

GAS SUPPLY CONTRACT

DATED AS OF [____], 2018

BETWEEN

PUBLIC ENERGY AUTHORITY OF KENTUCKY, as Seller

AND

[____], as Buyer

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GAS SUPPLY CONTRACT

This Gas Supply Contract (this “*Contract*”) is made and entered into as of [], 2018 (the “*Effective Date*”), by and between Public Energy Authority of Kentucky, a Natural Gas Acquisition Authority formed under the Natural Gas Acquisition Authority Act of the Commonwealth of Kentucky (“*Seller*”), and [_____] a [_____] (“*Buyer*”). Seller and Buyer are sometimes hereinafter referred collectively as the “*Parties*” and individually as a “*Party*”.

WITNESSETH

WHEREAS Seller was created between and among public agencies to acquire Gas at reasonable prices that would enhance reliability, efficiency, and supply security through the joint purchases and the arrangement of joint services on behalf of its members and other public agencies; and

WHEREAS, Seller has planned and developed a project to obtain a long-term supply of natural gas from BP Energy Company, a Delaware corporation (“*BPEC*”), pursuant to a Prepaid Natural Gas Purchase and Sale Agreement dated as of [], 2018 (the “*Prepaid Agreement*”); and

WHEREAS, the Seller will finance this project by issuing certain bonds pursuant to the Indenture; and

WHEREAS, Seller desires to sell this long-term supply of Gas to one or more public agencies, including Buyer (Buyer, together with all such other public agencies, collectively, the “*Gas Purchasers*”); and

WHEREAS, Buyer desires to purchase from Seller a portion of the Gas available to Seller under the Prepaid Agreement, and Seller desires to sell such Gas to Buyer, upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, Buyer and Seller agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Defined Terms. The following terms and abbreviations, when used in this Contract, have the respective meanings set forth below, unless otherwise provided in this Contract.

“**Administrative Charge**” means \$0.05 per MMBtu.

“**Available Discount**” means, the amount expressed in cents per MMBtu (rounded down to the nearest one-tenth cent) determined pursuant to the Repricing Agreement for each Month of a Reset Period. Any estimated Available Discount provided by Seller under Section

2.04 may differ from the Available Discount because the final Available Discount for any Reset Period will be finally determined under the Repricing Agreement's provisions.

"Billing Statement" has the meaning specified in Section 7.01.

"Bond Counsel" means any attorney(s) or firm(s) of attorneys of recognized national standing in the field of law relating to municipal bonds and the exclusion of interest on municipal bonds from gross income for federal income tax purposes, reasonably acceptable to both Seller and BPEC.

"Bonds" means bonds of one or more Series (including any refunding bonds) issued under the Indenture.

"BPEC" has the meaning specified in the recitals.

"Btu" means International Btu, which is also called the Btu (IT).

"Business Day" means (i) with respect to payments and general notices required to be given under this Contract, any day other than (a) a Saturday or Sunday, (b) a Federal Reserve Bank holiday, (c) any day on which commercial banks located in either New York, New York or the Commonwealth of Kentucky are required or authorized by Law or other governmental action to close, or (d) any other day excluded as a business day pursuant to the Indenture, and (ii) solely with respect to Gas deliveries and notices with respect thereto, any day.

"Buyer" has the meaning specified in the preamble.

"Buyer Statement" has the meaning specified in Section 7.01.

"Buyer Termination Event" has the meaning specified in Section 8.02.

"Central Prevailing Time" or **"CPT"** means Central Daylight Savings Time when such time is applicable and otherwise means Central Standard Time.

"Claims" means all claims or actions, threatened or filed, that directly or indirectly relate to the indemnities provided for in this Contract, and the resulting losses, damages, expenses and disbursements (including reasonable attorneys' and experts' fees and disbursements and court costs (and which, for the avoidance of doubt, shall exclude the allocated costs of in-house counsel)), whether incurred by settlement or otherwise, without regard to whether such claims or actions are threatened or filed prior to or after the termination of this Contract.

"Code" means the Internal Revenue Code of 1986, as amended, and the U.S. Treasury Regulations thereunder, or any successor or successors thereto.

"Contract" has the meaning specified in the preamble and shall include exhibits, recitals and attachments referenced herein and attached hereto and all amendments, supplements and modifications hereto and thereto.

"Contract Price" has the meaning specified in Section 3.02.

"Cover Standard" shall mean, if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract by a Party, then the performing Party shall use

commercially reasonable efforts to (i) if the Buyer is the performing Party, purchase Gas quantities or (ii) if the Seller is the performing Party, sell Gas quantities, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with (a) the amount of notice provided by the nonperforming Party; (b) the immediacy of Buyer's Gas delivery needs or Seller's Gas sales requirements, as applicable; (c) the quantities involved; and (d) the anticipated length of failure by the nonperforming Party.

"Daily Contract Quantity" means, with respect to each Gas Day during the Delivery Period, the daily quantity of Gas (in MMBtu) shown on Exhibit A, as may be revised from time to time pursuant to the terms of this Contract, to be delivered from Seller to Buyer and received by Buyer from Seller pursuant to this Contract for each Gas Day of each Month.

"Default Rate" means, as of any date of determination, the lesser of (a) the rate of interest per annum quoted in *The Wall Street Journal* (Eastern Edition) under the "Money Rates" section as the "Prime Rate" for such date of determination or (b) if a maximum rate is imposed by applicable Law, such maximum lawful rate.

"Delivery Period" shall mean [MM] 1, 2018, through the earlier of [MM] [DD], 20[YY], or an Early Termination Date.

"Delivery Point" or **"Delivery Points"** means the point or points set forth in Exhibit B.

"Delivery Suspension" shall have the meaning in Section 7.04.

"Discount" shall be [\$0.20] per MMBtu, provided that the Available Discount (as determined under the Repricing Agreement for any Reset Period) shall become the Discount after the Initial Reset Period.

"Early Termination Date" means a date occurring automatically pursuant to Section 8.01 or a date designated pursuant to Section 8.03, upon which in each case the Delivery Period will end and Buyer's and Seller's respective obligations to receive and deliver Gas under this Contract will terminate.

"Effective Date" has the meaning specified in the preamble.

"FERC" means the Federal Energy Regulatory Commission and any successor thereto.

"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 5.02(c) 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.

"Force Majeure" has the meaning specified in Article XIII.

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

"Gas Day" means a period of twenty-four (24) consecutive hours beginning at 9:00 a.m. CPT on a calendar day and ending at 9:00 a.m. CPT on the next succeeding calendar day. If,

through standardization of business practices in the industry or for any other reason, a Transporter or FERC changes the definition of Gas Day, such change shall apply to the definition of Gas Day in this Contract with respect to such Transporter or generally, as the case may be.

“Gas Project” means, collectively, the acquisition by Seller of Gas supplies from BPEC, the financing by Seller of the cost of acquisition of such Gas supplies, and the execution and performance by Seller of related contracts that provide Gas to the Gas Purchasers.

“Gas Purchasers” or **“Gas Purchaser”** has the meaning specified in the recitals.

“Government Agency” means the United States of America, any state thereof, or any local jurisdiction, or any political subdivision of any of the foregoing including, but not limited to courts, administrative bodies, departments, commissions, boards, bureaus, agencies, municipalities or other instrumentalities.

“Governmental Person” means a state or local governmental unit or any instrumentality thereof. It does not include the United States or any agency or instrumentality thereof.

“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.

“Indenture” means the Trust Indenture, dated as of [] 1, 2018, between the Seller and the Trustee, as the same may be amended or supplemented in accordance with its terms.

“Index Price” means, with respect to any Gas Day, the price published and in effect for the Month in which such Gas Day occurs as specified in Exhibit B.

“Initial Reset Period” means the period from and including [], 2018 to and including [], 202[].

“Law” means any statute, law, rule, regulation, order, or any judicial or administrative interpretation thereof having the effect of the foregoing imposed by a Government Agency whether in effect as of the Effective Date or at any time in the future.

“Minimum Discount” means \$[0.20] per MMBtu.

“MMBtu” means one million Btus.

“Month” means the period beginning at the beginning of the first Gas Day of a calendar month and ending at the beginning of the first Gas Day of the next calendar month.

“Municipal Utility” means any Person that (i) is a gas district, gas board, utility board, municipality or other entity to which Buyer is authorized to sell Gas under applicable law, (ii) is a “governmental person” as defined in U.S. Treas. Reg. §1.141-1(b) (or any successor regulation or provision of the Code), (iii) owns either or both a Gas distribution utility or an electric distribution utility (or provides Gas or electricity generated using the Gas at wholesale to “governmental persons” that own such utilities), and (iv) agrees in writing (a) to use the Gas it acquires from the Gas Project (or to cause such Gas to be used) in a “qualifying use” as defined in U.S. Treas. Reg. §1.148-1(e)(2)(iii)(A)(2) (or any successor regulation or provision of the

Code), (b) not to allocate directly or indirectly the Gas to the proceeds of any tax-exempt financing other than the Bonds, and (c) not to use the Gas for any Private Business Use. Except in the case of manifest error, any Qualifying Use Certificate that is (x) provided by a Person as to the identity, form or status of such Person, its intended use for the Gas or other matters contained in any such certificate, and (y) relied upon by Seller, BPEC or both, shall be deemed to have met the requirements under clause (iv). To the extent required or permitted by any change in the Code after the Effective Date, the Parties from time to time may revise the definition of "Municipal Utility" to conform to the applicable provisions of the Code, provided that a Favorable Opinion of Bond Counsel is obtained.

"New Tax" means (a) any Tax enacted and effective after the Effective Date of this Contract, including, without limitation, that portion of any Tax in effect on the Effective Date that constitutes an increase in such Tax over the rate thereof in effect as of the Effective Date, or (b) any law, rule, order or regulation, or interpretation thereof, enacted and effective after the Effective Date of this Contract resulting in the application of any Taxes enacted or effective on or before the Effective Date of this Contract to a new or different class of Persons.

"Nongovernmental Agency" means any Person other than a Governmental Person.

"Operational Flow Order" has the meaning set forth in Section 5.02(d).

"Output Contract" means a contract for the purchase by a Nongovernmental Agency of available output of an output facility financed with proceeds of an issue (as defined in U.S. Treas. Reg. §1.141-7).

"Partial Termination Condition" has the meaning specified in Section 9.02(b).

"Party" and **"Parties"** have the meaning specified in the preamble.

"Payment Default" has the meaning specified in Section 7.04.

"Person" means any individual, public or private corporation, partnership, limited liability company, state, county, district, authority, municipality, political subdivision, instrumentality, association, firm, trust, estate or any other entity or organization whatsoever.

"Prepaid Agreement" has the meaning specified in the recitals.

"Private Business Use" means use (directly or indirectly) in a trade or business carried on by any Person other than a Governmental Person. For purposes of the foregoing:

(i) Except as provided below Private Business Use includes: (a) any contracts by a Governmental Person for the sale of the Gas financed with Bond proceeds (or the electricity generated by the Gas) to a Nongovernmental Agency pursuant to: (1) a take contract, (2) a take or pay contract, or (3) a requirements contract, in each case, as defined in U.S. Treas. Reg. §1.141-7; or (b) any use of the Gas financed with the Bond proceeds (or electricity generated using the Gas) by a Nongovernmental Agency that may occur pursuant to: (1) a lease of, or management contract with respect to, all or a portion of a Municipal Utility's facilities, or (2) a brokerage contract or other arrangement creating a special legal entitlement with respect to such Gas (or electricity generated using the Gas); or (c) an Output Contract having a term longer than 3 years (including any renewal options).

