# STATE OF MICHIGAN PROCUREMENT

Department Technology, Management and Budget
Central Procurement Services
320 S Walnut Street Lansing, MI 48933
P.O. Box 30026, Lansing, MI 48909

## CONTRACT CHANGE NOTICE

Change Notice Number **4**
to
Contract Number **MA190000000295**

| CONTRACTOR | |
|---|---|
| | BP ENERGY COMPANY |
| | 201 Helios Way |
| | Houston TX 77079 |
| | Chris Bennett |
| | 246-271-6086 |
| | chris.bennett@bp.com |
| | CV0017442 |

| STATE | | | |
|---|---|---|---|
| Program Manager | Alannah Doak | DTMB |
| | | |
| | DoakA@michigan.gov | |
| Contract Administrator | Alannah Doak | DTMB |
| | (517) 230-9424 | |
| | DoakA@michigan.gov | |

| CONTRACT SUMMARY | | | |
|---|---|---|---|
| Natural Gas Supplier – Transportation Tier 1 | | | |
| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE |
| January 8, 2019 | June 30, 2027 | 2 - 2 Years | June 30, 2029 |
| PAYMENT TERMS | | DELIVERY TIMEFRAME | |
| | | | |
| ALTERNATE PAYMENT OPTIONS | | EXTENDED PURCHASING | |
| ☐ P-Card ☐ Direct Voucher (PRC) ☐ Other | | ☐ Yes ☒ No | |
| MINIMUM DELIVERY REQUIREMENTS | | | |
| | | | |

| DESCRIPTION OF CHANGE NOTICE | | | | |
|---|---|---|---|---|
| OPTION | LENGTH OF OPTION | EXTENSION | LENGTH OF EXTENSION | REVISED EXP. DATE |
| ☐ | | ☐ | 0 Years | |

| CURRENT VALUE | VALUE OF CHANGE NOTICE | ESTIMATED AGGREGATE CONTRACT VALUE |
|---|---|---|
| $160,000,000.00 | $120,000,000.00 | $280,000,000.00 |

| DESCRIPTION |
| --- |
| Please note the Program Manager or Contract Administrator may have changed, and are reflected on this Change Notice.<br><br>Effective 12/2/2025, this contract is hereby increased by $120,000,000.00.<br><br>All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, DTMB Central Procurement approval, and State Administrative Board approval on 12/2/2025. |

**STATE OF MICHIGAN PROCUREMENT**
Department Technology, Management and Budget
Central Procurement Services
320 S Walnut Street Lansing, MI 48933
P.O. Box 30026, Lansing, MI 48909

# CONTRACT CHANGE NOTICE

Change Notice Number **3**
to
Contract Number **MA190000000295**

| CONTRACTOR | |
|---|---|
| | BP ENERGY COMPANY |
| | 201 Helios Way |
| | Houston TX 77079 |
| | Chris Bennett |
| | 246-271-6086 |
| | chris.bennett@bp.com |
| | CV0017442 |

| STATE | | | |
|---|---|---|---|
| | Program Manager | Alannah Doak | DTMB |
| | | | |
| | | DoakA@michigan.gov | |
| | Contract Administrator | Alannah Doak | DTMB |
| | | (517) 230-9424 | |
| | | DoakA@michigan.gov | |

| CONTRACT SUMMARY | | | |
|---|---|---|---|
| Natural Gas Supplier – Transportation Tier 1 | | | |
| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE |
| January 8, 2019 | June 30, 2027 | 2 - 2 Years | June 30, 2027 |

| PAYMENT TERMS | DELIVERY TIMEFRAME |
|---|---|
| | |

| ALTERNATE PAYMENT OPTIONS | EXTENDED PURCHASING |
|---|---|
| ☐ P-Card ☐ Direct Voucher (PRC) ☐ Other | ☐ Yes ☒ No |

| MINIMUM DELIVERY REQUIREMENTS |
|---|
| |

| DESCRIPTION OF CHANGE NOTICE | | | | |
|---|---|---|---|---|
| OPTION | LENGTH OF OPTION | EXTENSION | LENGTH OF EXTENSION | REVISED EXP. DATE |
| ☐ | | ☐ | | |

| CURRENT VALUE | VALUE OF CHANGE NOTICE | ESTIMATED AGGREGATE CONTRACT VALUE |
|---|---|---|
| $160,000,000.00 | $0.00 | $160,000,000.00 |

**DESCRIPTION**

Please note the Contract Administrator has been changed to Alannah Doak.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement approval.

