APPROVAL OF CONTRACT FOR PURCHASE AND SALE OF NATURAL GAS

RESOLUTION NUMBER 2014-52

WHEREAS, the College currently procures natural gas through a myriad of utilities, remarketers and other suppliers on a decentralized basis with varying terms and conditions, and

WHEREAS, consolidating and aggregating the purchasing of natural gas procured by the College on a system wide basis is projected to generate cost savings and efficiencies; and

WHEREAS, the College has engaged Procurex, Inc., to conduct a reverse auction to procure natural gas for the College and to assist the College with utility and supplier contract negotiation and transition services; and

WHEREAS, the College’s natural gas volumes have been pooled with several private independent institutions of higher education operating in Indiana to achieve additional economies of scale and improved pricing, and

WHEREAS, it is anticipated that the reverse auction to procure natural gas for the College will be conducted in July or August 2014, as a floating rate full requirements auction commencing October 1, 2014 for a period of twelve (12) to eighteen (18) months;

NOW THEREFORE BE IT RESOLVED, the Treasurer is hereby authorized to solicit proposals for the College’s purchase of natural gas through a reverse auction process, and

BE IT FURTHER RESOLVED, the Treasurer is hereby authorized to execute the Base Contract for Sale and Purchase of Natural Gas, Transaction Confirmations and any Special Provisions in substantially similar form as attached in Exhibit A, and

BE IT FURTHER RESOLVED, the Treasurer is hereby authorized to execute any and all further documents, agreements or certificates to effectuate the purchase and sale of natural gas for the College.

State Trustees
Ivy Tech Community College of Indiana

Steve Schreckengast, Chairman

Kaye Whitehead, Secretary

Dated: June 12, 2014
General Terms and Conditions
Base Contract for Sale and Purchase of Natural Gas

SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.7.

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

Oral Transaction Procedure:

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

Written Transaction Procedure:

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

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

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

SECTION 2. DEFINITIONS

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

2.1. "Alternate Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation. In the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.

2.2. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.

2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.

2.5. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.

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

2.7. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation.

2.8. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.

2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.

2.10. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcusable failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.

2.11. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.

2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.

2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.

2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.

2.15. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.

2.16. "EF$" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EF$ shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.

2.17. "Firm" shall mean that either party may Interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure Intermittions, the party Invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. PERFORMANCE OBLIGATION

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

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

Cover Standard:

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

Spot Price Standard:

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

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

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

SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

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

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.
4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer’s receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller’s delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

SECTION 5. QUALITY AND MEASUREMENT

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

SECTION 6. TAXES

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

Buyer Pays At and After Delivery Point:

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

Seller Pays Before and At Delivery Point:

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

SECTION 7. BILLING, PAYMENT, AND AUDIT

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

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

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

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the Invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

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

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

7.7. Unless the parties have elected to include a Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall not all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.
SECTION 8. TITLE, WARRANTY, AND INDEMNITY

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

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 14.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

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

8.4. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 6.

SECTION 9. NOTICES

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

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

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

SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

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

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.
The parties have selected either “Early Termination Damages Apply” or “Early Termination Damages Do Not Apply” as indicated on the Base Contract.

Early Termination Damages Apply:

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

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

Early Termination Damages Do Not Apply:

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

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

Other Agreement Setoffs Apply:

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

Other Agreement Setoffs Do Not Apply:

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

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

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount shall accrue from the date due until the
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, interruptions or wars; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

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

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

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

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

SECTION 12. TERM

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

SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HERUNDER 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 HERIN 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 HERIN 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 HERIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR
CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

SECTION 14. MISCELLANEOUS

14.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (1) 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 (2) transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

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

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

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

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

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

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

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

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

14.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party’s assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, or (iv) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

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

14.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties.
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated ___________________. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.

