

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement”) is made and entered as of this ____ day of _____, 20 __, by and between National Fuel Gas Distribution of Ohio, LLC (“National Fuel”) and

 (“Potential Supplier”), a _____, organized and existing under the laws of the State of _____ (hereinafter collectively referred to as the “Parties” and individually as “Party.”

WITNESSETH:

WHEREAS, Potential Supplier has expressed a desire to supply natural gas to National Fuel or National Fuel customers;

WHEREAS, Potential Supplier represents that it possesses the requisite skill and experience to supply natural gas to National Fuel and/or National Fuel customers;

WHEREAS, in order for Potential Supplier to qualify to supply such natural gas, the Parties will exchange proprietary, confidential and trade secret information regarding their respective businesses, including, but not limited to, information related to their finances, practices, procedures, customers and other confidential matters; and

WHEREAS, the Parties desire to reach an understanding with respect to the disclosure of such information and with respect to the confidentiality of the disclosures in general;

NOW, THEREFORE, in consideration of the premises and Agreement herein made, the Parties agree as follows:

1. For the purpose of this Agreement, unless the context indicates otherwise, the term “Confidential Information” means all information of the disclosing Party revealed, directly or indirectly, to the receiving Party, regardless of the form in which it appears, or under which it is communicated, all copies or recordings thereof (whether or not made in accordance with this Agreement) and the content of such information, including but not limited to, all descriptions, economic data, computer programs (not including source code) and models and the results thereof.
2. The Parties agree that the Confidential Information it receives from the other Party is proprietary, the property of the disclosing Party, and shall be kept strictly confidential. The Confidential Information shall not be sold, traded, published, or otherwise disclosed by the receiving Party to anyone in any manner whatsoever, except as may be expressly provided for herein. The receiving Party agrees that it shall not use the Confidential Information for any purpose, without the consent of the disclosing Party, other than for purposes related to the performance of duties and obligations to supply natural gas as may be more fully described in related Pooling or Supply Agreements between Potential Supplier and National Fuel. The Parties acknowledge that their Representatives will form and retain mental impressions based upon the Confidential Information disclosed to each Party and

agree that it is not the intent of the Parties that the non-use restrictions contained in this Agreement will prevent these Representatives from performing their other work assignments for their respective employers. The receiving Party acknowledges that disclosure of the Confidential Information will be limited to the receiving Parties' Representatives and those Representatives will be informed by the receiving Party of the confidential nature of the Confidential Information and their obligation to keep it confidential in accordance with this Agreement. The receiving Party shall be responsible for any violations of the provisions of this Agreement caused by any of the receiving Party's Representatives. In this Agreement, "Representatives" means a Party's parent companies, Affiliates, and its and their respective directors, officers, employees (permanent or contract), agents or representatives, including, without limitation, its and their respective attorneys, accountants, consultants and financial advisors. "Affiliates" of any Party shall mean any company or legal entity which (a) controls, either directly or indirectly, such Party; or (b) which is controlled, directly or indirectly, by such Party; or (c) is directly or indirectly controlled by a company or entity which directly or indirectly controls such Party. "Control" means the right to exercise 50% or more of the voting rights in the appointment of the directors (or other managers having duties similar to those of directors) of such company.

3. Confidential Information shall remain the property of the disclosing Party. Potential Suppliers agree to return any and all Confidential Information provided by National Fuel including all copies in its possession, within fifteen (15) days of request by National Fuel. National Fuel agrees to return Confidential Information provided to it, including all copies, by Potential Supplier if Potential Supplier does not become a supplier of natural gas to National Fuel or National Fuel's customers within the contemplation of this Agreement within fifteen (15) days request by Potential Supplier. National Fuel may retain Confidential Information provided to it by Potential Supplier for the period of time Potential Supplier becomes an actual Supplier of natural gas pursuant to terms and conditions of a supporting Pooling or Supply Agreement between the Parties. In the event that a receiving Party has destroyed any copies, such receiving Party shall certify in writing to the other Party the occurrence of that action. Notwithstanding the foregoing, (i) the receiving Party shall not be obligated to return or destroy any documents created by it that may reflect or refer to Confidential Information; (ii) the receiving Party may create and retain an abstract describing the type of Confidential Information that it receives sufficient to document the nature and scope of the Parties' discussions under this Agreement; (iii) the receiving Party shall not be obligated to return or destroy any Confidential Information that the receiving Party is retaining pursuant to a document retention hold established in connection with any civil or criminal investigations or litigation, in which event the Confidential Information shall be retained by the receiving Party until such time as the document retention hold is no longer in effect, at which time the Confidential Information shall be returned to the disclosing Party or destroyed as aforesaid; and (iv) to the extent that receiving Party's computer back-up procedures create copies of the Confidential Information, the receiving Party may retain such copies in its archival or back-up computer storage for the period the receiving Party normally archives backed-up computer records. Any such documents or abstract so created will be retained subject to this Agreement until they are destroyed or erased.

