR, RATES & RESEARCH DIV.

DATE OF ISSUE: November 10, 1994

DATE EFFECTIVE: November 1, 1994

Issued by:

*Kathryn Shroyer*

Vice President - Regulatory Services

**COLUMBIA GAS OF KENTUCKY, INC.**

**INTRASTATE UTILITY SALES SERVICE (IUS)  
RATE SCHEDULE**

**APPLICABILITY**

Entire service territory of Company. See Sheet No. 8 for a list of communities.

**AVAILABILITY OF SERVICE**

Available for service to intrastate utilities purchasing gas for resale for consumption solely within the Commonwealth of Kentucky when:

- (1) Company's existing facilities have sufficient capacity and gas supply to provide the quantities of gas requested by said Customer, and
- (2) Customer has executed a Sales Agreement with Company specifying, among other things, a Maximum Daily Volume.

**CHARACTER OF SERVICE**

Gas delivered by Company to Customer under this rate schedule shall be firm and shall not be subject to curtailment or interruption, except as provided in Section 32 of the General Terms, Conditions, Rules and Regulations.

**BASE RATE**

Customer Charge per billing period \$255.00  
Delivery Charge per Mcf –  
For all gas delivered each billing period \$0.5905 per Mcf.

**MINIMUM CHARGE**

The minimum charge shall be the Customer Charge.

**GAS COST ADJUSTMENT**

Gas sold under this rate schedule and rates as prescribed herein are subject to a Gas Cost Adjustment as stated on currently effective Sheet Nos. 48 through 51, which are hereby incorporated into this rate schedule.

The charges set forth herein, exclusive of those pertaining to the Customer Charge, shall be subject to a Gas Cost Adjustment as shown on Sheet No. 5 of this tariff.

**RIDER FOR NATURAL GAS RESEARCH & DEVELOPMENT**

Volumes delivered to customers under this rate schedule are subject to a Rider for Natural Gas Research and Development as stated on Sheet No. 51c.

**DATE OF ISSUE:** September 10, 2007

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**DATE EFFECTIVE:** August 29, 2007

By  resident  
Executive Director

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE**

**8/29/2007**

**PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**

2007-00008 dated August 29, 2007



**COLUMBIA GAS OF KENTUCKY, INC.**

**INTRASTATE UTILITY SERVICE (IUS)  
RATE SCHEDULE  
(Continued)**

**LATE PAYMENT PENALTY AND TERMINATION OF SERVICE**

A Late Payment Penalty of five percent (5%) may be assessed, only once on any bill for rendered services, if a Customer fails to pay bill by the due date shown on Customer's bill. Any payment received will first be applied to the bill for service rendered. Additional penalty charges shall not be assessed on unpaid penalty charges.

If such failure to pay on the part of Customer continues for thirty (30) days after payment is due, Company may, after application to and authorization by the Commission, suspend further delivery of gas. This Late Payment Penalty may continue until authorization is received from the Commission to suspend deliveries. Company shall not be required to resume deliveries of gas until Customer has paid all amounts owed Company and has provided a cash deposit to secure payments of bills in an amount not to exceed two-twelfths (2/12) of Customer's estimated annual bill.

If prior to the due date of payment, Customer in good faith disputes the bill in part or total, and pays to Company such amounts as it concedes to be correct, and at any time thereafter within ten (10) days of a demand made by Company, furnishes a surety bond in an amount and with surety satisfaction to Company, guaranteeing payment to Company of the amount ultimately found due upon such bills after a final determination which may be reached either by agreement or judgment of the courts, as may be the case, then Company shall not be entitled to suspend further delivery of gas unless and until default be made in the conditions of such bond.

**TERM**

The period of time to be covered by the Sales Agreement shall be determined by agreement between Customer and Company, but shall not exceed twenty (20) years; provided, however, that where the Sales Agreement supersedes or cancels an existing contract, Company may require that the term of the Sales Agreement shall not be less than the unexpired portion of the term contained in the superseded or canceled contract. The initial term of the Sales Agreement executed by Customer under this rate schedule shall be for the period specified in the Sales Agreement, which shall continue in effect from year to year thereafter until canceled by either Customer or Company by giving written notice to the other no later than March 1 of any year that the agreement is to be terminated, effective November 1, of such year.

In the event any portion of Customer's gas requirements is provided by Company from local sources, the depletion of such local sources of supply shall relieve Company from the obligation to deliver hereunder such portion of Customer's gas requirements; provided, however, that Customer shall have the right to extend its facilities to Company's nearest available source of adequate gas supply, in which event **PUBLIC SERVICE COMMISSION OF KENTUCKY** shall be obligated to continue service to Customer under this rate schedule.

(C) Change

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DATE OF ISSUE: November 10, 1994

NOV 01 1994

DATE EFFECTIVE: November 1, 1994

Issued by:

*Kathryn Shroyer*

PURSUANT TO 807 KAR 5011, SECTION 9 (1)

Vice President - Regulatory Services

Issued by authority of an Order of the Public Service Commission in Case No. 94-179, dated November 1, 1994.

*John L. Lewis*  
DIRECTOR, RATES & RESEARCH DIV.

**COLUMBIA GAS OF KENTUCKY, INC.**

**INTRASTATE UTILITY SERVICE (IUS)  
RATE SCHEDULE  
(Continued)**

**MEASUREMENT BASE**

Refer to the General Terms, Conditions, Rules and Regulations, Section 17.

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS**

Service furnished under this rate schedule is subject to Company's Rules and Regulations and to all applicable rate schedules.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

SEP 1 1993

PURSUANT TO 807 KAR 5:011,  
SECTION 9 (1)

BY:   
PUBLIC SERVICE COMMISSION MANAGER

DATE OF ISSUE: June 1, 1993

DATE EFFECTIVE: September 1, 1993

Issued by:



Vice President - Regulatory Services

COLUMBIA GAS OF KENTUCKY, INC.

**FIRST REVISED SHEET NO. 25  
RESERVED FOR FUTURE USE**

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

NOV 01 1994

PURSUANT TO 807 KAR 5:011,  
SECTION 9 (1)

BY: Phyllis Lammie  
DIRECTOR, RATES & RESEARCH DIV.

C

(C) Change

DATE OF ISSUE: November 10, 1994

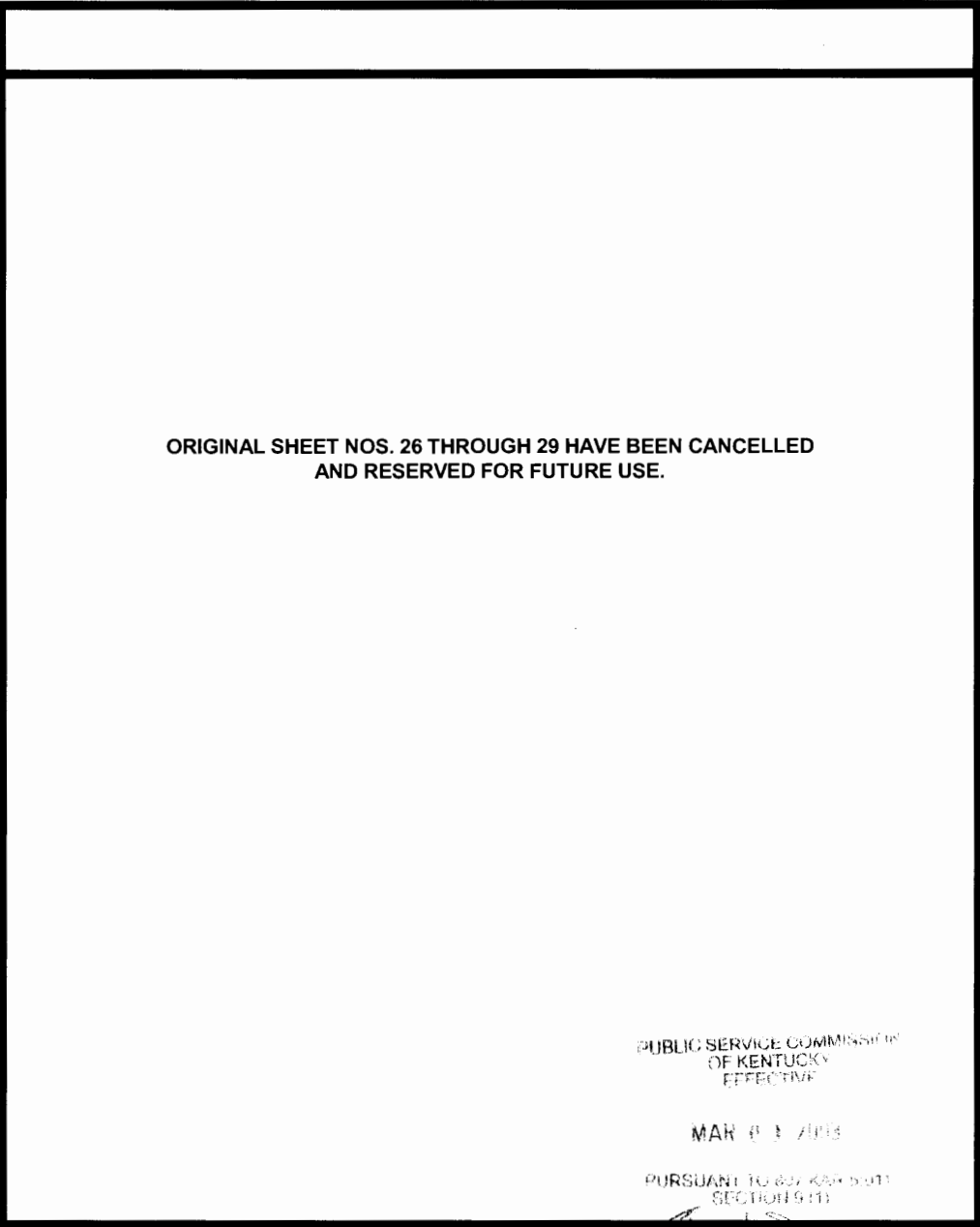
DATE EFFECTIVE: November 1, 1994

Issued by:

*Kathryn Shroyer*

Vice President - Regulatory Services

COLUMBIA GAS OF KENTUCKY, INC.



DATE OF ISSUE: January 30, 2003

BY: *[Signature]*  
DATE EFFECTIVE: March 1, 2003

Issued by: *[Signature]* Vice President

Issued by authority of an Order of the Public Service Commission in Case No. 2002-00145 dated December 13, 2002

**COLUMBIA GAS OF KENTUCKY, INC.**

P.S.C. Ky. No. 5

**SMALL VOLUME GAS TRANSPORTATION SERVICE  
(SVGTS)  
RATE SCHEDULE**

**APPLICABILITY**

Entire service territory of Columbia Gas of Kentucky through March 31, 2011. See Sheet No. 8 for a list of communities.

**AVAILABILITY**

Available to any customer that meets the following requirements:

- (1) Customer must be part of a Marketer's Aggregation Pool as the term is defined herein, and
  - (a) The Aggregation Pool consists of either: (1) a minimum of 100 customers; or (2) a customer or group of customers with a minimum annual throughput of 10,000 Mcf. The Aggregation Pool must be served by a single Marketer approved by Columbia; and the Marketer must have executed a Small Volume Aggregation Service agreement with Columbia; and,
  - (b) The Marketer must have acquired, or agreed to acquire, an adequate supply of natural gas of quality acceptable to Columbia, including allowances for (1) retention required by applicable upstream transporters; and (2) lost and unaccounted-for gas to be retained by Columbia. The Marketer must also have made, or have caused to be made, arrangements by which gas supply can be transported directly to specified receipt points on Columbia's distribution system; and,
- (2) Customer has normal annual requirements of less than 25,000 Mcf at any delivery point, and
- (3) Customer is currently a customer under the GS, IN6 or IUS Rate Schedule or in the case of a new customer would be considered a GS customer.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
11/7/2008  
PURSUANT TO 807 KAR 5:011**

**DATE OF ISSUE:** November 21, 2008

**DATE EFFECTIVE:** November 7, 2008

**ISSUED BY:** Herbert A Miller, Jr.                      President

Issued by authority of an Order of the Public Service Commission in  
November 7, 2008

By

  
Executive Director

**COLUMBIA GAS OF KENTUCKY, INC.**

**SMALL VOLUME GAS TRANSPORTATION SERVICE  
(SVGTS)  
RATE SCHEDULE (Continued)**

**CHARACTER OF SERVICE**

Service provided under this schedule shall be considered firm service.

**DELIVERY CHARGE**

The Delivery Charge shall be the Base Rate Charges for the applicable Rate Schedule as set forth below:

**General Service Residential**

Customer Charge per billing period	\$9.30
Delivery Charge	\$1.8715 per Mcf

**General Service Other – Commercial or Industrial**

Customer Charge per billing period	\$23.96
First 50 Mcf or less per billing period	\$1.8715 per Mcf
Next 350 Mcf per billing period	\$1.8153 per Mcf
Next 600 Mcf per billing period	\$1.7296 per Mcf
Over 1,000 Mcf per billing period	\$1.5802 per Mcf

**Intrastate Utility Service**

Customer Charge per billing period	\$255.00
Delivery Charge per Mcf	\$0.5905

**WEATHER NORMALIZATION ADJUSTMENT**

Volumes delivered to Residential and Commercial customers under this rate schedule are subject to a Weather Normalization Adjustment as stated on Sheet No. 51a.

**CUSTOMER ASSISTANCE PROGRAM SURCHARGE**

Volumes delivered to Residential customers under this rate schedule are subject to a Customer Assistance Program Surcharge as stated on Sheet No. 51b.

**RIDER FOR NATURAL GAS RESEARCH DEVELOPMENT**

Volumes delivered to customers under this rate schedule are subject to a Rider for Natural Gas Research and Development as stated on Sheet No. 51c.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE**

8/29/2007

**PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**

**DATE OF ISSUE:** September 10, 2007

**DATE EFFECTIVE:** August 29, 2007

**ISSUED BY:** Herbert A. Miller, Jr.

By



**Executive Director**

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

P.S.C. Ky. No. 5

**SMALL VOLUME GAS TRANSPORTATION SERVICE  
(SVGTS)  
RATE SCHEDULE (Continued)**

**ACTUAL GAS COST ADJUSTMENT**

Volumes delivered to all customers under this rate schedule are subject to the sum of the Refund Adjustment, SAS Refund Adjustment, Actual Cost Adjustment, Balancing Adjustment and Gas Cost Incentive Adjustment set forth on Sheet 48. A customer who is or has been receiving service under this tariff shall be responsible for this adjustment only for those months of the prior twelve months during which they were served under a sales service tariff.

**LOCAL FRANCHISE FEE OR TAX**

To the extent applicable, the above rates and charges are subject to Local Franchise Fee or Tax as set forth on Sheet No. 52.

**LATE PAYMENT PENALTY**

Late payment penalties shall apply to service under this rate schedule as provided in the General Terms, Conditions, Rules and Regulations, Section 25.

**OTHER PROVISIONS**

Where a Customer has installed a gas light(s) for continuous street or outdoor lighting in lighting devices approved by Company and the gas used by such light(s) is unmetered, the gas consumed by such light(s) shall be assumed to be two thousand (2,000) cubic feet per month when the Btu/hour input rating for such light(s) is 2,700 or less. For each additional 1,350 Btu/hour input or fraction thereof, the assumed consumption shall be increased by one thousand (1,000) cubic feet per month. Such assumed consumption shall be billed under the agreement Customer has with Marketer for metered consumption and shall be added to the Customer's metered usage and the total billed according to the rates contained herein.

**RIGHT OF REFUSAL**

Should Columbia be prohibited from assigning capacity, as specified in its Small Volume Aggregation Service Rate Schedule, for any reason whatsoever, including but not limited to directives from the Commission or any court having jurisdiction over said matters, Columbia shall have the right to refuse to accept new small volume transportation customers under this rate schedule.

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS**

Service furnished under this Rate Schedule is subject to Columbia's General Terms, Conditions, Rules and Regulations applicable to all Rate Schedules.

**DATE OF ISSUE:** April 12, 2005

**ISSUED BY:** Joseph W. Kelly


Issued by authority of an Order of the Public Service Commission in Case No. 29, 2005

**DATE EFFECTIVE:** April 1, 2005

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
4/1/2005**

**PURSUANT TO 207 KAR 5:011  
SECTION 9 (1)**

President

  
Executive Director





**COLUMBIA GAS OF KENTUCKY, INC.**

**SMALL VOLUME AGGREGATION SERVICE  
(SVAS)  
RATE SCHEDULE (Continued)**

**MARKETER CHARGE**

Each Marketer shall pay Columbia \$0.05 per Mcf for all volumes delivered to the Marketer's Aggregation Pool during each billing month.

**BALANCING CHARGE**

Columbia will provide the Marketer with a Balancing Service on a daily and seasonal basis that balances the Marketer's Daily Demand Requirements and the consumption of the Marketer's Aggregation Pool. The Marketer shall pay Columbia a throughput-based Balancing Charge equal to the Purchased Gas Demand Cost less a credit for assigned capacity as set forth below.

The Purchased Gas Demand Cost is the Demand Rate Component of Columbia's most recent Gas Cost Adjustment Clause report. The credit is the projected annual cost of assigned FTS capacity less estimated annual storage commodity costs (storage injection, withdrawal, shrinkage, and commodity transportation cost) divided by the estimated, annualized usage of customers served under Rate Schedule SVGTS.


The charge set forth on Sheet No. 7a shall be calculated quarterly in accordance with Columbia's Gas Cost Adjustment Clause report.

**DAILY DELIVERY REQUIREMENT**

Columbia shall calculate the Daily Delivery Requirement for each Marketer's Aggregation Pool on or about the 20<sup>th</sup> of each month. The Daily Delivery Requirement shall be calculated by Columbia by determining the estimate of the normalized annual consumption of all Customers that will be in the Marketer's Aggregation Pool during the following month, and dividing that aggregate sum by 365. Columbia shall convert the quotient to a Dth basis using Columbia's annual average Btu Content, and shall adjust for Company Use and Unaccounted For. The resultant quantity shall be the Daily Delivery Requirement for each Marketer's Aggregation Pool.

Columbia may reduce the Daily Delivery Requirement in the months of October, November and April to meet operation needs. Marketers are required to deliver gas supplies to Columbia at the Primary Firm City Gate Delivery Points designated in the Marketer's assigned firm transportation capacity on a daily basis, in an amount equal to the Daily Delivery Requirement of the Marketer's Aggregation Pool, unless directed otherwise by Columbia. In order to support reliable service on Columbia's system, Columbia may require the marketer to deliver gas to a secondary delivery point.

If, on any day, a Marketer delivers gas supply that is either greater or less than its Daily Delivery Requirement the Marketer will be charged a fee equal to 30% of the price reported in Platts Gas Daily in the Daily Price Survey titled "Prices of Spot Gas Delivered to Pipelines", under the column heading "Midpoint" for "Columbia Gas, Appalachia," adjusted for Columbia Gas Transmission Corporation's FTS Retainage, and commodity charges for the day in question, multiplied by the difference in Dth, plus a charge for all other costs incurred by Columbia that result from the Marketer's failure to deliver gas as required, including a proportionate share of any pipeline penalties and/or costs

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/29/2007**  
**PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**  
By   
**Executive Director**

**DATE OF ISSUE:** September 10, 2007

**DATE EFFECTIVE:** August 29, 2007

**ISSUED BY:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

**SMALL VOLUME AGGREGATION SERVICE  
(SVAS)  
RATE SCHEDULE (Continued)**

**DAILY DELIVERY REQUIREMENT (con't)**

resulting from efforts to increase or decrease gas supply on the system incurred by Columbia. These fees and charges do not reflect the purchase or sale of gas and will not impact the volumes considered in the annual reconciliation.

In addition to the fees and charges set forth in this rate schedule, on any day during which Columbia has a limitation or interruption in effect for transportation or interruptible customers, failure by Marketer to deliver according to the Daily Delivery Requirement will result in an additional penalty charge to the Marketer equal to twenty-five dollars (\$25) multiplied by the difference in Dth between the Marketer's Daily Delivery Requirement and the Marketer's actual deliveries on that day.

**ASSIGNMENT OF FIRM CAPACITY**

Columbia will assign a pro-rate share of its firm contracted capacity under Columbia Gas Transmission Corporation's Rate Schedule FTS, Columbia Gulf Transmission Corporation's Rate Schedule FTS-1, Tennessee Gas Pipeline Rate Schedule FT-A, and Central Kentucky Transmission Rate Schedule FTS ( collectively "FTS" ). The Marketer agrees to accept assignment of said FTS in an amount equal to the Marketer's Daily Delivery Requirement at Columbia's city gate.

Each month, when the Daily Delivery Requirement is determined for the following month, Columbia will assign to the Marketers its prorata share of Columbia's upstream FTS capacity for the marketer to use in the following month. Marketers that receive assigned FTS capacity by Columbia are subject to the terms and conditions of the tariffs of those pipeline companies on whose facilities capacity is assigned.

Columbia may recall any FTS capacity assigned to Marketer pursuant to this rate schedule in order to assure reliable service to customers in any instance where a Marketer fails to deliver the Daily Delivery Requirement of its Aggregation Pool.


Marketer shall provide the necessary assistance required to complete the mandatory firm capacity assignment transactions.

**DATE OF ISSUE:** April 12, 2005

**ISSUED BY:** Joseph W. Kelly

Issued by authority of an Order of the Public Service Commission in Case No. 2004-00462 dated March 29, 2005

**DATE EFFECTIVE:** April 1, 2005

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
4/1/2005  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**  
By  t  
Executive Director

**COLUMBIA GAS OF KENTUCKY, INC.**

P.S.C. Ky. No. 5

**SMALL VOLUME AGGREGATION SERVICE  
(SVAS)  
RATE SCHEDULE (Continued)**

**SCHEDULING DELIVERIES**

Marketers must schedule all daily deliveries using the Company's nomination web site.

**ANNUAL IMBALANCE RECONCILIATION**

Once each year Columbia will reconcile each Marketer's imbalance that has accumulated since the prior reconciliation by determining the difference between: (1) the Marketer's deliveries to Columbia during the reconciliation period, adjusted for Btu value and Company Use and Unaccounted For gas; and, (2) the actual consumption of the Marketer's Aggregation Pool, inclusive of all adjustments applicable to the reconciliation period.

If the reconciliation shows that the Marketer delivered more than what was consumed during the period, then Columbia will pay the Marketer for the excess deliveries. If the reconciliation shows that the Marketer delivered less than what was consumed during the period, then the Marketer will pay Columbia for the under deliveries. Columbia will perform the reconciliation, including associated payment or billing, in the month following the end of the reconciliation period.

The price to be paid for gas to resolve any such imbalance will be the average price during the reconciliation period reported in PLATTS *Inside FERC's Gas Market Report* in the monthly report titled "Prices of Spot Gas Delivered to Pipelines," under the column heading "Index" for "Columbia Gas Transmission Corp., Appalachia", adjusted for Columbia Gas Transmission Corporation's FTS Retainage, and commodity charges.

The first reconciliation period shall be the eight-month period ending March 31, 2005. The second reconciliation period shall be the sixteen-month period ending July 31, 2006. Thereafter, the reconciliation period shall end on July 31 of each year, except that, should the effective date of this tariff not continue past March 31, 2011, the final reconciliation period will be an eight-month period ending on March 31, 2011.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE**

11/7/2008

**PURSUANT TO 807 KAR 5:011**

**SECTION 2**

**DATE OF ISSUE:** November 21, 2008

**DATE EFFECTIVE:** November 7, 2008

**ISSUED BY:** Herbert A Miller, Jr.                      President

Issued by authority of an Order of the Public Service Commission in  
November 7, 2008

By:   
Ca: **Executive Director**

**COLUMBIA GAS OF KENTUCKY, INC.**

P.S.C. Ky. No. 5

**SMALL VOLUME AGGREGATION SERVICE  
(SVAS)  
RATE SCHEDULE (Continued)**

SHEETS 36 a THROUGH 36 f ARE CANCELLED AND WITHDRAWN

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
4/1/2005  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**

**DATE OF ISSUE:** April 12, 2005

**DATE EFFECTIVE:** April 1, 2005

**ISSUED BY:** Joseph W. Kelly

By  it

**Executive Director**

Issued by authority of an Order of the Public Service Commission in Case No. 2004-00462 dated March 29, 2005

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS  
APPLICABLE TO  
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)**

**CODE OF CONDUCT**

Each Marketer participating in Columbia's Small Volume Gas Transportation Service program shall:

1. Communicate to customers, in clear understandable terms, the customers' rights and responsibilities. This communication shall include: (a) the Marketer's customer service address and telephone number; (b) a statement describing the Marketer's dispute resolution procedures; (c) a statement that the Marketer must provide the customer with thirty (30) days written notice prior to discontinuing service; and (d) notice that the program is subject to ongoing Commission jurisdiction.
2. Provide in writing to customers pricing and payment terms that are clear and understandable. This should include an explanation for the customer to allow them to compare the offer to Columbia's Gas Cost Adjustment rate exclusive of taxes and delivery charges.
3. Accept any Columbia customer eligible for Rate Schedule Small Volume Aggregation Service that seeks to enroll, and offer at least one billing rate available to all eligible customers if Marketer is accepting new/renewed customers.
4. Refrain from engaging in communications or practices with customers which are fraudulent, deceptive, or misleading;
5. Deliver gas to Columbia on a firm basis on behalf of the Marketer's participating customers.
6. Undergo a credit evaluation, at the Marketer's expense, to assure that the Marketer is sufficiently credit-worthy to protect against damages resulting from any failure to deliver gas.
7. Provide customers a "regulatory out" provision in all contracts which allows contracts to be terminated without penalty should the small volume gas transportation program be terminated prior to the end of the contract.
8. Provide Columbia and customers at least thirty (30) days notice prior to the end of the customer contract term of the Marketer's intent to discontinue service to the customer.
9. To the maximum extent possible attempt to resolve disputes between the Marketer and its customers.

**DATE OF ISSUE:** April 12, 2005

**ISSUED BY:** Joseph W. Kelly

Issued by authority of an Order of the Public Service Commission in Case No. 29, 2005

**DATE EFFECTIVE:** April 1, 2005

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
4/1/2005  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**

President

  
March  
Executive Director

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS  
APPLICABLE TO  
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)**

**CODE OF CONDUCT - Continued**

10. No less than sixty (60) days and no more than ninety (90) days prior to the expiration of a contract that automatically renews for period of six (6) months or longer, the Marketer shall notify the customer of their right to renew, terminate or renegotiate the contract. Such notice shall include any proposed changes in the terms and conditions of the contract.

If a Marketer fails to deliver gas in accordance with the requirements of the program, Columbia shall have the power, in its sole discretion, to suspend temporarily or terminate such Marketer's participation in the program. If the Marketer is expelled from the program, customers in the Marketer's Aggregation Pool shall revert to Columbia sales service, unless and until said customers join another Marketer Aggregation Pool. Upon termination of a Marketer, Columbia shall notify Marketer's customers of the action and advise said customers that they have been returned to traditional sales service as of a date certain. The customers shall be informed of their opportunity to choose another Marketer and the options for enrollment.

In the event Columbia seeks to suspend or terminate a Marketer from the program, Columbia shall first notify the Marketer of the alleged violations which merit suspension or termination. Such notice shall be in writing and sent ten business days prior to the suspension or termination. Copies of the notice will also be provided to the Commission.

**CREDIT WORTHINESS**

Marketers will be evaluated to establish credit levels acceptable to Columbia. Marketers not meeting the necessary credit level will be required, at Columbia's option, to provide additional security in the form of an irrevocable letter of credit, cash deposit, and/or appropriate guaranty to be certified.

Marketers are required to provide the following information for evaluation:

1. Most recent audited financial statements;
2. Most recent annual report to shareholders, 10K or 10Q, if applicable;
3. IRS Form 990 (for Non-Profit Corporations), if applicable;
4. List of parent company and affiliates;
5. Names, addresses, and telephone numbers of three (3) trade references; and
6. Names, addresses, and telephone numbers of banking institution contacts.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
4/1/2005  
PURSUANT TO 807 KAR 5:011**

**DATE OF ISSUE:** April 12, 2005

**DATE EFFECTIVE:** April 1, 2005

**ISSUED BY:** Joseph W. Kelly

By  t  
Executive Director

Issued by authority of an Order of the Public Service Commission in Case No. 2004-00462 dated March 29, 2005



**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS  
APPLICABLE TO  
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)**

**CREDIT WORTHINESS -Continued**

The evaluation will be based on standard credit factors such as previous customer history, Dun & Bradstreet financial and credit ratings, trade references, bank information, unused line of credit, and financial information. Based on the number of standard credit factors met by the Marketer, Columbia will assign a dollar credit level range for each Marketer. Columbia shall have sole discretion to determine credit worthiness but will not deny credit worthiness without reasonable cause.

A fee of \$50 will be assessed for each evaluation. Columbia reserves the right to conduct further evaluations during the course of the program when information has been received by Columbia that indicates the credit worthiness of a Marketer may have deteriorated or that the Marketer's program is exceeding the credit level range previously approved by Columbia. Columbia will review each Marketer's program no less often than monthly, and will compare each Marketer's program against its previously assigned credit level range. Columbia will reevaluate each Marketer's overall credit worthiness on an annual basis. Marketers whose programs exceed the assigned credit level range will be required, at Columbia's option, to provide additional security in the form of an irrevocable letter of credit, cash deposit, and/or appropriate guaranty in order to continue to participate in the program beyond the last established credit level or to enroll additional customers. If additional security is provided by a Marketer, Columbia will assign a new credit level range for the Marketer.

**CUSTOMER ENROLLMENT PROCEDURES**

A customer may enroll by any one of the following means: written, telephone or internet.

**Written Enrollment**

Customers may enroll in the program by having the customer of record whose name is on the gas account execute a written consent form on a document supplied by the Marketer. A sample consent form is at the end of this section. At a minimum, the consent form is to indicate that the customer has a written agreement with the Marketer, desires to participate in this program, and authorizes the Marketer to obtain from Columbia Gas of Kentucky gas usage data on the customer's account. The format of the consent form may be designed by the Marketer, but must include the information shown on the sample.

The written agreement with the Marketer must state the terms and conditions covering the customer's gas supply purchase in legible print and must include the following information:

1. In clear understandable terms, the customer's rights and responsibilities. The Marketer's customer service address and telephone number; a statement describing the Marketer's dispute resolution procedures; a statement that the Marketer must provide the customer with 30 days written notice prior to discontinuing service.

**DATE OF ISSUE:** April 12, 2005

**ISSUED BY:** Joseph W. Kelly

Issued by authority of an Order of the Public Service Commission in Case No. 05-000000-0000, March 29, 2005

**DATE EFFECTIVE:** April 1, 2005

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
4/1/2005  
PURSUANT TO 807 KAR 5:011  
SECTION 9(1)**

  
President  
Executive Director

**COLUMBIA GAS OF KENTUCKY, INC.**

P.S.C. Ky. No. 5

**GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS  
APPLICABLE TO  
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)**

**Written Enrollment -Continued**

2. Written pricing and payment terms that are clear and understandable.
3. Notification of the customer's right to terminate or renegotiate their gas supply contract.
4. Notice that the Marketer will provide Columbia Gas of Kentucky and the customer at least 30 days notice prior to the end of the customer contract term, if one exists, of the Marketer's intent to discontinue service to the customer.
5. A local or toll-free telephone number for customers to obtain information on their account and a method to resolve disputes with the Marketer. The Marketer shall provide a copy of the method to resolve disputes to Columbia Gas of Kentucky and the Kentucky Public Service Commission and the name and phone number of a contact person from the Marketer whom Columbia or the Commission may contact concerning customer complaints.

**Telephone Enrollment**

In the alternative, Marketers may telephonically enroll customers under the following conditions:

1. While engaged in a telephone conversation with a potential customer, the Marketer must audio-tape in a date-stamped recording the complete conversation, including the following information:
  - (a) the telephone conversation between the customer and Marketer is being recorded;
  - (b) the customer either:
    - (1) has reviewed the terms and conditions of the Marketer's offer and that the written terms and conditions constitute the entire agreement between the Marketer and the customer; or,
    - (2) has reviewed orally with the Marketer the terms and conditions of the Marketer's offer, and agrees to enroll in the program subject to the Marketer mailing the customer an enrollment confirmation letter containing the terms and conditions of the offer within three business days, and that the written terms and conditions constitute the entire agreement between the Marketer and the customer;
  - (c) the customer wants to enroll with the Marketer;
  - (d) the customer's name;
  - (e) the customer's telephone number;

**DATE OF ISSUE:** April 12, 2005


**DATE EFFECTIVE:** April 1, 2005

**ISSUED BY:** Joseph W. Kelly

Issued by authority of an Order of the Public Service Commission in Case No. 2004-0072 dated March 29, 2005

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
4/1/2005**

**PURSUANT TO 807 KAR 5:041  
SECTION 9(i)**

**BY**   
**Executive Director**

**COLUMBIA GAS OF KENTUCKY, INC.**

P.S.C. Ky. No. 5

**GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS  
APPLICABLE TO  
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)**

**Telephone Enrollment - Continued**

- (f) the customer's mailing address;
  - (g) the customer's Columbia Gas of Kentucky account number; and,
  - (h) the appropriate enrollment cancellation period and a toll-free telephone number the customer may call to cancel enrollment:
    - (1) For customers enrolled pursuant to 1.(b) (1) the cancellation period is seven days from the date on which the customer in enrolled telephonically; or,
    - (2) For customers enrolled pursuant to 1.(b) (2) the Marketer must state that the Marketer will mail an enrollment confirmation letter containing the written terms and conditions to the customer and that the customer has seven days from receipt of the Marketer's confirmation letter to cancel enrollment.
    - (3) The customer must be advised that if the contract is cancelled by the customer, the Marketer will provide the customer with a cancellation number.
2. Following enrollment by telephone, the Marketer must mail to the customer at the address verified by the inquiry, a letter confirming the customer's enrollment. This letter must contain a copy of the identical terms and conditions of the Marketer's offer. The letter must also conspicuously inform the customer of the right to cancel enrollment by calling a prescribed toll-free number within seven business days of receiving said letter of confirmation, and must inform the customer that if the contract is canceled the Marketer will provide the customer with a cancellation number.

