

TRI-PARTY CAPACITY RELEASE AGREEMENT

This Agreement is made as of this _____ day of _____, 20 ____, by and among National Fuel Gas Distribution of Ohio, LLC, (herein “National Fuel”), _____ (herein “Supplier”), and _____ (herein “Supplier's Designee”). National Fuel, Supplier and Supplier's Designee are hereinafter sometimes referred to collectively as the “Parties” or individually as a “Party”.

WHEREAS, the Supplier has been certified by the Commission to act as a competitive retail natural gas (“CRNG”) supplier in Ohio, and 1) has been approved by National Fuel as a Choice Supplier to participate in National Fuel's Choice Program, or 2) has been approved by National Fuel to be an _____ Supplier in National Fuel's _____ Program, as such Programs have been approved by the Commission; and

WHEREAS, National Fuel's Tariff requires mandatory Capacity Release under the Program; and

WHEREAS, Supplier has identified Supplier's Designee to be the recipient of its allocated Released Capacity under the Program; and

WHEREAS, Supplier has entered into an agreement with Supplier's Designee requiring Supplier's Designee to provide natural gas supply sufficient to satisfy Supplier's obligations under the Program,

NOW THEREFORE, in consideration of the mutual promises and covenants made herein, the receipt and sufficiency of which is hereby acknowledged by all Parties with the intent to be legally bound hereby, the Parties agree as follows:

DEFINITIONS:

“Capacity Release” means the release of interstate pipeline transportation and storage capacity to replacement shippers pursuant to applicable FERC rules.

“Choice Program” means the retail customer access program instituted by National Fuel as a result of its approval by the Commission in Case No. 02-1566-GA-ATA, including applicable Tariff provisions and National Fuel business procedures, which may be changed from time to time.

“Choice Supplier Pooling Agreement” means National Fuel's Choice Supplier Pooling Agreement to which the Supplier is a party.

“Choice Supplier” means the marketer, supplier, broker, aggregator or governmental aggregator supplying natural gas through the Choice Program that is Party to this Agreement.

“Commission” or “PUCO” means the Public Utilities Commission of Ohio.

“Default Sales Service” or “DSS” means the sales service provided by National Fuel to certain residential and general service customers pursuant to its Tariff.

“FERC” means the Federal Energy Regulatory Commission.

“Program” means National Fuel's Choice Program or SCO Program, individually or collectively as context may require.

“Released Capacity” means the National Fuel -held pipeline transportation and storage capacity that is released pursuant to the mandatory Capacity Release requirements of the Program.

“SCO Supplier” means the marketer, supplier, or broker supplying natural gas for National Fuel's SCO Program that is Party to this Agreement.

“Standard Choice Offer (SCO) Program” means the Standard Choice Offer phase of the National Fuel Merchant Exit Transition program instituted by National Fuel as a result of the approval by the Commission in Case No. 07-1285-GA-EXM including applicable Tariff provisions and National Fuel business procedures, which may be changed from time to time.

“Standard Choice Offer (SCO) Supplier Agreement” means National Fuel's Standard Choice Offer Supplier Agreement to which the Supplier is a party.

“Supplier's Designee” means the person or legal entity, with whom the Supplier has entered into an agreement, required to provide natural gas supply sufficient to satisfy Supplier's obligations under the Program.

“Tariff” means National Fuel's Tariff for Gas Service as it may change pursuant to Commission approval from time to time.

1. Supplier, National Fuel and Supplier's Designee each individually represent and warrant that they are and shall remain in compliance with all applicable laws, all applicable PUCO rules, regulations and orders related to the Program, and all Tariff provisions of National Fuel related to the Program including but not limited to all gas delivery, capacity release, balancing and storage functions required in accordance with National Fuel's Tariff, Operating and Billing Practices, and Supplier Agreements, as each may be amended from time to time.
2. Supplier and Supplier's Designee represent that they have entered into an agreement wherein the Supplier's Designee is required to provide natural gas supply sufficient to satisfy Supplier's obligations under the Program.
3. Supplier and Supplier's Designee request that effective, _____, 20 __, National Fuel begin releasing Supplier's allocation of Released Capacity under the Program to Supplier's Designee.
4. Supplier's Designee represents and warrants that it is obligated to use the full amount of the Released Capacity to satisfy Supplier's obligations under the Program to provide the gas supply requirements of retail customers.
5. Supplier's Designee agrees, in addition to any other obligation under this agreement, to comply with National Fuel's delivery requirements as stated in National Fuel's Tariff, Operating and Billing Practices, and Supplier Agreements, as each may be amended from time to time. In the event that Supplier's Designee does not comply with these delivery requirements, Supplier's Designee agrees that National Fuel, in addition to any other remedy available to National Fuel under this agreement, may recall the Released Capacity.

6. At all times when utilizing the Released Capacity, Supplier and Supplier's Designee agree to comply with FERC's rules regarding shipper-must-have-title and the prohibition against buy/sell arrangements, as those rules are set forth in the FERC regulations and orders.

7. Supplier shall at all times remain responsible for all payments for Released Capacity to the pipelines and for any other charges, costs or expenses incurred by National Fuel related to the Released Capacity hereunder including costs or expenses incurred under provisions of the Tariff related to the Program. Supplier's Designee and Supplier shall indemnify and hold National Fuel harmless for any charges, costs, or expenses incurred by National Fuel related to the Released Capacity hereunder including costs or expenses incurred under provisions of the Tariff related to the Program. In the event that Supplier's Designee or Supplier fails to pay when due any charges, fees, penalties, or any other amounts due to the pipelines, as set forth in either or both of the Choice Pooling Agreement or the Standard Choice Offer Supplier Agreement between National Fuel and Supplier, National Fuel reserves the right to utilize any and all collateral, security interest in assets, receivables or other forms of financial assurance to offset the costs of any non-payment, including any reasonable attorney fees.