# STATE OF MICHIGAN
# CENTRAL PROCUREMENT SERVICES
## Department of Technology, Management, and Budget

320 S. WALNUT ST., LANSING, MICHIGAN 48933
P.O. BOX 30026 LANSING, MICHIGAN 48909

## CONTRACT CHANGE NOTICE

Change Notice Number **2**
to
Contract Number **190000000295**

| CONTRACTOR | |
|---|---|
| | BP ENERGY COMPANY |
| | 201 Helios Way |
| | Houston, TX 77079 |
| | Chris Bennett |
| | 246-271-6086 |
| | chris.bennett@bp.com |
| | CV0017442 |

| STATE | | | |
|---|---|---|---|
| Program Manager | Yvon Dufour | MULTI |
| | 517 249-0455 | |
| | dufoury@michigan.gov | |
| Contract Administrator | Yvon Dufour | DTMB |
| | (517) 249-0455 | |
| | dufoury@michigan.gov | |

**CONTRACT SUMMARY**

NATURAL GAS SUPPLIER – TRANSPORTATION TIER 1

| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE |
|---|---|---|---|
| January 8, 2019 | June 30, 2027 | 2 - 2 Year | June 30, 2027 |

| PAYMENT TERMS | DELIVERY TIMEFRAME |
|---|---|
| | |

| ALTERNATE PAYMENT OPTIONS | | | EXTENDED PURCHASING | |
|---|---|---|---|---|
| ☐ P-Card | ☐ PRC | ☐ Other | ☐ Yes | ☒ No |

| MINIMUM DELIVERY REQUIREMENTS |
|---|
| |

**DESCRIPTION OF CHANGE NOTICE**

| OPTION | LENGTH OF OPTION | EXTENSION | LENGTH OF EXTENSION | REVISED EXP. DATE |
|---|---|---|---|---|
| ☒ | 2 years | ☐ | | June 30, 2029 |

| CURRENT VALUE | VALUE OF CHANGE NOTICE | ESTIMATED AGGREGATE CONTRACT VALUE |
|---|---|---|
| $160,000,000.00 | $0.00 | $160,000,000.00 |

**DESCRIPTION**

Effective 10/23/2023, the first two option years available on this contract is hereby exercised. The revised contract expiration date is 6/30/2029. All other terms, conditions, specifications and pricing remain the same. Per agency request, and DTMB Procurement approval.

# STATE OF MICHIGAN
# ENTERPRISE PROCUREMENT
## Department of Technology, Management, and Budget

320 S. WALNUT ST., LANSING, MICHIGAN 48933
P.O. BOX 30026 LANSING, MICHIGAN 48909

## CONTRACT CHANGE NOTICE

Change Notice Number **1**
to
Contract Number **190000000295**

| CURRENT CONTRACTOR | | NEW CONTRACTOR | |
|---|---|---|---|
| | BP CANADA ENERGY MARKETING CORP. | | BP ENERGY COMPANY |
| | 240 4 Ave, PO Box 200 | | 201 Helios Way |
| | Calgary, Canada AB T2P 2H8 | | Houston, Texas 77079 |
| | Pete Currie | | Chris Bennett |
| | 231-922-1104 | | 346-271-6086 |
| | Peter.Currie@bp.com | | chris.bennett@bp.com |
| | CV0017442 | | CV0017442 |

