

**Dembowski** moved Amendment 1.

The motion carried.



6/2/2022

[M. Reed]

Sponsor: Dembowski

Proposed No.: 2022-0157

1 **AMENDMENT TO PROPOSED ORDINANCE 2022-0157, VERSION 1**

2 Strike Attachment A, Contract for Sale of South Treatment Plant Biomethane and  
3 Related Environmental Attributes and insert Attachment A, Contract for Sale of South  
4 Treatment Plant Biomethane and Related Environmental Attributes, Revised May 2022

6 **EFFECT prepared by *Mike Reed*:**

7 Strikes the existing Attachment A and inserts a new Attachment A Revised May 2022,  
8 which makes the following revisions:

10 **General Terms and Conditions Clarifications.**

- 11 • Specifies the contract effective date to be the date of the final signature.
- 12 • Deletes references to the North American Energy Standards Board (“NAESB”) as  
13 the publisher of the General Terms and Conditions (“GTCs”). Since the proposed  
14 GTCs are not the standard NASB form, the parties agreed to reduce the number of  
15 interrelated portions of the overall contract by eliminating the Special Provisions  
16 document and incorporating the text into the GTCs. One additional clarification  
17 to the section 11.8 makes clear that if a force majeure event, that prevents the  
18 delivery or receipt of gas, continues uninterrupted for more than 180 days, either  
19 party may terminate the contract with no liability to the other party because of the  
20 force majeure event. Deletes the Special Provisions and incorporates them into  
21 the GTCs .

22 **Transaction Confirmation Clarifications.**

- 23 • The definition of “D3 RIN”, described as a D3 Cellulosic Biofuel RIN, is clarified  
24 to note that it is “as established by the Federal Renewable Fuels Program”.
- 25 • The RIN Share provision that allows for the deduction of direct expenses  
26 including the portion of cash revenue from the sale of D3 RINs associated with  
27 Environmental Attributes delivered by the seller is revised to strike the inclusion  
28 of revenues from the sale of D3 RINs tied to such Environmental Attributes.

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- The LCFS Credit Value provision that allows for the deduction of expenses including the portion of cash revenue from the sale of LCFS Credits associated with Environmental Attributes delivered by the seller is revised to strike the inclusion of revenues from the sale of LCFS Credits tied to such Environmental Attributes.
  - Clarifies that no early termination damage calculation would take place for a termination under Force Majeure provisions.

## Contract for Sale of South Treatment Plant Biomethane and Related Environmental Attributes

**BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

This Base Contract is entered into as of the date of the last signature below

The parties to this Base Contract are the following:

<b>PARTY A</b> Blue Source, LLC	<b>Party Name</b>	<b>PARTY B</b> King County, through its Department of Natural Resources and Parks -- Wastewater Treatment Division
2825 Cottonwood Parkway, Suite 400 Cottonwood Heights, UT 84121	<b>Address</b>	Wastewater Treatment Division 201 S. Jackson St., Suite 500 Seattle, WA 98104
www.bluesource.com	<b>Business Website</b>	www.kingcounty.gov/environment/wtd.aspx
(801) 322-4750	<b>Contact Number</b>	(206) 477-4544
041609723	<b>D-U-N-S® Number</b>	135108934
<input checked="" type="checkbox"/> US FEDERAL: 87-0676638 <input type="checkbox"/> OTHER:	<b>Tax ID Numbers</b>	<input checked="" type="checkbox"/> US FEDERAL: 91-6001327 <input type="checkbox"/> OTHER:
Utah	<b>Jurisdiction of Organization</b>	Washington
<input type="checkbox"/> Corporation <input checked="" 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 type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input checked="" type="checkbox"/> Other: A home rule charter county and political subdivision of the State of Washington
<b>Contact Information</b>		
Blue Source, LLC <b>ATTN:</b> Will Overly <b>TEL#:</b> 801-438-1533 <b>FAX#:</b> n/a <b>EMAIL:</b> <a href="mailto:woverly@bluesource.com">woverly@bluesource.com</a>	<b>Commercial</b>	King County Department of Natural Resources and Parks <b>ATTN:</b> David Broustis <b>TEL#:</b> 206-477-4544 <b>FAX#:</b> n/a <b>EMAIL:</b> david.broustis@kingcounty.gov
<b>ATTN:</b> Will Overly <b>TEL#:</b> 801-438-1533 <b>FAX#:</b> n/a <b>EMAIL:</b> <a href="mailto:woverly@bluesource.com">woverly@bluesource.com</a>	<b>Scheduling</b>	<b>ATTN:</b> Curtis Steinke <b>TEL#:</b> 206-263-1817 <b>FAX#:</b> n/a <b>EMAIL:</b> curtis.steinke@kingcounty.gov
<b>ATTN:</b> Matt Harmer <b>TEL#:</b> 801-438-1541 <b>FAX#:</b> n/a <b>EMAIL:</b> <a href="mailto:mharmer@bluesource.com">mharmer@bluesource.com</a>	<b>Contract and Legal Notices</b>	<b>ATTN:</b> David Broustis <b>TEL#:</b> 206-477-4544 <b>FAX#:</b> n/a <b>EMAIL:</b> david.broustis@kingcounty.gov
<b>ATTN:</b> Will Overly <b>TEL#:</b> 801-438-1533 <b>FAX#:</b> n/a <b>EMAIL:</b> <a href="mailto:woverly@bluesource.com">woverly@bluesource.com</a>	<b>Transaction Confirmations</b>	<b>ATTN:</b> David Broustis <b>TEL#:</b> 206-477-4544 <b>FAX#:</b> n/a <b>EMAIL:</b> david.broustis@kingcounty.gov
<b>Accounting Information</b>		
<b>ATTN:</b> Jennifer Stirling <b>TEL#:</b> 801-438-1592 <b>FAX#:</b> n/a <b>EMAIL:</b> <a href="mailto:jstirling@bluesource.com">jstirling@bluesource.com</a>	<b>Invoices Payments Settlements</b>	<b>ATTN:</b> Francesca Ho <b>TEL#:</b> 206-477-5521 <b>FAX#:</b> n/a <b>EMAIL:</b> Francesca.ho@kingcounty.gov
<b>BANK:</b> JP Morgan Chase Bank <b>ABA:</b> 124001545 <b>ACCT:</b> 900833248	<b>Wire Transfer Numbers (If Applicable)</b>	<b>BANK:</b> U.S. Bank 1420 Fifth Avenue, 10th FL Seattle, WA 98101 <b>ABA:</b> 123000848

<b>OTHER DETAILS:</b> Blue Source, LLC		<b>ACCT:</b> 153910685327 <b>OTHER DETAILS:</b> Include details regarding purpose of wire or ACH
<b>BANK:</b> JP Morgan Chase Bank <b>ABA:</b> 124001545 <b>ACCT:</b> 900833248 <b>OTHER DETAILS:</b> Blue Source, LLC	<b>ACH Numbers</b> <i>(If Applicable)</i>	<b>BANK:</b> U.S. Bank 1420 Fifth Avenue, 10th FL Seattle, WA 98101 <b>ABA:</b> 123000848 <b>ACCT:</b> 153910685327 <b>OTHER DETAILS:</b> Include details regarding purpose of wire or ACH

**THE AGREEMENT**

This Base Contract incorporates by reference for all purposes the General Terms and Conditions attached hereto as Exhibit A. 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 type="checkbox"/> Oral (default) OR <input checked="" type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default	<input checked="" type="checkbox"/> No Additional Events of Default (default)
<b>Section 2.7</b> Confirm Deadline	<input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> 5 Business Days after receipt		<input type="checkbox"/> Indebtedness Cross Default  <input type="checkbox"/> Party A: <input type="checkbox"/> Party B:  <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u>
<b>Section 3.2</b> Performance Obligation	<input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages	<input type="checkbox"/> Early Termination Damages Apply (default) OR <input checked="" type="checkbox"/> Early Termination Damages Do Not Apply
<i>Note: The following Spot Price Publication applies to both of the immediately preceding.</i>		<b>Section 10.3.2</b> Other Agreement Setoffs	<input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default)  <input checked="" type="checkbox"/> Bilateral (default)  <input type="checkbox"/> Triangular  OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 2.31</b> Spot Price Publication	<input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____		
<b>Section 6</b> Taxes	<input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point		
<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 15.5</b> Choice Of Law	Washington
<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 15.10</b> Confidentiality	<input type="checkbox"/> Confidentiality applies (default) OR <input checked="" type="checkbox"/> Confidentiality does not apply
<b>Section 7.7</b> Netting	<input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply		

Addendum: n/a

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

By: _____
Will Overly
Blue Source, LLC

By: _____
Kamuron Gurol
Wastewater Treatment Division Director

**Exhibit A**

**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.

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

1.2.1. Oral Transaction Procedure: 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 (similar to the form of Exhibit B) 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.

