

**Base Contract for Sale and Purchase of Natural Gas**

This Base Contract is entered into as of the following date: August 11<sup>th</sup>, 2014.

**Supplier 91**

The parties to this Base Contract are the following:

<b>PARTY A</b> [REDACTED]	<b>PARTY NAME</b>	<b>PARTY B</b> CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND ORANGE AND ROCKLAND UTILITIES, INC.
[REDACTED]	<b>ADDRESS</b>	111 Broadway Suite 1601 New York, New York 10006
[REDACTED]	<b>BUSINESS WEBSITE</b>	www.coned.com
[REDACTED]	<b>CONTRACT NUMBER</b>	
[REDACTED]	<b>D-U-N-S® NUMBER</b>	00-698-2359
<input type="checkbox"/> OTHER:	<b>TAX ID NUMBERS</b>	<input checked="" type="checkbox"/> US FEDERAL: 135009340 <input type="checkbox"/> OTHER:
<u>Delaware</u>	<b>JURISDICTION OF ORGANIZATION</b>	
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:	<b>COMPANY TYPE</b>	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:
[REDACTED]	<b>GUARANTOR (IF APPLICABLE)</b>	
<b>CONTACT INFORMATION</b>		
[REDACTED]	▪ <b>COMMERCIAL</b>	ATTN: <u>Director, Gas Supply</u> TEL#: <u>212-466-8248</u> FAX#: <u>212-528-0397</u> EMAIL: <u>carnavospe@coned.com</u>
[REDACTED]	▪ <b>SCHEDULING</b>	ATTN: <u>Manager, Gas Purchasing and Scheduling</u> TEL#: <u>212-466-8278</u> FAX#: <u>917-534-4018</u> EMAIL: <u>castellanoa@coned.com</u>
[REDACTED]	▪ <b>CONTRACT AND LEGAL NOTICES</b>	ATTN: <u>Manager, Gas Billing &amp; Analysis</u> TEL#: <u>212-466-8211</u> FAX#: <u>917-534-4081</u> EMAIL: <u>ichiharat@coned.com</u>
[REDACTED]	▪ <b>CREDIT</b>	ATTN: <u>Manager, Energy Risk Management</u> TEL#: <u>212-466-8252</u> FAX#: <u>212-962-2965</u> EMAIL: <u>hirstJ@coned.com</u>
[REDACTED]	▪ <b>TRANSACTION CONFIRMATIONS</b>	ATTN: <u>Contract Administrator, Gas Billing &amp; Analysis</u> TEL#: <u>212-466-8205</u> FAX#: <u>917-534-4081</u> EMAIL: <u>ostrowskaj@coned.com</u>
<b>ACCOUNTING INFORMATION</b>		
[REDACTED]	▪ <b>INVOICES</b> ▪ <b>PAYMENTS</b> ▪ <b>SETTLEMENTS</b>	ATTN: <u>Manager, Gas Billing &amp; Analysis</u> TEL#: <u>212-466-8211</u> FAX#: <u>917-534-4081</u> EMAIL: <u>ichiharat@coned.com</u>
[REDACTED]	<b>WIRE TRANSFER NUMBERS (IF APPLICABLE)</b>	BANK: <u>Bank of New York</u> ABA: <u>021000018</u> ACCT: <u>6301374524</u> OTHER DETAILS:
ATTN: _____ ADDRESS: _____	<b>CHECKS (IF APPLICABLE)</b>	ATTN: _____ ADDRESS: _____
BANK: _____ ABA: _____    ACCT: _____ OTHER DETAILS: _____	<b>ACH NUMBERS (IF APPLICABLE)</b>	BANK: _____ ABA: _____    ACCT: _____ OTHER DETAILS: _____

# Base Contract for Sale and Purchase of Natural Gas

(Continued)

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select the appropriate box(es) from each section:

<b>Section 1.2</b> Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default <input checked="" type="checkbox"/> No Additional Events of Default (default) <input checked="" type="checkbox"/> Indebtedness Cross Default <input checked="" type="checkbox"/> Party A: 3% of Shareholder's Equity (see attached definition) but no more than \$100 million <input checked="" type="checkbox"/> Con Edison or O&R: \$100 million <input type="checkbox"/> Transactional Cross Default Specified Transactions:
<b>Section 2.7</b> Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> _____ Business Days after receipt	<b>Section 10.3.1</b> Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Section 2.8</b> Confirming Party <input checked="" type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer	<b>Section 10.3.2</b> Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input type="checkbox"/> Bilateral (default) <input checked="" type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	<b>Section 6</b> Taxes <input type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input checked="" type="checkbox"/> Seller Pays Before and At Delivery Point
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>	
<b>Section 2.31</b> Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____	<b>Section 15.5</b> Choice Of Law <input checked="" type="checkbox"/> <u>State of New York</u>
<b>Section 7.2</b> Payment Date <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 15.10</b> Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.2</b> Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) <input type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	<b>Section 7.7</b> Netting <input type="checkbox"/> Netting applies (default) OR <input checked="" type="checkbox"/> Netting does not apply
<input checked="" type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: 13	
<input checked="" type="checkbox"/> <b>Addendum(s):</b> <u>Representations (2 pages); Appendix (7 pages)</u>	

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

	PARTY NAME	CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND ORANGE AND ROCKLAND UTILITIES, INC.
	SIGNATURE	By:
	PRINTED NAME	Ivan Kimball* (See Attached Officer's Certificate)
	TITLE	Vice President, Energy Management

\*"Shareholders' Equity" means with respect to an entity, at any time, the sum (as shown in the most recent quarter audited financial statements of such entity) of (i) its capital stock (including preferred stock) outstanding, taken at par value, (ii) its capital surplus, (iii) its retained earnings, and (iv) other comprehensive income minus both (v) treasury stock and (vi) capital stock expense, each to be determined in accordance with generally accepted accounting principles of the United States

# General Terms and Conditions

## Base Contract for Sale and Purchase of Natural Gas

### SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

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

#### Oral Transaction Procedure:

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

#### Written Transaction Procedure:

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

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

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

### SECTION 2. DEFINITIONS

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

2.1. "Additional Event of Default" shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.

2.2. "Affiliate" shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.

- 2.3. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.
- 2.4. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.
- 2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "Cover Standard" as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.13. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.18. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.23. "Indebtedness Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.

