

Anthony S. Campagiorni, Esq.
Vice President
Regulatory & Governmental Affairs



November 11, 2016

Hon. Kathleen H. Burgess, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Dear Secretary Burgess:

A copy of the contract designated below is transmitted for filing in compliance with the requirements of the Public Service Commission of the State of New York

The pricing information has been redacted from the copies provided in this filing. Central Hudson has provided an unredacted copy of this contract to Ms. Donna Giliberto, the Records Access Officer, and has requested confidential treatment of them, as they contain trade secret information as defined in 16 NYCRR Part 6-1 and Part 6-2.

Contract No. 454

Central Hudson Gas & Electric Corporation

With

Cargill Incorporated

Effective: December 1, 2016

Very truly yours,

A handwritten signature in black ink, appearing to read "Anthony S. Campagiorni". The signature is fluid and cursive, with a large initial "A".

Anthony S. Campagiorni

cc: Ms. Donna Giliberto

284 South Avenue
Poughkeepsie, NY 12601

(845) 452-2000
Direct: (845) 488-5201
Fax: (845) 488-5465
email: acampagiorni@cenhud.com
www.CentralHudson.com

Contract No. 454

Central Hudson Gas & Electric Corporation

with

Cargill Incorporated

REDACTED COPY – CONFIDENTIAL TRADE SECRET STATUS REQUESTED

Type of Contract: Gas Firm- Peaking

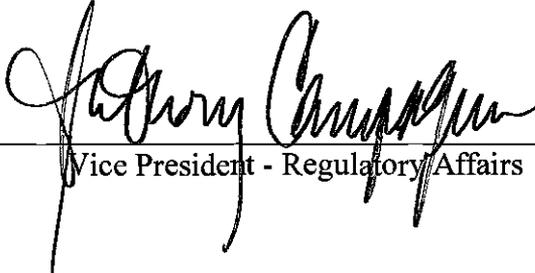
Term: December 1, 2016- March 31, 2017

Date of Execution: September 30, 2016

Date Effective: October 19, 2016

STATE OF NEW YORK)
) SS:
COUNTY OF DUTCHESS)

ANTHONY S. CAMPAGIORNI, being duly sworn, deposes and says that he is the Vice President - Regulatory Affairs of the Central Hudson Gas & Electric Corporation and that he has compared the preceding copy with the original contract (on file in the office) between Central Hudson Gas & Electric Corporation and Cargill Incorporated, and he does hereby certify that the same is a correct transcript therefrom and of the whole thereof.



Vice President - Regulatory Affairs

Subscribed and sworn to before
me this 15th day of November, 2016



Notary Public

LINDA L. VANETTEN
Notary Public, State of New York
Qualified in Ulster County
Reg. No. 01VA6068532
Commission Expires January 7, 2018

AMA



Cargill, Incorporated
9350 Excelsior Blvd Mallstop #150 Hopkins, MN 55343

Date: September 30, 2016

To: Central Hudson Gas & Electric Corporation
Attn:
E-mail:

CONFIRMATION # [REDACTED]
ZKEY: [REDACTED]

This Transaction Confirmation (this "Confirmation") is being provided pursuant to and in accordance with the Gas Annex Master Agreement for Sale and Purchase of Natural Gas dated July 31, 2006 between Cargill Incorporated ("Cargill") and Central Hudson Gas & Electric Corporation ("Counterparty") (the "Agreement") and constitutes part of and is subject to all of the terms and provisions of the Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Agreement. In the case of a conflict or inconsistency between the terms of this Confirmation and the terms of the Agreement, the terms of this Confirmation shall govern.

This Confirmation confirms the agreement reached between Cargill and Counterparty regarding the purchase/sale of Natural Gas upon the terms and conditions set forth herein.

