



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 **1**
 to
 Contract Number **18000000214**

CONTRACTOR	CONSTELLATION NEWENERGY – GAS DIVISION, LLC
	2211 Old Earhart Rd
	Ann Arbor, MI 48105
	Matt Tupta
	502-213-9129
	matthew.tupta@constellation.com
	CV0006250

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

CONTRACT SUMMARY

NATURAL GAS SUPPLIER – CUSTOMER CHOICE PROGRAM

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
March 26, 2018	March 25, 2025	5 - 1 Year	March 25, 2025

PAYMENT TERMS	DELIVERY TIMEFRAME

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

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DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	3 years	<input type="checkbox"/>		March 25, 2028
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$1,750,000.00	\$0.00	\$1,750,000.00		

DESCRIPTION

Effective 5/15/2023, the first 3 option years available on this contract are hereby exercised. The revised contract expiration date is 3/25/28. All other terms, conditions, specifications and pricing remain the same. Per contractor request, and DTMB Procurement approval.



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management & Budget
525 W. Allegan Street Lansing, MI 48933
P.O. Box 30026 Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. 17118000000214
between
THE STATE OF MICHIGAN
and

CONTRACTOR	Constellation NewEnergy – Gas Division, LLC
	2211 Old Earhart Rd
	Ann Arbor, MI 48105
	Matt Tupta
	502-213-9129
	matthew.tupta@constellation.com
	8057

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

CONTRACT SUMMARY			
DESCRIPTION: Natural Gas Supplier – Customer Choice Program			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
3/26/2018	3/25/2025	Five, 1 year options	
PAYMENT TERMS		DELIVERY TIMEFRAME	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
MISCELLANEOUS INFORMATION			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$1,750,000

FOR THE CONTRACTOR:

Constellation New Energy, LLC
Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Yvon Dufour – Senior Category Analyst
Name & Title

DTMB Procurement - Commodities
Agency

Date



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

Natural Gas Supplier - Pre-Qualification for Customer Choice Program (Tier One)

This enterprise STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) through the Michigan Department of Technology, Management and Budget (“**DTMB**”) and Constellation NewEnergy – Gas Division (“**Contractor**”), an LLC. The Contract is effective on March 26, 2018 (“**Effective Date**”), and unless terminated, expires on March 25, 2025. This Contract may be renewed for up to five (5) additional one-year periods. Renewal may occur by written notice from the State and automatically extends the Term of this Contract. The parties agree as follows:

1. Definitions

For the purposes of this Contract, the following terms have the following meanings:

“**Adequate Assurance of Performance**” has the meaning set forth in section 14.

“**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 the International BTU, which is also called the Btu (IT).

“**Business Day**” means any day except Saturday, Sunday, or other day on which the State is authorized or required by law to be closed for business.

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

“**Change of Control**” has the meaning set forth in section 25 below.

“**Confidential Information**” has the meaning set forth in section 35 below.

“**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 this 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 and all binding Transaction Confirmations.

“**Contract Activities**” has the meaning set forth in section 3 below.

“**Contract Administrator**” has the meaning set forth in section 12 below.

“**Contract Change Notice**” has the meaning set forth in section 52 below.

“**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.

“Contractor” has the meaning set forth in the introductory section above.

“Cover Standard,” as referred to in section 4, 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.

“Defaulting Party” has the meaning set forth in section 14.

“Delivery Period” means the period during which deliveries are to be made as agreed to by the parties in a transaction.

“Delivery Point” means such points as are agreed to by the parties in a transaction.

“Early Termination Date” has the meaning set forth in section 14.

“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.

“Effective Date” has the meaning set forth in the introductory section above.

“Event of Default” has the meaning set forth in section 14.

“Excluded Transaction” has the meaning set forth in section 14.

“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.

“Fixed Price” means the guaranteed gas price a Buyer has agreed to pay, for service with full requirements on gas consumption during a specified period.