- 2.24. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability; except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.27. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.28. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.
- 2.31. "Spot Price" as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.
- 2.32. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.
- 2.33. "Transactional Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.
- 2.34. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.
- 2.35. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

### SECTION 3. PERFORMANCE OBLIGATION

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

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

**Cover Standard:**

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

**Spot Price Standard:**

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

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

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

## SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

## SECTION 5. QUALITY AND MEASUREMENT

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

## SECTION 6. TAXES

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

**Buyer Pays At and After Delivery Point:**

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

**Seller Pays Before and At Delivery Point:**

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

## SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed without undue delay. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

8.5. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

## SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payment instructions, and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. 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.

9.3. 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.

9.4. 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.

## SECTION 10. FINANCIAL RESPONSIBILITY

10.1. 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 or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or guaranty. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; (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; or (ix) be the affected party with respect to any Additional Event of Default; 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.

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

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

### **Early Termination Damages Apply:**

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

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

Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

**Early Termination Damages Do Not Apply:**

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

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

**Other Agreement Setoffs Apply:**

**Bilateral Setoff Option:**

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

**Triangular Setoff Option:**

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

**Other Agreement Setoffs Do Not Apply:**

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

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

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. 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.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

## SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

## SECTION 13. LIMITATIONS

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

## SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

## SECTION 15. MISCELLANEOUS

15.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

15.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

15.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

15.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

15.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

15.7. There is no third party beneficiary to this Contract.

15.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

15.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency's reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

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.

15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties

15.12. Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, 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 Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

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

Letterhead/Logo	Date: _____, _____ Transaction Confirmation #: _____			
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.				
<b>SELLER:</b> _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	<b>BUYER:</b> _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____			
Contract Price: \$ _____ /MMBtu or _____				
Delivery Period: Begin: _____, _____ End: _____, _____				
<b>Performance Obligation and Contract Quantity: (Select One)</b>  <table style="width:100%; border: none;"> <tr> <td style="width:33%; vertical-align: top;"> <b>Firm (Fixed Quantity):</b>                      _____ MMBtus/day  <input type="checkbox"/> EFP                 </td> <td style="width:33%; vertical-align: top;"> <b>Firm (Variable Quantity):</b>                      _____ MMBtus/day Minimum                      _____ MMBtus/day Maximum                      subject to Section 4.2. at election of  <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller                 </td> <td style="width:33%; vertical-align: top;"> <b>Interruptible:</b>                      Up to _____ MMBtus/day                 </td> </tr> </table>		<b>Firm (Fixed Quantity):</b> _____ MMBtus/day <input type="checkbox"/> EFP	<b>Firm (Variable Quantity):</b> _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	<b>Interruptible:</b> Up to _____ MMBtus/day
<b>Firm (Fixed Quantity):</b> _____ MMBtus/day <input type="checkbox"/> EFP	<b>Firm (Variable Quantity):</b> _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	<b>Interruptible:</b> Up to _____ MMBtus/day		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>   				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: <u>Consolidated Edison Company of New York and Orange and Rockland Utilities, Inc.</u> By: _____ Title: _____ Date: _____			

FOR IMMEDIATE DELIVERY



**Special Provisions to the NAESB Base Contract**  
**Between [REDACTED]**  
**Consolidated Edison Company Of New York, Inc. and Orange And Rockland Utilities, Inc.**

**Dated August 11<sup>th</sup>, 2014**

**SECTION 1. PURPOSE AND PROCEDURES**

**(Oral Transaction Procedure).** Section 1.2 is hereby amended by: (i) adding the phrase “, or other mutually agreeable electronic transmission and use by the parties of a form of electronic transmission to enter into a Gas transaction shall evidence such a mutual agreement” after the words “EDI transmission” where they appear on the second line; (ii) adding the words “in writing in a separate agreement executed” after the words “agreed to” where they first appear on the second to last line and (iii) adding the words “the said commercial terms of” after the word “invalidate” on the last line.

**1.3.** Section 1.3 is hereby amended by: adding the words “or agreement of the parties reached in an EDI transmission or other mutually agreeable electronic transmission, each” after the word “conversation” on the second to last line.

**1.4.** Section 1.4 is hereby amended by adding the words “under laws relating to whether certain agreements are to be in writing or signed by the party to be thereby bound.” at the end of the third sentence.

**SECTION 2. DEFINITIONS**

**2.6. “Business Day”.** Section 2.6 is hereby amended by deleting Section 2.6 in its entirety and replacing it with the following:

“2.6. “Business Day” shall mean any day except Saturday, Sunday, or a statutory or banking holiday observed in the jurisdiction of the relevant party’s place of business. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant party’s principal place of business. The relevant party, in each instance unless otherwise specified, shall be the party to whom the Notice is being sent and by whom the Notice is to be received, or in the case of a payment to be made, shall be the party who is required to make such payment.

**2.13 “Credit Support Obligation”.** Section 2.13 is hereby amended by deleting the words “a security interest in an asset,” in the second line and replacing the words “an irrevocable standby letter of credit” with “a Letter of Credit”.

Delete Section 2.34 in its entirety and replace with the following:

“2.34. “Termination Option” shall mean the option of either party to terminate a transaction under this Contract 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 as specified in Section 3.4 herein.”

**Section 2** is hereby amended by adding the following provisions as Sections 2.36 to 2.44:

**2.36.** "Bankruptcy Event" shall mean that an entity (i) is dissolved (other than pursuant to a consolidation, reorganization, reincorporation, reconstitution, 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, including without limitation, the Bankruptcy and Insolvency Act (Canada), the United States Bankruptcy Code and the Companies' Creditors Arrangement Act (Canada), or a petition is presented for its winding-up or liquidation which has not been dismissed within 30 days; (v) has a resolution passed for its dissolution, winding-up, official management or liquidation (other than pursuant to a consolidation, reorganization, reincorporation, reconstitution, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, receiver manager, monitor, 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; (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.** "Credit Rating" shall mean, with respect to an entity, the lowest of the ratings then assigned to such entity's (i) unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or (ii) if the entity has no such debt obligations, its issuer or general corporate rating, by Standard & Poor's Ratings Group or its successor ("S&P"), Moody's Investor Services or its successor ("Moody's") and/or any other ratings agency agreed to by the parties from time to time.

