

STATE OF MICHIGAN
 ad
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 525 W. ALLEGAN, LANSING, MI 48933

NOTICE OF CONTRACT NO. 071B6600002

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
BP Canada Energy Marketing Corp. 240 4 Ave; PO Box 200 Calgary, AB T2P 2H8, CANADA	Pete Currie	Peter.Currie@bp.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	231-922-1104	7994

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	Various			
CONTRACT ADMINISTRATOR	DTMB	Melissa Sambiago	517-284-7016	sambiagiom@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Natural Gas Supplier – Tier I			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
Contract Ordering Period: 6 Years, 9 Months Contract Delivery Period: 5 years, 3 Months	October 1, 2015	June 30, 2022	N/A
PAYMENT TERMS	F.O.B.	SHIPPED TO	
45 Days	N/A	N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$325,000,000.00	

For the Contractor:

_____,
Contract Administrator

Date

For the State:

Rebecca Cook, Commodities Division Director
DTMB Procurement
State of Michigan

Date



STATE OF MICHIGAN
STANDARD CONTRACT TERMS
Natural Gas Supplier - Tier I

This STANDARD CONTRACT ("Contract") is agreed to between the State of Michigan (the "State") and BP Canada Energy Marketing Corp. ("Contractor"), a Delaware corporation. This Contract Ordering Period is effective on October 1, 2015 ("Effective Date"), and unless terminated, expires on June 30, 2022. The Contract Delivery period shall begin on April 1, 2017, and unless terminated, expires on June 30, 2022.

The parties agree as follows:

- 1. Duties of Contractor. Contractor must perform the services and provide the deliverables described in Exhibit B – Statement of Work (the "Contract Activities"). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Exhibit B.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

- 2. NAESB Section 9 has been replaced, in its entirety, with the following: Notices. All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

Table with 2 columns: If to State, If to Contractor. Contains contact information for Melissa Sambiagio and Contract Services.



3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a “**Contract Administrator**”):

State: <i>Melissa Sambiagio DTMB Procurement 525 W. Allegan Constitution Hall – 1N Lansing, MI 48913 sambiagiom@michigan.gov</i>	Contractor: <i>Contract Services P. O. Box 3092 Houston, TX 77079 E-mail: N/A Phone: 713- 323-2000 Fax: 713-323-0203</i>
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4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

State: <i>Landmark Energy Consulting, LLC Becki Grabowski 2159 Allen Road Kimball, MI 48074 landmarkec@comcast.net 810-334-6646 Phone 810-984-4824 Fax</i>	Contractor: <i>BP Canada Energy Marketing Corp. Diane Hagelberg 300 E. Front Street, Suite 440 E-mail: diane.hagelberg@bp.com Phone: 231-922-1118 Fax: 231-922-9491</i>
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5. **Reserved.**

6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by an company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Umbrella or Excess Liability Insurance	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	



Workers' Compensation Insurance

Minimal Limits:
Coverage according to applicable laws governing work activities.

Waiver of subrogation, except where waiver is prohibited by law.

Employers Liability Insurance

Minimal Limits:
\$500,000 Each Accident
\$500,000 Each Employee by Disease
\$500,000 Aggregate Disease.

Pollution Liability and Asbestos Pollution Liability (Errors and Omissions)

Minimal limits:
\$1,000,000 Each Occurrence
\$2,000,000 Annual Aggregate

Contractor must have their policy: (1) be applicable to the work being performed, including completed operations equal to or exceeding statute of repose; (2) not have exclusions or limitations related to Transportation (upset overturn, spills during loading or unloading, Hazardous Materials Handling, and Non Owned disposal site liability; and (3) endorsed to add "the State of Michigan, its departments, division, agencies, offices, commissions, officers, employees, and agents" as additional insured.

If any of the required policies provide **claim-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

7. **Reserved.**

8. **Reserved.**

9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.



10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor. Such notice must be written with reasonable detail outlining the reason for removal or reassignment and be based on legitimate good-faith reasons.
12. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
13. **NAESB Section 14.1 has been replaced, in its entirety, with the following: Assignment.** Neither party may assign this Contract to any other party without the prior approval of the other party; provided, the State may assign this Contract to any other State agency, department, or division without the prior consent of Contractor and Contractor may assign this Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform this Contract. The State may withhold consent from proposed assignments when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on this Contract or the State's ability to recover damages. For purposes of this paragraph, "**affiliate**" means an entity that controls, is controlled by, or is under common control with Contractor.
14. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the state of a change in Contractor's organizational structure or ownership that would constitute a change of control. For purposes of this Contract, a change of control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a more than 50% change in ownership of Contractor through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in **Exhibit B**.
16. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in **Exhibit B**. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause. Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver



unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract. If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

17. **Delivery.** Contractor must deliver all Contract Activities with transportation and handling charges paid by Contractor, unless otherwise specified in **Exhibit B**.
18. **Reserved.**
19. ***NAESB Section 8.2, the last sentence is removed in its entirety.***
20. ***NAESB Sections 7.2, 7.4 and 7.5 have been replaced, in their entirety, with the following: Terms of Payment.*** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in **Exhibit B**. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Contract are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

21. **Reserved.**
22. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
23. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability;



(d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

24. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
25. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
26. **NAESB Section 8.3 has been replaced, in its entirety, with the following: General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).