**STATE CONTACTS**

| | | | | | |
|---|---|---|---|---|---|
| Program Manager | Yvon Dufour | DTMB | Contract Administrator | Yvon Dufour | DTMB |
| | 517 249-0455 | | | (517) 249-0455 | |
| | dufoury@michigan.gov | | | dufoury@michigan.gov | |

**CONTRACT SUMMARY**

NATURAL GAS SUPPLIER – TRANSPORTATION TIER 1

| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE |
|---|---|---|---|
| January 8, 2019 | June 30, 2027 | 2 - 2 Year | June 30, 2027 |

| PAYMENT TERMS | DELIVERY TIMEFRAME |
|---|---|
| | |

| ALTERNATE PAYMENT OPTIONS | | | EXTENDED PURCHASING | |
|---|---|---|---|---|
| P-Card | Direct Voucher (PRC) | ☐ Other | ☐ Yes | ☒ No |

**MINIMUM DELIVERY REQUIREMENTS**

**DESCRIPTION OF CHANGE NOTICE**

| OPTION | LENGTH OF OPTION | EXTENSION | LENGTH OF EXTENSION | REVISED EXP. DATE |
|---|---|---|---|---|
| ☐ | | ☐ | | June 30, 2027 |

| CURRENT VALUE | VALUE OF CHANGE NOTICE | ESTIMATED AGGREGATE CONTRACT VALUE |
|---|---|---|
| $160,000,000.00 | $0.00 | $160,000,000.00 |

**DESCRIPTION**

Effective September 1, 2023, the following amendment is hereby incorporated into the contract. BP Canada Energy Marketing Corp. is assigning their interests of this contract with the State of Michigan to BP Energy Company. This is a legal ownership change. The Tax ID number has changed as a result. However, the Customer Number will remain the same. All local employees shall be retained. All other terms, conditions, specifications, and pricing remain the same. Per Vendor request and DTMB Central Procurement
approval.

# STATE OF MICHIGAN
# ENTERPRISE PROCUREMENT

**STATE OF MICHIGAN**
**DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET**
**525 W. ALLEGAN, LANSING, MI 48933**
**P.O. BOX 30026, LANSING, MI 48909**

## NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **171 – 190000000295**
between
THE STATE OF MICHIGAN
and

| CONTRACTOR | |
|---|---|
| | BP Canada Energy Marketing Corp. |
| | 240 4 Ave, PO Box 200 |
| | Calgary, AB T2P 2H8, Canada |
| | Pete Currie |
| | (231) 922-1104 |
| | Peter.Currie@bp.com |
| | CV0017442 |

| STATE | | | |
|---|---|---|---|
| Program Manager | Various | Agency Acronym |
| | Phone Number | |
| | Email Address | |
| Contract Administrator | Yvon Dufour | DTMB |
| | (517) 249-0455 | |
| | dufoury@michigan.gov | |

| CONTRACT SUMMARY | | | |
|---|---|---|---|
| **DESCRIPTION: Natural Gas Supplier – Transportation Tier 1** | | | |
| **INITIAL EFFECTIVE DATE** | **INITIAL EXPIRATION DATE** | **INITIAL AVAILABLE OPTIONS** | **EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW** |
| 1/8/2019 | 6/30/2027 | Two, 2 year options | |
| **PAYMENT TERMS** | | **DELIVERY TIMEFRAME** | |
| Net 45 | | Ordering Period is 1/8/2019 to 6/30/2027<br>Delivery period is 7/1/2022 to 6/30/2027. | |
| **ALTERNATE PAYMENT OPTIONS** | | | **EXTENDED PURCHASING** |
| ☐ P-card | ☐ Payment Request (PRC) | ☐ Other | ☒ Yes ☒ No |
| **MINIMUM DELIVERY REQUIREMENTS** | | | |
| | | | |
| **MISCELLANEOUS INFORMATION** | | | |
| | | | |
| **ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION** | | | **$160,000,000.** |