**2.38.** "Dollars" or "\$" shall mean, unless otherwise stated, United States dollars.

**2.39.** "Letter(s) of Credit" shall mean one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a Canadian bank with a U.S. branch, with such bank having a Credit Rating of at least A from S&P or A2 from Moody's, and which is not a party to this Contract or a subsidiary or Affiliate of a party to this Contract, in a form acceptable to the party requesting a Letter of Credit under this Contract in its commercially reasonable discretion. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit and not the party requesting the Letter of Credit.

**2.40.** "Letter of Credit Default" shall mean, with respect to any outstanding Letter of Credit, that a party ("Y") fails to maintain any outstanding Letter of Credit for the benefit of the other party ("X"), including, without limitation, as a result of the occurrence of any of the following events (i) the issuer of a Letter of Credit fails to comply with or perform its obligations under such Letter of Credit; disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity or enforceability of, such Letter of Credit; is subject to a Bankruptcy Event; or fails to maintain the Credit Rating set out in the definition of Letter of Credit; or (ii) a Letter of Credit terminates or fails or ceases to be in full force and effect at any time until 10 days beyond the final payment date of the transactions for which it is issued, without having been replaced by another form of Credit Support Obligation suitable to X; Provided, however, that no Letter of Credit Default shall occur in any event with respect to any outstanding Letter of Credit after the time such Letter of Credit is permitted or required to be expired, cancelled or returned to Y in accordance with the terms of this Contract.

**2.41.** "Merger Event" shall mean, with respect to a party and/or, if applicable, its Guarantor, that it consolidates, reorganizes, reincorporates or reconstitutes into or as, amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and either (i) the resulting entity fails to assume all of the transferring entity's obligations hereunder by operation of law or pursuant to an agreement reasonably satisfactory to the other party; (ii) any Credit Support Obligation fails to extend to the performance by the resulting entity of its obligations under this Base Contract unless the other party agrees that the benefits of any such Credit Support Obligations are unnecessary; or (iii) the resulting entity's creditworthiness is below the Minimum Rating specified in Section 10.1 below.

### **SECTION 3. PERFORMANCE OBLIGATION**

In Section 3.2, for both the Cover Standard and the Spot Price Standard, the following is inserted at the beginning of the first sentence thereof and the word "The" is then changed to "the":

"Subject to Sections 3.4,"

Delete Section 3.4 in its entirety and replace with the following:

"3.4 In addition to the remedies provided pursuant to Section 3.2, if Seller or Buyer breaches a Firm obligation to deliver or receive Gas for a period of (i) three (3) consecutive Days or (ii) five (5) or more cumulative Days in any thirty (30) day period, under any transaction, and such breach is not excused due to an event of Force Majeure or by the other party's failure to perform, then the non-breaching party shall have the right to terminate and liquidate any or all transactions (the "Termination Right") in the manner provided in Section 10.3 by declaring an Early Termination Date, in addition to any and all remedies provided herein. The exercise of this Termination Right shall not be deemed to be an Event of Default with respect to the transaction(s) or any other transactions or any other agreement between the parties. If the non-breaching party fails to provide Notice to exercise its Termination Right within fifteen (15) Business Days of the occurrence of the most recent failure to deliver or receive Gas that gave rise to that Termination Right, the Termination Right shall expire, but without prejudice to any Termination Right that may subsequently arise. For the purposes of this Section 3.4 only, a failure to deliver or receive Gas on a Day will be considered not to be a breach of a Firm obligation to deliver or receive Gas on that Day, if (i) the amount of the shortfall is equal to or less than three percent (3%) of the Contract Quantity and (ii) the breaching party utilizes commercially reasonable efforts to make up the shortfall to the non-breaching party as soon as practicable. The Termination Right is in addition to any and all remedies available hereunder. In the event of any inconsistency between this provision and the provisions in Section 10.3, the provisions in Section 3.4 shall apply."

### **SECTION 6. TAXES**

In Section 6 – Taxes (Seller Pays Before and at Delivery Point), delete the paragraph in its entirety and substitute the following paragraph in its place:

"Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s) except as provided in the next sentence. Buyer shall pay or cause to be paid (or reimburse Seller to the extent that Seller has paid) all Taxes on or with respect to the Gas after the Delivery Point(s) and any applicable New York State/New York City ("NYC") sales/use taxes or NYC Utility Excise Tax imposed on non-exempt sales at NYC Delivery Point(s). Con Edison/O&R has advised Party A that some of the Gas that it purchases from its Counterparties, including Party A, could be allocated in a given monthly period for steam or electric production purposes; if that were to occur, Con Edison/O&R will advise Party A of same (with specific purchase information) within ten (10) days after the close of the month. In addition, if (i) New York State should impose a Utility Excise Tax ("State GRT") at NYS Delivery Points or (ii) a local municipality should impose a Utility Excise Tax ("Local GRT") on a specific Gas purchase during the term of this Contract, the parties will negotiate in good faith to determine who should bear responsibility for such tax within thirty (30) days following public notice of the imposition of a State GRT or Local GRT or, if no public notice is made, within thirty (30) days following the imposition of any of those specified taxes ("the Deadline") on a specific Gas purchase. In the event that the parties are unable to agree on who should bear responsibility for such State GRT or Local GRT on or before the Deadline, then either party may terminate this Contract and

any pending transactions under it effective upon the Deadline and that party shall then act as the Non-Defaulting Party pursuant to Sections 10.3 and 10.4 (and the applicable sub-sections thereof). Notwithstanding anything herein contained to the contrary, if the parties are unable to agree upon who should bear responsibility for the State GRT or Local GRT on or before the Deadline, then Buyer shall be responsible for the State GRT or Local GRT through the Deadline with respect to any pending transactions between the parties. If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof."

## **SECTION 7. BILLING, PAYMENT AND AUDIT**

7.4. Section 7.4 is hereby amended by adding the following provision at the end of Section 7.4:

"Any disputed amount which is later determined to be due to the non-disputing party shall be paid by the invoiced party (via wire transfer) to the non-disputing party, together with interest thereon, calculated in accordance with Section 7.5 hereof, within five (5) Business Days of that determination."

## **SECTION 9. NOTICES**

In Section 9.4, delete the words "ten Business Days" and substitute in their place the words "30 days".