1.2.2. Written Transaction Procedure: 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 parties shall execute a Transaction Confirmation for such transaction. The parties acknowledge that their agreement will not be binding until both parties have executed the Transaction Confirmation, and neither party shall have a right, interest or claim with respect to such agreement prior to the mutual execution of the Transaction Confirmation.

1.3. 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. [Reserved]

**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. For purposes of this Section 2.12 and respective to each applicable Transaction Confirmation, "Gas" shall mean equivalent Biogas and affiliated Environmental Attributes if and as such terms are defined in such applicable Transaction Confirmation.
- 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 from one party to the other as set forth in Section 7.
- 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 determined in accordance with Section 14.
- 2.32. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit B, 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.
- 2.36. "Taxes" shall mean any and all taxes, charges, licenses, levies, fees, penalties, permits, assessments or charges, or increases on any of the foregoing, (whether sales, use, gross receipts, excise, customs, duties or otherwise) which are claimed to be due by any federal, state, local or tribal government or any other governmental agency having jurisdiction to do so, whether or not in effect on the date the transaction is entered into. The term "Taxes" shall not include any employment or franchise taxes imposed upon either party, nor any tax based upon a party's income or net worth.

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

#### **3.2.1. Cover Standard:**

The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas 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.



### 3.2.2. Spot Price Standard:

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.

6.1. Buyer Pays At and After Delivery Point: Seller shall pay or cause to be paid 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.

*Gross Receipts and Compensating Taxes.* The Contract Price does not include any applicable state or local, gross receipts, compensating, utility, transaction privilege, sales or use tax which may be assessed as a result of sales of or use of Gas hereunder, whether measured by quantity or revenues ("Gross Receipts" or "Compensating Tax"). If there is such a Gross Receipts and/or Compensating Tax, either of which being applicable to that quantity of Gas sold to or used by Buyer hereunder, Seller will invoice Buyer and Buyer will pay Seller the amount of the Gross Receipts or Compensating Tax, and Seller will remit same as required by the applicable law.

*Protest and Payment.* 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, except to the extent either party has filed, or provides prior notice to the other party that it will timely file, a good faith protest, contest, dispute or complaint with the

taxing authority or applicable court with jurisdiction, which tolls the requirement to pay such Taxes. Any party is entitled to make such good faith protests, contests, disputes or complaints with the applicable taxing authority or applicable court with jurisdiction or to file for a request for refund for such Taxes already paid in a timely manner as to any Taxes that it is responsible to pay or remit or for which it is responsible to pay or reimburse the other party. In the event either party makes such filings, the other party shall cooperate with such filing party by providing any relevant information within that party's possession, which will support the filing party's filing upon request by and as specified by the filing party. Upon the issuance by the taxing authority or court of a final, non-appealable order, which lifts the tolling of an obligation to pay and requires payment of the applicable Taxes, and absent a stay of such order, the responsible party shall either pay directly to the applicable taxing authority, or reimburse the other party for, such Taxes and any other amounts (including interest) required by such order. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

- 6.2. 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; provided, however, that the finality of all invoices and billings shall not apply to Taxes or any adjustments made by Transporter(s) under the terms of its applicable tariff, and the responsible party under the Contract shall continue to be responsible for such amounts. 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 electronic mail, personal service, certified or registered mail, or recognized overnight courier.

9.3. Notices shall be deemed delivered: (i) when sent via electronic mail; (ii) when personally delivered; (iii) on the third Day after mailing when sent by certified or registered mail and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; or (iv) on the first Business Day after deposit with a recognized overnight courier if deposited in time to permit overnight delivery by such courier as determined by its posted cutoff times for receipt of items for overnight delivery to the recipient.

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. Notwithstanding the forgoing, Neither Party shall have the right to demand Adequate Assurance of Performance from the other.

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 five (5) Business Days 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; (ix) be the affected party with respect to any Additional Event of Default; (x) commit any fraudulent act in connection with its purchase or use of the Gas; (xi) make any material misrepresentation under the applicable Transaction Confirmation or materially breach any representation or covenant under the applicable Transaction Confirmation; (xii) fail to perform any other material obligation hereunder that is not cured within sixty (60) days of receiving written notice of such failure; provided that no suspension of performance shall continue for more than ten (10) Days unless an Early Termination Date has been declared and the Defaulting Party is given Notice thereof in accordance with Section 10.3; 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.

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.

10.3.1.1. Early Termination Damages Apply: 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). If the determination pursuant to clauses (x) and (y) above of the difference between the Market Value(s) and Contract Value(s) of all the Terminated Transactions does not result in an amount being owed to the Non-Defaulting Party, it shall be deemed that such difference is zero.

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.

10.3.1.2. Early Termination Damages Do Not Apply: 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.

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

10.3.2.1. Other Agreement Setoffs Apply/Bilateral Setoff Option: 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.

10.3.2.2. Other Agreement Setoffs Apply/Triangular Setoff Option: 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.

10.3.2.3. Other Agreement Setoffs Do Not Apply: 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 fifth 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. Each party further agrees that the other party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each party agrees to waive and not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding involving such party.

## **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; (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; (vi) the occurrence of a Regulatory Event and (vii) a failure to obtain, or a delay in obtaining a permit or governmental

authorization required for the operation, maintenance, modification or repair of the Project (as that term is defined in the TC). 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.

11.7. If an event of Force Majeure prevents a party from delivering or purchasing Gas under this Contract and such event continues (i) for more than ninety (90) consecutive Days or (ii) for more than one hundred and eighty (180) cumulative Days during any calendar year, the party not claiming the event of Force Majeure may terminate this Contract while such event continues by giving Notice of such termination to the other party, in which case neither party shall have any liability or obligations hereunder except for any amounts owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties on and before such termination and all other applicable charges relating to such deliveries and receipts, for which payment has not yet been made by the party that owes such payment to the other party. Without restricting the generality of the foregoing, if an event of Force Majeure occurs, the party affected may, in its sole discretion and without notice to the other party, determine not to make a claim of Force Majeure and to waive its rights hereunder as they would apply to such event. Such determination or waiver shall not preclude the affected party from claiming Force Majeure in respect of any subsequent event, including any event that is substantially similar to the event in respect of which such determination or waiver is made.

11.8. If an event of Force Majeure impairs or prevents Seller from delivering or Buyer from receiving Gas under this Contract and such event of Force Majeure continues for an uninterrupted period of time greater than one hundred and eighty (180) Days, either party may terminate this Contract without liability on the part of either party for or as a result of such termination; provided, however, that no such termination shall relieve either party of any liability incurred prior to such termination.

## **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: (i) Section 7, (ii) Section 10, (iii) Section 13, (iv) Section 14, (v) Section 15, (vi) 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, or delay, failure or refusal to exercise or enforce any rights under this Contract, shall be held to be a waiver of any other or subsequent breach, or be construed as a waiver of any such right then existing or arising in the future.

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. In addition, each Party will be deemed to represent to the other party each time a Transaction Confirmation is entered into that: (a) it has full and complete corporate authority to enter into and perform that Transaction Confirmation; (b) the person who executes that Transaction Confirmation on its behalf has full and complete authority to do so and is empowered to bind it thereby; (c) the Contract (1) constitutes a legal, valid and binding obligation of such party enforceable against such party in accordance with its respective terms, except as may be limited by bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights in general and except to the extent that the availability of equitable remedies is subject to the discretion of the court before which any proceedings therefor may be brought, and (2) will not result in any violation of, breach of or default under, any contract or agreement to which it is party; (d) there is no action, suit, grievance, arbitration or proceeding, pending against such party at law or in equity, that prohibits or impairs its ability to enter into or perform that Transaction Confirmation; (e) it is not a party to, nor subject to or bound by, any judgment, injunction or decree of any court or other governmental authority which may restrict or interfere with its performance of that Transaction Confirmation; (f) it is acting for its own account, and it has made its own independent decisions to enter into that Transaction Confirmation and as to whether that Transaction Confirmation is appropriate or proper for it based upon

its own judgment and upon advice from such advisors as it has deemed necessary; (g) it is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction Confirmation; it being understood that information and explanations related to the terms and conditions of a Transaction Confirmation shall not be considered investment advice or a recommendation to enter into that Transaction Confirmation; (h) no communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction Confirmation; (i) it is capable of assessing the merits and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction Confirmation; (j) it is capable of assuming, and assumes, the risks of that Transaction Confirmation; (k) the other party is not acting as a fiduciary for, or an advisor to, it in respect of that Transaction Confirmation; (l) it is not insolvent and has not sought protection (and is not contemplating seeking protection) from its creditors under the United States Bankruptcy Code or under any similar laws; and (m) it is current on all payments for indebtedness incurred by it and no event of default currently exists, or with the lapse of time or due notice will exist, regarding to any such indebtedness for borrowed money by it.