<table>
<thead>
<tr>
<th>SELLER:</th>
<th>BUYER:</th>
</tr>
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<tbody>
<tr>
<td>Att:</td>
<td>Att:</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone:</td>
</tr>
<tr>
<td>Fax:</td>
<td>Fax:</td>
</tr>
<tr>
<td>Base Contract No.</td>
<td>Base Contract No.</td>
</tr>
<tr>
<td>Transporter:</td>
<td>Transporter:</td>
</tr>
<tr>
<td>Transporter Contract Number:</td>
<td>Transporter Contract Number:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contract Price: $_____/MMBtu or ____</th>
</tr>
</thead>
</table>

| Delivery Period: Begin: ______ | End: ______ |
|-----------------------------|

<table>
<thead>
<tr>
<th>Performance Obligation and Contract Quantity: (Select One)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firm (Fixed Quantity):</td>
</tr>
<tr>
<td>______ MMBtus/day</td>
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<td>□ EFP</td>
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<table>
<thead>
<tr>
<th>Delivery Point(s): ____</th>
</tr>
</thead>
</table>

(If a pooling point is used, list a specific geographic and pipeline location):

<table>
<thead>
<tr>
<th>Special Conditions:</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Seller: ____</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: ____</td>
</tr>
<tr>
<td>Title: ____</td>
</tr>
<tr>
<td>Date: ____</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Buyer: ____</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: ____</td>
</tr>
<tr>
<td>Title: ____</td>
</tr>
<tr>
<td>Date: ____</td>
</tr>
</tbody>
</table>
SPECIAL PROVISIONS TO
BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS

This Special Provisions ("Special Provisions") to the Base Contract for Sale and Purchase of Natural Gas ("Base Contract"), dated ____________, by and between __________________ and __________________ is entered into and made effective as of ________________, and shall supplement and form part of the Base Contract. Except as otherwise set forth in this Special Provisions, all of the terms and conditions of the Base Contract shall remain in full force and effect. If there is a conflict between the terms and conditions set forth in this Special Provisions and the terms and conditions set forth in the Base Contract, the terms and conditions set forth in this Special Provisions shall prevail.

The defined terms used in this Special Provisions shall have the same meaning as set forth in the Base Contract.

1. Replace the definition in Section 2.14 with the following: "Delivery Point(s)" shall mean such point(s) to which Gas is delivered as are agreed to by the parties in a transaction."

2. In the second sentence of Section 3.1 delete "or interruptible" and ", as agreed to by the parties in a transaction".

3. Replace the third sentence of Section 4.2 with the following sentence: "Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall notify the other party within one Business Day."

4. Section 7.1 is amended by inserting the following language in the first sentence immediately after "Seller shall invoice Buyer" and before "or for Gas delivered and received:"

   "by the fifteenth (15th) day of each calendar month"

5. In the first sentence of Section 7.2 replace "10" with "15".

6. Section 7.7 is amended (a) by striking the following language from the end of the first sentence immediately following "Credit Support Obligation"; "or pursuant to Section 7.3" and (b) adding the following language from the end of the first sentence immediately following "under this Section": "provided, further, that notwithstanding the foregoing clause, the party due payment under Section 7.3 may insist upon payment within 5 Business Days as provided in Section 7.3."

7. In the first sentence of Section 8.3 add "the acts or omissions of Seller and" after "arising from or out of".

8. Section 8.3 is amended such that "(including death)" shall be inserted in both the first and second sentences immediately following the term "personal injury."

9. In the second sentence of Section 8.3 add "the acts or omissions of Buyer and" after 'arising from or out of ".

10. Delete the last sentence of Section 9.3.

11. Delete "or a performance bond or guaranty" from the last sentence of Section 10.1 and add "or" before "a security interest".

12. In item (viii) of Section 10.2 (a) replace "second" with "fifth", and (b) in item (viii) insert "subsequent to invoice" immediately after "Notice".