(ii) Private Business Use does not include any of the following, provided that the Seller or Gas Purchaser, as the case may be, obtains a Favorable Opinion of Bond Counsel: (a) any lease, management contract or other arrangement that: meets the applicable requirements set forth in the U.S. Treas. Reg. §1.141-3 or IRS Revenue Procedure 2017-13, as such requirements are modified from time to time; or (b) any Output Contract with a term, including renewal options, that is not longer than 3 years, and that meets the requirements of U.S. Treas. Reg. §1.141-7(f)(3); or (c) any other arrangement with respect to the use of Gas (or electricity generated using Gas), including, but not limited to, small purchases of output as described in U.S. Treas. Reg. §1.141-7(f)(1); or (d) any swapping and pooling arrangement described in U.S. Treas. Reg. §1.141-7(f)(2).

“Project Management Committee” has the meaning set forth in Section 16.02.

“Qualifying Use” shall have the meaning ascribed in U.S. Treas. Reg. § 1.148-1(e)(2)(iii)(A)(2) (or any successor regulation or provision of the Code); provided that the use does not give rise to a Private Business Use.

“Qualifying Use Certificate” means (i) a Buyer Certificate executed by (a) a Municipal Utility, in substantially the form set forth in Exhibit D, or (b) a Governmental Person other than a Municipal Utility that sells Gas (or electricity generated from such Gas) to a Municipal Utility, as modified from the form set forth in Exhibit D with language approved by Bond Counsel, or (ii) in the case of a remarketing of the Gas, a certificate signed by a Gas Purchaser of the Gas delivered hereunder and sold by Seller (or BPEC on behalf of Seller), certifying in language approved by Bond Counsel which may be included in a confirmation for the sale of Gas that such Gas (or the electricity generated by the Gas) shall be applied for a “qualifying use” as defined in U.S. Treas. Reg. §1.148-1(e)(2)(iii)(A)(2) (or any successor regulation or provision of the Code); provided that the use does not give rise to Private Business Use.

“Rate Stabilization Fund” has the meaning set forth in Section 3.04.

“Receivables Purchase Agreement” means the Receivables Purchase Agreement, dated as of [], between Seller, BPEC, and the Trustee, as amended or supplemented from time to time in accordance with its terms.

“Receivables Purchase Agreement Provider” means BPEC.

“Remarketing Notice” means the form set forth in Exhibit H attached hereto.

“Repricing Agreement” means the Repricing Agreement, dated as of the Effective Date, between Seller and BPEC, as amended or supplemented from time to time in accordance with its terms.

“Reset Period” means a period commencing on the first day following the Initial Reset Period or prior Reset Period, as the case may be, and ending on the day prior to the first day of the subsequent Reset Period; provided that the final Reset Period shall be the period from the first day after the prior Reset Period to the end of the Delivery Period.

“Reset Period Remarketing” has the meaning set forth in Section 2.03.

“Seller” has the meaning specified in the preamble.

“Tax” or **“Taxes”** means (a) any or all ad valorem, property, occupation, severance, production, generation, extraction, first use, conservation, Btu or energy, gathering, transport, transmission, pipeline, utility, gross receipts, gas or oil revenue, gas or oil import, privilege, sales, use, consumption, excise, lease, transaction, greenhouse gas, carbon, and other taxes or any interest, penalties, or assessments thereon, (b) state or local Taxes or any interest, penalties, or assessments thereon, (c) New Taxes or any interest, penalties, or assessments thereon, and (d) governmental charges, licenses, fees, permits and assessments, or any interest, penalties, or increases thereon, and specifically excludes taxes based on net income or net worth.

“Transporter” or **“Transporters”** 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(s).

“Trustee” means [The Bank of New York Mellon Trust Company, N.A.], a national banking association organized and existing under the laws of the United States, or any successor thereto under the Indenture.

Section 1.02 Interpretation. All references to any agreement or document shall be construed as of the particular time that such agreement or document may then have been executed, amended, varied, supplemented or modified. Terms defined in this Contract shall have the meanings given therein when used elsewhere in this Contract. Titles appearing at the beginning of any articles, sections, subsections and other subdivisions of this Contract are for convenience only and shall not constitute part of such subdivisions and shall be disregarded in construing the language contained in such subdivisions. References in the singular shall include the plural, and references to the masculine shall include the feminine, and vice versa. Any reference in this Contract to any Person includes its successors and permitted assigns and, in the case of any governmental authority, any Person succeeding to its functions and capacities. Reference to a particular article, section, subsection, paragraph, subparagraph, attachment, schedule or exhibit, if any, shall be a reference to such article, section, subsection, paragraph, subparagraph, attachment, schedule or exhibit in and to this Contract. Any appendices, schedules or exhibits are fully incorporated and made part of this Contract. The appendices, schedules or exhibits shall be read in conjunction with the provisions of the body of this Contract, and the appendices, schedules or exhibits and the body of this Contract shall be interpreted to give effect to the intent of the Parties as evidenced by their terms when taken as a whole, *provided, however*, that in the event of an express and irreconcilable conflict between the terms of an attachment, schedule or exhibit and the provisions of the body of this Contract, the provisions of the body of this Contract shall control. Capitalized terms appearing in an attachment, schedule or exhibit shall have the meanings set forth in Section 1.01, unless the context requires otherwise. The recitals at the beginning of this Contract are incorporated herein for all purposes. All uses of “include” or “including” shall be deemed to be followed by “without limitation”, whether expressly so stated or not. All references to a law, rule, regulation, contract, agreement, or other document mean that law, rule, regulation, contract, agreement, or document as amended, modified, supplemented or restated, from time to time.

Section 1.03 Technical Meanings. Words not otherwise defined in this Contract that have well-known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

ARTICLE II TERM AND DELIVERY PERIOD

Section 2.01 Term. This Contract shall be in effect from and including the Effective Date to and including the last day of the Month following the last Month of the Delivery Period, subject to the provisions of Section 2.02, Section 7.05 and Article VIII.

Section 2.02 Termination Prior to Commencement of Delivery Period. In the event that the Prepaid Agreement is terminated prior to the commencement of the Delivery Period because BPEC does not receive the prepayment, Seller shall terminate this Contract without any further obligation or liability of either Party.

Section 2.03 Reset Period Remarketing. A Reset Period Remarketing occurs when the Available Discount for a new Reset Period is not equal to or greater than the Minimum Discount. Upon a Reset Period Remarketing, Buyer (and each other Gas Purchaser) shall either (i) continue to purchase and receive its Daily Contract Quantity for each Gas Day during such Reset Period at a Contract Price that reflects the Available Discount, or (ii) deliver to Seller a written notice designating a Reset Period Remarketing.

Section 2.04 Reset Period Remarketing Notice Procedure. No later than thirty (30) days prior to the first day of a new Reset Period, Seller shall provide Buyer a written notice setting forth the duration of the new Reset Period and the estimated Available Discount for such Reset Period. Buyer may elect conditionally to remarket its Daily Contract Quantity by delivering to Seller a notice designating a Reset Period Remarketing, in the form set forth in Exhibit E attached hereto, no later than 4:00 p.m. Central Prevailing Time on the eighth (8th) Business Day following the date of the Seller's notice. Buyer's notice designating a Reset Period Remarketing shall only be effective if the Available Discount as finally determined fails to equal or exceed the Minimum Discount.

ARTICLE III SALE AND PURCHASE; DELIVERY POINT PREMIUM

Section 3.01 Sale and Purchase. Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to purchase and take, on a Firm basis, the Daily Contract Quantity for each Gas Day during the Delivery Period pursuant to the terms and conditions set forth in this Contract.

Section 3.02 Contract Price. The price payable for Gas delivered and purchased pursuant to this Contract (the "Contract Price") shall be equal to the Index Price applicable to the relevant quantity of Gas for the applicable Delivery Point minus the Discount.

Section 3.03 Annual Refund. At the end of each fiscal year following completion of the annual audit of Seller's financial statements, Seller shall compare its revenues (as determined in accordance with the Indenture) and expenses under the Gas Project for that fiscal year. For purposes of such annual comparison, Seller's expenses shall include: (a) its expenses incurred in obtaining Gas supply under the Gas Project; (b) its administrative, legal, and accounting expenses directly incurred in connection with or properly allocable to the Gas Project, including the administration of this Contract and all other contracts for the sale of Gas obtained under the Gas Project; (c) debt service on the Bonds, including payments under any hedge agreement; (d) any replenishment of draws made upon any working capital fund associated with the Gas Project; (e) any deposits required to be made by Seller into any debt service reserve or other

reserve or contingency fund or funds established with respect to the Bonds; (f) any fees or other amounts due to any provider of credit support for the Bonds; (g) payments under any commodity price swap or hedge agreement entered into in connection with the Gas Project; (h) any amounts required by the Repricing Agreement to be deposited to the Rate Stabilization Fund, and (i) any other similar costs and expenses. If this annual comparison demonstrates that such revenues exceeded such expenses during the applicable fiscal year and there are amounts on deposit in the fund established by the Indenture available for such purpose, then Seller shall make refunds to Buyer and the other Gas Purchasers in the amount available after making allowances for any necessary and appropriate reserves and contingencies to fund any working capital reserve and to reserve or account for unfunded liabilities, including future sinking fund or other principal amortization of the Bonds. The amount available for refund shall be allocated among and paid to Buyer and the other Gas Purchaser in proportion to their respective purchases for such fiscal year. Buyer acknowledges and agrees that (a) there is no assurance an annual refund will be achieved and that, under the structure of the Gas Project, none is anticipated, and (b) any such refund and the amount thereof is subject to the availability to Seller of sufficient funds for Seller to satisfy its obligations and covenants under the Indenture and the Prepaid Agreement, and other reasonably related factors, some of which may not be known to the Parties at the time of execution of this Contract.

Section 3.04 Rate Stabilization Fund. A fund (the “Rate Stabilization Fund”) will be created in the Indenture so that monies deposited in such fund may, at the direction of Seller, be applied from time to time, primarily to supplement (increase) the Available Discount pursuant the terms of the Repricing Agreement. Pursuant to the Indenture, any amounts remaining in the Rate Stabilization Fund on the first day of the final Reset Period shall be applied to increase the Available Discount to all Gas Purchasers over the term of such final Reset Period.

ARTICLE IV FAILURE TO DELIVER OR TAKE GAS

Section 4.01 Seller’s Unexcused Failure to Deliver.

(a) If on any Gas Day Seller fails to deliver all or any portion of the Daily Contract Quantity pursuant to the terms of this Contract, and such failure is not due to either (i) the actions or inactions of Buyer, or (ii) Force Majeure, then the portion of the Daily Contract Quantity that Seller failed to deliver shall be the “*Deficiency Quantity*”.

