

## **NATIONAL FUEL GAS DISTRIBUTION OF OHIO, LLC Standard Choice Offer Supplier Agreement**

This Standard Choice Offer Supplier Agreement (“Agreement”) is made this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_, between National Fuel Gas Distribution of Ohio, LLC, (hereinafter, “National Fuel” or “Party”), and \_\_\_\_\_ (hereinafter, “SCO Supplier” or “Party”); (collectively, “Parties”).

WHEREAS, SCO Supplier has submitted an Auction bid for the right to deliver natural Gas to National Fuel pursuant to the SCO Program;

WHEREAS, as a result of that Auction, SCO Supplier has been awarded the right to deliver natural Gas to National Fuel's customers; and

WHEREAS, the Commission has approved SCO Supplier's Auction bid; and

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

### **ARTICLE I**

#### **Definitions**

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

- 1.1 Intentionally left blank.
- 1.2 “Auction” shall mean an auction for the right to deliver Gas to National Fuel pursuant to the SCO Program based on a competitive bidding process approved by the Commission.
- 1.3 “Business Day” shall mean any day except Saturday, Sunday, declared National Fuel holidays, or Federal Reserve Bank holidays.
- 1.4 “Choice Program” shall mean 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, which may be changed from time to time upon Commission Order, and applicable National Fuel business procedures which may be changed from time to time at National Fuel's discretion.
- 1.5 “Choice Supplier” shall mean a marketer, supplier, broker, aggregator or governmental aggregator supplying natural gas through the Choice Program.
- 1.6 “Collections” means with respect to any SCO Accounts Receivable, all cash collections and other cash proceeds of such SCO Accounts Receivable, including, without limitation, all cash proceeds of Related Security with respect to such SCO Accounts Receivable.
- 1.7 “Commission” shall mean the Public Utilities Commission of Ohio.

- 1.8 “Cross Default” shall mean the occurrence and continuation of (i) a default, event of default or other similar condition or event by SCO Supplier under one or more agreements or tariffs in the provision of service in any retail choice program, exit-the-merchant function program, transportation or wholesale program on a utility LDC system in an aggregate amount of not less than \$500,000 that are declared defaults in such programs (and remain uncured for greater than three (3) Business Days); provided, however, that for the purpose of this Section 1.8 scheduling errors that result in over or under deliveries that do not result in the utility declaring default shall not be deemed a Cross Default under this Agreement, or (ii) a declared default, event of default or other similar condition or event by SCO Supplier, or if SCO Supplier has provided a guaranty, by SCO Supplier's guarantor, under one or more agreements or instruments individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than 2% of SCO Supplier's shareholders equity, or if SCO Supplier has provided a guaranty, SCO Supplier's guarantor's shareholders equity, wherein such declared default, event of default or other similar condition results in creditor calling such obligations immediately due and payable; however, excluding in each case any such indebtedness (a) arising from or in respect of any obligation for borrowed money where the creditors' recourse on the obligation is limited to assets for which money was borrowed, or (b) owing by one affiliate to another where such indebtedness is in an aggregate amount of not less than 2% of SCO Supplier's shareholders equity, or if SCO Supplier has provided a guaranty, SCO Supplier's guarantor's, shareholders equity, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable. Shareholders equity shall be calculated using the following formula: Total Assets - Intangibles - Total Liabilities = Shareholders Equity. A cross default is an Event of Default herein.
- 1.9 “Day” shall mean a period of twenty-four (24) consecutive hours, coextensive with a “day” as defined by the receiving Transport Provider in a particular transaction.
- 1.10 “DDQ” shall mean the Daily Delivery Quantity of gas in Dth that SCO Supplier must deliver to Company's city gates, as specified by Company, to meet the Expected Demand of SCO Supplier's SCO and DSS customers' demand and Company's Unaccounted for Gas Percentage.
- 1.11 “DSS” shall mean Default Sales Service, which is Sales Service provided to Residential and General Service Customers that do not qualify for SCO Service.
- 1.12 “DSS Customer” shall mean a National Fuel customer receiving DSS.
- 1.13 “DSS Pool” shall mean the aggregate load requirement of DSS Customers awarded to SCO Supplier pursuant to the Auction, and as it may change from time-to-time thereafter.
- 1.14 “DSS Sales Revenues” shall mean the SCO Supplier's proportionate share of the amounts billed to DSS Customers based on the SCO Price during a given Month.
- 1.15 “Default Fee” shall be set at 10% of projected NYMEX price for upcoming SCO Period to account for volatility.
- 1.16 “Default Fee Collateral” shall have the same meaning as set forth in Article 4 herein.
- 1.17 “Delivery Point(s)” shall mean the specific point(s) on a Transport Provider's system (a) at which National Fuel has the right to take delivery of Gas to the Transport Provider's nomination process and (b) to which National Fuel directs SCO Supplier to nominate and to deliver Gas.