13. Section 10.2 is further amended as follows:

   The following provision is added immediately after "such payment is due:" in the ninth line of Section 10.2:
(ix) 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 ("Y") fails to assume all the obligations of the Defaulting Party under this Contract to which it or its predecessor was a party by operation of law ("Non-Affected Party") or that the Policies (as defined below) in effect at the time, of the Non-Affected Party, would lead such Non-Affected Party, solely as a result of a change in the nature, character, identity or condition of the Defaulting Party from its state (as a party to the Contract) prior to such consolidation, amalgamation, merger or transfer, to decline to make an extension of credit to, or enter into a Transaction with Y. For purposes of this definition, "Policies" means a party’s (1) internal credit limits applicable to individual entities, (2) other limits on doing business with entities domiciled in certain jurisdictions or engaging in certain activities, or (3) internal restrictions on doing business with entities with whom such party has had prior adverse business relations;"

14. Add "unless otherwise terminated hereunder" to the end of the first sentence of Section 14.1.

15. Section 14.1 is amended as follows:

   The end of the second sentence beginning with (ii) shall be stricken in its entirety and replaced with the following: "(ii) transfer its interest to any parent or affiliate, who’s creditworthiness is comparable to or higher than that of such party, by assignment, merger or otherwise without the prior approval of the other party."

16. The following is added as a new Section 14.13:

   14.13 If a Market Disruption Event has occurred during a Trading Day, the Floating Price for the affected Trading Day shall be determined pursuant to the index agreed to in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within five (5) Business Days of the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the parties have not so agreed on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined with each party obtaining in good faith a quote from a leading dealer in the relevant market and averaging the two quotes. "Floating Price" means the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index, 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 in the relevant options contract or commodity 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) a material change in the formula for the method of determining the Floating Price. "Trading Day" means a day in respect of which the relevant price source published the relevant price.

   For purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected within thirty (30) calendar days of its original publication or announcement, and the correction is published or announced by the person responsible for that publication or announcement, either party may notify the other party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a party gives notice that an amount is so payable, the party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other party that amount.

IN WITNESS WHEREOF, the Parties hereto have executed this Special Provisions as of the day and year first above written.

________________________________________  ______________________________________

By: _______________________________        By: _______________________________

Name: _______________________________  Name: _______________________________
Frequently Asked Questions (FAQs)
Related to
Government Acquisition Provisions Addendum

NAESB prepared these FAQs to help counterparties understand the need to incorporate provisions relating to certain Federal statutes and regulations into the NAESB Base Contract under which it buys and sells commodities. Each counterparty will conduct its own legal review of these provisions and the underlying statutes and regulations. NAESB anticipates that these provisions will soon be widely adopted in the industry as companies with government sales obligations analyze and better understand the need to incorporate these provisions in their sub-contracts.

Question: What is the Government Acquisition Provisions Addendum (GAPA)?

Answer: It is a model addendum to the NAESB Base Contract designed to comply with applicable law and obligations under contracts and/or leases with the Federal Government. A counterparty should incorporate the provisions of certain federal statutes and/or regulations in its purchase subcontracts for any goods and/or services necessary for the performance of and/or production for such government contracts.

Question: How might the natural gas, natural gas liquids, or power I supply to a counterparty be necessary for the performance of or production for one or more government contracts?

Answer: A counterparty may be a supplier to certain customers who are parties to contracts with the Federal Government. Because the gas supplied by counterparty to these customers is used to support the customers' obligations under its Federal contracts (for example, the gas supplied may be used as fuel at facilities that produce products sold to the Federal Government), these customers are required to obtain counterparty's agreement to the GAPA. Similarly, because a counterparty may purchase natural gas, natural gas liquids, or power from you that is ultimately used to supply counterparties who are party to Federal Government contracts, a counterparty should seek incorporate these provisions into its contracts with you. When you conduct a legal review of these provisions, you will likely see that the definition of "subcontract" within the Federal regulations is quite broad and therefore the need to incorporate these provisions into subcontracts is far reaching.

