

Purchase Requisition Number: _____
Contract Number: _____
Vendor Number: _____

**MILWAUKEE BOARD OF SCHOOL DIRECTORS
PROFESSIONAL SERVICES CONTRACT
MODIFICATION AND EXTENSION AGREEMENT**

THIS MODIFICATION AND EXTENSION AGREEMENT (“Extension Agreement”) is made as of the ____ day of _____, 2019, by and between **THE MILWAUKEE BOARD OF SCHOOL DIRECTORS** (hereinafter “MPS”) and **CONSTELLATION NEWENERGY – GAS DIVISION, LLC** (as successor by merger with Constellation Energy Services Natural Gas, LLC (hereinafter “Supplier”).

WHEREAS, on May 4, 2016, MPS and Supplier entered into Professional Services Contract with a term of July 1, 2016 through June 30, 2019 (“Contract”); and

WHEREAS, the Contract consisted of (1) MPS’ Professional Services Contract (“PSC”), (2) the Supplier’s NAESB Base Contract for Sale and Purchase of Natural Gas (“NAESB Agreement”), and (3) Supplier’s Retail Special Provisions to the NAESB Base Contract for Sale and Purchase of Natural Gas (“Special Provisions”); and

WHEREAS, Section 2 of the Contract provides for up to three additional one-year extensions subject to funding and an annual performance review; and

WHEREAS, the parties wish to modify and extend the Contract for a single additional three-year term, from July 1, 2019 through June 30, 2022, under the same terms and conditions as set forth in the original Contract, except for those specifically modified by this Extension Agreement;

NOW, THEREFORE, the parties hereto agree as follows (all capitalized terms used but not defined herein shall have the meaning set forth in the Contract):

1. Section 2 of the Contract is deleted in its entirety and replaced with the following:

“Subject to Section 12 of the NAESB Agreement, the Term of this Contract shall be July 1, 2016 through June 30, 2019, with one possible three-year extension subject to funding and a performance review.

No work shall commence before a Supplier receives a fully executed Contract and has been given approval to proceed. Any work performed by the Supplier prior to obtaining a fully-executed contract with approval to proceed shall not be compensated pursuant to this contract. Any continuation of the contract beyond this term must be set forth in writing and signed by authorized signatories on behalf of the Party for which it is executed.”

2. Section 7 of the Contract is deleted in its entirety and replaced with the following:

“Supplier understands and agrees that financial responsibility for claims or damages to any person, or to Supplier’s employees and agents, shall rest with the Supplier. Supplier and its subSuppliers

shall effect and maintain any insurance coverage, including, but not limited to, Workers' Compensation, Employers' Liability, General Liability, Contractual Liability, Professional Liability, Automobile Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

The minimum limits of insurance required of the Supplier by MPS shall be:

Workers' Compensation	Statutory Limits
Employers' Liability	\$100,000 per occurrence
General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Professional Liability	\$1,000,000 per occurrence
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

The Milwaukee Board of School Directors shall be named as an additional insured under Supplier's and subSuppliers' general liability insurance and umbrella liability insurance. Evidence of all required insurances of Supplier shall be given to MPS. The certificate of insurance or policies of insurance evidencing all coverages shall include a statement that MPS shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any of Supplier's insurers providing the coverages required by MPS for the duration of this contract."

3. The parties hereby extend the Term of the Contract, as modified by this Extension Agreement, for one three-year term, from July 1, 2019 through June 30, 2022 ("Extension Term").
4. The NAESB Agreement to be in effect during the Extension Term shall be the NAESB Agreement attached hereto as Appendix A and incorporated into the Contract by reference ("NAESB Agreement in Extension Term").
5. The Special Provisions to be in effect during the Extension Term shall be the Special Provisions attached hereto as Appendix B and incorporated into the Contract by reference ("Special Provisions in Extension Term").
6. The Contract Quantity per year is 857,700 dekatherms during the Extension Term and is estimated not to exceed \$6,000,000 per year without Board approval and is based on historical usage and consideration of worst case scenarios. MPS shall be responsible for payment of actual volumes which may be higher or lower based on actual use by MPS and will be purchased or sold at prevailing market rates. All invoicing and payment obligations during the Extension Term shall be governed by the NAESB Agreement in Extension Term and Special Provisions in Extension Term. The total cost of transportation, daily balancing and basis during the Extension Term is NYMEX plus \$0.89 per dekatherm (Dth).

IN WITNESS WHEREOF, the parties hereto have executed this Extension Agreement on the date first written above.