Trade Date:	September 30, 2016	Trade Type:	INDEX PHYSICAL ✓
Commodity:	Natural Gas ✓	Transaction Type	FIRM ✓
Buyer:	Central Hudson Gas & Electric Corporation ✓	Seller:	Cargill Incorporated ✓
Broker:	-	Delivery Point:	IGTS - ZONE2 (Non Hunts/Eastchester) ✓
Start Date:	December 01, 2016 ✓	End Date:	March 31, 2017 ✓
Total Nomination:	As defined in supply obligation below. ✓	Call Pricing:	[REDACTED] ✓
Supply Obligation:	Buyer may call on up to [REDACTED] during the December 1, 2016-March 31, 2017 period. ✓	Optimization Fee:	[REDACTED] paid ratably during normal billing cycle ✓
		Demand Charge:	Releasing Shipper will release on pipeline [REDACTED] an AMA agreement ✓

Call Notification: Buyer will notify Seller for delivery of Gas hereunder prior to 9:00 a.m. prevailing Eastern Time on the Business Day prior to the Gas Day on which delivery of Gas is requested. Friday nomination shall be for Saturday through Monday (ratably). Holidays are as determined by ICE and shall be treated the same as weekends (i.e., nominated ratably on Business Day prior to the Holiday).

Cargill hereby adopts as its signature its letterhead for this confirmation and with the intention of authenticating this confirmation.

Cargill, Incorporated

Central Hudson Gas & Electric Corporation

Mark Gazzilli

Email: Energyconfirm@eargill.com

Date: _____

Christopher Carone
Signature

Printed Name: CHRISTOPHER CARONE

Date: 10-19-16

*PNLB
10/20/16*

Execution

**AMENDMENT TO
1992 ISDA MASTER AGREEMENT
(Multicurrency-Cross Border)**

THIS AMENDMENT, dated as of August 6, 2013, is made by and between **CENTRAL HUDSON GAS & ELECTRIC CORPORATION** (Party A) and **CARGILL, INCORPORATED**, acting through its Cargill Risk Management Business Unit ("Party B").

1. Party A and Party B have previously entered into that certain 1992 ISDA Master Agreement (Multicurrency-Cross Border) dated as of July 31, 2006 (the "Agreement"), which Agreement includes the Schedule, the Credit Support Annex and all Confirmations exchanged between the parties confirming the Transactions thereunder.
2. The parties have now agreed to amend the Agreement by this amendment (this "Amendment").

Accordingly, the parties agree as follows:

1. **Amendments**

1.1 Upon execution of this Amendment by both parties, the Agreement shall be and is hereby amended as follows:

- (a) The words "Cargill, Incorporated" are deleted where ever they occur and are replaced with the following:

CARGILL, INCORPORATED, acting through its Cargill Risk Management Business Unit

- (b) With respect to Party B, the address in Part 4(a) of the Schedule is deleted in its entirety and replaced with the following:

Cargill, Incorporated
Cargill Risk Management
Mailstop #150
9350 Excelsior Boulevard
Hopkins, MN 55343 USA
Attention: Credit/CRM Administration
Telephone: 952-984-3843
Facsimile: 952-367-0849

Addresses for Notices or communications for Physical Gas Transactions:

	PARTY A	PARTY B
Invoices	Energy Resources Phone: 845-486-5443 Fax: 845-486-5626 Email: EnergyResourcesAP@cenhud.com	Natural Gas Accounting Phone: 952-984-3234/3829 Fax: 952-367-1524
Nominations	Energy Resources Phone: 845-486-5562 Fax: 845-486-5626	Sr. Gas Scheduler Phone: 713-932-2321 Fax: 713-461-8646
Confirmations	Energy Resources Phone: 845-486-5562 Fax: 845-486-5626	Natural Gas Confirmation 952-984-4055/3538 Fax: 952-367-1575
Wire Transfer	Bank: [REDACTED] [REDACTED] [REDACTED]	Bank: [REDACTED] [REDACTED] [REDACTED]

- (c) Part 5(b) of the Schedule is amended by adding the following to Section 3(g) of the Master Agreement:

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(iii) *Eligible Contract Participant.* It is an "Eligible Contract Participant" as that term is defined in Sec. 1a(18) of the Commodity Exchange Act and applicable regulations thereunder (which representation will be deemed to be repeated on each date on which a Transaction is entered into).