(b) To the extent Buyer purchases replacement Gas that is delivered prior to the end of the Month in which such Deficiency Quantity arose, then Seller shall pay to Buyer the amount determined as follows:

$$P = DQ \times (RP + AC)$$

Where:

P = the amount payable by Seller under this Section 4.01(b)

DQ = the Deficiency Quantity

RP = Utilizing the Cover Standard, the positive amount, if any, by which the price actually paid by Buyer for the replacement Gas in an arm’s length Gas purchase from an unaffiliated third party, as may

be adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), exceeds the Contract Price for the applicable Gas Day and Delivery Point.

AC = the Administrative Charge

(c) Imbalance Charges shall not be recovered pursuant to Section 4.01, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 5.02(c). The replacement prices referred to under the definition of "RP" as used in Section 4.01(b) shall not include any administrative or other internal costs incurred by Buyer, it being understood that such costs are being compensated by way of the Administrative Charge included above.

Section 4.02 Buyer's Unexcused Failure to Take.

(a) If on any Gas Day Buyer fails to take all or any portion of the Daily Contract Quantity at any Delivery Point(s) for any reason other than Force Majeure, Seller will attempt to remarket such Gas. If Seller is able to remarket such Gas, Seller will invoice Buyer in the amount equal to the positive difference, if any, between the Index 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), plus the Administrative Charge, multiplied by the difference between the Daily Contract Quantity and the quantity actually taken by Buyer for such Gas Day(s). If Seller remarkets the Gas for Qualified Use, the Cover Standard may be adjusted to reflect any discounts required to complete that sale.

(b) Buyer agrees to notify Seller promptly upon becoming aware that Buyer or any Gas Purchaser may not be able to take all or a portion of the Daily Contract Quantity at any Delivery Point(s) on any Gas Day.

Section 4.03 Failure to Deliver or Take Due to Force Majeure. If on any Gas Day Buyer fails to take or Seller fails to deliver, all or any portion of the Daily Contract Quantity at any Delivery Point(s) and such failure is due to either Party claiming Force Majeure, then each Party shall be relieved of its respective obligation to deliver and receive, as applicable, such portion of the Daily Contract Quantity.

Section 4.04 Load Loss. If Buyer experiences a sustained load loss such that it is unable to take all or any part of the Daily Contract Quantities, it may request remarketing of the affected quantities of Gas and Seller shall use commercially reasonable efforts to resell such quantities on behalf of Buyer consistent with Article IX.

Section 4.05 Make-up Delivery in Lieu of Payment. The Parties may mutually agree to make up all or a portion of the Daily Contract Quantity not delivered or taken by increasing deliveries and takes over the remainder of the Month in which such failure occurred or the following Month.

Section 4.06 Sole Remedies. Except with respect to the payment of Imbalance Charges pursuant to Section 5.02(c) the remedies set forth in this Article IV shall be each Party's sole and exclusive remedies for any failure by the other Party to deliver or take Gas pursuant to this Contract.

ARTICLE V
DELIVERY POINTS; TRANSPORTATION; NOMINATIONS AND IMBALANCES

Section 5.01 Delivery Points.

(a) Gas delivered hereunder shall be delivered and received at the points specified as Delivery Point(s) in Exhibit B, or any other Delivery Point established pursuant to Section 5.01(b) or otherwise by mutual agreement of the Parties. Each Delivery Point must have a published Index Price, mutually agreed by the Parties, corresponding to such Delivery Point.

(b) Not more frequently than once during the ensuing summer season (the period from April through October) or once during the ensuing winter season (the period from November through March), Buyer may change delivery for all or a portion of the Daily Contract Quantity at any of the Delivery Point(s) to any other delivery point(s), as may be allowed under the operating terms and conditions of the applicable Transporter or Transporters; provided (A) Seller is able to obtain a corresponding change under the Prepaid Agreement; (B) such new Delivery Point is in the reasonable opinion of each Party a liquidly traded Gas delivery point, (C) the Parties designate a replacement Index Price that is reasonably acceptable to each Party, (D) the Parties are able to agree on any reasonable actual incremental costs, including but not limited to actual costs incurred to meet such request and including transportation costs, fuel costs and hedge unwind costs, if any, or the reduction in actual costs, if any, and (E) Seller shall not be obligated to enter into any new upstream supply agreement, transportation agreement or other arrangement to meet Buyer's request. Following any agreed upon modification to the Delivery Points, Buyer and Seller shall enter into a revised Exhibit B reflecting said change.

(c) Seller will deliver and Buyer will receive Gas at the Delivery Point(s) in accordance with Buyer's pooling arrangements, if any, and other requirements in each case as specified in Exhibit A. Buyer may issue a standing nomination with respect to pooling arrangements at any Delivery Point. Any changes to such standing nomination must be received by Seller not later than six (6) Business Days prior to the applicable delivery Month for any change to the monthly standing nomination, and prior to 7:30 AM CPT on the Business Day prior to any change for a Gas Day.

Section 5.02 Responsibility for Transportation, Nominations and Imbalances.

(a) Seller shall have the sole responsibility for all transportation necessary for delivery of the Daily Contract Quantity to the Delivery Point(s). Buyer shall have the sole responsibility for all transportation necessary to receive the Daily Contract Quantity at the Delivery Point(s) and to transport the Daily Contract Quantity from the Delivery Point(s). Seller has responsibility for all compliance with applicable Transporter tariffs and regulations of the FERC for Gas transported on pipelines prior to the Delivery Points. Buyer has responsibility for all compliance with applicable Transporter tariffs and regulations of the FERC for Gas transported on pipelines from the Delivery Point(s).

(b) Unless otherwise agreed by the Parties or required by a Transporter, Seller shall nominate, schedule and deliver, and Buyer shall nominate, schedule and take, the Daily Contract Quantity, ratably, at the Delivery Point(s) in accordance with the requirements of the receiving Transporter and the delivering Transporter at such Delivery Point. The Parties shall coordinate their nomination activities, giving sufficient time to meet the nomination deadlines of the Transporters. Should either Party become aware that the actual deliveries of Gas at the

Delivery Point(s) are greater or less than the Daily Contract Quantity, such Party shall promptly notify the other Party.

(c) The Parties shall use commercially reasonable efforts to avoid the imposition of any Imbalance Charges. If either Party receives an invoice from a Transporter that includes Imbalance Charges related to the obligations of either Party under this Contract, 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 takes of quantities of Gas greater than or less than the Daily Contract Quantity at any Delivery Point, 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 Daily Contract Quantity at any Delivery Point, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

(d) Should either Party receive an operational flow order or other order or notice from a Transporter, or a Transporter posts such notice on its bulletin board or provides the notice by another industry standard, requiring action to be taken in connection with the Gas being delivered under this Contract (a "*Operational Flow Order*"), it shall notify the other Party as soon as possible during normal business hours and provide the other Party with a copy of the Operational Flow Order, or direct the other Party to an electronic version of the Operational Flow Order. The Parties shall cooperate to take all actions required by the Operational Flow Order within the time prescribed. Seller shall indemnify, defend and hold harmless Buyer from any Claims, including, without limitation, all non-compliance penalties and reasonable attorneys' fees, if any, associated with an Operational Flow Order (i) with respect to which Seller failed to give the notice required hereunder to Buyer, or (ii) under which Seller failed to take the action required by the Operational Flow Order within the time prescribed; provided, that any notice required to be given to Buyer by Seller was timely delivered as required by this Section 5.02(d). To the extent not otherwise prohibited by law, Buyer agrees to indemnify, defend and hold harmless Seller from any Claims, including, without limitation, all non-compliance penalties and reasonable attorneys' fees, if any, associated with an Operational Flow Order (i) with respect to which Buyer failed to give the notice required hereunder to Seller, or (ii) under which Buyer failed to take the action required by the Operational Flow Order within the time prescribed; provided, that any notice required to be given to Seller by Buyer was timely delivered as required by this Section 5.02(d).

Section 5.03 Agreements Regarding Operations and Delivery.

Agreements regarding operations and delivery may be made in one or more telephone conversations or by instant messenger between Seller (or BPEC on behalf of Seller) and Buyer whereby an offer and acceptance shall constitute a valid and enforceable agreement subject to the terms of this Agreement that also shall be considered a part of this Agreement. Such an agreement shall be considered a "writing" or "in writing" and to have been "signed." To the extent permitted by applicable law, Seller (or BPEC on behalf of Seller) and Buyer: (i) consent to the recording of telephone conversations between the trading, marketing and other relevant personnel of the Parties in connection with this Agreement; (ii) agree to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel; (iii) agree that recordings may be submitted in evidence in any proceedings; and (iv) acknowledge to the other Party and consent that such other Party may from time to time and without further notice (A) retain electronic transmissions (including telephone conversations, e-mail and instant messaging between the Parties' respective representatives in connection with this Contract) on central and local databases for their respective legitimate purposes, and (B) monitor electronic

transmissions through their internal and external networks for purposes of security and compliance with applicable laws, regulations and internal policies for their legitimate business purposes. Each Party further agrees that, to extent permitted by applicable law, it will indemnify, defend and hold the other Party harmless from any and all damages, losses, claims, liabilities, judgments, costs and expenses, including but not limited to reasonable attorney's fees and costs of court arising directly or indirectly from or out of such Party's failure to obtain any consent necessary from a Party's trading, marketing and other relevant personnel, agents or representatives or such Party's failure to give any notice required to such individuals. The Parties shall be entitled to rely without further inquiry on oral representations as to the identity of person(s) purporting to transact on behalf of the other Party.

Section 5.04 Title and Risk of Loss.

(a) Title to Gas delivered hereunder shall pass from Seller to Buyer at the Delivery Points. 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 FOR THE WARRANTIES EXPRESSLY MADE BY SELLER IN THIS SECTION AND Article XI, SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE.

(b) As between the Parties, Seller shall be deemed to be in exclusive control and possession of Gas delivered hereunder and responsible for and will assume any liability with respect to the Gas prior to its delivery to Buyer at the Delivery Points. As between the Parties, Buyer shall be deemed to be in exclusive control and possession thereof and responsible for and will assume any liability with respect to the Gas after its delivery to Buyer at the Delivery Points. Seller agrees to indemnify Buyer and save it harmless from all 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.

**ARTICLE VI
QUALITY AND MEASUREMENT**

Section 6.01 Quality and Measurement. The Parties acknowledge that the Gas delivered by Seller under this Contract shall meet the quality specifications of the receiving Transporter at the applicable Delivery Point(s). 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 Transporters that own or operate the measurement facilities at the Delivery Point(s). The Parties acknowledge that the Gas delivered by Seller under this Contract will be delivered in common stream with other sources of Gas. In the event and to the extent that a Transporter refuses to receive or transport Gas nominated for delivery to Buyer at the Delivery Point(s) for reasons of gas quality, the event shall be considered an event of Force Majeure, and Seller shall be relieved of its obligation to deliver and Buyer shall be relieved of its obligation to receive the affected volumes of Gas until the situation is remedied in accordance with Article XIII.

**ARTICLE VII
BILLING, PAYMENT AND AUDIT**

Section 7.01 Monthly Statements.

(a) No later than the fifth (5th) day of each Month (or the immediately succeeding Business Day, if such day is not a Business Day) following any Month during which replacement Gas was purchased by Buyer pursuant to Section 4.01(b), Buyer shall deliver to Seller a statement (the "*Buyer Statement*") setting forth the quantity and replacement price.