## FOR THE CONTRACTOR:

**BP Canada Energy Marketing Corp.**
**Company Name**

_______________________________
**Authorized Agent Signature**

_______________________________
**Authorized Agent (Print or Type)**

_______________________________
**Date**

## FOR THE STATE:

_______________________________
**Signature**

**Jared Ambrosier, Director of Sourcing Operations**
**Name & Title**

**DTMB - Procurement**
**Agency**

_______________________________
**Date**

# STATE OF MICHIGAN

## STANDARD CONTRACT TERMS

### Natural Gas Supplier – Transportation Tier 1

This 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 January 8, 2019 (“**Effective Date**”), and unless terminated, expires on June 30, 2027. The Contract Delivery period shall begin on July 1, 2022, and unless terminated, expires on June 30, 2027.

This Contract may be renewed for up to 2 additional 2-year periods. Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The State of Michigan Energy Purchasing Cooperative (sometimes, “**Cooperative**”) currently consists of State agencies, universities, community colleges, cities, counties, and K-12 public schools. During the term of the gas supply contract, State agencies and public entities have the option to join the Cooperative, utilizing the natural gas contracts awarded by the State of Michigan.

The parties agree as follows:

1. **Definitions.** For purposes of this Contract, the following terms have the following meanings:

“**Adequate Assurance of Performance**” has the meaning set forth in **section 10**.

“**Alternative Damages**” means such damages, expressed in dollars or dollars per MMBtu, as the parties 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.

“**British thermal unit**” or “**Btu**” means mean the International BTU, which is also called the Btu (IT).

“**Business Day**” means any day except Saturday, Sunday or Federal Reserve Bank holidays.

“**Buyer**” means the party receiving Gas.

“**Cap Price**” is the maximum contracted price that the State will pay for natural gas.

“**Confidential Information**” has the meaning set forth in **section 36**.

“**Confirm Deadline**” means 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 Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party’s time zone, it is deemed received at the opening of the next Business Day.

“**Confirming Party**” means the party designated in the Contract to prepare and forward Transaction Confirmations to the other party.

“**Contract**” means the legally-binding relationship established by (i) this Contract, including schedules, addenda, and special provisions and (ii) any binding Transaction Confirmation.

“**Contract Price**” means 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.

“**Contract Quantity**” means the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.

"**Contract Value**" has the meaning set forth in **section 11**.

"**Contracted Basis**" is 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.

"**Contractor**" has the meaning set forth in the recitals section above.

"**Contractor Mark-up**" means a fee per MMBtu paid to Contractor for each MMBtu of gas sold to the Cooperative excluding the Outside Purchase Volumes. The Contractor Mark-up fee, at the time the contract was awarded, will remain constant during the entire term of the contract.

"**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 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.

"**Cover Standard**," as referred to in **section 4** below, means that if there is an unexcused failure to take or deliver any quantity of Gas under this Contract, then the performing party must 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.

"**Credit Support Obligation**" means any obligation 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.

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

"**Default Pricing Structure**" equals the Gas Price Index.

"**Defaulting Party**" has the meaning set forth in **section 10**.

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

"**Delivery Point**" means such point as are agreed to by the parties in a transaction.

"**Early Termination Date**" has the meaning set forth in **section 10**.

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

"**EFP**" means the purchase, sale, or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP incorporates 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.

"**Event of Default**" has the meaning set forth in **section 10**.

"**Firm**" means that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in **section 5.c** related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.

"**Fixed Price**" is the guaranteed gas price the State has agreed to pay for a specified volume of gas to be delivered during a specified period.

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

"**Gas Price Index**" means 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.

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

"**Interruptible**" means 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 5.c** related to its interruption after the nomination is made to the Transporter and until the change in deliveries or receipts is confirmed by Transporter.

"**Market Basis"** is the difference between the NYMEX Settlement Price and the Gas Price Index for the Point of Delivery for the specified month.

"**Market Value**" has the meaning set forth in **section 11**.

"**MMBtu**" means one million British thermal units, which is equivalent to one dekatherm.

"**Month**" means 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.