(iv) *Acknowledgment of Party A.* Party A understands that Party B is not offering advice or assistance or a recommendation on whether to enter into this Agreement and any related Transaction(s), and no statements in writing or otherwise from Party B should be construed as investment, legal or tax advice. Party A understands that it should seek, consult with and depend on independent investment, legal and tax advice concerning the consequence of entering into this Agreement and any related Transaction(s).

(d) Part 5 of the Schedule is amended to add the following as Part 5(g):

(g) *Dodd-Frank Supplement.*

- (i) *Designation as Swap Dealer.* Party B has registered with the U.S. Commodity Futures Trading Commission ("CFTC") as a limited designation "swap dealer" as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Regulation 1.3(ggg) thereunder ("Swap Dealer");
- (ii) *ISDA August 2012 DF Supplement.* Reference is made to the ISDA August 2012 DF Supplement published on August 13, 2012 by the International Swaps and Derivatives Association, Inc. ("ISDA"), and any subsequently published applicable Addendum (the "ISDA August 2012 DF Supplement");
- (iii) *Alternative to Protocol Agreement.* In lieu of using the procedures set forth in the ISDA August 2012 DF Protocol Agreement (the "Protocol Agreement"), the parties desire to implement certain terms of the ISDA August 2012 DF Supplement by setting them forth in Exhibit A to this Agreement;
- (iv) *ISDA March 2013 DF Supplement.* Reference is made to the ISDA March 2013 DF Supplement published on March 22, 2013 by the International Swaps and Derivatives Association, Inc. ("ISDA"), and any subsequently published applicable Addendum (the "ISDA March 2013 DF Supplement");
- (v) *Alternative to March 2013 Protocol Agreement.* In lieu of using the procedures set forth in the ISDA March 2013 DF Protocol Agreement (the "March Protocol Agreement"), the parties desire to implement certain terms of the ISDA March 2013 DF Supplement by setting them forth in Exhibit B to this Agreement;
- (vi) *Limitation on Incorporation.* Unless expressly incorporated herein, no other terms of the ISDA August 2012 DF Supplement or the March 2013 DF Supplement are to be incorporated into this Agreement;
- (vii) *Adoption of Terms.* The parties adopt certain terms of the ISDA August 2012 DF Supplement and March 2013 DF Supplement into this Agreement by execution of this Agreement, rather than pursuant to the procedure set forth in the Protocol Agreement or the Adherence Letter (as defined in the Protocol Agreement), the ISDA August 2012 DF Supplement and the March 2013 DF Supplement;
- (viii) *Resolving Conflict of Terms.* Capitalized terms used in this Part 5(i) and not otherwise defined shall have the meaning ascribed thereto in the ISDA August 2012 DF Supplement and the ISDA March 2013 DF Supplement. However, in the event of any inconsistency between (a) a term defined in this Agreement or in a Swap Transaction or Transaction confirmation and (b) a term defined in the ISDA August 2012 DF Supplement, or (c) a term defined in the ISDA March 2013 DF Supplement, then the terms defined in the ISDA August 2012 DF Supplement and/or ISDA March 2013 DF Supplement will control for purposes of interpreting this Agreement.
- (ix) *Mutual Representations.* Each party represents to the other (which representations will be deemed to be repeated by each party as of the time of each Swap Transaction Event) that:

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It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing; and

It has the power to execute the terms of Part 5(h) Dodd Frank Supplement, Exhibit A and Exhibit B.