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

“Local Distribution Company (LDC)” local utility such as Consumers Energy, Michon, DTE, etc.

“MiDeal” means an extended purchasing program provided under MCL 18.1263 which allows members to utilize State contracts. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals.

“MMBtu” means one million British thermal units, which is equivalent to one dekatherm.



“Month” or **“Monthly”** 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 16 below.

“Non-Defaulting Party” has the meaning set forth in section 14 below.

“Participant” has the meaning set forth in section 17 below.

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

“Proceeding” has the meaning set forth in section 33 below.

“Program” means this Natural Gas Supplier - Pre-Qualification for Customer Choice Program. This Program consists of two tiers. **“Tier 1”** provides an opportunity for Gas suppliers to become prequalified for further participation in the Program. Tier 1 provides the terms and conditions governing participation in the Program. **“Tier 2”** permits MiDeal members and other Participants to solicit Gas pricing from Gas suppliers that have been prequalified under Tier 1. Upon receipt and review of a supplier’s Tier 2 pricing, MiDeal members and other Participants may execute a Transaction Confirmation.

“Program Manager” has the meaning set forth in section 13 below.

“Receiving Transporter” means the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.

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

“Seller” means the party delivering Gas.

“Taxes” has the meaning set forth in section 7 below.

“Term” has the meaning set forth in the introductory section above.

“Termination Fee” has the meaning set forth in **Schedule A1**.

“Tier 1” has the meaning set forth in the definition of “Program” above.

“Tier 2” has the meaning set forth in the definition of “Program” above.

“Transaction Confirmation” means a document in the form shown as **Schedule A1**, setting forth the terms of a transaction formed under section 2 below for a particular Delivery Period.

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

“Terminated Transaction” has the meaning set forth in section 14 below.

“Transition Responsibilities” has the meaning set forth in section 29 below.



“**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 particular transaction.

“**Utility**” means the local distribution company servicing the participating facilities. Utility means DTE Energy (MichCon, DTE Gas Company), Consumers Energy Company (CEC), SEMCO Energy Company (SEMCO), and Michigan Gas Utilities (MGU).

- 2. Written Transaction Procedure (No Oral Transactions).** 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.
- 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 Statement of Work or 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, and other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, Contract Administrator, Program Manager, 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 or public releases relating to this Contract 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 and 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 basis, as agreed to by the parties in a transaction.
 - b.** 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 Market Value, 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.

- c. Notwithstanding subsection 4(b) above, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.
 - d. In addition to subsection 4(b) 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.** Seller has the sole responsibility for transporting Gas to the Delivery Point, including all shipping and handling costs. Buyer has the sole responsibility for transporting Gas from the Delivery Point.
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 under this Contract must be in accordance with the established procedures of the Receiving Transporter.
7. **Taxes.** 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 under this Contract, 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. **Billing and Payment.** MiDeal members and other Participants will be invoiced in accordance with the billing and payment standards as defined by their Local Distribution Company (LDC). Applicable LDC charges in accordance with executed Transaction Confirmations, including rates set forth herein, Taxes (which are passed through to the MiDeal member as applicable), and utility charges for delivery, distribution, and transportation apply. Transactions, including invoicing and payment, are between Contractor and MiDEAL members or other Participants; the State has no role in such transactions, except to provide this Contract vehicle for Participants in the Program (see section 17 below).
9. **Title.** Title to the Gas passes from Seller to Buyer at the Delivery Point. Seller is responsible for and assumes liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point. Buyer is responsible for and assumes liability with respect to said Gas after its delivery to Buyer at the Delivery Point.
10. **Warranties and Representations.**
 - a. 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.
 - b. 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 license use; (b) all Contract Activities are delivered free from any security interest, lien, encumbrance, or claim 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 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 must inform the State of any material adverse changes on an on-going basis; (h) all information furnished and representations made in connection with the award of this Contract are true, accurate, and complete, and contain no false statements or omit any fact that would make the information misleading; and (i) that 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 27, Termination for Cause.