8. As among National Fuel, Supplier's Designee and Supplier, Supplier's Designee and Supplier warrant title to the gas to be transported to National Fuel using the Released Capacity.

9. Supplier's Designee acknowledges and agrees to be bound by the provisions for recall of interstate capacity released from Columbia Gas Transmission, LLC ("Columbia") and Panhandle Eastern Pipe Line Company, LP ("Panhandle"), ANR Pipeline, and Texas Eastern Transmission ("TETCo") set out in Appendix A to this agreement.

10. Supplier's Designee agrees to submit monthly Agency Agreements to Columbia providing access to Supplier's Designee's storage inventory and nomination information in the manner required by National Fuel.

11. This Agreement shall remain in effect for so long as Supplier continues to participate in the Program as determined by National Fuel, or unless terminated pursuant to the provisions of this Agreement. If Supplier ceases participate in the Program for any reason, Supplier shall immediately notify National Fuel and this Agreement shall be terminated and any Released Capacity pursuant to this Agreement shall be recalled, effective the first business day after such reason for cessation occurred or as soon thereafter as possible in accordance with the Tariff.

12. This Agreement may be terminated by National Fuel, Supplier or Supplier's Designee with 30-days written notice to each Party.

13. To the fullest extent allowed by law, in no event shall any Party be liable for any consequential, incidental, indirect, special or punitive damages incurred by another Party and connected with, arising from or related to this Agreement or the performance or failure to perform services hereunder, including but not limited to loss of good will, cost of capital, claims of customers and lost profits or revenue, whether or not such loss or damages is based in contract, warranty, tort, negligence, strict liability, indemnity, or otherwise, even if a party has been advised of the possibility of such damages.

14. Each party ("Indemnifier"), to the fullest extent allowed by law, shall indemnify, defend and save harmless any other party, its parent, subsidiary and affiliate companies, and its and their officers, directors, shareholders, agents, employees, contractors, representatives, successors and assigns ("Indemnified Parties") from and against any and all suits, actions, legal proceedings, claims, losses, demands, damages, costs, liabilities, fines, penalties, royalties, obligations, judgments, orders, writs, injunctions, decrees, assessments, diminutions in value of any kind and expenses of whatsoever kind or character, including reasonable attorneys' fees and court costs, whether incurred in a third-party action or in an action to enforce this provision that may at any time be imposed on, incurred by or asserted against any of the Indemnified Parties by any third party, including, without limitation, FERC, the Commission, or Supplier's customers, arising from or in connection with any (a) breach of a representation or warranty or failure to perform any covenant or agreement in this Agreement by the Indemnifier, (b) any violation of applicable law, regulation or order by the Indemnifier or (c) any act or omission by the Indemnifier with respect to this Agreement, first arising, occurring

or existing during the term of this Agreement, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of the Agreement. The obligations of an Indemnifier as set forth in this section shall survive the expiration, cancellation, or termination of this Agreement.

15. No Party shall assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

16. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, supersedes any and all previous agreements and understandings between the Parties with respect to the subject matter hereof, and binds and inures to the benefit of the Parties, their successors and permitted assigns.

17. Except as otherwise provided herein, no modification or waiver of all or any part of this Agreement will be valid unless in writing and signed by the Parties or their agents and approved by National Fuel. A waiver will be effective only for the particular event for which it is issued and will not be deemed a waiver with respect to any subsequent performance, default or matter.

18. Interpretation and performance of this Agreement will be in accordance with, and will be controlled by, the laws of the State of Ohio, except its conflict of laws provisions to the extent they would require the application of the laws of any other jurisdiction. All Parties irrevocably waive any objection that it may now or in the future have to the State of Ohio as the proper and exclusive forum for any legal action or proceeding arising under or relating to this Agreement.

19. If one or more provisions herein are held to be invalid, illegal or unenforceable in any respect, it will be given effect to the extent permitted by applicable law, and such invalidity, illegality or unenforceability will not affect the validity of the other provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this agreement to be executed as of the date first above written.

NATIONAL FUEL GAS DISTRIBUTION OF OHIO, LLC

By: _____
Signature

Name: _____
Printed Name

Title: _____

Date: _____

(Supplier)

By: _____
Signature

Name: _____
Printed Name

Title: _____

Date: _____

(Supplier Designee)

By: _____
Signature

Name: _____
Printed Name

Title: _____

Date: _____

Appendix A

National Fuel Gas Distribution of Ohio, LLC, (“National Fuel”) will include the language below in monthly capacity releases in order to provide National Fuel with prompt access to the National Fuel - held pipeline transportation and storage capacity that is released pursuant to the mandatory Capacity Release requirements of the Program as that term is defined in the Tri-Capacity Release Agreement.

1. Recalling interstate capacity releases due to material change(s) in creditworthiness:

1.1. This capacity release to a Supplier or Supplier's Designee in an Ohio-regulated retail access program, as defined in 18 C.F.R. § 284.8, shall be subject to FERC Order Nos. 712, 712-A, & 712- B, Docket No. RM08-1-000 (re: interstate pipeline capacity release rules); and FERC Docket No. RP08-377-000 (granting National Fuel capacity release rules waivers); and the orders in PUCO Case No. 02-1566-GA-ATA (retail choice program) and PUCO Case No. 07-1285-GA-EXM (merchant exit and retail choice program updates) including associated National Fuel tariff sheets and operating procedures. TERM OF OBLIGATION IS TERM OF RELEASE.