1.2 The Schedule is amended to add the following as Exhibit A:

EXHIBIT A

Where the relevant box has been checked, the following schedules of the ISDA August 2012 DF Supplement shall be incorporated into this Agreement (each such schedule, a "*DF Schedule*"). All DF Schedules so incorporated in this Agreement will be applicable to such Agreement unless otherwise provided in such Agreement, and any term defined herein and used in any DF Schedule that is incorporated by reference in this Agreement will have the meaning set forth in this Agreement unless otherwise provided in such Agreement. Any term used in this Agreement will, when combined with the name of a party, have meaning with respect to the named party only.

ISDA August 2012 DF Supplement Schedules

- Schedule 1: Defined Terms.
- Schedule 2: Agreements Between a Swap Dealer and Any Other Party.
 - Part I. Representations and Agreements.
 - Part II. Agreements of a Non-Reporting Counterparty.
 - Part III. Representations and Agreements of a Counterparty that is not a Swap Dealer.
 - Part IV. Agreements and Acknowledgements of a Counterparty that is not a Regulated Swap Entity.
 - Part V. Representation of a Hedging Entity ECP.
 - Part VI. Representation of a Hedging Individual ECP.
 - Part VII. Notifications by a Swap Dealer.
- Schedule 3: Institutional Suitability Safe Harbors for Non-Special Entities.
 - Part I. Representations and Agreements Applicable if Counterparty Has One or More Designated Evaluation Agents.
 - Part II. Representations Applicable if Counterparty Does Not Have a Designated Evaluation Agent.
 - Part III. Disclosures of a Swap Dealer.
- Schedule 4: Safe Harbors for Non-ERISA Special Entities. (if applicable)
 - Part I. Representations of a Counterparty.
 - Part II. Disclosures of a Swap Dealer.
 - Part III. Representations and Agreements of a Designated QIR.
- Schedule 5: Safe Harbors for ERISA Special Entities (Option 1) (if applicable)
 - Part I. Representations of a Counterparty.
 - Part II. Disclosures of a Swap Dealer.
 - Part III. Representations and Agreements of a Designated Fiduciary.
- Schedule 6: Safe Harbors for ERISA Special Entities (Option 2) (if applicable)
 - Part I. Representations of a Counterparty.
 - Part II. Disclosures of a Swap Dealer.
 - Part III. Representations and Agreements of a Designated Fiduciary.

1.3 The Schedule is amended to add the following as Exhibit B:

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EXHIBIT B

Where the relevant box has been checked, the following schedules of the ISDA March 2013 DF Supplement shall be incorporated into this Agreement (each such schedule, a "*March DF Schedule*"). All DF Schedules so incorporated in this Agreement will be applicable to such Agreement unless otherwise provided in such Agreement, and any term defined herein and used in any March DF Schedule that is incorporated by reference in this Agreement will have the meaning set forth in this Agreement unless otherwise provided in such Agreement. Any term used in this Agreement will, when combined with the name of a party, have meaning with respect to the named party only.

ISDA March 2013 DF Supplement Schedules

- [X] Schedule 1: Defined Terms
- [X] Schedule 2: General Terms
 - Part I. Representations and Agreements
 - Part II. Confirmations
 - Part III. Clearing
 - Part IV. End-User Exception
 - Part V. Orderly Liquidation Authority
- [X] Schedule 3: Calculation of Risk Valuation's and Dispute Resolution
 - Part I. Calculation of Risk Valuations for Purposes of Section 4s(j) of the CEA
 - Part II. Dispute Resolution for Risk Valuations for Purposes of Section 4s(j) of the CEA
 - Part III. Relationship to Other Valuations
- [X] Schedule 4: Portfolio Reconciliation.
 - Part I. Required Reconciliation Dates
 - Part II. One-way Delivery of Portfolio Data
 - Part III. Exchange of Portfolio Data
 - Part IV. Valuation Differences Below the Discrepancy Threshold Amount
 - Part V. Reconciliation Against SDR Data
 - Part VI. Other Portfolio Reconciliation Procedures

1.4 The Schedule is amended to add a new Part 7. Physically Settled Gas Transactions to read as set forth on Annex A to this Amendment.