Constellation NewEnergy – Gas Division, LLC, LLC

Milwaukee Board of School Directors

Dated: _____

Dated: _____

By: _____

By: _____
(Principal or Administrator Signature)

Address: 9400 Bunsen Parkway, Suite 100

Louisville, KY 40220

Phone Number: (502) 426-4500

Tax ID or SS 20-5838057

By: _____

Keith P. Posley, Ed.D.
Superintendent of Schools

By: _____

Mark Sain, President
Milwaukee Board of School Directors

APPENDIX A

Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: May 4, 2016 ("Effective Date")

The parties to this Base Contract are the following:

PARTY A Constellation Energy Services – Natural Gas, LLC ("CESNG" or "Seller")	<i>PARTY NAME</i>	PARTY B Milwaukee Board of School Directors on behalf of Milwaukee Public Schools ("Buyer")
9960 Corporate Campus Drive, Suite 2000 Louisville, KY 40223	<i>ADDRESS</i>	5225 W. Villet Street Milwaukee, WI 53208
	<i>BUSINESS WEBSITE</i>	
CESNG19189	<i>CONTRACT NUMBER</i>	
	<i>D-U-N-S® NUMBER</i>	
<input type="checkbox"/> US FEDERAL: <input type="checkbox"/> OTHER:	<i>TAX ID NUMBERS</i>	<input type="checkbox"/> US FEDERAL: <input type="checkbox"/> OTHER:
Wisconsin	<i>JURISDICTION OF ORGANIZATION</i>	
<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: _____	<i>COMPANY TYPE</i>	<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
	<i>GUARANTOR (IF APPLICABLE)</i>	
CONTACT INFORMATION		
9960 Corporate Campus Drive, Suite 2000, Louisville, KY 40223 <i>ATTN:</i> Contracts Department <i>TEL#:</i> (502) 426-4500 <i>FAX#:</i> (502) 214-6381	<input type="checkbox"/> COMMERCIAL <i>(if different from Contract/Legal notices)</i>	<i>ATTN:</i> _____ <i>TEL#:</i> _____ <i>FAX#:</i> _____ <i>EMAIL:</i> _____
9960 Corporate Campus Drive, Suite 2000, Louisville, KY 40223 <i>ATTN:</i> Contracts Department <i>TEL#:</i> (502) 426-4500 <i>FAX#:</i> (502) 214-6381	<input type="checkbox"/> SCHEDULING <i>(if different from Contract/Legal notices)</i>	<i>ATTN:</i> _____ <i>TEL#:</i> _____ <i>FAX#:</i> _____ <i>EMAIL:</i> _____
9960 Corporate Campus Drive, Suite 2000, Louisville, KY 40223 <i>ATTN:</i> Contracts Department <i>TEL#:</i> (502) 426-4500 <i>FAX#:</i> (502) 214-6381	<input type="checkbox"/> CONTRACT AND LEGAL NOTICES	1224 North 11 th Street, Milwaukee, WI 53233 <i>ATTN:</i> John Linn <i>TEL#:</i> (414)-283-4600 <i>FAX#:</i> (414) 283-4682 <i>EMAIL:</i> linnja@milwaukee.k12.wi.us
9960 Corporate Campus Drive, Suite 2000, Louisville, KY 40223 <i>ATTN:</i> Contracts Department <i>TEL#:</i> (502) 426-4500 <i>FAX#:</i> (502) 214-6381	<input type="checkbox"/> CREDIT <i>(if different from Contract/Legal notices)</i>	n/a <i>ATTN:</i> _____ <i>TEL#:</i> _____ <i>FAX#:</i> _____ <i>EMAIL:</i> _____
9960 Corporate Campus Drive, Suite 2000, Louisville, KY 40223 <i>ATTN:</i> Contracts Department <i>TEL#:</i> (502) 426-4500 <i>FAX#:</i> (502) 214-6381	<input type="checkbox"/> TRANSACTION CONFIRMATIONS <i>(if different from Contract/Legal notices)</i>	<i>ATTN:</i> _____ <i>TEL#:</i> _____ <i>FAX#:</i> _____ <i>EMAIL:</i> _____
ACCOUNTING INFORMATION		
<i>ATTN:</i> <u>see invoice</u> <i>TEL#:</i> _____ <i>FAX#:</i> _____ <i>EMAIL:</i> _____	<input type="checkbox"/> INVOICES <input type="checkbox"/> PAYMENTS <input type="checkbox"/> SETTLEMENTS	<i>ATTN:</i> _____ <i>TEL#:</i> _____ <i>FAX#:</i> _____ <i>EMAIL:</i> _____
<i>BANK:</i> <u>see invoice</u> <i>ABA:</i> _____ <i>ACCT:</i> _____ <i>OTHER DETAILS:</i> _____	<input type="checkbox"/> WIRE TRANSFER NUMBERS (IF APPLICABLE)	<i>BANK:</i> <u>N/A</u> <i>ABA:</i> _____ <i>ACCT:</i> _____ <i>OTHER DETAILS:</i> _____
<i>BANK:</i> <u>see invoice</u> <i>ABA:</i> _____ <i>ACCT:</i> _____ <i>OTHER DETAILS:</i> _____	<input type="checkbox"/> ACH NUMBERS (IF APPLICABLE)	<i>BANK:</i> <u>N/A</u> <i>ABA:</i> _____ <i>ACCT:</i> _____ <i>OTHER DETAILS:</i> _____
<i>ATTN:</i> <u>see invoice</u> <i>Address:</i> _____	<input type="checkbox"/> CHECKS (IF APPLICABLE)	<i>ATTN:</i> <u>N/A</u> <i>ADDRESS:</i> _____