(b) No later than the tenth (10th) day of each Month (or the immediately succeeding Business Day, if such day is not a Business Day) (the "*Billing Date*"), of each Month following the Month in which Gas was delivered, Seller shall deliver to Buyer a statement (the "*Billing Statement*") setting forth (i) the quantities of Gas delivered, (ii) the total amount due to Buyer, if any, under Article III and Article IV with respect to the prior Month(s), (iii) any other amounts due to Seller in connection with this Contract, including, but not limited to, amounts due under Section 4.02 with respect to the prior Month(s), and (iv) the net amount due to Buyer or Seller. If the actual quantity of Gas delivered is not known by the Billing Date, the Billing Statement will be prepared based upon the quantity of Gas confirmed by the Transporter(s) for transportation. Adjustments will be made in the following Month's Billing Statement for any differences between the quantity of Gas delivered and the quantity of Gas confirmed by the Transporter(s) for transportation.

(c) Upon reasonable request by either Party, the other Party will deliver such supporting documentation acceptable in industry practice to support an amount due.

Section 7.02 Payment.

(a) Any amounts due shall be remitted by wire transfer in immediately available funds to the accounts specified in Exhibit C, on or before the twentieth (20th) day of the Month in which the Billing Statement or the Buyer Statement, as applicable, was received unless such day is not a Business Day, in which case payment is due on the Business Day immediately preceding such day.

(b) If the invoiced Party, in good faith, disputes any amounts included in a statement, such Party will (except in the case of manifest error) pay the full amount due. 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.

(c) If a Party owing any amounts due under this Contract fails to remit the full amount then payable when and as due, interest on the unpaid portion shall accrue at the Default Rate from and including the date on which the payment was due to, and including, the date on which the full amount is paid.

Section 7.03 Netting. The Parties shall net all amounts due and owing, and/or past due, arising under this 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 this Article VII.

Section 7.04 Payment Default and Suspension. If by the twenty-fourth (24th) day of the Month in which Buyer fails to pay when due any amount owed to Seller ("Payment Default"), the Trustee shall draw on the Receivables Purchase Agreement in accordance with its terms to

make payments in satisfaction of all or a portion of amounts owed to Seller. The Receivables Purchase Agreement Provider then shall be subrogated to the rights of Seller against Buyer in respect of such Payment Default. Upon a Payment Default, delivery of Buyer's Daily Contract Quantity shall be suspended ("*Delivery Suspension*") until either (a) Buyer's payment is received in full, including any interest at the Default Rate, on or before the twentieth (20th) day of the Month following the Month that payment was originally due, or (b) this Contract is terminated pursuant to Section 7.05 or Article VIII. Seller shall provide notice of the Delivery Suspension to Buyer, BPEC and its designee(s), and the Trustee. Buyer agrees that such notice shall be deemed received by Buyer (whether or not actually given or received) as of the sixth (6th) Business Day after the time any such amounts referred to in the first sentence of this Section were due.

Section 7.05 Termination. If Buyer fails to pay any amount owed to Seller on or before the twentieth (20th) day of the Month following Buyer's Delivery Suspension, then Seller may at its option terminate this Contract by providing notice pursuant to Section 15.02, with copies to Buyer, BPEC, and the Trustee. Upon such notice (a) the Delivery Period will end, (b) Seller shall no longer have any obligation to sell or deliver Gas to Buyer under this Contract, (c) the obligation of Buyer to purchase and receive Gas from Seller under this Contract will terminate, and (d) Buyer shall have no right to any Discount or proceeds that may arise due to remarketing of the Gas. In lieu of or in addition to notice of termination given by Seller, the Trustee purporting to act pursuant to the terms of the Indenture may provide notice of termination to Buyer, Seller, and BPEC.

ARTICLE VIII TERMINATION

Section 8.01 Automatic Termination Event. If the Prepaid Agreement terminates prior to the end of the Delivery Period, this Contract shall terminate on the date of early termination of the Prepaid Agreement (subject to all winding up arrangements) such that all Gas deliveries hereunder shall cease. In the event of the early termination of the Prepaid Agreement, Seller agrees to transfer to Buyer, solely from amounts thereof actually available to Seller under the Indenture, if any, Buyer's share of any excess monies available from the Gas Project. Notwithstanding the foregoing, Seller's reasonable determination of Buyer's share of any such amounts may include retention by Seller from Buyer's share recoupment of costs incurred because of the early termination, costs incurred due to any audit of the Gas Project or any transactions thereunder, and amounts reasonably determined by Seller to represent the present value of administrative fees that Seller would otherwise have retained or received in respect of the Daily Contract Quantity over the remainder of the Delivery Period had such early termination of the Prepaid Agreement not occurred. Seller in its sole discretion may delay such a payment until the time that the Gas Project and any transactions thereunder are no longer subject to audit.

Section 8.02 Buyer Termination Events. Each of the following events shall constitute a "**Buyer Termination Event**" under this Contract:

(a) Failure by Buyer to pay when due any of the amounts owed to Seller pursuant to Section 7.05;

(b) Any representation, warranty, or covenant made by Buyer in this Contract shall prove to have been incorrect in any material respect when made or deemed made;

(c) Buyer otherwise fails to perform any covenant under this Contract;

(d) Buyer (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) otherwise becomes bankrupt or insolvent (however evidenced); (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (vii) causes or is subject to any event with respect to it, which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vi) above (inclusive); or (viii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

Section 8.03 Right to Termination; Remedies.

(a) At any time a Buyer Termination Event has occurred and is continuing, Seller may by notice to the Buyer specifying the relevant Buyer Termination Event designate an Early Termination Date not later than the last day of the Month in which such notice is provided. Each of (i) Seller's obligation to sell and deliver Gas, (ii) Buyer's obligation to purchase and take Gas, and (iii) Seller's obligation to remarket Gas pursuant to the terms of this Contract shall terminate on the Early Termination Date.

(b) In lieu of or in addition to any notice provided by Seller, the Trustee acting pursuant to the Indenture may provide notice to Buyer of any Early Termination Date or Partial Termination Condition.

(c) If a Partial Termination Condition under Section 9.02(b) has occurred, Seller, unless the Parties agree otherwise, may designate an Early Termination Date with respect to that portion of this Contract represented by the quantities of Gas remaining to be delivered hereunder described in clause (i) of Section 9.02(b). If this Contract is so partially terminated with respect to such quantities of Gas, the provisions of this Article VIII shall apply to the portion terminated. Nothing in this paragraph (c) is meant to imply that a complete termination of this Contract would or would not be required or permitted pursuant to the exercise of any other right or remedy under this Contract.

(d) In the event of a default by Seller under any covenant, agreement, or obligation in this Contract, for which no exclusive remedy is expressly provided herein, Buyer may bring any suit, action, or proceeding at law or in equity to enforce Seller's obligation(s), including mandamus, injunction, and action for specific performance, as Buyer determines may be necessary or appropriate to enforce any covenant, agreement, or obligation in this Contract against Seller.

Section 8.04 Other Remedies. If all amounts payable by a defaulting Party on the Early Termination Date shall not have been received on such date by the non-defaulting Party, the non-defaulting Party may proceed to protect and enforce its rights, either by suit in equity or by action at law or both, whether for the specific performance of any covenant or agreement contained in this Contract or in aid of the exercise of any power, right or remedy granted in this Contract or may proceed to enforce the payment of all amounts owing to the non-defaulting Party under this Contract (including, without limitation, any sums specified as liquidated

damages or any other unpaid amounts due to the non-defaulting Party hereunder, together with interest thereon to the extent provided herein); it being intended that, except with respect to events or circumstances for which an exclusive remedy is expressly provided herein, no remedy conferred herein is to be exclusive of any other remedy, and each and every remedy contained herein shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

Section 8.05 Limitation on Damages. 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, unless such breach is the result of gross negligence or willful misconduct. It is the intent of the Parties that (i) the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes related thereto, including, without limitation, the negligence of either Party, other than gross negligence or willful misconduct, whether such negligence be sole, joint or concurrent, or active or passive, and (ii) if and to the extent any damages required to be paid hereunder are liquidated, the parties acknowledge that the damages are difficult or impossible to determine, otherwise obtaining an adequate remedy is inconvenient and the liquidated damages constitute a reasonable approximation of the harm or loss. In determining the appropriate measure of damages that would make the Parties whole, the Parties have thoroughly considered, inter alia, the uncertainty of fluctuations in gas prices, the ability and intention of the Parties to hedge such fluctuations, the bargained-for allocation of risk, the knowledge, sophistication and equal bargaining power of the Parties, the arms-length nature of the negotiations, the special circumstances of this transaction, the accounting and tax treatment of the transaction by the Parties and the entering into of other transactions in reliance on the enforceability of the liquidated damages provisions contained herein. The Parties acknowledge that this Contract is subject to Article 2 of the Uniform Commercial Code, as enacted by the state or commonwealth the law of which shall govern this Contract, including without limitation, §§ 2-706(6), 2-711, 2-718, and 2-719, except to the extent any provisions of such Article 2 (inclusive of such sections) may be inconsistent with the provisions of this Contract, which shall control. Except as expressly set forth herein, Seller expressly disclaims any, and makes no other, representation or warranty, written or oral, express or implied, including, without limitation, any representation or warranty with respect to conformity to models or samples, merchantability, or fitness for any particular purposes. There are no warranties which extend beyond the description on the face hereof.

ARTICLE IX REMARKETING

Section 9.01 Remarketing Notices.

(a) Upon delivery by Buyer to Seller of a Remarketing Notice satisfying the criteria in clause (b) below, provided that no Buyer Termination Event exists, Seller shall use commercially reasonable efforts to remarket on behalf of Buyer (or arrange for BPEC to remarket) all or a specified portion of the Daily Contract Quantity as set forth in the Remarketing Notice.

(b) Each Remarketing Notice shall specify: (i) the portion (in MMBtu) of the Daily Contract Quantity to be remarketed with respect to the applicable Delivery Point for each Gas Day; (ii) the applicable period during which such Gas is to be remarketed; and (iii) an explanation, in reasonable detail, as to the reason(s) for the remarketing. Each such notice in the form of Exhibit H shall be sent by electronic mail, with a mailed copy following, shall be

deemed to have been properly delivered, with such notice complete upon transmission by electronic mail, notwithstanding any different requirements for notice under Section 15.02. A Remarketing Notice where the type of remarketing is "Daily" must be delivered by 7:15 a.m. CPT on the Business Day prior. A Remarketing Notice where the type of remarketing is "Monthly" must be delivered by 4:00 p.m. CPT on the fifteenth (15th) day of the Month preceding the Month in which Gas is to be remarketed. If the remarketing is for a season, the Remarketing Notice must be delivered by 4:00 p.m. CPT on February 10th for remarketing of Gas during the ensuing summer season (the period from April through October) and by 4:00 p.m. CPT on September 10th for remarketing of Gas during the ensuing winter season (the period from November through March).

(c) The provision of a Remarketing Notice in itself does not relieve Buyer of its obligation to pay the Contract Price to Seller for the Daily Contract Quantity.

Section 9.02 Remarketing Terms.

(a) For all Gas remarketed pursuant to Section 9.01, if the remarketed Gas does not sell for a price equal to or exceeding the Contract Price plus the Administrative Charge, then Buyer shall pay Seller for the difference between the Contract Price plus the Administrative Charge and the price at which the remarketed Gas actually sold.