- 1.18 “Financial Assurance Obligations” shall mean any financial security provided by a Party under the Agreement to meet or secure the obligations of that Party hereunder excluding the Default Fee Collateral, such as a Letter of Credit, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature as determined to be satisfactory by National Fuel in its sole discretion, and any obligation(s) in respect of the foregoing, all of which obligations and security shall be provided at the sole expense of the Party whose credit is being supported in a form, substance and amount that is reasonably acceptable to National Fuel, and consistent with credit and collateral requirements set forth herein. National Fuel shall have no Financial Assurance Obligations under this Agreement so long as National Fuel continues to perform in compliance with the SCO Program.
- 1.19 “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 fees or charges that may be imposed for non-delivery related to its interruption after the nomination is made to the Transport Provider and until the change in deliveries and/or receipts is confirmed by the Transport Provider.
- 1.20 “Firm Delivery Obligation(s)” shall mean the volume of Gas as determined by National Fuel and communicated to SCO Supplier to satisfy the anticipated volumetric requirements of SCO Supplier's SCO and DSS customers pursuant to the SCO Program. SCO Supplier shall have the obligation to make Firm deliveries with respect to such volumes.
- 1.21 “Gas” shall mean any pipeline-quality mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 1.22 “Index Failure” shall mean, with respect to the NYMEX settlement price for any given Month, any of the following: (a) the failure of the NYMEX to announce or publish information necessary for determining the NYMEX monthly settlement price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange; (c) the temporary or permanent discontinuance or unavailability of the NYMEX; or (d) both Parties agree that a material change in the formula for or the method of determining the NYMEX monthly settlement price has occurred.
- 1.23 “Letter of Credit” shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to the Party in whose favor such letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for same.
- 1.24 “Marketer Extranet” shall mean National Fuel's electronic communications software that facilitates nominations, confirmation and other administrative functions associated with Transportation Service.
- 1.25 “Mcf” shall mean one thousand cubic feet when measured at a pressure of fourteen and seventy-three hundredths pounds per square inch at a temperature of 60 degrees Fahrenheit.
- 1.26 “MMBtu” shall mean one million British thermal units, which is equivalent to one dekatherm.
- 1.27 “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.
- 1.28 “Monthly Statement” shall mean the statement issued monthly by National Fuel to SCO Supplier containing fees, charges, and credits applicable to SCO Supplier.
- 1.29 “NYMEX” shall mean the New York Mercantile Exchange.

- 1.30 “Provider of Last Resort” shall mean National Fuel's responsibility for coordinating Gas supplies of National Fuel, SCO Suppliers, Choice Suppliers and large transport customers and pool operators to cover SCO and DSS load requirements in the event of an SCO or Choice Supplier default, or any other event that requires National Fuel to take steps to protect the integrity of its system and/or to continue to provide service to customers.
- 1.31 “Qualified Institution” shall mean a U.S. office of a major commercial bank (which is not an affiliate of either Party) organized under the laws of the United States (or any state or a political subdivision thereof) or a Schedule I Canadian Bank with a U.S. branch office and, in either case, having assets of at least \$10 Billion and a long term debt rating or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P (iii), or an alternate equivalent rating in National Fuel's sole discretion. In the event there is only one rating from either Moody's or S&P, the long term debt rating or deposit rating must be at least (i) A3 from Moody's or, (ii) A- from S&P.
- 1.32 “Receiving Transport Provider” shall mean the Transport Provider receiving Gas at a Delivery Point, or absent such receiving Transport Provider, the Transport Provider delivering at a Delivery Point.
- 1.33 “Related Security” means with respect to any SCO Account Receivable:
- (i) all security interests or liens and property subject thereto from time to time purporting to secure payment of such SCO Account Receivable, together with all financing statements describing any collateral security for such SCO Accounts Receivable;
  - (ii) all guaranties, insurance and other agreements or arrangements of whatever character from time to time supporting or securing payment of such SCO Accounts Receivable; and
  - (iii) all of SCO Supplier's right, title, and interest, if any, in and to all invoices and that evidence, secure or otherwise relate to such SCO Accounts Receivable.
- 1.34 “Retail Price Adjustment” shall mean the adjustment to the NYMEX monthly settlement price, as determined by the SCO Auction and fixed for the term of the Agreement, expressed in U.S. Dollars per Mcf.
- 1.35 “SCO” shall mean Standard Choice Offer.
- 1.36 “SCO Accounts Receivable” shall mean the indebtedness and the obligations of any SCO Customer to pay for natural Gas provided by SCO Supplier under the SCO Program and delivered on National Fuel's distribution system, whether billed or unbilled, including the SCO Price and applicable sales tax.
- 1.37 “SCO Customer” shall mean a National Fuel customer receiving SCO Service under the then current a Standard Choice Offer Service Rate Schedule.
- 1.38 “SCO Pool” shall mean the aggregation of SCO Customers to be served by the SCO Supplier.
- 1.39 “SCO Pool Customers” are the SCO customers served by the SCO Supplier.
- 1.40 “SCO Price” shall mean the amount expressed in U.S. Dollars per Mcf to be charged to SCO Customers and DSS Customers for the purchase of Gas as established through the Auction. As set forth more particularly in the Standard Choice Offer Rider in the Tariff , each month it shall consist of the sum of the