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.

EXHIBIT A – FORM OF TRANSACTION CONFIRMATION*

**The actual Transaction Confirmation entered into between Buyer and CESNG may differ from this form to reflect state regulatory and other local requirements and terms applicable to the Facility. This Form of Transaction Confirmation is for illustrative purposes only and CESNG reserves the right to alter its form of Transaction Confirmation at any time.*

This Transaction Confirmation is delivered pursuant to and in accordance with a natural gas supply agreement effective _____, 20__ (the "Master Agreement"), by and between Constellation Energy Services – Natural Gas, LLC ("CESNG") and _____ ("Buyer"), and is subject to and made part of the terms and conditions of such Master Agreement. Capitalized terms used herein but not defined will have the meanings ascribed to them in the Master Agreement.

Trade Date:

Facility Name:

Delivery Period:

Deal Type:

Nature of Parties' Obligation:

Contract Quantity/Price:

Month/Yr	Contract Quantity (in MMBtu)	Contract Price

Delivery Point(s):

Utility:

This Transaction Confirmation documents a Transaction previously reached by authorized representatives of the Parties. It is binding and shall be deemed accepted as the definitive expression of the Transaction unless disputed by Customer in writing within two (2) business days of CESNG's execution date.

CONSTELLATION ENERGY SERVICES – NATURAL GAS, LLC BUYER

By: _____
 Name: _____
 Title: _____
 Date: _____

By: SAMPLE
 Name: NOT FOR EXECUTION
 Title: _____
 Date: _____

TRANSACTION CONFIRMATION

This Transaction Confirmation dated _____ is made a part of, and pursuant to terms of, the Base Contract for Sale and Purchase of Gas dated May 4, 2016 between Buyer and Seller identified herein (the "NAESB").

SELLER:

Constellation NewEnergy – Gas Division, LLC
(as successor by merger to Constellation Energy Services Natural Gas, LLC)

1716 Lawrence Drive
PO Box6025
De Pere, WI 54115-6025
Attn: Account Management
E-mail: amwi@constellation.com
Phone: 888-367-4403 (Option 2)
Fax: 443-213-6116

BUYER:

Milwaukee Board of School Directors
on behalf of Milwaukee Public Schools

1124 N. 11th St.
Milwaukee WI 53233

Attn: Yuriy Indman, PE, CEM
E-mail: indmany@milwaukee.k12.wi.us
Phone: 414-416-5112
Agent / Assoc: Julie Cowling

ACCOUNTS:

Check here if Attachment A is attached and made a part of this Transaction Confirmation.

Account Executive:

Delivery Period: July 1, 2019 to June 30, 2022; provided however, the Delivery Period shall begin on the later of, (i) the day after the first meter read during the period noted above, or (ii) upon acceptance by the utility of Seller as Buyer's gas supplier.

Contract Quantity (in dekatherms): see table

Month	Quantity	Month	Quantity	Month	Quantity	Month	Quantity
Jul	5600	Oct	46,000	Jan	165,000	Apr	66,700
Aug	5,100	Nov	95,800	Feb	149,000	May	28,000
Sep	8,500	Dec	162,000	Mar	117,000	Jun	9,000

Price: NYMEX Last Day Settle ("NYM LDS") plus Market Basis per dekatherm. Either or both of the price components may be fixed for specific quantities and delivery months with mutual agreement of the Parties. The Basis is fixed at \$0.89 per dekatherm.

Performance Obligation: Up to 7,300 dkthm/day shall be Firm. The remainder shall be Interruptible

Delivery Point: Buyer's Transporter Citygate

Buyer's Transporter: WE Energies

- SPECIAL PROVISIONS -

Balancing Services.