While it is true that a counterparty who sells to another counterparty cannot know whether the product it sells to such counterparty will ultimately be resold to a counterparty who is party to a Federal contract, the applicable statutes and regulations do not exclude from them application industries where the products are fungible and purchased and sold with the kind of fluidity that exists in the natural gas and power trading businesses. As a result, counterparty should take the view that the prudent approach is to adopt these provisions in its supply contracts that may serve as the source for commodities eventually used in Federal contracts.

Question: Why does the Government require that these statutes and/or regulations be included?

Answer: Federal law requires that the statutes and regulations be specifically included. Some are designed to promote socioeconomic programs mandated by Congress (e.g. Equal Opportunity, Affirmative Action for Workers with Disabilities) while others are intended to maintain industrial preparedness and the national defense (e.g. Preference for Privately Owned U.S. Flag Commercial Vessels).

Question: Are counterparties and/or its customers imposing any additional obligations on me pursuant to its GAPA?

Answer: No. Any obligations contained in the GAPA merely reflect the requirements of relevant
federal statutes, regulations, and/or orders.

Question: My contract with other counterparties already requires me to comply with "all applicable laws" – why do I also need to agree to the GAPA?

Answer: The language as shown in the GAPA has been drafted to meet specific requirements. The relevant government contracts/leases and/or laws require express reference to the relevant provisions. Reference to "all applicable laws" would not meet government requirements.

Question: What are my obligations associated with the GAPA?

Answer: By agreeing to the GAPA, you are contractually agreeing to comply with specific statutory and/or regulatory provisions set forth in the Provision, but only to the extent you are required by law to comply. We suggest you confer with your legal counsel should you have any questions.

Question: Why should counterparties include this provision?

Answer: Specific customers of several counterparties have requested that their NAESB Base Contract include this provision; therefore, a counterparty is expected to ask its suppliers for the same.

Question: What if parties prefer to make an agreement to the GAPA reciprocal?

Answer: The parties should enter into two corresponding addenda, with each party being buyer in one and seller in the other. Sample clarifying language can be added to the NAESB Base Contract Special Provisions explaining application of the addendum, as follows:

Bilateral:
When _______ is the Seller and _______ is the Buyer under the Base Contract, the Government Acquisition Provisions Addendum ("GAPA") naming _______ as Party A "Seller/Delivering" and _______ as Party B "Buyer/Receiving" shall govern and when _______ is the Seller and _______ is the Buyer under the Base Contract, the GAPA naming __________ as Party A "Seller/Delivering" and _______ as Party B "Buyer/Receiving" shall govern (in either case such addendum being designated on the cover of the Base Contract).

Unilateral:
_______ is the Seller and _______ is the Buyer under the Base Contract; therefore, _______ is Party A "Seller/Delivering" and _______ is Party B "Buyer/Receiving" as designated in the Government Acquisition Provisions Addendum, such addendum as referenced on the cover of the Base Contract.

Additional general information may be found at the following link:

http://en.wikipedia.org/wiki/Federal_Acquisition_Regulation

NAESB
February 8, 2012
Government Acquisition Provisions Addendum
to the
Base Contract for Sale and Purchase of Natural Gas

This Government Acquisition Provisions Addendum ("GAPA") is entered into as of this ________ day of __________, 20______.
The parties to this GAPA are the following:

<table>
<thead>
<tr>
<th>PARTY A – SELLER / DELIVERING [INSERT COUNTERPARTY LEGAL ENTITY NAME]</th>
<th>PARTY NAME</th>
<th>PARTY B – BUYER / RECEIVING [INSERT COUNTERPARTY LEGAL ENTITY NAME]</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADDRESS</td>
<td>ADDRESS</td>
<td></td>
</tr>
<tr>
<td>BASE CONTRACT NUMBER</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BASE CONTRACT DATE</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**GAPA RELATED NOTICES (If different from Base Contract)**

<table>
<thead>
<tr>
<th>ADDRESS</th>
<th>PHONE</th>
<th>FAX</th>
<th>EMAIL</th>
</tr>
</thead>
</table>

IN WITNESS WHEREOF, the parties hereto agree to the terms and conditions herein and have executed this Government Acquisition Provisions Addendum in duplicate.