**Internet Enrollment**

As another alternative, Marketers may enroll customers via the Internet provided that the terms and conditions of agreement are publicly posted and accessible and include the information as set forth in Written Enrollment above. The terms of the electronic publicly posted Internet agreement also shall state conspicuously that the customer has seven business days from the date on which the customer is enrolled via the Internet to cancel the agreement and shall provide a toll-free telephone number and/or an Internet or e-mail means for the customer to cancel the agreement within this period of time. The agreement shall state that if the customer cancels the agreement, the Marketer will provide the customer a cancellation number. Internet enrollment will be permitted under the following conditions:

- 1. All Internet enrollment procedures shall be customer-initiated;

**DATE OF ISSUE:** April 12, 2005

**ISSUED BY:** Joseph W. Kelly

Issued by authority of an Order of the Public Service Commission in Case No. 2004-00462 dated March 29, 2005

**DATE EFFECTIVE:** April 1, 2005

By   
Executive Director

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
4/1/2005  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**

Case No. 2004-00462 dated March

**COLUMBIA GAS OF KENTUCKY, INC.**

P.S.C. Ky. No. 5

**GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS  
APPLICABLE TO  
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)**

**Internet Enrollment - Continued**

2. The means of enrollment, renewal, renegotiation and cancellation information transfer between the customer and Marketer is an encrypted transaction using Secure Socket Layer or a similar encryption standard to ensure privacy of customer information;
3. Any electronic agreement containing a Marketer's terms and conditions shall be identified by a version number in order to ensure the ability to verify the particular agreement to which the customer assents;
4. The Marketer shall retain and make available to the customer throughout the duration of the agreement Internet access to terms and conditions of the agreement version number to which the customer assents;
5. Before a Marketer may enroll a customer, the Marketer's Internet enrollment process must:
  - (a) prompt the customer to print or save the terms and conditions to which the customer assents, and provide an option to have written terms and conditions sent by regular mail;
  - (b) require the customer to complete an Electronic Customer Consent Form in a format retrievable by the Marketer, containing a statement that comports with the Customer Consent Form as set forth herein. The Marketer must provide a mechanism by which both the submission and receipt of the electronic customer consent form are recorded by time and date;
  - (c) after the customer completes the Electronic Customer Consent Form, the Internet enrollment process shall disclose conspicuously that the customer has been enrolled;
6. The Marketer shall send an enrollment confirmation to the customer by e-mail at the specified e-mail address or by regular U. S. mail at the post office address specified by the customer. If the Marketer's e-mail attempt fails, the Marketer shall send an enrollment confirmation with the same information to the customer via regular U. S. mail at an address specified by the customer;
7. The Marketer shall provide customer a toll-free telephone number and/or Internet or e-mail means for the customer to cancel the agreement within seven business days from the date on which the customer is enrolled by the Internet. If the customer cancels the agreement, the Marketer shall provide customer with a cancellation number via the same medium through which the cancellation was made.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

JUL 19 2000

DATE OF ISSUE: June 19, 2000

DATE EFFECTIVE: July 19, 2000

Issued by: Joseph W. Kelly

FURSUANT TO 807 KAR 0011,  
SECTION 5(1)

Vice President and Chief Operating Officer

Issued by authority of an Order of the Public Service Commission in Case No. 99-165 dated May 19, 2000

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS  
APPLICABLE TO  
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)**

Internet Enrollment - continued

Marketers must provide a copy of each Customer Consent Form or audio tape of telephone enrollment recording to Columbia or the Kentucky Public Service Commission within seven business days of any such request. With Internet enrollments Marketers must provide either a copy of the Electronic Customer Consent form or on-line access to verify customer enrollment to Columbia or the Kentucky Public Service Commission within seven business days of any such request. Failure by a Marketer to provide timely such records shall be deemed to be a violation of the Code of Conduct and shall cause the customer to be returned to Columbia's sales service tariff and a \$50.00 fee shall be paid by the Marketer to the Company and a \$50.00 fee shall be paid by the Marketer to the customer.

Marketers shall retain Customer Consent Forms, telephone enrollment recordings, electronic consent forms and on-line access to verification of enrollment for twelve months following termination of the Marketer's service to the customer.

Marketers may add customers to their Aggregation Pool on a monthly basis. Marketers shall notify Columbia by the 15<sup>th</sup> day of the prior month the accounts for which they will be supplying the commodity in the next month. (i.e. by November 15 for deliveries beginning December 1). Marketers will provide a computer spreadsheet listing all of their accounts via electronic means suitable to Columbia Gas of Kentucky. The listing shall include customer account numbers. The Marketer will be responsible for verifying the eligibility of each customer. Any incomplete submittal will be returned to the Marketer for completion. Columbia will verify the listing with its database and then provide the Marketer a Daily Delivery Requirement for the customers in the aggregate as well as an exceptions report. In the event that a customer attempts to join more than one Aggregation Pool, with more than one Marketer, Columbia Gas of Kentucky will assign the customer to the Marketer whose computer listing which includes the customer has been date-stamped first. Once enrolled with a Marketer and verified by Columbia, the Marketer shall send the customer a letter confirming the customer's choice of Marketer and stating the effective date. Whenever customers switch Marketers, the newly chosen Marketer shall send a letter confirming the customer's choice of a new Marketer.

BILLING

Columbia will bill according to the Marketer billing option by Aggregation Pool. Columbia will include a statement on the customer's bill indicating the customer's participation in the program and stating the Marketer with whom the customer is enrolled. The rate for billing shall be \$0.20 per account, per month. Such fee shall be deducted from the amount remitted each month to the Marketer for its revenues.

PAYMENT TO MARKETER

Columbia will issue a check to the Marketer by the last business day of the following calendar month for 98% of the Marketer's revenues from the previous billing month less the cost for billing and any other outstanding balances Marketer owes Columbia. The revenues will be based on actual deliveries to customers served under Rate Schedule SVGTS and the Marketer's current month billing rate. Customers' volumes will be considered actual volumes whether the meter reading is actual or calculated. Columbia will thereafter assume the risk of collecting payment for the gas commodity from small volume transportation customers.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/29/2007  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)

DATE OF ISSUE: September 10, 2007

DATE EFFECTIVE

ISSUED BY: Herbert A. Miller, Jr.

By   
Executive Director

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00000 Dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS  
APPLICABLE TO  
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)**

**HEAT CONTENT ADJUSTMENT**

When Company receives Marketer's gas from an interstate pipeline on a dekatherm (one million Btu) basis, Company will make a heat content adjustment based on the Company's average Btu value in order to deliver to customer volumes of gas, in Mcf, equal in heat content to the gas delivered to Company for the customer.

**MEASUREMENT AT POINT(S) OF RECEIPT WITH AN INTERSTATE PIPELINE**

When Company receives Marketer's gas at point(s) of receipt with an interstate pipeline, all measurement shall be performed in accordance with the terms of Company's agreement with that interstate pipeline.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
4/1/2005  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**

**DATE OF ISSUE:** April 12, 2005

**DATE EFFECTIVE:** April 1, 2005

**ISSUED BY:** Joseph W. Kelly

By  it

Issued by authority of an Order of the Public Service Commission in Case No. 2004-00462 dated March 29, 2005

**Executive Director**

**COLUMBIA GAS OF KENTUCKY, INC.**

P.S.C. Ky. No. 5

**GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS  
APPLICABLE TO  
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)**

**QUALITY OF GAS DELIVERED TO COMPANY**

Gas delivered by or on behalf of Marketer to Company shall conform to interstate pipeline gas quality standards.

**WARRANTY OF TITLE**

Marketer warrants that it will have good and merchantable title to all natural gas delivered to Company for redelivery to customer(s), that such gas will be free and clear of all liens, encumbrances and claims whatsoever, and that it will indemnify Company and hold it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas.

**CHARGES FOR THIRD PARTY SERVICE**

If furnishing service to customer pursuant to this tariff requires Company to use transportation service provided by another entity, any cost incurred by, or billed to Company with regard thereto, shall be charged to Marketer by Company and paid by Marketer. Such costs shall include, without limitation, transportation or delivery charges, retainage for Company use and unaccounted-for gas, and penalties incurred as a result of gas volume imbalances or other factors set forth in the applicable rate schedule or contract of such other entity

**FORCE MAJEURE**

Neither Company nor Marketer shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts affecting the company or its suppliers of gas, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the party claiming suspension.

Such causes or contingencies affecting the performance hereunder by either Company or Marketer, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and to remove the cause in an adequate manner and will all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve either party from its obligations to make payments of amounts then due hereunder in respect of gas theretofore delivered.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
4/1/2005**

**PURSUANT TO 807 KAR 5:011**

**SECTION 5(1)**


**DATE OF ISSUE:** April 12, 2005

**DATE EFFECTIVE:** April 1, 2005

**ISSUED BY:** Joseph W. Kelly

By  it

Issued by authority of an Order of the Public Service Commission in Case No. 2004-00462 dated March 29, 2005

By  it  
E-0462 dated March 29, 2005





**COLUMBIA GAS OF KENTUCKY, INC.**

P.S.C. Ky. No. 5

**GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS  
APPLICABLE TO  
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)**

**STANDARDS OF CONDUCT – Continued**

5. Columbia shall not disclose to anyone other than a Columbia Gas of Kentucky employee any information regarding an existing or proposed gas transportation arrangement, which Columbia receives from: (i) a customer or Marketer, (ii) a potential customer or Marketer, (iii) any agent of such customer or potential customer, or (iv) a Marketer or other entity seeking to supply gas to a customer or potential customer, unless such customer, agent, or Marketer authorizes disclosure of such information in writing.
6. If a customer requests information about Marketers, Columbia should provide a list of all Marketers operating on its system, but shall not endorse any Marketer nor indicate a preference for any Marketer.
7. Before making customer lists available to any Marketer, Columbia will use electronic mail to provide notice to all Marketers of its intent to make such customer list available. The notice shall describe the date the customer list will be made available, which shall in no case be less than three working days after the date of the notice, and the method and terms under which the customer list will be made available to all Marketers.
8. To the maximum extent practicable, Columbia's operating employees and the operating employees of its marketing affiliate must function independently of each other. This includes complete separation of the regulated utility Company's procurement activities from the affiliated marketing company's procurement activities.
9. Columbia shall not condition or tie its agreements for gas supply or for the release of interstate pipeline capacity to any agreement by a gas supplier, customer or other third party in which its marketing affiliate is involved.
10. Columbia and its marketing affiliate shall keep separate books of accounts and records.
11. Neither Columbia nor its marketing affiliate personnel shall communicate to any customer, marketer or third party the idea that any advantage might accrue for such customer, marketer or third party in the use of Columbia's service as a result of that customer's marketer's or other third party's dealing with its marketing affiliate.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE**

4/1/2005

**DATE EFFECTIVE:** April 1, 2005  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)

President

  
March  
Executive Director

**DATE OF ISSUE:** April 12, 2005

**ISSUED BY:** Joseph W. Kelly

Issued by authority of an Order of the Public Service Commission in Case No. 29, 2005

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS  
APPLICABLE TO  
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)**

**STANDARDS OF CONDUCT - Continued**

12. Columbia shall establish a complaint procedure for issues concerning compliance with these Standards of Conduct. All complaints, whether written or verbal, shall be referred to the General Counsel of Columbia. The General Counsel, or his/her designee, shall orally acknowledge the complaint within five (5) working days of receipt. The General Counsel, or his/her designee, shall prepare a written statement of the complaint which shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, companies involved, employees involved, and specific claim. The General Counsel, or his/her designee, shall communicate the results of the preliminary investigation to the complainant in writing within thirty (30) days after the complaint was received including a description of any course of action which was taken. The General Counsel, or his/her designee, shall keep a file with all such complaint statements for a period of not less than three years.
  
13. Columbia Gas of Kentucky's name or logo will not be used in its marketing affiliate's promotional material, unless the promotional material discloses in plain, legible or audible language, on the first page or at the first point where Columbia Gas of Kentucky's name or logo appears, that its marketing affiliate is not the same company as Columbia Gas of Kentucky.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE**

4/1/2005

**DATE EFFECTIVE:** April 1, 2005  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)

President



March

Executive Director

**DATE OF ISSUE:** April 12, 2005

**ISSUED BY:** Joseph W. Kelly

Issued by authority of an Order of the Public Service Commission in Case No. 29, 2005

**COLUMBIA GAS OF KENTUCKY, INC.**

P.S.C. Ky. No. 5

**GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS  
APPLICABLE TO  
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)**

**CUSTOMER CONSENT FORM**

I have signed a written agreement for the purchase of natural gas supply containing the terms and conditions of my service with my Marketer, \_\_\_\_\_. I understand and agree to those terms, and agree to participate in the program as a Small Volume Gas Transportation Service customer. My Marketer is entitled to obtain my historic and current gas usage data from Columbia Gas of Kentucky. I understand that Columbia Gas of Kentucky will deliver to me the gas I purchase from my Marketer. I will receive one bill from Columbia Gas of Kentucky that identifies my Marketer and includes both the delivery charge from Columbia and the gas purchase charge from my Marketer.

\_\_\_\_\_  
Signature of Customer                      Date

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Columbia Gas of Kentucky Account Number

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE**

**4/1/2005**

**DATE EFFECTIVE: April 1, 2005**  
**PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**

**President**



**March**  
**Executive Director**

**DATE OF ISSUE:** April 12, 2005

**ISSUED BY:** Joseph W. Kelly

Issued by authority of an Order of the Public Service Commission in Case No. 29, 2005

**COLUMBIA GAS OF KENTUCKY, INC.**

**DELIVERY SERVICE (DS)  
 TRANSPORTATION SERVICE RATE SCHEDULE**

**APPLICABILITY**

Entire service territory of Company. See Sheet No. 8 for a list of communities.

**AVAILABILITY**

This rate schedule is available to any Customer throughout the territory served by Company provided:

- (1) Customer has executed a Delivery Service Agreement with Company, and
- (2) Customer has normal annual requirements of not less than 25,000 Mcf at any delivery point, and
- (3) Company will not be required to deliver on any day more than the lesser of (i) a quantity of gas equivalent to Customer's Maximum Daily Volume specified in its Delivery Service Agreement; (ii) the quantity of gas scheduled and confirmed to be delivered into the Company's distribution facilities on behalf of the Customer on that day plus applicable Standby Sales; or (iii) the Customer's Authorized Daily Volume, and
- (4) On an annual basis, a Customers Maximum Daily Volume and Annual Transportation Volume will be automatically adjusted to the Customers actual Maximum Daily Volume and actual Annual Transportation Volume based on the Customers highest daily and annual volumetric consumption experienced during the preceding 12-month periods ending with March billings. Upon a Customers request, the Company shall have the discretion to further adjust a Customers Maximum Daily Volume and Annual Transportation Volume for good cause shown.

Customers Grandfathered ("GDS") This rate schedule is also available to customers with normal annual requirements of less than 25,000 Mcf but not less than 6,000 Mcf, at any delivery point taking service under a contract with Company for delivery service executed prior to April 1, 1999.

Intrastate Utility ("IUDS") This rate schedule is also available to intrastate utilities for transportation and consumption solely within the Commonwealth of Kentucky.

**BASE RATE**

Administrative Charge per account per billing period		55.90
Customer Charge per billing period		547.37
Customer Charge per billing period (GDS only)	23.96	
Customer Charge per billing period (IUDS only)	255.00	
Delivery Charge per Mcf -		
First 30,000 Mcf	\$0.5467 per Mcf for all gas delivered each billing month.	
Over 30,000 Mcf	\$0.2905 per Mcf for all gas delivered each billing month.	
Grandfathered Delivery Service		
First 50 Mcf per billing period	1.8715	
Next 350 Mcf per billing period		1.8153
Next 600 Mcf per billing period		1.7296
All Over 1,000 Mcf per billing period		1.5802
Intrastate Utility Delivery Service		
All volumes per billing period	\$0.5905	
Banking and Balancing Service		
Rate per Mcf		0.0208

**RIDER FOR NATURAL GAS RESEARCH & DEVELOPMENT**

Volumes delivered to customers under this rate schedule are subject to a Rider for Natural Gas Research and Development as stated on Sheet No. 51c.

**PUBLIC SERVICE COMMISSION  
 OF KENTUCKY**  
 CASE NO. 07-00008  
 8/29/2007  
 PURSUANT TO 807 KAR 5.011  
 SECTION 9 (1)

**DATE OF ISSUE:** September 10, 2007

**Issued by:** Herbert A. Miller, Jr.

D.  29, 2007  
 By \_\_\_\_\_  
 Executive Director

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

**DELIVERY SERVICE (DS)  
RATE SCHEDULE  
(Continued)**

**BANKING AND BALANCING SERVICE**

The rate for the Banking and Balancing Service is set forth on Sheet Nos. 6. This rate represents the current storage cost to the Company to provide a 'bank tolerance' to the Customer of five percent (5%) of the Customer's Annual Transportation Volume. The calculation of the Banking and Balancing Service rate is set forth in the Company's Gas Cost Adjustment.

The Banking and Balancing Service rate is subject to flexing as provided in the Flex Provision of this rate schedule. Refer to Sheet 91, Banking and Balancing Service, for the terms and conditions.

**NOMINATION AND SCHEDULING OF TRANSPORTATION DELIVERIES**

All transportation deliveries must be nominated and scheduled daily through the Company's internet based nomination system. Any customer that transports gas under this schedule may elect to have its marketer or agent make the required nominations, or the customer may elect to make daily nominations of Delivery Service gas.

**FLEX PROVISION**

When a Customer with normal volume requirements of 25,000 Mcf annually can demonstrate to Company that a lower rate is necessary to meet competition from that Customer's alternate energy supplier, Company may transport gas at a rate lower than the Base Rate and/or flex other terms and conditions associate with this rate schedule. Company may also, after receiving prior approval from the Commission, transport gas at a rate lower than the Base Rate where Customer has demonstrated that its only alternative would be a shutdown or relocation of facilities, or that the lower rate is necessary to expand facilities.

If any of these Flex Provisions apply to it, a Customer may at any time request that the transportation Base Rate be flexed. However, once the transportation Base Rate for a Customer is flexed, Customer must continue to pay the flex rate determined by Company each month and may not opt to revert to the Base Rate, except by the following procedure. Any Customer wishing to return to the Base Rate can do so by written notification to Company. Upon notification, Customer will revert to the Base Rate three months subsequent to the first day of the billing month which follows the date of the notification. Each such notification received by Company will cancel any previous such notification received by Company from the same Customer.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/29/2007  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**

**DATE OF ISSUE:** September 10, 2007

**DATE EFFECTIVE:** August 29, 2007

**Issued by:** Herbert A. Miller, Jr.

By  esident  
**Executive Director**

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

**DELIVERY SERVICE (DS)  
RATE SCHEDULE  
(Continued)**

**FLEX PROVISION - (Continued)**

Company may also transport gas under this provision to a Customer at a rate greater than the Base Rate if such rate remains competitive with the price of energy from that Customer's alternate energy suppliers. In no event shall the flex rate exceed 150% of the Base Rate.

**STANDBY SERVICE**

Rate Schedule GDS

Any Grandfathered Delivery Service Customer who elects to transport gas under this rate schedule must establish, subject to the approval of Company, a Daily Standby Service Volume contracted for under the Standby Service Rate Schedule for that portion of load that is not protected by an alternate energy source. This Daily Standby Service Volume is subject to a Demand Charge and Commodity Charge as shown on Sheet No. 6.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE**

8/29/2007

**PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**

**DATE EFFECTIVE:** August 29, 2007

By  President  
**Executive Director**

**DATE OF ISSUE:** September 10, 2007

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007



**COLUMBIA GAS OF KENTUCKY, INC.**

**MAIN LINE DELIVERY SERVICE (MLDS)  
RATE SCHEDULE**

**APPLICABILITY**

Entire service territory of Company. See Sheet No. 8 for a list of communities.

**AVAILABILITY**

This rate schedule is available to any Customer throughout the territory served by Company provided:

- (1) Customer has executed a Delivery Service Agreement with Company, and
- (2) Customer has normal annual requirements of not less than 25,000 Mcf at any delivery point, and
- (3) Customer is connected directly through a dual-purpose meter to facilities of an interstate pipeline supplier of Company, and
- (4) Company will not be required to deliver on any day more than the lesser of: (i) a quantity of gas equivalent to Customer's Maximum Daily Volume specified in its Delivery Service Agreement; (ii) the quantity of gas scheduled and confirmed to be delivered into the Company's distribution facilities on behalf of the Customer on that day plus applicable Standby Sales; or (iii) the Customer's Authorized Daily Volume, and
- (5) On an annual basis, a Customer's Maximum Daily Volume and Annual Transportation Volume will be automatically adjusted to the Customer's actual Maximum Daily Volume and actual Annual Transportation Volume based on the Customer's highest daily and annual volumetric consumption experienced during the preceding 12-month periods ending with March billings. Upon a Customer's request, the Company shall have the discretion to further adjust a Customer's Maximum Daily Volume and Annual Transportation Volume for good cause shown.

**RATE**

The transportation rate shall be \$0.0858 per Mcf for all gas delivered each month.

**ADMINISTRATIVE CHARGE**

The monthly administrative charge shall be \$55.90 per account each billing period.

**CUSTOMER CHARGE**

The customer charge shall be \$200 per account each billing period.

**BANKING AND BALANCING SERVICE**

The rate for the Banking and Balancing Service is set forth on Sheet No. 6. This rate represents the current storage cost to the Company to provide a 'bank tolerance' to the Customer of five percent (5%) of the Customer's Annual Transportation Volume. The calculation of the Banking and Balancing Service rate is set forth in the Company's Gas Cost Adjustment.

The Banking and Balancing Service rate is subject to flexing as provided in the Flex Provision of this rate schedule. Refer to Sheet No. 91, Banking and Balancing Service, for the terms and conditions of the Balancing and Banking Service.

**RIDER FOR NATURAL GAS RESEARCH & DEVELOPMENT**

Volumes delivered to customers under this rate schedule are subject to a Rider for Natural Gas Research and Development as stated on Sheet No. 51c.

**NOMINATION AND SCHEDULING OF TRANSPORTATION DELIVERIES**

All transportation deliveries must be nominated and scheduled through the Company's internet-based nomination system. Any customer that transports gas under this schedule may elect to have its marketing agent make the required nominations, or the customer may elect to connect to make daily nominations of Delivery Service gas.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY**  
EFFECTIVE  
August 29, 2007  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)

**DATE EFFECTIVE:** August 29, 2007

By  resident  
**Executive Director**

**DATE OF ISSUE:** September 10, 2007

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

**ALTERNATE FUEL DISPLACEMENT SERVICE (AFDS)  
RATE SCHEDULE**

**APPLICABILITY**

Entire service territory of Company. See Sheet No. 8 for a list of communities.

**AVAILABILITY**

This rate schedule is available in the territory served by Company to any commercial, industrial or wholesale Customer having normal annual usage of not less than 6,000 Mcf, provided:

- (1) Customer is currently purchasing natural gas from Company under Company's GS, IS, or IUS Rate Schedules.
- (2) The capacity of Company's facilities and the available gas supply are sufficient to provide the quantities requested by Customer, and
- (3) Customer has submitted to Company an initial affidavit which provides the following information:
  - (a) Name and address at which service under this rate schedule will be received, and
  - (b) Customer has installed operable capability for long term use of an alternate energy source other than No. 6 fuel oil and has made available to Company the option of on-sight inspection of the alternate fuel facilities, and
  - (c) Customer's verification that gas purchased under the rate schedule will be utilized to reduce or eliminate alternate energy requirements, that such purchase would not be made during any month of the term in the absence of this rate schedule, and that such gas will not replace non-alternate energy requirements which would otherwise be purchased under Company's applicable GS, IS, or IUS Rate Schedules, and
- (4) Customer submits to Company a monthly affidavit on or before the fifth day of the current billing month providing the following information to be used for purposes of billing:
  - (a) Prior billing month's usage of alternate fuel displacement service, unless separately metered, and
  - (b) Projected prices and estimated usage of Customer's alternate fuel for the current billing period.

(C) Change

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

NOV 01 1994

DATE OF ISSUE: November 10, 1994      PURSUANT TO 807 KAR 5.001,      RATE EFFECTIVE: November 1, 1994

Issued by: *Kathryn Shroy*      SECTION 9 (1)      Vice President - Regulatory Services  
*Phillip Linn*  
DIRECTOR, RATES & RESEARCH DIV.

Issued by authority of an Order of the Public Service Commission in Case No. 94-179, dated November 1, 1994.

**COLUMBIA GAS OF KENTUCKY, INC.**

**ALTERNATE FUEL DISPLACEMENT SERVICE (AFDS)  
RATE SCHEDULE  
(Continued)**

**CHARACTER OF SERVICE**

The Maximum Daily Volume available for delivery pursuant to this rate schedule shall not exceed Customer's installed non-peaking alternate fuel capability and shall be within:

- (1) The limits imposed by the curtailment and daily interruption provisions governing the otherwise applicable GS, IS, or IUS Rate Schedules, or
- (2) The limits imposed by Customer's effective Maximum Daily Volume entitlement under Company's otherwise applicable GS, IS, or IUS Rate Schedules.

**RATE**

A rate per Mcf shall be established by Company in excess of the monthly equivalent Commodity Charge (Average Cost of Gas less Demand Cost of Gas) as contained in Company's most recent Gas Cost Adjustment. The floor price shall be the Commodity Charge plus ten cents (10¢) plus allowances for taxes.

The ceiling price shall be at a rate no greater than 150% of the applicable Total Billing Rate under Customer's applicable rate schedule.

Prior to establishing the applicable rate for any month, Company will review pricing information contained in Customer's affidavit. Company will also inquire through existing independent sources about current local pricing of alternate fuel, and will use appropriate publications to assist it in determining the monthly rate.

Company will file the applicable rate and the current floor price with the Commission at least five (5) days before billing.

Pursuant to the preceding paragraphs, any Customer may, at any time, request that the rate be flexed. However, once the rate for a Customer is flexed, the Customer must continue to pay the flex rate determined by Company each month and may not opt to revert to any other available tariff rate except by the following procedure.

Any Customer wishing to revert to any other available tariff rate can do so by written notification to Company. Upon notification, Customer will revert to the appropriate tariff rate three months subsequent to the first day of the billing month which follows the date of the notification. Each such notification received by Company will cancel any previous such notification received by Company from the same Customer.

**MINIMUM MONTHLY CHARGE**

The Minimum Monthly Charge provisions of the applicable rate schedules remains in full force and effect. However, volumes delivered under this rate schedule shall be combined with volumes delivered under the applicable rate schedule for minimum bill calculation purposes.

(C) Change

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DATE OF ISSUE: November 10, 1994

NOV 01 1994

DATE EFFECTIVE: November 1, 1994

Issued by:

*Kathryn Shroyer*

Vice President - Regulatory Services

PURSUANT TO 807 KAR 5011.

Issued by authority of an Order of the Public Service Commission in Case No. 94-179, dated November 1, 1994.

BY: *Phyllis Fannin*  
DIRECTOR, RATES & RESEARCH DIV.

**COLUMBIA GAS OF KENTUCKY, INC.**

**ALTERNATE FUEL DISPLACEMENT SERVICE (AFDS)  
RATE SCHEDULE  
(Continued)**

**LOCAL FRANCHISE FEE OR TAX**

The monthly bill to Customers served under this rate schedule is subject to Local Franchise Fee or Tax as set forth on Sheet No. 52.

**TERM**

The term of the agreement for service under this rate schedule shall be for a minimum of one year and shall be automatically renewed each year unless written notice to terminate is given by Customer or Company not less than sixty (60) days prior to the expiration date of the contract.

**GENERAL TERMS, CONDITIONS, RULES and REGULATIONS**

All General Terms, Conditions, Rules and Regulations applicable to GS, IS, or IUS Rate Schedules apply to this rate schedule and are hereby incorporated herein.

**SPECIAL TERMS AND CONDITIONS**

**Separate Metering**

Gas delivered hereunder, except that for oil burner pilot usage shall not be used interchangeably with gas supplied under any other schedule, and shall be separately metered; provided, however, if gas is delivered to Customer under more than one rate schedule at one location, and if separate metering of the Alternate Fuel Displacement Service portion of such deliveries is not practicable, monthly volumes to be billed under the GS, IS, or IUS Rate Schedule and AFDS Rate Schedule shall be determined from Customer's monthly affidavit, as required by Paragraph (4) of the Availability Section.

**Stand-By Facilities**

In all cases where continuous operation of Customer's facilities is necessary, Customer shall provide and maintain stand-by equipment, including fuel supply for operation thereof, in satisfactory operating condition and of sufficient capacity to permit full interruption of the interruptible gas supply.

**Meter Reading**

Meter readings shall be made monthly.

(C) Change

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

NOV 01 1994

PURSUANT TO 807 KAR 5011,  
SECTION 9 (1)

BY: Phyllis Lammie  
DIRECTOR, RATES & RESEARCH DIV.

DATE OF ISSUE: November 10, 1994

DATE EFFECTIVE: November 1, 1994

Issued by: Kathryn Shroyer

Vice President - Regulatory Services

Issued by authority of an Order of the Public Service Commission in Case No. 94-179, dated November 1, 1994.

**COLUMBIA GAS OF KENTUCKY, INC.**

**ALTERNATE FUEL DISPLACEMENT SERVICE (AFDS)  
RATE SCHEDULE  
(Continued)**

**Special Conditions**

Company reserves the right, at its sole discretion, to reduce the quantities of gas requested by Customer to the extent Company determines that the quantities of gas requested by customer are invalid or inaccurate.

**OTHER**

For purposes of administering provisions of the IS Rate Schedule relating to Penalty for Failure to Interrupt, Payments for Unauthorized Takes and Availability of Excess Gas, volumes delivered under this rate schedule will be combined with volumes delivered to Customer under the IS Rate Schedule.

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(C) Change

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

NOV 01 1994

PURSUANT TO 807 KAR 5.011,  
SECTION 9 (1)

BY: Phyllis Lammie  
DIRECTOR, RATES & RESEARCH DIV.

DATE OF ISSUE: November 10, 1994

DATE EFFECTIVE: November 1, 1994

Issued by:

*Kathryn Shroyer*

Vice President - Regulatory Services

Issued by authority of an Order of the Public Service Commission in Case No. 94-179, dated November 1, 1994.

**COLUMBIA GAS OF KENTUCKY, INC.**

**SPECIAL AGENCY SERVICE (SAS)  
RATE SCHEDULE**

**APPLICABILITY**

Entire service territory of Company. See Sheet No. 8 for a list of communities.

**AVAILABILITY**

This service is available to any commercial or industrial Customer taking service under Rate Schedules GS, IS, or IUS, provided:

- (1) Customer has executed a contract with Company for Delivery Service, and
- (2) Customer has submitted an affidavit that demonstrates to Company's satisfaction that gas obtained hereunder will be used as a replacement for an installed operable energy system - either an alternate fuel or an alternate source of supply.

**VOLUMES AND PRICE**

Each month this program is in effect, Company shall notify each participating Customer of the price, which may vary depending on Customer's cost of alternate energy, to be charged for volumes to be purchased by Company as agent for Customer during the following month, exclusive of transportation charges. On or before the twenty-fifth (25th) day of each month, Customer shall nominate the quantity of gas it will require during the following month at the price indicated by Company. Such nominations must be in writing and are not effective until received by Company. Company will then use its best efforts to purchase such quantities of gas as agent for Customer, and Customer must take and pay for all volumes so delivered. In addition to the price charged for such volumes, an Agency Fee will be charged on all such delivered volumes. Company will attempt to maximize the contributions of the Agency Fee to other Customers. When necessary, Company may vary this fee to effectively compete with any alternate energy source, provided that, on an annual basis:

- (1) the revenues collected from the Special Agency Service will cover the cost of the program and make a contribution to Company's fixed costs; and
- (2) revenues received from each agency Customer, including transportation charges, will be sufficient to recover Company's marginal cost, i.e., the cost of the most expensive agency gas.

The minimum Agency Fee will be five cents (05¢) per Mcf. The Agency Fee will be credited to Customers through Company's Gas Cost Adjustment Program. Customers shall also be liable for all state and local taxes levied as a result of transactions hereunder.

(C) Change

NOV 01 1994

DATE OF ISSUE: November 10, 1994

DATE EFFECTIVE: November 1, 1994

Issued by:

*Kathryn Shroyer*

PURSUANT TO 807 KAR 50.01,

SECTION 9(1)

Vice President - Regulatory Services

BY:

*Phyllis Lunn*

Issued by authority of an Order of the Public Service Commission in Case No. 94-179, dated November 1, 1994.

**COLUMBIA GAS OF KENTUCKY, INC.**

**SPECIAL AGENCY SERVICE (SAS)  
RATE SCHEDULE  
(Continued)**

**VOLUMES AND PRICE** (Continued)

Company shall not be liable for losses or damages resulting from any failure by Company to purchase volumes nominated by Customer under this program.

**TERM**

Customers may participate in this program on a month-to-month basis.

**TRANSPORTATION TERMS AND CONDITIONS**

Transportation of all volumes purchased under this program is subject to the charges, terms and conditions set forth or incorporated in Rate Schedule DS - Delivery Service.

**GENERAL TERMS, CONDITIONS, RULES and REGULATIONS**

All General Terms, Conditions, Rules and Regulations applicable to GS, IS, or IUS Rate Schedules apply to this rate schedule and are hereby incorporated herein.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

NOV 01 1994

(C) Change

PURSUANT TO 807 KAR 5.011,  
SECTION 9 (1)

BY: Phyllis Fanning  
DIRECTOR, RATES & RESEARCH DIV.

DATE OF ISSUE: November 10, 1994

DATE EFFECTIVE: November 1, 1994

Issued by:

*Kathryn Shroyer*

Vice President - Regulatory Services

Issued by authority of an Order of the Public Service Commission in Case No. 94-179, dated November 1, 1994.