(b) If during any period of twelve (12) consecutive Months during the Delivery Period (i) the sum of (A) the quantity of Gas requested to be remarketed under Section 4.02 and Section 9.01, and (B) the quantity of Gas which Buyers fails to take under Section 4.02 (without duplication), exceeds (ii) fifty percent (50%) of the sum of the Daily Contract Quantity during such twelve (12) Month period, and (iii) Seller shall have given written notice thereof to Buyer, then a "*Partial Termination Condition*" shall be deemed to exist and Section 8.03(c) shall apply.

ARTICLE X EXCHANGES

Section 10.01 General Principle. With the consent of Seller, Buyer may effectuate an exchange of Delivery Points for Gas purchased under this Contract on a daily or monthly basis under this Article X, provided, however, that any failure by a third party to perform its obligations under any such exchange arrangement shall not relieve Buyer of its obligations under this Contract.

ARTICLE XI REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 11.01 Tax-Exempt Status of the Bonds. Buyer and Seller acknowledge and agree that Seller will finance the prepayment under the Prepaid Agreement with the proceeds of the Bonds, which will be issued as obligations under which the interest is excluded from the gross income of the owners thereof for federal income tax purposes. Buyer and Seller covenant and agree that each will not take any action, or fail to take any action, or permit any action to be taken on its behalf or cause or permit any circumstance within its control to arise or continue, unless specifically so ordered by a Government Agency, if any such action or inaction would adversely affect the exclusion from gross income for federal income tax purposes of the interest on any of the Bonds under the Code. Buyer further agrees that it will provide all documents and records reasonably requested by Seller for response to any inquiry or audit relating to the tax-exempt status of the bonds.

Section 11.02 Qualifying Use.

(a) Buyer represents, warrants, covenants and agrees that:

(i) it is (a) either (1) a Municipal Utility or (2) a Governmental Person that sells Gas (or electricity generated from such Gas) to a Municipal Utility, and (b) which, in either case, possesses all power, authority, and applicable approvals necessary for it to enter into this Contract;

(ii) it has delivered to Seller, as a condition precedent to Seller's execution of this Contract, the Buyer Certificate, in substantially the form set forth in Exhibit D hereto;

(iii) the Gas purchased under this Contract is and shall be used, at all times during the Delivery Period, by Buyer in its normal and customary governmental utility operations to provide utility service to consumers located within its governmental service territory pursuant to Buyer's rate schedules and tariffs as they exist from time to time; and

(iv) it will execute such additional documents and certificates as Bond Counsel may reasonably request evidencing Gas Purchaser's compliance with this Section, with the Code, and with Treasury Regulations thereunder.

(b) Without limiting the foregoing, Buyer further agrees that it will use the Gas (i) for Qualifying Use, (ii) in a manner that will not result in any Private Business Use, and (iii) that it will not use Gas purchased under this Contract in any other manner without the prior written consent of Seller. Buyer agrees that it will execute such additional documents and certificates as Bond Counsel may reasonably request evidencing Gas Purchaser's compliance with this Section, with the Code, and with Treasury Regulations thereunder.

Section 11.03 Representations and Warranties. As a material inducement to entering into this Contract, each Party, with respect to itself, hereby represents and warrants to the other Party as of the Effective Date as follows:

(a) it is duly organized and validly existing in good standing under the Laws of the state or commonwealth in which it is organized, and has all requisite power and authority, corporate or otherwise, to enter into and to perform its obligations hereunder and to carry out the terms and conditions hereof and the transactions contemplated hereby;

(b) it has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Contract;

(c) there is no litigation, action, suit, proceeding or investigation pending or, to the best of such Party's knowledge, threatened, before or by any Government Agency that could reasonably be expected to materially and adversely affect the performance by such Party of its obligations hereunder or that questions the validity, binding effect or enforceability hereof or of any action taken or to be taken by such Party pursuant hereto or any of the transactions contemplated hereby;

(d) the execution, delivery and performance of this Contract by such Party have been duly authorized by all necessary actions on the part of such Party and do not

require any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party;

(e) this Contract has been duly executed and delivered on behalf of such Party by an appropriate officer or authorized Person of such Party and constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights generally and by general principles of equity;

(f) the execution, delivery and performance of this Contract by such Party shall not violate any provision of any Law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it;

(g) the execution, delivery and performance by such Party of this Contract, and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its financial obligations hereunder, shall not result in any violation of any term of any material contract or agreement applicable to it, or any of its charter or bylaws or of any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, Law, ordinance, rule or regulation applicable to it or any of its properties or to any obligations incurred by it or by which it or any of its properties or obligations are bound or affected, or of any determination or award of any arbitrator applicable to it, and shall not conflict with, or cause a breach of, or default under, any such term or result in the creation of any Lien upon any of its properties or assets; and

(h) to the best of the knowledge and belief of such Party, no consent, approval, order or authorization of, or registration, declaration or filing with, or giving of notice to, obtaining of any license or permit from, or taking of any other action with respect to, any Government Agency is required in connection with the valid authorization, execution, delivery and performance by such Party of this Contract or the consummation of any of the transactions contemplated hereby.

Section 11.04 Additional Representations, Warranties and Covenants of Buyer. As a material inducement to entering into this Contract, Buyer hereby represents, warrants and covenants to Seller as follows:

(a) the amounts payable by Buyer under this Contract (i) shall be payable as a "Operation and Maintenance Cost" under and as defined in any of Buyer's revenue bond resolutions that is payable prior to debt service on Buyer's revenue bonds, as applicable, and (ii) do not constitute an indebtedness or liability of Buyer within the meaning of any constitutional or statutory limitation or restriction applicable to Buyer; and

(b) Buyer shall establish, maintain and collect rates and charges for the sale or use of Gas or electric energy generated, transmitted, distributed or furnished by it so as to provide revenues sufficient, together with other legally available moneys, to enable Buyer to pay timely all amounts payable to Seller under this Contract, to pay any other amounts legally payable from such revenues, to maintain any required reserves pursuant to any financing obligations, and to promptly enforce the payment of any and all accounts owing to Buyer for the sale of Gas or electricity or the provision of distribution or other services to its customers.

(c) Buyer further agrees to use Gas purchased under this Contract prior to other Gas purchased by Buyer that is not subject to any Qualifying Use restrictions.

Section 11.05 Negative Covenant. Buyer agrees that unless the Receivable Purchase Agreement Provider shall otherwise expressly consent in writing, Buyer shall not create, incur or suffer to exist, or agree to create, incur or suffer to exist, or consent to cause or permit in the future (upon the happening of a contingency or otherwise) the creation, incurrence or existence of any Lien on the source of payment for Buyer's payment obligations hereunder to or for the benefit of any Person that would provide such Person with a right to payment that is prior to the rights of Seller to payment under this Contract or the rights of the Receivable Purchase Agreement Provider to payment under this Contract.

ARTICLE XII TAXES

Section 12.01 Taxes. Seller shall (i) be responsible for and shall pay, cause to be paid, or promptly reimburse Buyer if Buyer has paid all Taxes assessed upstream of the Delivery Point, and (ii) indemnify Buyer and its Affiliates for any such taxes paid by Buyer or its Affiliates. Buyer shall (i) be responsible for and shall pay, cause to be paid, or promptly reimburse Seller if Seller has paid, all Taxes assessed at or downstream of the Delivery Point, and (ii) indemnify Seller and its Affiliates for any such taxes paid by Seller or its Affiliates. The Index Price does not include any applicable state or local, gross receipts, compensating, utility, transaction privilege, sales or use tax, and any other transactional-type tax which may be levied as a result of sales of or use of Gas hereunder and that is allowed by applicable law to be invoiced to the Buyer as a separate charge from the Index Price, whether measured by quantity or revenues; and if there are any such taxes Seller will invoice Buyer and Buyer will pay Seller the amount of such taxes which Seller will remit as required by applicable law. The parties agree to cooperate, in the event either party in good faith protests, contests, disputes, or files a refund request, with the applicable taxing authority or court with jurisdiction, by providing any relevant information, upon request, within a party's possession, which will support the filing party's filing. At Seller's request, Buyer shall provide Seller with a valid sales tax exemption certificate and any other required exemption or resale certificate to the extent applicable necessary for exemption from any relevant state taxes that may be levied against the Parties in relation to the transactions under, or pursuant, to this Contract.

ARTICLE XIII FORCE MAJEURE

Section 13.01 Force Majeure.

(a) Except with regard to a Party's obligation to make payment(s) due under Section 7.02, and Imbalance Charges under Section 5.02(c), 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 this section.

(b) Notwithstanding and without limiting the generality of the foregoing, Buyer acknowledges and agrees that the Delivery Points under this Contract are at, near, or supplied by Gas production areas at point(s) or pool(s) at which Gas is aggregated, and that these Gas production areas may be affected by weather-related events, including hurricanes and wellhead freeze offs, which could disrupt or curtail Seller's ability to access Gas supplies, and that such

circumstances, if and to the extent that they actually affect Seller's performance, constitute a Force Majeure event that relieves Seller of all or part, as applicable, of its obligations under this Contract to either (a) make deliveries of Gas, or (b) financially to keep Buyer whole, in either case by using any other source of Gas that may be available, including without limitation (x) storage deliveries and (y) deliveries under any third-party supply contracts not used to supply Gas under this Contract prior to such event, including deliveries from a different supply region than the regions used to supply Gas at the Delivery Points.

(c) 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 evacuations of the affected area, floods, washouts, explosions or breakage, accident or the necessity of repairs to machinery or equipment or lines of pipe; (ii) weather-related events affecting a broad 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, acts of terrorism or wars; (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 (excluding any actions taken by Buyer or a Gas Purchaser unless such actions are taken in response to an event that would otherwise constitute an event of Force Majeure); and (vi) an event of the type specified as an event of Force Majeure in Section 6.01. 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. In no event shall Seller be under any obligation to source Gas from storage or other markets if an event of Force Majeure occurs. To the extent an event of Force Majeure occurs, Seller or Buyer will allocate the supply or purchase of Firm Gas for affected transactions, as applicable, on a pro rata basis with other similarly situated Firm Gas customers.

(d) If an event of Force Majeure occurs, the Party affected may, in its sole discretion and without notice to the other Party, determine not to make a claim of Force Majeure and waive its rights under this Contract as such rights would apply to such event. Such determination or waiver shall not preclude the affected Party from claiming Force Majeure with respect to any subsequent event, including any event that is substantially similar to the event with respect to which such determination or waiver is made.

(e) Neither Party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is prevented 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; (iii) Seller's ability to sell Gas at a higher or more advantageous price, and Buyer's ability to purchase Gas at a lower or more advantageous 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 markets or Buyer's inability to use or resell Gas purchased under this Contract, except, in either case, as a result of Force Majeure; or (v) the loss or failure of Seller's Gas supply or depletion of reserves, except, in either case, for reasons of Force Majeure. The Party claiming Force Majeure shall not be excused from its responsibility for costs associated with Imbalances.

(f) Notwithstanding anything to the contrary in this Contract, 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.

(g) 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 to make or accept delivery of Gas, as applicable, to the extent and for the duration of the Force Majeure event, and neither Party shall be deemed to have failed in such obligation to the other during such occurrence or event.