NYMEX settlement price for that month (converted to Mcf using National Fuel's annual standard Btu factor) plus the Retail Price Adjustment as well as any other components as may be approved by the Commission.

- 1.41 "SCO Program" shall mean 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 Docket Number 07-1285-GA-EXM and Tariff Sheets approved therein or subsequently revised as a result of Commission Order.
- 1.42 "SCO Suppliers" shall mean those entities providing Gas supply for National Fuel's SCO and DSS services, inclusive of SCO Supplier, as determined by the Auction.
- 1.43 "SCO Supply Rights" shall mean the right (a) to deliver and sell Gas to SCO Customers and (b) to deliver and sell Gas to National Fuel for resale to DSS Customers, pursuant to the SCO Program.
- 1.44 "Standard Choice Offer" shall mean the Tariff-based standard market-priced Choice service provided by retail natural gas suppliers certified by the Commission.
- 1.45 "Storage Contract Quantity" shall mean the maximum quantity of dekatherms that SCO Supplier may store in National Fuel -released storage capacity on any given Day.
- 1.46 "Tariff" shall mean National Fuel's Tariff for Gas Service, as approved from time to time by the Commission, and which is incorporated by reference into this Agreement.
- 1.47 "TCO" shall mean Columbia Gas Transmission, LLC.
- 1.48 "Transport Provider" shall mean any interstate pipeline interconnected to the National Fuel system.
- 1.49 "National Fuel" shall mean National Fuel Gas Distribution of Ohio, LLC.

## **ARTICLE 2**

### **Service to be Rendered**

- 2.1 SCO Supplier shall deliver to National Fuel the Gas supplies needed to satisfy the usage requirements of SCO Supplier's Customers and a proportionate share of DSS Customers' usage requirements, in accordance with this Agreement. SCO Supplier shall be solely responsible for supplying its Firm Delivery Obligations at the SCO Price.
- 2.2 National Fuel agrees to purchase from SCO Supplier and SCO Supplier agrees to sell to National Fuel the DSS quantities requested by National Fuel during the SCO Program.
- 2.3 National Fuel is willing and able pursuant to the terms of this Agreement, to accept receipt of SCO Supplier's Firm Delivery Obligations and to redeliver such Gas supplies to SCO Pool Customers and DSS customers served by SCO Supplier.
- 2.4 If an Index Failure has occurred that would prevent a determination of the NYMEX monthly settlement price, the Parties shall negotiate in good faith to agree on a replacement price or on a method for

determining a replacement price for the affected Month, and if National Fuel and a majority of all other SCO Suppliers have not so agreed on or before the first calendar Day of the affected Month, then the replacement 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 Month of a similar quality and quantity in the geographic 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 NYMEX monthly settlement price. The Parties agree to seek any regulatory approval required for implementation of a price change referenced in this provision.