<table>
<thead>
<tr>
<th>PARTY A – SELLER / DELIVERING [INSERT COUNTERPARTY LEGAL ENTITY NAME]</th>
<th>PARTY NAME</th>
<th>PARTY B – BUYER / RECEIVING [INSERT COUNTERPARTY LEGAL ENTITY NAME]</th>
</tr>
</thead>
<tbody>
<tr>
<td>By:</td>
<td>SIGNATURE</td>
<td>By:</td>
</tr>
<tr>
<td>[Insert Name]</td>
<td>PRINTED NAME</td>
<td>[Insert Name]</td>
</tr>
<tr>
<td>[Insert Title]</td>
<td>TITLE</td>
<td>[Insert Title]</td>
</tr>
</tbody>
</table>

**Addendum:**

Without limiting the definition of "Base Contract" in Section 2.4 of the Base Contract, the parties agree that this GAPA constitutes an addendum to that certain Base Contract, as identified above, between the parties, and supplements and amends the Base Contract affecting transactions thereunder.
The parties agree to add the following provisions:

Party A (Seller/Delivering Party) and Party B (Buyer/Receiving Party) are collectively referred to as the "parties." In the event the parties fail to check a box, the default provision for such section shall apply.

<table>
<thead>
<tr>
<th>APPLICABLE GOVERNMENT ACQUISITION PROVISIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Section 17 - Federal Government Acquisition Provisions (default)</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

SECTION 16. PURPOSE

This GAPA constitutes an Addendum to that certain Base Contract for Sale and Purchase of Natural Gas, as identified above, between the parties ("Base Contract"), and supplements, forms part of, and amends the Base Contract affecting transactions thereunder. Capitalized terms used in this GAPA that are not herein defined will have the meanings ascribed to them in the Base Contract. In the event of a conflict between the terms of this GAPA and the Base Contract, the terms of this GAPA shall apply for the purposes of this GAPA.

SECTION 17. FEDERAL GOVERNMENT ACQUISITION PROVISIONS

17.1. This GAPA is intended to comply with applicable laws and obligations under contracts and/or leases with the United States Federal Government or one of its agencies or subdivisions. This provision is only applicable to the extent that pursuant to the Base Contract one or more transactions are entered into between the parties in support of a Federal Government contract or Federal Lease. Nothing in this provision is intended to create any obligations that do not exist under relevant federal statutes, regulations and/or orders.

17.2. As to all transactions performed hereunder, in whole or in part within the United States of America, as defined by 48 C.F.R. § 2.101, including as applicable, the United States of America's outlying areas, Seller/Delivering Party A agrees that it shall comply with all applicable federal, state and local laws, regulations and orders, including, but not limited to, the following provisions:

- 48 C.F.R. § 52.203-13, "Contractor Code of Business Ethics and Conduct";
- 48 C.F.R. § 52.219-8, "Utilization of Small Business Concerns";
- 48 C.F.R. § 52.219-9, "Small Business Subcontracting Plan";
- 48 C.F.R. § 52.222-26, "Equal Opportunity;"
- 41 C.F.R. § 60-1.4, and 48 C.F.R. § 52.222-35, "Equal Opportunity for Veterans;"
- 41 C.F.R. §§ 60-250.5 and 60-300.5, and 48 C.F.R. § 52.222-36, "Affirmative Action for Workers with Disabilities;" and
- 41 C.F.R. § 60-741.4; 48 C.F.R. § 52.222-50, "Combating Trafficking in Persons."

These provisions are incorporated herein by reference and have the same force and effect as if they were given in full text.