**COLUMBIA GAS OF KENTUCKY, INC.**

**GAS COST ADJUSTMENT CLAUSE  
APPLICABLE TO ALL RATE SCHEDULES**

GAS COST ADJUSTMENT CLAUSE

Determination of GCA

Company shall file a quarterly report with the Commission which shall contain an updated Gas Cost Adjustment (GCA) Rate and shall be filed at least thirty (30) days prior to the beginning of each quarterly calendar period. The GCA shall become effective for billing with the final meter readings of the first billing cycle of each quarterly calendar period.

The gas cost adjustment is comprised of:

- (1) The Expected Gas Cost Component (EGC), on a dollar-per-Mcf basis, is made up of two components: (a) Expected Commodity Gas Cost which applies to Rate Schedules GS, IS, and IUS, and represents the average expected commodity cost of gas supplied, and (b) Expected Demand Gas Cost which applies to Rate Schedules GS, IUS and SVAS, and represents the average expected demand cost of gas supplied, excluding the Standby Service demand costs to be recovered from IS Customers and General Service Delivery Service Customers. The Commodity Gas Cost component of the EGC includes the gains and losses resulting from the settlement of gas futures contracts entered into pursuant to the Company's Commission approved hedging plan and all transaction fees and other brokerage fees or costs associated with the use of those gas futures contracts.
- (2) The supplier Refund Adjustment (RA), on a dollar-per-Mcf basis, which reflects refunds received during the reporting period plus interest at a rate equal to the average of the "three month commercial paper rate" for the immediately preceding twelve month period. In the event of any large or unusual refunds, Company may apply to the Commission for the right to depart from the refund procedure herein set forth.
- (3) The Actual Cost Adjustment (ACA), on a dollar-per-Mcf basis, which compensates for any previous over or undercollections of gas costs experienced by the company through the operation of this gas cost recovery procedure. The ACA shall be based on the twelve months ended June 30th each year, with the ACA factor to be in effect for twelve months beginning September 1st of each year.
- (4) The Balancing Adjustment (BA), on a dollar-per-Mcf basis, which compensates for any under or overcollections which have occurred as a result of prior adjustments.
- (5) The Gas Cost Incentive Adjustment (GCIA), on a dollar-per -Mcf basis, which is calculated annually based on the prior April through October period, with the GCIA factor to be in effect for twelve months beginning March 1<sup>st</sup> each year.
- (6) The Off-System Sales and Capacity Release Adjustment (OSCRA), on a dollar-per-Mcf basis, which is calculated annually based on the twelve months ended September 30<sup>th</sup> of each year, with the OSCRA factor to be in effect for twelve months beginning December 1<sup>st</sup> of each year.

NOTE: All adjustments will be assigned to the Expected Demand Gas Cost or Expected Commodity Gas Cost components.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
4/1/2005**  
 PURSUANT TO 807 KAR 5:011  
 SECTION 9 (1)  
 \_\_\_\_\_  
 President  
 \_\_\_\_\_  
 March  
 Executive Director

**DATE OF ISSUE:** April 12, 2005

**DATE EFFECTIVE:** April 1, 2005

**ISSUED BY:** Joseph W. Kelly

Issued by authority of an Order of the Public Service Commission in Case No. 29, 2005

**COLUMBIA GAS OF KENTUCKY, INC.**

**GAS COST ADJUSTMENT CLAUSE  
APPLICABLE TO ALL RATE SCHEDULES  
(Continued)**

**GAS COST ADJUSTMENT CLAUSE - (Continued)**

**Billing**

The Gas Cost Adjustment (GCA) shall be the sum of the following components:

$$GCA = EGC + RA + ACA + BA + GCIA + OSCRA$$

The GCA will be added to (or subtracted from) the tariff rates prescribed by the Commission Order on Company's latest rate case and will be included in the tariff rates stated on each applicable rate sheet in this tariff.

**Definitions**

For the purpose of this tariff:

- (a) "Average expected cost" is the cost of gas supplies purchased during the latest available twelve month period, including associated transportation charges, storage charges and Take-or-Pay charges, which is determined by the application of suppliers' rates currently in effect, or reasonably expected to be in effect during the quarterly calendar period, less banking and balancing charges, and less the demand costs to be recovered from IS and General Service Delivery Service Customers, divided by the sales volumes for the latest available twelve month period. Where the calculations require the use of volumes used during a given period, and those volumes did not exist for a particular source for the entire period, or Company expects the volumes to change substantially, Company may make appropriate adjustments in its calculations. Any adjustments of this type shall be described in the Quarterly Gas Cost Adjustment report.
- (b) "quarterly calendar period" means each of the four three month periods of (1) September through November, (2) December through February, (3) March through May, and (4) June through August.
- (c) "Reporting period" means the three month accounting period that ended approximately thirty (30) days prior to the filing date of the updated gas recovery rates, i.e. the three months ended June 30<sup>th</sup>, September 30<sup>th</sup>, December 31<sup>st</sup>, and March 31<sup>st</sup> each year.

**Hedging Plan**

In accordance with the Company's hedging plan approved by the Commission, the Company will utilize gas futures and/or fixed price gas contracts for the purpose of hedging the price of its gas purchases within the parameters established in the hedging plan. By June 1 of each year, the Company shall file a report with the Commission that details said hedging activity during the twelve month period ended March 31. The report will include details of hedge positions taken for future months.

**DATE OF ISSUE:** April 12, 2005

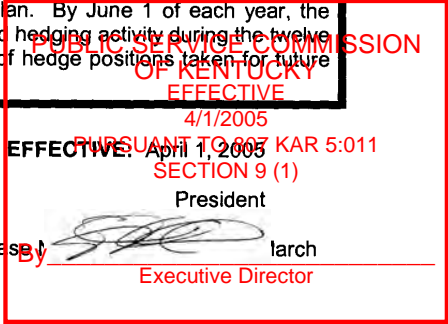
**DATE EFFECTIVE:** 4/1/2005  
PURSUANT TO 2007 KAR 5:011  
SECTION 9 (1)

**ISSUED BY:** Joseph W. Kelly

President

Issued by authority of an Order of the Public Service Commission in Case No. 29, 2005

  
March  
Executive Director



**COLUMBIA GAS OF KENTUCKY, INC.**

**GAS COST ADJUSTMENT CLAUSE  
APPLICABLE TO ALL RATE SCHEDULES  
(Continued)**

**GAS COST ADJUSTMENT CLAUSE - (Continued)**

**Gas Cost Incentive Adjustment**

The Gas Cost Incentive Adjustment ("GCI") shall be calculated as follows:

$$GCI = PV \times 50\% / PSV$$

PV = Performance Value = BC - AC  
BC = Benchmark Cost  
AC = Actual Cost  
PSV = Projected Sales Volume

The GCI will measure the Company's gas purchase performance in the months of April through October each year against a Market Standard.

For each gas purchase made during the months of April through October, the Company will calculate a Market Standard price by taking the NYMEX natural gas futures contract settlement price for the month and adjusting for basis. Basis is calculated as the difference between the prices published in the first publication of the month of *Inside FERC's Gas Market Report*, under the column labeled "Index" for the Henry Hub and for the pipeline location at which Columbia made the gas purchase.

A monthly Benchmark Cost will be calculated by multiplying the applicable Market Standard for each purchase by the gas volume of each applicable purchase, and summing the results for all applicable purchases that month.

When the Company's Actual Cost for gas purchased in the month is less than the Benchmark Cost, the result for the month is a positive performance. When the Company's gas purchase costs are greater than the Benchmark Cost, the result for the month is a negative performance. The resulting negative or positive Performance Amount will be shared equally between the Company and its sales customers.

If the Company purchases gas at a point not reported in the applicable index publication. The Company will use the next closest index on the applicable pipeline upstream of the purchase point, and add to that index the 100% load factor cost of firm transportation on that pipeline between the index location and the purchase point.

Purchases made at Columbia's own city gate are excluded from the GCI process and calculation.

If the index used to develop the Market Standard price ceases to exist or ceases to adequately report those prices required in the normal implementation of this GCI, the Company shall choose a suitable replacement index, assuming an acceptable index is available, and immediately report that change in writing to the Commission.

**DATE OF ISSUE:** April 12, 2005

**DATE EFFECTIVE:** April 1, 2005  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)

**ISSUED BY:** Joseph W. Kelly

President

Issued by authority of an Order of the Public Service Commission in Case No. 29, 2005

  
\_\_\_\_\_  
Executive Director

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
4/1/2005

PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)



**COLUMBIA GAS OF KENTUCKY, INC.**

**GAS COST ADJUSTMENT CLAUSE  
APPLICABLE TO GENERAL PROPANE SERVICE (GPS)  
RATE SCHEDULE**

**PROPANE SERVICE - PROPANE COST ADJUSTMENT CLAUSE**

Company shall file with the Commission a report containing an updated Propane Cost Adjustment (PCA) Rate each time the propane supply is replenished. This report will be filed within 45 days of the propane delivery. Additionally, Company shall file an Actual Cost Adjustment (ACA) to be effective September 1st of each year.

The propane cost adjustment is comprised of:

- (1) The Expected Propane Cost (EPC) component, on a dollar-per-Mcf basis, which represents the average expected cost of propane supplied.

The Expected Propane Cost is calculated by dividing the value of propane by the volume (gallons) of propane on hand. This price per gallon is multiplied by a conversion factor of 28.19 to arrive at a price per Mcf (propane). This amount is then divided by 2.48, the Btu conversion, propane to natural gas, which yields the price per Mcf (natural gas) which is the Expected Propane Cost.

- (2) The Propane Refund Adjustment (PRA), on a dollar-per-Mcf basis, which reflects supplier refunds received during the reporting period, plus interest at a rate equal to the average of the "three month commercial paper rate" for the immediately preceding twelve month period. In the event of any large or unusual refunds, Company may apply to the Commission for the right to depart from the refund procedure herein set forth.

- (3) The Actual Cost Adjustment (ACA), on a dollar-per-Mcf basis, compensates for any previous over or undercollections of propane costs experienced by Company through the operation of this cost recovery procedure and any balancing adjustments for any under or over collections which have occurred as a result of prior adjustments. The ACA shall be based on the twelve months ended June 30th each year, with the ACA factor to be in effect for twelve months beginning September 1st of each year.

Billing

The Propane Cost Adjustment (PCA) shall be the sum of the following components:

$$PCA = EPC + PRA + ACA$$

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

SEP 1 1993

PURSUANT TO 807 KAR 5:011.  
SECTION 8 (1)

DATE OF ISSUE: June 1, 1993

Issued by:



DATE EFFECTIVE: September 1, 1993

BY:   
Vice President - Regulatory Services

**COLUMBIA GAS OF KENTUCKY, INC.**

**WEATHER NORMALIZATION ADJUSTMENT CLAUSE  
APPLICABLE TO GS, SVGTS AND GPS RATE SCHEDULES**

**WEATHER NORMALIZATION ADJUSTMENT (WNA)**

The sales to Residential and Commercial Customers under Rate Schedules GS, SVGTS and GPS shall be increased or decreased monthly by an amount hereinafter described as the Weather Normalization Adjustment (WNA).

**Determination of WNA**

Weather normalized volumes shall be utilized during the December through April billing months to calculate the non-gas portion of the bills of all heating Customers served under Rate Schedules GS, SVGTS and GPS. During the remainder of the year May through November, the monthly bills shall be computed based on actual consumption.

Weather Normalization Adjustment will be calculated using the following formula:

$$\text{WNA} = [(\text{Actual Mcf} - \text{Base Load Mcf}) * (\text{Normal Degree Days} / \text{Actual Degree Days})]$$

Each customer's base load will be determined individually, and will be recomputed annually. Rates used in the computation of the WNA shall be determined based on the applicable base rate charge as set forth on Sheet No. 5 of this tariff.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

JUL 19 2000

PURSUANT TO 807 KAR 5011,  
SECTION 9(1)

BY: Stephan D. Bell  
SECRETARY OF THE COMMISSION

**DATE OF ISSUE:** June 19, 2000  
**Issued by:** Joseph W. Kelly

**DATE EFFECTIVE:** July 19, 2000  
Vice President and Chief Operating Officer

Issued by authority of an Order of the Public Service Commission in Case No. 99-165 dated May 19, 2000

COLUMBIA GAS OF KENTUCKY, INC.

**ENERGY ASSISTANCE PROGRAM RIDER  
APPLICABLE TO GSR RATE SCHEDULE**

**Energy Assistance Program**

The Energy Assistance Program ("EAP") provides a bill credit to enrolled customers during the five heating season months of November through March. It is available to eligible residential customers in Company's service territory subject to enrollment by the Program Administrator. The surcharge is applicable to all residential customers under the General Service and Small Volume Gas Transportation Service Rate Schedules. The EAP surcharge will be a separate line item on customers' bills.

**Rate:**

The surcharge shall be \$0.0525 per Mcf.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
3/1/2009**

**PURSUANT TO 807 KAR 5:011**

**DATE EFFECTIVE: March 11, 2009**

**DATE OF ISSUE:** January 30, 2009

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission  
December 13, 2002

By  resident  
Executive Director dated





**COLUMBIA GAS OF KENTUCKY, INC.**

**LOCAL FRANCHISE FEE OR TAX  
 APPLICABLE TO ALL RATE SCHEDULES**

There shall be added to the Customer's bill, as a separate item, an amount equal to the proportionate part of any license, occupation, franchise, or their similar fee and Sales tax now or hereafter imposed upon Company by state and local taxing authorities, whether imposed by ordinance, franchise or otherwise, and which fee or tax is based upon a percentage of the gross receipts, net receipts, or revenues of Company. Such amount shall be added exclusively to bills of Customers receiving service within the territorial limits of the authority imposing the fee or tax. Where more than one such fee or tax is imposed, each of the fees or taxes applicable to each Customer shall be added to the Customer's bill as a separately identified item.

In the event all or any part of such tax liability is not finally determined, or if reimbursement from Customers has been deficient, then the amount of such reimbursement required in respect of such tax liability not finally determined or deficient shall, when possible, be set forth for all months in any calendar year(s) in a statement to be rendered by Company to Customer by April 1, of the year following the year of final determination and Customer shall pay the amount due pursuant to such statement on or before May 1, of such following year.

Customers receiving service in the following municipalities or political subdivisions shall pay a local franchise fee or tax based on the following effective rates:

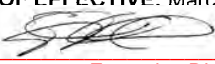
<u>Municipality or Political Subdivision</u>	<u>Local Franchise Fee or Tax Percent</u>
Lexington-Fayette Urban County Government	3.16%
City of Irvine - Kentucky	2%
City of Ravenna - Kentucky	2%
City of Winchester - Kentucky	3%
City of Greenup – Kentucky	2%
City of Ashland, Kentucky	3%

Exemption:

Those volumes delivered under the Delivery Service (DS) Rate Schedule, Main Line Delivery Service (MLDS) and Special Agency Service (SAS) are exempt from the above-mentioned taxes in the Cities of Irvine, Ravenna, Winchester, and Greenup.

HT

**PUBLIC SERVICE COMMISSION  
 OF KENTUCKY  
 EFFECTIVE  
 3/30/2007  
 PURSUANT TO 807 KAR 5:011  
 SECTION 9 (1)**

By  President  
 Executive Director

DATE OF ISSUE: March 6, 2007

Issued by: Herbert A. Miller, Jr.

DATE OF EFFECTIVE: March 30, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

**TEMPORARY VOLUMETRIC LIMITATIONS AND  
CURTAILMENT PROVISIONS RELATING TO  
ALL RATE SCHEDULES**

**VOLUMETRIC LIMITATIONS AND CURTAILMENT PROVISIONS**

**1. Definitions**

**A. Maximum Monthly Volume**

A statement showing Maximum Monthly Volume applicable to commercial and industrial Customers will be furnished each Customer. Commercial and industrial Customers hereunder are those having a monthly consumption of 1,000 Mcf or more in any one month, excluding commercial service for buildings where people reside on either a permanent or temporary basis. The Maximum Monthly Volume represents the maximum volume of gas that Company is obligated to deliver to Customer in any one month.

**B. Authorized Monthly Volume**

When Customer's Maximum Monthly Volume is reduced as a result of the provisions of Section 2 herein, the reduced volume shall thereafter constitute Customer's Authorized Monthly Volume and shall continue as Customer's Authorized Monthly Volume until changed by notice from Company.

**C. Maximum Seasonal Volume**

Shall mean: (i) for the winter season, the total Authorized Monthly Volume for the billing months of November through March, and (ii) for the summer season, the total Authorized Monthly Volume for the billing months of April through October. Customer shall be billed and shall pay for all volumes taken hereunder in excess of Customer's Authorized Monthly Volume at the applicable rate therefore, together with any applicable charges, pursuant to Section 3 herein.

**D. Human Needs**

Shall mean Residential Customers and all Customers whose facilities are used for residential dwellings on either a permanent or temporary basis (such as, but not limited to, apartment buildings, correctional institutions, hospitals, nursing homes, hotels and motels). Those whose requirements can be met by installed alternate fuel facilities will be required to utilize such facilities prior to curtailing other loads in Priority 1, as that term is defined in Section 2, herein.

**E. Alternate Fuel Capability**

Shall mean a situation in which an alternate fuel could have been utilized, whether or not the facilities for such use have actually been installed.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE**

(C) Change

NOV 01 1994

DATE OF ISSUE: November 10, 1994

DATE EFFECTIVE: November 1, 1994

PURSUANT TO 807 KAR 5011.

Issued by: *Kathryn Shroyer* SECTION 9 (1) Vice President - Regulatory Services

BY: *Phyllis Fanning*

Issued by authority of an Order of the Public Service Commission, Case No. 94-179, dated November 1, 1994.

**COLUMBIA GAS OF KENTUCKY, INC.**

**TEMPORARY VOLUMETRIC LIMITATIONS AND  
CURTAILMENT PROVISIONS RELATING TO  
ALL RATE SCHEDULES (Continued)**

**VOLUMETRIC LIMITATIONS AND CURTAILMENT PROVISIONS (Continued)**

**2. Curtailment Provisions**

**A. Gas Supply Deficiency Curtailment**

If, from time to time and in Company's sole judgment, Company's gas supply is not adequate to deliver its market requirements, including the Maximum Monthly Volumes of each Customer, Company shall order curtailment of deliveries to Customers by giving notice to each Customer of the percentage curtailment ordered for each priority applicable to Customer as described herein. Such notice will be given as much in advance as possible.

Provided, however, the provisions herein for curtailment shall in no way limit or restrict Company from curtailing and interrupting daily deliveries as provided for in other provisions of this tariff.

**Priorities of Curtailment**

Company may curtail or discontinue service, in whole or in part, monthly or seasonal volumes in accordance with the following priorities commencing with the highest numbered Priority and proceeding in ascending order, without incurring thereby any liability for any subsequent loss or damage which the Customer may sustain by reason of such curtailment or discontinuance, in order to conserve the supply of gas for existing domestic uses and uses deemed to be necessary to the protection of public health and safety and to avoid undue hardship:

**PRIORITIES OF SERVICE**

**Priority 1:** Residential loads and "Human Needs" as herein defined.

**Priority 2:** Remaining commercial loads not previously curtailed in Priority 4.

**Priority 3:** Remaining industrial loads not curtailed in Priorities 4, 5 and 6.

**Priority 4:** After 100% curtailment of all loads in Priorities 5 and 6, all commercial and industrial loads of 1,000 Mcf and larger in any month will be curtailed on a pro rata basis, except that curtailment of commercial loads will not exceed 40% during the winter period November through March and 15% during the remaining months.

**Priority 5:** After 100% curtailment of all loads in Priority 6 and prior to curtailment of loads in Priority 4, all industrial loads of 1,000 Mcf and larger in any month having alternate fuel capability will be curtailed on a pro rata basis except where the Commission has granted an extension of time.

**Priority 6:** All industrial boiler fuel loads of 1,000 or more in any month will be curtailed up to 100% prior to curtailment of loads in Priority 5.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DATE OF ISSUE: June 1, 1993

DATE EFFECTIVE: September 1, 1993

Issued by:



SEP 1 1993  
Vice President - Regulatory Services

PURSUANT TO 807 KAR 5:011,  
SECTION 9 (1)

**COLUMBIA GAS OF KENTUCKY, INC.**

**TEMPORARY VOLUMETRIC LIMITATIONS AND  
CURTAILMENT PROVISIONS RELATING TO  
ALL RATE SCHEDULES (Continued)**

**VOLUMETRIC LIMITATIONS AND CURTAILMENT PROVISIONS (Continued)**

**2. Curtailment Provisions (Continued)**

**B. Curtailment Resulting from Operating Conditions**

If, due to necessity to make modifications, tests, replacements, or repairs (excluding repairs arising from the occurrence of a force majeure) to Company's facilities, as determined in Company's sole judgment or to the facilities of Company's supplier of gas, the gas available for delivery by Company is insufficient to meet all of Company's authorized sales on any day, then Company, upon providing as much notice as possible under all of the circumstances, shall order curtailment by Customers to the extent required.

**3. Penalty Provision for Takes in Excess of Authorized Monthly Volumes**

**A. Penalty for Excess Takes at the End of the Five-Month Period Ending with the March Billing Month**

If, at the end of the five-month period ending with the March billing month, Customer has exceeded the sum of its Authorized Monthly Volumes for such period, then Customer shall pay a penalty computed at the rate of ten dollars (\$10.00) per Mcf for all volumes taken in excess of one hundred three percent (103%) of the sum of Customer's Authorized Monthly Volumes. Provided, however, to the extent that a Customer exceeds the sum of its Authorized Monthly Volumes for such period, the penalty shall not apply to the excess volumes authorized pursuant to the provision of Section 5 herein.

**B. Penalty for Excess Takes at the End of the Seven-Month Period Ending with the October Billing Month**

If, at the end of the seven-month period ending with each October billing month, Customer has exceeded the sum of its Authorized Monthly Volumes for such period, then Customer shall pay a penalty computed at the rate of \$10.00 per Mcf for all volumes taken in excess of one hundred and two percent (102%) of the sum of Customer's Authorized Monthly Volumes. Provided, however, to the extent that a Customer exceeds the sum of its Authorized Monthly Volumes for such period, the penalty shall not apply to the excess volumes authorized pursuant to the provision of Section 5 herein.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

SEP 1 1993

PURSUANT TO 807 KAR 5011.  
SECTION 9 (1)

DATE OF ISSUE: June 1, 1993

Issued by:



DATE EFFECTIVE: September 1, 1993

BY:   
PUBLIC SERVICE COMMISSION MANAGER

Vice President - Regulatory Services

**COLUMBIA GAS OF KENTUCKY, INC.**

**TEMPORARY VOLUMETRIC LIMITATIONS AND  
CURTAILMENT PROVISIONS RELATING TO  
ALL RATE SCHEDULES (Continued)**

**VOLUMETRIC LIMITATIONS AND CURTAILMENT PROVISIONS (Continued)**

**4. Disposition of Penalties**

As of December 31 of each year, Company shall total all penalties then collected from all Customers resulting from the provisions of Section 3 hereof applicable to the contract period of the same year. As of December 31 of each year, Company shall also total the penalties paid to its supplier(s) for volumes taken in excess of the volumes authorized by supplier(s) for the contract period of the same year. Company shall return to all Customers penalties collected in excess of those penalties paid to Company's supplier(s). The total amount of such penalties to be returned shall be divided by the total volume of sales to all Customers during the contract period. The result of such computation shall represent the factor to be multiplied by each Customer's total purchase volumes during such contract period to determine the amount to be returned to each Customer as a credit on the invoice to Customer for the January billing month. All references to "contract period" in this Section shall mean a twelve-month period ended October 31.

**5. Availability of Excess Gas**

If, in Company's sole judgment, sufficient gas supply is available to permit deliveries in addition to the Maximum Monthly Volumes in any month, Company will provide all Customers with as much advance notice as possible of the amount of such additional gas anticipated to be available. Such gas shall be apportioned and offered by Company to all Customers on the basis of the total of Maximum Monthly Volumes for all Customers for that month. Notwithstanding the provision of this Section 5, Company shall not be obligated to deliver to Customer in any month a quantity of gas in excess of the Maximum Monthly Volumes.

**6. Minimum Monthly Bill and Other Charges, Assessments and Penalties**

The provisions of Sections 1 through 5 above shall not serve to reduce any charges, assessments or penalties otherwise payable or applicable under provisions of any rate schedule. Provided, however, that if Customer is assessed penalties as the result of takes in excess of Customer's reduced Maximum Monthly Volumes as provided for in Section 3 herein, to the extent such reduced Maximum Monthly Volumes result in the imposition of a minimum bill, such minimum bill shall be decreased by that portion of the volume of curtailment under Section 2 herein for which Customer was penalized, which is below the level of volumes necessary to meet minimum bill requirements times the applicable rate of such rate schedule.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

SEP 1 1993

DATE OF ISSUE: June 1, 1993

FORBIDDEN TO BE USED FOR ANY OTHER PURPOSES  
DATE EFFECTIVE: SECTION 9 (1) 1993

Issued by:



BY:   
Vice President - Regulatory Services  
PUBLIC SERVICE COMMISSION

**COLUMBIA GAS OF KENTUCKY, INC.**

**TEMPORARY VOLUMETRIC LIMITATIONS AND  
CURTAILMENT PROVISIONS RELATING TO  
ALL RATE SCHEDULES (Continued)**

**VOLUMETRIC LIMITATIONS AND CURTAILMENT PROVISIONS (Continued)**

**7. Suspension of Deliveries During Gas Supply Emergencies**

Company may request that transportation Customers allow the use of their Customer-owned gas to supply higher priority end-usages. Should transportation Customers refuse to allow the use of their gas during emergencies and the ability of Company to serve essential human needs is threatened, Company may delay delivery of Customer-owned gas and utilize the gas to serve essential human needs when significant relief would be provided by the use of such gas, until such time as the supply threat to essential human needs has been resolved. Company shall notify the Commission that it has delayed transportation gas deliveries under this provision without Customer's agreement.

Transportation Customers shall be compensated for the use of transportation gas voluntarily supplied or otherwise used in an emergency to assist Company. The level of compensation shall be determined through negotiation with the transportation Customer. Such compensation shall be limited to (i) the reasonable costs associated with alternate fuels, or (ii) the price difference associated with resupplying gas to Customer. Compensation is not intended to reflect damages, whether consequential or otherwise, that may result from the use of Customer-owned gas. Transportation Customers or Company may request that the Commission waive the foregoing compensation limit for the purpose of negotiating contingency emergency supply agreements. Any such agreement must be approved by the Commission unless otherwise specified in this tariff.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

SEP 1 1993

PURSUANT TO 807 KAR 5.011,  
SECTION 9 (1)

BY:   
PUBLIC SERVICE COMMISSION MANAGER

DATE OF ISSUE: June 1, 1993

DATE EFFECTIVE: September 1, 1993

Issued by:



Vice President - Regulatory Services



**COLUMBIA GAS OF KENTUCKY, INC.**



**PUBLIC SERVICE COMMISSION  
OF KENTUCKY**  
EFFECTIVE  
8/29/2007  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)  
By   
Executive Director  
2007-00008 dated August 29, 2007

**DATE OF ISSUE:** September 10, 2007

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No.

**DATE EFFECTIVE:** August 29, 2007

2007-00008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

P.S.C. Ky. No. 5

**ORIGINAL SHEET NO 59  
RESERVED FOR FUTURE USE**

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
  
JUL 19 2000  
  
PURSUANT TO 607 KAR 5011,  
SECTION 0 (1)  
BY: Stephen D. Kelly  
VICE PRESIDENT AND CHIEF OPERATING OFFICER

**DATE OF ISSUE:** June 19, 2000

**DATE EFFECTIVE:** July 19, 2000

**Issued by:** Joseph W. Kelly

Vice President and Chief Operating Officer

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS**

**1. COMMISSION'S RULES AND REGULATIONS**

All gas service provided by the Company shall be in accordance with the Kentucky Public Service Commission law and the acts, rules, regulations and forms which have been adopted by the Commission and all amendments thereto and modifications and deviations thereof which may be made or approved by the Commission.

**2. COMPANY'S RULES AND REGULATIONS**

In addition to the Rules and Regulations prescribed by the Commission, all gas service provided shall, also be in accordance with these Rules and Regulations adopted by Company. The Company's Rules and Regulations shall not conflict with the rules of the Commission or those approved by the Commission for Company.

**3. APPROVALS FOR SUBDIVISION PRIOR TO DISTRIBUTION MAINS**

Before Distribution Mains are installed in new subdivisions, the subdivider shall record a plot or plan of the subdivision in the County Court Clerk's Office of the county in which same is located and shall furnish a copy of said plot or plan, so recorded, to Company. In the event it is required that plans for a proposed subdivision be submitted to a city, county or city-county planning and zoning commission, for approval, such approval must be obtained before Distribution Mains are installed in said subdivision.

**4. APPLICATION FOR SERVICE**

Applications for service shall be made through any local office of Company. The application is not complete until the applicant has fulfilled all applicable tariff eligibility requirements and complied with these rules. A separate application or contract shall be made for each separate location.

**5. COMPANY'S RIGHT TO DEFER SERVICE**

Where Company's existing facilities are inadequate to serve a Customer for new or additional commercial or industrial load, Company specifically reserves the right to defer service until such time as its facilities can be made adequate.

**6. ACCESS TO PREMISES**

Company and its authorized employees shall have free access at all reasonable times to all of the premises in which gas supplied by Company is used or is to be used. Any employee of Company whose duties require entering a Customer's premises will wear a distinguishing uniform or other insignia, and/or show a badge or other identification which will verify employment with the Company.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DATE OF ISSUE: June 1, 1993

DATE EFFECTIVE: <sup>SEP 1 1993</sup> September 1, 1993

Issued by:



Vice President, Regulatory Services

BY:   
PUBLIC SERVICE COMMISSION CONTACT

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**7. RIGHT-OF-WAY**

Customer, without reimbursement, will make or procure conveyance to Company of right-of-way satisfactory to it across the property owned or controlled by Customer for Company's distribution mains, extensions thereof, or appurtenances necessary or incidental to the supplying of service to Customer. No service line shall be installed across private property other than the premises of the building to be supplied with gas, except after special investigation and approval by Company.

**8. TURNING ON GAS**

Customer, after making proper application for service, shall notify Company when to establish service. In no case shall Customer or Customer's agent or employee turn on the gas at the curb or meter.

**9. ASSIGNMENT OF CONTRACT**

The benefits and obligations of any service application or contract shall begin when Company commences to supply gas service. It shall inure to and be binding upon the successors and assigns, survivors and executors or administrators, as the case may be, of the original parties thereto, respectively, for the full term thereof. However, no application, agreement or contract for service may be assigned or transferred without the written consent or approval of Company.

When the gas supply has been disconnected for non-payment of bills or other violation of Company's Rules and Regulations the service will not be restored at the same location or connected at another location, for the same or related occupants under a different contract or name when it appears to the Company that the change of name is a subterfuge designed to defraud or penalize Company.

**10. EXTENSION OF DISTRIBUTION MAIN**

The Company will extend its distribution mains without cost up to but not more than a distance of one hundred (100) feet for each prospective Customer who shall apply for and contract to use service for one (1) year or more and provides guarantee for such service.

Where a distribution main extension of more than one hundred (100) feet is requested for residential or domestic purposes and all or part of such distribution main extension is not deemed economically justified at Company's expense, based on a cost-benefit study, Company shall require the applicant or applicants to provide a contribution in aid of construction and/or enter into a line extension agreement and contribute or deposit with Company the estimated cost of that portion of the distribution main extension which is not deemed economically justified at Company's expense, based on such study. The line extension agreement deposit will be refunded at the average cost of one hundred (100) feet for each bona fide Customer connected

PUBLIC SERVICE COMMISSION  
OF KENTUCKY

DATE OF ISSUE: June 1, 1993

DATE EFFECTIVE: September 1, 1993

Issued by:



Vice President Regulatory Services

PURSUANT TO 807 KAR 5:011,  
SECTION 9 (1)

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**10. EXTENSION OF DISTRIBUTION MAIN - (Continued)**

to the distribution main extension who will utilize gas for base load purposes and as the major source of energy. The classification of Customer shall be determined by Company at the time Customer is connected to the distribution main extension. No refunds shall be paid after the expiration of ten (10) years from the date of the agreement.

Where a distribution main extension of more than one hundred (100) feet is requested for commercial or industrial purposes and all or part of such distribution main extension is not deemed economically justified at Company's expense, based on a cost-benefit study, Company shall require the applicant or applicants to provide a contribution in aid of construction and/or enter into a line extension agreement and contribute or deposit with Company the estimated cost of that portion of the distribution main extension which is not deemed economically justified at Company's expense, based on such study. The line extension agreement deposit will be refunded annually, based upon the incremental volumes, if any, sold directly from the distribution main extension which are over and above those volumes used to determine the portion of the distribution main extension to be done at Company's expense. The refund shall be determined by multiplying such incremental volumes by the applicable base rates. No refunds shall be paid after the expiration of ten (10) years from the date of the agreement.

In no case shall the total of refunds exceed the amount deposited for the distribution main extension. Deposits will not draw interest. All distribution main extensions shall be the property of Company.

Where a distribution main extension is deemed economically justified at Company's expense, based upon a cost-benefit study, no deposit shall be required.

**11. EXTENSION OF SERVICE LINES**

When Company initiates service to a new Residential or Commercial Customer, Company will install, own, operate and maintain the service line at the premises of Residential and Commercial Customers, if such premises are not connected to a Company main by a service line.


With respect to Residential and Commercial Customers that occupy premises already connected to a Company main by a service line, Company shall be responsible for operating and maintaining the Customer Service Line, and when Company determines that replacement of such Customer Service Lines is necessary, Company shall be responsible for installing the service line, and shall thereafter own the service line. If it becomes necessary for Company to replace a service line, Company shall use its best efforts to replace the line, during normal working hours and as soon as practical, after Company is made aware of the need for the replacement of the service line.


When the length of the service line required between the property line and the meter is 100 feet or less, and the customer has agreed to use natural gas as its major source of energy, Company will assess no charge for the service line installation. A customer's major source of energy is defined as its primary energy source for heating the premises. If the customer is not using natural gas as its major energy source, customer will be required to contribute a portion of the cost of the service line in the form of a contribution in aid of construction. This amount will vary depending upon the installed appliances but will not exceed the Company's annual average cost of a service line.