- 11. 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 - DTMB - Procurement 525 W. Allegan Constitution Hall – 1N Lansing, MI 48913 dufour@michigan.gov (517) 284-6996	<i>Contracts Department 9400 Bunsen Parkway, Suite 100 Louisville, KY 40220 (502) 426-4500</i>

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

State:	Contractor:
Yvon Dufour - DTMB - Procurement 525 W. Allegan Constitution Hall – 1N Lansing, MI 48913 dufour@michigan.gov (517) 284-6996	<i>Contracts Department 9400 Bunsen Parkway, Suite 100 Louisville, KY 40220 (502) 426-4500</i>

- 13. Program Manager.** Each party must appoint a 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 Becki Grabowski 2159 Allen Road Kimball, MI 48074 landmarkec@comcast.net 810-334-6646 Phone 810-984-4824 Fax	Matt Tupta 9400 Bunsen Parkway, Suite 100 Louisville, KY 40220 Matthew.Tupta@Constellation.com Phone (667) 313-1840

- 14. 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 subsection 14(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 14(c), in addition to any and all other remedies available under this Contract.
- 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 15 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 to be valued consistent with section 15 below. With respect to each Excluded Transaction, its actual termination date is the Early Termination Date for purposes of section 15.

15. Termination Fees. See **Schedule A1** for terms relating to "**Termination Fees.**"

16. 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 15 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. 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 will 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 within 15 Business Days following such Notice, which date must not be earlier than the Early Termination Date.

- c. 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.
- d. The Non-Defaulting Party's remedies under section 15 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.
- e. With respect to section 15, 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.

17. Extended Purchasing Program (MiDEAL). This Contract is hereby extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. This Contract may also be extended to other states, including governmental subdivisions and authorized entities (together with MiDEAL members and State agencies, "**Participants**"). Contractor must supply Contract Activities to Participants at the established Contract prices and terms. The State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by additional extensions.

- a. **Invoices to Participants.** Contractor must submit invoices to, and receive payment from, Participants on a direct and individual basis.
- b. **Quarterly Administrative Fees.** Contractor must pay an administrative fee of 0.5% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions) and Participants. Administrative fee payments must be made by check payable to the State of Michigan and mailed to: DTMB-Cashiering, P.O. Box 30681, Lansing, MI 48909. Administrative fees are due within 30 Days from the last Day of each calendar quarter.
- c. **Quarterly List of Participants.** Contractor must maintain a listing of all Program Participants leveraging this Contract. The list must include the name of the entity/agency and the contact person for each entity/agency (including name, address, phone, email, and fax). Contractor must provide a copy of this by email to the State Contract Administrator and State Program Manager within 30 Days from the last Day of each calendar quarter.
- d. **MiDEAL Membership Validation.** Prior to leveraging this Contract to transact business with MiDEAL members, Contractor must validate that the entity is a MiDEAL member by referencing the list at www.michigan.gov/MiDEAL.
- e. **Pricing.** Contractor must extend pricing to Participants as if it providing quotes to the State for that date and geographic region.
- f. **Quarterly Purchasing Activity Reports.** Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity, item and quantity purchased, total purchase for each MiDeal member, and the total dollar volume in sales. Purchasing activity reports must be mailed to DTMB-Procurement within 30 Days from the last Day of each calendar quarter.
- g. **Monthly Gas Savings Report.** Contractor must provide Quarterly gas cost savings summaries to Participants within 6 Months of an executed Transaction Confirmation.
- h. **Meetings.** At Contractor's sole cost, Contractor must attend in Lansing, MI:
 - i. A kick-off meeting within 30 Days of the Contract award;
 - ii. The Annual Cooperative Member Conference;
 - iii. Other meetings as may be deemed appropriate by the State.