## **SECTION 10. FINANCIAL RESPONSIBILITY**

Delete Section 10.1 and replace with the following:

"10.1 Each party must either (i) have a Credit Rating of at least "BBB-" from S&P and "Baa3" from Moody's and not be on Negative Credit Watch or words of similar import for the lowest specified ratings (the "Minimum Rating") or (ii) provide the other party, when requested and when there is an open transaction between the parties, with Performance Assurance as described below. In instances where a party is rated by only one of the two rating agencies, only the Minimum Rating specified above for that agency must be satisfied.

"Performance Assurance" means collateral security for the obligations of the party in the form of (i) cash, (ii) a Letter of Credit, or (iii) a guaranty from a third party that is a U.S. corporation or a foreign corporation having a Minimum Rating (or where the third party is rated by only one of the two rating agencies, only the minimum Credit Rating (specified above) for that agency must be satisfied. The Performance Assurance if a party is unrated or cannot satisfy the Minimum Rating described above and when there is an open transaction between the parties shall be the greater of one million dollars (\$1,000,000.00) or an amount equal to the Contract Price for Gas in an existing transaction(s) between the parties multiplied by the quantity of Gas in the subject transaction multiplied by the number of Days in the transaction period(s) (not to exceed, in the case of a Seller providing Performance Assurance, 30 Days, and in the case of a Buyer providing Performance Assurance, 60 Days) and shall be in a form reasonably acceptable to the other party.

If a party is unrated or cannot satisfy the Minimum Rating described above, then the party must provide the other party with Performance Assurance within forty-eight (48) hours of receiving the other party's written (via electronic mail and facsimile) request for same or the other party shall have the right to withhold and/or suspend deliveries or payments and/or to immediately terminate this Contract in accordance with Sections 10.2 and 10.3 below. In addition, if a party (or its guarantor) that initially satisfied the Minimum Rating is subsequently downgraded below the

Minimum Rating or when reasonable grounds for insecurity regarding the party's performance or making of required payments arise, that party must provide Performance Assurance to the other party within forty-eight (48) hours of receiving the other party's written (via electronic mail and facsimile) request for same or the other party shall have the right to withhold and/or suspend deliveries or payments and/or to immediately terminate this Contract in accordance with Sections 10.2 and 10.3 below. In each case, if the forty-eight (48) hour period ends on a weekend or Federal Banking Holiday, the Performance Assurance must be provided on the next Business Day following receipt of the other party's written request. Any failure by either party to exercise its rights (as set forth above) at the first available opportunity shall not be construed as a waiver of such rights (unless expressly done so in writing) and shall not preclude either party from exercising them at a later time."

In Section 10.2, make the following changes:

- (i) items (i) to (v) are deleted in their entirety and replaced with the following: "(i) be subject to a Bankruptcy Event;"
- (ii) in the seventh (7<sup>th</sup>) line, (i) substitute the term "Performance Assurance" for "Adequate Assurance of Performance"; and (ii) delete the end of the sentence starting with, "within 48 hours" and replace it with "within the deadline set forth in Section 10.1 above".
- (iv) on the ninth and tenth (9<sup>th</sup> and 10<sup>th</sup>) lines, delete the word "or" before "ix)" and all of the words in "ix" and insert the following in their place:
  - (v) be the Defaulting Party with respect to any Additional Event of Default (Indebtedness Cross Default);
  - (vi) breach any material covenant or obligation set forth herein or in any guaranty provided in connection herewith if such failure is not remedied within 7 Business Days following Notice of such failure;
  - (vii) experience a Merger Event; or
  - (viii) fail to cure a Letter of Credit Default within two (2) Business Days following Notice of such default.
- (v) at the end of Section 10.2, add:

"Notwithstanding anything to the contrary herein, if an Event of Default has occurred with respect to a party, then the other party may suspend its payment and delivery obligations but only for a maximum of twenty (20) Business Days without an Early Termination Date being designated. If the other party has not designated an Early Termination Date within such twenty (20) Business Days, then it shall resume performance of its payment and delivery obligations and shall not suspend its obligations again with respect to the same Event of Default."

**10.3.1. (Early Termination Damages Apply).** Section 10.3.1 (Early Termination Damages Apply) is hereby amended by:

replacing the words "whether or not then due" with the words "whether or not yet invoiced or due" in the second line.

**10.3.2 (Triangular Setoff Option).** In Section 10.3.2 (Triangular Setoff Option), make the following changes:

- (i) on the eighth (8<sup>th</sup>) line, delete the words “or its Affiliates”; and
- (ii) on the eleventh (11<sup>th</sup>) line, after the words “and/or (v)” delete the remainder of the words in the sentence and insert the following in their place:

“any Net Settlement Amount payable to the Defaulting Party against any reasonable costs and expenses, including reasonable attorneys’ fees and expenses, incurred by the Non-Defaulting Party as a result of the termination, acceleration and liquidation of the Terminated Transactions. Notwithstanding any provision to the contrary contained in this Contract, the Non-Defaulting Party shall not be required to pay to the Defaulting Party the Net Settlement Amount pursuant to Section 10.4 until the Non-Defaulting Party receives confirmation from legal, accounting, tax or other personnel satisfactory to it in its reasonable discretion that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party or an Affiliate of the Non-Defaulting Party under this Contract or otherwise, which are due and payable as of the Early Termination Date hereof, have been fully and finally performed. This Contract shall be without prejudice and in addition to any right of set-off, recoupment, combination of accounts, lien or other right which either party has at any time, by operation of law, contract or otherwise. For the purposes of this section, [REDACTED]

## **SECTION 11. FORCE MAJEURE**

In Section 11.2, the following language is deleted from the second (2<sup>nd</sup>) line thereof:

“storms or storm warnings, such as hurricanes, which result in the evacuation of the affected area.”.

In Section 11.2, the following language is added to the fourth (4<sup>th</sup>) line thereof at the end of subsection (ii):

“or storms or storm warnings, such as hurricanes, which result in evacuation of an entire geographic region”.

In Section 11.3, the following language is inserted in the third (3<sup>rd</sup>) line thereof after the word “excuse”:

“failed to use reasonable efforts to overcome the condition or”.

In Section 11.3, eliminate the word “or” before “(v)” on the eighth (8<sup>th</sup>) line thereof and add the following language to the ninth (9<sup>th</sup>) line thereof after “Section 11.2”:

“; or (vi) partial or entire failure of specific wells, including without limitation, well blow outs and well craterings”.