### **ARTICLE 3**

#### **Term**

- 3.1 This Agreement shall commence on the first Day of April 20 or at such later date as is determined by the Commission and, subject to SCO Supplier's continued compliance with the requirements outlined herein and the applicable Tariff provisions, shall continue in effect thereafter for a term of twelve (12) months or longer by agreement of the Parties, unless terminated pursuant to the provisions of this Agreement, or for such other period of time as determined by the Commission. However, in no case other than in the case of material alteration of SCO Program by Commission Order shall any service pursuant to this Agreement be terminated during a winter month (November through March), unless such winter period termination date is mutually agreed upon by both National Fuel and SCO Supplier and/or except pursuant to the other provisions of this Agreement.
- 3.2 In the event that during the term of this Agreement the Commission issues any Order or makes any determination which alters the SCO Program including but not limited to any limitation or expansion or new requirement, and which Commission Order or determination materially adversely affects one or both of the Parties, either Party may terminate this Agreement with thirty (30) days' advance written notice to the other Party. A material adverse affect would include any affect that impacts the financial bargain of the Party or the Party's ability to physically meet their responsibilities under this Agreement.
- 3.3 In the event of an Event of Default, as described in Article 10 of this Agreement, this Agreement may be terminated in accordance with the provisions of Article 12 of this Agreement. In the event of a termination pursuant to an Event of Default, all outstanding obligations of SCO Supplier and amounts due under the Agreement shall become due and payable. No termination or due course expiration of this Agreement shall relieve either Party from the obligations incurred by such Party prior to such termination or expiration.
- 3.4 The rights of either Party the obligations to make payment hereunder, and the obligation of either Party to indemnify the other pursuant hereto shall survive the termination of this Agreement.

### **ARTICLE 4**

#### **Requirements for SCO Supplier Participation**

- 4.1 To participate in the SCO Program, SCO Supplier shall provide a copy of the certificate demonstrating that SCO Supplier is certified by the Commission to provide retail natural Gas service, and SCO Supplier shall

maintain such certification status and comply with all applicable provisions of the Tariff. SCO Supplier acknowledges that in its capacity as an SCO Supplier, it has a continuing responsibility to conduct its business in a legal and ethical manner, and it is responsible for complying with all applicable statutes, ordinances, rules and regulations.

- 4.2 As a further condition of participation in the SCO Program, SCO Supplier shall have a continuing obligation to meet the creditworthiness requirements established by National Fuel in accordance with the terms of the SCO Program, which shall include, but not be limited to, an assessment by National Fuel of SCO Supplier's ability to fulfill its Firm Delivery Obligations and to accept up to an additional 50% increase in its Firm Delivery Obligations and SCO Supply Rights (i) in the event of another SCO Supplier's default under the SCO Program or (ii) in the event non-defaulting Choice Suppliers do not assume all of the customers of a defaulting Choice Supplier under the Choice Program. Upon request by National Fuel, SCO Supplier shall provide National Fuel with the information necessary for National Fuel to make that ongoing assessment, in National Fuel's absolute and sole discretion. The provision of such information shall be governed by a Nondisclosure Agreement entered into by National Fuel and SCO Supplier prior to the Auction.
- 4.3 In order for National Fuel to complete and periodically reassess its financial evaluation as contemplated immediately above, SCO Supplier agrees to provide, upon request by National Fuel, the following information and authorizations: 1) current audited financial statements (Annual Report, 10K or 10Q if available) for itself or its parent company prepared in the last twelve (12) months; 2) list of parent companies and affiliates; 3) names, addresses and phone numbers of three trade references; and 4) names, addresses and phone numbers of financial institution contacts, with authorization for those contacts to provide to National Fuel information as to whether SCO Supplier is current on its payment obligations to such financial institution. In the event that any of such information is unavailable from SCO Supplier, National Fuel may permit SCO Supplier to provide other verifiable sources of financial information. National Fuel may require additional information if the preceding is not sufficient to determine SCO Supplier's creditworthiness.
- 4.4 SCO Supplier shall immediately provide to National Fuel notice of any change in the status of its Commission-issued certificate to provide retail natural Gas service in Ohio.
- 4.5 To ensure system reliability, SCO Supplier hereby grants to National Fuel the right to nominate from storage, with notice to SCO Supplier, Gas volumes held in National Fuel -released storage on behalf of SCO Supplier on any Day that SCO Supplier's confirmed delivery nominations would fail to meet its Firm Delivery Obligations to satisfy the SCO Supply Rights awarded under this Agreement. SCO Supplier hereby authorizes National Fuel to provide directions to the storage system operator regarding the nomination of such Gas upon notice by National Fuel to such operator that National Fuel is exercising the rights granted to it hereunder with respect to such Gas hereunder. In the event such Gas is used, National Fuel remains obligated to reflect the confirmed gas nominated by National Fuel from the SCO Supplier's storage account on behalf of SCO Supplier, or withdrawn as a result of system demand via TCO No- Notice withdrawal, in the normal Monthly Statement process.
- 4.6 As more particularly set forth in Article 8 (below), and for so long as the Commission-approved Purchase of Receivable Program remains in effect, in connection with the SCO Program and the term of this Agreement shall not have expired or otherwise terminated, SCO Supplier shall be selling SCO Accounts Receivable to National Fuel in exchange for the payment for those SCO Accounts Receivable.
- 4.7 If National Fuel has reasonable grounds for insecurity regarding the performance of any obligation under

the Agreement, whether or not then due, by SCO Supplier, including, without limitation, the occurrence of a material change in the creditworthiness of SCO Supplier, National Fuel may demand adequate assurance of performance in the form of Financial Assurance Obligations.