1. A Balancing Service charge of \$0.03 per dekatherm applies in addition to the Price.

Buyer and Seller shall use commercially reasonable efforts to provide each other with sufficient notice to allow timely and accurate nominations in accordance with the nomination requirements of that Transporter, as they may change from time to time due to Constraint Day requirements or otherwise. Buyer accepts the following responsibilities: Buyer hereby appoints Seller as its agent for the purposes of balancing, including the receipt of current and historic Usage, storage, billing and transportation data from Transporter. Buyer agrees to assist Seller in the timely collection of data directly and through Transporter, notify Seller of usage expectations and any material changes to those usage expectations, and comply with any Daily Limitations concerning use. If Usage data is unavailable electronically, Buyer shall obtain usage data manually and deliver that information weekly via facsimile or electronic mail, or as requested by Seller.

2. Seller agrees to monitor and review all information provided to the Seller by Buyer and Transporter regarding Buyer's gas Use. Based on such information, Seller shall use commercially reasonable effort to keep Buyer within the balancing parameters established by Transporter. Seller shall pass through to Buyer and Buyer shall pay for any Imbalance Charges and/or Cashout resulting from Buyer's failure to (i) fulfill its obligations set forth in paragraph 1 above, (ii) maintain telemetry, and/or (iii) meet Daily Limitations with respect to Use.

3. Mid-month variations to delivered quantity. In the event that the quantity of natural gas that can be delivered to Buyer (without the Transporter assessing Imbalance Charges or Cashout) is less than the quantity agreed to be purchased for the relevant period, Buyer shall remain liable for the entire quantity it agreed to purchase, however, Seller will provide a credit at prevailing market rates for that portion of the purchased quantity that is not delivered. In the event that Buyer's expected Use will exceed the quantity of gas purchased by Buyer and/or available to Buyer without incurring Imbalance Charges for the relevant period, Seller will use commercially reasonable efforts to provide Incremental supply, plus Fuel (if applicable) at prevailing market rates. Credits for reductions in delivered quantity and/or charges for Incremental supply shall appear as separate line items on Seller's invoice to Buyer, including applicable price and quantity.

TRANSACTION CONFIRMATION

4. **Telemetry Obligations.** Buyer acknowledges and agrees that it shall be responsible for installing and maintaining a meter telephone line. Buyer shall also be responsible for any charges imposed by a contractor for repairing the meter telephone line. As a convenience to Buyer, Seller may arrange for telemetry service or repairs to be provided and Buyer agrees it shall be responsible for any costs associated with such service and repairs.

"Constraint Day" means any period of time during which a Transporter issues balancing orders, operational now orders, operational matching orders (or the equivalent), or winter splits or deems the day a Critical Gas Day (or the equivalent) and thereby restricts deliveries by Seller or use by Buyer, requires a specific delivery by Seller or use by Buyer, or otherwise requires an affirmative action by either Party due to adverse operational conditions experienced by the Transporter.

"Daily Limitations" means Transporter enforced restrictions or mandates concerning quantities of gas delivered and/or used, including those imposed due to Constraint Day conditions and/or under ordinary operating conditions.

5. **Invoices.** Invoices shall be prepared based upon quantities used.

6. **Consolidated Billing:** Seller shall include the Transporter distribution fees on the monthly invoice. Past due and other charges due Transporter, that apply to service prior to the effective date of the Confirmation will not be Included in Seller's invoice to Buyer. Seller may discontinue this service at any time with notice to Buyer.

~~7. Term: This Transaction Confirmation is effective for the Delivery Period as it may be extended or renewed as described below.~~

~~8. Extending Delivery Period: Should the Parties agree to a fixed price for any pricing component for a delivery month (or billing cycle, as applicable) that occurs after the current Delivery Period, then the Delivery Period of this Transaction Confirmation shall be extended to the latest occurring delivery month (or billing cycle, as applicable) with a fixed price or fixed price component.~~

~~9. Renewal: The Parties agree that this Transaction Confirmation shall automatically renew for successive twelve (12) month periods (each constituting a "Renewal Delivery Period") unless written notice pursuant to Section 9 of the Agreement terminating the Transaction Confirmation at the end of a Delivery Period is given by either Party thirty (30) days prior to the end of the Delivery Period. The Contract Quantity during any Renewal Delivery Period shall be the Contract Quantity stated in the table above for the respective month. The Price for the Contract Quantity during any Renewal Delivery Period shall be NYMEX-LDS plus Market Basis.~~

All other terms and conditions of this Transaction Confirmation shall remain unchanged.