When the length of required service line exceeds the 100 feet, Company may require Customer to contribute toward the cost of the service line installation an amount equal to the estimated cost per foot for each lineal foot of service line beyond the 100 feet. Contributions by

**DATE OF ISSUE: January 30, 2003**

**DATE EFFECTIVE: March 10, 2003**

Issued by: 

PURSUANT TO THE  
SECTION 9 (1)  
BY:  Vice President  
EXECUTIVE DIRECTOR

Issued by authority of an Order of the Public Service Commission in Case No. 2002-00145 dated December 13, 2002

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

11. **EXTENSION OF SERVICE LINES (continued)**

Company's average annual cost of a service line in 2003 equals \$926.

Calculated as:

Cost of service lines installed in 2003 divided by number of lines equals  
average annual cost

$$\$1,431,242 / 1,546 = \$ 926$$

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
RECEIVED  
MAR 01 2004  
EXECUTIVE DIRECTOR

**DATE OF ISSUE:** January 30, 2004

**DATE EFFECTIVE:** March 1, 2004

**Issued by:** J. W. Kelly

President

Issued by authority of an Order of the Public Service Commission in Case No. 2002-00145 dated  
December 13, 2002

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**11. EXTENSION OF SERVICE LINES - (Continued)**

Customers toward Company's cost of furnishing and installing service lines in accordance with this section are non-refundable.

**12. REQUEST FROM HIGH-PRESSURE LINES**

When a General Service Customer requests gas service from a transmission Company's high-pressure pipeline, Company will furnish and install regulating equipment and meters at no cost to Customer except as follows with respect to pressure regulators:

- A. If the line from which Customer is to be served has a maximum allowable operating pressure not exceeding 60 psig, Company will furnish the necessary service regulator at no cost to Customer.
- B. If the line from which Customer is to be served has a maximum allowable operating pressure in excess of 60 psig but not in excess of 200 psig, which will necessitate one high-pressure regulator in addition to the service regulator, **Customer will be required to make a payment of \$100 to cover the cost and installation of the high-pressure regulator.**
- C. If the line from which Customer is to be served has a maximum allowable operating pressure in excess of 200 psig which will necessitate two high-pressure regulators in addition to the service regulator, **Customer will be required to make a payment of \$200 to cover the cost and installation of the high-pressure regulators.**

**13. COMPANY OBLIGATION TO RESTORE PROPERTY**

In the event that Company is required to undertake any excavation on Customer's property in connection with the installation, repair, maintenance or replacement of a service line, Company shall make reasonable efforts to restore the property to its original conditions pursuant to generally accepted utility standards for such construction operations.

**14. PROTECTION OF COMPANY'S PROPERTY**

All meters, piping and other appliances and equipment furnished by or at the expense of Company, which may at any time be in or on Customer's premises shall, unless otherwise expressly provided herein, be and remain the property of Company. Customer shall protect such property from loss or damage.

**15. CUSTOMER'S LIABILITY**

Customer shall assume all responsibility for the gas service in or on Customer's premises, at and from the point of delivery of gas, and for all the piping, appliances and equipment used in

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DATE OF ISSUE: June 1, 1993

DATE EFFECTIVE: September 1, 1993  
SEP 1 1993

Issued by: *Alan P. Bowman*

Vice President - Regulatory Services  
PURSUANT TO 807 KAR 5:011,  
SECTION 9 (1)

BY: *[Signature]*  
PUBLIC SERVICE COMMISSION MANAGER



**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**15. CUSTOMER'S LIABILITY**

Customer shall assume all responsibility for the gas service in or on Customer's premises, at and from the point of delivery of gas, and for all the piping, appliances and equipment used in connection therewith which are not the property of Company. Customer will protect and save Company harmless from all claims for injury or damage to persons or property occurring on Customer's premises or at and from the point of delivery of gas occasioned by such gas or gas service and equipment, except where said injury or damage will be shown to have been caused solely by the negligence of Company.

**16. CUSTOMER WITH MORE THAN ONE METER**

A Customer may be supplied through more than one meter, with the usage combined for one billing and counted as one Customer, subject to the following conditions:

- A. Provided all meters qualify for the same rate schedule. If the usage on two or more meters is to be combined for routine billing purposes, all meters to be combined must qualify for the same rate schedule.
- B. Provided all meters are located within the confines of or adjacent to the particular property served. Combined usage for billing purposes shall be restricted to meters located within the confines of or adjacent to the property being served.
- C. Provided the additional meters are a necessary part of rendering service. Combined usage of multiple meters for billing purposes shall be restricted to those situations where the additional meters are a necessary part of rendering service.
- D. Provided the combining of usage is not for the purpose of circumventing the Minimum or Customer Charge of a rate schedule.

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**17. METER TESTING AND MEASUREMENT OF NATURAL GAS**

**Volumetric Measurement Base** is one (1) cubic foot of gas at a pressure base of fourteen and seventy-three one-hundredths (14.73) pounds per square inch absolute (thirty (30) inches of mercury), a temperature base of sixty degrees (60°) Fahrenheit, (520° F. absolute) and without adjustment for water vapor content.

**Average Absolute Atmospheric (Barometric) Pressure** is assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of actual elevation of location of the delivery point above sea level or variations in actual barometric pressure from time to time.

**Flowing Temperature.** Company shall determine the temperature of the natural gas flowing through the meter or meters by recorder, or as read from established tables for the location involved.

**Specific Gravity** of the natural gas shall be determined by Company, or at Customer's option by joint test, at the commencement of deliveries and as often as deemed necessary.

(C) Change

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DATE OF ISSUE: November 10, 1994

NOV 01 1994 DATE EFFECTIVE: November 1, 1994

Issued by: *Kathryn Shroyer* Vice President - Regulatory Services  
SUBJ: PURSUANT TO 807 KAR 5:011, SECTION 9(1)

Issued by authority of an Order of the Public Service Commission in Case No. 94-179, dated November 1, 1994.  
BY *Public Service*  
DIRECTOR, RATES & RESEARCH DIV.

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**17. METER TESTING AND MEASUREMENT OF NATURAL GAS - (Continued)**

**Supercompressibility.** The deviation of the gas from the laws for ideal gases shall be determined by Company, or jointly at Customer's option, in one of the following ways:

- (a) The deviation factors shall be computed by approved methods or read from standard tables, in accordance with Report No. 3 of the Gas Measurement Committee of the American Gas Association, as amended, expanded or superseded from time to time. Such computations or selection of factors from tables shall be based on the composition of the gas and conditions at point of measurement, and the factors used to be checked by tests of the gas made with such reasonable frequency as found necessary; or
- (b) The deviation factors shall be determined by tests of the gas made with such reasonable frequency as found necessary.

**Measuring Equipment.** Unless otherwise agreed upon, Company will install, maintain and operate, measuring stations equipped with displacement or flow meters and other necessary measuring equipment by which the volumes of gas delivered shall be determined. The gas delivered shall be measured in accordance with the latest approved methods in use in the industry generally. Orifice meters shall be installed and operated, and gas volumes computed in a practical and appropriate manner, in accordance with Report No. 3 of the Gas Measurement Committee of the American Gas Association, as amended, expanded or superseded from time to time. Displacement meter readings shall be adjusted for pressure and temperature conditions. Customer may install check measuring equipment, provided that such equipment shall be so installed as not to interfere with the operations of Company. Company and Customer, in the presence of each other, shall have access to the other's measuring equipment at all reasonable times, but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by Customer, unless otherwise agreed upon. Both Company and Customer shall have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting done in connection with the other's measuring equipment. The records from such measuring equipment shall remain the property of Customer, but upon request, each will submit to the other its records and charts, together with calculations, for inspection, subject to return within thirty (30) days after receipt thereof. Company shall exercise reasonable care in the installation, maintenance and operation of its equipment so as to avoid any inaccuracy in the determination of the volume of gas delivered.

**Meter Testing (GS Rate Schedule Customers).** Company shall make a test of any meter upon written request of Customer provided such request is not made more frequently than once each twelve months or the meter is not scheduled for a periodic test. Customer shall advance an amount based on meter capacity as follows: 500 cu. ft. per hour and under @\$10.00, over 500 cu. ft. per hour @\$20.00, and 1,500 cu. ft. per hour @\$30.00. If such tests show the meter to be more than 2% fast or slow, the amount advanced shall be refunded to the customer and adjustments made pursuant to **Correction of Metering Errors** section herein. If the meter is found not to be more than 2% fast or slow, the amount advanced by Customer shall be retained by Company.

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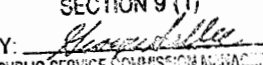
DATE OF ISSUE: June 1, 1993

DATE EFFECTIVE: SEP 1 1993

Issued by:



Vice President, Regulatory Services

PURSUANT TO SECTION 9(1)  
BY:   
PUBLIC SERVICE COMMISSION

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**17. METER TESTING AND MEASUREMENT OF NATURAL GAS - (Continued)**

**Calibration and Test of Meters (IS and IUS Rate Schedule Customers).** The accuracy of all measuring equipment shall be verified by the owner at reasonable intervals and, if requested, in the presence of representatives of the other party, but neither Company nor Customer shall be required to verify the accuracy of such equipment more frequently than once in any thirty (30) day period. If either party at any time desires a special test of any measuring equipment, or if either party at any time observes an error in any such measuring equipment, it will promptly notify the other party, and the parties shall then cooperate to secure a prompt verification of the accuracy of such equipment.

**Correction of Metering Errors.** If upon periodic test, request test, or complaint test a meter in service is found to be more than two percent (2%) fast, additional tests shall be made to determine the average error of the meter. Said tests shall be made in accordance with commission regulations applicable to the type of meter involved.

If test results on Customer's meter show an average error greater than two percent (2%) fast or slow, or if a Customer has been incorrectly billed for any other reason, except in an instance where Company has filed a verified complaint with the appropriate law enforcement agency alleging fraud or theft by Customer, Company shall immediately determine the period during which the error has existed, and shall recompute and adjust the Customer's bill to either provide a refund to Customer or collect an additional amount of revenue from the underbilled Customer. Company shall readjust the account based upon the period during which the error is known to have existed. If the period during which the error existed cannot be determined with reasonable precision, the time period shall be estimated using such data as elapsed time since the last meter test, if applicable, and historical usage data for Customer. If that data is not available, the average usage of similar Customer loads shall be used for comparison purposes in calculating the time period. If Customer and Company are unable to agree on an estimate of the time period during which the error existed, the commission shall determine the issue. In all instances of Customer overbilling, Customer's account shall be credited or the overbilled amount refunded at the discretion of Customer within thirty (30) days after the final meter test results. Company shall not require Customer repayment of any underbilling to be made over a period shorter than a period coextensive with the underbilling.

**Failure of Measuring Equipment.** In the event any measuring equipment is out of service, or is found registering inaccurately and the error is not determinable by test, previous recordings or deliveries through such equipment shall be estimated:

- (a) By using the registration of any other meter, if installed and accurately registering, or, in the absence of (a):
- (C) Change

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

NOV 01 1994

DATE OF ISSUE: November 10, 1994

DATE EFFECTIVE: November 1, 1994

Issued by:

*Kathryn Schroyer*

PURSUANT TO 807 KAR 5.011,  
SECTION 9(1)

Vice President - Regulatory Services

Issued by authority of an Order of the Public Service Commission, Case No. 94-179, dated November 1, 1994.

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**17. METER TESTING AND MEASUREMENT OF NATURAL GAS - (Continued)**

**Failure of Measuring Equipment. - (Continued)**

- (b) By correcting the error if the percentage of error is ascertainable by calibration, special test or mathematical calculation, or, in the absence of both (a) and (b), then:
- (c) By estimating the quantity of delivery based on deliveries during periods under similar conditions when the meter was registering accurately.

The estimated readings shall be used in determining the volume of gas delivered for any known or agreed-upon applicable period. In case the period is not known or agreed-upon, such estimated deliveries shall be used in determining the volume of gas delivered during the latter half of the period beginning on the date of the immediately preceding test and ending on the date the measuring equipment was adjusted to record accurately; the recordings of the measuring equipment during the first half of said period shall be considered accurate in computing deliveries.

**Preservation of Records.** The complete record of tests of each meter shall be continuous for at least two (2) periodic test periods and shall in no case be less than two (2) years.

**Remote Meter Reading Devices.** Remote meter reading devices are available for installation in those instances where it is difficult to obtain a reading of the Customer's meter. The customer will be billed for the installation of a remote meter device at a rate of \$40.00 per device.

**Standard Delivery Pressure**

Company, in accordance with 807 KAR 5:022, Section 13(14): Standard Pressure adopts seven (7) inches water column as its standard pressure as measured at the outlet of Customer's meter.

When conditions warrant, and Customer and Company mutually agree, certain Customers may receive gas at pressures higher than the standard pressure. In these cases either indices compensated for the delivery pressure or pressure factors corresponding to delivery pressure will be used to adjust volumes of gas billed.

The above paragraphs notwithstanding Company shall assume no liability from any damage or loss resulting from inadequate or interrupted supply or from any pressure variation when such conditions are not due to willful fault or neglect on its part.

(N) New  
(C) Change

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DATE OF ISSUE:

AUG 13 1997

DATE EFFECTIVE:

Issued by: J. W. Kelly

PURSUANT TO 807 KAR 5:011,  
SECTION 9 (1)

Vice President and General Manager

BY: Stephan O. Bell  
SECRETARY OF THE COMMISSION

COLUMBIA GAS OF KENTUCKY, INC.

GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)

18. QUALITY

**Processing.** The gas delivered shall be natural gas; provided, however, that:

- (a) Company may extract or permit the extraction of moisture, helium, natural gasoline, butane, propane or other hydrocarbons (except methane) from said natural gas, or may return thereto any substance extracted from it. Company, in order to conserve and utilize other available gases, may blend such gases with said natural gas; provided, however, that such blending shall not extend to a degree which, in Customer's judgment reasonably exercised, would materially affect the utilization of the gas delivered.
- (b) Company may subject or permit the subjection of said natural gas to compression, cooling, cleaning or other processes to such an extent as may be required in its transmission from the source thereof to the point or points of delivery.

**Heat Content.** The natural gas delivered shall contain an average total heating value for any twelve (12) months period of not less than one thousand (1,000) Btu per cubic foot. Such heating value shall be determined by tests at the beginning of deliveries, or from recording calorimeters located at such place or places as may be selected by Company. Such calorimeters shall be periodically checked, using a reference sample of gas of known heating value, or such other method as may be mutually agreed upon. Customer shall not be required to accept natural gas having a total heating value of less than nine hundred fifty (950) Btu per cubic foot, but acceptance by Customer shall not relieve Company of its obligation to supply natural gas having the said average total heating value of one thousand (1,000) Btu per cubic foot.

The unit of volume for the purpose of determining total heating value shall be one (1) cubic foot of gas saturated with water vapor at a temperature of sixty degree (60°) Fahrenheit and an absolute pressure equivalent to thirty (30) inches of mercury at thirty-two degrees (32°) Fahrenheit and under standard gravity (32.174 ft. per second per second).

**Freedom From Objectional Matter.** The gas delivered:

- (a) shall be commercially free from dust or other solid or liquid matter which might interfere with its merchantability or cause injury to or interference with proper operation of the lines, regulators, meters, and other equipment of Customer;
- (b) shall not contain more than a trace of hydrogen sulfide per one hundred (100) cubic feet of gas, as determined by methods prescribed in Standards for Gas Service, Circular of the National Bureau of Standards No. 405, Page 134 (1934 Edition), and shall be considered free from hydrogen sulfide if a strip of white filter paper, moistened with a solution containing five percent (5%) by weight of lead acetate, is not discolored darker than a second paper freshly moistened with the same solution, after the first paper has been

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE


DATE OF ISSUE: June 1, 1993

DATE EFFECTIVE: September 1, 1993

Issued by:



Vice President, Regulatory Services  
PURSUANT TO KRS 192.011,  
SECTION 9 (1)

BY:   
PUBLIC SERVICE COMMISSION MANAGER

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**18. QUALITY - (Continued)**

**Freedom From Objectional Matter. - (Continued)**

exposed to the gas for one (1) minute in an apparatus of approved form, through which the gas is flowing at the rate of approximately five (5) cubic feet per hour, the gas not impinging directly from a jet upon the test paper;

- (c) shall not contain more than twenty (20) grains of total sulfur per one hundred (100) cubic feet; and
- (d) can be measured to determine the usability of the product or the interchangeability of one gas with another gas by using a utilization factor known as the Wobbe Index. The Wobbe Index factor is calculated by dividing the saturated Btu value by the square root of the specific gravity of the sample of gas. An acceptable value for the Wobbe Index factor is one thousand three hundred (1,300) plus or minus six percent (6%).

In the event the gas contains more than a trace of hydrogen sulfide per one hundred (100) cubic feet or more than twenty (20) grains of total sulfur per one hundred (100) cubic feet, by test prescribed by the Bureau of Standards or other recognized method, Company, upon the request of Customer, shall reduce the hydrogen sulfide content to not more than a trace per one hundred (100) cubic feet and the total sulfur content to twenty (20) grains or less per one hundred (100) cubic feet.

**19. POSSESSION OF GAS AND WARRANTY OF TITLE**

**Control of Gas.** Company shall be deemed to be the owner and in control and possession of the natural gas purchased on behalf of Customer until it has been physically delivered to Customer at the point or points of delivery, after which Customer shall be deemed to be the owner and in control and possession thereof.

**Division of Responsibility.** Customer purchasing gas from Company shall have no responsibility with respect to any natural gas until it is physically delivered to Customer, or on account of anything which may be done, happen or arise with respect to said gas before such delivery; and Company shall have no responsibility with respect to said gas after such delivery to Customer, or on account of anything which may be done, happen or arise with respect to said gas after such delivery.

**Warranty of Title.** Company agrees that it will, and it hereby does, warrant that it will at the time of physical delivery of gas purchased on behalf of Customer, have good title to all gas delivered by it to Customer, free and clear of all liens, encumbrances and claims whatsoever, that it will at such time of delivery have good right and title to sell said gas as aforesaid, that it will indemnify Customer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DATE OF ISSUE: June 1, 1993

DATE EFFECTIVE: SEP 1 1993  
September 1, 1993

Issued by:

*Alan P. Bowman*

Vice President

BY: *Charles H. ...*  
PUBLIC SERVICE COMMISSION MANAGER

PUBLIC SERVICE COMMISSION  
SECTION 9 (1)

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**20. FORCE MAJEURE**

Neither Company nor Customer shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts affecting the company or its suppliers of gas, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the party claiming suspension.

Such causes or contingencies affecting the performance hereunder by either Company or Customer, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and to remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve either party from its obligations to make payments of amounts then due hereunder in respect of gas theretofore delivered.

**21. RECONNECTION OF SERVICE**

If service is discontinued at the request of any Customer, Company may refuse service to such Customer, at the same premises within eight (8) months, unless it shall first receive payment of seventy-four dollars and forty cents (\$74.40, current minimum charge of \$9.30 times 8 months) for residential customers reconnect fee and one-hundred ninety one dollars and sixty eight cents (\$191.68, current minimum charge of \$23.96 times 8 months) for commercial customers reconnect fee.

Company will charge a reconnect fee of twenty-five dollars (\$25) when service has been disconnected for nonpayment of bills or for violation of Company's Rules and Regulations and Customer has qualified for and requested the service to be reconnected. Customers exempt from the reconnect fee must qualify under the Commission's Winter Hardship Reconnection Rules, as stated:

- A. During the months from November through March, Customer or Customer's agent:
- (1) Presents a certificate of need from the Cabinet for Human Resources, State Department for Social Insurance, including a certification that a referral for weatherization services has been made in accordance with subsection (C) of this section;
  - (2) Pays one-third (1/3) of the outstanding bill or \$200, whichever is less; and

**DATE OF ISSUE:** September 10, 2007

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**DATE EFFECTIVE:** August 29, 2007

By  resident  
Executive Director

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/29/2007  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**



**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**21. RECONNECTION OF SERVICE - (Continued)**

- (3) Agrees to a repayment schedule which would permit Customer to become current in the payment of Customer's bill as soon as possible but no later than October 15. However, if, at the time of application for reconnection, Customer has an outstanding bill in excess of \$600 and agrees to a repayment plan that would pay current charges and makes a good faith reduction in the outstanding bill consistent with Customer's ability to pay, then such plan shall be accepted. In addition to payment of current charges, repayment schedules shall provide an option to Customer to select at least one (1) payment of arrearage per month.
- (4) Company shall not require a new deposit from Customer whose service is reconnected due to paragraphs (1), (2), or (3) of this subsection.
- B. Certificate of need for reconnection. Federal and statewide energy assistance programs are administered by the Kentucky Cabinet for Human Resources, Department for Social Insurance. A Customer who is eligible for energy assistance under the department's guidelines or is certified as household with gross income at or below 130 percent of the poverty level, may obtain a certificate of need from the department to be used in obtaining a service reconnection from Company.
- C. Weatherization program. Customers obtaining a certificate of need under this regulation shall agree to accept referral to and utilize weatherization services which are administered by the Cabinet for Human Resources. The provision and acceptance of weatherization services is contingent on the availability of funds and other program guidelines. Weatherization services include, but are not limited to, weather stripping, insulation and caulking.
- D. Customers who are current in their payment plans under subsection A(3) of this section shall not be disconnected.

**22. CUSTOMER DEPOSITS**

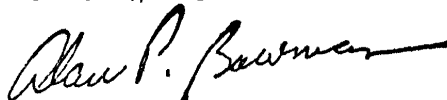
Company may require from any Customer a minimum cash deposit or other guaranty to secure payment of bills, except from those Customers qualifying for service reconnection under the Winter Hardship Reconnection Rules, as stated on Sheet Numbers 70 and 71 of this tariff. Service may be refused or discontinued for failure to pay the requested deposit.

All Customer's deposits shall be based upon actual usage of Customer at the same or similar premises for the most recent 12-month period, if such information is available. If usage information is not available, the deposit will be based on the average bills of similar Customers and premises in the system. The amount of cash deposit shall not exceed two twelfths (2/12) of Customer's actual or estimated annual bill.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DATE OF ISSUE: June 1, 1993

Issued by:



DATE EFFECTIVE: September 1, 1993  
SEP 1 1993

Vice President - Regulatory Services  
PURSUANT TO 807 KAR 5:011,  
SECTION 9 (1)

BY:   
PUBLIC SERVICE COMMISSION MANAGER

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS**

(Continued)

**22. CUSTOMER DEPOSITS - (Continued)**

A deposit would normally be required, unless waived at Company's discretion, if any of the following circumstances exist:

- 1) New business
- 2) Previous service with bad debt account
- 3) Transient or seasonal employment
- 4) Disconnected due to non-pay
- 5) Renting, short-term employment
- 6) Unemployed and no regular income
- 7) Student, or
- 8) Unable or unwilling to provide identification.
- 9) Unsatisfactory Credit History

If a deposit has been waived or returned and Customer fails to maintain a satisfactory payment record, a deposit may then be required. Company may require a deposit in addition to the initial deposit if Customer's classification of service changes or if there is a substantial change in usage.

Company will refund the deposit to Customer after twelve (12) consecutive months of good credit and payment history. Upon termination of service, the deposit, any principal amounts, and any interest earned and owing will be credited to the final bill with any remainder refunded to Customer.

Company shall issue to every Customer from whom a deposit is received a receipt of deposit showing, the name of Customer, location of the service or Customer account number, date and amount of the deposit, and informing Customer that they can request a recalculation of the deposit after eighteen (18) months based on actual usage. If the deposit on account differs from the recalculated amount by more than \$10.00 for a Residential Customer or 10 percent for a non-residential Customer, Company may collect any underpayment and shall refund any overpayment by check or credit to Customer's bill. No refund will be made if Customer's bill is delinquent at the time of the recalculation.

Interest will be paid on all sums held on deposit at the rate of 6 percent annually. The interest will be applied as a credit to Customer's bill or will be paid to Customer on an annual basis, except if Customer's bill is delinquent on the anniversary of the deposit date, Company shall not be required to refund or credit interest. If the deposit is refunded or credited to Customer's bill prior to the deposit anniversary date, interest will be paid or credited to Customer's bill on a prorated basis. If interest is not credited to Customer's bill or paid to Customer annually, interest will be computed by a method which will result in an amount no less than that obtained by using a middle course method between simple and compound interest in compliance with Commission Order dated October 31, 1989 in Case No. 89-057. Interest on deposits computed in this manner will accrue until credited to Customer's bill or paid to Customer.

(N) New

PUBLIC SERVICE COMMISSION

OF KENTUCKY  
EFFECTIVE

DATE OF ISSUE:

DATE EFFECTIVE:

Issued by: J. W. Kelly

Vice President and General Manager

AUG 13 1997

PURSUANT TO 807 KAR 5:011,  
SECTION 9 (1)

BY: *Stephan Bess*

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS**  
**(Continued)**

**23. BILLING**

General Service Rate Schedule

Bills will be rendered and be payable once each billing month. Company may read any meter once each billing month, but may read meters of the General Service Rate Schedule Customers once each two billing months. As to any Customer whose meter is read once each two months, the consumption for the first month of each bimonthly meter reading period shall be determined by calculation on the basis of Customer's previous usage -- considering factors such as variations in weather, number of days in the period, the trend in seasonal usage, etc., in order to provide as nearly accurate a bill as possible without actually reading the meter. Customer's consumption for the second month of each bimonthly meter reading period shall be determined by actual measurement taken from Customer's meter, subtracting therefrom the calculated consumption for the first month of the bimonthly meter reading period. The bill for each month shall be the result of applying to the consumption, determined as aforesaid, the applicable rates and charges contained in this tariff.

A customer shall be liable for unbilled service up to 2 years from the date of service, unless the customer obtained service through fraud, theft, or deception.

All Other Rate Schedules

On or before the tenth (10th) day following the date of the final monthly meter reading for each billing month, Company shall render to Customer a statement of the total amount of gas delivered during the preceding billing month and the amount due, with the exception of Delivery Service Customers.

When information necessary for billing purposes is in the control of Customer, Customer shall furnish such information to Company on or before the fifth (5th) day following the date of final meter reading of each month.

Both Company and Customer shall have the right to examine, at reasonable times, books, records, and charts of the other to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions hereof.

A customer shall be liable for unbilled service up to 2 years from the date of service, unless the customer obtained service through fraud, theft, or deception.

**24. PAYMENT**

Customer shall pay Company at its General Office, 200 Civic Center Drive, Columbus, Ohio 43215, or at such other address as Company shall designate on or before the twentieth (20th) day following the date of the final monthly meter reading for the gas delivered hereunder during the preceding billing month.

(T) Text

DATE OF ISSUE: October 19, February 24, 2006

Issued by: J. W. Kelly

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
3/29/2006  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)  
DATE OF EFFECTIVE:**  
By  ident  
Executive Director

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

If presentation of a bill by Company is delayed after the tenth (10th) day following the date of final monthly meter reading, then the time of payment shall be extended accordingly unless Customer is responsible for such delay.

**24a . TERMINATION**

The Company reserves the right to discontinue furnishing gas service to a Customer with at least ten (10) days written notice from the Company to the Customer, irrespective of any claim pending against the Company, upon the occurrence of any one of the following events:

- a) For non-payment of tariff approved charges.
- b) For failure to comply with any of the Company's Gas tariffs as filed with the Commission, or with any of the conditions or obligations of any agreements with the Company for the purchase of gas.

Notice of discontinuance shall be considered to be given a Customer when a copy of such notice is left with the Customer, or left at the premises where his bill is rendered, or posted in the United States mail, addressed to the Customer's last post office address shown on the records of the Company. Company shall diligently attempt to induce Customer to make all payments owed or to comply with all applicable terms and conditions of service prior to discontinuing service.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE**

**AUG 13 1997**

**PURSUANT TO 807 KAR 5.011,  
SECTION 9(1)**

BY: Stephan D. Bell  
SECRETARY OF THE COMMISSION

(N) New

**DATE OF ISSUE:**

**DATE EFFECTIVE:**

**Issued by: J. W. Kelly**

**Vice President and General Manager**

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued )**

**25. LATE PAYMENT PENALTY**

A Late Payment Penalty of five percent (5%) may be assessed, only once on any bill for rendered services, excluding Residential Customers, if Customer fails to pay bill by the due date shown on Customer's bill. Any payment received will first be applied to the bill for service rendered. Additional penalty charges shall not be assessed on unpaid penalty charges.

If prior to the due date of payment, Customer in good faith disputes the bill in part or total, and pays to Company such amounts as it concedes to be correct, and at any time thereafter within ten (10) days of a demand made by Company, furnishes a surety bond in an amount and with surety satisfaction to Company, guaranteeing payment to Company of the amount ultimately found due upon such bills after a final determination which may be reached either by agreement or judgment of the courts, as may be the case, then Company shall not be entitled to suspend further delivery of gas unless and until default be made in the conditions of such bond.

**26. RETURNED CHECK FEE**

If Customer's check tendered in payment of a bill for service is returned by a bank as unpaid, Customer will be charged a fee of fifteen dollars (\$15.00) to cover the cost of further processing of the account.

**27. BILL ADJUSTMENT AND MONITORING OF CUSTOMER USAGE**

**Bill Adjustment.** If upon periodic test, request test, or complaint test a meter in service is found to be more than two (2) percent fast, additional tests shall be made to determine the average error of the meter. Said tests shall be made in accordance with commission regulations applicable to the type of meter involved.

If test results on Customer's meter show an average error greater than two (2) percent fast or slow, or if Customer has been incorrectly billed for any other reason, except in an instance where Company has filed a verified complaint with the appropriate law enforcement agency alleging fraud of theft by Customer, Company shall immediately determine the period during which the error has existed, and shall recompute and adjust Customer's bill to either provide a refund to Customer or collect an additional amount of revenue from the underbilled Customer. Company shall readjust the account based upon the period during which the error is known to have existed. If the period during which the error existed cannot be determined with reasonable precision, the time period shall be estimated using such data as elapsed time since the last meter test, if applicable, and historical usage data for Customer. If that data is not available, the average usage of similar customer loads shall be used for comparison purposes in calculating the time period. If Customer and Company are unable to agree on an estimate of the time period during which the error existed, Commission shall determine the issue. In all instances of Customer overbilling, Customer's account shall be credited or the overbilled amount refunded at the

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY**

**EFFECTIVE**

**8/29/2007**

**PURSUANT TO 807 KAR 5:011**

**SECTION 9 (1)**

**DATE OF ISSUE:** September 10, 2007

**DATE EFFECTIVE:** August 29, 2007

**Issued by:** Herbert A. Miller, Jr.

By  asident

Issued by authority of an Order of the Public Service Commission in Case No

**Executive Director**  
2007-00008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**27. BILL ADJUSTMENT AND MONITORING OF CUSTOMER USAGE - (Continued)**

discretion of Customer within thirty (30) days after final meter test results. Company shall not require Customer repayment of any underbilling to be made over a period shorter than a period coextensive with the underbilling.

**Monitoring Usage.** Company shall monitor Customers' usage at least annually. The procedures shall be designed to draw Company's attention to unusual deviations in Customer's usage and shall provide for reasonable means by which Company can determine the reasons for the unusual deviation. If Customer's usage is unduly high and the deviation is not otherwise explained, Company shall test Customer's meter to determine whether the meter shows an average error greater than two (2) percent fast or slow.

If Company's procedure for monitoring usage indicates that an investigation of Customer's usage is necessary, Company shall notify Customer in writing either during or immediately after the investigation of the reasons for the investigation, and of the findings of the investigation. If knowledge of a serious situation requires more expeditious notice, Company shall notify Customer by the most expedient means available.

**Customer Notification.** If a meter is tested and it is found necessary to make a refund or back bill Customer, Customer shall be notified in compliance with 807 KAR 5:006, Section 10 (5).

Customer accounts shall be considered to be current while a dispute is pending pursuant to this section, as long as Customer continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads, and stays current on subsequent bills.

**28. BUDGET PLAN**

**Twelve Month Equal Payment Plan**

At the request of any qualified **Residential Customer** who uses gas as the primary source of space heating, monthly budget payments for such Customers shall be made as follows:

Monthly budget payments shall be based on an amount equivalent to 1/12 of Customer's estimated annual gas utility service bill and such payments shall commence with bills payable during the month of August.

The last payment under this budget plan will end with the June payments. Payments due in July will be for the difference between the amount applicable to actual gas consumed during the twelve month period and the amount actually paid during the eleven months of August through June of each year.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DATE OF ISSUE: June 1, 1993

Issued by:



DATE EFFECTIVE: September 1, 1993

SEP 1 1993

Vice President - Regulatory Services  
PURSUANT TO 807 KAR 5:011,  
SECTION 9 (1)

BY:   
PUBLIC SERVICE COMMISSION MANAGER

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**28. BUDGET PLAN - (Continued)**

**Twelve Month Equal Payment Plan - (Continued)**

If during the billing months of April, May or June, the account balance of Customer is less than the monthly budget payment, then such Customer shall pay the account balance instead of the monthly budget payment. If during the billing months of April, May, June or July, Customer's account balance reflects a credit, that amount shall be refunded upon request.

The monthly budget payment, which shall be based on the estimated annual gas utility service bill of Customer, shall not be construed by Customer as a guaranty of assurance that the total actual charges will not exceed such estimate. Company may, at any time, submit a revised estimate to Customer whenever, in Company's judgment, such revision is deemed advisable. (Budgets will be reviewed and recalculated at least twice a year.)

The billing, under this budget plan of payment, is for the convenience of Customer. Bills will be rendered at the regular billing dates and will show the amount budget Customers are to pay. The bill will also show the actual gas used and the amount calculated at the applicable rate contained in Company's tariff. In addition, such bills will show the balance of Customer's account.

This budget plan will be canceled and the total account balance shall become due, or in the event of a credit balance, such balance shall be refunded, under the following circumstances:

Discontinuance of service at Customer's request;

Discontinuance of this budget plan at the Customer's request; or

If Customer fails to pay bills as rendered under the budget payment plan, Company reserves the right to revoke the plan, restore Customer to regular billing and require immediate payment of any deficiency.