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 or any financial information provided by a party under the terms of this Contract 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. Notwithstanding the foregoing or any other provision of this Contract, Party A acknowledges that Party B, as a home rule charter county of Washington State, is subject to the Washington State Public Records Act, Ch. 42.56 RCW, and Party A agrees that Party B shall not be in breach of this Contract or have any liability whatsoever under this Contract or otherwise for any claims or causes of action whatsoever resulting from or arising out of Party B's copying or releasing to a third party any of the information of Party A when ordered or instructed to do so by a court of competent jurisdiction, or when, in the professional judgment of Party B's counsel, Party B is compelled to permit such disclosure or copying or else risk civil or criminal liability. Party B shall provide timely notice to Party A of any public records request, claim or action reasonably placing at risk the release of any information of Party A, in order to permit Party A to intervene therein, or initiate an action to enjoin release of such information, at Party A's own cost and expense.

The provisions of this Section 15.10 shall survive the expiration or termination of this Contract.

#### 15.11. ***Dispute Resolution.***

15.11.1. **Executive Panel.** Either party may submit any material dispute between the parties relating to this Contract to a panel of not greater than two (2) senior executives of each party by providing written notice (the "Dispute Notice") to the other party. Within ten (10) Business Days from the date of receipt of the Dispute Notice, the parties' respective executives shall use reasonable efforts to confer (via telephone or in person) in an effort to resolve such dispute.

15.11.2. **Mediation.** In the event the parties' respective executives are unable to resolve such dispute within twenty (20) Business Days from the date of receipt of the Dispute Notice, either party may elect to initiate confidential non-binding mediation to attempt in good faith to resolve the dispute. If a party so elects, the parties shall select a mutually agreeable mediator with expertise on the disputed issue(s) or, if the parties cannot agree upon a mediator, the parties shall jointly request JAMS to appoint a mediator with expertise on the disputed issue(s). The parties shall agree upon mediation procedures, and if they cannot agree, the parties agree to be subject to mediation procedures imposed by the mediator. Each party shall bear its own costs and expenses for the mediation and shall equally share the costs and expenses assessed by the mediator for administering the mediation.



15.11.3. Remedies not Limited. Nothing in this Section 15.11 shall prevent either party from commencing at any time, including prior to providing a Dispute Notice to the other party or after receipt of a Dispute Notice from the other party, any action(s) in accordance with Section 15.16 to resolve any dispute(s) between the parties relating to this Contract.

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.

15.13. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR IN ANY WAY RELATING TO THIS CONTRACT OR THE PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS ARISING UNDER OR IN CONNECTION WITH THIS CONTRACT.

15.14. This Contract shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the manner in which this Contract was negotiated, prepared, drafted or executed.

15.15. **Counterparts.** This Contract, including any Transaction Confirmations, may be executed in as many counterparts as are necessary and all executed counterparts together shall constitute one and the same agreement. The electronic transmission of a signed original counterpart of this Contract and transmission, or re-transmission, of an electronically-signed counterpart shall be deemed to be the same as delivery of a signed original counterpart of this Contract. At the request of either party, the parties will confirm an electronically-signed or transmitted counterpart by signing an original counterpart for delivery between them by mail or courier service; *provided, however*, a party's failure to so confirm such a counterpart shall not affect the validity and enforceability of this Contract.

15.16. **Venue; Jurisdiction.** Venue for any suit, legal action or other legal proceeding arising out of or relating to this Contract shall be in the Superior Court of Washington for King County or the United States District Court for the Western District of Washington and located in Seattle. Each party consents to the jurisdiction of any such court in any such suit, action or proceeding and waives any objection or defense which such party may have to the laying of venue of any such suit, action or proceeding in any such court, including the defense of an inconvenient forum to the maintenance in such court of such suit, action or proceeding. The parties agree that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or by any other manner provided by law. Except as otherwise expressly provided in this Contract, each party shall pay its own attorneys' fees and costs in connection with any legal action hereunder.

15.18. 15.17 Each party will be deemed to represent to the other party each time a transaction is entered into that: (i) it is acting for its own account, and it has made its own independent decisions to enter that transaction and as to whether that transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary; (ii) it is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that transaction; it being understood that information and explanations related to the terms and conditions of a transaction shall not be considered investment advice or a recommendation to enter into that transaction; (iii) no communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that transaction; (iv) it is capable of assessing the merits (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that transaction; (v) it is capable of assuming, and assumes, the risks of that transaction; and (vi) the other party is not acting as a fiduciary for, or an advisor to, it in respect of that transaction. Where the negotiation process is specifically prescribed to resolve a dispute under this Contract, the parties shall seek to resolve the dispute by negotiations between senior executives who have authority to settle the controversy provided, however, that either party may seek interim relief to the extent necessary to preserve its rights hereunder or protect its property during the continuance of the resolution process described herein. Either party may initiate this negotiation process by written Notice to the other party outlining that party's position regarding the dispute ("Negotiation Notice"). The senior executives shall meet at a mutually acceptable time and place within fifteen (15) Business Days after the date of the Negotiation Notice to exchange relevant information concerning the dispute and to attempt to resolve the dispute. If a senior executive intends to be accompanied at a meeting by an attorney, the other party's senior executive shall be given at least three Business Days' Notice of such intention and may also be accompanied by an attorney. All negotiations are confidential and shall be treated as compromise and settlement negotiations under the Federal Rules of Evidence or any similar applicable rules of evidence. If the parties are unable to resolve the dispute after the meeting, either party may pursue its rights and remedies in a court of competent jurisdiction in accordance with Section 15.16.

**Exhibit B**

TRANSACTION CONFIRMATION (Sample – Not for Execution)

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:</b> (Select One) <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> _____	
<b>Special Conditions:</b>  	
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____

**TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY**



**Trade Date:**

**Contract:** Blue Source, LLC / King County

This Transaction Confirmation (this “TC”) is subject to the Base Contract and Special Provisions between Seller and Buyer dated . The terms of this TC are binding upon execution by the Parties. Capitalized terms not otherwise defined in this TC have the meanings ascribed to such terms in the Base Contract.

**BUYER:**

**Blue Source, LLC**

2825 Cottonwood Parkway, Ste 400  
Cottonwood Heights, UT 84121

Attn: Will Overly

Email: [woverly@bluesource.com](mailto:woverly@bluesource.com)

Phone: 801-438-1533

Base Contract No. \_\_\_\_\_

**SELLER:**

**King County, through its Department of Natural Resources and Parks – Wastewater Treatment Division**

201 S Jackson St #500  
Seattle, WA 98104

Attn: David Broustis

Email: [david.broustis@Kingcounty.gov](mailto:david.broustis@Kingcounty.gov)

Phone: 206-477-4544

Base Contract No. \_\_\_\_\_

This TC regards the sale and purchase of Biogas, which includes associated Environmental Attributes. All references to “Gas” in the Base Contract and the Special Provisions of the Base Contract will include “Biogas” and apply to the Biogas sale and purchase transactions addressed in this TC.

**Contract Price:**

The Contract Price for Biogas sold and purchased hereunder shall be paid by Buyer to Seller and equals the Biogas Contract Price *plus* the Environmental Attribute Contract Price.

**Biogas Contract Price.** The “**Biogas Contract Price**” (\$/MMBtu) for each MMBtu of Biogas sold and purchased hereunder is the aggregate dollar amount received by Buyer from Buyer’s sale of that MMBtu without Environmental Attributes *less* the following: (1) \$0.10 per MMBtu for marketing services; and (2) any charges deducted under the Section titled Delivery Point in this TC.

**Environmental Attribute Contract Price.** The “**Environmental Attribute Contract Price**” for Biogas sold and purchased hereunder is the RIN Share *plus* the LCFS Credit Share:

- “**RIN Share**” shall mean, for each Month in which RINs are generated and sold in connection with Biogas sold and purchased hereunder, (i) 90% of the RIN Value for RINs generated in connection with Vehicle Fuel use outside California, and (ii) 82% of the RIN Value for RINs generated in connection with Vehicle Fuel use inside California.
- “**LCFS Credit Share**” shall mean, for each month in which LCFS Credits are generated and sold in connection with Biogas sold and purchased hereunder, 65% of the LCFS Credit Value. Payment of the LCFS Credit Share is contingent upon Buyer being able to utilize Environmental Attributes purchased under this TC, coupled with Gas, as Vehicle Fuel in the state of California (or other state or jurisdiction that has in force any program allowing the generation of carbon credits from the production and use of low carbon fuels), and the production and sale of LCFS Credits from such Environmental Attributes.