The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

27. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
28. **NAESB Section 13 has been replaced, in its entirety, with the following: Limitation of Liability.** Neither the Contractor nor the State is liable to each other, for consequential, incidental, indirect, or special damages, regardless of the nature of the action. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property cause by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.
29. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
30. **State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived solely therefrom as it relates to the transactions and performance of this contract, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
31. **Reserved.**
32. **NAESB Section 14.10 has been replaced, in its entirety, with the following: Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire



communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

- a. Meaning of Confidential Information. For the purposes of this Contract, the term “**Confidential Information**” means all information and documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term “Confidential Information” does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor’s responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State’s Confidential Information in confidence. Any other disclosure is prohibited except for disclosures as required or requested by law, regulation, court order, or similar process, provided that to the extent a receiving party is required to disclose confidential information pursuant to this subsection, the receiving party shall, to the extent permitted by law, provide the furnishing party with notice of the legal request within two (2) Business Days of receipt, and assist the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party. At the State’s request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must reasonably assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party, within two (2) Business Days, in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party’s possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-



State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. Contractor shall have the right to retain copies of State Data Confidential Information, and any summaries, analyses, notes, or extracts prepared by Contractor which are based on or contain portions of such Confidential Information (a) to the extent necessary to evidence performance of the Services, (b) pursuant to a civil or criminal investigation or litigation document retention hold, (c) that are archived or backed-up by receiving party's computer procedures, provided that Contractor retains such copies in accordance with its confidentiality obligations hereunder.

33. **Fixed Price Transaction Special Condition.** In the event that the Contract Price for a transaction is a Fixed Price (as defined in Part 1 of Exhibit C-1), and such transaction (a) has a Firm performance obligation, and (b) a Delivery Period of at least one Month, the parties hereby agree that the underlying Transaction Confirmation shall include, or be deemed to include, the additional Special Condition set forth in Part 1 of Exhibit C-1.
34. **Regulatory Event Special Condition.** In the event that Delivery Period for any transaction would extend beyond the day that is forty-two (42) months after the date of the underlying Transaction Confirmation, the parties hereby agree that such Transaction Confirmation shall include, or be deemed to include, the additional Special Condition set forth in Part 2 of Exhibit C-1.
35. **Reserved.**
36. **NAESB Section 7.6 has been replaced, in its entirety, with the following: Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. The State does not have the right to copy any information deemed confidential by the Contractor to the extent access would require the confidential information to become public information. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

37. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a



material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.

38. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
39. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
40. **Reserved.**
41. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
42. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
43. **NAESB Section 14.5 and 14.6 is replaced, in its entirety, and replaced with the following: Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
44. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
45. **NAESB Section 11 is replaced in its entirety with the following: Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
46. **NAESB Section 14.11 has been replaced, in its entirety, with the following: Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of



limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

47. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
48. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
49. **NASBE Section 1.3, the last sentence is removed, in its entirety and replaced with- Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: a) **Exhibit C** - Transaction Confirmation, and **Exhibit C-1** – Additional Special Conditions for Certain Transactions, as applicable; b) Contract Change Notice; c) **Exhibit B** – Statement of Work; d) State of Michigan Standard Terms and Condition; e) **Exhibit A** – NAESB Base Contract for Sale and Purchase of Natural Gas
50. **NAESB Section 14.2 has been replaced, in its entirety, with the following: Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
51. **NAESB Section 14.3 has been replaced, in its entirety, with the following: Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
52. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
53. **NAESB Section 14.4 has been replaced, in its entirety, with the following: Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").



EXHIBIT A

NAESB Base Contract for Sale and Purchase of Natural Gas

The parties to this Base Contract are the following:

BP Canada Energy Marketing Corp. and State of Michigan, DTMB Procurement

Notices & Confirmations:

See State of Michigan Standard Contract Terms and Conditions 525 West Allegan Street

 Attn: _____
 Director
 Phone: _____ Fax: _____

Constitution Hall, 1N
 P. O. Box 30026
 Lansing, Michigan 48909
 Attn: Sharon Walenga-Maynard, Sourcing
 Phone: 517-284-7000 Fax: 517-335-0046

Invoices and Payments:

See State of Michigan Standard Contract Terms and Conditions State of Michigan, DTMB Financial Services

 Attn: _____
 Phone: _____ Fax: _____

Lewis Cass Building
 320 S Walnut Street
 P. O. Box 30026
 Lansing, Michigan 48909
 Attn: Jackie Huhn
 Phone: 517-241-3564 Fax: 517-373-1071
huhnj@michigan.gov

Wire Transfer or ACH Numbers (if applicable):

The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select only one box from each section:

<p>Section 1.2 <input type="checkbox"/> Oral (default) Transaction Procedure <input checked="" type="checkbox"/> Written</p>	<p>Section 7.2 <input type="checkbox"/> 25th Day of Month following Month of delivery (default) Payment Date <input checked="" type="checkbox"/> 45 Calendar Days following the Date of the Invoice or the month of Delivery (the later)</p>
<p>Section 2.5 <input checked="" type="checkbox"/> 2 Business Days after receipt (default) Confirm Deadline <input type="checkbox"/> _____ Business Days after receipt</p>	<p>Section 7.2 <input type="checkbox"/> Wire transfer (default) Method of Payment <input type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check <input checked="" type="checkbox"/> Warrant/EFT</p>
<p>Section 2.6 <input type="checkbox"/> Seller (default) Confirming Party <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Both Parties</p>	<p>Section 7.7 <input checked="" type="checkbox"/> Netting applies (default) Netting <input type="checkbox"/> Netting does not apply</p>
<p>Section 3.2 <input checked="" type="checkbox"/> Cover Standard (default) Performance Obligation <input type="checkbox"/> Spot Price Standard</p>	<p>Section 10.3.1 <input checked="" type="checkbox"/> Early Termination Damages Apply (default) Early Termination Damages <input type="checkbox"/> Early Termination Damages Do Not Apply</p>
<p>Note: The following Spot Price Publication applies to both of the immediately preceding.</p>	<p>Section 10.3.2 <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) Other Agreement Setoffs <input type="checkbox"/> Other Agreement Setoffs Do Not Apply</p>



<p>Section 2.26 Spot Price Publication</p> <p><input type="checkbox"/> Gas Daily Midpoint (default) <input checked="" type="checkbox"/> Gas Daily First of Month</p>	<p>Section 14.5 Choice Of Law</p> <p>Michigan</p>
<p>Section 6 Taxes</p> <p><input type="checkbox"/> Buyer Pays At and After Delivery Point (default) <input checked="" type="checkbox"/> Seller Pays Before and At Delivery Point</p>	<p>Section 14.10 Confidentiality</p> <p><input type="checkbox"/> Confidentiality applies (default) <input checked="" type="checkbox"/> Confidentiality does not apply</p>
<p><input checked="" type="checkbox"/> Special Provisions: All modifications noted and superseded in State of Michigan Standard Terms and Conditions</p> <p><input checked="" type="checkbox"/> Addendum(s): Exhibit B – Statement of Work – Contract Activities Exhibit C – Transaction Confirmation Exhibit C-1 – Additional Special Conditions for Certain Transactions Exhibit D – Pricing</p>	



PURPOSE AND PROCEDURES

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

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

Oral Transaction Procedure:

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

Written Transaction Procedure:

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

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



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

DEFINITIONS

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

- 1.5. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.
- 1.6. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.
- 1.7. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 1.8. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 1.9. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 1.10. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 1.11. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation.
- 1.12. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 1.13. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 1.14. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 1.15. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as an irrevocable standby letter of credit, a margin



agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.

- 1.16. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 1.17. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 1.18. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 1.19. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 1.20. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 1.21. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 1.22. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 1.23. "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.
- 1.24. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- 1.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 1.26. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 1.27. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 1.28. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 1.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 1.30. "Spot Price " as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day;



and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

- 1.31. "Transaction Confirmation" shall mean a document, similar to the form of **Exhibit C**, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.
- 1.32. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.
- 1.33. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

PERFORMANCE OBLIGATION

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

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

Cover Standard:

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

Spot Price Standard:

~~3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of~~



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

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

TRANSPORTATION, NOMINATIONS, AND IMBALANCES

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

QUALITY AND MEASUREMENT

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

TAXES

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

Buyer Pays At and After Delivery Point:

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


Seller Pays Before and At Delivery Point:

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

BILLING, PAYMENT, AND AUDIT

- 1.42. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.
- 1.43. ~~Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.~~
- 1.44. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for ~~an accelerated~~ payment setting forth the basis upon which the invoiced amount was calculated. ~~Payment from the nonperforming party will be due five Business Days after receipt of invoice. See State of Michigan – Contract Terms, Item 20.~~
- 1.45. ~~If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.~~
- 1.46. ~~If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.~~
- 1.47. ~~A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.~~
- 1.48. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall



be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

TITLE, WARRANTY, AND INDEMNITY

- 1.49. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).
- 1.50. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. ~~EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 14.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.~~
- 1.51. ~~Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after title passes to Buyer.~~
- 1.52. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

NOTICES

- 1.53. ~~All Transaction Confirmations, invoices, payments and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.~~
- 1.54. ~~All Notices required hereunder may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.~~
- 1.55. ~~Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.~~

FINANCIAL RESPONSIBILITY

- 1.56. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).
- 1.57. In the event (each an "Event of Default") either party (the "Defaulting Party") or its guarantor shall:
 - (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition



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

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



The parties have selected either “Early Termination Damages Apply” or “Early Termination Damages Do Not Apply” as indicated on the Base Contract.