In Section 11.5, add the following language at the end of the Section after the word “event”:

"provided, however, that in the event of a Force Majeure affecting some, but not all, of Seller's gas supplies accessible at the Delivery Point(s) provided for in the Transaction Confirmation(s) hereunder, Firm buyers at those Delivery Point(s) shall be entitled to a pro rata allocation of available gas supplies among Seller's Firm buyers at said Delivery Point(s), and any failure by Seller to make such allocation and deliveries shall not be excused by Force Majeure. In addition, in instances where the Force Majeure prevents Seller from supplying the Contract Quantity at the Delivery Point(s) provided for in the Transaction Confirmation(s) hereunder, Seller shall use commercially reasonable efforts to offer alternative gas supplies to Buyer (in an amount equal to the difference between Buyer's Contract Quantity and the amount supplied to Buyer by Seller at the Delivery Point(s) provided for in the Transaction Confirmation(s)) at mutually agreed-upon Alternate Delivery Points and mutually agreed-upon prices."

## **SECTION 15. MISCELLANEOUS**

Section 15.1(ii) is revised by adding the following between the word "party" and the period at the end of the sentence:

"as long as such entity has provided such guarantees, Letters of Credit or other assurance of its ability to perform as the non-assigning party, in its sole reasonable opinion, may require".

Section 15.1 is further amended by deleting the words "(and shall not relieve the assigning party from liability hereunder)" on the fourth (4<sup>th</sup>) line and by deleting the last sentence in its entirety and inserting the following in its place:

"Upon any such assignment, transfer and assumption, the transferor shall be relieved of and discharged from any obligations hereunder."

**15.10.** Section 15.10 is hereby amended by:

(i) deleting the word "or" after the words "recovery proceedings" on the seventh line and adding the following provision after the words "published index" on the eighth line: ", or (vi) in the course of inspection, examinations or inquiries by federal, state or Canadian provincial regulatory agencies that have requested or required the inspection of records that contain Confidential Information, provided that the disclosing party advises the other party of and exercises reasonable efforts to obtain reliable assurances that confidential treatment will be accorded such disclosure";

(ii) adding the following at the end of the first paragraph of 15.10: "The parties affirm that the remedies available in the event of a breach of confidentiality shall include injunctions and any other equitable relief"; and

(iii) by adding the following as the third (3<sup>rd</sup>) paragraph:

"Notwithstanding anything to the contrary, each party to this Contract (and each employee, representative, or other agent of such party for so long as they remain an employee, representative or agent) may disclose to any and all persons, without limitation of any kind: (i) the tax treatment and tax structure of the transactions contemplated by this Contract; and (ii) all materials of any kind (including opinions or other analyses) that are provided to such party relating to such tax treatment or tax structure. Each party to this Contract may also disclose to any Federal, state or local taxing authority the identity of the parties to the Contract. Nothing in this Contract, or any other agreement between the parties hereto, express or implied, shall be construed as limiting in any way the ability of either party to consult with any tax adviser (including a tax adviser independent from all other entities involved in the transactions) regarding the tax treatment or tax structure of the transactions."

**Section 15** is hereby amended by adding the following provisions as Sections 15.13 to 15.17:

15.13. “(a) If the Public Service Commission of the State of New York (PSC) disallows the recovery of costs incurred by Buyer under any transaction(s) under this Contract, Buyer shall promptly notify Seller in writing and offer to Seller an amendment(s) reflecting a pricing formula designed to produce prices equal to that portion of Seller’s charges recoverable by Buyer and which amendment(s) preserve, to the maximum extent possible, the respective economic positions of the parties. If within ten (10) days of its receipt of Buyer’s Notice, Seller has not accepted the proposed amendment(s), Buyer may terminate the applicable transaction(s) on no less than thirty (30) days’ written Notice to Seller, to be effective on the last Day of the following month, provided however, that if Buyer gives Notice to Seller during a winter season, which for purposes herein shall run from November 1 through March 31, the termination will occur no earlier than the end of that winter season. No retroactive adjustment will be made for costs incurred by Buyer prior to the effective date of the termination.

(b) On or before July 1 of any Contract Year (November 1 through October 31 of the following year during the term of this Contract), Buyer shall have the right to notify Seller that it will permanently reduce the Contract Quantity by an amount calculated in accordance with 15.13 (c) below, effective September 1 of that same Contract Year.

(c) Any reduction of the Contract Quantity shall be equal to the following:

$A \times (B/C)$ , where:

“A” is equal to (i) the estimated peak day demand associated with customers of Buyer that switched from Buyer’s firm sales service classifications to its firm transportation service classifications, during the 12 month period ending June 1 of that Contract Year, minus (ii) the forecasted increase in peak day demand for customers under Buyer’s firm sales service classifications for the next Contract Year; provided that “A” cannot be less than zero;

“B” is the then current Contract Quantity times 365; and

“C” is the aggregate annual firm contract quantities under Buyer’s long term, firm gas purchase agreements, including this Contract.”

**15.14.** Where a Credit Support Obligation or Performance Assurance posted by a delivering party is in the form of cash, the receiving party shall not be entitled to commingle such cash with its own funds unless it or, if applicable, its Guarantor has a Minimum Rating and no Event of Default has occurred with respect to the receiving party or, if applicable, its Guarantor. (In instances where a party is rated by only one of the two rating agencies, only the Minimum Rating specified above for that agency must be satisfied.) If the receiving party or, if applicable, its Guarantor does not have the Minimum Rating or an Event of Default has occurred with respect to it or, if applicable, its Guarantor, the receiving party shall immediately deposit all cash posted by the delivering party in a separate interest bearing account established by the receiving party at a U.S. commercial bank or a Schedule I Canadian Chartered Bank. Such account shall be (i) designated as “Collateral Account” or such other designation that indicates that the balances in that account are owned by the delivering party, subject to the security interest of the receiving party (the “Collateral Account”); and (ii) established in the currency provided by the delivering party. From time to time at the delivering party’s request, the receiving party shall provide

evidence reasonably satisfactory to the delivering party that the Collateral Account has been established and is being maintained in accordance with this Section.