**Delivery Period:**

The “**Delivery Period**” shall begin on July 1, 2022 (“**Start Date**”) and continue through June 30, 2025 . The contract can be extended for up to two additional one-year terms, through June 30, 2026 and then subsequently June 30, 2027, upon mutual agreement of the Parties, pursuant to the terms and conditions set forth in this TC. Buyer represents and warrants to Seller that Buyer has binding contracts with the owners or operators of one or more locations that dispense Vehicle Fuel for the sourcing of all Environmental Attributes produced by the Project during the Delivery Period to such locations *and* the generation of RINs from all such Environmental Attributes.

**Contract Quantity:**

- **Maximum Daily Quantity.** Buyer shall have a Firm obligation to purchase and receive from Seller each Day of the Delivery Period all Biogas and Environmental Attributes produced from the Project (“**MaxDQ**”), up to 1,300 MMBTU per day. MaxDQ does not include any volumes identified as **Retained Quantities**.
- **Minimum Daily Quantity.** Seller shall have a Firm obligation to sell and deliver to Buyer each Day of the Delivery Period all Biogas and Environmental Attributes produced from the Project (“**MinDQ**”). For clarity, the MinDQ may be a quantity of zero at any one time and does not include any volumes identified as **Retained Quantities**.
- **Seller Rained Biogas and Environmental Attributes.** Seller may retain the right, during the Term of this TC, to 10% of all Biogas and Environmental Attributes actually produced at the Project each month (“**Retained Quantities**”). To exercise this right, Seller must give Buyer written notice of the volumes it wishes to retain by the 15<sup>th</sup> day of the preceding month. If Seller does not notify Buyer of any Retained Quantities, then such volumes shall be included in the MaxDQ and MinDQ calculations.

**Performance Obligation:**

**Sale and Purchase Obligation.** Seller shall sell and deliver to Buyer at the Delivery Point, and Buyer shall purchase and receive from Seller at the Delivery Point, the MinDQ and up to the MaxDQ. Through such delivery, Buyer shall maintain and have the firm claim and responsibility for the generation of all RINs, LCFS Credits, and any other environmental credits or such equivalent associated with Environmental Attribute deliveries under this TC. Buyer shall pay the Biogas Contract Price, the RIN Share and the LCFS Credit Share to Seller. Subject to Buyer’s obligations under Section 2 of the Special Provisions in this TC, the Parties acknowledge and agree that Environmental Attributes coupled with Gas will not be eligible for: (i) RINs to be generated unless end-use is for Vehicle Fuel compliant with the EPA RFS, nor (ii) LCFS Credits (or equivalent state- or regional-level carbon credits) unless the end-use is for Vehicle Fuel compliant with the LCFS (or similar state- or regional-level program) and the End-Use Location(s) location(s) are in California (or other state or jurisdiction that has in force any program allowing the generation of carbon credits from the production and use of low carbon fuels).

This TC is contingent upon the operation of the Project complying with all necessary procedures to avoid any Biogas produced from the Project being disqualified from the EPA Renewable Fuel Standard.

**Delivery Point:**

The “**Delivery Point**” for Biogas delivered and received hereunder shall be at the interconnection point of the facility with the natural gas distribution system of Puget Sound Energy, identified as the South Seattle Gate Station

- Meter# 8.

Buyer and Seller acknowledge and agree that Seller is solely responsible for (a) all transportation-related pipeline charges, including, but not limited to, balancing and pooling charges, for the transportation of the Gas to the Delivery Point, (b) any balancing and pooling charges resulting from Seller’s failure to comply with the nomination procedures set forth in Section 3.A of the Special Provisions in this TC or Seller’s failure to deliver nominated Gas, that are assessed by the applicable local distribution company or pipeline, and (c) any direct third-party charges reasonably incurred by Buyer in the transportation of the Gas from the Delivery Point to the point of Buyer’s sale of such Gas without Environmental Attributes. If any of the charges under (a) and (b) are incurred by Buyer in the ordinary course of business, such charges may be passed through to Seller to the extent Buyer is not able to mitigate such charges, in its commercially reasonable discretion, and Buyer shall make commercially reasonable efforts to minimize the charges deducted under (c). Any such charges billed directly to Buyer shall be deducted when calculating the Biogas Contract Price and not when calculating the RIN Value under Section 4.C of the Special Provisions in this TC or the LCFS Value under Section 5.D of the Special Provisions in this TC.

**Special Provisions:**

**1. Definitions.**

“**Affected Party**” shall have the meaning set forth in Section 8.C of the Special Provisions in this TC.

“**Alternative Fuel**” means any transportation fuel that is not California reformulated gasoline or a diesel fuel, including, but not limited to, those fuels specified in the California LCFS Regulations.

“**Biogas**” means, as measured in MMBtus, the bundled product that (i) is comprised of pipeline quality Gas that meets the applicable pipeline quality standards for the relevant transporters; (ii) is coupled with the equivalent quantity of Environmental Attributes of Gas derived from the decomposition of organic matter; (iii) when dispensed as Vehicle Fuel, meets EPA’s RFS eligibility requirements as a Cellulosic Biofuel; (iv) when dispensed as Vehicle Fuel, meets CARB’s eligibility requirements as an Alternative Fuel, as applicable; and (v) transfers the equivalent quantity of Environmental Attributes to Buyer.

“**Biogas Contract Price**” shall have the meaning set forth in the Section titled Contract Price in this TC.

“**CARB**” means the California Air Resources Board or its successor agency. If operating outside of California, any reference herein to CARB shall also be inclusive of any state entity equivalent in the relevant jurisdiction.

“**Carbon Intensity**” means the amount of Lifecycle Greenhouse Gas Emissions, per unit of energy of fuel delivered, expressed in grams of carbon dioxide equivalent per megajoule (gCO<sub>2</sub>E/MJ) as calculated in the applicable version of the California GREET model and approved by CARB.

“**Cellulosic Biofuel**” means a renewable fuel derived from any cellulose, hemi-cellulose or lignin that has Lifecycle Greenhouse Gas Emissions that are at least sixty percent (60%) less than the Baseline Lifecycle Greenhouse Gas emissions (as set forth in the EPA RFS (40 C.F.R. § 80.1401 (2012))).

“**CNG**” means compressed natural gas.

“**D3 RIN**” means a D3 Cellulosic Biofuel RIN as established by the Federal Renewable Fuel Standard Program.

“**Delivery Period**” shall have the meaning set forth in the Section titled Delivery Period in this TC.

“**Delivery Point**” shall have the meaning set forth in the Section titled Delivery Point in this TC.

“**Disqualified Biogas**” means Gas that was initially determined by the Parties upon delivery to be Biogas but subsequently becomes disqualified as Biogas and ineligible to generate RINs and/or LCFS Credits because it does not qualify as a renewable fuel under the EPA Renewable Fuel Standard or the LCFS, as applicable.

“**End-Use Location(s)**” means location(s) where Environmental Attributes purchased by Buyer under this TC are to be used for Vehicle Fuel purposes, which will be listed on the applicable documentation provided by Buyer to EPA under the EPA RFS in connection with generating RINs from such Environmental Attributes.

“**Environmental Attributes**” means any and all environmental attributes, including the avoidance of Lifecycle Greenhouse Gas Emissions, associated with the use of Biogas as an Advanced Biofuel, Cellulosic Biofuel, low carbon fuel or Alternative Fuel, including, but not limited to, any and all attributes required to generate RINs, Q-RINs, or verified LCFS Credits, and including any and all reporting rights associated therewith.

“**Environmental Attribute Contract Price**” shall have the meaning set forth in the Section titled Contract Price in this TC.

“**EPA**” means the United States Environmental Protection Agency or its successor.

“**EPA Renewable Fuel Standard**” or “**EPA RFS**” means the renewable energy program and policies established by the EPA and published on March 26, 2010 (at 75 Fed. Reg. 14670 and codified at 40 C.F.R. § 80.1400 et seq.), which became effective on July 1, 2010, as amended, restated or supplemented from time to time.

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

“**Law**” shall have the meaning set forth in Section 8.C of the Special Provisions in this TC.

“**Lifecycle Greenhouse Gas Emissions**” means the aggregate quantity of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, or any other substances or combination of substances that may become regulated as greenhouse gases under any federal, state or local laws, in each case measured in increments of one metric tonne of carbon dioxide equivalent (collectively, “**Greenhouse Gases**”), emissions, as determined by the EPA or another regulatory agency, related to the full fuel lifecycle, where mass values for all Greenhouse Gases are adjusted to account for their relative global warming potential.