Early Termination Damages Apply:

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

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

Early Termination Damages Do Not Apply:

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



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

Other Agreement Setoffs Apply:

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

Other Agreement Setoffs Do Not Apply:

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

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

- 1.59. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.
- 1.60. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.
- 1.61. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.
- 1.62. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.



FORCE MAJEURE

- 1.63. ~~Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.~~
- 1.64. ~~Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.~~
- 1.65. ~~Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Agreement; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.~~
- 1.66. ~~Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.~~
- 1.67. ~~The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.~~
- 1.68. ~~Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.~~

TERM

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



LIMITATIONS

~~FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.~~

MISCELLANEOUS

- ~~1.69. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.~~
- ~~1.70. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.~~
- ~~1.71. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.~~
- ~~1.72. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.~~
- ~~1.73. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.~~
- ~~1.74. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.~~
- ~~1.75. There is no third party beneficiary to this Contract.~~



- 1.76. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.
- 1.77. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.
- 1.78. ~~Unless the parties have elected on the Base Contract not to make this Section 14.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, or (iv) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.~~
- 1.79. ~~In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.~~
- 1.80. ~~The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties.~~

DISCLAIMER: ~~The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.~~



STATE OF MICHIGAN

EXHIBIT B STATEMENT OF WORK - CONTRACT ACTIVITIES Natural Gas Supplier - Tier I

1. **BACKGROUND**

The State of Michigan Energy Purchasing Cooperative (Cooperative) currently consists of State agencies, universities, community colleges, cities, counties, and K-12 public schools. The State of Michigan operates many facilities within the State that consume natural gas as their only or primary fuel source. During the term of the gas supply contract, State agencies and public entities have the option to join the supply Energy Purchasing Cooperative, utilizing the natural gas contracts awarded by the State of Michigan.

The State may, per Act Number 431 of the Public Acts of 1984, create and operate a cooperative build purchasing program to include cities, villages, counties, townships, school districts, intermediate school districts, non-profit hospitals, institutions of higher learning, and community or junior colleges in the Energy Purchasing Cooperative.

2. **DEFINITIONS**

For purposes of this Contract, the following definitions will be used:

- a. **Cap Price** is the maximum contracted price that the State of Michigan has agreed to pay for natural gas.
- b. **Contracted Basis** shall be the Basis price for volumes purchased at NYMEX using a Risk Management Product. If a Contracted Basis is not executed for any Risk Management Product, the Contracted Basis will automatically equal the Market Basis.
- c. **Cooperative Members** can participate with 100% of their gas needs dedicated to the program or some volume less than 100%. Those Cooperative Members participating less than 100% must operate as follows: (1) defined gas supply volume in advance of the first of the month, (2) notify the Gas Supplier five (5) business days prior to the start of the month the quantity of gas needed for the upcoming month, or (3) daily gas supply needs in the morning prior to the date of requested gas flow.
- d. **Default Pricing Structure** shall equal the Gas Price Index.
- e. **Fixed Price** is the guaranteed gas price the State of Michigan has agreed to pay for a specified volume of gas to be delivered during a specified period.
- f. **Gas Price Index** shall mean the monthly index for said month published in the *platts Gas Daily Price Guide*. For the CEC service area, the Upper Midwest, Consumer Energy city-gate is the reference price; for the MichCon service area, the Upper Midwest MichCon city-gate is the reference price; for the SEMCO facilities not serviced by Northern Natural Gas Company and for the MGU service area, the Upper Midwest, ANR Pipeline ML7 is the reference price; for the SEMCO facilities serviced by the Northern Natural Gas Company pipeline the reference index price will be Midpoint Average, others, Northern, demark or other pricing point as defined in a Transaction Confirmation.
- g. **Market Basis** shall be the difference between the NYMEX Settlement Price and the Gas Price Index for the Point of Delivery for the specified month.