2. Representations

Each party represents to the other party that all representations contained in Section 3 of the Agreement (including all representations set forth in this Amendment) are true and accurate as of the date of this Amendment and that such representations are deemed to be given or repeated by each party, as the case may be, on the date of this Amendment.

3. Miscellaneous

- (a) **Definitions.** Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings specified for such terms in the Agreement (without the Amendment).
- (b) **Entire Agreement.** This Amendment constitutes the entire agreement and understandings of the parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto.
- (c) **Effective Date.** This Amendment shall be effective as of the date specified on the first page.
- (d) **Counterparts.** This Amendment may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

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- (e) **Headings.** The headings used in this Amendment are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Amendment.
- (f) **Governing Law.** This Amendment will be governed by and construed in accordance with New York law.

IN WITNESS WHEREOF the parties have executed this Amendment on the respective dates specified below with effect from the date specified on the first page of this Amendment.

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

CARGILL, INCORPORATED, acting through its
Cargill Risk Management Business Unit

By: Christopher Caine
Name: Christopher Caine
Title: CFO
Date: 8/13/13

By: Melanie Humfeld
Name:
Title: Melanie Humfeld
Date: Senior Credit Analyst
Authorized Signer
Cargill, Incorporated

8/6/13

Annex A

SPECIAL PROVISIONS

To The ISDA North America Gas Annex to the Schedule to the ISDA Master Agreement

(Gas Annex)

effective

Part 7. Physically Settled Gas Transactions.

(a) **Form of ISDA North American Gas Annex.** The parties hereby agree that the text of the body (paragraphs (a) to (n)) of the pre-printed form of ISDA North American Gas Annex, Sub-Annex F to the 2005 ISDA Commodity Definitions as published and copyrighted by the International Swaps and Derivatives Association, Inc. as in effect at the date hereof (the "Gas Annex") is incorporated by reference herein without change or modification, other than as set forth in Section 7(b) Elective Provisions and Section 7(c) Other Modifications to this Gas Annex below. The Commodity Definitions are incorporated in the Gas Annex for all purposes. All terms used in this Part 7 that are not otherwise defined shall have the meanings given to them in the Gas Annex.

(b) **Elective Provisions.** For purposes of clause (l) of the Gas Annex, the following elections shall apply:

(l) **Elective Provisions**

1. (a)(ii) – **Outstanding Gas Transactions.** This Gas Annex shall apply to the following pre-existing Gas Transactions pursuant to clause (a)(ii):

Option A: All Gas Transactions outstanding between the parties as of the date this Gas Annex becomes effective.

Option B: The Gas Transactions listed in Schedule I to this Gas Annex.

Option C: None of the Gas Transactions between the parties that were executed prior to the date this Gas Annex becomes effective.

If none of the above options is selected, Option A shall apply.

2. (a)(iii) – **Outstanding Gas Credit Support**

Outstanding Gas Credit Support held by a party in connection with Outstanding Gas Transactions shall be deemed to have been delivered under and in connection with this Agreement pursuant to clause (a)(iii).

If not checked, not applicable.

3. (b)(ii) – **Performance Obligation (remedy for breach of Firm obligation)**

Option A: Cover Standard

Option B: Spot Price Standard

If neither option is selected, Option A shall apply.

4. (e) – **Taxes**

Option A: Buyer Pays At and After Delivery Point

Option B: Seller Pays Before and At Delivery Point

If neither option is selected, Option A shall apply.

5. (f)(ii) – **Payment Date**

Execution

Option A: the later of the 25th Day of Month following Month of delivery or 10 Days after receipt of the invoice by Buyer (provided that if the Payment Date is not a Local Business Day, payment is due on the next Local Business Day following that date).

___ Option B: the later of the ___ Day of Month following Month of delivery or 10 Days after receipt of the invoice by Buyer (provided that if the Payment Date is not a Local Business Day, payment is due on the next Local Business Day following that date).