“**Low Carbon Fuel Standard**” or “**LCFS**” means the California Air Resources Board Low Carbon Fuel Standard set forth in the California Code of Regulations at Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, §§ 95480 – 95503, as amended from time to time (hereinafter the “**California LCFS Regulations**”). If operating outside of California, any reference herein to LCFS shall also be inclusive of any state entity equivalent in the relevant jurisdiction.

“**Low Carbon Fuel Standard Credits**” or “**LCFS Credits**” means credits generated and traded under the Low Carbon Fuel Standard, with each credit equal to one metric tonne of carbon dioxide equivalent reductions as compared to the baseline carbon dioxide equivalent emissions under the Low Carbon Fuel Standard. If operating outside of California, any reference herein to LCFS Credits shall also be inclusive of any state entity equivalent in the relevant jurisdiction.

“**LCFS Credit Value**” shall have the meaning set forth in Section 5.D of the Special Provisions in this TC.

“**LNG**” means liquified natural gas.

“**MaxDQ**” shall have the meaning set forth in the Section titled Contract Quantity in this TC.

“**MinDQ**” shall have the meaning set forth in the Section titled Contract Quantity in this TC.

“**Non-Affected Party**” shall have the meaning set forth in Section 8.C(i) of the Special Provisions in this TC.

“**OPIS**” means the Oil Price Information Service, or successor thereto, and its publications and daily reports covering the physical spot market for renewable fuels and related environmental credit/carbon values across the United States.

“**Party(ies)**” means, singularly, Buyer or Seller and, plurally, both Buyer and Seller.

“**Product Transfer Document**” or “**PTD**” means a document or a set of documents that authenticates the transfer of ownership of fuel from a regulated party to the recipient of fuel. A PTD is created by a regulated party to contain information collectively supplied by other fuel transaction documents, including bills of lading, invoices, contracts, meter tickets, rail inventory sheets, etc. per 40 C.F.R. § 80.1453 of the Renewable Fuel Standard (RFS2) and as per Section 95491(c) of the California LCFS Regulations.

“**Project**” means the King County South Wastewater Treatment Plant, 1200 Monster Rd SW, Renton, WA 98057

“**Q-RIN**” means a RIN that has been reviewed and validated by an approved QAP provider.

“**Quality Assurance Plan**” or “**QAP**” means the voluntary RIN validation program implemented under 40 C.F.R. § 80.1469 to § 80.1473 whereby independent third parties audit the production of the renewable fuel and monitor on a monthly and quarterly basis to ensure that RINs have been validly generated, which as applies to RINs under the EPA RFS was published on July 18, 2014 (at 79 Fed. Reg. 42078) and which became effective on September 16, 2014.

“**Regulatory Event**” shall have the meaning set forth in Section 8.C of the Special Provisions in this TC.

“**Renewable Identification Number**” or “**RIN**” is a number generated to represent a volume of renewable fuel as set forth in Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program, 75 Fed. Reg. 16484 (March 26, 2010) (codified at 40 C.F.R. § 80.1425 (2011); 40 C.F.R. § 80.1426 (2012)).

“**RIN Share**” shall have the meaning set forth in the Section titled Contract Price in this TC.

“**RIN Value**” has the meaning set forth in Section 4.C of the Special Provisions in this TC.

“**Start Date**” shall have the meaning set forth in the Section titled Delivery Period in this TC.

“**Vehicle Fuel**” means CNG or LNG derived from Biogas and/or Gas that qualifies for receipt of a RIN under the EPA Renewable Fuel Standard or for receipt of a LCFS Credit under the LCFS.

**2. Buyer Commitments.** Buyer shall:

- A. Cause all Biogas (or associated Environmental Attributes) sold and purchased hereunder to be dispensed as Vehicle Fuel in accordance with the EPA RFS and, as applicable, the LCFS;
- B. Act in good faith in the sale of Biogas, Gas, and Environmental Attributes purchased by Buyer hereunder and the generation and sale of RINs and LCFS Credits therefrom, use commercially reasonable efforts to maximize the proceeds received by Buyer from such sales, and include all proceeds received by Buyer from such sales in the calculation of the Contract Price;
- C. With respect to the EPA RFS, (i) timely file for and use commercially reasonable efforts to secure and maintain EPA producer registration in order to generate RINs using Biogas from the Project, and (ii) use commercially reasonable efforts to monthly generate RINs, and
- D. With respect to the LCFS and the utilization of Environmental Attributes purchased under this TC, coupled with Gas, as Vehicle Fuel in the state of California (or other state or jurisdiction that has in force any program allowing the generation of carbon credits from the production and use of low carbon fuels), (i) use commercially reasonable efforts to pair at least 25% of the Contract Quantity produced by the Project to Vehicle Fuel use in California (or other state or jurisdiction that has in force any program allowing the generation of carbon credits from the production and use of low carbon fuels), (ii) timely file for and use commercially reasonable efforts to obtain and maintain pathway registration in order to generate LCFS Credits (or other carbon credits) using Biogas from the Project, and (iii) use commercially reasonable efforts to quarterly generate LCFS Credits (or other carbon credits).

**3. Additional Terms and Conditions.**

- A. **Nominations.** Seller will provide Buyer with its nominated daily quantity of Biogas, based on the Project’s projected Biogas production schedule and Seller’s projected deliveries at the Delivery Point at no less than the MinDQ and up to the MaxDQ, unless otherwise accepted by Buyer and Seller, for each Month of the Delivery Period per the conditions as provided below:
  - i. No less than thirty (30) days prior to the end of any calendar year, Seller shall nominate daily expected quantities to Buyer for the subsequent year.
  - ii. No less than ten (10) days prior to each delivery Month, Seller shall submit to Buyer changes to daily nominated quantities for said upcoming delivery month.

- iii. Mid-month changes to daily nominated quantities are due from Seller to Buyer by 8:00 a.m. Eastern Standard Time, one (1) day prior to each said daily delivery or weekend/holiday trading period.
- iv. Any material changes to expected deliveries above shall be reported from Seller to Buyer promptly following Seller identifying such changes.

**B. Delivery and Use of Environmental Attributes.** For all Environmental Attributes sold and purchased under this TC between Seller and Buyer, Seller represents and warrants that:

- i. it has the right and title to all Environmental Attributes transferred hereunder, which were produced from the Project, and will convey to Buyer all such Environmental Attributes in accordance with the requirements of the EPA RFS and, as applicable, the LCFS in order to preserve the ability to generate RINs and, as applicable, LCFS Credits, and it will not take any action that would result in the Environmental Attributes not satisfying the requirements of the EPA RFS and, as applicable, the LCFS;
- ii. Seller has not and will not generate RINs or LCFS Credits nor represent the fuel for sale as Biogas with the ability to generate RINs to any other party;
- iii. Seller has not and will not generate RINs or LCFS Credits under any renewable energy or fuel program, including but not limited to any state Renewable Portfolio Standard, for any and all Biogas sold to Buyer.
- iv. the Environmental Attributes have not been used by Seller, or sold or transferred by Seller to any third party prior to transfer to Buyer;
- v. the Environmental Attributes delivered to Buyer hereunder are from Biogas of pipeline quality that, when dispensed as Vehicle Fuel, meet the requirements of the EPA RFS and, as applicable, the LCFS; and
- vi. all information provided by Seller to Buyer relating to this TC shall be accurate and complete in all material respects.

**C. Disqualified Biogas.** Each Party will promptly notify the other Party in the event that any Biogas associated with the Environmental Attributes subject to this TC is determined to be Disqualified Biogas. As applies to end-use as Vehicle Fuel, Buyer and Seller acknowledge and agree that (a) Disqualified Biogas may be eligible to generate LCFS Credits as a non-renewable Vehicle Fuel via the applicable pathway under the LCFS, and (b) each Party will promptly provide any documentation or supporting information reasonably requested by Buyer related to the Disqualified Biogas.

**D. Regulatory Certifications.** Seller shall provide to Buyer all documentation required by the EPA and/or CARB from the producer of Biogas to (i) certify that the Environmental Attributes sold and purchased hereunder were from a Cellulosic Biofuel eligible to generate RINs or Q-RINs (with respect to the EPA RFS) and, as applicable, create a low Carbon Intensity pathway (with respect to the LCFS) for generation of LCFS Credits, and (ii) assist with the certification of RINs, Q-RINs or LCFS Credits. This documentation will include, but is not limited to, all documentation required to certify that production of the Biogas and transportation of the Environmental Attributes of Biogas from its point of production to the Delivery Point is compliant with the transportation routing requirements (“pathing”) of the EPA RFS and LCFS and any producer documentation required following delivery of Environmental Attributes of Biogas to Buyer. Additional documentation may include any affidavits, reporting or attestations required by the EPA and/or CARB as applicable, such as documentation confirming Seller is (to the extent necessary and subject to Buyer’s obligations under Section 5 of the Special Provisions in this TC) registered under the California LCFS Regulations as a regulated party under the LCFS.