- h. **NYMEX Settlement Price** shall mean the price established by the New York Mercantile Exchange (NYMEX) at the close of the trading session for the specified month.
- i. **Outside Purchase Volumes** shall mean the quantity of natural gas acquired by the Cooperative outside said agreement but said volumes are delivered during the term of said agreement.
- j. **Point of Delivery** shall be the following City-gates: DTE Energy (MichCon), Consumers Energy Company (CEC), SEMCO Energy Company (SEMCO), and Michigan Gas Utilities (MGU).
- k. **Pooling Fee** shall mean a fee per MMBtu paid to the Contractor for each MMBtu of gas consumed by the Cooperative within the SEMCO service area (excluding those participants serviced from the Great Lakes Gas Transmission system). The Cooperative does not have an aggregated contract arrangement with the utility company and therefore must utilize the customer pool of the Contractor to meet the daily balancing requirements of SEMCO.
- l. **Pricing Structures** are the combination of the various Risk Management Structures that the State of Michigan has executed to determine the cost of natural gas for the customers participating in the gas program. The volume of gas supplied associated with Pricing Structures will be volumes of gas forecasted to be consumed for the period of time defined in said structure.
- m. **Contractor Mark-up** shall mean a fee per MMBtu paid to the Contractor for each MMBtu of gas sold to the Cooperative excluding the Outside Purchase Volumes and excluding the Special Pricing Volumes. The Contractor Mark-up fee, at the time the contract was awarded, will remain constant during the entire term of the contract.
- n. **Special Pricing Volumes** shall mean those volumes designated from time to time by the Cooperative to be purchased under separate pricing arrangements as agreed to between the Contractor and the Buyer. Special Pricing Volumes and the associated pricing details are specified in Transaction Confirmations.
- o. **Risk Management Products** are a defined block of 10,000 MMBtu (10,000 MMBtu = 1 NYMEX contract) for a specified delivery month and price as outlined in the transaction. The fee for processing said transaction should be incorporated into the cost of the transaction. Examples of such Risk Management Products are Gas Options, Cap Prices, Fixed Prices, etc. These Risk Management Products only apply to forward purchases that are coincidental with gas supply needs of the Program at the time of purchase.
- p. **Utility** shall refer to the local distribution company servicing the participating facilities. For purposes of this agreement Utility shall refer to the Consumers Energy Company, DTE Energy (MichCon, DTE Gas Company), SEMCO Energy Company (SEMCO), or Michigan Gas Utilities (MGU).

3. **General Requirements**

The Contractor must provide the following:

- a. The Contractor shall forecast usage each month for the State of Michigan participating facilities and any public entity participating as a full requirements member. At a minimum of five (5) business days before the start of the month, Contractor shall discuss and recommend nomination volumes through the State's Energy Consultant (including the Cooperative member if the Cooperative Member desires to actively participate).



- b. Prepare scheduling details and file nominations for delivery of required gas commodity to the Point Delivery for all members. Submit a summary of the first of month nominations filed with the Utilities for all the Cooperative Members to the State's Energy Consultant.
- c. Implement monthly, or more frequently as needed, monitoring procedures to eliminate shortfalls, over-deliveries, and avoid supply interruptions for all members.
- d. The Contractor is responsible for the accuracy of nominations, consumption forecasting, and the ability to maintain supply imbalances within the utilities tolerances.
- e. Adhere to deadlines and other operating/procedural requirements as dictated by other companies associated with the Cooperative to avoid penalties and other unexpected costs.
- f. Act as a liaison between the Cooperative members and the Utility in the event of curtailments and interruptions. Utilize alternate fuel capabilities to respond to Utility interruptions where possible. Ensure proper notice is given to participating facilities to transition from natural gas to alternate fuels.
- g. Maintain a listing of participating facilities in the gas program, the energy contact person for each facility (name, phone, email, and fax), that provides meter read data and the status of alternate fuel.
- h. The Contractor will assist the State in acquiring Risk Management Products as agreed to between the State (and/or the State's Energy Consultant) and the Contractor. The State (or the State's Energy Consultant) will prepare, within five (5) business days, a Transaction Confirmation detailing the transaction completed and e-mail said document to the Contractor. The Contractor will email a signed copy of the Transaction Confirmation to the State's Energy Consultant for final review. Within three (3) business days of receipt of the Transaction Confirmation. The State will execute said document and return one (1) copy to the Contractor.
- i. The Contractor and the Energy Consultant will catalogue all Risk Management Products. Five (5) business days before the beginning of each month, the Contractor and the Energy Consultant will confirm those transactions for the upcoming month.
- j. There is no requirement as to the routes or levels of transportation service used by the Contractor. However, the Contractor is obligated to deliver the gas needs on a firm basis. Contractor is responsible for any penalty charges incurred as a result of Contractor's choice of routes of gas transportation to the Point(s) of Delivery.
- k. If Contractor's nominations, imbalance trading, and delivery scheduling at any time results in the Cooperative being assessed penalties, the State may withhold payment equal to the penalty amount until the parties agree as to the validity of the disputed amount. Contractor is responsible for any penalty charges incurred as a result of Contractor's error.
- l. Initially, gas supply pricing will be based on the Contractor Mark-up plus the applicable Gas Price Index. After this contract is awarded, the Cooperative plans to make advanced purchases or other forms of risk management structures from the Contractor (or other gas suppliers on contract). Such purchases could include but are not limited to ceiling prices, price collars, cross-commodity pricing and/or purchase at a fixed price. Such purchase negotiations could be any time after this contract is awarded.
- m. If during any given month, additional gas supply is needed or excess gas supply must be sold during the month, the price for said transactions shall be one of the following:
 - i. the average of the daily prices reflected in the platts Gas Daily, Daily Price Survey OR
 - ii. the daily cash price.If a Cooperative Member has excess supply, during a given month, the Contractor shall discuss the sale of said volumes with the State's Energy Consultant. If the excess supply is associated with Outside Purchase Volumes and/or Special Pricing Volumes belonging to the Cooperative Member, said volumes may be sold to another Cooperative Member if the sale is of economic benefit to both Cooperative Members.