4. The obligation of the Parties to maintain the Confidential Information covered by this Agreement will be for a period of two (2) years from the date this Agreement is executed unless superseded at an earlier date by the Confidentiality provisions of a definitive agreement or for a period expiring one (1) year following cessation of the supply services contemplated by the Parties, whichever is later and shall be construed and governed by the laws of the State of Indiana without regard to choice of law or conflict of law provisions that would allow or require the application of law of another jurisdiction.
5. The Parties agree that Confidential Information does not include information which:
 - a) was already known to the receiving Party prior to the inception of these discussions or disclosures pursuant to this Agreement and to which there is no existing obligation of confidentiality;
 - b) is or becomes publicly available other than through the act or omission of the receiving Party or its Representatives;
 - c) rightfully becomes available to the receiving Party on a non-confidential basis from a third party source other than the disclosing Party or its Representatives, provided that such third party source is not bound by an accompanying confidentiality obligation to maintain the confidentiality of the information with the disclosing Party or its Representatives or is otherwise prohibited from transmitting such Confidential Information to the receiving Party or the receiving Party's Representatives by a contractual, legal, or fiduciary obligation; or
 - d) is independently developed by the receiving Party or any of its Affiliates without the use of or reliance upon the Confidential Information.
6. The Receiving Party or anyone to whom the receiving Party transmits such Confidential Information pursuant to the terms of this Agreement will not be deemed to have violated this Agreement if it is required to produce information hereunder if such production is in accordance with a request for information that cannot be legally avoided (i.e., a subpoena, oral questions, interrogatories, request for information or documents, civil or criminal investigative demand or similar process) or if such disclosure is necessary in order to obtain or maintain regulatory or governmental approvals, applications, or exemptions. In the event of the receipt of such a request, the Party required to produce the information will promptly provide notice of the request to the disclosing Party, to the extent that such notice is legally permissible and reasonably practicable, prior to disclosing such information, so that the disclosing Party may seek appropriate protective order and/or waive compliance with this Article. If, in the absence of a protective order or the receipt of waiver hereunder, a receiving Party is nonetheless legally compelled to disclose such information or needs to disclose such information in order to maintain regulatory or governmental approvals, it will exercise reasonable and diligent efforts to maintain the confidentiality of any information required to be produced. Moreover, the Party receiving the request shall accommodate all reasonable efforts to preserve the confidentiality of the information that are made by the Party that provided the information.

7. The Parties acknowledge that the Confidential Information is valuable and unique and agree that there is no adequate remedy at law for any unauthorized use or disclosure of the Confidential Information in violation of the terms of this Agreement and that any such unauthorized use or disclosure will constitute irreparable harm and will entitle the non-disclosing Party to seek injunctive and other equitable relief. Such remedy shall be cumulative and in addition to all other remedies available.
8. Any notice or other communications required or permitted to be given pursuant to this Agreement shall be confirmed in writing and shall be deemed properly given when hand delivered, sent by overnight mail service, mailed certified mail, return receipt requested, or transmitted by Email with date and sending Party identified to the following address:

National Fuel Gas Distribution of Ohio, LLC
6363 Main Street,
Williamsville, NY 14221
Attn: Gas Supply Administration – Transportation Services
Phone: 716-857-7446
Email: TSOHio@natfuel.com

Attn: _____
Title: _____
Telephone: _____
Email: _____

9. Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages.
10. No amendments, changes or modifications to this Agreement shall be valid unless the same are in writing and signed by a duly authorized representative of each of the Parties hereto.
11. This Agreement may not be assigned by either Party hereto without the prior written consent of the other Party. Any assignment without such written consent shall be null and void and of no force or effect. This Agreement shall be binding upon the successors and permitted assigns of the Parties.

12. The Parties hereto understand and agree that until a Pooling Supply Agreement is executed between the Parties no contract or agreement providing for a commodity transaction between the Parties shall be deemed to exist between the Parties, and neither Party will be under any legal obligation of any kind whatsoever with respect to such commodity transaction by virtue of this or any written or oral expression thereof, except, in the case of this Agreement, for the matters specifically agreed to herein.
13. Each Party understands and agrees that no failure or delay by the other Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or future exercise of any right, power or privilege hereunder.
14. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any executed counterpart transmitted by facsimile or similar transmission by any Party shall be deemed an original and shall be binding upon such Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed the day and year first above written.

NATIONAL FUEL GAS DISTRIBUTION OF OHIO, LLC

BY: _____
Signature

Printed Name and Title

SUPPLIER: _____

BY: _____
Signature

Printed Name and Title