**E. Records.** Each Party shall maintain all records in its possession relevant to the purchase of Environmental Attributes hereunder, including, as applicable, all records relevant to the production, purchase and sale, transportation, and delivery of Environmental Attributes purchased hereunder and for end-use, including end-use as Vehicle Fuel, and Buyer shall maintain information as it applies to the creation and sale of RINs and/or Q-RINs in accordance with the requirements of the EPA RFS and LCFS Credits in accordance with the requirements of the LCFS. Seller shall maintain records related to the Environmental Attributes production process, feedstocks used, Project commissioning and registration, treatment of Biogas to pipeline quality, Biogas deliveries to the Delivery Point. Buyer shall maintain records related to Biogas deliveries from the Delivery Point along the pathway, including use as Vehicle Fuel, QAP compliance and certifications, and the registration, generation and monetization of RINs and/or Q-RINs and LCFS Credits associated to Environmental Attributes deliveries under this TC. As may be requested from time to time by Seller, Buyer will provide to Seller access and rights to audit (i) Buyer’s books and records to verify the accuracy of

any accounting and reconciliation of the Contract Price and the performance of Buyer's obligations under this TC, and (ii) the records related to end-use consumption at End-Use Location(s) associated with Environmental Attributes deliveries under this TC, including, but not limited to, meter readings at locations of End-Use Locations.

**F. Additional Acknowledgements.** Each Party will provide the other Party with such cooperation, additional documentation, certifications or other information as may be reasonably necessary to carry out the purposes of this TC. Buyer and Seller each acknowledge and agree that any and all obligations set forth in this TC of either Buyer or Seller, including, but not limited to, the obligation to provide information, data, documentation or other cooperation to the other Party shall also be applicable with respect to an agent or subcontractor of the other Party in the event such Party retains another party to perform any obligations under this TC. Such Party shall ultimately be responsible for its agent's or subcontractor's actions or inactions. Notwithstanding anything in this TC to the contrary, Seller acknowledges and understands that Buyer takes no responsibility for any action or inaction of Seller. Buyer acknowledges and understands that Seller takes no responsibility for any action or inaction of Buyer. As applies to end-use as Vehicle Fuel, the Parties understand and agree that Buyer shall be solely responsible for the generation and marketing of RINs and LCFS Credits, including, but not limited to, all compliance responsibilities with respect thereto. Seller understands and agrees that Buyer will have firm claim and responsibility for all Q-RINs and verified LCFS Credits associated with Environmental Attributes sold and purchased under this TC and agrees to not make any claims related to such Environmental Attributes inconsistent with the creation and use of such Q-RINs and verified LCFS Credits.

**G. Reporting.**

**Seller Production Data and Affidavits.** To achieve EPA registration, Seller shall execute and deliver to Buyer the Contract Affidavit in the form of attached Exhibit C. Seller will notify and provide any required and, to the extent available to Seller, on-demand meter reading data access to Buyer, or its designee, regarding the quantity of Biogas being produced by the Project. On or before the fifth (5th) day following the end of each Month of the Delivery Period, Seller will provide Buyer with evidence of delivery to Buyer of a quantity of Environmental Attributes of Biogas, by providing Buyer with an affidavit in the form of attached Exhibit D to this TC. Seller shall also provide supporting documentation of the measurement and throughput delivery of such Biogas, as well as the creation of the Environmental Attributes, including copies of the applicable local distribution company or pipeline meter read statements to be provided to Buyer on or before the fifth (5th) day following receipt of such statement by Seller. Additional reporting requirements and/or changes to the reporting requirements listed above may occur upon mutual written agreement by the Parties.

**H. Other Low Carbon Credits.** In the event that Environmental Attributes sold and purchased hereunder are delivered to a state or jurisdiction other than California, and such state or jurisdiction has in force any program allowing the generation of carbon credits from the production and use of low carbon fuels, any credits generated under such program (or the value realized on the sale of such credits) from the Biogas sold and purchased hereunder shall be allocated to Buyer and Seller according to the same terms and conditions as the LCFS Credits are allocated.

**4. RINs.**

**A. RIN Compliance.** The Parties understand and agree that Buyer shall be responsible for registering with EPA and complying with the relevant regulatory provisions of the EPA RFS, including, but not limited to, pathway registration, RIN generation, completing ongoing QAP requirements and certifications, registering Q-RINs in the EPA Moderated Transaction System ("EMTS"), monthly, quarterly and annual progress and compliance reporting, and that Seller shall not have any responsibility with respect thereto, including, but not limited to, responsibilities for the registrations applicable to the EPA RFS, beyond such reporting and documentation responsibilities as are set forth in this TC.

**B. RIN Credit Generation.** The Parties understand and agree that, provided that Seller provides all data required under the terms of this TC, Buyer will generate RINs, or Q-RINs, associated with Environmental Attributes delivered under this TC, in accordance with the EPA RFS.

**C. RIN Share Calculation.** The "RIN Value" used to calculate the RIN Share payable for a given Month shall equal one-hundred percent (100%) of the cash revenue realized by Buyer during such Month from the sale of D3 RINs associated with Environmental Attributes delivered by Seller to Buyer under this TC *less* any direct third-party expenses reasonably incurred by Buyer for the generation and verification of such RINs. Such expenses may include, but are not limited to, all reasonable costs paid by Buyer to third parties in order to fulfill its obligations pursuant to



this TC, such as actual fees paid to a QAP provider and/or any third-party engineering assessment performed by third parties, EPA or other registration costs, transfer fees, and the portion of the cash revenue paid by Buyer to End-Use Location(s) in connection with D3 RINs and Environmental Attributes sold and purchased hereunder. Buyer shall make commercially reasonable efforts to monetize RIN Share within 45 days from the date of RIN generation, unless otherwise mutually-agreed -upon between Seller and Buyer to delay RIN monetization in an attempt to increase the RIN sales value to both parties. For example, the standard RIN Share payment to Seller for Seller's June gas production volume will be paid by Buyer on or before the 14<sup>th</sup> of August. Buyer will provide documentation for all expenses deducted under this Section 4.C. and will make every commercially reasonable effort to minimize such expenses.

**D. RIN Market and Trades.** For the avoidance of doubt, Seller acknowledges and agrees that (i) the market for RINs may lack liquidity, (ii) Buyer shall at all times retain control over the evaluation of potential sales of RINs and the ultimate sale of RINs into the market, and (iii) Seller shall have no right to participate in or direct the sales of RINs. EXCEPT AS EXPRESSLY SET FORTH IN THIS TC, BUYER DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ALL WARRANTIES AND REPRESENTATIONS WITH RESPECT TO THE CREATION AND MARKETING OF RINS OR Q-RINS.

## 5. LCFS Credits.

**A. LCFS Compliance.** The Parties understand and agree that Buyer shall be responsible for registering with CARB and complying with the relevant regulatory provisions of the LCFS, including, but not limited to, pathway registration, LCFS Credit generation, quarterly progress reporting and quarterly and annual compliance reporting, and that Seller shall not have any responsibility with respect thereto, including, but not limited to, responsibilities for the registrations applicable to the LCFS, beyond such reporting and documentation responsibilities as are set forth in this TC.

**B. LCFS Credit Generation.** The Parties understand and agree that, provided that Seller provides all data required under the terms of this TC, Buyer will determine the number of LCFS Credits eligible to be generated and will generate LCFS Credits, associated with Environmental Attributes delivered under this TC, in accordance with the LCFS. For avoidance of doubt, Buyer and Seller acknowledge and agree that Buyer is generating and is taking title to LCFS Credits associated with Environmental Attributes deliveries under this TC and Seller has no rights to LCFS Credits nor does Seller have any rights to LCFS Credits which may be generated by End-Use Location(s) associated with the consumption of Gas not delivered under this TC.

**C. Regulated Party Status and Product Transfer Documents.** Pursuant to the California LCFS Regulations, Seller shall transfer its LCFS regulated party status to Buyer with respect to all Environmental Attributes sold by Seller to Buyer hereunder. As required under the California LCFS Regulations, Seller shall, on a quarterly basis, provide Buyer or its designee with a Product Transfer Document.