Pricing for additional or excess gas supply will be mutually agreed upon by the State's contracted energy consultant and the Contractor. Additional or excess volumes should default to the average daily prices as reflected in the Gas Daily, Daily Price Survey unless a cash price for incremental purchases has been previously agreed to and finalized in a Transaction Confirmation.

- n. The Contractor may be requested to attend meetings with the Cooperative and discuss such topics as gas purchasing strategies, gas pricing options, etc. The Cooperative meets periodically.
- o. The Contractor may contact the Cooperative Members directly to discuss daily operating issues, meter read information, and other dealings with the nominating and scheduling of the gas supply for the participant. Any such communications shall be summarized in writing and copied to the State's Energy Consultant. The Contractor shall not directly contact a participant for other issues without first notifying the State Contract Administrator and/or the State's Energy Consultant.

4. Quality Assurance Program

The Contractor will monitor consumption of Cooperative Members to ensure penalties are avoided and to achieve desired storage balance percentages. Should any questions or concerns arise, the Contractor will contact the State Energy Consultant. The Contractor will contact the LDC/Pipe to obtain meter/account information that may help to determine if additional volumes are needed or to be sold-off. The Contractor will obtain ACQ/MDQ limits from both the State Energy Consultant and the LDC/Pip direct. Upon request from the Cooperative members, the Contractor will provide access to market intelligence reports available from the Contractor. The Contractor will track market data and all ordering patterns of the Co-Operative Members and provide feedback and ideas to purchase volumes in the most cost effective way. If a potential threat to pricing exists, the Contractor will contact the State's Energy Consultant to explore all possible options to avoid increased costs.

5. Incentives

The Contractor shall notify the State's Energy Consultant of any incentives or special services available to the State and its Cooperative Members.

6. Service Levels

- a. Time Frames
 - Contract Activities must be delivered within the time frame specified.
 - i. Supply Order Requests, excluding transportation/basis, for Natural Gas must be confirmed, in writing, no later than 60 minutes after initial request is made.
 - ii. Supply Order Requests, including transportation/basis, for Natural Gas should be confirmed, in writing, no later than four (4) hours after initial request is made.
 - iii. First-of-month nomination reporting, at a minimum of five (5) business days before the start of the month.
- b. Contractor's ability to project consumption and maintain cooperative monthly imbalances within utility restrictions
- c. Delivery will be expected pursuant to the applicable fully executed Transaction Confirmation document.

7. Training

The Contractor will be available for any training events/webinars, etc., as requested by the State.



8. Reporting

The Contractor must submit, the following written reports to the personnel below; failure to submit reports as required may be considered a breach of contract.

- a. To State of Michigan Energy Consultant:
 - i. Within twenty-five (25) calendar days after the close of the month, a summary of the gas delivered to the various Utilities for each participant in the Cooperative.
 - ii. Throughout the month of gas flow, Contractor shall keep the State's Energy Consultant apprised of the daily gas purchases for the Cooperative
 - iii. Within five (5) business days prior to the start of a month, a summary of the initial nominations filed with the Utility for each participant in the Cooperative shall be provide.
 - iv. At a period no less than bimonthly the Contractor shall provide market intelligence reports containing information that the Contractor may have available summarizing trends in the market for the forthcoming time periods. Such reports are to assist the Cooperative to make better-informed decisions regarding acquisition of natural gas.
 - v. At the request of the Contract Administrator and/or the State's Energy Consultant, additional reporting may be required.
- b. To DTMB Financial Services:
 - i. Invoices, as approved by the State's Energy Consultant
- c. Adhoc reporting as requested

9. Meetings

The Contractor must attend the following meetings:

- a. Contract Kick-Off Meeting, within thirty (30) days after award.
- b. Annual Cooperative Member Conference
- c. Other meetings as deemed appropriate by the State of Michigan

10. Staffing

- a. Contractor Representative
 - i. The Contractor must appoint a minimum of two (2) individuals, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, including but not limited to executing Transaction Confirmations, answering questions related to ordering, delivery, reporting, meter reads, etc. (the "Contractor Representative").
 - ii. The Contractor must notify the Contract Administrator at least thirty (30) business days before removing or assigning a new Contractor Representative.
- b. Customer Service Number
 - i. The Contractor must specify its telephone number for the State to make contact with the Contractor Representative. The Contractor Representative should be available for calls during the hours of 8 am to 5 pm EST.
- c. Organizational Chart
 - i. Provide an overall organizational chart that details staff members and subcontractors, by name title, detailed area of responsibility, and specific contact information including phone numbers and email.

11. Disclosure of Subcontractors

No subcontractors will be used for this this contract. However, if the Contractor intends to utilize subcontractors, the Contractor must disclose the following, prior to requesting approval:

- a. The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- b. The relationship of the subcontractor to the Contractor.



- c. Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
- d. A complete description of the Contract Activities that will be performed or provided by the subcontractor.
- e. Of the total bid, the price of the subcontractor's work.

12. Pricing

- a. Supplier mark-up pricing, is firm for the entire length of the Contract. The pricing period begins on the Effective Date.