**Off Season Equal Payment Plan**

At the request of any qualified Residential Customer who uses gas as the primary source for space heating, an equal payment plan may be made for the number of months remaining in the budget year, which shall be defined as August through July. The Off Season Equal Payment amount will be determined as follows:

Total gas consumption for the same months involved during the previous year will be determined.

The total gas consumption determined will be adjusted to normal weather.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DATE OF ISSUE: June 1, 1993

DATE EFFECTIVE: September 1, 1993

Issued by:



Vice President - Regulatory Services

PURSUANT TO 807 KAR 5.011,  
SECTION 9 (1)

BY:   
PUBLIC SERVICE COMMISSION MANAGER



**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**28. BUDGET PLAN - (Continued)**

**Off Season Equal Payment Plan - (Continued)**

The total gas consumption is then divided into equal Mcf over the remaining months in the extended period.

The equal Mcf is multiplied by the current rate in effect to obtain a monthly amount.

The equal monthly amount is multiplied by the total months in the extended payment period to obtain the total estimated amount due during the extended payment period.

Existing arrearage, if any, will be added to the total estimated amount due in the extended payment period to obtain the total amount due.

The total amount due is then divided into equal payments over the remaining months in the extended payment period. If such equal payment should not divide into an even dollar amount, such equal payments are increased to the next even dollar amount.

If existing arrearage is present at the time of application, the first month's budget payment amount shall be paid at the time Customer's request to participate in the plan is granted.

The last payment under this off season budget plan will end with the June payments. Payments due in July will be for the difference between the amount applicable to actual gas consumed plus any arrearage during the extended payment period and the amount actually paid during the extended payment period.

If, during the billing months of April, May or June, Customer's account balance is less than the monthly budget payment, then such Customer shall pay the account balance instead of the monthly budget payment. If, during the billing months of April, May, June, or July, Customer's account balance reflects a credit, that amount shall be refunded upon request.

This budget plan will be canceled and the total account balance shall become due, or in the event of a credit balance, such balance shall be refunded, under the following circumstances:

Discontinuance of service at Customer's request;

Discontinuance of this budget plan at Customer's request; or

If Customer fails to pay bills as rendered under the budget payment plan, Company reserves the right to revoke the plan, restore Customer to regular billing and require immediate payment of any deficiency.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DATE OF ISSUE: June 1, 1993

DATE EFFECTIVE: September 1, 1993  
SEP 1 1993

Issued by:



Vice President - Regulatory Services  
PURSUANT TO 807 KAR 50.11.  
SECTION 9 (1)

BY:   
PUBLIC SERVICE COMMISSION MANAGER

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**29. CHANGES IN CONTRACTED VOLUMES**

Changes in contracted volumes shall be made in any one of the following ways:

- A. In the event Customer shall desire an increase in the then effective contracted volumes, Customer shall notify Company by April 1, of any year as to the total amount of increase required. If Customer is advised by Company that it has the required capacity and facilities then Customer shall execute a contract to become effective November 1, of such year which shall specify the total amount required.
- B. In the event Customer shall desire a decrease in the then effective contracted volumes, after the expiration of the development period, Customer shall notify Company by April 1, in any year of the desire to decrease to become effective November 1, of such year, and Company would grant such decrease providing the desired decrease does not exceed Company's ability to offset such decreases against reductions in contracted volumes from its supplier(s), or Customer and Company may mutually agree to the decrease providing Company can otherwise utilize such decrease.
- C. For increases or decreases in effective contracted volumes requested on shorter notice than in A or B above, Company shall, giving consideration to all pertinent factors, use its best efforts to comply with such requests.

**30. TRANSFERS BETWEEN RATE SCHEDULES**

If Customer desires to transfer service from one to another of Company's rate schedules, Customer shall give notice to Company by April 1, of any year and if Customer is advised by Company that it has the required gas supply, capacity, and facilities, then Customer, shall execute a contract to become effective November 1, of such year.

**31. OPERATING INFORMATION AND ESTIMATES**

Upon request of Company, Customer shall from time to time submit estimates of the daily, monthly and annual volumes of gas required, including peak day requirements, together with such other operating data as company may require in order to plan its operations.

**32. SEASONAL CURTAILMENT OF SERVICE**

If, in Company's judgment, it is necessary to limit the delivery of natural gas for the protection of monthly and seasonal volumes in order to supply market requirements based on gas supply available, Company shall curtail or discontinue in whole or in part gas service to its industrial and commercial Customers in the manner prescribed on Sheet Nos. 53 through 56 of this tariff. In so curtailing or discontinuing service Company shall curtail monthly and seasonal volumes to

**DATE OF ISSUE:** September 10, 2007

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**DATE EFFECTIVE:** August 29, 2007

By  President  
Executive Director

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY**

**EFFECTIVE**

**8/29/2007**

**PURSUANT TO 807 KAR 5:011**

**SECTION 9 (1)**

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**32. SEASONAL CURTAILMENT OF SERVICE - (Continued)**

such Customers by ordering curtailment of deliveries to such Customers by giving notice to each such Customer of the percentage curtailment of each priority applicable to Customer as described in said sheets of this tariff. Such curtailment shall be ordered as to the affected Commercial and Industrial Customers.

Company shall not be liable for any loss, cost, damage, injury, or expense that may be sustained by Customer by reason of partial or complete curtailment, interruption or discontinuance of gas service.

**32a. CHARGES FOR CUSTOMER AUTHORIZED SERVICE**

When a Customer requests the Company's services for premises work, the rates to be charged shall be in accordance with one of the following:

1. When the Customer has requested the Company to do customer authorized service work during regular working hours, the Customer will be charged: \$30.25 for the first employee, and \$28.25 per hour for each additional employee, if needed. There will be a one hour minimum charge per employee of \$30.25. Charges after the first hour are made to the nearest 1/4 hour: \$5.25 for the first employee, and \$4.75 for each additional employee, if needed.

Work done outside regular working hours including holidays and weekends for customer authorized services, will be charged: \$45.50 per hour for the first employee, and \$42.50 per hour for each additional employee, if needed. There will be a one hour minimum charge per employee of \$45.50. Charges after the first hour are made to the nearest 1/4 hour: \$8.00 for the first employee, and \$7.25 for each additional employee, if needed.

The time for the labor charge shall start when the employee reaches the customer premises and end when the employee leaves the premises after the work is completed.

2. When the Customer has requested the Company to perform customer authorized services while the employee is on the customer's premise, the Customer will be charged to the nearest 1/4 hour: \$5.25 for the first employee, and \$4.75 for each additional employee, if needed.

If work is done outside normal regular working hours including holidays and weekends, the Customer will be charged to the nearest 1/4 hour: \$8.00 for the first employee, and \$7.25 for each additional employee, if needed.

(N) New

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DATE OF ISSUE:

AUG 13 1997

DATE EFFECTIVE:

Issued by: J. W. Kelly

PURSUANT TO 807 KAR 5:011,  
SECTION 9(1)

Vice President and General Manager

BY: Stephen D. Bell

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**32a. CHARGES FOR CUSTOMER AUTHORIZED SERVICE - (Continued)**

The time for the labor charge shall start at the time the actual customer authorized service work is started and end when the customer authorized service work is completed.

Where special arrangements are made to do customer authorized work and, upon arriving at the Customer's premise the Company employee cannot gain access to perform the previously scheduled work, a minimum one-hour charge, in effect for that time of day, may be made.

Material charges shall consist of the following: 1) If the materials are available at the Company warehouse, the material charge will be the cost of the part plus a 35% markup, 2) If the materials are not available at the Company warehouse, the material charge will be billed to the customer at the invoice cost of the part plus a 10% markup and any applicable shipping charges.

The service performed on the Customer's premise will carry a 30 day labor warranty, but on parts and materials, the Company will honor only the manufacturer's warranty.

PUBLIC SERVICE COMMISSION  
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EFFECTIVE

AUG 13 1997

PURSUANT TO 807 KAR 5.011,  
SECTION 9(1)

BY: Stephan O. Bell  
SECRETARY OF THE COMMISSION

(N) New

**DATE OF ISSUE:**

**DATE EFFECTIVE:**

**Issued by:** J. W. Kelly

Vice President and General Manager

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS**

(Continued)

**33. CUSTOMER BILL FORMAT AND CONTENT**

**Columbia Gas of Kentucky**  
A NISource Company

**How to Contact Us**  
 1-800-432-5345  
 For Customer Assistance  
 For Billing Questions  
 Call us at 1-800-432-5345  
 For Service Requests  
 Call us at 1-800-432-5345  
 For more information please visit our website  
 at [www.columbiagas.com](http://www.columbiagas.com)

**Billing Options**  
 Budget Payment Plan: With more stable bills spread the cost of winter heating throughout the year. Budget billing is available for residential customers through the meter. Annual budget billing is available for residential customers through the meter. Call us at 1-800-432-5345 for more information.  
 Extended Payment Plans: Personal payment arrangements and meter disconnection are available, if eligible.

**Payment Options**  
 E-bill: Receive and pay your bill online. To register, visit our Website, [columbiagas.com](http://columbiagas.com).  
 Zip Check: Authorize your bank to pay your bill automatically each month.  
 Phone: Call NCO EasyPay at 1-800-264-8572 or log on our website to pay by credit card, debit card or electronic check. NCO charges a convenience fee for each transaction.  
 Authorized Payment Centers: Call us at 1-800-432-5345 or visit our Web site for the location of an authorized payment center near you.  
 Mail: Detach and return the coupon below with payment to:  
 Columbia Gas of Kentucky  
 P.O. Box 2200  
 Lexington, KY 40588-2200

**Gas Bill**  
Residential Gas Service Page 1 of 2

**Billing & Payment Summary**

Customer Name	John Doe
Previous Amount Due on 5/15/2004	\$130.00
Payments Received by 5/19/2004	\$130.00
Balance on 5/19/2004	\$0.00
Charges for Service This Period	\$31.81
Optional Services	\$1.50
<b>Amount Due by 6/25/2004</b>	<b>\$39.31</b>

**Service Summary**

Service Location: 123 Main St, Lexington, KY 12345-6789

Meter Number: 1234567

Meter Readings (32 Billing Days):  
 Actual Reading on 6/12: 5385  
 Actual Reading on 5/11: 5344  
 Gas Used (Mcf): 2.1

**Gas Use History**

**Car Use History**

Month	Estimate	Customer	Actual
Jul	7.3	8.6	9.1
Aug	15.4	15.2	15.2
Sep	15.4	15.2	15.2
Oct	15.4	15.2	15.2
Nov	15.4	15.2	15.2
Dec	15.4	15.2	15.2
Jan	15.4	15.2	15.2
Feb	15.4	15.2	15.2
Mar	15.4	15.2	15.2
Apr	15.4	15.2	15.2
May	15.4	15.2	15.2
Jun	15.4	15.2	15.2

**Payment Coupon**

Amount Due by 6/25/2004: \$39.31

Payment Enclosed \$

Mails check payable to:  
 COLUMBIA GAS OF KENTUCKY  
 P.O. BOX 2200  
 LEXINGTON, KY 40588-2200

Account Number: 9999999 999 999 9

Statement Date: 6/14/2004

**Billing & Payment Notes**  
 Save time and money by making this your last mailed payment. Call for details about Zip Check at 1-800-432-5345. See back of bill for Detail of Charges.

**Service Summary Notes**  
 Your next actual meter reading date is between 7/10/04 and 7/15/04.

**Daily Comparisons**

Month	Temperature	Avg Daily Usage	Avg Daily Usage
Jun 04	72.1°	0.1	0.1
May 04	84.0°	0.2	0.2
Jun 03	71.0°	0.2	0.2

Explanation of Customer Bill on Sheet Numbers 81 and 82 of this tariff.  
 (T) Text

DATE OF ISSUE: February 24, 2006  
 Issued by: J. W. Kelly

**PUBLIC SERVICE COMMISSION OF KENTUCKY**  
**EFFECTIVE 3/29/2006**  
**PURSUANT TO 807 KAR 5:011**  
**SECTION 9 (1)**  
**DATE EFFECTIVE:**  
 By: \_\_\_\_\_ esident  
 Executive Director







**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS**  
(Continued)

**33. CUSTOMER BILL FORMAT AND CONTENT - (Continued)**

**9. Customer Account Number -**

identifies your account on our records. For more efficient service, please use it when you call or write us about your account.

**10. Customer Charge -**

covers a portion of the fixed costs required to ensure that natural gas service is available to your home or business. This amount will be the same each billing period.

**11. Gas Delivery Charge -**

covers the costs to physically deliver natural gas to your home or business each month. The total delivery charge amount will vary each month according to your gas usage.

**12. Gas Supply Cost -**

cost of natural gas itself. There is no mark-up on the price of gas; therefore, we make no profit on the gas cost. The total gas supply cost amount will increase as gas usage increases. If Customer chooses an alternative supplier, the supplier's name will also appear on the Customer's bill.

**13. Due Date & Amount -**

the date payment is due and the amount you should pay.

**14. Gas Used -**

the difference between the meter readings equals the amount of gas you used between the dates, shown in MCF. (1 MCF = 1000 cubic feet of gas.) A consumption history is also provided.

**15. Message Area -**

items of interest and concern may be included in the message area from time to time.

**16. Columbia Gas Information -**

for your convenience in contacting us, this is our address, office hours and phone number.


**17. Back of Bill -**

the back of your bill includes additional information about services, including an explanation and other information for customers.

DATE OF ISSUE: September 10, 2007

Issued by: Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/29/2007  
PURSUANT TO 807 KAR 5:011**  
DATE EFFECTIVE: August 29, 2007  
By  esident  
Executive Director

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
 (Continued)**

**33a. CUSTOMER BILL FORMAT FOR EAP CUSTOMERS**

**Columbia Gas of Kentucky**  
A NISource Company

**Gas Bill**  
Residential Gas Service

Account Number  
 99999999 999 999 9  
 Statement Date  
 6/23/2004

Page 1 of 2

**How to Contact Us**

1-800-432-3345  
 123 Main St.  
 Lexington, KY 40588-2200

**Billing & Payment Summary**

Customer Name  
 John Doe

Previous Amount Due on 5/19/2004 = \$48.04  
 Payments Received by 5/19/2004 = \$48.04  
 Balance on 5/19/2004 = \$0.00  
 Charges for Gas Service This Period + \$30.39  
 Energy Assistance Program Credit - \$65.00  
 Current Account Balance = \$34.51 CR

**Amount Due by 7/28/2004 = \$0.00**

Your account has a credit balance. No payment is due.

**Service Summary**

Service Location  
 123 Main St.  
 Lexington, KY 12345-6789

Meter Number  
 1234567

Meter Readings (12 Billing Days)  
 Actual Reading on 6/12 = 1421  
 Actual Reading on 5/11 = 1390  
 Gas Used (Gals) = 2.3

**Gas Use History**

Estimated  Customer  Actual

**Daily Comparisons**

Month	Avg Daily Temp	Avg Daily Usage
Jul '04	71.1°	6.1
Jun '04	69.0°	6.8
Jul '03	71.0°	6.3

**Payment Options**

Pay online at [www.columbiaenergy.com](http://www.columbiaenergy.com)  
 Check or money order  
 Bill automatically each month  
 Phone Call NCO EasyPay at 1-800-284-8172  
 or link from our website to pay by credit card,  
 debit card or electronic check. NCO charges a  
 convenience fee for each transaction.  
 Authorized Payment Centers: Call us at  
 1-800-432-3345 or visit our website for the  
 location of an authorized payment center  
 near you.  
 Mail: Detach and return the coupon below  
 with payment to:  
 Columbia Gas of Kentucky  
 P.O. Box 2200  
 Lexington, KY 40588-2200

**Payment Coupon**

John Doe  
 123 Main St.  
 Lexington, KY 12345-6789

Amount Due by 7/28/2004 **\$0.00**

Your account has a credit balance. No payment is due.

Payment Enclosed \$

Make check payable to: **COLUMBIA GAS OF KENTUCKY**  
 PO BOX 2200  
 LEXINGTON KY 40588-2200

Account Number  
 99999999 999 999 9

If your contact information has changed, please check this box and detail the correction on the reverse side.

**PUBLIC SERVICE COMMISSION  
 OF KENTUCKY  
 EFFECTIVE  
 3/29/2006  
 PURSUANT TO 807 KAR 5:011  
 SECTION 9 (1)**

By **J. W. KELLY**  
 Executive Director  
 President

DATE OF ISSUE: February 24, 2006  
 Issued by: J. W. Kelly

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS**

(Continued)

**34. SALES AGREEMENT (IS AND IUS RATE SCHEDULES)**

Form of Sale Agreement

Customer shall enter into a contract with company under company's standard form of Sales Agreement and customer shall designate thereon the rate schedule under which such service shall be rendered by Company. Such Sales Agreement shall be subject to the provisions contained in the designated rate schedule and the General Terms, Conditions, Rules and Regulations applicable thereto or any subsequent changes and revisions which are made in accordance with valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction.

Term

The term of the Sales Agreement executed by customer shall be for the period commencing with the initial delivery of gas through October 31 of the next succeeding year and from year-to-year thereafter until canceled by either customer or company giving written notice to the other no later than April 1, to become effective on November 1, of such year, unless otherwise provided in the applicable rate schedule.

Successors and Assigns

Any company which shall succeed by purchase, merger or consolidation substantially as an entirety, of Company or of Customer, as the case may be, and any Affiliated successor in Interest which shall acquire from Company the properties of Company used in rendering service to Customer, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under the Sales Agreement; and either party may assign or pledge the Sales Agreement under the provision of any mortgage, deed of trust, indenture of similar instrument which it has executed or may execute hereafter; provided, however, such mortgage, deed of trust, indenture or similar instrument shall cover the properties of such party as an entirety unless such party is an Affiliated successor in Interest as above; otherwise neither party shall assign the Sales Agreement or an of its rights thereunder unless it first shall have obtained the consent thereto in writing of the party.

Waiver of Default

No waiver by either party of any one or more defaults by the other in the performance of any provisions of the Sales Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE**

8/29/2007

**PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**

**DATE EFFECTIVE:** August 29, 2007

By  esident  
**Executive Director**

**DATE OF ISSUE:** September 10, 2007

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS**  
**(Continued)**

**35. THEFT OF SERVICE**

Company may terminate service to Customer without advance notice if it has evidence that Customer has obtained unauthorized service by illegal use or theft. Within twenty-four (24) hours after such termination, Company shall send written notification to Customer of the reasons for termination or refusal of service upon which Company relies, and of Customer's right to challenge the termination by filing a formal complaint with Commission. This right of termination is separate from and in addition to any other legal remedies which Company may pursue for illegal use or theft of service. Company shall not be required to restore service until Customer has complied with all tariff rules of Company and laws and regulations of Commission.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

SEP 1 1993

PURSUANT TO 907 KAR 5:011,  
SECTION 9 (1)

BY:   
PUBLIC SERVICE COMMISSION

DATE OF ISSUE: June 1, 1993

DATE EFFECTIVE: September 1, 1993

Issued by:



Vice President - Regulatory Services

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
(Continued)**

**ORIGINAL SHEET NOS. 85 THROUGH 88  
RESERVED FOR FUTURE USE**

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE**

**SEP 1 1993**

**PURSUANT TO 807 KAR 5:011.  
SECTION 9 (1)**

**BY: *[Signature]*  
PUBLIC SERVICE COMMISSION MANAGER**

**DATE OF ISSUE: June 1, 1993**

**DATE EFFECTIVE: September 1, 1993**

**Issued by:**

*Alan P. Bowman*

**Vice President - Regulatory Services**

COLUMBIA GAS OF KENTUCKY, INC.

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
APPLICABLE TO DELIVERY RATE SCHEDULES ONLY**

**1. DELIVERIES OF CUSTOMER-OWNED GAS**

Subject to the limitations of Company's pipeline capacity in its system, Company will accept deliveries of Customer's gas at the point(s) of receipt, less applicable retainage, for redelivery to Customer's facilities, in Mcf. Such gas volumes delivered to Company and redelivered to Customer shall be limited to the annual and maximum daily transportation volumes for each facility or, at Company's discretion, lesser volumes if Customer's expected requirements are projected to be less than stated contract quantities. These volume levels shall represent the actual expected requirements of Customer's facilities and may be exceeded only with the prior consent of Company.

The volumes of Customer-owned gas transported by Company, including banked volumes, to Customer at its facilities during each monthly billing cycle will be considered the first gas through the meter, as explained in Section 4, herein.

**2. AUTHORIZED DAILY VOLUME**

Customers Authorized Daily Volume on any day consists of the sum of Customer's transported volumes (as determined herein) plus any contracted Daily Standby Service Volume the Customer has contracted for. Delivery of Customer's Authorized Daily Volume is firm, with no planned interruption, except as provided in Section 3 herein. Company may, but is not obligated, to provide additional gas volume that is in excess of the Authorized Daily Volume. These additional daily volumes shall be on a best efforts basis, and will be based on information available to Company. Consumption at Customer's facility in excess of the Authorized Daily Volume is interruptible service. In the event actual gas deliveries to Customer are in excess of the Authorized Daily Volume on any day on which the Company requires Customer to limit gas consumption to that Authorized Daily Volume, Customer shall be liable for all penalties, fines and charges incurred by Company as a result of Customer's deliveries in excess of its Authorized Daily Volume.

For purposes of this section, the portion of Customer's Authorized Daily Volume attributable to transported gas delivered to Company shall consist of two parts. The first part shall consist of volumes delivered at receipt points where the upstream transporter, producer, or other delivering entity does not report deliveries to Company on a daily basis. The portion of Customer's Authorized Daily Volumes attributable to this part shall be determined by dividing the volume of gas delivered to Customer in the month by the number of days in that month.

The second part shall consist of volumes delivered by upstream transporters which report Customer's deliveries to Company on a daily basis. If the upstream transporter's reporting system is acceptable to Company, Company may, at its option, utilize such system to determine Customer's deliveries on any day. If Company elects not to utilize such reporting system, it shall determine Customer's deliveries using the best information available, as determined by Company.

**PUBLIC SERVICE COMMISSION  
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**EFFECTIVE**

**8/29/2007**

**PURSUANT TO 807 KAR 5:011**

**SECTION 9 (1)**

**DATE OF ISSUE:** September 10, 2007

**DATE EFFECTIVE:** September 2007 Billing Cycle

**Issued by:** Herbert A. Miller, Jr.

**, 2007)**

**resident**

**By**

**Executive Director**

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

COLUMBIA GAS OF KENTUCKY, INC.

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS**  
**APPLICABLE TO DELIVERY SERVICE RATE SCHEDULES ONLY**  
**(Continued)**

**3. INTERRUPTION**

Notwithstanding the provisions of Section 2 herein, all deliveries by Company to Customer, including Customer's Authorized Daily Volumes, are subject to partial or complete interruption during force majeure situations, herein defined to mean acts of God, strikes, lockouts, or other labor disturbances, acts of a public enemy, war, blockages, insurrections, riots, epidemics, fire, storms, floods, washouts, civic disturbances, explosions, breakage or accidents to machinery or pipelines, freezing of wells or pipelines, partial or entire failure of such wells, or any other cause not otherwise provided for herein, whether of the kind herein enumerated or otherwise, not reasonably within the control of Company. All deliveries are also subject to complete or partial interruption whenever service to residential and other high priority Customers in the same local market area is threatened or to protect the integrity of Company's natural gas distribution system.

In addition, where a transportation Customer delivers gas to Company at a receipt point which is located in a local market area other than the local market area in which Customer's facilities are located, such delivery shall be considered a delivery by displacement. Company may interrupt deliveries by displacement, up to 100%, where such interruption is necessary to prevent Company from exceeding contractual limitations with its interstate pipeline suppliers, including, but not limited to, any Maximum Daily Delivery Obligation (MDDO), provided, however, that Company will use its best efforts to make deliveries by displacement, and provided, further, that Company will not interrupt deliveries by displacement pursuant to this paragraph unless

- (A) such interruption is necessary to enable Company to maintain deliveries to high priority Customers in the same local market area, or
- (B) Company's interstate pipeline supplier has directed Company to limit its deliveries to the applicable MDDO in order to enable the supplier to maintain firm deliveries on its pipeline system.

When Company interrupts deliveries pursuant to this section, Customer will pay Company \$25 per Mcf as a result of any failure by Customer to interrupt its usage when directed to do so plus all fines and penalties incurred by Company as a result of Customer's failure to interrupt.

**4. SUSPENSION OF DELIVERIES DURING GAS SUPPLY EMERGENCIES**

Refer to Sheet No. 57, Volumetric Limitations and Curtailment Provisions.

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/29/2007  
PURSUANT TO 807 KAR 5:011  
SECTION 4(1)**

By  resident  
**Executive Director**

**DATE OF ISSUE:** September 10, 2007

**DATE EFFECTIVE:** September 2007 Billing Cycle  
(August 29, 2007)

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007



COLUMBIA GAS OF KENTUCKY, INC.

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
APPLICABLE TO DELIVERY SERVICE RATE SCHEDULES ONLY  
(Continued)**

**5. BANKING AND BALANCING SERVICE**

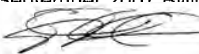
A. Election Customers must subscribe to the Banking and Balancing Service set forth on Rate Schedule DS and MLDS to be eligible for the provisions of this service described herein. Customers without daily metering equipment must subscribe to the Banking and Balancing Service. Daily usage and measurement can be obtained from an electronic meter device, or a charted meter device.

B. Cash-Out Customers who have installed daily metering equipment and who choose not to subscribe to Banking and Balancing Service will be placed on a daily cash-out provision, defined as follows. On days when Customer's deliveries are less than their usage, the Company will sell gas to the Customer at the current month's average indexed price, as reported in PLATTS *Gas Daily* in the monthly report titled "Prices of Spot of Gas Delivered to Pipelines", under the column heading "Index" for "Columbia Gas Transmissions Corp., Appalachia", adjusted for Columbia Gas Transmission Corporation's FTS Retainage and commodity charges, times 120%. On days when Customer's deliveries are greater than their usage, Company may, at its option, purchase the excess deliveries at the current month's average indexed price, as reported in PLATTS *Gas Daily* in the monthly report titled "Prices of Spot of Gas Delivered to Pipelines", under the column heading "Index" for "Columbia Gas Transmissions Corp., Appalachia", adjusted for Columbia Gas Transmission Corporation's FTS Retainage and commodity charges, times 80%.

C. Volume Bank Under the Banking and Balancing Service, Company has established a system to account for Customer's volumes received by Company but not delivered to Customer at its facilities during the same monthly billing cycle. Such undelivered volumes shall be called a volume bank and Customer shall be permitted to receive such banked volumes at a later date at Company's discretion. Customer will use its best effort to notify Company of a planned or expected significant change in its volume bank level before that change occurs. Customer may not utilize banked volumes during any period in which a consumption limitation or interruption has been imposed pursuant to Section 3 herein. The availability of Banking and Balancing Service under this Section is contingent upon the policies, practices, and procedures of Company's interstate pipeline suppliers. Company reserves the right to request Commission approval to modify the banking system, if the policies, practices, procedures of one or more of such interstate pipeline suppliers make it impracticable for Company to continue the Banking and Balancing Service system established herein.

D. Imbalances The total volume bank of Customer shall not at any time exceed a 'bank tolerance' of five percent (5%) of Customer's Annual Transportation Volume. If, at any time, Customer's volume bank exceeds the bank tolerance, Company will purchase the excess deliveries at the current month's average indexed price, as reported in PLATTS *Gas Daily* in the monthly report titled "Prices of Spot of Gas Delivered to Pipelines", under the column heading "Index" for "Columbia Gas Transmission Corp., Appalachia", adjusted for Columbia Gas Transmission Corporation's FTS Retainage and commodity charges, times 80%. In addition, if the Customer's exceeded bank tolerance causes the Company to incur a storage overrun penalty, Customer is subject their proportionate share of any pipeline penalty.

Any volumes of gas that are delivered by Company to Customer in any monthly billing cycle that are in excess of: (A) Customer's volume bank from the previous month, plus (B) any volumes delivered to Company by Customer for that billing cycle, plus (C) any Standby Service volumes available to Customer, shall be considered a deficiency in deliveries. All deficiencies in deliveries to Columbia will be billed to the Customer at the current month's average indexed price, as reported in PLATTS *Gas Daily* in the monthly report titled "Prices of Spot of Gas Delivered to Pipelines", under the column heading "Index" for "Columbia Gas Transmission Corp., Appalachia", adjusted for Columbia Gas Transmission Corporation's FTS Retainage and commodity charges, times 120%.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/29/2007  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)  
By  sident  
Executive Director

DATE OF ISSUE: September 10, 2007

DATE EFFECTIVE: September 2007 Billing Cycle

Issued by: Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
APPLICABLE TO DELIVERY SERVICE RATE SCHEDULES ONLY  
(Continued)**

Company may also, on its own initiative, take such actions as are necessary to (1) immediately bring Customer's deliveries and consumption into balance or (2) reduce Customer's volume bank to a level which is equal or less than the bank tolerance permitted under this section. The Company further reserves the right to set limitations prior to, or during the course of a month, on how much gas can be scheduled by the Customer in an effort to control Customer's banking activity.

**E. Balancing Service Interruption ("BSI")** Customers without Daily Metering are subject to Columbia's issuance of Balancing Service Interruptions (BSIs) that will direct Customers or their Agent to schedule confirmed supply volumes to match Columbia's estimate of their daily usage adjusted for contracted standby sales quantities and/or any balancing service quantities that may be available from Columbia. Columbia shall provide a BSI percentage and direct Customers or their Agents to schedule confirmed supply volume equal to plus or minus 3% of the BSI percentage times the Customers' Maximum Daily Volume (MDV). This is referred to as the BSI volume. Balancing Service Interruptions may require the scheduling of a BSI volume in excess of Customers' MDV when forecasted operating conditions exceed the Company's design criteria. Failure to comply with a BSI will result in the billing of the charges below assessed against the BSI difference. The BSI difference is defined as the shortfall between the BSI volume and actual daily supply deliveries during a cold weather BSI, and the overage between the BSI volume and the actual daily supply deliveries during a warm weather BSI.

- (A) Twenty-five dollars (\$25) per Mcf times the BSI difference; and
- (B) The payment of all other charges incurred by Columbia as a result of Customer noncompliance on the date of the BSI difference.

Customers with Daily Metering are subject to Columbia's issuance of BSIs that will direct Customers or their Agents to adjust usage to match confirmed supply volumes or adjust confirmed supply to match usage adjusted for contracted standby sales quantities and/or balancing services quantities available from the Company. Failure to comply with a BSI will result in the billing of the following charges to the BSI difference, which is defined as the difference between the actual daily usage and the confirmed supply volume, plus or minus 3%:


- (A) Twenty-five dollars (\$25) per Mcf times the BSI difference; and
- (B) The payment of all other charges incurred by Columbia as a result of Customer noncompliance on the date of the BSI difference.

**F. Monthly Bank Transfers** Monthly bank transfers will be permitted between one Customer/Agent ("transferor") and another Customer/Agent ("transferee") located within the same Columbia Gas Transmission Market Area and having confirmed deliveries on the same transmission pipeline. Transfers may also be permitted, solely at the discretion of the Company, between a transferor and a transferee located in different Columbia Gas Transmission Market Areas and having confirmed deliveries on the same transmission pipeline. All such transfers may only be requested once a month to be effective for the upcoming billing cycle and must be requested within three (3) business days after the conclusion of the Customers' monthly billing cycle.

**G. Termination of Service** In the event service hereunder is terminated, Company will deliver to Customer volumes of Customer's gas which Company is holding pursuant to this Volume Bank section during the three monthly billing cycles following the date of termination. However, should Customer fail to take delivery of its entire Volume Bank within the three-month period, Company may, at its option, retain and purchase the undelivered banked volumes. In addition, if Customer owes Company any outstanding gas transportation charges, or other charges which are due, Company may, at its option, offset said unpaid charges by retaining as necessary, banked volumes that would have otherwise been delivered to Customer upon termination of service. The value assigned to such retained bank volumes which are purchased or retained will be the cost of Company's least expensive gas supply at the time the gas was delivered to Company.

**6. HEAT CONTENT ADJUSTMENT**

When Company receives Customer's gas from an interstate pipeline on a dekatherm (one million Btu) basis, Company will make a heat content adjustment in accordance with the procedures set forth below in order to deliver to Customer volumes of gas, in Mcf, equal in heat content to the gas delivered to Company for the account of Customer. The average monthly heating value of gas measured and calculated by the pipeline which delivers Customer's gas to Company will be used each billing month to establish the heating value of the gas delivered by Company to Customer. However, if locally produced gas or gas from pipelines other than the delivering pipeline is introduced into Company's pipeline system, Customer's facilities should raise a question as to the applicability of the heating value determined by the delivering pipeline, either

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/29/2007  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)  
, 2007)  
By  President  
Executive Director  
2007-0008 dated August 29, 2007**

**DATE OF ISSUE:** September 10, 2007

**DATE EFFECTIVE:** September 2007 Billing Cycle

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No

2007-0008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
APPLICABLE TO DELIVERY SERVICE RATE SCHEDULES ONLY  
(Continued)**

**7. HEAT CONTENT ADJUSTMENT - (Continued)**

Company or Customer may request that gas samples be taken to determine the heating value of the gas received by Customer at its facilities. The following provision will apply in the event either party elects to have gas samples taken:

- (A) The party requesting the sample(s) will pay all costs connected with obtaining the sample(s) and having the sample(s) analyzed.
- (B) The gas sample(s) shall be obtained at or in the vicinity of Customer's facilities during normal operating hours of the facilities.
- (C) The gas sample(s) will be analyzed at a Company testing facility or at a testing facility approved by Company.
- (D) If the analysis is done by an outside testing facility, the testing facility will forward the results directly to Company and Customer, using a format provided by Company for recording the results of the analysis. If Company performs the analysis, the Company testing facility will forward the results directly to Customer.
- (E) Multiple samples taken during any billing month will be averaged to obtain a Btu value; that Btu value will be applied only for that particular billing month. No retroactive adjustments based on Btu readings obtained in a current billing month will be made to billings for any prior month.
- (F) The average Btu value obtained from sample(s) during any billing month shall be used to determine the volumes delivered by Company to Customer only if such Btu value is more than 103% or less than 97% of the saturated (wet) Btu value provided by the delivering pipeline for that month, otherwise the delivering pipeline's Btu value will be used.