- i. **60-Day Notice.** Contractor must notify Participants in writing 60 Days prior to their fixed-price contract expiration. Contractor must notify the State Program Manager at the same time by copy.
- j. **Communications.** Contractor may contact Participants directly to discuss Contract term end date, market opportunities, or any changes to their participation status such as a change in facility status. Any such communications must be summarized in writing and copied to the State Program Manager. Contractor may not directly contact a Participant for other Contract-related issues without first notifying the State Contract Administrator and the State Program Manager.

18. Service Levels. Delivery of Gas and other Contract Activities must be delivered within the time frame specified below.

- a. Tier 2 pricing requests for Gas must be confirmed in writing no later than 120 minutes after initial request is made unless otherwise stated in the Participant’s solicitation documents.
- b. Contractor must deliver that which is ordered under the applicable fully executed Transaction Confirmation document.

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

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Automobile Liability Insurance	
<u>Minimal Limits:</u> If a motor vehicle is used in relation to Contractor’s performance, Contractor must have vehicle liability insurance on the motor	Contractor must have their policy include Hired and Non-Owned Automobile coverage.



vehicle for bodily injury and property damage as required by law.	
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	

- 20. 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.
- 21. 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 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.
- 22. Staffing.** The State Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor. Such notice must be written with reasonable detail outlining the reason for removal or reassignment and be based on legitimate good-faith reasons.
- 23. 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 to the State 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.
- 24. Assignment.** Contractor may not assign this Contract to any other party or entity without the prior approval of the State.
- 25. Change of Control.** Contractor must notify the State at least 30 Days before the effective date of a change in Contractor's organizational structure or ownership that would constitute a Change of Control. For purposes of this Contract, a "Change of Control" means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a more than 50% change in ownership of Contractor through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A Change of Control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes. In the event of a Change of Control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.



- 26. 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 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.
- 27. 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 28, 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 Contractor for the State's reasonable costs in terminating this Contract. 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.
- 28. 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 29, 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. If the State terminates this Contract for convenience, Transaction Confirmations that are binding under section 2, Written Transaction Procedure, prior to the State's termination may be considered an Event of Default by the Participant bound by the Transaction Confirmation as defined in section 14, in which case, section 15, Early Termination Damages, may apply.
- 29. 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 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.

- 30. General Indemnification.** Contractor must defend, indemnify and hold harmless the State (and its departments, divisions, agencies, offices, commissions, officers, and employees), and Participants, 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 or Participants, as applicable, 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 and Participants, as applicable, are 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.
- 31. 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.
- 32. Limitation of Liability.** Neither Contractor nor the State is liable to each other, for consequential, incidental, indirect, or special damages, regardless of the nature of the action. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property cause by the gross negligence or willful misconduct of Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract. In no event will the State be liable for the acts or omissions of Participants leveraging this Contract, regardless of the form of action, whether in contract, tort, negligence, strict liability, statute, or otherwise, for any claim related to or arising under this Contract. 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, statute, or otherwise, for any claim related to or arising under this Contract, be greater than the maximum Contract Price applicable to fully executed Transaction Confirmations as between the State and Contractor.



- 33. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 30 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 and that may be expected to adversely affect Contractor's viability, financial stability, or ability to provide Contract Activities to the State, including but not limited to an entity's claim or written allegation of fraud or misrepresentation.
- 34. State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived solely therefrom as it relates to the transactions and performance of this contract, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 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.
- 35. Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this section survive the termination of this Contract.
- a. Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. Any other disclosure is prohibited except for disclosures as required or requested by law, regulation, court order, or similar process, provided that to the extent a receiving party is required to disclose confidential information under this subsection, the receiving party must, to the extent permitted by law, provide the furnishing party with notice of the legal request within 2 Business Days of receipt, and assist the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this section.



- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must reasonably assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party, within 2 Business Days, in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
 - d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract and any Transaction Confirmations, in whole or in part.
 - e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Transaction Confirmation, in whole or in part, each party must, within 5 Days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within 5 Days from the date of termination to the other party. Contractor has the right to retain copies of State Data Confidential Information, and any summaries, analyses, notes, or extracts prepared by Contractor which are based on or contain portions of such Confidential Information (a) to the extent necessary to evidence performance of the Contract Activities, (b) pursuant to a civil or criminal investigation or litigation document retention hold, (c) that are archived or backed-up by receiving party's computer procedures, provided that Contractor retains such copies in accordance with its confidentiality obligations hereunder.
- 36. 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 Days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. The State does not have the right to copy any information deemed confidential by Contractor to the extent access would require the confidential information to become public information. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 Days. This section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 37. Conflicts and Ethics.** Contractor must 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.

- 38. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 39. 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.
- 40. 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.
- 41. 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.
- 42. 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 Participants from acquiring similar, equal, or like Contract Activities from other sources.
- 43. 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, provided that the non-performing party and any subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means, including disaster recovery planning.
- 44. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this section. 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.



- 45. Media Releases.** News releases, promotional literature, and commercial advertisements pertaining to this Contract must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
- 46. Headings.** The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and may not be used to construe or interpret the provisions of this Contract.
- 47. Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
- 48. Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, exhibits, schedules, Contract Change Notices, a Tier 2 price proposal, or a Transaction Confirmation, the order of precedence is: first, a binding Transaction Confirmation; second this Contract excluding exhibits, schedules, and Contract Change Notices; third, Contract Change Notices; fourth exhibits and schedules; and fifth, a Tier 2 price proposal.
- 49. Severability.** If any part of this Contract is held invalid or unenforceable by a 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.
- 50. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 51. 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.
- 52. Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").

Transaction Confirmation – Schedule A1 Gas Customer Choice – [Insert Contractor Name] FIXED Price Program

(Large Commercial with annual aggregate usage over 500 Mcf)

State of Michigan Customer Choice Program

Contract #: [Enter]

Vendor ID#: [Enter]

This Transaction Confirmation is subject to the Contract between the State of Michigan and Contractor dated [insert date] and the applicable MiDEAL Member Agreement between the State and Participant. The terms of this Transaction Confirmation are binding as between Buyer and Seller unless disputed in writing within 2 Business Days of receipt, unless otherwise specified in the Contract. Terms used in this Transaction Confirmation have the meanings ascribed to them in the Contract unless otherwise defined here.

SELLER:

Contractor
Street Address
City, State, ZIP
Attn:
Phone:
Fax:
Email:

BUYER:

Participant
Street Address
City, State, ZIP
Attn:
Phone:
Fax:
Email:

Fixed Price Per Mcf.: _____

Effective Date: _____

End Date: _____

Estimated Annual Consumption: _____

Utility: _____

1. Termination: Buyer has a 14-Day unconditional right to cancel this transaction without termination fees following the date Buyer signs this Transaction Confirmation (sometimes referred to within this document as “the Transaction”). Buyer may waive this right of cancellation by initialing below:

_____ I agree to waive my 14-day right to cancel this transaction.

(Buyer’s Initials)

Buyer may also terminate participation in this Transaction at any time after the unconditional cancellation period. However, if Buyer elects to terminate this Transaction after 14 Days and prior to expiration, it must pay Seller a “Termination Fee” to compensate Seller for volumes secured on Buyer’s behalf and not delivered to Buyer. The Termination Fee is calculated by multiplying the projected future volume (based on Buyer’s actual historical usage) by the difference in the per Mcf price stated in this Transaction Confirmation and the “Market Price,” where the Market Price is the average of the New York Mercantile Exchange (NYMEX) contract settlement price plus basis costs for each month remaining in this Transaction.

2. Special Conditions: This Transaction may continue after initial-term expiration on a month-to-month basis **at the Contractor’s monthly Market Based pricing product, cancelable at any time**

