

## SPECIAL PROVISIONS FOR NAESB BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS

(Revision Date: 07/01/2008)

The parties to this Base Contract hereby agree the following Special Provisions shall govern and control over the foregoing provisions of this Base Contract and shall be considered incorporated therein for all purposes. Any reference to this Base Contract shall include the following Special Provisions.

### AMENDMENTS TO BASE CONTRACT GENERAL TERMS AND CONDITIONS

#### Amendments to Section 1: Purpose and Procedures

##### **Section 1.4 is hereby amended by the inserting at the end of the third sentence:**

"solely under Statute of Frauds laws or laws relating to whether certain agreements are to be in writing or signed by the party to be thereby bound."

#### Amendments to Section 2: Definitions

##### **Section 2 is hereby amended by adding the following new definitions:**

- 2.36** "Bankruptcy Event" shall mean, with respect to a party or other entity, that such party or other entity
- (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
  - (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
  - (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
  - (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (a) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (b) is not dismissed, discharged, stayed or restrained, in each case within 30 Days of the institution or presentation thereof;
  - (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
  - (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
  - (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 Days thereafter;
  - (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or
  - (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
- 2.37** "Event of Default" shall mean with respect to a party (the "Defaulting Party") any of the following:
- (i) the failure by the Defaulting Party to make, when due, any payment required hereunder if such failure is not remedied within three Business Days after Notice of such failure is given to the Defaulting Party;
  - (ii) the failure by the Defaulting Party to provide credit support pursuant to Section 10.1 if such failure is not remedied within one Business Day after Notice of such failure is given to the Defaulting Party;
  - (iii) any representation or warranty made by the Defaulting Party herein shall prove to have been false or misleading in any material respect when made;
  - (iv) the breach by the Defaulting Party of any material covenant set forth herein (other than any covenant otherwise listed as a specific Event of Default in this provision) if such failure is not remedied within 30 Days after Notice of such failure is given to the Defaulting Party;
  - (v) the Defaulting Party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, any transaction or this Base Contract;
  - (vi) a Bankruptcy Event occurs with respect to the Defaulting Party;
  - (vii) a Merger Event occurs with respect to the Defaulting Party;
  - (viii) an Event of Default occurs (howsoever determined) with respect to the Defaulting Party under any transaction or agreement between Seller and Buyer under any forward contract, swap agreement or commodity contract, in each case as defined in the United States Bankruptcy Code, or any indebtedness for borrowed money, and there occurs a liquidation of, an acceleration of obligations under, or an early termination of, all transactions thereunder or the agreement;
  - (ix) the Guarantor of the Defaulting Party fails to perform any covenant set forth in any guaranty; any representation or warranty made by the Guarantor in such guaranty shall prove to have been false or misleading in any material respect when made; the Guarantor disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, any such guaranty; or the Guarantor takes or suffers any actions set forth in items (vi) or (vii) above as applied to it;
  - (x) the issuer of a letter of credit provided pursuant to Section 10.1 fails to comply with or perform its obligations under such letter of credit if such failure shall be continuing after the lapse of any applicable grace period, or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such letter of credit, or takes or suffers

any actions set forth in item (vi) above as applied to it, or such letter of credit expires or terminates or fails or ceases to be in full force and effect at any time during the term of the transactions for which it is issued without having been replaced, or such issuer fails to maintain the Rating Level without the letter of credit having been replaced by another issuer satisfactory to the party requesting Adequate Assurance of Performance; or

- (xi) the Defaulting Party and/or its Guarantor (individually or collectively), defaults under any one or more agreements or instruments relating to indebtedness for borrowed money or the payment of money under any forward contract, swap agreement or commodity contract in an amount of not less than the Threshold Amount which has resulted in such amount becoming, or becoming capable at such time of being declared, due and payable under the applicable agreement or instrument, before it would otherwise have been due and payable, or a default (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the Threshold Amount under such agreements or instruments (after giving effect to any applicable Notice requirement or grace period).

**2.38** "Merger Event" shall mean, with respect to a party or other entity, that such party or other entity, consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such party or other entity hereunder or (ii) the benefits of any credit support provided pursuant to Section 10.1 fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder or (iii) the resulting entity's creditworthiness is materially weaker than that of such party or other entity immediately prior to such action.

**2.39** "Rating Level" shall mean, with respect to the issuer of a letter of credit provided as Adequate Assurance of Performance pursuant to Section 10.1, the credit rating of at least "A-" or "A3" assigned to the issuer's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by Standard & Poor's Rating Group and Moody's Investors Service, Inc., respectively.

**2.40** "Threshold Amount" shall mean, in respect of Seller, Buyer, or Guarantor of Seller and Buyer, if applicable, an amount equal to three percent of shareholders' equity (howsoever described) as shown on the most recent annual audited financial statements of the relevant entity.

#### **Amendments to Section 10: Financial Responsibility**

**Section 10.2 is hereby deleted in its entirety and replaced with the following provision:**

**10.2** In the event an "Event of Default" occurs then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

**Section 10.3.2 is hereby amended by deletion of sub-paragraph 10.3.2 (v).**

#### **Amendments to Section 15: Miscellaneous**

**Section 15.1 is hereby amended by the inserting at the end of the third sentence:**

"and any guaranty of the transferor's obligations hereunder or other credit support arrangement supporting the transferor provided pursuant to Section 10.1 continues to extend to the performance of any such permitted assignee."

**Section 15.5 is hereby deleted in its entirety and replaced with the following provision:**

**15.5** This Contract and the rights and duties of the parties arising therefrom shall be governed by, interpreted and construed in accordance with the laws of the State of New York (without reference to choice of law doctrine). With respect to any suit, action or proceedings relating to the foregoing ("Proceedings") each party irrevocably submits to the non-exclusive jurisdiction of the federal and state courts located in the County of New York, State of New York, waives any objection which it may have to the laying of venue of any Proceedings brought in any such court, and waives any claim that any such Proceedings have been brought in an inconvenient forum. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS BASE CONTRACT OR ANY TRANSACTION AND ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS BASE CONTRACT.**

**Section 15 is hereby amended by the addition of the following provisions as Section 15.13:**

**15.13** Each of the parties hereby represents and warrants (which representations and warranties will be deemed to be repeated by each party on each date on which a transaction is entered into):

- (i) that it is entering into this Base Contract and each transaction as principal and not as agent for any other party;
- (ii) the execution, delivery and performance of this Base Contract and each transaction, including, without limitation, the provision of credit support pursuant to Section 10.1, are within its powers, have been duly authorized by all necessary action, and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law or regulation applicable to it;
- (iii) this Base Contract and each transaction when entered into in accordance with this Base Contract constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; and
- (iv) there is not pending or, to its knowledge, threatened against it or its Guarantor, if any, any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability of this Base Contract, any transaction, or any guaranty or other credit support arrangement provided pursuant to Section 10.1, or the ability to perform the obligations thereunder.