**8. MEASUREMENT AT POINT(S) OF RECEIPT WITH AN INTERSTATE PIPELINE**

When Company receives Customer's gas at point(s) of receipt with an interstate pipeline, all measurement shall be performed in accordance with the terms of Company's agreement with that interstate pipeline.

**9. QUALITY OF GAS DELIVERED TO COMPANY**

Gas delivered by or on behalf of Customer to Company shall conform to interstate pipeline gas quality standards.

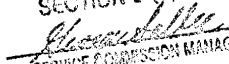
PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DATE OF ISSUE: September 28, 1993

DATE EFFECTIVE: <sup>1993</sup> November 1, 1993

Issued by:



Vice President, Regulatory Services  
PURSUANT TO COMPTON 6011  
SECTION 9 (1)  
BY:   
PUBLIC SERVICE COMMISSION MANAGER

**COLUMBIA GAS OF KENTUCKY, INC.**

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
APPLICABLE TO DELIVERY SERVICE RATE SCHEDULES ONLY  
(Continued)**

**10. BILLING**

Company will render a statement of total gas delivered to Customer during the preceding billing month at the same time a statement of volumes transported is rendered, but no later than the 15th of the following month.

**11. ADDITION AND REPLACEMENT OF FACILITIES**

Where it is necessary, and if Customer agrees that it should be done, Company will construct additions, replacements or betterment of its distribution system or its facilities located at Customer's facility or at the point(s) of receipt in order to accommodate the volumes of gas to be delivered by Company. Company shall install such additions, replacements or betterment and bill Customer for the cost thereof. Such bill shall be accompanied by supporting data, in such detail as Customer may reasonably require. Subject to the foregoing, Customer specifically agrees to bear the full cost of the expense for such modifications of Company's distribution facilities and of any measurement or regulation facilities, including the placement and construction thereof, installed by Company or Company's agent which are required to accomplish either the receipt of Customer's volumes into Company or the delivery of Customer's volumes to its delivery point(s). Such facilities shall, however, remain the property of Columbia.

**12. WARRANTY OF TITLE**

Customer warrants that it will have good and merchantable title to all natural gas delivered to Company for redelivery to Customer's facilities, that such gas will be free and clear of all liens, encumbrances and claims whatsoever, and that it will indemnify Company and hold it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas.

**13. CHARGES FOR THIRD PARTY SERVICES**

If furnishing service to Customer pursuant to this tariff requires Company to use transportation service provided by another entity, any cost incurred by, or billed to Company with regard thereto, shall be billed to Customer by Company and paid by Customer. Such costs shall include, without limitation, transportation or delivery charges, retainage for Company use and unaccounted-for gas, filing fees, and penalties incurred as a result of gas volume imbalances or other factors set forth in the applicable rate schedule or contract of such other entity. Customer shall also reimburse Company for any filing fees paid by Company to another entity when necessary to commence or continue gas transportation service to Customer.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DATE OF ISSUE: September 28, 1993

DATE EFFECTIVE: ~~November 1, 1993~~  
NOV 1 1993

Issued by:



Vice President - Regulatory Services  
PURSUANT TO 807 KAR 50.01,  
SECTION 9 (1)

BY:   
PUBLIC SERVICE COMMISSION MANAGER

COLUMBIA GAS OF KENTUCKY, INC.

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS  
APPLICABLE TO DELIVERY SERVICE RATE SCHEDULES ONLY  
(Continued)**

**14. PROVISION FOR HUMAN NEEDS**

Customers who are Human Needs Customers are required to either have installed alternate fuel equipment or contract with Company for Daily Firm Volumes of 100% of their gas requirements. This requirement shall not apply to any meter that serves only uses which are not classified as Human Needs Customers.

**15. DELIVERY SERVICE AGREEMENT**

Before commencing service hereunder, Customer shall execute a service agreement in the form such as that contained within this tariff. The service agreement shall set forth among other things:

- (A) the point(s) of receipt at which Company will accept delivery of Customer's gas;
- (B) the point(s) at which Company will redeliver gas to Customer's facilities;
- (C) Customer's maximum daily and annual transportation volumes; and
- (D) the specific services and levels of such services for which Customer has contracted.

**DATE OF ISSUE:** September 10, 2007

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**DATE EFFECTIVE:** August 29, 2007

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/29/2007  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**  
By  sident  
**Executive Director**

COLUMBIA GAS OF KENTUCKY, INC.

**SALES AGREEMENT  
FOR IS AND IUS  
RATE SCHEDULES**

**AGREEMENT** made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between COLUMBIA GAS OF KENTUCKY, INC., a Kentucky Corporation (hereinafter called Seller), and \_\_\_\_\_, a \_\_\_\_\_ Corporation (hereinafter called Buyer).

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

**SECTION 1. GAS TO BE SOLD**

Seller hereby agrees to sell and deliver and Buyer hereby agrees to purchase and receive natural gas for use by Buyer in its operations at the delivery point specified herein and pursuant to the terms, conditions, and price stated in Seller's Rate Schedule(s) \_\_\_\_\_ on file with the Public Service Commission of Kentucky or any effective superseding Rate Schedule(s). The specific amounts contracted for herein shall be as follows:

Annual Volume*	Maximum Daily Volume*	Daily Firm Percentage	Daily Firm Volume*	Daily Interruptible Percentage	Daily Interruptible Volume*
_____	_____	_____ %	_____	_____ %	_____

\* All Volumes in Mcf

**SECTION 2. TERM**

This agreement shall become effective on \_\_\_\_\_ and shall continue in effect until \_\_\_\_\_ and thereafter from year to year unless and until canceled by either Buyer or Seller giving written notice to the other no later than April 1, to become effective on November 1, of such year.

**SECTION 3. DELIVERY POINT**

The delivery point shall be at \_\_\_\_\_ (service address)  
PCID # \_\_\_\_\_ PSID# \_\_\_\_\_

**SECTION 4. NOTICES**

Notices to Seller under this Agreement shall be addressed to it at:

\_\_\_\_\_ and Notices to Buyer shall be addressed to it at:  
\_\_\_\_\_

**SECTION 5. CANCELLATION OF PREVIOUS CONTRACTS**

This Agreement supersedes and cancels, as of the effective date hereof, the Sales Agreement dated \_\_\_\_\_ The parties hereto have accordingly and duly executed this Agreement.

COLUMBIA GAS OF KENTUCKY, INC:

BUYER

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Witness:


\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/29/2007  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)  
DATE EFFECTIVE: August 29, 2007**

By  President  
**Executive Director**

**DATE OF ISSUE:** September 10, 2007

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-0008 dated August 29, 2007



COLUMBIA GAS OF KENTUCKY, INC.

**DELIVERY SERVICE AGREEMENT  
FOR DS AND MLDS  
RATE SCHEDULES**

CONTRACT NO:

Customer's Legal Corporate Name: \_\_\_\_\_  
Customer DBA: \_\_\_\_\_  
Customer Group:(Name): \_\_\_\_\_ (Number) \_\_\_\_\_  
Billing Address: \_\_\_\_\_  
Street City State Zip  
Telephone No. \_\_\_\_\_ Contact Person/Title \_\_\_\_\_

THIS AGREEMENT, made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between COLUMBIA GAS OF KENTUCKY, INC., ("Company") and \_\_\_\_\_ ("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 Delivery Service Addendum 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. INTERRUPTION.** Notwithstanding the provisions of Section 2 hereof, or any other provisions of Columbia's Tariff to the contrary, service under this agreement is conditioned upon the availability of capacity sufficient to provide the service without detriment or disadvantage to Columbia's existing customers, or any subsequent new higher priority customers. Therefore, Columbia, in its sole discretion, may interrupt deliveries of gas to Customer at any time

**SECTION 4. 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 5. TERM.** This Agreement shall become effective as of the first day of Customer's next billing cycle following its execution and shall continue in effect thereafter for a minimum primary term of twelve (12) months, until October 31, 20\_\_\_, and thereafter from year to year unless and until canceled by either Customer or Company giving written notice to the other no later than April 1, to become effective on November 1 of such year.

**SECTION 6. 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 the Delivery Service Addendum of this Agreement.

**SECTION 7. 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.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)  
DATE EFFECTIVE: August 29, 2007  
By \_\_\_\_\_ esident  
Executive Director

DATE OF ISSUE: September 10, 2007

Issued by: Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007



COLUMBIA GAS OF KENTUCKY, INC.

**h FORM OF SERVICE AGREEMENT  
 FOR DELIVERY SERVICE DS AND MLDS  
 RATE SCHEDULES (Continued)**

**DELIVERY SERVICE ADDENDUM**

Customer Name: \_\_\_\_\_  
 Effective Billing Month/Year: \_\_\_\_\_  
 Addendum to Service Agreement Dated: \_\_\_\_\_

**A. Point(s) of Receipt into Columbia Gas of Kentucky**

Point(s) of Receipt with Interstate Pipelines:  
 1) Interstate Pipeline: \_\_\_\_\_  
 2) Other Point(s) of Receipt: \_\_\_\_\_  
 Meter No.: \_\_\_\_\_ Line No.: \_\_\_\_\_ County: \_\_\_\_\_

**B. Facility Address:**

PCID: \_\_\_\_\_  
 PSID: \_\_\_\_\_

C. Type of Business	D. Rate and Service Selections and Alternate Fuel Data: To be completed by Customer. *Notice of change must be received on or before April 1, to be effective for the following November billing month.				
Description of Business: _____ _____	Delivery Rate Schedule: _____	Alternate Fuel: Type _____  Alternate Fuel %: _____	*Banking and Balancing Service <input type="checkbox"/> YES  <input type="checkbox"/> NO	*Standby Service - Daily (Mcf) _____  (Subject to approval by Company)	*Standby Service - Annual (Mcf) _____  (Subject to approval by Company)

Customer Notices: (Mailing address for Contract) (Please Print)	Company Notices
Company Name:	Columbia Gas of Kentucky, Inc
dba (if applicable):	
Address:	
City, St, Zip:	
Attn: _____ Title: _____	
Telephone #: ( ) -	
Fax #: ( ) -	
E-mail Address:	

IN WITNESS WHEREOF, the parties hereto have accordingly and duly executed this Addendum as of the date herein above first mentioned.

**CUSTOMER**

**COLUMBIA GAS OF KENTUCKY, INC.**

By: \_\_\_\_\_  
 (Signature)  
 Printed: \_\_\_\_\_  
 Title: \_\_\_\_\_

By: \_\_\_\_\_  
 (Signature)  
 Printed: \_\_\_\_\_  
 Title: \_\_\_\_\_

**PUBLIC SERVICE COMMISSION  
 OF KENTUCKY  
 EFFECTIVE  
 8/29/2007  
 PURSUANT TO 807 KAR 5:011  
 SECTION 9 (1)  
 DATE EFFECTIVE: August 29, 2007  
 By: \_\_\_\_\_ President  
 Executive Director**

**DATE OF ISSUE:** September 10, 2007

**DATE EFFECTIVE:** August 29, 2007

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**COLUMBIA GAS OF KENTUCKY, INC.**

**GLOSSARY**

**Account** includes all gas consumption which (1) is consumed by the same individual, governmental, or corporate entity, including subsidiaries and affiliates, and (2) occurs on property which is either contiguous or is separated by no more than the width of a public or private right-of-way.

**Administrative Releases** are capacity release transactions which are entered into to increase efficiency and reduce administration related to Columbia's purchase of certain system supplies.

**Alternate Fuel Capabilities** means Customer has installed alternate fuel equipment, access to other gas sources or has economically feasible access to other gas source.

**Annual Period** means the twelve-month period beginning on the first day of Customer's November billing cycle and ending on the last day of Customer's October billing cycle.

**Annual Volume** shall mean the estimated consumption for the Customer for a 12-month period, as determined by the Company

**Authorized Daily Volume** means the volume of gas on any day that Columbia would deliver to Customer with no planned interruption of that volume.

**Billing Month** is the period elapsed between consecutive monthly meter readings, whether actual or estimated.

**Btu** is one (1) British Thermal Unit.

**Capacity Release** means FERC Order 636 provides companies, which have contractual entitlement to firm interstate pipeline transportation capacity, the opportunity to release such capacity on a temporary or permanent basis for a fee.

**Commercial Customer** is a customer using gas service through a single meter in commercial activities such as apartment buildings, rooming and boarding dwellings, residential hotels, multi-family row housing, doubles, duplexes, combination commercial and residential accounts shall be considered commercial if commercial usage is half or more than half of the total service, and all other situations where gas is supplied to consumers in two or more dwelling units designed for the primary purpose of residences. Includes warehousing, distributing or selling commodities, providing professional services, wholesale and retail stores, offices, office buildings, hotels, clubs, lodges, associations, restaurants, warehouses, railroad and bus stations, banks, laundries, dry cleaners, mortuaries, garages for commercial activity, gasoline stations, theaters, bowling alleys, billiard parlors, motor courts, camps, bars, grills, taverns, retail bakeries, private hospitals, private schools, churches, religious and charitable institutions, governmental agencies, or the like.

**Commission** is the Kentucky Public Service Commission.

**DATE OF ISSUE:** September 10, 2007

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/29/2007  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)**  
**DATE EFFECTIVE:** August 29, 2007  
By  resident  
**Executive Director**

COLUMBIA GAS OF KENTUCKY, INC.

**GLOSSARY**

**Company** is "Columbia Gas of Kentucky, Inc.," the entity who owns, controls, operates and manages facilities used in connection with the distribution or transportation of natural gas service.

**Company's Billing Cycle** means the Company's accounting revenue month.

**Customer** is any person, firm, corporation or body politic applying for or receiving service from the Company.

**Customer's Billing Cycle** means the monthly period that occurs between monthly meter readings taken by Company for billing purposes at Customer's facilities.

**Customer's Facilities** means the Customer's property, factories, and buildings where natural gas is being consumed.

**Customer's Maximum Daily Requirement** means Customer's maximum estimated usage during any 24-hour period as determined by Company.

**Daily Firm Volume** is the portion of an Interruptible Service Customers Maximum Daily Volume requirements that Customer has chosen to purchase under a published rate schedule from Company which will make gas available at all times except when interruption is necessary due to Force Majeure conditions or where service to Human Needs Customers is threatened.

**Day** is a period of twenty-four (24) consecutive hours, beginning at 10:00 a.m.

**Dekatherm or Dth** means one million British thermal units (Btu's).

**Firm Sales Service Volumes** means the portion of an Interruptible Service Customer's requirements that Customer has chosen to purchase gas under a published sales rate schedule from Company on a firm regular basis.

**Human Needs** refers to residential Customers and all Customers whose facilities are used for residential dwellings on either a permanent or temporary basis (such as, but not limited to, apartment buildings, correctional institutions, hospitals, nursing homes, hotels and motels).

**Industrial Customer** is a customer using gas primarily in a process which either involves the extraction of raw materials from the earth, or a change of raw or unfinished materials into another form or product through the application of heat or heat treating, steam agitation, evaporation, baking, extraction, drying, distilling, etc.

**DATE OF ISSUE:** September 10, 2007

**Issued by:** Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

**DATE EFFECTIVE:** August 29, 2007

By  :ident

Executive Director

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/29/2007  
PURSUANT TO 807 KAR 5:011  
SECTION 9(1)

COLUMBIA GAS OF KENTUCKY, INC.

GLOSSARY

**Local Market Area** means a continuous, physically-interconnected system of Company-owned distribution piping through which the Company provides natural gas service to Customers in a discrete geographic area, utilizing one or more common points of delivery from interstate pipeline supplier(s).

**Maximum Daily Volume** is the greatest volume of gas which Company shall be obligated to deliver to Customer and which Customer shall be entitled to receive from Company during any one day.

**Mcf** is the abbreviation for one thousand (1,000) cubic feet of gas.

**Off-System Sales** and exchanges are arrangements to sell gas to non-traditional customers. The term "off-system" is used because the transfer of title will occur at a point somewhere other than at Columbia's traditional customer meter locations.

**Operational Sales** are sales which are required during times of over supply to avoid other high costs such as pipeline penalties.

**Opportunity Sales** are sales which occur when prevailing market conditions, price volatility, system demand, and storage levels all combine to present opportunities to earn margins from off-system sales.

**Points of Receipt** means those measurement locations where Customer-owned gas is delivered into Company's system.

**Residential Customer** is a customer using gas in a single-family residential dwelling or unit for space heating, air conditioning, cooking, water heating, incineration, refrigeration, laundry drying, lighting, incidental heating, or other domestic purposes. Includes a tenant billed for natural gas consumption or use by other tenants at the same premises that are metered separately.

**Standby Service** means a type of Backup Service available to DS and MLDS Customers which will make the contracted quantities of gas available at all times except when interruption is necessary due to force majeure conditions or where service to human needs Customers is threatened.

DATE OF ISSUE: September 10, 2007

Issued by: Herbert A. Miller, Jr.

Issued by authority of an Order of the Public Service Commission in Case No. 2007-00008 dated August 29, 2007

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

8/29/2007

PURSUANT TO 807 KAR 5:011

SECTION 9 (1)

DATE EFFECTIVE: August 29, 2007

By  resident

Executive Director

COLUMBIA GAS OF KENTUCKY, INC.

CURRENTLY EFFECTIVE BILLING RATES				
	Base Rate Charge \$	Gas Cost Adjustment <sup>1/</sup> Demand \$	Commodity \$	Total Billing Rate \$
<b><u>RATE SCHEDULE GSR</u></b>				
First 1 Mcf or less per Mo.	6.95	1.2130	8.9669	17.1299
Over 1 Mcf per Mo.	1.8715	1.2130	8.9669	12.0514
<b><u>RATE SCHEDULE GSO</u></b>				
<b><u>Commercial or Industrial</u></b>				
First 1 Mcf or less per Mo.	18.88	1.2130	8.9669	29.0599
Next 49 Mcf per Mo.	1.8715	1.2130	8.9669	12.0514
Next 350 Mcf per Mo.	1.8153	1.2130	8.9669	11.9952
Next 600 Mcf per Mo.	1.7296	1.2130	8.9669	11.9095
Over 1000 Mcf per Mo.	1.5802	1.2130	8.9669	11.7601
<b><u>Delivery Service</u></b>				
Administrative Charge	55.90			55.90
<b><u>Standby Service Demand Charge</u></b>				
Demand Charge times Daily Firm Vol. (Mcf) in Cust. Serv. Agrmt.		6.6520		6.6520
<b><u>Delivery Rate Per Mcf</u></b>				
First 400 Mcf per Mo.	1.8153			1.8153
Next 600 Mcf per Mo.	1.7296			1.7296
All Over 1000 Mcf per Mo.	1.5802			1.5802
Former INB Rate Per Mcf	1.0575			1.0575
Banking and Balancing Service		0.0208		0.0208
(continued on following sheet)				
1/ The Gas Cost Adjustment, as shown, is an adjustment per Mcf determined in accordance with the "Gas Cost Adjustment Clause" as set forth on Sheets 48 through 51 of this Tariff.				

DATE OF ISSUE; November 29, 2004

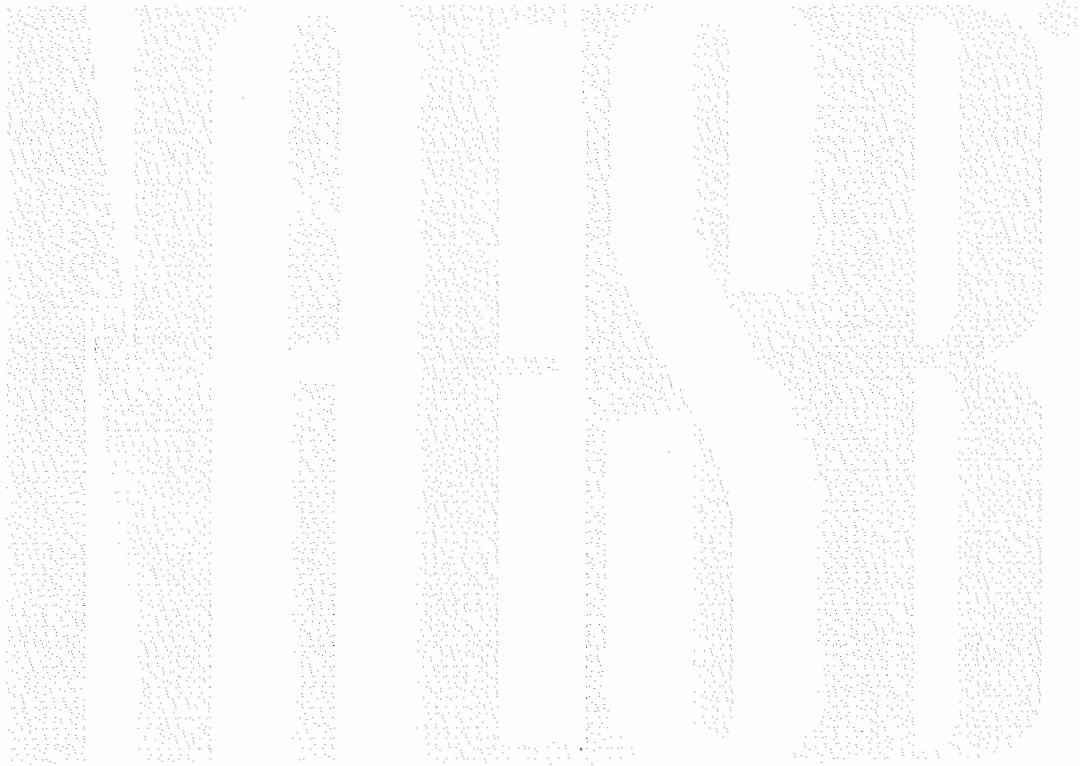
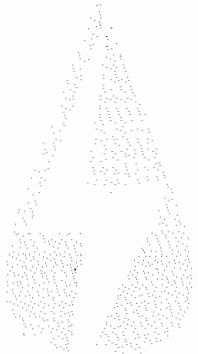
DATE EFFECTIVE: December 2004 Billing Cycle  
 November 29, 2004

ISSUED BY: Joseph W. Kelly

President

Issued by authority of an Order of the Public Service Commission in Case No. 2004-00299 dated  
 November 22, 2004

<b>BANK:</b> Citibank NA NY <b>ABA:</b> :021000089 <b>ACCT:</b> 3056-9329 <b>OTHER DETAILS:</b> SWIFT: CITIUS33	<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> For the Account of	<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> <u>Gas Accounting</u> <b>ADDRESS:</b> <u>220 W Main St., 7th Fl</u> <u>Louisville KY 40202</u>



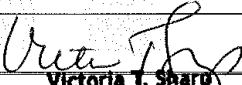
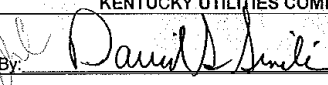
**Base Contract for Sale and Purchase of Natural Gas**

(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 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 16.5</b> Choice Of Law _____ <u>New York</u> _____
<b>Section 7.2</b> Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) AND 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: 6 <input type="checkbox"/> Addendum(s): _____	

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

Citigroup Energy Inc.	PARTY NAME	LOUISVILLE GAS AND ELECTRIC COMPANY and KENTUCKY UTILITIES COMPANY
By: 	SIGNATURE	By: 
Victoria I. Sharp Managing Director Citigroup Energy Inc.	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 (i) 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 discontinuation 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 August 17, 2011**

**by and between**

**Citigroup Energy Inc. ("Party" A or "CEI")**

**And**

**Louisville Gas and Electric Company and Kentucky Utilities Company ("Party B" or  
"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 submitted into evidence in the absence of a Transaction Confirmation 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 A party may, at its expense, maintain equipment necessary to regularly record transactions on Transaction 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. To the extent one party records (the "Recording Party") and the other party does not (the "Non-recording Party"), the Recording Party shall, in the event of any dispute, make a complete and unedited copy of such party's tape of the entire day's conversations with the Non-recording Party's personnel available to the Non-recording Party. The Recording Party's tapes may be used by either party in any forum in which a dispute is sought to be resolved and the Recording Party will retain tapes for a consistent period of time in accordance with the Recording Party's policy unless one party notifies the other that a particular Transaction is under review and warrants further retention."

**SECTION 2. DEFINITIONS**

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 (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a terminated transaction; and (c) commercially reasonable attorneys' fees and expenses, 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 a guaranty from a Guarantor or a letter of credit 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 "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.

2.40 "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 and combined capital surplus of at least \$10,000,000,000.

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

3.2 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":

"Within thirty (30) Business Days of the receipt of a written request by one party from the other party, such party shall provide to the other party such certificates, documents or other evidence sufficient to confirm the exemption from liability for any Taxes by such party for each jurisdiction in which the purchase, sale and/or delivery of any Gas takes place or is to take place under this Contract, such that the other party will bear no obligation in relation to the purchase, sale and/or delivery of any Gas for charging, collecting and/or remitting to any local, municipal, state or federal authority or agency any Taxes for which such party hereunder is otherwise exempt."

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**

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

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

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

“ 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 and in accordance with Section 7.5 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, and in accordance with 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.

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

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

8.2 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 “two (2)”.

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

10.1. Section 10.1 is hereby amended by:

- (a) the deletion of the first sentence thereof and the addition of the following in lieu thereof: “If the credit rating of a party, or its guarantor, if applicable, (“Y”) falls below Investment Grade Rating, the other party (“X”) may demand Adequate Assurance of Performance; and
- (b) 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.”

10.2 shall be amended by:

- (a) deleting “or” before “(ix)”;
- (b) the deletion of “second” in 10.2(viii) and the addition in lieu thereof of “first,”
- (c) adding “or” at the end of clause “(ix)” and adding the following as new clause “(x)”



“(x) have any representation or warranty made or repeated or deemed made or repeated by a party or its guarantor, in this Contract or any document or Credit Support Document provided in connection herewith, determined to have been false, incorrect or misleading in any material respect when made or deemed to have been made or repeated”

(d) 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.”

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”);

(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 if reasonably possible.

11.8 “If on any Day, Force Majeure partially restrains Seller’s ability to perform its Firm obligations for any transaction at a Delivery Point, then all of such party’s Firm obligations at that Delivery Point shall be reduced pro rata without regard to the price paid or received for Gas; provided, however, that (i) the Seller shall not perform under any interruptible purchase or sale arrangement at that Delivery Point until all Firm obligations are fulfilled and (ii) Seller shall be entitled to deliver Gas without regard to such pro rata reduction to municipal entities under long-term prepaid gas contracts funded from the proceeds of tax exempt bonds.”

## SECTION 12. TERM

12. shall be amended by deleting the last sentence and replacing with the following: “Notwithstanding any termination, the obligation to make payment and provisions of Sections 1.6, 7.6, 7.7, 8.3, 10, 13 and 15 that (with respect to Section 15.10, such survival is limited as provided therein shall continue to apply).

## SECTION 14. MARKET DISRUPTION

Section 14 is amended by

(i) Deleting the first two sentences in their entirety and replacing them with the following:

“If a Market Disruption Event occurs: the Floating Price for the affected Day(s) shall be determined pursuant to the (i) alternative Floating Price specified in the transaction, and if no such alternative price is specified, (ii) the Floating Price specified for 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 Day on which the Market Disruption Event occurred or existed, then (iii) 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 (5th) Business Day following the first affected Day on which the Market Disruption Event occurred or existed, then 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 4 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

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.

- (ii) Deleting the last two sentences and replacing them with the following:

"For the purposes of the calculation of a Floating Price, all numbers shall be rounded to the fourth (4<sup>th</sup>) decimal places. If the fifth (5<sup>th</sup>) decimal number is five (5) or greater, then the fourth (4<sup>th</sup>) decimal number shall be increased by one (1), and if the fifth (5<sup>th</sup>) decimal number is less than five (5), then the fourth (4<sup>th</sup>) decimal number shall remain unchanged."

- (iii) Adding the following definitions:

"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.

- (iv) Adding the following paragraph:

"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 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 no later than thirty (30) calendar days after such publication or announcement of correction."

#### SECTION 15. MISCELLANEOUS

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

15.5. Section 15.5 is hereby amended by the addition of the following:

"With respect to any suit, action or proceedings (a "Proceeding") relating to any dispute arising out of or in connection with the Contract, each party knowingly, voluntarily and irrevocably (i) **WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE CONTRACT AND ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS CONTRACT**, (ii) submits to non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City and (iii) waives any objection which it may have at any time to the laying of venue of any Proceeding brought in any such court, waives any claim that such Proceeding has been brought in an inconvenient forum and further waives the right to object, with respect to any such Proceeding, that such court does not jurisdiction over such party."

15.10. Section 15.10 is hereby amended by the addition of "subpoena," before "applicable" in the fifth line of the section and the deletion of "or" before "(v)" and the addition of the following at the end of the first sentence: "or (vi) at the request of a bank examiner in connection with an examination of CEL or its Affiliates".

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.

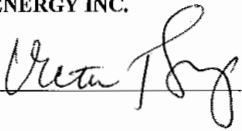
15.13. The following new Section 15.13 shall be added:

"15.13 Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") 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."

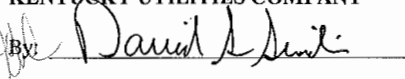
**SECTION 16. OPTION**

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."

**CITIGROUP ENERGY INC.**

By:   
Name: Victoria T. Sharp  
Title: Managing Director  
Citigroup Energy Inc.

**LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY**

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

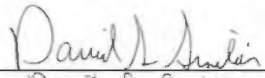
IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

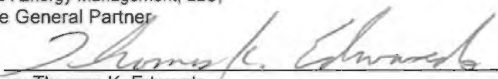
LOUISVILLE GAS AND ELECTRIC CO./KENTUCKY UTILITIES CO  
Party Name

CIMA ENERGY, LTD.

CIMA Energy Management, LLC;  
Sole General Partner

By  
Name:  
Title:

  
David S. Sinclair  
VP - Energy Marketing

By   
Name: Thomas K. Edwards  
Title: President

# 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 \_\_\_\_\_ (the “Base Contract”) by and between: Louisville Gas and Electric Co./Kentucky Utilities Co. and CIMA ENERGY, LTD.

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 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 "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 Provision 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 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 to the end 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 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

## Special Provision to the Base Contract

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 8.2" and "AND IN SECTION 14.8" in the last sentence.

14. 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

15. 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."

16. 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"

17. 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"

18. Section 10.3.1 "Early Termination Damages Apply" shall be amended by adding at the end of the last sentence of the second paragraph:

## Special Provision to the Base Contract

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

**19. 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

**20. 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”.

**21. 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

**22. 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, 7.7, 8.3, 8.4, 10 and 13 shall continue to apply.”

### SECTION 13. LIMITATIONS

### 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. 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).**

## Special Provision to the Base Contract

26. 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 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 14.13, 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.

## Special Provision to the Base Contract

- 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 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.**

- 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.

## 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."



**CHEVRON U.S.A. INC.**  
**CERTIFICATE OF ASSISTANT SECRETARY**

I, Walker C. Taylor, Vice President and Assistant Secretary of CHEVRON U.S.A. INC., a corporation duly organized under the laws of the Commonwealth of Pennsylvania (the "Corporation"); do hereby certify that annexed hereto is a full, true and correct copy of the By-Laws of this Corporation, amended as of May 9, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand on May 11, 2005.

CHEVRON U.S.A. INC.

  
Walker C. Taylor

BY-LAWS OF CHEVRON U.S.A. INC.  
Amended effective May 9, 2005

ARTICLE I

Management

Section 1. Names and Functions of Divisions; Authority.

The corporation shall operate through the following divisions:

Chevron Chemical Company shall manage the business and assets of the corporation relating to ongoing and discontinued chemical, agricultural and consumer product operations and the provision of personnel seconded to chemical related affiliates.

Chevron Business and Real Estate Services shall manage the business and assets of the corporation relating to administrative support services and business products and the management of non-mineral real estate activities, businesses, properties and services.

Chevron Energy Solutions Company shall manage the business and assets of the corporation relating to the provision of services and solutions relating to energy information, usage and cost management, energy efficiency and conservation, power quality, power reliability, electric infrastructure and distributed generation, and customer energy strategies.

Chevron Energy Technology Company shall manage the business and assets of the corporation relating to the provision of certain technical services for oil and gas exploration and production, oil and gas refining, marketing, and supply and distribution.

Chevron Global Gas shall manage the exploration, development, and promotion of global gas and midstream business opportunities, including the provision of technical and other related services, for the benefit of the corporation and its affiliates.

Chevron Global Power Generation shall manage the business and assets of the corporation relating to front end development activities consistent with its global gas business purpose and related operations.

Chevron Hydrogen Company shall manage the work required to design, engineer, build, maintain and operate hydrogen fueling stations.

Chevron Industries shall manage the business and assets of the corporation relating to the provision of services for all branches of the petroleum business as well as for oil, gas, mineral, geothermal and other energy, explorative and extractive activities.

Chevron Information Technology Company shall manage the business and assets of the corporation relating to the provision of functional guidance for communications, data processing, and advanced office systems.

Chevron International Exploration and Production Company shall manage the business and assets of the corporation relating to the provision of certain technical and other related services for global oil and gas exploration and producing activities.

Chevron Natural Gas shall manage the purchase and sale of natural gas and natural gas liquids for the corporation, and shall provide associated risk management and support services.

Chevron North America Exploration and Production Company shall manage the business and assets of the corporation relating to oil and gas exploration and production and natural gas operations in North America.

Chevron Products Company shall manage the business and assets of the corporation relating to refining, marketing, trading, supply and distribution of crude and refined products derived from petroleum, and the marketing of related technology. Such businesses include aviation and marine fuels; lubricant products of all kinds, and related support operations.

Chevron Services Company shall manage the business and assets of the corporation relating to the provision of financial, legal and technical support services.

Chevron Shale Oil Company shall manage the business and assets of the corporation relating to shale oil exploration and production operations and research.