"**Net Settlement Amount**" has the meaning set forth in **section 12**.

"**Non-Defaulting Party**" has the meaning set forth in **section 10**.

"**NYMEX Settlement Price**" means the price established by the New York Mercantile Exchange (NYMEX) at the close of the trading session for the specified month.

"**Outside Purchase Volumes**" means the quantity of natural gas acquired by the Cooperative outside said agreement but said volumes are delivered during the term of said agreement.

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

"**Point of Delivery**" means the following City-gates: DTE Energy (MichCon), Consumers Energy Company (CEC), SEMCO Energy Company (SEMCO), and Michigan Gas Utilities (MGU).

"**Pooling Fee**" means 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.

"**Pricing Structures**" are the combination of the various Risk Management Products 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 defined in said structure.

"**Receiving Transporter**" means the Transporter receiving Gas at a Delivery Point, or absent such receiving

Transporter, the Transporter delivering Gas at a Delivery Point.

"**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.

"**Scheduled Gas**" means the quantity of Gas confirmed by Transporter for movement, transportation or management.

"**Seller**" means the party delivering Gas.

"**Special Pricing Volumes**" means 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.

"**Spot Price** " as referred to in **section 4** means the price listed in the publication indicated on the Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point 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 is the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price is 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.

"**State Data**" has the meaning set forth in **section 35** below.

"**Taxes**" has the meaning set forth in **section 7** below.

"**Terminated Transaction**" has the meaning set forth in **section 10** below.

"**Transaction Confirmation**" means a document, like **Schedule B**, setting forth the terms of a transaction formed under **section 2** for a particular Delivery Period.

"**Termination Option**" means the option of either party to terminate a transaction if 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.

"**Transporter**" means 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 under a transaction.

"**Utility**" refers to the local distribution company servicing the participating facilities. For purposes of this Contract, Utility refers to the Consumers Energy Company, DTE Energy (MichCon, DTE Gas Company), SEMCO Energy Company (SEMCO), or Michigan Gas Utilities (MGU).

2. **Written Transaction Procedure (No Oral Transactions)**.
    a. The parties will use the following Transaction Confirmation procedure. If the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party must, 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 2.b** below.
    b. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in **section 2.a** above, such receiving party must 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 is binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations.

c. 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 must obtain any necessary consent of its agents and employees to such recording.

3. **Duties of Contractor**. Contractor must perform the services and provide the deliverables described in this Contract (sometimes referred to as "**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 a Contract Change Notice. 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.

4. **Performance Obligation—Cover Standard**.

a. 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.

b. The parties select the Cover Standard. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas is recovery of the following: (i) in the event of a breach by Seller on any Day, 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, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day; or (ii) in the event of a breach by Buyer on any Day, 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, multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day; 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 is 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. Imbalance Charges may not be recovered under this section, but Seller and Buyer are responsible for Imbalance Charges, if any, as provided in **section 5.c**. The amount of such unfavorable difference is payable 5 Business Days after presentation of the performing party's invoice, which must set forth the basis upon which such amount was calculated.

c. Notwithstanding **section 4.b** above, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.
d. In addition to **section 4.b** and **section 4.c** above, 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.

5. **Transportation, Nominations, and Imbalances**.
    a. Seller has the sole responsibility for transporting the Gas to the Delivery Point. Buyer has the sole responsibility for transporting the Gas from the Delivery Point.
    b. The parties must coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter. Each party must give the other party timely prior Notice, sufficient to meet the requirements of all Transporters 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 are greater or lesser than the Scheduled Gas, such party must promptly notify the other party.
    c. The parties must 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 must 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 must 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 must pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

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

7. **Taxes—Seller Pays Before and At Delivery Point**. Seller must pay 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 and all Taxes at the Delivery Point. Buyer must pay all Taxes on or with respect to the Gas after the Delivery Point. If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes must promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges must furnish the other party documentation to establish same.