**D. LCFS Credit Share Calculation.** The "LCFS Credit Value" used to calculate the LCFS Credit Share payable for a given Month shall equal one-hundred percent (100%) of the cash revenue realized by Buyer during such Month from the sale of LCFS Credits associated with Environmental Attributes delivered by Seller to Buyer under this TC less any direct third-party expenses reasonably incurred by Buyer for the generation and verification of such LCFS Credits. Such expenses may include, but are not limited to, all reasonable costs paid by Buyer to third parties in order to fulfill its obligations pursuant to this TC, such as actual fees paid to any third-party engineering assessment performed by third parties, CARB, or other registration costs, transfer fees, and the portion of the cash revenue paid by Buyer to End-Use Location(s) in connection with LCFS Credits sold and purchased hereunder; *provided, however*, that direct third-party expenses deducted under Section 4.C of the Special Provisions in this TC shall not also be deducted under this Section 5.D. Buyer shall make commercially reasonable efforts to monetize LCFS Share within 45 days from LCFS Credit generation as well as minimize the expenses deducted under this Section 5.D.

**E. LCFS Market and Trades.** For the avoidance of doubt, Seller acknowledges and agrees that (i) the market for LCFS Credits may lack liquidity, (ii) Buyer shall at all times retain control over the evaluation of potential sales of LCFS Credits and the ultimate sale of LCFS Credits into the market, and (iii) Seller shall have no right to participate in or direct the sales of LCFS Credits. EXCEPT AS EXPRESSLY SET FORTH IN THIS TC, BUYER DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ALL WARRANTIES AND REPRESENTATIONS WITH RESPECT TO THE CREATION AND MARKETING OF LCFS CREDITS. .

**6. Statements; Payments.** Notwithstanding Section 7 of the Base Contract, for each Month during the Delivery Period Buyer shall deliver a statement to Seller within thirty (30) days after the end of the immediately following Month that details the following:

- i. the quantity of Biogas sold hereunder during such Month and Buyer's calculation of the Biogas Contract Price for such quantity, including an itemized list of all expenses deducted in the calculation thereof pursuant to this TC;
- ii. the quantity of RINs generated from such Biogas (or associated Environmental Attributes), the quantity of RINs yet to be generated from such Biogas (or associated Environmental Attributes), and Buyer's estimated calculation of the RIN Share, including an itemized list of all expenses deducted in the calculation thereof pursuant to this TC;
- iii. the quantity of LCFS Credits generated from such Biogas (or associated Environmental Attributes), the quantity of LCFS Credits yet to be generated from such Biogas (or associated Environmental Attributes), and Buyer's estimated calculation of the LCFS Share, including an itemized list of all expenses deducted in the calculation thereof pursuant to this TC; and
- iv. the quantities of RINs and LCFS Credits generated from Biogas (or associated Environmental Attributes) sold hereunder in each prior Month during the Delivery Period and the quantities of such RINs and LCFS Credits that Buyer has not yet sold.

For Biogas sold hereunder in any Month, Buyer shall remit, in immediately available funds, the amount due to Seller for (i) the Biogas Contract Price within thirty (30) days after Buyer's receipt of payment for Buyer's sale of such Biogas without Environmental Attributes, (ii) the RIN Share within thirty (30) days after Buyer's receipt of payment from the sale of D3 RINs generated from such Biogas (or associated Environmental Attributes), and (iii) the LCFS Share within thirty (30) days after Buyer's receipt of payment from the sale of LCFS Credits generated from such Biogas (or associated Environmental Attributes). If any such payment differs from the associated amount identified on the aforementioned statement for such Month, Buyer shall deliver to Seller a reconciliation explaining the difference.

**7. Breach.**

**A.** In the event that, over any one hundred and twenty (120) day period, a Party breaches its obligation to deliver or receive, as applicable, Biogas or other obligations that results in an inability or failure by Buyer to generate RINs and/or LCFS Credits from delivered and received Biogas, the RINs and LCFS Credits that would have been generated by Buyer shall be accounted for in the calculation of the Contract Price for purposes of Section 3.2 of the Base Contract with the amount due to the non-breaching party in connection with such RINs and LCFS Credits calculated as follows:

- i. For a breach by Buyer, an amount equal to the positive difference, if any, between (1) the sum of the RIN Share (with the RIN Value equal to the RIN Index Price multiplied by the Net Quantity) and the LCFS Credit Share (with the LCFS Credit Value equal to the LCFS Index Price multiplied by the Net Quantity), and (2) the net proceeds received by Seller from the sale of any RINs and LCFS Credits generated, if any, outside this TC from the Biogas associated with Buyer's breach, less the additional reasonable costs Seller incurs in connection with generating and selling such RINs and LCFS Credits; and
- ii. For a breach by Seller, an amount equal to the sum of (1) RIN Value multiplied by the difference between 100% and the percentage of the RIN Value set forth in the Section titled Contract Price in this TC that Buyer would have been obligated to pay Seller (with the RIN Value equal to the RIN Index Price multiplied by the Net Quantity), and (2) the LCFS Credit Value multiplied by the difference between 100% and the percentage of the LCFS Credit Value set forth in the Section titled Contract Price in this TC that Buyer would have been obligated to pay Seller (with the LCFS Credit Value equal to the LCFS Index Price multiplied by the Net Quantity), where (a) "**Net Quantity**" means the number of RINs or LCFS Credits, as applicable, that would have been generated from the Biogas which either was not delivered or was not received pursuant to a breach, less the portion of such RINs or LCFS Credits associated with Buyer's obligation to compensate End-Use Location(s) in connection with the generation of such RINs or LCFS Credits, (b) "**RIN Index Price**" means the average D3 Q-RIN price for the applicable RIN year published by OPIS for all posting days of the Month in which RINs were not generated due to the breach, and (c) "**LCFS Index Price**" means the average LCFS

Credit price published by OPIS for all posting Days of the quarter in which LCFS Credits were not generated due to the breach.

**B.** Any amount owed under this Section 7 shall be deducted from the breaching Party's RIN Share and LCFS Credit Share. In the event that the non-breaching Party elects to terminate this TC pursuant to Section 7(C) below, then the breaching Party shall pay the non-breaching Party the remaining amount owed under this Section 7 within thirty (30) days of termination.

**C.** If a Party cannot cure a breach under this Section 7 within the cure period provided under Section 10.2 of the Base Contract, the non-breaching Party may terminate this TC immediately. For avoidance of doubt, if the Parties have elected to apply Early Termination Damages under the Base Contract, no early termination calculation would take place for a termination under this Section 7.

**8. Termination of this TC.** In addition to termination under the Base Contract, this TC may be terminated in its entirety under the following circumstances:

**A. Regulatory Event.** If the implementation of new, or changes to existing, Laws or other requirements or changes in administration or interpretation of Laws ("**Regulatory Event**") occurs and the affected party ("**Affected Party**") is unable, after using commercially reasonable efforts, to avoid nonperformance or negative material economic impacts, the Affected Party shall be entitled to terminate this TC, subject to the following conditions:

- i. The Affected Party must give the non-affected party ("**Non-Affected Party**") prior written notice of its intent to terminate this TC, and shall specify the Early Termination Date, which shall be not more than thirty (30) Business Days after the date of the notice to terminate. On the Early Termination Date, the Affected Party shall determine the amounts owed (whether or not then due) by each Party with respect to all Biogas delivered and received between the Parties under this TC on and before the Early Termination Date (including, but not limited to, an estimate of the Environmental Attribute Contract Price for such Biogas) and all other applicable charges relating to such deliveries and receipts, for which payment has not yet been made by the Party that owes such payment under this TC.
- ii. Nothing herein shall prevent the Non-Affected Party from disputing whether the Affected Party has the right to terminate this TC.

For avoidance of doubt, no early termination damage calculation would take place for a termination under this Section 8.B. "Regulatory Events" shall not include (1) the imposition of new Taxes, (2) any requirement to procure a new permit, license or other governmental authorizations (unless a Party is ineligible and cannot procure the same within a reasonable period of time using best efforts), (3) the imposition of regulatory requirements that increase the costs of one or both Parties' performance of their obligations under this TC, (4) any EPA rulemaking relating to the setting of renewable fuel volume obligations or standards under the RFS, including by way of a reset of renewable fuel volume obligations by EPA, (5) any delay of an EPA rulemaking relating to such setting of renewable fuel volume obligations or standards, (6) any revision to the pricing formula for cellulosic waiver credits under the RFS, (7) any change in the point of obligation under the RFS program, (8) any EPA rulemaking relating to the rules for RIN carry forwards, and (9) any change in compliance procedures in respect of the generation, trading or retirement of RINs. "**Law**" means any law, rule, regulation, ordinance, statute, judicial decision, administrative order, Transporter business practices or protocol, Transporter tariff, or rule of any commission or agency with jurisdiction in the state in which the Project or Seller is located.