___ Option C: Notwithstanding anything to the contrary in the Schedule, payments with respect to both Gas Transactions and Power Transactions (as defined separately in the Schedule) will be netted and payable on or before the later of the 20th Day of Month following Month of delivery or 10 Days after receipt of the invoice by Buyer (provided that if the Payment Date is not a Local Business Day, payment is due on the next Local Business Day following that date).

___ Option D: Notwithstanding anything to the contrary in the Schedule, payments with respect to both Gas Transactions and Power Transactions (as defined separately in the Schedule) will be netted and payable on or before the later of the 25th Day of Month following Month of delivery or 10 Days after receipt of the invoice by Buyer (provided that if the Payment Date is not a Local Business Day, payment is due on the next Local Business Day following that date).

If none of the above options is selected, Option A shall apply.

6. (k)(xxii) – **Alternative to Spot Price Index.** The parties have selected the following alternative index as the Spot [REDACTED] if no index is specified, the Spot Price Index specified in clause (k)(xxci) applies.

(c) **Special Provisions.** The following special provisions (the "Special Provisions") to the Gas Annex shall supplement and form part of the Gas Annex between the parties. In the event of any conflict or inconsistency between the Special Provisions and the Gas Annex, the Special Provisions shall govern. Except as amended hereby, the Gas Annex shall remain in full force and effect.

1. **Physical Gas Transactions under this Agreement.** Section (a) of the Gas Annex is hereby amended to add new subsection (iv) as follows:

(iv) Transaction Procedure.

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

(B) With respect to Gas Transactions, if a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section (a)(iv)(A) above, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then the oral agreement reached under Section (a)(iv)(A) above shall be controlling and satisfy the statute of frauds, howsoever evidenced by the parties. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section (a)(iv)(A) above, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, (iii) the Gas Annex, (iv) the Schedule, and (v) the ISDA Master Agreement, the terms of the documents shall govern in the priority listed in this sentence.

2. **Certain Amendments to the Agreement for Gas Transactions** Section (h) is hereby amended to add new subsection (vii) as follows:

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(vii) In the event of non-performance due to Force Majeure, the affected party shall, to the extent permitted by the Transporters, prorate all Firm obligations at the affected Delivery Point and shall give Firm obligations priority over all Interruptible obligations."

3. Section (j) is hereby amended to add new subsections (iv), (v), (vi), (vii), (viii) and (vix) as follows:

(iv) **Termination of Transactions.** Notwithstanding the provisions of Section 6(e) of the Master Agreement, for Gas Transactions, as of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions 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 (b)(ii)), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

(v) **Confidentiality.** Neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, or (iv) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section (j), the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

(vi) **Assignment.** Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

(vii) **Recording.** Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full

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execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

Additionally, each party waives any objections to the introduction of the recorded conversations or instant messages (a service provided by AOL Instant Messenger, Yahoo! Messenger and others) into evidence to prove a Contract whether based on the Statute of Frauds, the Parol Evidence Rule, the Best Evidence Rule or any similar evidentiary rules. Each party waives any objection or defense to its authority or the authority of its employee provided that such employee can be identified on the relevant employing party's recording.

(viii) **Imaged Agreement.** Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence.

(ix) **Adequate Assurances.** If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit or cash.

4. Section "k" is hereby amended by adding new definitions as follows:

"Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.

"Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.

"Confirming Party" shall mean Cargill, Incorporated as the party designated to prepare and forward Transaction Confirmations to the other party.

"Contract" shall mean the legally-binding relationship established by (i) the Master Agreement, (ii) the Gas Annex, (iii) any and all binding Transaction Confirmations and (iv) any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation.

"Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price

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

Execution

"Transaction Confirmation" shall mean a document, setting forth the terms of a transaction formed pursuant to Section (a)(iii) for a particular Delivery Period.

5. Section "k(vi)" is hereby amended as follows:

Delete the following: "(or an alternate fuel if elected by Buyer and replacement Gas is not available)," from line 3.

6. Section (m) is hereby amended by adding the following:

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