8. **Invoicing and Payment**.
    a. Seller must 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.
    b. If payments become due under **section 4.c** or **section 4.d**, 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.
    c. Unless the parties have elected on the Contract not to make this **section 8.c** applicable to this Contract, the parties must net all undisputed amounts due and owing, and past due, arising under the Contract such that the party owing the greater amount must make a single payment of the net amount to the other party in accordance with this **section 8**; provided that no payment required to be made under the terms of any Credit Support Obligation or under **section 8.b** is subject to netting under this section.
    d. 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. Invoices must

include an itemized statement of all charges. 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/SIGMAVSS 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.

9. **Title and Warranty**. Unless otherwise specifically agreed, title to the Gas passes from Seller to Buyer at the Delivery Point. Seller has responsibility for and assumes any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point. Buyer has responsibility for and any liability with respect to said Gas after its delivery to Buyer at the Delivery Point. 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. Notwithstanding the other provisions of this **section 9**, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of **section 6**.

10. **Financial Responsibility**.
    a. 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**" means 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).
    b. In the event (each an "**Event of Default**") either party (the "**Defaulting Party**") or its guarantor must: (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.a** 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**") has the right, at its sole election, to immediately withhold and suspend deliveries or payments upon Notice and to terminate and liquidate the transactions under the Contract, in the manner provided in **section 10.c**, in addition to any and all other remedies available hereunder.
    c. If an Event of Default has occurred and is continuing, the Non-Defaulting Party has 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 under **section 11** 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 is a Terminated Transaction and which must be valued consistent with

**section 11** below. With respect to each Excluded Transaction, its actual termination date is the Early Termination Date for purposes of **section 11**.

11. **Early Termination Damages Apply**.
    a. As of the Early Termination Date, the Non-Defaulting Party must 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 4.b**), 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 must (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 is due to the Buyer under the Terminated Transaction 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).
    b. For purposes of this **section 11**, "**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 may not be required to enter into a replacement transaction to determine the Market Value. Any extension 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") may not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option under which one party has the right to extend the term of a transaction is considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value must be determined by the Non-Defaulting Party in a commercially reasonable manner.

12. **Other Agreement Setoffs Apply**.
    a. The Non-Defaulting Party must net or aggregate, as appropriate, any and all amounts owing between the parties under **section 11**, 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 payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.
    b. If any obligation that is to be included in any netting, aggregation or setoff under **section 12.a** 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 under **section 12.a** must be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.
    c. As soon as practicable after a liquidation, Notice must 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 must include a written statement explaining in reasonable detail the calculation of such amount, provided that failure to give such Notice must 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 must be paid by the close of business on the second Business Day following such Notice, which date must not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount accrues 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.

d. 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.

e. The Non-Defaulting Party's remedies under this section 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.

With respect to this **section 12**, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein prevail to the extent inconsistent here.

13. **Term**. This Contract may be terminated on 30 Day's written Notice, but remains in effect until the expiration of the latest Delivery Period of any transaction.

14. **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.

| If to State: | If to Contractor: |
|---|---|
| Yvon Dufour<br>DTMB - Procurement<br>525 W. Allegan<br>Constitution Hall – 1N<br>Lansing, MI 48913<br>dufoury@michigan.gov<br>(517) 249-0455 | |

15. **Contract Administrator**. The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a "**Contract Administrator**"):

| State: | Contractor: |
|---|---|
| Yvon Dufour<br>DTMB - Procurement<br>525 W. Allegan<br>Constitution Hall – 1N<br>Lansing, MI 48913<br>dufoury@michigan.gov<br>(517) 249-0455 | |

16. **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: | Contractor: |
|---|---|
| Landmark Energy Consulting, LLC<br>Becki Grabowski<br>2159 Allen Road<br>Kimball, MI 48074<br>landmarkec@comcast.net 810-334-6646<br>Phone<br>810-984-4824 Fax | |

17. **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 a company with an A.M. Best rating of “A” or better, and a financial size of VII or better.