ARTICLE XIV GOVERNING RULES AND REGULATIONS

Section 14.01 Compliance with Laws. This Contract shall be subject to all present and future Laws of any Government Agency having jurisdiction, and neither Party has or will knowingly undertake or knowingly cause to be undertaken any activity that would conflict with such Laws; *provided, however*, that nothing herein shall be construed to restrict or limit either Party's right to object to or contest any such Law, and neither acquiescence therein or compliance therewith for any period of time shall be construed as a waiver of such right.

Section 14.02 Contests. Excluding all matters involving a contractual dispute between the Parties, no Party shall contest, cause to be contested or in any way actively support the contest of the equity, fairness, reasonableness or lawfulness of any terms or conditions set forth or established pursuant to this Contract, as those terms or conditions may be at issue before any Government Agency in any proceeding, if the successful result of such contest would be to preclude or excuse the performance of this Contract by either Party.

Section 14.03 Defense of Contract. Excluding all matters involving a contractual dispute between the Parties, each Party shall hereafter defend and support, and shall take no action in derogation of, this Contract before any Government Agency in any proceeding, if the substance, validity or enforceability of all or any part of this Contract is hereafter challenged or if any proposed changes in Law or regulatory practices or procedures would have the effect of making this Contract invalid or unenforceable or would subject either Party to any greater or different regulation or jurisdiction that materially affects the rights or obligations of the Parties under this Contract.

Section 14.04 Continuing Disclosure. Buyer understands and acknowledges that, in connection with the public offering of the Bonds, Seller is subject to certain disclosure requirements for the benefit of prospective purchasers and beneficial owners of the Bonds under Rule 15c2-12 ("**Rule 15c2-12**") and under Rule 10b-5 ("**Rule 10b-5**"), promulgated pursuant to the Securities Exchange Act of 1934 (including any amended or successor regulation or statute thereto). To assist Seller in complying with Rule 15c2-12 and Rule 10b-5, Buyer covenants and agrees that if Seller reasonably determines that (i) Buyer is a material obligated person, as that term is defined in Rule 15c2-12, or (ii) that a material event, as that term is defined in Rule 15c2-12, has occurred with respect to Buyer or this Contract, then Buyer will authorize and provide to Seller, for inclusion in any preliminary official statement, final official statement or disclosure document prepared in connection with the remarketing of the Bonds or any continuing disclosure relating thereto, all statements and information relating to Buyer deemed material by Seller for the purpose of satisfying Rule 15c2-12 as well as Rule 10b-5. If Seller has determined that Buyer is a material obligated person for purposes of Rule 15c2-12, then Buyer further covenants and agrees that Buyer will enter into a continuing disclosure agreement in such form as Seller shall reasonably determine to be necessary for compliance

with Rule 15c2-12 and shall thereafter provide ongoing disclosure as required thereby and by Rule 15c2-12.

ARTICLE XV MISCELLANEOUS

Section 15.01 Assignment. Neither Party shall assign this Contract or any of its rights or obligations under this Contract without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed, *provided, however* (i) Seller may pledge and assign its right, title, and interest in this Contract and the amounts payable by Buyer under this Contract to the Trustee under the Indenture, such that the Trustee or any receiver appointed under the Indenture shall have the right to enforce all obligations of Buyer and to perform all obligations of Seller under this Contract; (ii) in the event of Payment Default and receipt by the Trustee of payment by the Receivables Purchase Agreement Provider of amounts owing by Buyer, Seller shall be deemed to have assigned its rights under this Contract to the Receivables Purchase Agreement Provider; and (iii) Buyer shall not assign this Contract or any of its rights or obligations under this Contract without the prior written consent of the Receivables Purchase Agreement Provider.

Section 15.02 Notices. All notices, requests, statements or payments shall be made as specified on Exhibit C hereto. All notices, requests, or statements to Buyer shall be recognized as valid, whether from Seller, or its designee(s), and Buyer shall not be held liable by reason of Buyer having relied on them. Notices required to be in writing shall be delivered by letter, electronic mail, facsimile or other documentary form or such other means of communication as the Parties may agree from time to time in writing and shall be deemed given upon actual receipt by the Party to which such notice is given except that any notices received after 2:00 p.m. CPT shall be deemed received at the close of the next Business Day. A Party may change its address by providing notice of same in accordance herewith. Notwithstanding the foregoing, any notices regarding day-to-day operations may be given orally, to be followed up in writing.

Section 15.03 Indemnification Procedure. With respect to each indemnification included in this Contract, the indemnity is given to the fullest extent permitted by applicable Law and the following provisions shall be applicable. The indemnified Party shall promptly notify the indemnifying Party in writing of any Claim and the indemnifying Party shall have the right to assume its investigation and defense, including employment of counsel, and shall be obligated to pay related court costs and the indemnifying Party's attorneys' and experts' fees, and to post any appeals bonds; *provided, however*, that the indemnified Party shall have the right to employ at its expense separate counsel and participate in the defense of any Claim. The indemnifying Party shall not be liable for any settlement of a Claim without its express written consent thereto. In order to prevent double recovery, the indemnified Party shall reimburse the indemnifying Party for reasonable payments or costs incurred in respect of an indemnity with the proceeds of any judgment, insurance, bond, surety or other recovery made by the indemnified Party with respect to a covered event.

Section 15.04 Entirety. This Contract, including the Exhibits hereto, constitutes the entire agreement between the Parties and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed. Except for any matters that, in accordance with the express provisions of this Contract, may be resolved by oral agreement between the Parties, no amendment,

modification or change herein shall be enforceable unless reduced to writing and executed by both Parties.

Section 15.05 Governing Law. This Contract shall be interpreted and construed in accordance with the applicable Laws of the State of New York, excluding conflicts of law principles which would refer to the laws of another jurisdiction; *provided* that the authority of each of Buyer and Seller to enter into and perform its obligations under this Contract shall be determined in accordance with the Laws of the state or commonwealth, as applicable, of formation of each Party.

Section 15.06 Non-Waiver. No waiver of any breach of any of the terms of this Contract shall be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach shall be deemed a waiver of any other subsequent breach.

Section 15.07 Severability. If any provision of this Contract, or the application thereof, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Contract and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent permissible under applicable Law, so long as the economic and legal substance of the transactions contemplated hereby is not affected in any materially adverse manner as to either Party.

Section 15.08 Exhibits. Any and all Exhibits referenced in this Contract shall be incorporated herein by reference and shall be deemed to be an integral part hereof.

Section 15.09 Winding Up Arrangements. All indemnity obligations, audit rights and other provisions specifically providing for survival shall survive the expiration or termination of this Contract. The expiration or termination of this Contract shall not relieve either Party of (a) any unfulfilled obligation or undischarged liability of such Party on the date of such termination, or (b) the consequences of any breach or default of any warranty or covenant contained in this Contract. All obligations and liabilities described in the preceding sentence of this Section 15.09, and applicable provisions of this Contract creating or relating to such obligations and liabilities, shall survive such expiration or termination.

Section 15.10 Relationship of the Parties. The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Contract, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement. This Contract is intended to secure and provide for the services of each Party as an independent contractor.

Section 15.11 Immunity. Buyer and Seller represent and covenant to and agree that each is not entitled to, and hereby waives any rights it may have to and shall not assert the defense of, sovereign immunity with respect to its obligations or any claims under this Contract.

Section 15.12 Counterparts. This Contract may be executed and acknowledged in multiple counterparts and by different Parties in separate counterparts, each of which shall be an original and all of which shall be and constitute one and the same instrument.

Section 15.13 Third-Party Beneficiaries. With the exception of the Receivables Purchase Agreement Provider and as provided in Section 15.14 with respect to the Trustee, the Parties acknowledge and agree that there are no third party beneficiaries of this Contract, and

that this Contract shall not impart any rights enforceable by any person, firm, organization, or corporation not a party to this Contract. Regarding the Receivables Purchase Agreement Provider, it shall be an express third party beneficiary of this Contract entitled, but not obligated, to enforce each of the covenants and provisions of this Contract. Each Party expressly acknowledges and agrees that, irrespective of any action taken or omitted to be taken by the Receivables Purchase Agreement Provider under or in connection with this Contract or otherwise in connection with the transactions contemplated by this Contract, the sole liability and obligation of the Receivables Purchase Agreement Provider in connection therewith shall be those obligations which are expressly undertaken pursuant to the Receivables Purchase Agreement.

Section 15.14 Rights of Trustee. Pursuant to the terms of the Indenture, Seller has irrevocably appointed the Trustee as its agent to issue notices (including Remarketing Notices) and to take any other actions that Seller is required or permitted to take under this Contract, and as assignee of Seller under the Indenture and subject to the terms thereof, the Trustee shall have all rights of Seller to enforce Buyer's payment and other obligations under this Contract on behalf of the holders of the Bonds and the other parties secured under the Indenture. Buyer may rely on notices or other actions taken by Seller or the Trustee, and Buyer has the right to exclusively rely on any notices delivered by the Trustee, regardless of any conflicting notices that it may receive from Seller.

Section 15.15 Non-Publication of Index Price. Pursuant to the Prepaid Agreement, Seller and BPEC shall undertake a process to agree on a replacement Index Price (or on a method for determining a replacement Index Price) for the affected Gas Day(s) should any of the following events occur: (a) the failure of the price source to announce or publish information necessary for determining the Index 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 price source; (c) the temporary or permanent discontinuance or unavailability of the price source; (d) the temporary or permanent closing of any exchange acting as the price source; or (e) both Seller and BPEC agree that a material change in the formula for or the method of determining the Index Price has occurred. Seller shall involve Buyer in this process. If Seller incurs any costs associated with this process, such as payment to an independent third party, such costs shall be paid by Buyer.

ARTICLE XVI PROJECT MANAGEMENT AND ADMINISTRATION

Section 16.01 Administration of the Gas Project. Seller covenants and agrees that it will use its best efforts to acquire, manage and administer the Gas Project for the benefit of all of the Gas Purchasers. Buyer acknowledges and agrees that Seller may from time to time enter into amendments of and supplements to the Indenture and any or all of the related project agreements and that Seller will not be required to obtain the consent or approval of Buyer in connection with any such supplement or amendment.

Section 16.02 Project Management Committee. Pursuant to the Seller's bylaws, Gas Purchasers may appoint a representative to serve on the Seller's "Project Management Committee" (the "**Project Management Committee**") created for this transaction. The Project Management Committee is required to act in accordance with and is governed by the Seller's bylaws. In the event that a weighted vote is called for on any matter before the Project Management Committee, the Gas Purchaser shall be entitled to cast the number of votes that is

equal to the total daily quantities of Gas to be purchased by it under its Gas Supply Contract with Seller.

ARTICLE XVII CLOSING DOCUMENTATION

Section 17.01 Closing Documentation.