Project Resources Company shall manage the business and assets of the corporation relating to the provision of capital project management and support services.

Except as otherwise provided by the Restated Articles of Incorporation or By-Laws of the corporation, each division of the corporation shall have all requisite corporate authority to take all such actions as it deems appropriate, and to fully obligate the corporation accordingly.

#### Section 2. Director; Limitation of Personal Liability.

The authorized number of Directors who shall constitute the Board of Directors of the corporation shall be not less than three nor more than ten, and shall be determined from time to time by resolution adopted by the shareholders or the Board of Directors of the corporation. The Board of Directors of each division of the corporation shall also have an authorized number of Directors, which number shall not be less than three nor more than ten for any such division; and which shall be determined from time to time by resolution adopted by the shareholders or the Board of Directors of the corporation or the Board of Directors of the division.

Any person may be a Director of more than one division, and any Director of the corporation may also be a Director of one or more of its divisions. Any vacancy existing

in any Board of Directors may be filled by vote of the majority of the remaining members of such Board of Directors.

To the fullest extent permitted by law, no Director of the corporation or any of its divisions shall be personally liable, as such, for monetary damages for any action taken, or any failure to take any action, by any such Director. Any repeal, amendment or modification of this section shall be prospective only and shall not increase, but may decrease, a Director's liability with respect to actions or failures to act occurring prior to such changes.

#### Section 3. Meetings of the Boards of Directors; Consents:

Meetings of any of the Boards of Directors of the corporation or its divisions may be held at such times and places as may be determined from time to time by resolution of such Board of Directors or as may be called by any of its members. Annual and regular meetings of any Board of Directors may be held without notice thereof. Actual or constructive notice of the time and place of any special meeting of a Board of Directors must be given to each of its members, unless all of the members waive notice thereof. Notice of any meeting of a Board of Directors may be given by any member of such Board of Directors or any officer elected by such Board of Directors or any officer appointed by the President. The notice may be given orally, in person or by telephone, or in writing, delivered, mailed, sent by facsimile, telegraphed or otherwise transmitted to the Director's business or home address. The notice shall be given not less than one hour before the hour fixed for the meeting. A quorum for action at any meeting of any of the Boards of Directors of the corporation or its divisions shall exist if at least one-third of the members of such Board of Directors are present at such meeting. Any Board of Directors may also take action by the unanimous written consent of its members.

#### Section 4. Officers.

Each of the corporation and its divisions shall have one or more Presidents, Vice-Presidents, Secretaries, Assistant Secretaries, Treasurers, Assistant Treasurers, and such additional officers as may be elected or appointed to hold such offices as may from time to time be created by the Board of Directors of the corporation or division. Each of the Boards of Directors of the corporation and its divisions shall elect the President who shall serve at the pleasure of the Board of Directors which has elected him or her. The Board of Directors or the President of the corporation may appoint other designated officers of the corporation to serve at the pleasure of such Board of Directors and President. The Board of Directors or the President of any division of the corporation may appoint other designated officers of such division to serve at the pleasure of the Board of Directors and President of such division. Subject to the direction of the Board of Directors under which an officer serves, each officer shall have and may exercise all the customary authority accorded to the office held by the officer, and each officer shall also perform such other duties as may from time to time be assigned by or in accordance with the direction of such Board of Directors. The officers of the corporation are also authorized to assist any division of the corporation in carrying out the business of the

division, and to execute and deliver such instruments and documents and take such further actions as have been authorized by the board of directors of the division or an officer of the division acting within the scope of his or her authority or are otherwise consistent with the policies established by the division, and to render reports to the division of their activities on behalf of the division.

#### Section 5. Attorneys-in-Fact.

Each of the Boards of Directors of the corporation and its divisions may also appoint attorneys-in-fact with such powers and duties as may be determined by such Board of Directors. Whenever an applicable statute, decree, rule or regulation requires an instrument to be subscribed by a particular officer, or an officer is otherwise authorized or directed to execute or deliver an instrument in an official capacity, the instrument may be signed on behalf of the officer by an attorney-in-fact authorized by the officer to act on his or her behalf, unless the Board of Directors which has elected the officer has otherwise directed, or as otherwise limited by law.

#### Section 6. Indemnification.

The corporation shall have authority to indemnify its representatives against loss or liability in any manner it considers appropriate, including against settlements and judgments in derivative suits, subject only to limitations imposed by applicable law. The corporation shall not fail to indemnify any natural person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, by reason of the fact that he or she is or was a Director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation in a similar capacity for some other entity, against expenses, judgments, fines, and amounts paid in settlement, provided that such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. Each person who shall serve in any such capacity for the corporation shall be deemed to have done so in reliance on the foregoing right to indemnification, which shall continue after such service ends and shall inure to the benefit of the heirs, executors and administrators of such person.

#### Section 7. Offices.

The corporation shall maintain an office at 6001 Bollinger Canyon Road, San Ramon, California, at which shall be kept the share register for the corporation, the minutes of the proceedings of the shareholders and of the Board of Directors of the corporation, and true and correct copies of the minutes of the proceedings of the Boards of Directors of each division of the corporation. The corporation shall have such other offices as it may from time to time determine, and each division of the corporation shall have such offices at such places as it may from time to time determine.

### ARTICLE II

## Shares and Shareholders.

### Section 1. Shares.

The shares of the corporation shall be represented by certificates. The certificates shall be impressed with the seal of the corporation and signed by two officers elected by the Board of Directors of the corporation, one of whom shall be a President or a Vice-President and the other of whom shall be a Secretary or an Assistant Secretary.

### Section 2. Shareholders of Record.

The Board of Directors of the corporation may fix a time as a record date for the determination of shareholders entitled to receive any dividend or distribution declared to be payable on any shares; or to vote upon any matter to be submitted to any vote of shareholders; or to be present or to be represented by proxy at any meeting of shareholders, which record date in the case of a meeting of the shareholders shall be not more than ninety nor less than ten days before the date set for such meeting; and only shareholders of record as of the record date shall be entitled to receive such dividend or distribution, or to vote on such matter; or to be present or represented by proxy at such meeting.

### Section 3. Meetings of Shareholders; Consents.

An annual meeting of the shareholders shall be held on the first Tuesday in May of each and every year, at 1:00 P.M. of said day, provided that should said first Tuesday in May fall upon a legal holiday the annual meeting of the shareholders shall be held at the same hour on the next day following that shall not be a legal holiday. At the annual meeting, Directors of the corporation and its divisions shall be elected to serve for the ensuing year and until their successors are elected. Any other proper business may also be transacted at the annual meeting. Special meetings of the shareholders may be called at any time by the Board of Directors of the corporation or by shareholders possessing at least twenty percent of the issued and outstanding shares. In the absence of any other designation, any meeting of shareholders shall be held at the offices of the corporation at 6001 Bollinger Canyon Road, San Ramon, California. A Secretary or Assistant Secretary elected or appointed by the Board of Directors or the President of the corporation shall give written notice of any meeting of shareholders at least ten days prior to the date fixed for the meeting, but failure to give notice shall not affect the validity of the meeting if notice is waived by all the shareholders of the corporation. A quorum for action shall exist at any meeting if a majority of the shares are represented at the meeting and approve the action. The shareholders may also take action by unanimous written consent.

## ARTICLE III

### Amendments to By-Laws

The By-Laws may be amended by the shareholders of the corporation and, to the extent permitted by law, by the Board of Directors of the corporation.

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# 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 ChevronTexaco Natural Gas, a div of Chevron U.S.A. Inc.

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 relating to transactions governed by the Base Contract, 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 transportation costs related to the terminated transactions pursuant to this Contract incurred by the Non-Defaulting Party to the extent such costs cannot be avoided or mitigated 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 has no such indebtedness, its corporate credit rating or "issuer rating", in each case by S&P or 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 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 Seller and/or the Buyer for verification and/or evidentiary purposes."

## Special Provision 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"

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

- (a) **Index Unavailability.** If any index used to determine the price under a transaction ceases to be available, the parties agree to promptly negotiate on a good faith basis a mutually satisfactory alternate price or reference publication to take effect as of the date the original index becomes unavailable. If the parties cannot agree on an alternative price or reference publication within thirty (30) days of the original index ceasing to be available, then the parties shall refer the matter to binding arbitration.
- (b) **Determination of Price by Arbitration.** If the parties are unable to agree within the time specified in subsection (a) of this Section upon an alternate price or reference publication, then the price or publication shall be finally and conclusively determined by arbitration, conducted in Chicago, Illinois, before a single arbitrator in accordance with the CPR Rules for Non-Administered Arbitration, and governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 and judgment upon the decision rendered by the arbitrator may be entered by any court having jurisdiction thereof. Pending the arbitrator's decision, the price shall be determined by reference to the last price published prior to the cessation of the original index and any adjustments to such price based on the arbitrator's decision shall be made in the first monthly billing following such decision.

### SECTION 6. TAXES

7. Section 6 Taxes - "Buyer Pays At and After the Delivery Point" is hereby deleted and replaced by the following:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") which may now or hereafter be imposed on or with respect to the Gas prior to the Delivery Point(s). The Contract Price is inclusive of all production, severance, ad valorem or other Taxes levied on or with respect to the Gas prior to its delivery to Buyer at the Delivery Point(s), and all such Taxes shall be borne and paid exclusively by Seller; provided however (a) if any governmental authority requires Buyer to remit such Taxes to the collecting authority, Buyer may do so and may deduct such Taxes paid from payments otherwise due to Seller hereunder, and (b) Buyer and Seller agree that the agreed Contract Price includes reimbursement to the producer of the Gas for state severance tax that is due on the Gas sold under this Base Contract.

Buyer shall pay or cause to be paid all Taxes which may now or hereafter be imposed on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). The Contract Price does not include any federal, Indian, state, or local sales, use, utility, consumption or other similar Taxes which may now or hereafter be imposed on the transfer of title, possession or risk of loss of the Gas to Buyer or on Buyer's subsequent use or disposition thereof, and all such Taxes shall be borne and paid exclusively by Buyer. If any governmental authority requires Seller to remit such Taxes to the collecting authority, Buyer shall promptly reimburse Seller for such Taxes. Any party entitled to an exemption from any Taxes governed by this section shall furnish the other party any necessary documentation thereof.

### SECTION 7. BILLING, PAYMENT AND AUDIT



## Special Provision to the Base Contract

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

“including all supporting documentation acceptable in industry practice to support the amount charged”
9. 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.”
10. Section 7.5 shall be amended by inserting “U.S.” between “then-effective” and “prime rate” in subsection (i).
11. 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

12. 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

13. 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.”
14. 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”
15. 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"

16. 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")"

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 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."

18. 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 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

19. 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, 7.6, 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

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

## SECTION 14. MISCELLANEOUS:

21. Insert in Section 14.1 the word "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).

## Special Provision to the Base Contract

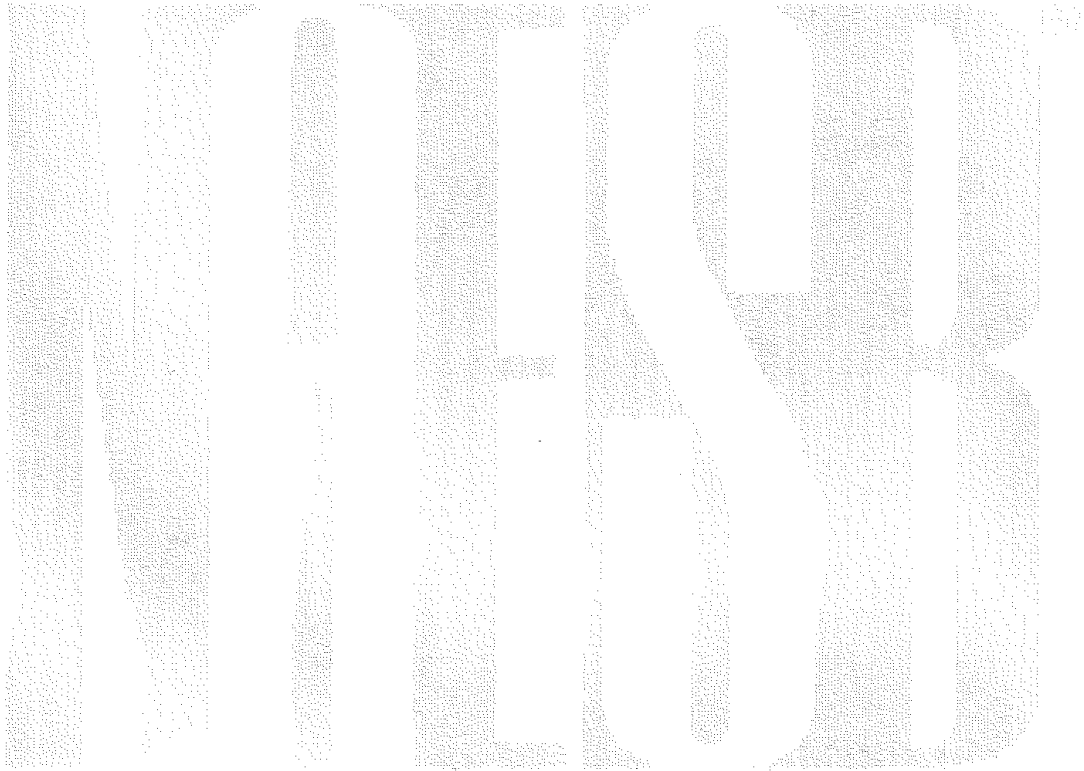
23. The following Sections shall be added to Section 14:

- 14.12 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.
- (c) For purposes of this Section 14.12, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.
- 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 No director, employee, or agent of either party shall give to or receive from any director, employee, or agent of the other party any commission, fee, rebate, gift, or entertainment of significant cost or value in connection with this Contract. Any mutually agreeable representative(s) authorized by either party may audit the applicable records of the other party solely for the purpose of determining whether there has been compliance with this paragraph. Such audit shall be conducted to the extent provided for in Section 7.6.

### 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)	ATTN: <u>Gas Accounting</u> ADDRESS: <u>220 W Main St., 7th Fl</u> <u>Louisville KY 40202</u>
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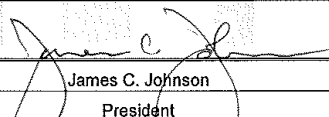

## Base Contract for Sale and Purchase of Natural Gas

(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"/> 5 Business Days after receipt	<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard
<b>Section 2.8</b> Confirming Party <input type="checkbox"/> Seller (default) OR <input checked="" type="checkbox"/> Buyer	<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 15.5</b> Choice Of Law _____ New York
<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) AND <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>5</u> <input type="checkbox"/> Addendum(s): _____	

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

Chesapeake Energy Marketing, Inc.	PARTY NAME	LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY
By: 	SIGNATURE	By: 
James C. Johnson	PRINTED NAME	David S. Sinclair
President	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 November 2, 2011**

**by and between**

**Chesapeake Energy Marketing, Inc. ("CEMI")**

**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 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."

"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 "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

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.

#### 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. 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.

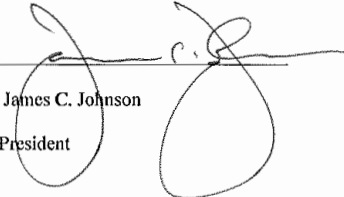
(b) Seller recognizes that Buyer may verify title to the Gas purchased and sold hereunder and agrees to provide all information reasonably requested by Buyer for such verification within thirty (30) days of such request. Subject to the other provisions of this Section, Buyer agrees to make payment to 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."

**CHESAPEAKE ENERGY MARKETING, INC.**

By:   
Name: James C. Johnson  
Title: President

**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:

<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"/> 5 Business Days after receipt	
<b>Section 2.8</b> <input type="checkbox"/> Seller (default) Confirming Party <input checked="" type="checkbox"/> Buyer	
<b>Section 3.2</b> <input checked="" type="checkbox"/> Cover Standard (default) Performance Obligation <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"/> 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> <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"/> 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"/> 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"/> Confidentiality does not apply
<b>Section 7.7</b> <input checked="" type="checkbox"/> Netting applies (default) Netting <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"/> Addendum(s): _____	

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

<b>CENTRAL CRUDE, INC</b>	PARTY NAME	LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY
By: <i>William H Clemons</i> 11/13/13	SIGNATURE	By: <i>David S. Sinclair</i>
William H Clemons	PRINTED NAME	David S. Sinclair
Director Marketing & Trading Natural Gas	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		
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: _____			

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF  
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS  
Dated November 11, 2013**

by and between  
**CENTRAL CRUDE, INC ("CENTRALCRUDE")**

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.

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**

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.

**CENTRAL CRUDE, INC.**

By: *William H Clemons* 11/12/13

Name: William H Clemons

Title: Director Marketing & Trading Natural Gas

**LOUISVILLE GAS AND ELECTRIC COMPANY  
AND  
KENTUCKY UTILITIES COMPANY**

By: *David S. Sinclair*

Name: David S. Sinclair

Title: Vice President Energy Marketing

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 01:19 PM 12/31/2012  
FILED 01:11 PM 12/31/2012  
SRV 121408372 - 3395812 FILE

**STATE of DELAWARE  
CERTIFICATE OF AMENDMENT  
TO THE  
CERTIFICATE OF FORMATION  
OF  
LOUIS DREYFUS HIGHBRIDGE ENERGY LLC**

1. Name of the Limited Liability Company is:

**Louis Dreyfus Highbridge Energy LLC**

2. The Certificate of Formation of the limited liability company is hereby amended as follows:

**FIRST: The name of the limited liability company is:**

**Castleton Commodities International LLC**

3. This Certificate of Amendment shall be effective on January 1, 2013.

**IN WITNESS WHEREOF**, the undersigned executed this Certificate of Amendment on the 31st day of December, 2012.

By: Yair Yaish  
Authorized Person(s)

Name: Yair Yaish

85428v1

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: October 12, 2006. The parties to this Base Contract are the following:

**Louisville Gas and Electric Company/Kentucky Utilities Company ("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 **Louis Dreyfus Energy Services L.P. ("LDES")**  
 20 Westport Road, Wilton, CT 06897  
 Duns Number: 038714783  
 Contract Number: N/A  
 U.S. Federal Tax ID No.: 06-1597760

**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

20 Westport Road, Wilton, CT 06897  
 Attn: Credit Dept. copy to Law Dept. Fax 203-761-8321  
 Phone: 203-761-2103 Fax: 203-761-8069

**Confirmations:**

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

20 Westport Road, Wilton, CT 06897  
 Attn: Confirmations Dept.  
 Phone: 203-761-8017 Fax: 203-761-8182

**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

20 Westport Road, Wilton, CT 06897  
 Attn: Operations Dept.  
 Phone: 203-761-8031 Fax: 203-761-8478

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

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

**WIRES ONLY:**  
 BANK: HSBC Bank USA  
 ABA: 021-001-088  
 ACCT: 000-12-97-55  
 Other Details: f/a/o Louis Dreyfus ES GP LLC, general partner

**WIRES ONLY:**  
 BANK: Bank of America, New York, NY  
 ABA: 0260-0959-3  
 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> 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) (LGE/KU & LDES) <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) (LGE/KU) <input type="checkbox"/> Check
<b>Section 2.6</b> Confirming Party	<input type="checkbox"/> Seller (default) <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Both Parties	<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: 8 pages <input type="checkbox"/> Addendum(s): _____			

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

*EWK*  
*SA*  
*plc*

LOUISVILLE GAS AND ELECTRIC COMPANY *SOP*

LOUIS DREYFUS ENERGY SERVICES L.P.  
By: LOUIS DREYFUS ES GP LLC, Its General Partner

By *[Signature]*  
Name:  
Title:

By *[Signature]*  
Name: Helen Lovely  
Title: Vice President

*KENTUCKY UTILITIES*  
*LOUISVILLE GAS & ELECTRIC COMPANY*  
*KENTUCKY UTILITIES COMPANY*  
*SR. VICE PRESIDENT*  
*MARTYN GALLUS*

By *[Signature]*  
Name: MARTYN GALLUS  
Title: 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: _____			



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 October 12<sup>th</sup>, 2006 (the “Base Contract”) by and between: Louisville Gas and Electric Company/Kentucky Utilities Company and Louis Dreyfus Energy Services 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. Section 1.4 is amended by substituting the following for the second sentence:

“Each party consents to and agrees, to the extent required by law, to obtain the consent of its agents and employees to the recording of telephone conversations between the parties regarding this Contract or any transaction.”

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 properly authenticated 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 (actual or apparent) to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds or similar evidentiary rules, to the introduction of such properly authenticated 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.”

SECTION 2. DEFINITIONS

3. Section 2.7 (“Contract”) is amended by inserting before the period at the end of the Section, “, all of which shall form a single integrated agreement between the parties.”
4. 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.
5. Section 2.11 (“Credit Support Obligation(s)”) shall be deleted in its entirety and replaced with the following language: “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 in the form of Eligible Collateral or a Credit Support Document.”
6. The following Sections shall be added to the end of Section 2:

## Special Provision to the Base Contract

2.30 "Affiliate(s)" shall mean with respect to any party, any entity controlled, or controlled by, or under common control, directly or indirectly, with such party through one or more intermediaries. For this definition, "control" of any entity or party means ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power of such entity or party.

2.31 "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.

2.32 "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.

2.33 "Eligible Collateral" shall mean either (i) cash, or (ii) a Letter of Credit, 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).

2.34 "Investment Grade Rating" shall mean a party's unsecured, senior long-term public 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 public 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. The party delivering a Letter of Credit as Eligible Collateral shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, or (ii) if the bank that has 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 at least twenty (20) Business Days before the expiration of the outstanding Letter of Credit. The costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

2.36 "Material Adverse Change" shall mean a party's rating falls below an Investment Grade Rating.

2.37 "Present Value Discount Rate" shall be calculated, using as a discount rate the rate of interest per annum that is published from time to time under "Money Rates" by The Wall Street Journal for large U.S. Money Center commercial banks for the then effective "LIBOR" rate corresponding to the remaining length of the Terminated Transactions. If the applicable discount rate is not available, the rate of interest used in calculating the present value shall be determined in a commercially reasonable manner.

2.38 "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 Provision to the Base Contract

### SECTION 3. PERFORMANCE OBLIGATION

7. 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

8. 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

9. 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."

10. 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

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

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

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

## 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 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. 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."

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

14. 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

15. 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.

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 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

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 or, if reasonably acceptable to the receiving party, a Credit Support Document. For purposes of this Section 10, without limiting the circumstances in which X may be deemed to have "reasonable grounds for insecurity", X may be deemed to have reasonable grounds for insecurity if Y or Y's guarantor 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 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."

18. Amend Section 10.2 as follows:

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

## Special Provision to the Base Contract

(b) delete "or" before "(viii)"

(c) insert in the ninth line after the phrase "such payment is due" the phrase "or (ix) the failure to perform any material obligation under the Contract (other than obligations which are specifically covered in this definition as a separate Event of Default or covered under Section 3.2), if not remedied within two (2) Business Days after receiving Notice thereof; or (x) with respect to a party or a party's guarantor, consolidate or amalgamate with, or merge into or with, or transfer substantially all of its assets to another entity and, at the time of such consolidation, amalgamation, merger or transfer, (a) the resulting entity fails to assume all of the obligations of such party or guarantor hereunder, (b) the benefits of any Eligible Collateral provided under this Contract or any Credit Support Document fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder, or (c) the resulting entity's creditworthiness is materially weaker than that of such party or guarantor in the reasonable opinion of the Non-Defaulting Party."

**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 replacing "in a commercially reasonable manner" in the third to last line of the first paragraph with "using the Present Value Discount Rate"; and by deleting in the last line of the second paragraph "determined by the Non-Defaulting Party in a commercially reasonable manner" and inserting "the Present Value Discount Rate".**

**21. Section 10.3.2 (Other Agreement Setoffs Apply) is amended by adding the following provision at the end of the Section:**

"The Non-Defaulting Party may, in its sole discretion, also be entitled to take any or all of the following actions: (i) draw on or apply any Eligible Collateral held by or for the benefit of the Non-Defaulting Party to satisfy any obligations of the Defaulting Party against and in satisfaction of any amounts due and owing to the Non-Defaulting Party with respect to the Net Settlement Amount under this Base Contract; (ii) exercise all rights and remedies available to a secured party under the personal property legislation of any applicable jurisdiction; and (iii) liquidate, free from any claim or right of the Defaulting Party, any Eligible Collateral held by or for the benefit of the Non-Defaulting Party, and apply the proceeds thereof to any obligations of the Defaulting Party against and in satisfaction of any amounts due and owing to the Non-Defaulting Party under this Base Contract with respect to the Net Settlement Amount."

**22. Section 10.3.3 is amended by replacing "in a commercially reasonable manner determined by the Non-Defaulting Party" with "using the Present Value Discount Rate".**

**23. 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 five (5) 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."

"10.10 If the parties execute an agreement that governs the obligation to deliver and maintain Eligible Collateral, or a Credit Support Document, it shall be incorporated into and made a part of these Special Provisions."

"10.11 This Section 10.11 shall apply where a party ("X") has delivered and is maintaining

## Special Provision to the Base Contract

Eligible Collateral with the other party ("Y") and the parties have not entered into a Credit Support Document or other agreement governing the obligation to deliver and maintain Eligible Collateral. Upon Notice to Y specifying the Eligible Collateral to be returned, (i) if X has unperformed obligations to Y under the Contract, X may, on any Business Day, transfer to or establish for the benefit of Y substitute Eligible Collateral for that being held by Y (provided, that such substitute Eligible Collateral shall be acceptable to Y in its sole discretion) and, if an Event of Default or Early Termination Date has not occurred with respect to X, Y shall return to X or release the Eligible Collateral specified in X's Notice not later than the Business Day following the date on which Y receives the substitute Eligible Collateral or, (ii) if X has no outstanding obligations to Y under the Contract (determined by Y in its sole discretion), Y shall return to X or release the Eligible Collateral specified in X's Notice not later than the second Business Day following the date of X's Notice. In all cases, the cost and expense of substituting Eligible Collateral shall be borne by Party X.

### SECTION 11. FORCE MAJEURE

24. Section 11.2 is amended by inserting "terrorism," after "sabotage" on the sixth line; and by amending the last sentence by deleting the words "Seller and Buyer" and replacing with "The party claiming the Force Majeure".
25. Section 11.3 is amended as follows: insert the following language after "also curtailed" in the third line: ", and, then, only to the extent of such curtailment on the affected pipeline segment"; and 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) failure or interruption of specific, individual wells or appurtenant facilities, specific supply or markets at "pooling points" or "hubs" in the absence of a Force Majeure event broadly affecting most other wells, appurtenant facilities, supply or "pooling points" or "hubs" in the same geographic area and then, only to the extent of such curtailment".

26. 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 affected by a claim of Force Majeure that has continued for ninety (90) consecutive days and is continuing may be terminated and liquidated by the Non-claiming Party in the manner provided in Section 10.3, in addition to any and all remedies available hereunder."

"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

27. 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

## Special Provision to the Base Contract

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, 7.6, 7.7, 8.1, 8.2, 8.3, 8.4, 10, 13, 14.5, 14.10, 14.13, and 14.14 shall continue to apply."

### SECTION 13. LIMITATIONS

28. Delete the phrase "UNLESS EXPRESSLY HEREIN PROVIDED," from the sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) lines and replace with the following "EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN SECTION 10.8 HEREOF,"

### SECTION 14. MISCELLANEOUS:

29. Section 14.1 is amended as follows:
- (a) insert in Section 14.1 the word ", conditioned," after the phrase "unreasonably withheld," in the fourth (4<sup>th</sup>) line;
  - (b) replace subsection (ii) of the second sentence with the following:  
"(ii) transfer or assign this Contract to any Affiliate, person or entity succeeding to all or substantially all of the transferring party's assets without the prior approval of the other party 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 non-transferring party's 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."
30. Section 14.5 is amended by inserting the following at the end thereof: "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 PROCEEDINGS RELATING TO THESE SPECIAL PROVISIONS, THE BASE CONTRACT OR ANY TRANSACTION THEREUNDER."
31. Section 14.10 is amended by inserting "Affiliates" between "employees," and "lenders," in the third line of the first paragraph; and 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).
32. Section 14.11 is removed in its entirety.
33. The following Sections shall be added:
- 14.12 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 each party obtaining no more than two quotes from leading dealers in the relevant market and averaging such quotes. From and



**Special Provision to the Base Contract**

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.

14.13 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.

14.14 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 If applicable to the parties to this Contract, the Equal Opportunity Clause set forth in 41 C.F.R. 60-1.4(a), as amended, and the Affirmative Action clauses for Disabled Veterans and Veterans of the Vietnam Era and for Individuals with Disabilities set forth at 41 C.F.R. 60-250.4 and 60-741.5, as amended, are incorporated by reference as part of this Contract."

14.16 Louisville Gas and Electric Company and Kentucky Utilities Company shall be jointly and severally liable for their obligations under this Agreement.

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

*QWK*  
*ES*  
*PL*

LOUIS DREYFUS ENERGY SERVICES L.P.  
BY: LOUIS DREYFUS ES GP LLC  
ITS GENERAL PARTNER

By: *Helen Lovely*  
Printed Name: Helen Lovely  
Title: Vice President

Louisville Gas and Electric Company *SOP*

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

Kentucky Utilities Company *SOP*

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

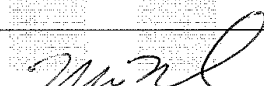
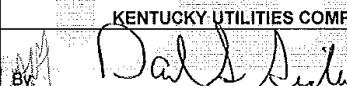
## Base Contract for Sale and Purchase of Natural Gas

(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:

<p><b>Section 1.2</b> <input checked="" type="checkbox"/> Oral (default) Transaction Procedure <input type="checkbox"/> OR <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: 3% of Shareholders Equity <input checked="" type="checkbox"/> Party B: 3% of Shareholders Equity <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"/> OR <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"/> OR <input checked="" type="checkbox"/> Buyer</p>	
<p><b>Section 3.2</b> <input checked="" type="checkbox"/> Cover Standard (default) Performance Obligation <input type="checkbox"/> OR <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"/> 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 2.3.1</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"/> OR <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"/> 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> <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"/> OR <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"/> OR <input type="checkbox"/> Netting does not apply</p>	
<p><input checked="" type="checkbox"/> Special Provisions Number of sheets attached: <u>4</u> <input type="checkbox"/> Addendum(s): _____</p>	

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

<b>CARGILL, INCORPORATED</b>	<i>PARTY NAME</i>	<b>LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY</b>
By: 	<i>SIGNATURE</i>	By: 
Marc Moril	<i>PRINTED NAME</i>	David S. Sinclair
Credit Manager – Authorized Signatory	<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 (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.

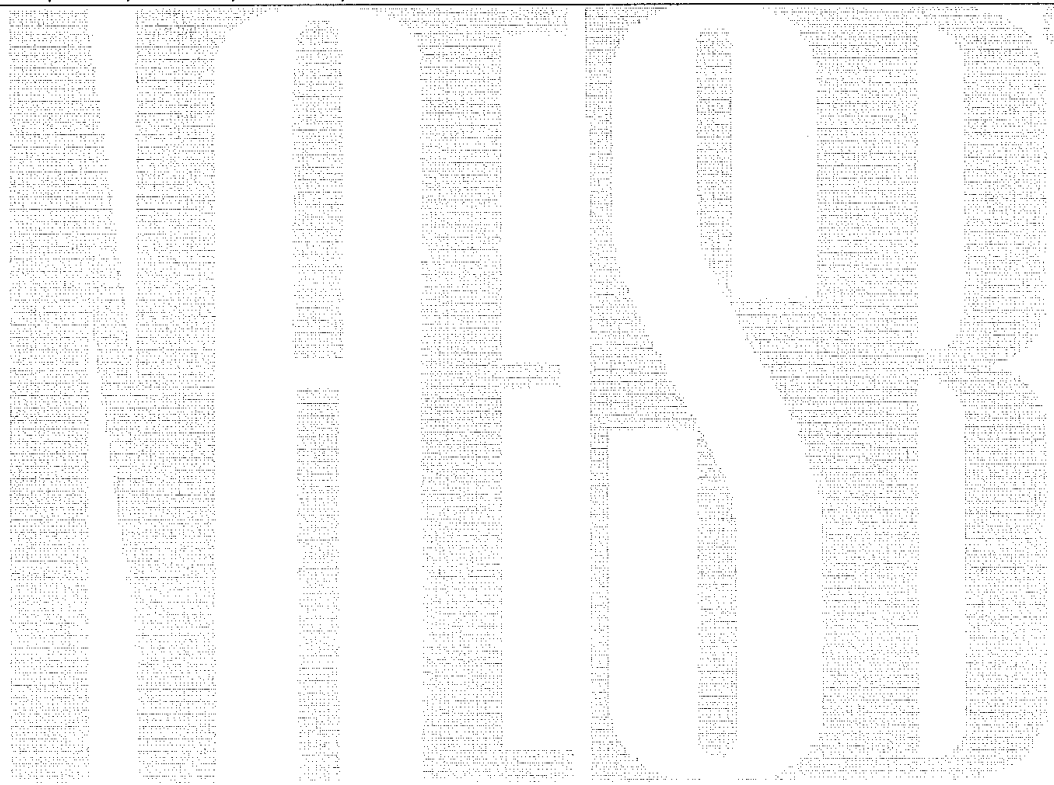
In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure,

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 August 18, 2014**

**by and between  
Cargill, Incorporated ("Cargill")  
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 "Shareholder's Equity" shall mean with respect to a Party, at any time, the sum (as shown in the most recent annual audited financial statements of such entity) of (i) its capital stock (including preferred stock) outstanding, take at par value, (ii) its capital surplus and (iii) its retained earnings, minus (iv) treasury stock, each to be determined in accordance with generally accepted accounting principles of the United States.

**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 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.

## 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

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 to the best of its ability provide the other party (the Non-claiming Party") an 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 sixty (60) 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 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.

(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.