**B. Force Majeure.** See Section 11 of the Base Contract. For avoidance of doubt, no early termination damage calculation would take place for a termination under this Section 8.B.

**C. Early Termination Payments.** Early termination of this TC will not affect either Party's obligations accruing, due and owing hereunder on or prior to the effective date of the termination. Amount(s) owed as a result of early termination, as detailed this Section 8, shall be due for such amount(s) within fifteen (15) days upon receipt by the owing Party of an invoice for such amount due to the non-owing Party. The Parties acknowledge and agree that any termination payment under this TC constitutes a reasonable approximation of harm or loss and is not a penalty or punitive in any respect.

**9. Limitation of Liability.** Notwithstanding anything to the contrary contained in this TC:

- i. Neither Party shall be liable to the other Party or its directors, officers, employees or agents for any indirect, special, punitive or consequential damages, losses, expenses, or liabilities howsoever caused (including, without limitation, loss of profits).

- ii. Buyer’s liability under this TC shall not exceed the value of Buyer’s RIN Share plus Buyer’s LCFS Credit Share, as actually retained by Buyer pursuant to this TC.
- iii. Seller’s liability under this TC shall not exceed the value of the RIN Share plus LCFS Credit Share actually received by Seller pursuant to this TC.

**10. Additional Indemnifications.**

**A. Seller.** Notwithstanding any other provisions in the Base Contract, Seller agrees to defend, indemnify and hold harmless Buyer and all its affiliates, and all of their respective officers, directors, shareholders, associates, employees, agents, representatives, successors and assigns from and against all losses, penalties, fines, charges or claims, arising out of any third party claim (collectively, “Claims”) arising from or out of (i) Seller-provided falsehoods, misrepresentations, material inaccuracies or misleading statements in any documentation (including, but not limited to, in claims of title, registrations, attestations and other representations and warranties concerning the Biogas); (ii) personal injury (including death) or property damage from said Biogas which attach before title passes to Buyer, (iii) other claims, liens, and encumbrances related to said Biogas which attach before title passes to Buyer, (iv) Seller’s gross negligence or willful misconduct; (v) violation of any applicable law/regulation/ordinance, (including but not limited to, failure to comply with any applicable obligation or requirement of the EPA or CARB); or (vi) Seller’s breach of this Transaction Confirmation.

**B. Buyer.** Notwithstanding any other provisions in the Base Contract, Buyer agrees to defend, indemnify and hold harmless Seller and all its affiliates, and all of their respective officers, directors, associates, employees, agents, representatives, successors and assigns from and against all third party Claims based on or arising from or out of (i) Buyer-provided falsehoods, misrepresentations, material inaccuracies or misleading statements in any documentation related to this Transaction Confirmation; (ii) personal injury (including death) or property damage from said Biogas that occurred after title passes to Buyer, (iii) other claims, liens, and encumbrances related to said Biogas that attach after title passes to Buyer, (iv) Buyer’s gross negligence or willful misconduct; (v) violation of any applicable law/regulation/ordinance (including but not limited to, failure to comply with any applicable obligation or requirement of the EPA or CARB); or (vi) Buyer’s breach of this Transaction Confirmation.

Please confirm the foregoing correctly sets forth the terms of our agreement with respect to this TC by signing in the space provided below and returning a copy of the executed confirmation by emailing it to [woverly@bluesource.com](mailto:woverly@bluesource.com).

<p><b>Buyer: Blue Source, LLC</b></p> <p>By: _____</p> <p>Name: Will Overly</p> <p>Title: Vice President</p> <p>Date: _____, 2022</p>	<p><b>Seller: King County Wastewater Treatment Division</b></p> <p>By: _____</p> <p>Name: Kamuron Gurol</p> <p>Title: Division Director</p> <p>Date: _____, 2022</p> <p>Attest: _____</p>
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**Exhibit C**  
**(sample) King County Affidavit**

STATE OF WASHINGTON

COUNTY OF KING

I the undersigned, [NAME], [TITLE] of the King County Wastewater Treatment Division, South Wastewater Treatment Plant (“SWTF”), acting on behalf of SWTF, hereby attest to the following statements to the best of my knowledge and belief:

- 1) I oversee the supply and/or collection of biogas for SWTF at the 1200 Monster Rd SW, Renton, WA 98057 facility;
- 2) SWTF produces biogas as defined in §80.1401:
  - a. *Biogas* means a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure that is produced through the anaerobic digestion of organic matter
- 3) SWTF has entered into an agreement with Bluesource LLC (Bluesource), whereby Bluesource purchases from SWTF, biogas that is produced at the facility as follows:
  - a. The delivery period is [DATE] and until [DATE];
  - b. The delivery point is at the raw biogas [flange/meter/other description];
  - c. The Maximum Anticipated Biogas Supply (“Max DQ”) of the facility to [SHORT NAME OF COUNTER PARTY] is [AMOUNT] MMBtu per day [or MSCFD];
- 4) SWTF produces biogas by the anaerobic digestion of sludge, undissolved solids, and biosolids derived from municipal wastewater, and no other materials are co-processed in the digesters;
- 5) In the unlikely event that SWTF elects to co-process other materials in the digesters, SWTF will provide 30 days written notice to Producer;
- 6) SWTF has not and will not generate credits under any renewable energy or fuel program nor represent the fuel for sale as biogas with the ability to generate credits, including but not limited to any state Renewable Portfolio Standard, for any and all biogas sold to Bluesource
- 7) [OPTIONAL BUT RECOMMENDED] The historical biogas generation rates for the facility are attached as Appendix A.

DATED THIS \_\_\_ DAY OF \_\_\_\_\_, 2022

\_\_\_\_\_  
[NAME]  
[TITLE]

[FULL NAME OF SWTF]

STATE OF WASHINGTON  
COUNTY OF KING

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022 appeared before me \_\_\_\_\_, personally known to me to be the person described herein and who has signed this Affidavit and acknowledged that he/she signed the Affidavit freely and voluntarily for the purposes and uses herein described.

In witness hereof, I have hereunto set my hand and affixed my official seal the day and year last written above.

(seal)

\_\_\_\_\_  
Notary Public in and for the State of Washington

\_\_\_\_\_  
Name Printed

My commission expires: \_\_\_\_\_

**Exhibit D**

(sample) **QUARTERLY AFFIDAVIT**

STATE OF WASHINGTON

COUNTY OF KING

The undersigned, under penalty of perjury, attest to the following statements to the best of my knowledge and belief:

I, \_\_\_\_\_, currently serve as [TITLE] \_\_\_\_\_ for the King County (the “County”), and the County owns and operates the South Wastewater Treatment Facility (“SWTF”), a wastewater treatment facility located at 1200 Monster Rd SW, Renton, WA 98057;

In this capacity I oversee, or have direct knowledge of the data related to, the production and sale of biogas from the SWTF;

The County produced at the SWTF biogas as defined in 40 C.F.R. § 80.1401 that qualifies as cellulosic biofuel as defined in 40 C.F.R. § 80.1401 and sold such biogas to Blue Source, LLC (“Marketer”) in the period between \_\_\_\_\_ and \_\_\_\_\_;

The biogas described above was produced by the anaerobic digestion of sludge, undissolved solids, and biosolids derived from municipal wastewater [and no other material was co-processed in the digesters] in the period described above and in accordance with the table below; and

The biogas described above was sold to Marketer for use as transportation fuel in accordance with the table below:

<b>Biogas Activities by Digester</b>	<b>Amount [Units]</b>
Municipal Wastewater Processed in SWTF:	XX [UNITS]
Sludge Processed in Digester:	XX [UNITS]
Raw Biogas Produced:	XX MMBTU
Biogas Physically Injected:	XX MMBTU
Biogas Sold to Marketer:	XX MMBTU

DATED THIS \_\_\_ DAY OF \_\_\_, \_\_\_\_\_

\_\_\_\_\_  
[Name] \_\_\_\_\_  
[Title] \_\_\_\_\_  
[Entity] \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF KING

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ appeared before me \_\_\_\_\_, personally known to me to be the person described herein and who has signed this Affidavit and acknowledged that he/she signed the Affidavit freely and voluntarily for the purposes and uses herein described.

In witness hereof, I have hereunto set my hand and affixed my official seal the day and year last written above.

(seal)

\_\_\_\_\_  
Notary Public in and for the State of Washington

\_\_\_\_\_  
Name Printed

My commission expires: \_\_\_\_\_