| Required Limits | Additional Requirements |
|---|---|
| **Commercial General Liability Insurance** | |
| Minimal Limits:<br>$1,000,000 Each Occurrence Limit<br>$1,000,000 Personal & Advertising Injury Limit<br>$2,000,000 General Aggregate Limit<br>$2,000,000 Products/Completed Operations<br><br>Deductible Maximum:<br>$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** | |
| Minimal Limits:<br>$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** | |
| Minimal Limits:<br>$1,000,000 Per Occurrence | Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage. |
| **Workers’ Compensation Insurance** | |
| Minimal Limits:<br>Coverage according to applicable laws governing work activities. | Waiver of subrogation, except where waiver is prohibited by law. |
| **Employers Liability Insurance** | |
| Minimal Limits:<br>$500,000 Each Accident<br>$500,000 Each Employee by Disease<br>$500,000 Aggregate Disease. | |
| **Environmental and Pollution Liability (Errors and Omissions)** | |
| Minimal Limits:<br>$1,000,000 Each Occurrence<br>$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 **claims-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).

18. **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.

19. **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.

20. **Staffing**. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

21. **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.

22. **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.

23. **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. For purposes of this Contract, a change in 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 change in ownership 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.

24. **Ordering**. Contractor is not authorized to begin performance until receipt of a Transaction Confirmation.

25. **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**"). 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 28**, 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.

26. **Delivery**. Contractor must deliver all Contract Activities with transportation and handling charges paid by Contractor, unless otherwise specified in **Schedule A**.

27. **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.

28. **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 29**, 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.

29. **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 30**, 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.

30. **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.

31. **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.

32. **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.

33. **Limitation of Liability and Disclaimer of Damages**. **IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

34. **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.

35. **State Data**. All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, 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.

36. **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. 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 use its best efforts to 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 immediately 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 Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

37. **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. 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.

38. **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;(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; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under **section 28**, Termination for Cause.

39. **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.

40. **Compliance with Laws**. Contractor must comply with all federal, state and local laws, rules and regulations.

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. **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. **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. **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. **Entire Agreement and Order of Precedence**. This Contract, which expressly incorporates schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and **Schedule A – Statement of Work**; (b) second, **Schedule A – Statement of Work** as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

50. **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. **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. **Contract Modification**. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

## Federal Provisions Addendum

The provisions in this addendum may apply if the purchase will be paid for in whole or in part with funds obtained from the federal government. If any provision below is not required by federal law for this Contract, then it does not apply and must be disregarded. If any provision below is required to be included in this Contract by federal law, then the applicable provision applies and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

### 1. Federally Assisted Construction Contracts

If this contract is a "**federally assisted construction contract**" as defined in 41 CRF Part 60-1.3, and except as otherwise may be provided under 41 CRF Part 60, then during performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**2. Davis-Bacon Act (Prevailing Wage)**

a. If applicable, the Contractor (and its Subcontractors) for **prime construction contracts** in excess of $2,000 must comply with the Davis-Bacon Act (40 USC 3141-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

b. The Contractor (and its Subcontractors) shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and the laborers and mechanics;

c. The Contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work;

d. There may be withheld from the Contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the Contractor or any Subcontractor on the work the difference between the rates of wages required by the Contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the Contractor or Subcontractors or their agents.

**3. Copeland "Anti-Kickback" Act**

If applicable, the Contractor must comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

**4. Contract Work Hours and Safety Standards Act**

If the Contract is **in excess of $100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), as applicable.

**5. Rights to Inventions Made Under a Contract or Agreement**

If the Contract is funded by a federal "funding agreement" as defined under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**6. Clean Air Act**

If this Contract is **in excess of $150,000,** the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387). Violations must be reported to the federal awarding agency and the regional office of the Environmental Protection Agency.

### 7. Debarment and Suspension

A "contract award" (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

### 8. Byrd Anti-Lobbying Amendment

If this Contract **exceeds $100,000**, bidders and the Contractor must file the certification required under 31 USC 1352.