17.3. Except as otherwise noted, the effective date and substance of the provisions listed in Section 17.2 shall be the date/substance of the provision incorporated in a party's Federal Government contract or Federal lease.

17.4. Except where it would otherwise render a provision meaningless or ineffective, the terms "Government" and "Contracting Officer" shall mean Party B (Buyer/Receiving Party and/or the Government) and the term "Contractor" shall mean Party A (Seller/Delivering Party).

17.5. Party A (Seller/Delivering Party) shall, if and to the extent required by applicable laws, regulations and/or orders, incorporate the terms and conditions specified by the aforementioned provisions into every non-exempt subcontract or purchase order related to the Base Contract and this GAPA, so that these terms and conditions will be binding upon each lower-tier subcontractor and sub-vendor.

17.6. Certification Of Nonsegregated Facilities (applicable only to Federal subcontracts/purchase orders in support of Federal Leases): By entering into the Base Contract and this GAPA, Party A (Seller/Delivering Party) certifies, as specified in 41 C.F.R. 60-1.8, that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. As used in this certification, the term "segregated facilities" means, but is not limited to, any waiting rooms, work areas, restrooms, and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking
lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. Party A (Seller/Delivering Party) further agrees that it will obtain identical certifications from proposed contractors and subcontractors prior to award of contracts or subcontracts unless they are exempt under 41 C.F.R. 60-1.5.

SECTION 18. OTHER GOVERNMENT ACQUISITION PROVISIONS

18.1. This GAPA is intended to comply with applicable laws and obligations under contracts and/or leases with the Government Jurisdiction identified in the preamble to this GAPA. This provision is only applicable to the extent that pursuant to the Base Contract one or more transactions is entered into between the parties in support of a Government Jurisdiction contract or lease. Nothing in this provision is intended to create any obligations that do not exist under relevant Government Jurisdiction, state and local statutes, regulations, ordinances or orders.

18.2. Taxes. If the Buyer is a government entity, then the Buyer is exempt from Federal Excise and Transportation taxes as well as certain other taxes, e.g. state sales taxes. Section 6 of the Base Contract is amended to deny the Seller the ability to pass on or invoice the government Buyer for such taxes. Upon request, the government Buyer shall provide its exemption certificates and federal tax identification number to Seller. Other taxes from which Buyer is exempt include: ________________________________.

18.3. Preemption. The parties agree and acknowledge that the law of the jurisdiction identified in the preamble to this GAPA may provide for a different result for a government party with regards to (i) billing, payments and interest than that in Section 7 of the Base Contract, and (ii) indemnification than that in Section 8 of the Base Contract, and that such law shall preempt the terms of the Base Contract.

18.4. Sovereign Immunity. Nothing in this GAPA or the Base Contract or any action taken shall be construed as waiving or limiting the government party’s sovereign immunity.

18.5. Special State and Local Provisions. If there are any special state and local provisions applicable to this GAPA, they are attached hereto, incorporated herein and have the same force and effect as if they were given in full text. Number of sheets attached: ____________.

SECTION 19. GENERAL GAPA PROVISIONS

19.1. Each party will pay its own costs and expenses in connection with performing its obligations under this GAPA and neither party will be liable for any costs or expenses incurred by the other party in connection herewith.

19.2. This GAPA has been and is made solely for the benefit of the parties and their permitted successors and assigns, and no other entity shall acquire or have any right under or by virtue of this GAPA.

19.3. No failure or delay by either party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

19.4. The headings in this GAPA are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof.

19.5. Capitalized terms used in this GAPA which are not herein defined will have the meanings ascribed to them in the Base Contract.

19.6. This GAPA is published and copyrighted by the North American Energy Standards Board, Inc.
The parties agree to add the following provision:

DISCLAIMER: The purposes of this GAPA are to facilitate trade and avoid misunderstandings related to contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this GAPA by any party. NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS GAPA 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 GAPA 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 GAPA 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 GAPA.