Special Condition: This Confirmation is not effective and binding upon the parties hereto unless signed concurrently with the Professional Services Contract Modification and Extension Agreement dated effective _____:

Seller: Constellation NewEnergy – Gas Division, LLC

Buyer: Milwaukee Board of Schools Directors on behalf of Milwaukee Public Schools

Signature:

Signature:

By:

By:

Title:

Title:

Date:

Date:

Signature:

By:

Title:

Date:

APPENDIX B

RETAIL SPECIAL PROVISIONS TO THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS (2006) BETWEEN CONSTELLATION ENERGY SERVICES – NATURAL GAS, LLC (“CESNG” or “Seller”) AND MILWAUKEE BOARD OF SCHOOL DIRECTORS ON BEHALF OF MILWAUKEE PUBLIC SCHOOLS (“Buyer”) DATED MAY 4, 2016

The following special provisions to the Base Contract and General Terms and Conditions shall supplement and form part of the Base Contract and General Terms and Conditions between the parties. In the event of any conflict or inconsistency between such special provisions and the Base Contract or General Terms and Conditions, the special provisions shall govern.

SECTION 1. PURPOSE AND PROCEDURES

Section 1.1 is deleted in its entirety and replaced with the following:

1.1 These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas (each a “Transaction”) for one or more of Buyer’s accounts or facilities (each a “Facility”) on a Firm, Secondary Firm or Interruptible basis. The terms of any Transaction between CESNG and Customer shall be as set forth on the applicable TC, but CESNG will procure gas from its suppliers on terms CESNG deems appropriate. The parties may further agree to implement certain strategies or related services, the specifics of which will be set forth in a rider executed by the parties (“Rider”). The entire agreement between the parties shall be the Contract as defined in Section 2.9.

1.2 Section 1.2 “Oral Transaction Procedure” is amended by adding the phrase “or other electronic means of communication” immediately after the phrase “EDI transmission” in the second sentence.

1.3 The last sentence of Section 1.3 is deleted in its entirety and replaced with the following:

“In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) a Rider, (iii) 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, (iv) the Base Contract, and (v) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.”

The following shall be added to Section 1:

1.5 **Price Locks.** Unless otherwise set forth in a Transaction Confirmation or a Rider, Buyer can request to lock in the commodity price for any month(s) at any time during the Delivery Period, prior to 12:00 p.m. EST/EDT on the final day of NYMEX last day settlement for each applicable delivery month. Commodity purchase/sale prices exclude pipeline and utility distribution charges. Buyer also has the right to lock basis at a fixed price and at predetermined volumes. Basis includes interstate and intrastate pipeline transportation but does not include the commodity cost or the utility distribution charges.

SECTION 2. DEFINITIONS

Section 2.9 is deleted in its entirety and replaced with the following:

2.9 “**Contract**” shall mean the legally-binding relationship established by (i) the Milwaukee Board of School Directors Professional Services Contract, (ii) the Base Contract, (iii) any and all binding Transaction Confirmations, (iv) any and all Riders, and (v) 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.

2.10 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 Section 2.12 “**Cover Standard**” is amended by deleting the words “(or an alternate fuel if elected by Buyer and replacement Gas is not available)” in the third line of Section 2.12 (“**Cover Standard**”).

Section 2.16 is deleted in its entirety and replaced with the following:

2.16 “**Delivery Point**” shall mean city gate interconnection between the Buyer’s utility and the upstream Transporter or such other delivery point(s) as are agreed in a Transaction. However, to the extent that Buyer owned transportation capacity is used to deliver Gas to the Buyer, the Delivery Point shall be the receipt point of such capacity.

2.21 Section 2.21 “**Guarantor**” shall be deleted in its entirety and replaced with the following: “Guarantor shall mean any entity or individual that has provided a guaranty or surety of the obligations of a party hereunder.”

2.32 Section 2.32 “**Transaction Confirmation**” shall be amended by adding the following at the end of the section: “The term “Transaction Confirmation” shall have the same meaning as “TC”.”

2.35 Section 2.35 “**Transporter**” is amended by adding the word “, storage,” after the word “gathering” on the first line of Section 2.35 and adding the words “or storing” after the word “transporting” on the second line of Section 2.35.

The following sections shall be added to Section 2:

2.36 “**Costs**” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such party as a result of the Event of Default except for such amounts already included in the Net Settlement Amount.

2.37 “**Market Price**” is a price comprised of (i) the spot commodity cost of Gas as determined by CESNG in its reasonable discretion, plus (ii) all related interstate and intrastate pipeline charges required to deliver Gas to the Delivery Point, plus (iii) a reasonable market based margin. Market Price does not include the cost of utility imposed charges, including but not limited to utility or pipeline balancing charges unless otherwise agreed upon.