Add this new Section 15.14 as follows:

Where applicable, Company (vendor) shall comply with the requirements of the Fair Labor Standards Act of 1938, as amended, in performing the services hereunder. To the extent applicable to the performance of Company's obligations hereunder, Company also agrees to comply fully with all applicable federal, state, and local laws and regulations concerning nondiscrimination and affirmative action, including those enforced by the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) and/or the U.S. Equal Employment Opportunity Commission (EEOC). As applicable, Company agrees to comply with Executive Order 11246, as amended. Cargill is an equal opportunity employer, and the Agreement is subject to the rules and regulations imposed upon contractors and subcontractors pursuant to 41 CFR Chapters 60 and 61. Unless this Order is exempt, there is incorporated herein by reference 41 CFR 60-1.4 and 61-250.10. 29 C.F.R. Part 471, Appendix A to Subpart A is also incorporated herein by reference. As applicable, both Parties shall abide by the requirements of 41 CFR 60-300.5 and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

**CARGILL, INCORPORATED**

By: 

Name: Marc Moril

Title: Credit Manager – Authorized Signatory

**LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY**

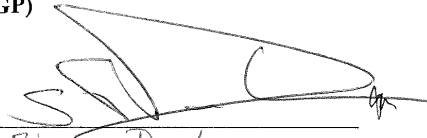
By: 

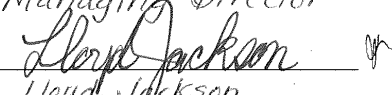
Name: David S. Sinclair

Title: Vice President Energy Marketing

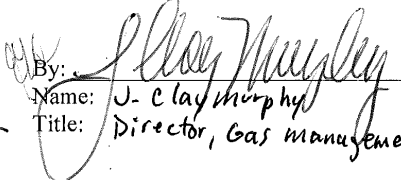
IN WITNESS WHEREOF, this Amendment has been executed effective as of the Effective Date.

**BNP PARIBAS ENERGY TRADING GP**  
(formerly known as Fortis Energy Marketing & Trading GP)

By:   
Name: Simon Dent  
Title: Managing Director

By:   
Name: Lloyd Jackson  
Title: Managing Director

**LOUISVILLE GAS AND ELECTRIC COMPANY**

By:   
Name: J. Clay Murphy  
Title: Director, Gas management Planning and Supply

*phg*

**AMENDMENT  
to the  
BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

Reference is made to (a) the Base Contract for Sale and Purchase of Natural Gas dated as of January 1, 2005 (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 and Kentucky Utilities 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]

IN WITNESS WHEREOF, this Amendment has been executed effective as of the Effective Date.

**BNP PARIBAS ENERGY TRADING GP**  
(formerly known as Fortis Energy Marketing & Trading GP)

By: 

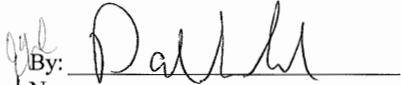
Name: *Simon Dent*  
Title: *Managing Director*

By: 

Name: *Lloyd Jackson*  
Title: *Managing Director*

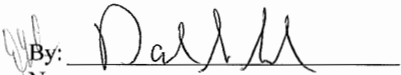
**COUNTERPARTY:**

**LOUISVILLE GAS AND ELECTRIC COMPANY**

By: 

Name:  
Title:

**KENTUCKY UTILITIES COMPANY**

By: 

Name:  
Title:

# 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 "FORTIS ENERGY MARKETING & TRADING GP", CHANGING ITS NAME FROM "FORTIS ENERGY MARKETING & TRADING GP" TO "BNP PARIBAS ENERGY TRADING GP", FILED IN THIS OFFICE ON THE TWELFTH DAY OF JANUARY, A.D. 2010, AT 5:51 O'CLOCK P.M.


AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AMENDMENT IS THE FOURTEENTH DAY OF JANUARY, A.D. 2010.

4210473 8100

100032592

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



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 7756650

DATE: 01-13-10



STATE OF DELAWARE

CERTIFICATE OF MERGER

Merging  
**CINERGY MARKETING & TRADING, LP,**  
a Delaware limited partnership,  
with and into  
**FORTIS ENERGY MARKETING & TRADING GP,**  
a Delaware general partnership

Pursuant to Section 15-902 of the Delaware Revised Uniform Partnership Act, 6 Del. C. §§ 15-101 *et seq.* (the "DRUPA"), and Section 17-211 of the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. §§ 17-101 *et seq.* (the "DRULPA"), Fortis Energy Marketing & Trading GP does hereby certify as follows:

1. The names and states of formation of each of the constituent entities (the "Constituent Entities") of the merger (the "Merger") are:
  - (a) Cinergy Marketing & Trading, LP ("CMT"), a Delaware limited partnership; and
  - (b) Fortis Energy Marketing & Trading GP, a Delaware general partnership ("FMT").
2. An Agreement and Plan of Merger dated October 1, 2006 (the "Agreement"), has been approved and executed by each of the Constituent Entities in accordance with Section 15-902 of the DRUPA and Section 17-211 of the DRULPA.
3. The surviving entity will be Fortis Energy Marketing & Trading GP, a Delaware general partnership (the "Surviving Entity").
4. The partnership agreement of FMT will be the partnership agreement of the Surviving Entity.
5. A copy of the Agreement is on file at the principal place of business of the Surviving Entity located at 1100 Louisiana St., Suite 4900, Houston, Texas 77002.
6. A copy of the Agreement will be furnished by the Surviving Entity, on request and without cost, to any partner of the Constituent Entities.
7. The Surviving Entity agrees that it may be served with process in the State of Delaware in any action, suit or proceeding for the enforcement of any obligation of CMT and hereby irrevocably appoints the Secretary of State as its agent to accept any service of process in any such action, suit or proceeding. The Secretary of State may mail a copy of any such process to the Surviving Entity at the following address:

Fortis Marketing & Trading GP  
1100 Louisiana Street, Suite 4900  
Houston, Texas 77002-5219  
Attention: Legal Department

8. The merger shall become effective at 12:02 a.m. on October 1, 2006, for accounting purposes.

IN WITNESS WHEREOF, a partner of the Surviving Entity has duly executed this Certificate of Merger this 2nd day of October, 2006.

FORTIS ENERGY MARKETING & TRADING GP

By: FB ENERGY HOLDINGS LLC,  
a Partner

/s/ John Rieger  
Name: John Rieger  
Title: Chief Financial Officer



# 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 ("Special Provisions") attached to and forming a part of that certain Base Contract for Sale and Purchase of Natural Gas dated January 1, 2005 (the "Base Contract") by and between: Louisville Gas & Electric Company and Kentucky Utilities Company ("LGE"/"KU") and Cinery Marketing & Trading, LP ("CMT").

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 1.1 shall be amended by adding to the end thereof the following:

"This Base Contract and all transactions hereunder (whether or not evidenced by an executed Transaction Confirmation) shall constitute a single, integrated agreement."

2. 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.

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

1.5 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. Neither party shall be liable to the other 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 sole, joint, concurrent, or active or passive, negligence of the party. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof."

### SECTION 2. DEFINITIONS

4. 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.

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

2.30 "Costs" means (a) losses directly associated with transportation costs related to the Terminated Transactions pursuant to Section 10.3 of this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party's reasonable efforts; and (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party if entering into a new arrangement to replace a Terminated Transaction.

2.31 "Credit Support Document" means, 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 the obligations of the First Party under this Contract, and in each case the issuer, the form, term and amount of such document shall be at the election of and acceptable to the requesting party.

2.32 "Eligible Collateral" means either (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, at the election of the requesting party, and in each case in an amount and for a term acceptable to the requesting party (which shall be in an amount at least equal to the sum of (a) the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated, and (b) an



amount equal to the product of the Contract Price times the Quantity of Gas which would have been delivered during the remainder of the current month).

2.33 "Futures Contract" means 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" means 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 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. 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, amount and for a term acceptable to the requesting party from a major U.S. commercial bank or a foreign bank with a U.S. branch office, if acceptable to the requesting party, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

2.36 "Material Adverse Change" means a party does not have an Investment Grade Rating.

2.37 "NYMEX" means 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 upon terms as set forth in a Transaction Confirmation, which terms shall include, among other terms, which of the Option Buyer and the Option Seller is the Buyer and which is the Seller of Gas 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, 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, 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, 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 of transaction conversations maintained by CMT and LGE/KU."

2.43 "Specified Transaction(s)" means any obligation of a party to this Contract incurred under any other agreement(s) between a party to this Contract, or instrument(s) or undertaking(s) issued or executed by one party to, or in favor of another party.

### SECTION 3. PERFORMANCE OBLIGATION

6. Delete subsection (iii) of Section 3.2, "Cover Standard" in its entirety and substitute the following in lieu thereof:

"(iii) in the event that Buyer has used commercially reasonable efforts to replace Gas or Seller has used commercially reasonable efforts to sell Gas to a third party, and no such replacement or sale for all





or any portion of the Gas is available, or in the event that the non-breaching party elects, at its sole option, not to replace undelivered Gas or sell unaccepted Gas, then the sole and exclusive remedy of the performing party with respect to the quantity for which no replacement or sale is made 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 for the quantity for which replacement or sale is made, multiplied by the difference between the Contract Quantity minus the sum of (a) the quantity actually delivered by Seller and received by Buyer for such Day(s), plus (b) the quantity of Gas, if any, sold or purchased using the Cover Standard as provided herein."

7. Add a new Section 3.5 as follows:

**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 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 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.**

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

8. 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 content requirements of the delivering Transporter delivering 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 delivering 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 pipeline."

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

9. Insert in Section 7.3 at the end of the first sentence the following":

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

10. Section 7.4 is amended by deleting the last sentence in its entirety and replacing it with the following:

"Payment of the disputed amount shall not be required until the dispute is resolved, but payment of the undisputed amount is required as provided above. 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 7.4 within twenty-four (24) months after the invoice is rendered."

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

12. Add a new Section 7.8 as follows:





"7.8 Upon either party's request, Buyer and Seller shall provide supporting documentation, including but not limited to copies of any and all pertinent portions of Transporter statements, related to any transaction between the parties in order to determine the amount due for each Month. Each party shall exercise reasonable efforts to provide supporting documentation that is inclusive of volume and price data, by Delivery Point, for the applicable Month."

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

13. The word "assume" will be added after the word "and" on the third line of Section 8.1

14. Section 8.2 is amended by inserting at the end thereof the following sentence:

"The foregoing sentence of this Section 8.2 disclaims certain warranties but has no effect on Seller's contractual obligations contained in Section 5."

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

15. Section 10.1 is amended as follows:

(a) Insert "a material default under any Specified Transaction or" after the phrase "the occurrence of" on the second (2<sup>nd</sup>) line;

(b) 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."

16. Section 10.2 is amended as follows:

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

(b) delete "or" before "(viii)"; and

(c) insert in the ninth line after the phrase "such payment is due;" the following: "or (ix) suffer a Material Adverse Change; provided that such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party provides within 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;"

17. Section 10.3 is amended by deleting from the second (2<sup>nd</sup>) sentence the phrase:

"that may not be liquidated and terminated under applicable law or".

18. 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")"

19. Section 10.3.1. "Early Termination Damages Apply" is amended by adding at the end thereof the following sentence:

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

20. Add at the end of Section 10 the following new section:

"10.8 No suspension pursuant Section 10.2 shall continue for more than twenty (20) 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

21. Section 11 shall be amended by adding the following new section:

"11.7 Any party claiming Force Majeure, (the "Claiming Party") as an excuse for performance shall provide the other party (the "Non-claiming Party") with a good faith estimate of the duration of the Force Majeure. In the event the Force Majeure continues for a period of thirty (30) consecutive days, then the transaction(s) affected by the 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 transaction(s) (including without limitation any payments described in Section 10)."

## SECTION 12. TERM

22. 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 Buyer and Seller prior to the date of termination of this Contract until such time as all such transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment, the obligation of either party to indemnify the other, and the provisions of Sections 1.5, 7.6, 7.7, 8.1, 8.2, 8.3, 8.4, 10, 13, 14.6, 14.10, 14.12, 14.13, and 14.14 shall continue to apply."

## SECTION 13. LIMITATIONS

23. Delete from the beginning of the fifth (5<sup>th</sup>) sentence the phrase "UNLESS EXPRESSLY HEREIN PROVIDED,"

## SECTION 14. MISCELLANEOUS:

24. Insert in Section 14.1 in the fourth (4<sup>th</sup>) line the word "conditioned" after the phrase "unreasonably withheld".

25. Section 14.6 shall be amended by adding the following phrase prior to the period at the end of the last sentence:

"provided, however, in the event either party (the "Affected Party") is prohibited from selling or purchasing Gas, as applicable, under this Contract due to compliance with any laws, rules, regulations, orders or directives of any Federal, State or local governmental authority, then notwithstanding any provision of this Contract to the contrary, including Section 11.2 (v), such event shall be treated as an Event of Default under Section 10.2 hereof and the Affected Party shall be treated as if it were the Defaulting Party and the other party shall be treated as if it were the Non-Defaulting Party for the purposes of Section 10."

26. Insert in Section 14.10 at the end of subpart (i) the phrase "provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure".

27. The following new 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 Except as otherwise provided for herein and except to the extent the parties have otherwise specifically agreed on the terms and conditions as evidenced by the provisions of this Contract, all Transaction Confirmations and all transactions, the provisions of the Uniform Commercial Code ("UCC") of the state of New York shall be deemed to apply to this Contract and all transactions.

14.14 Each of Louisville Gas & Electric Company and Kentucky Utilities Company hereby agree to be jointly and severally responsible and liable for the full and complete performance and payment of all obligations of either of them under this Contract, all Transaction Confirmations and all transactions."

28. Insert a new Section at the end of section 14 as follows:

**SECTION 15. OPTION**

"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."

<sup>500</sup>  
LOUISVILLE GAS & ELECTRIC COMPANY

By: M Gallus  
Name: MARTYN GALLUS  
Title: SR. VICE PRESIDENT

LOUISVILLE GAS & ELECTRIC COMPANY  
KENTUCKY UTILITIES <sup>500</sup>

By: M Gallus  
Name: MARTYN GALLUS  
Title: SR. VICE PRESIDENT

LOUISVILLE GAS & ELECTRIC COMPANY  
KENTUCKY UTILITIES

CINERGY MARKETING & TRADING, LP

By: Janelle Scheuer  
Name: Janelle Scheuer  
Title: Vice President

**Janelle Scheuer**  
**Vice President**  
**Transport, Storage & Services**

## 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**

<b>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>
<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.

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>		
<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 NAESB BASE CONTRACT

BG Energy Merchants, LLC, a Delaware limited liability company ("BGEM"), and Louisville Gas and Electric Company, a Kentucky corporation and Kentucky Utilities Company, a Kentucky corporation referred to herein as "Counterparty") hereby agree effective as of the 3rd day of November, 2008, to the following special provisions ("Special Provisions") to the NAESB Standard version 6.3.1 (modified April 19, 2002) Base Contract for Sale and Purchase of Natural Gas which hereby modifies and amends the Base Contract dated and effective as of the date hereof between BGEM and Counterparty. Unless specifically agreed otherwise in a Transaction Confirmation, the Base Contract, as modified by these Special Provisions, shall apply to all transactions for the purchase and sale of Gas between the parties. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Base Contract.

### 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. Section 1.3 is amended by deleting the words "which may be" from the last sentence of Section 1.3 and inserting "as" in lieu thereof.
3. Section 1.4 is amended by inserting the following immediately before the last sentence thereof:

"Telephonic recordings may be relied upon to resolve any differences provided that a true and complete copy is made available to the other party. No party may knowingly destroy or erase a recording once the possessing party becomes aware of an actual dispute in which the recording may reasonably be anticipated to be discoverable."

4. 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

5. Section 2.7 "Contract" shall be amended by adding to the end of the sentence, "all of which shall form a single integrated agreement between the parties"

6. Section 2.8 "Contract Price" shall be amended by adding as the last sentence "Seller shall be responsible for all production, severance, and other such taxes imposed on the Gas prior to delivery at the Delivery Point."
7. 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.
8. Section 2.11 "Credit Support Obligations" shall be amended by adding "cash," before "an irrevocable standby letter of credit" and deleting "a performance bond".
9. Section 2 is amended by adding, as alphabetically appropriate, the following definitions:

"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.

"Guarantee" shall mean a guarantee of the obligations hereunder in a form and in an amount satisfactory to the beneficiary thereof in its reasonable discretion.

"Guarantor" shall mean, with respect to BGEM, BG Energy Holdings Limited.

"LNG" means liquefied Gas.

"LNG Facility" means any presently existing or future facility for the receipt, storage or revaporization of LNG.

"LNG Vessel" shall mean any vessel used to transport or unload LNG to the LNG Facility.

"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 "A2" from Moody's.

"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 6. TAXES**

10. Add to the end of the last sentence of Section 6 designated as Buyer Pays At and After Delivery Point "prior to the due date of the applicable tax return."

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

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

"including all supporting documentation acceptable in industry practice to support the amount charged."
12. 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.”

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

14. Section 7.8 shall be added as follows:

“7.8 Upon either party’s request, Buyer and/or Seller shall promptly 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 promptly provide support documentation that is inclusive of volume and price [by location] data for the applicable Month.”

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

15. Section 8.1 is amended by adding the word “assume” after “responsibility for and” and by adding the words “at and” between “Gas” and “after” in the third 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 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.”

“8.6 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.”

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

17. Delete 10.1 in its entirety and replace 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”) (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 from Y or Y’s

Guarantor. "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.

18. Section 10.2 is amended by inserting "if any" after "guarantor" in the first (1st) line. Section 10.2(ii) is amended by inserting a comma after the word "creditors" and adding the words "and such involuntary petition or proceeding that is filed or commenced against it is not withdrawn, dismissed, discharged, stayed or restrained within 30 days of its presentation or commencement" between the words "commenced against it" and the semicolon.
19. Amend Section 10.3 by deleting from the second (2nd) sentence the phrase "or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate."
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 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**

21. Section 11.1 is modified by adding the following to the end of the first sentence after the words "to the extent such failure was caused by Force Majeure":

"and the party claiming excuse shall have no obligation to seek alternate Gas or LNG supplies in order to satisfy any obligation hereunder. Counterparty acknowledges that, with respect to sales of Gas by BGEM, it is anticipated that a portion of such Gas may be derived from LNG that BGEM or its affiliates import through one or more LNG Vessels and LNG Facilities."
22. Section 11.2 is modified by deleting the word "and" before subsection (v) and adding the following after subsection (v):

"; (vi) any event, action or circumstance described in the preceding clauses (i) through (v) which affects any LNG Facility or LNG Vessel; and (vii) without limiting the foregoing, any collision, grounding, mechanical failure, port closure, loss of vessels, weather related events or acts of others that impede the transportation of LNG or the operations of any LNG Facility. Notwithstanding anything herein to the contrary, no event affecting an LNG Facility and/or LNG Vessel shall constitute Force Majeure hereunder unless (i) such event of Force Majeure directly affects BGEM's ability to perform its Firm obligations at the Delivery Point agreed to by the Parties and (ii) such event occurs within 200 miles of the U.S. coastline or otherwise affects a geographic area within 200 miles of the U.S. coastline."
23. 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

24. Section 12 shall be amended by inserting “,13” after the phrase “Section 7.6”.

#### 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. Section 14.1(ii) is amended by inserting “as long as such entity has provided Adequate Assurance of Performance as the non-assigning party may reasonably require” after the word “party” and before the period.
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. The following Sections shall be added:

**“14.12 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 REGARD TO CONFLICT OF LAW PRINCIPLES OTHER THAN SECTION 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW). WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING RELATING TO THE FOREGOING (“PROCEEDING”) EACH OF THE PARTIES HERETO HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND OF ANY NEW YORK STATE COURT SITTING IN THE CITY OF NEW YORK FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE TRANSACTIONS CONTEMPLATED HEREBY, AND AGREES THAT SUCH COURTS SHALL BE THE EXCLUSIVE FORUM FOR RESOLVING ANY DISPUTE OR CONTROVERSY UNDER OR WITH RESPECT TO THIS CONTRACT. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.”**

**“14.13 EACH OF THE PARTIES HERETO HEREBY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE AMONG ANY OF THEM ARISING OUT OF, CONNECTED WITH, RELATING TO OR INCIDENTAL TO THE RELATIONSHIP BETWEEN THEM IN CONNECTION WITH THIS CONTRACT OR THE OTHER TRANSACTION DOCUMENTS.”**

“14.14 Index Transactions. If the parties enter into a transaction in which any or all of the pricing component is based on a pricing index, the following provisions shall apply:

- (a) Market Disruption Events. If a Market Disruption Event has occurred and is continuing for one or more Trading Days during the Determination Period, the Floating Price for such

Trading Day(s) shall be determined pursuant to the index 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 within two Business Days 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; provided, however, if the index specified in the transaction 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.

(b) Corrections to Published Prices. For purposes of determining the relevant prices 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 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. 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 is less than five (5), then the third (3rd) decimal shall remain unchanged.

(d) Definitions for Index Transactions

"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 a price (other than a fixed price) specified in a transaction as being based upon a specified index.

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

“Trading Day” means a day in respect of which the relevant price source published or was (absent the Market Disruption Event) to publish the relevant price.”

- 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.

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.

LOUISVILLE GAS AND ELECTRIC COMPANY

By: David S. Sinclair

Name: David S. Sinclair

Title: Vice President – Energy Marketing

BG ENERGY MERCHANTS, LLC

By: Matthew Schatzman

Name: Matthew Schatzman

Title: President

KENTUCKY UTILITIES COMPANY

By: David S. Sinclair

Name: David S. Sinclair

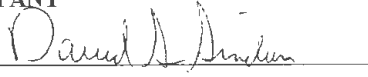
Title: Vice President – Energy Marketing



ATMOS ENERGY MARKETING, L.L.C LOUISVILLE GAS & ELECTRIC  
COMPANY/KENTUCKY UTILITIES  
COMPANY

By: 

Name: ~~J. Philip Chesson~~ *ib*  
*MIC TICNZE*  
Title: ~~Chief Financial Officer~~  
*SI Vice President*  
Date: *9/17/09*

By: 

Name: David S. Sinclair  
Title: Vice President Energy Marketing  
Date: *9-2-09*

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

This Base Contract is entered into as of the following date: **January 11, 2006**. 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 Atmos Energy Marketing, LLC ("Atmos Energy")  
11251 Northwest Freeway, Suite 400, Houston, Tx. 77092  
 Contract Number: \_\_\_\_\_  
 U.S. Federal Tax ID No.: 75-2879833

DUNS #: LGE 00-694-5505/ KU 00-694-4938

DUNS #: 83-570-5831

**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

11251 Northwest Freeway, Suite 400, Houston, Tx. 77092  
 Attn: Contract Administration  
 Phone: 713-688-7771 Fax: 713-688-1625

**Confirmations:**

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

11251 Northwest Freeway, Suite 400, Houston, Tx 77092  
 Attn: Contract Administration  
 Phone: 713-688-7771 Fax: 713-688-1625

**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

11251 Northwest Freeway, Suite 400, Houston, Tx. 77092  
 Attn: Gas Accounting  
 Phone: 713-688-7771 Fax: 713-688-8162

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

BANK: Bank of America, Dallas, TX (ACH) New York, NY (Wires)  
 ABA: (ACH) 111-0000-12 (Wires) 260-0959-3  
 ACCT: 3752099133  
 Other Details: \_\_\_\_\_

BANK: Bank of America, Dallas, Tx  
 ABA: 111-000-012  
 ACCT: 375-156-1125  
 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 Procedure <input type="checkbox"/> Written	<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 Deadline <input type="checkbox"/> _____ Business Days after receipt	<b>Section 7.2</b> <input checked="" type="checkbox"/> Wire transfer (default) AND <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) Method of Payment <input type="checkbox"/> Check
<b>Section 2.6</b> <input type="checkbox"/> Seller (default) Confirming Party <input type="checkbox"/> Buyer <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 Obligation <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"/> 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> <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) Other Agreement Setoffs <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 2.26</b> <input checked="" type="checkbox"/> Gas Daily Midpoint (default) Spot Price Publication <input type="checkbox"/> _____	<b>Section 14.5</b> Choice Of Law <u>                    New York                    </u>
<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
<input checked="" type="checkbox"/> Special Provisions Number of sheets attached: 7	
.. Addendum(s): _____	

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

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

**ATMOS ENERGY MARKETING, LLC**  
 Party Name

By [Signature]  
 Name: \_\_\_\_\_  
 Title: Martyn Gallus, SVP Energy Marketing

By [Signature]  
 Name: Marc [unclear]  
 Title: Sr. VP

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NAESB Standard 6.3.1  
 April 19, 2002

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## 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>		
<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: _____	

**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 January 11, 2006 (the “Base Contract”) by and between: Louisville Gas & Electric Co./Kentucky Utilities Co. and Atmos Energy Marketing, 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 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 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, 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 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 Provision 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"

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 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 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*:**

"Notwithstanding the provisions of the fourth sentence of the Section 6, all such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to remit directly such Taxes, in which event Buyer shall withhold from payments to Seller the amount required to be remitted by Buyer and then remit such amounts to the taxing authority."



**Special Provision to the Base Contract**

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

9. Add the following language to the end 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 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 (f).

12. 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**

13. Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 3" and "AND IN SECTION 14.8" in the last sentence.

14. 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 hereunder 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."

**Special Provision to the Base Contract**

**SECTION 10. FINANCIAL RESPONSIBILITY**

15. 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."
16. 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"
17. Amend Section 10.3 by
- (a) 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"
18. 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")"
19. Section 10.5 is amended by deleting the section in its entirety and replacing it with the following:
- "Bankruptcy Matters.
- (a) Each party acknowledges and agrees that (i) the Transaction(s) hereunder constitute "forward contracts" within the meaning of Title 11 of the United States Code (the "Bankruptcy Code"); (ii) each of party LGE/KU and Atmos Energy is a "forward contract merchant" within the meaning of the Bankruptcy Code with respect to any Transactions that constitute "forward contracts"; (iii) 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; (iv) all transfers of Performance Assurance by one party to the other party under this Contract constitute "margin payments" within the meaning of the Bankruptcy Code; and (v) each party's rights under Sections 10.2, 10.3 and 10.4 of this Contract constitutes a "contractual right to liquidate" the Transactions within the meaning of the Bankruptcy Code.
  - (b) Each party acknowledges and agrees that, for purposes of this Contract, the other party is not a "utility" as such term is used in 11 U.S.C. Section 366 of the Bankruptcy Code, and each party agrees to waive and 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 agrees to waive the right to assert that the other party is a provider of last resort."
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."

## Special Provision to the Base Contract

### 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, 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 “unreasonably conditioned,” after the phrase “unreasonably withheld,” and insert the word “unreasonably” before the word “delayed” in the fourth (4<sup>th</sup>) line.

26. Insert the following to the end of Section 14.5:

“, and if New York law is indicated, excluding Section 5-1401 (choice of law) and Section 5-1402 (choice of forum) of Title 14 of the New York General Obligations Law. The parties submit to the non-exclusive jurisdiction of such indicated jurisdiction, including all appellate courts therein and therefrom, to determine such matters, but nothing in the foregoing shall prohibit a party from seeking enforcement of any judgment in any other jurisdiction.

**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. 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 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.

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

**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."

IN WITNESS WHEREOF the parties have executed these Special Provisions on the respective dates specified below with effect from the date specified on the first page of the Special Provisions.

Atmos Energy Marketing, LLC

By: [Signature]  
Name: Marc Ironzo  
Title: Sr. VP

Louisville Gas and Electric Company/  
Kentucky Utilities Company

By: [Signature] **SOR**  
Name: Martyn Gallus  
Title: SVPEnergy 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 PROVISIONS TO  
BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

Anadarko Energy Services Company ("AES") and Louisville Gas and Electric Company/Kentucky Utilities Company ("LGE"/"KU" or "Counterparty") hereby agree effective this 1st day of June, 2003, to amend, modify and supplement the NAESB Standard 6.3.1 Base Contract for Sale and Purchase of Natural Contract ("Base Contract") with the following special provisions contained herein ("Special Provisions"). The Base Contract, as modified by the Special Provisions, shall apply to all confirmed transactions between the parties for the purchase and sale of Gas (each a "Transaction"). All capitalized terms not otherwise defined herein shall have the meaning set forth in the Base Contract.

**SECTION 1. PURPOSES AND PROCEDURES**

- **The following shall be inserted between the 2<sup>nd</sup> and 3<sup>rd</sup> sentences in Section 1.4:**

"In addition, 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."

- **The following sections shall be added to Section 1:**

"1.5 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 (1) a fully executed (or deemed agreed to) Transaction Confirmation or (2) in the event a Transaction Confirmation is not fully executed (or deemed agreed to) by both parties, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation."

**SECTION 2. DEFINITIONS**

- **The following Sections shall be added:**

"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 “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.”

“2.32 “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”).”

“2.33 “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”).”

“2.34 “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.”

### SECTION 3. PERFORMANCE OBLIGATION

- **Line 10 of Section 3.2(iii) of the Cover Standard shall be amended by adding the phrase “or the non-breaching party elects, at its sole option not to replace Gas or sell Gas,” after the phrase “and no such replacement or sale is available”.**
- **Section 3.2 shall be amended by adding the following language at the end of such section:**

“In addition to the other amounts specified herein, the party not in breach of a Firm obligation shall be entitled to recovery of commercially reasonable incremental transportation and storage costs actually incurred to purchase or sell the difference between the Contract Quantity and the actual quantity delivered or received, as the case may be.”

“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 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 shall be amended by adding a new Section 3.5.**

“3.5 Fixed Price Contracts. From time-to-time the parties may agree to fix the Contract Price paid for a certain Contract Quantity under a transaction (“Fixed Price Contract”). A Fixed Price Contract shall mean any transaction with a Firm performance obligation in which the agreed price (per unit volume) for the delivery of the Contract Quantity is expressed either as: (i) a flat dollar amount, or (ii) a range of dollar amounts, which is limited either at the lowest value or the highest value, or both. For any Fixed Price Contract, the Contract Quantity must be nominated by Buyer and shall be deemed to be the first Gas purchased at the Delivery Point. If more than one Fixed Price Contract is applicable between the parties at the same Delivery Point for any period, then the first Gas purchased during such period shall be attributed to the Fixed Price Contract that was executed earliest, followed by any additional Contract Quantities in chronological order of Fixed Price Contract execution.”

#### **SECTION 6, TAXES**

- **Add as the last paragraph of Section 6:**

“6.2 In the event a federal, 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**

- **Section 7.3 shall be amended by adding the following to the end of the last sentence of such section:**

“including all supporting documentation acceptable in industry practice to support the amount charged. Netting shall not apply to any accelerated payment obligation under Section 7.3; provided, however, that the party due payment under an accelerated payment invoice may net all sums due thereunder against any amounts payable by it when making payments under Section 7.”

- **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 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 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 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**

- **Line 2 of Section 8.2 shall be amended by adding the phrase ", Section 5" after the phrase "Section 8.2".**
- **Section 8.3 shall be amended by adding the following to the end of such section:**  
"Neither party shall be required to indemnify the Claims of the other party resulting from the gross negligence or willful misconduct of such other party."

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

- **Amend Section 10.2 as follows:**  
insert "if any" after "guarantor" in the first (1<sup>st</sup>) line
- **Section 10.3.1 "Early Termination Damages Apply" shall be amended by adding at the end of the last sentence of the second paragraph the phrase:**  
" (included without limitation by using a commercially reasonable rate such as London Interbank Offered Rate or "LIBOR")"
- **Section 10 is amended by adding the following as new Sections 10.8 and 10.9:**  
"10.8 In calculating Early Termination Damages, 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 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 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 1.6, 7.6, 7.7, 8.1, 8.2, 8.3, 8.4, 10, 13, 14.10, 14.12, and 14.13 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:**

- **Insert in Section 14.1 the word “conditioned” after the phrase “unreasonably withheld,” in the fourth (4<sup>th</sup>) line.**
- **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).**
- **The following Sections shall be added:**

“14.12 The parties intend that any Option under this Contract shall qualify under the trade option exception, 17 C.F.R. § 32.4. Accordingly, each party buying or selling an Option agrees and warrants that any such Option shall be offered only to a provider, user, or merchant and that the entities entering into the Options are doing so solely for purposes related to their business.”

“14.13 Each party represents that it has a net worth exceeding \$1,000,000 and total assets exceeding \$10,000,000 and the creditworthiness of the other party is a material consideration in entering into this Contract; and it has entered into this Contract and shall enter into each transaction in reliance upon its own judgment or that of its investment advisors or other fiduciaries, (ii) the other party does not and will not hold out itself as advising, or any of the other party’s employees or agents as having the authority to advise it as to whether or not it should enter into any transaction or as to any subsequent actions relating thereto or on any other commercial matter concerned with any transaction, (iii) the other party shall not be acting as a fiduciary with respect to it and shall not have any responsibility or liability whatsoever in respect of any advice or information of this nature given or not given, or views expressed or not expressed, by the other party or any of the other party’s



employees or agents to it or any such fiduciary, whether or not such advice or information is given or such views are expressed at the request of it or any such fiduciary, and (iv) the other party shall not have any responsibility to govern or monitor the conduct of it or any such fiduciary.”

“14.14 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE BASE CONTRACT OR IN THE SPECIAL PROVISIONS, LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY AGREE TO AND SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ALL BUYER’S OBLIGATIONS AND LIABILITIES IN THE BASE CONTRACT OR IN THE SPECIAL PROVISIONS.”

“14.15 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.”

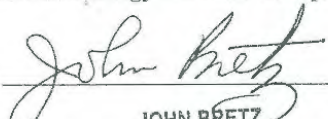
“14.16 IN NO EVENT SHALL ANY SINGLE TRANSACTION ENTERED INTO PURSUANT TO THIS CONTRACT BE FOR A DELIVERY PERIOD OF GREATER THAN ONE (1) MONTH.”

**THE FOLLOWING NEW SECTION SHALL BE ADDED: 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.”

IN WITNESS WHEREOF the parties have executed these Special Provisions on the respective dates specified below with effect from the date specified on the first page of the Special Provisions.

**Anadarko Energy Services Company**

By:   
Name: JOHN BRETZ  
VICE PRESIDENT OF GAS  
MARKETING  
Title: \_\_\_\_\_

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

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