For the purposes of any cash held as Performance Assurance in the United States, as security for the prompt payment and performance of all obligations of the delivering party under the Contract, the delivering party hereby pledges, assigns, conveys and transfers to the receiving party, and hereby grants to the receiving party, a present and continuing first priority security interest in and to, and a general first lien upon and right of setoff against all such cash collateral and all proceeds thereof. The delivering party agrees to take such action as the receiving party reasonably requests in order to perfect the receiving party's continuing security interest in, lien on, and right of setoff against such cash collateral and grants authority to the receiving party to file financing statements or take such other actions necessary to perfect the foregoing interests. This Agreement is a Security Agreement under the Uniform Commercial Code of the State of New York.

Each party represents and warrants to the other party (which representations will be deemed to be repeated by the delivering party on each date on which the receiving party holds cash collateral) that:

- (a) it has the power to grant a security interest in and lien on the cash it delivers to the receiving party as collateral and has taken all necessary actions to authorize the granting of that security interest and lien;
- (b) it is the sole owner of or otherwise has the right to deliver such cash collateral to the receiving party, free and clear of any security interest, lien, encumbrance or other restrictions, other than the security interest and lien granted under this Contract; and
- (c) upon the delivery of the cash collateral to the receiving party and compliance by the receiving party of any statutory requirements, the receiving party will have a valid and perfected first priority security interest therein.

**15.15.** Amounts that are set off or netted against, deducted from, or applied to, obligations under Section 10.3.2 (Other Agreement Setoffs Apply) may be converted by the Non-Defaulting Party into any currency in which any obligation owed is denominated at the rate of exchange at which the Non-Defaulting Party, acting in a reasonable manner and in good faith, would be able to purchase the relevant amount of the currency being converted.

**15.16** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THE BASE CONTRACT OR ANY TRANSACTION CONFIRMATION.

**15.17.** Any dispute relating to this Contract shall first be referred in writing to a senior representative of each party for resolution, provided that either party shall retain the right at any time thereafter to pursue any remedy available at law or in equity to enforce its rights under this Contract."

**The Base Contract is further amended by inserting the following new Section 16, Dodd Frank, at the end thereof to address certain compliance and regulatory matters in connection with Title VII of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111–203, H.R. 4173):**

## “SECTION 16 DODD FRANK

16.1. The terms set forth below shall have the meanings ascribed to them below:

“*CFTC Regulations*” means the rules, regulations, orders, supplementary information, guidance, questions and answers, staff letters and interpretations published or issued by the CFTC, in each applicable case as amended, and when used herein may also include specific citations to Titles, Parts or Sections of Title 17 of the Code of Federal Regulations without otherwise limiting the applicability of other rules, regulations, orders, supplementary information, guidance, questions and answers, staff letters and interpretations.

“*CFTC*” means the U.S. Commodity Futures Trading Commission.

“*Commodity Exchange Act*” means the U.S. Commodity Exchange Act, as amended, 7 USC Section 1, et seq.

“*Commodity Option*” means a “commodity option” within the meaning of CFTC Regulations.

“*Swap*” means a “swap” as defined in Section 1a(47) of the Commodity Exchange Act and CFTC Regulations.

“*Swap Transaction*” means a transaction between the Parties pursuant to the Base Contract involving a Swap.

“*Trade Option*” means a Commodity Option between the Parties under the Base Contract that meets the conditions contained in CFTC Regulation 32.3(a).

16.2. The Parties shall seek to agree at the time a transaction is executed whether the transaction is a Swap, a Trade Option or a contract excluded from the defined term “Swap” or otherwise exempt from reporting. If the transaction is a Swap, the Parties shall seek to agree who will be the reporting counterparty with respect to such Swap. If the transaction is a Trade Option, each Party shall report the transaction in accordance with CFTC Regulations. If the Parties cannot agree as to whether a transaction is a Swap or a Trade Option or otherwise exempt from reporting, then each Party shall make its own determination.

16.3. Each Party warrants and represents as of the Effective Date and on each date that it enters into a transaction subject to this Base Contract, that:

(i) It regularly makes or takes delivery of the commodity that is the subject of the transactions that are entered into subject to this Base Contract in the ordinary course of its business and any transaction it enters into subject to this Base Contract is entered into in connection with such business;

(ii) To the extent any transaction entered into subject to this Base Contract contains an embedded option, then *either* the factors determining the exercise of such option are beyond the control of the exercising Party, *or* if it is the offeree, *i.e.*, buyer, of such option, it is a producer, processor,

commercial user of, or a merchant handling the commodity, or the products or byproducts thereof, that is/are the subject of the transaction (a "Commercial Party") and it is entering into the transaction solely for purposes related to its business as such, and if it is the offeror, i.e., seller, of such option, it is either a Commercial Party and it is entering into the transaction solely for purposes related to its business as such or it is an "eligible contract participant" as defined in Section 1a(18) of the Commodity Exchange Act; and

(iii) It intends to make or take physical delivery of the commodity that is the subject of any transaction it enters into subject to this Base Contract in accordance with the terms and provisions of the applicable Transaction Confirmation and this Base Contract.

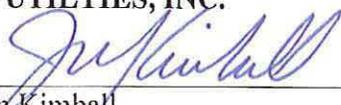
16.4. Each Party will promptly notify the other Party, if any representation made by such Party in Exhibit A, attached hereto and made a part hereof, or this Amendment becomes incorrect or misleading in any material respect, and will promptly update such representation."

**ACCEPTED AND AGREED TO:**

**CONSOLIDATED EDISON OF NEW YORK, INC. AND ORANGE AND ROCKLAND UTILITIES, INC.**

BY:

NAME:

  
Ivan Kimball

TITLE:

Vice President, Energy Management

DATE:

8/29/2014

**EXHIBIT A**

<b>Party A:</b> [REDACTED]	<b>Party B: Consolidated Edison Company of New York, Inc. ("CECONY") and Orange and Rockland Utilities, Inc. ("ORU")</b>
<b>CICI/Legal Entity Identifier:</b> [REDACTED]	<b>CICI/Legal Entity Identifier:</b> <b>CECONY:</b> VZFZPMWDHTQCFKYOBP05 <b>ORU:</b> 26RM8T263FMD21834 H79
[REDACTED]	<b>Principal Address:</b> <b>CECONY:</b> 4 Irving Place New York, NY 10003 Phone: 212-466-8265  <b>ORU:</b> One Blue Hill Plaza Pearl River, NY 10965 Phone: 1-877-434-4100
<b>Guarantor, if applicable:</b> [REDACTED]	<b>Guarantor, if applicable: N/A</b>
[REDACTED]	<b>Address:</b>  <b>Phone:</b> <b>Fax:</b> <b>Email:</b>
<b>Address for Notices:</b> [REDACTED]	<b>Address for Notices:</b> <b>CECONY and ORU:</b> Consolidated Edison Company of New York, Inc. 111 Broadway, Suite 1601 New York, NY 10006 Phone: 212-466-8205 Fax: 917-534-4081 Email: ostrowskaj@coned.com
<b>Swap Dealer within the meaning of Section 1a(49) of the Commodity Exchange Act and CFTC Regulations:</b>	
<b>Party A:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Party B: Both CECONY and ORU</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Major Swap Participant within the meaning of Section 1a(33) of the Commodity Exchange Act and CFTC Regulations:</b>	
<b>Party A:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Party B: Both CECONY and ORU</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Eligible Contract Participant:</b>	
<b>Party A:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Party B: Both CECONY and ORU</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>U.S. person within the meaning of CFTC Regulations:</b>	

Party A: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Party B: Both CECONY and ORU <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------

<b>Financial Entity within the meaning of CFTC Regulations:</b>	
Party A: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Party B: Both CECONY and ORU <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

<b>Special Entity within the meaning of CFTC Regulations:</b>	
Party A: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Yes, check if the following applies: "owns or operates electric or natural gas facilities or electric or natural gas operations (or anticipated facilities or operations), supplies natural gas and/or electric energy to other utility special entities, has public service obligations (or anticipated public service obligations) under Federal, State or local law or regulation to deliver electric energy and/or natural gas service to utility customers, or is a Federal power marketing agency as defined in Section 3 of the Federal Power Act (16 U.S.C. 796(19))"	Party B: Both CECONY and ORU <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Yes, check if the following applies: "owns or operates electric or natural gas facilities or electric or natural gas operations (or anticipated facilities or operations), supplies natural gas and/or electric energy to other utility special entities, has public service obligations (or anticipated public service obligations) under Federal, State or local law or regulation to deliver electric energy and/or natural gas service to utility customers, or is a Federal power marketing agency as defined in Section 3 of the Federal Power Act (16 U.S.C. 796(19))"

**Other information if requested:**

<b>Ultimate Parent (legal entity name of the company that owns or controls the counterparty, and that itself has no parent entity):</b> 	<b>Ultimate Parent (legal entity name of the company that owns or controls the counterparty, and that itself has no parent entity):</b> Both CECONY and ORU:  Consolidated Edison, Inc.
<input checked="" type="checkbox"/> Check if 100% owned by above entity	<input checked="" type="checkbox"/> Check if 100% owned by above entity

## DEFINITIONS AND INSTRUCTIONS

*Small business concern*, as used in this form, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation involved in the Con Edison contract that it is seeking or performing, and qualified as a small business under the criteria and size standards in Part 121 of Title 13 of the Code of Federal Regulations.

*Women-owned small business concern*, as used in this form, means a small business concern that (a) is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

*Small disadvantaged business concern*, as used in this form, means a small business concern that (a) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals. The term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of Part 124 of Title 13 of the Code of Federal Regulations.

*Qualified groups*. The supplier/contractor (and potential supplier/contractor) shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans, and other individuals found to be qualified by the Small Business Administration under Part 124 of Title 13 of the Code of Federal Regulations. The supplier/contractor (and potential supplier/contractor) shall presume that socially and economically disadvantaged entities also include Indian tribes and Native Hawaiian Organizations.

*Asian Pacific Americans*, as used in this form, mean United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

*Indian Tribe*, as used in this form, means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation as defined in Section 124.100 of Title 13 of the Code of Federal Regulations which is recognized as eligible for special programs and services provided by the U.S. to Indians because of their status as Indians, or which is recognized as such by the State in which such tribe, band, nation, group, or community resides.

*Native Americans*, as used in this form, means American Indians, Eskimos, Aleuts, and native Hawaiians.

*Native Hawaiian Organization*, as used in this form, means any community service organization serving Native Hawaiians in, and chartered as a not-for-profit organization by, the State of Hawaii, which is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

*Subcontinent Asian Americans*, as used in this form, means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

### NOTICE

As explained more fully in 15 U.S.C. § 645(d)(1)(c), please take notice that whoever misrepresents the status of a concern in order to obtain a contract that will be included as part or all of a goal contained in any subcontracting plan of Con Edison pursuant to 15 U.S.C. § 637(d) shall be subject to the penalties and remedies contained in 15 U.S.C. § 645(d)(2), which include a fine and/or term or imprisonment, administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986, suspension and debarment pursuant to Federal regulations, and ineligibility for programs or activities conducted under the Small Business Act and the Small Business Investment Act of 1958. Such penalties and remedies shall not limit any contractual remedies available to Con Edison.

Dear Con Edison Supplier/Contractor:

In connection with being a contractor to the Federal Government, Con Edison requires that its suppliers/contractors represent whether they are Small Business Concerns, Small Disadvantaged Business Concerns, and/or Women-Owned Small Business Concerns as defined on the attached sheet. Please carefully read the attached "Definitions and Instructions" form and make the required representations by checking the appropriate boxes below. After completing and signing this form, please return it or fax it to the attention of Joanna Ostrowska, fax # 917-534-4081.

Please note that a document entitled "Appendix A - Required Clauses and Certifications" is enclosed. Contracts that are entered into by Con Edison with suppliers and contractors will be subject to that document. Accordingly, you should retain "Appendix A" in your files.

Sincerely,

*Joanna Ostrowska*

Joanna Ostrowska  
Gas Supply

#### REPRESENTATIONS

Supplier/contractor represents as follows by checking the appropriate boxes:

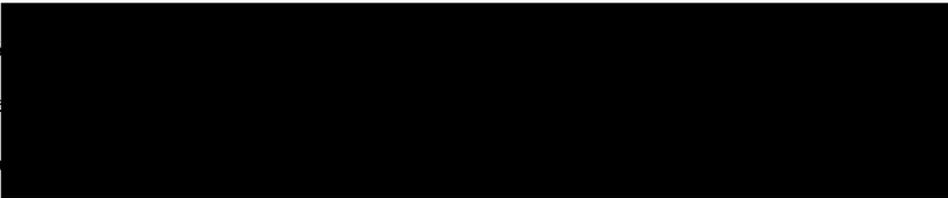
- Yes  No Are you a Small Business Concern?
- Yes  No If you are a Small Business Concern, are you also a Small Business Disadvantaged Business Concern?
- Yes  No If you are a Small Business Concern, are you also a Woman-Owned Business Concern?