### 9. Procurement of Recovered Materials

Under 2 CFR 200.322, a non-Federal entity that is a state agency or agency of a political subdivision of a state **and its contractors** must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

# STATE OF MICHIGAN

## SCHEDULE A
## STATEMENT OF WORK - CONTRACT ACTIVITIES
## Natural Gas Supplier – Transportation 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 with an annual estimated total contract value of $24 million. 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 the 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. 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 desire 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. <u>Staffing</u>**

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. <u>Disclosure of Subcontractors</u>**

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 contract, the price of the subcontractor's work.

**12. <u>Pricing</u>**

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

**13. <u>Ordering</u>**

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. <u>Acceptance</u>**

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. <u>Invoice and Payment</u>**

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 submited 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 SCHEDULE B
FOR IMMEDIATE DELIVERY

| **State of Michigan** | | Date:<br>Transaction Confirmation #:<br>BP ID Number: 12779495 |
|---|---|---|

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.

**SELLER:**
BP Canada Energy Marketing Corporation
240 4 AVENUE
P. O. Box 200
Calgary, AB T2P 2HB, CA

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

**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: Pamela Platte
Phone: 517-249-0927
Fax: 517-335-0046
Contract No. 190000000295
E-mail: plattep@michigan.gov

**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**:

☐ Schedule C-1 – Additional Special Conditions for Certain Transactions apply if checked

Seller:

By: ______________________________________

Title: ______________________________________

Date: ______________________________________

Buyer: **State of Michigan, DTMB – Procurement**

By: ______________________________________

Title: Category Director

Date:

## SCHEDULE C – Pricing

Natural Gas Supplier - Tier I

| Utility | The applicable Gas Price Index (platts Gas Daily Price Guide) | Seller Mark-up (MMBtu) Only |
|---|---|---|
| **Consumers Energy Company** | **Upper Midwest, Consumers Energy city-gate** | **$0.00** (calculated on deliveries) |
| **DTE Energy Company** | **Upper Midwest Mich Con city-gate** | **$0.00** (calculated on deliveries) |
| **SEMCO Energy Company** | **Pooling Fee** | **$0.055** (calculated on usage) |
| **SEMCO Serviced By ANR Pipeline Company** | **NYMEX plus ANR Transportation Costs** ***Note 1*** | **$0.00** (calculated on usage) |
| **SEMCO Serviced by Northern Natural** | **NYMEX plus Northern Natural Transportation Costs** ***Note 2*** | **$0.00** (calculated on usage) |
| **SEMCO Serviced by Great Lakes Transmission** | **NYMEX plus Great Lakes Transmission Transportation Costs** ***Note 2*** | **$0.00** (calculated on usage) |
| **Michigan Gas Utilities Serviced by ANR Pipeline** | **NYMEX plus ANR Transportation Costs** ***Note 1*** | **$0.00** (calculated on usage) |
| **Special Pricing Volumes** | **Fixed Price, Basis Only NYMEX Only** ***Note 3*** | **Variable** (calculated on deliveries) |

Schedule C – pricing, represents the default pricing for those volumes nominated first-of-the-month, except for Outside Purchase Volumes and Special Pricing Volumes. The Supplier Mark-up is firm for the entire length of the contract period, including option years.

Gas flows under the contract shall commence per the applicable fully executed Transaction Confirmation document, but no sooner than **July 1, 2022**.

1) For SEMCO and MGU served by ANR Pipeline. On those months when the Platts Gas Daily Price Guide is not liquid and therefore not applicable. Pricing for first-of-month nominated volumes will default to NYMEX plus ANR transportation Costs, plus supplier mark-up fee. ANR transportation costs will be at the monthly market rate and will need to be defined at this time.
2) Pipeline Basis does not need to be defined at this time as it will default to “Market”. Please add Supplier Mark-up fee only.
3) Please indicate the cost to transact (Supplier Mark-up fee) for Fixed Price, Basis only, and NYMEX only transactions (Special Pricing Volumes).

# SCHEDULE 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.