(a) The following documents shall be delivered by Buyer on or before the Effective Date of this Contract:

(i) a completed and executed certificate of Buyer, in substantially the form attached as Exhibit D;

(ii) a certificate of the Secretary or Assistant Secretary or other duly authorized representative of Buyer setting forth (i) the resolutions of its governing body authorizing Buyer to execute and deliver this Contract and to enter into the transactions contemplated hereby and any agreements relating thereto, in substantially the form attached as Exhibit G, (ii) the appropriate individuals who are authorized to execute the Agreement and any such agreements, (iii) specimen signatures of such authorized individuals, and (iv) the organizational documents of Buyer, certified as being true and complete;

(iii) such other documents, certificates and opinions as may be reasonably requested by Seller; and

(iv) a legal opinion of counsel to the Buyer, in substantially the form of Exhibit F hereto, addressed to PEAK, the Trustee and the Receivables Purchase Agreement Provider to the effect that this Contract has been duly authorized, executed and delivered by Buyer and constitutes its legal, valid and binding obligation, enforceable in accordance with its terms.

(b) The following documents shall be delivered by Seller on the Effective Date of this Contract:

(i) An executed copy of the resolution(s) of its governing body authorizing Seller to execute and deliver this Contract and to enter into the transactions contemplated hereby and any agreements relating thereto;

(ii) a legal opinion addressed to the Buyer, Trustee, BPEC, the Swap Counterparty and the Receivables Purchase Agreement Provider to the effect that this Contract has been duly authorized, executed and delivered by Seller and constitutes its legal, valid and binding obligation, enforceable in accordance with its terms; and

(iii) executed copy of the Prepaid Agreement and Repricing Agreement.

(c) Buyer shall provide to Seller such updates to the documents provided by Buyer pursuant to Section 17.01(a) as Seller may reasonably request prior to the beginning of the Delivery Period.

IN WITNESS WHEREOF, Seller and Buyer have caused this Contract to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

[GAS PURCHASER]

By: _____

Name: _____

Title: _____

PUBLIC ENERGY AUTHORITY OF KENTUCKY

Name: _____

Title: _____

Name: _____

EXHIBIT A
DAILY CONTRACT QUANTITY

ESTIMATED:

MONTH	PREPAY VOLUME	% OF LOAD
JANUARY	5,000	25%
FEBRUARY	5,000	30%
MARCH	3,500	26%
APRIL	2,500	24%
MAY	2,500	26%
JUNE	2,500	28%
JULY	2,500	28%
AUGUST	2,500	28%
SEPTEMBER	2,500	27%
OCTOBER	2,500	25%
NOVEMBER	4,000	32%
DECEMBER	4,000	27%

EXHIBIT B
DELIVERY POINTS AND INDICES

[TBD]

EXHIBIT C

NOTICE CONTACT AND PAYMENT INSTRUCTIONS

NOTICES

If to Seller: Public Energy Authority of
Kentucky
516 Highland Ave.
Carrollton, KY 41008

Attention: President and
General Manager
Telephone: (502) 732-0991
Fax: (502) 732-8777
E-mail: gballinger@peakgas.net

with a copy to: BPEC

Attention:
Telephone:
Fax:

PAYMENT INSTRUCTIONS

By Wire Transfer:

Account No.
ABA No.

EXHIBIT D
BUYER CERTIFICATE*

DATED: [] 1, 2018

The undersigned hereby certifies that [he/she] is the [Title] of the [Entity] (“Buyer”), and that as such [he or she] is authorized to execute this certificate on behalf of Buyer. This certificate is executed in connection with the Gas Supply Contract, dated as of _____, 2018 (the “Gas Supply Contract”), between Buyer and the Public Energy Authority of Kentucky (“PEAK” or “Seller”). Capitalized terms used and not otherwise defined in this Certificate have the meanings assigned to them in the Gas Supply Contract.

Pursuant to the Indenture, Seller will issue the Bonds to finance the cost of acquisition of the Gas Supply Project, Gas from which will be sold to Buyer under the Gas Supply Contract. In connection with the foregoing, Buyer hereby certifies and represents as follows:

1. Buyer is a Municipal Utility duly created and validly existing and in good standing under the laws of the [State Name] (“State”) and has the corporate power and authority to enter into and perform its obligations under the Gas Supply Contract.
2. The Gas Supply Contract has been duly authorized, executed and delivered by Buyer, is in full force and effect and constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms. Attached hereto as Annex A is a true, correct and complete copy of the resolution or ordinance of Buyer authorizing the execution and delivery of the Gas Supply Contract.
3. I have reviewed the statements and information relating to Buyer and its utility system attached as Annex B that are contained in the final Official Statement prepared by the Seller in connection with the sale of the Bonds with respect to the Bonds and, as of the date hereof and to the best of my knowledge, such statements and information are true and correct in all material respects and did not and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.
4. The authorization, execution and delivery of the Gas Supply Contract and compliance with the provisions thereof (a) will not conflict with or constitute a breach of, or default under, any instrument relating to the organization, existence or operation of Buyer, any commitment, agreement, bond resolution, bond, note, indenture or other instrument to which Buyer is a party or by which it or its property is bound or affected, or any ruling, regulation, ordinance, judgment, order or decree to which Buyer (or any of its officers in their respective capacities as such) is subject or any provision of the laws of the State relating to Buyer and its affairs, and (b) will not result in, or require the creation or imposition of, any

* The Buyer Certificate set forth in this Exhibit D is a form certificate for buyers that are Municipal Utilities. This form will be modified with language approved by Bond Counsel in the case of a Governmental Person (other than a Municipal Utility) that sells Gas (or electricity generated from such Gas) to a Municipal Utility, and possesses all power, authority, and applicable approvals necessary for it to enter into this Contract.

Lien on any of the properties or revenues of Buyer pursuant to any of the foregoing.

5. There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or administrative body pending or, to the best of Buyer's knowledge, threatened, against Buyer which in any way affects or questions the validity or enforceability of any provision of the Gas Supply Contract.
6. Buyer has entered into the Gas Supply Contract for the purpose of acquiring a long-term supply of Gas (x) for sale to its Retail Customers, or (y) to produce electricity for sale to its Retail Customers.
7. Tax Certifications
 - a. Buyer understands that PEAK will issue the Bonds to finance prepayment of the purchase price payable by PEAK for the Gas to be sold and delivered to Buyer under the Gas Supply Contract. Buyer further understands and acknowledges that PEAK will issue the Bonds as tax-exempt obligations under Sections 141-150 of the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury regulations promulgated thereunder (the "Regulations"). Sections 141-150 of the Code and the Regulations impose certain conditions and requirements on Buyer's use of the Gas purchased by it under the Gas Supply Contract (the "Gas Supply") in order to establish and maintain the tax exemption for interest on the Bonds. Buyer understands that the statements made herein will be relied upon by PEAK in its effort to comply with the conditions imposed by the Code and the Regulations, and by Bond Counsel in rendering its opinion with respect to the exclusion from gross income for federal income tax purposes of interest on the Bonds.
 - b. Definitions: For purposes of this Certificate:
 - i. "Testing Period" means calendar years 2013 through 2017.
 - ii. "Service Area" means (A) any area throughout which Buyer provided, at all times during (x) the Testing Period, and (y) the period immediately following the Testing Period and ending on the Issue Date, natural gas transmission or distribution services or electric energy distribution services, or (B) any area recognized as the natural gas or electric distribution service area of Buyer under state or federal law.
 - iii. "Issue Date" shall mean [Issue Date], 2018, the issue date of the Bonds.
 - iv. "Governmental Person" means a state or local governmental unit or any instrumentality thereof. It does not include the United States or any agency or instrumentality thereof.
 - v. "Retail Customer" shall mean a customer of Buyer located in the Service Area of the Buyer that purchases Gas or electricity, as applicable, for consumption and not for resale.

- vi. "Nongovernmental Agency" means any Person other than a Governmental Person.
 - vii. "Private Use" means use of property, directly or indirectly, in any trade or business carried on by any Person, or any activity of any Person other than a natural person, in each case excluding Governmental Persons, unless (1) such use is merely as a member of the general public, (2) such property is intended to be and is in fact reasonably available for use on the same basis as natural persons not engaged in a trade or business, and (3) no priority rights therein or special benefits therefrom are extended to such Person (other than customary and reasonable differences in rates and terms and conditions of service for different classes of users). For this purpose, property is considered to be "used" by a Person if it is owned by such Person or otherwise actually or beneficially used by such Person under a lease, management contract, output-type contract, or similar arrangement. For the avoidance of doubt, Private Use does not arise as a result of the receipt by a Nongovernmental Agency (including an industrial or commercial customer) of retail Gas service from Buyer under a generally applicable and uniformly applied tariff (including, for example, customary and reasonable differences in rates and terms and conditions of service for different classes of users). On the other hand, Private Use does arise, for example, if a Nongovernmental Agency receives retail Gas service for its trade or business from Buyer under a contract entered into between such Nongovernmental Agency and Buyer, other than bona fide requirements contracts satisfying the requirements of the Regulations.
- c. In accordance with the requirements of Sections 141-150 of the Code and the Regulations, Buyer certifies as follows:
- i. Buyer is a Municipal Utility that owns and operates either or both a gas distribution utility or an electricity distribution utility (the "System").
 - ii. Attachment I hereto shows (A) the average annual amount of Gas either (x) sold by Buyer to Retail Customers within its Service Area during the Testing Period, or (y) used by Buyer to generate electricity for sale to Retail Customers within its Service Area during the Testing Period, (B) the maximum amount of Gas storage available to Buyer on the date hereof, and (C) the amount of Gas that Buyer has a right to acquire for the System from any Person in any year during the term of the Gas Supply Contract.
 - iii. Buyer owns and operates the System and reasonably expects to use all of the Gas Supply solely to (x) furnish Gas to its Retail Customers located in its Service Area in the normal and customary operations of the System, or (y) generate electricity for sale to its Retail Customers located in its Service Area in the normal and customary operation of the System.
 - iv. The amount of Gas to be acquired under the Gas Supply Contract during any year, plus the amount of Gas otherwise available to Buyer for the System as of the Issue Date, does not exceed the sum of (A) the annual

average amount during the Testing Period of Gas purchased by Retail Customers of Buyer, (B) the amount of Gas to be used by Buyer to generate electricity for sale to Retail Customers of Buyer, and (C) the amount of Gas to be used to transport the Gas acquired under the Gas Supply Contract to the System during the year. For purposes of the preceding sentence, the “amount of Gas otherwise available to Buyer for the System as of the Issue Date” means the sum of (I) the amount of Gas held by Buyer for the System on the Issue Date, and (II) the amount of Gas that Buyer has an obligation to purchase for the System in any year during the term of the Gas Supply Contract, divided by [] (the number of years in the Gas Supply Contract).

- v. Buyer will not engage in any intentional act to render the volume of Gas acquired under the Gas Supply Contract to be in excess of (A) the amount of Gas needed to serve Retail Customers of Buyer, and (B) the amount of Gas used to transport the acquired Gas to the System. Buyer reasonably expects that all amounts paid for Gas acquired pursuant to the Gas Supply Contract will be derived from current revenues from operations of the System.
- vi. The Gas Supply is to be used in the Service Area. Therefore, the Gas Supply may not be used in any expansion of the Service Area occurring after the date of this Certificate unless Buyer receives the prior written approval of PEAK and agrees to comply with such conditions and limitations as PEAK may require, provided however that Buyer may expand its Service Area for this purpose, without seeking approval of PEAK, to any area contiguous to its existing Service Area if permitted by State law.
- vii. Except to the extent set forth in the Gas Supply Contract, or a prior written consent of PEAK delivered to Buyer, Buyer will not permit any portion of the Gas Supply to be used for a Private Use. In determining compliance with this requirement, Buyer will inform PEAK of the current existence of, and during the term of the Gas Supply Contract will notify PEAK prior to entering into, any of the following types of contracts or arrangements:

(A) Any sale or other disposition to a Nongovernmental Agency of all or any part of the System;

(B) Any lease of or management contract for the operation of all or any part of the System if such lease or management contract is with a Nongovernmental Agency;

(C) Any contract providing for the sale of Gas delivered under the Gas Supply Contract to a Nongovernmental Agency; and

(D) Any arrangement that conveys to a Nongovernmental Agency priority rights or any other preferential benefits to use of the output of the System (other than customary and reasonable differences in rates and terms and conditions of service for different classes of users).