2.38 “**Secondary Firm**” means deliveries and receipts of Gas under this Contract will be on a best-efforts basis up to Buyer’s maximum daily quantity as set forth in a Transaction Confirmation, if any. Seller may interrupt performance without liability to the extent that one or more of the following conditions are present: (i) Force Majeure, (ii) curtailment by Buyer’s local distribution company, (iii) curtailment of supply by a Gas supplier, (iv) curtailment of storage by a storage provider, (v) curtailment of transportation by a Transporter, including, but not limited to, transportation between secondary firm points, (vi) recall of transportation capacity release by its releaser, (vii) curtailment of Gas production behind a specific meter. If Seller interrupts for any other reason, Buyer’s exclusive remedy shall be that Buyer may recover damages as provided in Section 3.2 of the Base Contract.

SECTION 3. PERFORMANCE OBLIGATION

3.1 Section 3.1 shall be amended by inserting “, Secondary Firm,” before “Firm” in the second sentence.

3.2 Section 3.2 shall be amended by inserting “ or Secondary Firm” after “Firm” in the first sentence.

SECTION 6. TAXES

Section 6 is deleted in its entirety and replaced with the following:

6. Buyer shall pay all federal, state, municipal and local taxes, duties, fees, levies, premiums or other charges imposed by any governmental authority, directly or indirectly, on or with respect to the Gas and related products and services provided under the Contract, including without limitation any production, severance or ad valorem taxes, and including any taxes enacted after the Effective Date (collectively, "Taxes"). The term "Taxes" shall include any amounts imposed on Buyer directly or on CESNG in its function as Buyer's supplier, and that are associated with the supply of Gas to Buyer (in which case the Buyer shall be responsible to reimburse CESNG for such amounts). If Buyer is exempt from any Taxes, Buyer shall provide CESNG with any state and/or local exemption certificate prior to the issue date of Buyer's first invoice. All Taxes invoiced to Buyer under this Contract will be included on the invoice or in the applicable fixed price as allowed by law.

SECTION 7. BILLING, PAYMENT AND AUDIT

Section 7.1 is deleted in its entirety and replaced with the following:

7.1 Buyer will be billed for natural gas usage and related products and services supplied under the Contract in one of the following ways based on availability and eligibility of each Facility, which may change from time to time: (i) Dual Billing: Buyer will receive two invoices, one from CESNG for the natural gas supply and one from the utility for the amounts payable by Buyer for services provided by the utility ("Delivery Charges"); (ii) CESNG Consolidated Billing: Buyer will receive one invoice from CESNG that includes both the natural gas supply charges and the Delivery Charges. In the case of CESNG Consolidated Billing, Buyer agrees that (i) Buyer remains exclusively liable to the utility for all Delivery Charges, (ii) CESNG has no obligation to review Delivery Charges for accuracy, (iii) should Buyer dispute Delivery Charges, that is a matter for Buyer and the utility to resolve without any involvement or obligation on the part of CESNG, and (iv) CESNG may withhold any payments due to the utility if Buyer fails to pay CESNG invoices in accordance with this Contract. If the actual quantity of Gas delivered is not known by the invoice date, invoices will be prepared based on estimated meter data or other estimated information. The invoiced quantity will then be adjusted to the actual quantity on the following Month's invoice or as soon thereafter as actual delivery information is available. Section 7.2 is deleted in its entirety and replaced with the following:

7.2 All amounts set forth in an invoice are payable to the party issuing the invoice and will include, in addition to the natural gas supply charges, Delivery Charges, and Taxes, all other amounts related to the purchase and delivery of natural gas. CESNG's invoices will be sent to Buyer in accordance with CESNG's normal billing cycle, as adjusted from time to time. CESNG's invoices are due and payable on the Payment Date set forth on the cover page of the Base Contract, or such other date as set forth in a Rider, without offset or reduction of any kind, to the address set forth on the invoice; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date.

7.4 Section 7.4 shall be deleted in its entirety.

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1 The last sentence of Section 8.1 is deleted in its entirety and replaced with the following:

"Buyer shall have responsibility for and assume any liability with respect to said Gas at and after its delivery to Buyer at the Delivery Point(s)."

SECTION 10. FINANCIAL RESPONSIBILITY

Section 10.1 will be deleted in its entirety and replaced with the following:

10.1 If CESNG has reasonable grounds: (i) to believe that Buyer's creditworthiness has become unsatisfactory; or (ii) for insecurity with respect to Buyer's performance under the Agreement, CESNG may demand, in writing, adequate assurance of future performance from Buyer in a form, in an amount, from an issuer, and for a term, all as reasonably satisfactory to CESNG ("Adequate Assurance of Performance"). To satisfy a demand, Buyer shall provide Adequate Assurance of Performance to CESNG within three (3) Business Days of the date of the written demand. If at any time CESNG requires Buyer to prepay for gas, then (i) CESNG shall be under no obligation to deliver gas if Buyer fails to pay any prepayment by its due date, and (ii) in the event the aggregate cost of any quantities of gas required by Buyer in a month in excess of the scheduled nominated quantities exceeds \$15,000.00, Buyer shall pay CESNG the aggregate cost of such quantities within three (3) Business Days of CESNG's request for payment.