13. Ordering

- a. Authorizing Document
The appropriate authorizing document for the Contract will be a Transaction Confirmation.
- b. Order Verification
The Contractor must have internal controls to verify abnormal or unadvisable orders, ensuring only authorized individuals place orders.

14. Acceptance

- a. The State will use the following criteria to determine acceptance of the Contract Activities. Failure to comply, may be considered a breach of contract.
 - i. All gas must be of consistent quality and meet the pipe/LDC specifications
 - ii. Fully executed Transaction Confirmations
 - iii. Accurate quantity and timely delivery of gas, as specified in the applicable Transaction Confirmation
 - iv. Correct Invoices

15. Invoice and Payment

- a. Invoice Requirements
 - i. The State shall pay the Contractor for gas supply and services each month in accordance with the following: (Gas supply delivered to each Utility (usage in the case of SEMCO and MGU participants) less Outside Purchase Volumes less Special Pricing Volumes) multiplied by (Gas Price Index plus Contractor Mark-up); plus if applicable,
 - ii. Special Pricing Volumes multiplied by associated price designated in the Transaction Confirmation; plus if applicable,
 - iii. Interstate demand charges (for those facilities within the SEMCO service territory provided both the Contractor and Buyer agree to said charges); plus if applicable
 - iv. Gas consumption for the SEMCO facilities (excluding those serviced by the Great Lakes Gas Transmission) multiplied by Pooling Fee; minus if applicable
 - v. Any penalty charges such as daily balancing charges, cash out dollars, etc. invoiced by the Utility to the Cooperative.
 - vi. All invoices submitted to the State must include: (a) date; (b) State of Michigan's Contract number; (c) purchase order number; (c) itemized detail, confirming delivery, tied to each applicable Transaction Confirmation; (e) pricing; (f) Pooling fees and/or any applicable cash-outs.
- b. Payment Methods
 - i. The State will make payment for Contract Activities via EFT.

**16. Transition Out**

- a. The current Contractor will work with the newly awarded Contractor to complete the following tasks:
 - i. A minimum of 12 Month usage history CEC, DTE, MGU. Daily usage history SEMCO.
 - ii. Ending storage balances for DTE and CEC accounts.
 - iii. Listing of all Cooperative Members and their Key personnel related to the day to day operational needs (balancing, meter reads).

17. Project Plan

Within 30 calendar days of the Effective Date, the Contractor will submit a project plan to the State's Energy Consultant for final approval. The Contractor will carry out this project under the direction and control of the State's Energy Consultant. The Project plan should identify items such as the required contact personnel; project management process; project breakdown identifying sub-projects, tasks, and resources required; expected frequency and mechanisms for updates/progress reviews; process for addressing issues/changes; and individuals responsible for receiving/reacting to the requested information.

The plan must include, but is not limited to:

- a. Contractor's organizational chart with names and title of personnel assigned to the project
- b. Duties, responsibilities, and assignments of all personnel; these must align with Staffing stated in the accepted proposal
- c. Detail project breakdown showing sub-projects, tasks, and resources required for:
 - i. Collection of weekly and daily meter read data
 - ii. Determination of consumption projections
 - iii. Steps to ensure the State of Michigan and Cooperative members facilities will remain in tolerance with the utilities balancing restrictions
 - iv. First of Month Nomination process
 - v. Process for addressing issues
 - vi. Other detail as Contractor and Consultant deem necessary



TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

EXHIBIT C

State of Michigan	Date: Transaction Confirmation #: Vendor ID Number:				
<p>This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated . The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.</p>					
<p>SELLER: BP Canada Energy Marketing Corp. 240 4 AVENUE P. O. Box 200 Calgary, AB T2P 2HB, CA</p> <p>Attn: Pete M. Currie, Vice President of Traverse City Michigan BP Internal Contract ID # 5502955 Phone: 231-922-1104 Fax: 231-922-9491 E-mail: curriepm@bp.com</p>	<p>BUYER: State of Michigan, DTMB – Procurement 525 West Allegan Street 1st Floor NE Constitution Hall Lansing, Michigan 48933 P. O. Box 30026 Lansing, MI 48933 Attn: Sharon Walenga-Maynard Phone: 517-284-7000 Fax: 517-335-0046 Contract No. 071B6600002 E-mail: maynards1@michigan.gov</p>				
Contract Price:					
Delivery Period:					
Performance Obligation and Contract Quantity:					
Time Period/Year	Month/No. of Months	MMBtu per month	Total MMBtu	Price/MMBtu Citygate.NYMEX	Dollars
				\$	\$
Total					\$
Delivery Point(s):					
Special Conditions:					
<input type="checkbox"/> Exhibit C-1 – Additional Special Conditions for Certain Transactions apply if checked					
Seller:			Buyer: State of Michigan, DTMB – Procurement		
By:			By:		



Title:

Date:

-
Title: Sourcing Director

Date:



EXHIBIT C-1 – Additional Special Conditions for Certain Transactions

Part 1 - Fixed Price Transaction Special Condition

For the purpose of this Special Condition:

“Fixed Price” means, a Contract Price for a transaction that is expressed as a flat dollar amount for the Month of delivery, excluding any transactions that have been entered into after the last trading day (as defined by the NYMEX) for the applicable Month. Subject to the foregoing exclusion, “Fixed Price” also includes any transaction containing a Contract Price or a component of a Contract Price that has been converted from a floating price mechanism (i.e., a NYMEX/first of the month index basis component and a fixed price or floating price component, or a NYMEX/first of the month index priced component with a fixed basis component) to a flat dollar amount for the Month of delivery, either upon the mutual agreement of the parties or as a result of a party exercising a pricing “trigger” option in the Contract. For the purpose of clarity, the parties agree that all transactions providing for puts, calls, collars, swaptions, caps, and floors shall constitute transactions for a Fixed Price.

“FOM Price” means the price per MMBtu, stated in the same currency as the transaction subject to such event of Force Majeure, for the first of the Month delivery, either as the NYMEX settlement price or as an index price published in the first issue of a publication commonly accepted by the natural gas industry (selected by the Seller in a commercially reasonable manner) for the Month of such event of Force Majeure for the geographic location closest in proximity to the Delivery Point(s) for the relevant Day, adjusted for the basis differential between the Delivery Point(s) and the NYMEX or such published geographic location as determined by the Seller in a commercially reasonable manner.

Notwithstanding anything to the contrary in this Contract, including, without limitation, anything in Sections 3.2 or 11 of this Contract: (i) if, upon the occurrence of an event of Force Majeure, and as a result of the event of Force Majeure (a) Seller is unable to sell and deliver or (b) Buyer is unable to purchase and receive, the Contract Quantity of Fixed Price Gas, either in whole or in part, for such transaction, (ii) then, for the duration of the event of Force Majeure, for each Day that Seller is unable to sell and deliver, or Buyer is unable to purchase and receive, such Fixed Price Gas, as set out in item (i) above, the following settlement obligations between the parties shall apply:

- a. if the FOM Price exceeds the Fixed Price, Seller shall pay Buyer the difference between the FOM Price and the Fixed Price for each MMBtu of such Gas not delivered and/or received on that Day, or
- b. if the Fixed Price exceeds the FOM Price, Buyer shall pay Seller the difference between the Fixed Price and the FOM Price for each MMBtu of such Gas not delivered and/or received on that Day.

Part 2 - Regulatory Event Special Condition

For the purpose of this Special Condition:

“Applicable Law” means any foreign, federal, state, tribal or local law, statute, regulation, code, ordinance, license, permit, compliance requirement, decision, order, writ, injunction, directive, judgment, policy, decree, including any judicial or administrative interpretations thereof, or any agreement, concession or arrangement with any governmental authority, applicable to either party or either party’s performance under a transaction, and any amendments or modifications to the foregoing.

Each party is entering into this Transaction Confirmation in reliance on the Applicable Laws and Taxes in effect on the date hereof. If at any time after a transaction is entered into:



(i) new Applicable Law is enacted, existing Applicable Law is amended, new Taxes are imposed, or existing Taxes are changed (a "Regulatory Event"), in a way which individually or collectively has a material adverse economic effect upon a party (such party the "Affected Party") under a particular transaction (each such transaction an "Affected Transaction") and which does not constitute a Force Majeure event, then the Affected Party may notify the other party that it desires in good faith to renegotiate the material terms or conditions of the Affected Transaction(s) in order to address the effects of the Regulatory Event. Such Notice shall articulate, to a reasonable degree of specificity, how the Regulatory Event impacts the Affected Transactions and the proposed terms upon which the Affected Party would like to continue to perform the Affected Transaction(s) with respect to any Gas not yet delivered. If the other party reasonably requires more specificity, it shall notify the Affected Party within ten (10) days.

(ii) after giving effect to any applicable provision or remedy specified in the Contract, it becomes unlawful for a party, (such party the "Affected Party") under the Applicable Law to perform any material provision in relation the Contract or any particular transaction, (each such transaction an "Affected Transaction") (an "Illegality"), then the Affected Party may terminate such Affected Transaction as provided for below.

If a Regulatory Event occurs and the parties fail to renegotiate the price or other material terms or conditions within thirty (30) Days of the Notice, or if an Illegality occurs and such event continues for at least three Business Days, either party shall have the right by Notice to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given as the Early Termination Date to terminate and liquidate the Affected Transaction(s).

On the Early Termination Date (i) if there is one Affected Party damages shall be determined in accordance with Section 10 of the Contract, except that references to the Defaulting Party and to the Non-Defaulting Party will be deemed references to the Affected Party and to the Non-affected Party, or (ii) if there is two Affected Parties, each party shall determine damages in accordance with Section 10 of the Contract with the Market Value being the arithmetic average of the amounts so determined. The Market Value for each Terminated Transaction shall be determined by using the mid-market quotations or values without regard to the creditworthiness of the party performing the calculations.