Buyer will not use any of the types of contracts or arrangements described in A through D above without the prior written approval of PEAK and under PEAK's the written instruction, provided, however, that arrangements providing for the retail sale of Gas from the System to the general public (including private businesses as members of the general public) solely on the basis of rates or charges that are generally applicable and uniformly applied do not have to be reported to PEAK.

8. The undersigned has been duly authorized to execute and deliver this certificate on behalf of Buyer.

Dated as of the day and year first above written.

[BUYER]

By

Name:

Its

[SEAL]

ANNEX A

[insert Buyer's resolution in the form of Exhibit G]

ANNEX B

[TBD]

EXHIBIT E
FORM OF RESET REMARKETING NOTICE

[Date]

Public Energy Authority of Kentucky
Post Office Box 299
516 Highland Avenue
Carrollton, Kentucky 41008
Attn: President and General Manager

BP Energy Company
201 Helios Way
Houston, TX 77079

To the Addressees:

The undersigned, duly authorized representative of [] (the "Buyer"), is providing this notice (the "Reset Remarketing Election Notice") pursuant to the Gas Supply Contract, dated as of [] 1, 2018 (the "Supply Agreement"), between Public Energy Authority of Kentucky and the Buyer.

Pursuant to Section 2.04 of the Gas Supply Contract, if the Available Discount for the Reset Period beginning on [____], 20[] as finally determined does not equal or exceed the Minimum Discount, the Buyer has elected to have its Daily Contract Quantity for each Gas Day of such Reset Period remarketed.

Given this [] day of [____], 20[].

[BUYER]

By: _____
Name:
Title:

EXHIBIT F

OPINION OF COUNSEL TO BUYER

[dated as of Closing], 2018

Public Energy Authority of Kentucky
Post Office Box 299
516 Highland Avenue
Carrollton, Kentucky 41008
Attn: President and General Manager

Morgan Stanley & Co. LLC
1585 Broadway
New York, NY 10036

The Bank of New York Mellon Trust Company, N.A
One Wall Street
New York, NY 10286

BP Energy Company
201 Helios Way
Houston, TX 77079

Re: Gas Supply Contract between Public Energy Authority of
Kentucky and Buyer [Name]

Ladies and Gentlemen:

I am the duly appointed and acting ___ for and have acted as counsel to the Board of [_____] for the ("Buyer") in connection with the Gas Supply Contract between Public Energy Authority of Kentucky ("PEAK") and the Buyer dated as of [_____]1, 2018 (the "Gas Supply Contract"). PEAK acquired a supply of natural gas (the "Gas Supply") from BP Energy Company ("Supplier") pursuant to the Prepaid Natural Gas Purchase and Sale Agreement, dated as of [_____] , 2018, between Supplier and PEAK with the net proceeds of its Gas Supply Revenue Bonds 2018 Series B. PEAK will sell a portion of the Gas Supply to the Buyer under the Gas Supply Contract.

Unless otherwise specified herein, all terms used but not defined in this opinion shall have the same meaning ascribed to them in the Gas Supply Contract.

In connection with this opinion, I have assumed the genuineness of all signatures (other than the signatures of officers and directors of the Buyer) and the authenticity of all items submitted to me as originals and the conformity with originals of all items submitted to me as copies, and I am aware of no facts or circumstances that might indicate that these assumptions are not correct. I have further assumed the due authorization, execution and delivery of the Gas Supply Contract by PEAK. In connection with this opinion, I have examined originals or copies, certified or otherwise identified to my satisfaction, of the following:

(a) Resolution No. __, duly adopted by the governing body of Buyer on _____, 2018 (the "Resolution") authorizing Buyer to execute and deliver the Gas Supply Contract;

(b) Executed counterparts of the Gas Supply Contract, together with each of the Exhibits thereto; and

(c) Such other documents, information, and facts as are necessary for me to render the opinions contained herein.

Based upon the foregoing, I am of the opinion that:

i. The Buyer is a _____ duly organized and validly existing under the laws of the state of _____ (the "State"), and has the power and authority to deliver gas to retail gas customers desiring such service from the Buyer within its service area, to own its properties, to carry on its business as now being conducted, to execute, deliver, and perform the Gas Supply Contract.

ii. The rates charged by the Buyer to its retail gas customers are currently not regulated by any state or federal regulatory authority.

iii. The Buyer has lawful authority to own, operate, and manage its gas distribution utility and to fix and collect rates, fees and other charges in connection with such distribution system.

iv. The governing body of the Buyer has duly authorized executed, and delivered the Gas Supply Contract and do not and will not require, subsequent to the execution of the Gas Supply Contract by the Buyer, any consent or approval of the governing body or any officers of the Buyer.

v. The Gas Supply Contract constitutes the legal, valid, and binding obligation of the Buyer, enforceable in accordance with its terms. The Buyer complied with any applicable procurement requirements of State or local law prior to entering into the Gas Supply Contract.

vi. The authorization, execution and delivery of the Gas Supply Contract and compliance with the provisions thereof (a) will not conflict with or constitute a breach of, or default under, any instrument relating to the organization, existence or operation of the Buyer, any commitment, agreement, bond resolution, bond, note, indenture or other instrument to which the Buyer is a party or by which it or its property is bound or affected, or any ruling, regulation, ordinance, judgment, order or decree to which the Buyer (or any of its officers in their respective capacities as such) is subject or any provision of the laws of the State relating to the

Buyer and its affairs, and (b) will not result in, or require the creation or imposition of, any Lien on any of the properties or revenues of the Buyer pursuant to any of the foregoing. The foregoing assumes that all payments under the Gas Supply Contract are operating expenses of the Buyer's municipal utility system, as described in the Gas Supply Contract.

vii. As of the date of the Gas Supply Contract, to the best of my knowledge after due inquiry, there is no pending or threatened action or proceeding against or affecting the Buyer which in any way would adversely affect the legality, validity, or enforceability of the Gas Supply Contract.

viii. The foregoing opinion with respect to the enforceability of the Gas Supply Contract is subject to the effect of bankruptcy, insolvency, reorganization, moratorium, and other similar laws relating to or affecting creditors' rights generally, to the exercise of judicial discretion in the appropriate case, and to the limitations imposed by general principles of equity upon the specific enforceability of any of the remedies, covenants or other provisions of the Gas Supply Contract and any related documents and upon the availability of injunctive relief or other equitable remedies.

My opinion as to enforceability is limited by standards of good faith, fair dealing, materiality, and reasonableness that may be applied by a court to the exercise of certain rights and remedies; limitations based on statutes or on public policy limiting a person's right to waive the benefits of statutory provisions or of a common law right; and limitations releasing a party from or indemnifying a party against liability for its own wrongful or negligent act when such release or indemnification is contrary to public policy.

This opinion is rendered solely for use and benefit of the addressees in connection with the Gas Supply Contract and may not be relied upon other than in connection with the Gas Supply Contract, or by any other person or entity for any purpose whatsoever, nor may it be quoted in whole or in part or otherwise referred to in any document or delivered to any other person or entity without the prior written consent of the undersigned.

This opinion is given as of the date hereof and no opinion is expressed as to the effect of future applicable laws or court decisions. I assume no obligation, and expressly disclaim any obligation, to update or supplement this opinion to reflect any facts or circumstances which may hereafter come to my attention or as to any change in laws which may hereafter occur.

Very truly yours,

EXHIBIT G

**BUYERS AUTHORIZING RESOLUTION
NO. ____**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA, (i) AUTHORIZING THE EXECUTION OF A GAS SUPPLY CONTRACT WITH THE PUBLIC ENERGY AUTHORITY OF KENTUCKY (“PEAK”) FOR THE PURCHASE OF NATURAL GAS FROM PEAK; (ii) ACKNOWLEDGING THAT PEAK WILL ISSUE ITS GAS SUPPLY REVENUE BONDS TO FUND THE PURCHASE OF A SUPPLY OF NATURAL GAS FROM BP ENERGY COMPANY (“BPEC”), WHICH GAS WILL BE USED TO MAKE DELIVERIES UNDER THE CONTRACT; AND (iii) FOR OTHER PURPOSES.

WHEREAS, the City Council of the City of Pensacola owns and operates a municipal gas distribution utility known as Pensacola Energy and is authorized to acquire, purchase, transport, store and manage supplies of gas necessary to meet the requirements of the residential, commercial and industrial customers served by such utility; and

WHEREAS, the acquisition of secure, reliable and economic supplies of natural gas is necessary for the prudent and businesslike operation of the utility owned by the City of Pensacola, the continued economic development of its community and the promotion of the public health, safety and welfare; and

WHEREAS, the Public Energy Authority of Kentucky which was formed pursuant to the Natural Gas Acquisition Authority Act, KRS 353.400 to 353.410, has offered to sell to the City of Pensacola, pursuant to the contract, a supply of natural gas in the quantities on the dates set forth in the Contract, on the condition that PEAK issues its Gas Supply Revenue Bonds, 2018 Series A (the “Bonds”) the proceeds of which will be used to acquire a supply of natural gas (the “Gas Supply”) pursuant to a Prepaid Agreement with BPEC (the “Prepaid Agreement”); and

WHEREAS, the City of Pensacola is a Government Agency, as such term is defined in the Gas Supply Contract, and desires to enter into the Contract with PEAK.

NOW, THEREFORE, BE IT RESOLVED BY CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA as follows:

1. The City of Pensacola hereby approves the execution and delivery of the Gas Supply Contract, in substantially the form previously submitted to the City of Pensacola and attached hereto as Exhibit A, pursuant to which the City of Pensacola will agree to purchase specified quantities of natural gas from PEAK, such deliveries to be made on the dates, at the volumes and for the prices set forth in such Gas Supply Contract.

2. The Mayor of the City of Pensacola is hereby authorized to execute any such other

closing documents or certifications which may be required or contemplated in connection with the execution and delivery of the Contract or carrying out the intent and purpose of this resolution.

3. This Resolution shall become effective the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest: _____
City Clerk

EXHIBIT H

FORM OF REMARKETING NOTICE

To: Public Energy Authority of Kentucky

From: [], Participant

Check the box to indicate type of remarketing.

- Daily
- Monthly
- Seasonal Remarketing Notice
- Remainder of the current Reset Period

Period for which remarketing is requested: _____, 20__ through _____, 20__

Buyer requests that Seller remarket the amounts of Gas listed below pursuant to Article IX of the Agreement for the following reason(s):

Delivery Point		Daily Contract Quantity and total Quantity subject to remarketing (MMBtu)