The following sections shall be amended as follows:

10.2 Section 10.2 shall be amended by deleting the word "or" before "(ix)" in such Section; and 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 five (5) Business Days after receipt of written notice thereof; (xii) or 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 of the obligations of such party under the Contract; then ..."

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 has been given notice thereof in accordance with Section 10.3."

10.3.1 The following sentence shall be added at the end of Section 10.3.1: "In calculating its early termination damages hereunder, the Non-Defaulting Party may include its Costs."

SECTION 11. FORCE MAJEURE

11.6 Section 11.6 shall be deleted in its entirety.

SECTION 13. LIMITATIONS

Section 13 shall be deleted in its entirety and replaced with the following:

THIS SECTION DOES NOT WAIVE ANY LIMITATION ON INDEMNITY OR DAMAGES IMPOSED ON BUYER OR SELLER BY WISCONSIN STATE STATUTES. NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT TO THE CONTRARY, THE ENTIRE LIABILITY OF EACH PARTY FOR ANY AND ALL CLAIMS WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUBJECT IN ALL CASES TO AN AFFIRMATIVE OBLIGATION ON THE PART OF EACH PARTY TO MITIGATE ITS DAMAGES, AND NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST OPPORTUNITIES OR LOST PROFITS NOT CONTEMPLATED BY SECTION 10 ABOVE. The rights, powers, remedies and privileges provided in this Contract are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law. Buyer acknowledges and agrees that the utility is exclusively responsible for the gas distribution and delivery system, that CESNG has no independent control over their systems and will have no liability for any of their acts or omissions.

SECTION 15. MISCELLANEOUS

The following sections shall be amended as follows:

Section 15.4 shall be deleted in its entirety and replaced with the following:

15.4 Supersedes Prior Agreements. The Contract embodies the parties' entire agreement and understanding and may not be contradicted by any prior or contemporaneous oral or written agreement. Notwithstanding any provision to the contrary in a prior agreement, the parties agree that this Base Contract shall supersede and replace all prior written and oral agreements or arrangements between the parties with respect to the purchase and sale of Gas and related services and that all transactions under any such prior agreement(s) are, as of the Effective Date, now governed solely by the terms of this Base Contract and shall be Transactions hereunder and a part of the single integrated agreement between the parties. This Contract may be amended only by a writing executed by both parties.

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) it is duly organized, validly operating and in good standing under the laws of the jurisdiction of its formation; (ii) execution, delivery and performance of the Contract are duly authorized and do not violate any governing documents or any of its contracts or any applicable Law; (iii) it has the knowledge and experience to evaluate the merits and risks associated with the Contract; (iv) it is an "eligible contract participant" as that term is defined in the Commodity Exchange Act, as amended; (v) this Contract, each transaction hereunder, and each other document executed and delivered in accordance with this Contract constitutes a legally valid and binding obligation enforceable against it in accordance with the terms of said document, subject to any equitable defenses; (vi) it, or its credit support provider, if applicable, is not bankrupt and there are no proceedings pending or being contemplated by it, its credit support provider, if any, or, to its knowledge, threatened against it which would result in it being or becoming bankrupt and there is not pending or, to its knowledge, threatened against it, or its credit support provider, if any, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Contract and each transaction hereunder; and (vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Contract and each transaction hereunder. 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.

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 to any terms and conditions of the Contract, including but not limited to the rate(s), charges, or classifications set forth therein. By this provision, each Party expressly waives its right to seek or support, either directly or indirectly, and by whatever means: (i) an order from the U.S. Federal Energy Regulatory Commission ("FERC") seeking to change any of the terms and conditions of the Contract agreed to by the Parties; and (ii) any refund from the other Party with respect to the Contract. Each Party further agrees that this waiver and covenant shall be binding upon it notwithstanding any regulatory or market changes that may occur after the date of the Contract or any transaction entered into between the Parties. Absent the agreement of both Parties to the proposed change, the standard of review for changes to any terms and conditions of the Contract proposed by (a) a Party, to the extent that the waiver set forth in this Section 15.8 is unenforceable or ineffective as to such Party due to a final determination being made under applicable law that precludes the Party from waiving its rights to seek or support changes from the FERC to the terms and conditions of this Contract, (b) a non-party, or (c) the 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) (the "Mobile-Sierra Doctrine"), as the Mobile-Sierra Doctrine has been clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 128 S.Ct. 2733 (2008).