REPRESENTATIONS PREPARED BY:

Company

Signature

Name and



## **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract  
with Con Edison is referred to as the "Contractor")

**Dated: June 2014**

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$150,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (SEP 2006)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

### **ANTI-KICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$150,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (OCT 2010)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$150,000.

### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$30,000)

Con Edison is required to decline to enter into contracts in excess of \$30,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed

\$30,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

#### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization of Small Business Concerns (JAN 2011)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

#### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$650,000 [\$1,500,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2011)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government.

#### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (MAR 2007)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall

not result in any liability of Con Edison to the Contractor.

The Contractor further agrees to be bound by and comply with the applicable regulations contained in Chapter 60 of Title 41 of the Code of Federal Regulations which implement Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, as amended, and Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended and set forth the Contractor's obligations, including its affirmative action obligations. **Specifically, the Contractor and its subcontractors shall abide by the requirements of Sections 60-1.4(a), 60-300.5(a) and 60-741-5(a) of Title 41 of the Code of Federal Regulations. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

#### **EQUAL OPPORTUNITY FOR VETERANS**

(this clause is applicable to all contracts of or exceeding \$100,000 unless exempted by the rules, regulations or orders of the Secretary of Labor)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity for Veterans (SEP 2010)," which is contained in Section 52.222-35 of the Federal Acquisition Regulation (section 52.222-35 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

#### **AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES**

(this clause is applicable to all contracts of or exceeding \$15,000 unless exempted by the rules, regulations or orders of the Secretary of Labor)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Affirmative Action for Workers with Disabilities (OCT 2010)," which is contained in Section 52.222-36 of the Federal Acquisition Regulation (section 52.222-36 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued under the Rehabilitation Act of 1973 (29 U.S.C. 793, as amended).

#### **EMPLOYMENT REPORTS ON VETERANS**

(this clause is applicable to all contracts of or exceeding \$100,000 unless exempted by the rules, regulations or orders of the Secretary of Labor)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Employment Reports on Veterans (SEP 2010)," which is contained in Section

52.222-37 of the Federal Acquisition Regulation (section 52.222-37 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts and to comply with the reporting to the Federal Government (including the submission of VETS-100A Report).

**COMBATING TRAFFICKING IN PERSONS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Combating Trafficking in Persons (FEB 2009)," which is contained in Section 52.222-50 of the Federal Acquisition Regulation (section 52.222-50 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in all subcontracts.

**PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL**

(this clause is applicable to all contracts requiring access to a Federal facility)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Personal Identity Verification of Contractor Personnel (JAN 2011)," which is contained in Section 52.204-9 of the Federal Acquisition Regulation (section 52.204-9 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in all subcontracts.

**PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS**

(this clause is applicable to contracts which incorporate or refer to Section 52.232-27 of the Federal Acquisition Regulation)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Prompt Payment for Construction Contracts (OCT 2008)," which is contained in Section 52.232-27 of the Federal Acquisition Regulation (section 52.232-27 of title 48 of the Code of Federal Regulations), including the requirements set forth in subsection (c) "Subcontract clause requirements".

**ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS**

(this clause is applicable to all contracts for goods and services to be used or performed at a Federal facility)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Energy Efficiency in Energy-Consuming Products (DEC 2007)," which is contained in Section 52.223-15 of the Federal Acquisition Regulation (section 52.223-15 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in all subcontracts.

**PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

**NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to all contracts exceeding \$10,000 unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 13496, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Notification of Employee Rights under the National Labor Relations Act (DEC 2010)," which is contained in Section 52.222-40 of the Federal Acquisition Regulation (section 52.222-40 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in all subcontracts.

The Contractor agrees to comply with the requirements of Chapter 471 of Title 29 of the Code of Federal Regulations, which implement Executive Order 13496, including the posting of the notice required by Section 471.2 of Title 29 of the Code of Federal Regulations.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Notice of Employee Rights clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

**CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$150,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

## SUBCONTRACTS FOR COMMERCIAL ITEMS

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (DEC 2010)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the clause entitled "Contractor Code of Business Ethics and Conduct (APR 2014)" contained in Section 52.203-13 of the Federal Acquisition Regulations (section 52.203-13 of title 48 of the Code of Federal Regulations); (ii) the clause entitled "Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010)" contained in Section 52.2013-15 of the Federal Acquisition Regulations (section 52.203-15 of title 48 of the Code of Federal Regulations); (iii) the clause entitled "Utilization of Small Business Concerns (DEC 2010)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); (iv) the clause entitled "Equal Opportunity (MAR 2007)" contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2010)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); (vi) the clause entitled "Affirmative Action for Workers with Disabilities (OCT 2010)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (vii) the clause entitled "Notification of Employee Rights under the National Labor Relations Act (DEC 2010)" contained in Section 52.222-40 of the Federal Acquisition Regulations (section 52.222-40 of title 48 of the Code of Federal Regulations); (viii) the clause entitled "Combatting Trafficking in Persons (FEB 2009)" contained in Section 52.222-50 of the Federal Acquisition Regulations (section 52.222-50 of title 48 of the Code of Federal Regulations); and (ix) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)" contained in Section 52.247-64 of the Federal Acquisition Regulations (section 52.247-64 of title 48 of the Code of Federal Regulations). If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (DEC 2010)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (DEC 2010)" and the clauses referenced in such clause, (b) include the terms and conditions of "Subcontracts for Commercial Items (DEC 2010)" in all subcontracts, and (c) to make and comply with the provisions of the certifications that are referenced in this Appendix A. Additionally, with respect to clause (iv), above, the Contractor agrees to be bound by and comply with the applicable regulations contained in Chapter 60 of Title 41 of the Code of Federal Regulations which implement Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, as amended, and Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended and set forth the Contractor's obligations, including its affirmative action obligations. **Specifically, the Contractor and its subcontractors shall abide by the requirements of Sections 60-1.4(a), 60-300.5(a) and 60-741-**

5(a) of Title 41 of the Code of Federal Regulations. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.