Each party represents to the other party (with such representations deemed to be repeated by each party on each date on which a relevant transaction is entered into) that, with respect to any commodity option transaction, it is: (1) a producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the option transaction; (2) offering or has been offered or is entering into the transaction solely for purposes related to its business as such; and (3) intends to make or take, as applicable, physical delivery of the commodity if the option is exercised.

Further, Buyer warrants, represents and covenants that: (a) the data given and representations made concerning its Facility(ies) are true and correct; (b) it is entering into this Contract to purchase its Gas requirements only and not for speculative or resale purposes, and that the natural gas purchased under this Contract will be consumed at the Facility(ies); (c) if any transaction hereunder gives Buyer the right to adjust the Contract Quantity, or to require CESNG to provide some other quantity of Gas, Buyer's election to exercise such right is based predominantly on supply and demand factors related to Buyer's business; (d) it is the party of record of the Facility(ies), or if it is not the party of record, it has the authority to enter into and bind its principal to the Contract; and (e) if Buyer is a Governmental Entity, it will not claim immunity on the grounds of sovereignty or similar grounds from enforcement of the Contract. For purposes of this Section, defenses identified in Wis. Stats. §§ 893.80 and 895.46 are not considered similar defenses to sovereign immunity. "Governmental Entity" means a municipality, county, governmental board, governmental department, commission, agency, bureau, administrative body, joint action agency, court or other similar political subdivision (including a public school district or special purpose district or authority), or public entity or instrumentality of the United States or one or more states."

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 sub-section (v).

15.11 Section 15.11 shall be deleted in its entirety and replaced with the following:

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 jurisdiction identified on the cover page of the Base Contract (without reference to choice of law doctrine). **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY**

IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS CONTRACT.

The following sections shall be added to Section 15:

15.13 Information and Authorization. Buyer shall designate CESNG to the utility and any other applicable Transporter(s) as an authorized recipient of Buyer's current and historical Gas billing and usage data. Buyer authorizes CESNG to take such actions it deems necessary to enroll the Buyer's accounts with the Utility as accounts to be served by CESNG solely for fulfilling CESNG's obligations under this Contract, including executing on Buyer's behalf any documents necessary to effectuate any account enrollment or election, undertaking the management of any storage or transportation capacity allocated to Buyer by the utility or other Transporter(s), disposing of storage balances, adding or deleting accounts as necessary, receiving usage nominations from the utility relating to Buyer's Gas requirements and other similar documents. Buyer shall take any actions and execute any documents as CESNG shall reasonably request in this regard.

15.14 Change in Law. CESNG may pass through or allocate, as the case may be, to Buyer any increase or decrease in CESNG's costs related to the natural gas and related products and services sold to Buyer that results from the implementation of new, or changes (including changes to transportation rates) to existing, Laws, or other requirements or changes in administration or interpretation of Laws or other requirements. "Law" means any law, rule, regulation, ordinance, statute, judicial decision, administrative order, Transporter business practices or protocol, Transporter tariff, or rule of any commission or agency with jurisdiction in the state in which the Facilities are located. Such adjusted amounts will be included in subsequent invoices to Buyer. **15.15 Transporter Restrictions.** If either Party receives an operational flow order or any other usage or operating instructions, restrictions or similar notice (each an "OFO") from a Transporter requiring action to be taken in connection with the flow and/or consumption of gas covered by this Agreement, such party will use commercially reasonable efforts to notify the other party of such event in a timely

manner. Such notice may be given by electronic means. Each Party will take all commercially reasonable actions required by the OFO within the time prescribed. If OFO penalties, charges, fees, costs or expenses result from the actions or inactions of one Party, then such Party shall be solely responsible for any such penalties, charges, fees, costs or expenses. Both parties agree that OFOs may require one or both parties to buy or sell Gas quantities in the then-current market conditions, which may be appreciably higher or lower than the original pricing. If CEGS is responsible for nominations and balancing on a Transporter imposing an OFO or similar restriction, CEGS may (but is not required to) increase or decrease nominations, as appropriate, to avoid penalties.

IN WITNESS WHEREOF, the parties hereto have executed these Special Provisions as of the Effective Date.

CONSTELLATION ENERGY SERVICES – NATURAL GAS, LLC

ak
By: David T Donat
Name: David T Donat

MILWAUKEE BOARD OF SCHOOL DIRECTORS ON BEHALF OF
MILWAUKEE PUBLIC SCHOOLS

By: [Signature]
Name: Darienne B. Driver, Ed D

Title: Superintendent of Schools

By: [Signature]

Name: Mark A. Sain, President

Title: Milwaukee Board of School Directors