- 4.8 In addition to any other Financial Assurance Obligations, SCO Supplier shall be required to post sufficient collateral with National Fuel to secure payment of the Default Fee on all volumes that the SCO Supplier is obligated to serve through the remaining term of this Agreement (the "Default Fee Collateral"). Such credit support shall be posted by SCO Supplier within ten (10) Days of approval of the SCO Auction by the Commission, and shall be in the form of a Letter of Credit.
- 4.9 SCO Supplier agrees that, in the Event of Default as defined in this Agreement, and in addition to any other rights and remedies National Fuel may enjoy, National Fuel shall have the right to liquidate and use the proceeds from any and all of SCO Supplier's Financial Assurance Obligations to satisfy SCO Supplier's obligations under the Agreement. The proceeds from such items shall be used to satisfy any outstanding claims that National Fuel may have against SCO Supplier, including but not limited to, Gas costs, interstate pipeline capacity, commodity or fuel charges, imbalance charges, cash-out charges, pipeline penalty charges, reservation charges, and any other amounts owed to National Fuel, or for which National Fuel is or will be responsible, related to SCO Supplier's participation in the SCO Program or the Choice Program.
- 4.10 National Fuel further reserves the right to use SCO Supplier's assets associated with the SCO Program, including without limitation SCO Accounts Receivable, DSS Revenues, and over-delivery imbalance volumes, to offset or recoup any costs owed to and/or incurred by National Fuel resulting from an Event of Default by SCO Supplier under this Agreement.

## **ARTICLE 5**

### **SCO Supplier's Responsibilities**

- 5.1 In exchange for the opportunity to participate in the Auction and to continue participation in the SCO Program, SCO Supplier agrees to accept the responsibilities described below.

SCO Supplier acknowledges that the National Fuel SCO Program is administered pursuant to National Fuel's business procedures (Operating and Billing Practices), which National Fuel may amend from time to time with thirty (30) days advance notice via posting by National Fuel on its website, and the most recent version of which is available from National Fuel on its website. National Fuel will provide sixty (60) days advance notice for any changes related to Electronic Data Interchange (EDI) file format changes. This provision and the SCO Supplier compliance with the posted Operating and Billing Practices shall not constitute a waiver by the SCO Supplier(s) of any of their rights to object or file a complaint related to these Practices with the Public Utilities Commission.

- 5.2 SCO Supplier agrees to deliver its Firm Delivery Obligations on a daily basis, in accordance with the DDQ. Such DDQ shall be based on the expected demands of the SCO Pool and the DSS Pool as adjusted for, among other things, operating constraints. SCO Supplier agrees to accept National Fuel's DDQ forecasting methodology.
- 5.3 In the event SCO Supplier discovers or determines that it may not be able to deliver its Firm Delivery Obligations, as required by this Agreement, it shall immediately provide notice by telephone, or electronic mail to National Fuel of such potential failure.

- 5.4 If SCO Supplier fails to deliver its full Firm Delivery Obligations in accordance with its DDQ, National Fuel shall administer and coordinate the measures necessary to cover to the extent of such under-delivery, including reliance on other SCO and Choice Suppliers to supply natural Gas temporarily to the affected SCO and DSS Pool Customers, and delivery of Gas by National Fuel. SCO Supplier shall be responsible for all costs and charges associated with such event of under-delivery of its Firm Delivery Obligations, including but not limited to the Gas cost differential between the covered volumes at the SCO Price and the actual cost of Gas required to fully serve the SCO Supplier's SCO and DSS Pools. This includes, but is not limited to, any gas volumes purchased by National Fuel to replace storage volumes of other SCO and Choice Suppliers who have temporarily provided Gas and volumes purchased at the city-gate by National Fuel, due to SCO Supplier's under-delivery.
- 5.5 In the event that a supplier participating in the SCO Program defaults on its Firm Delivery Obligations and National Fuel terminates the Defaulting Supplier's participation in the SCO Program, National Fuel shall solicit, if National Fuel deems necessary, volunteers from non-defaulting SCO Suppliers to serve the defaulted load at the initial SCO Price. In the event multiple non-defaulting SCO Suppliers agree to serve the defaulted load, that load shall be awarded in proportion to the number of tranches awarded the non-defaulting SCO Suppliers as a result of the Auction. In the event that SCO Suppliers are unwilling to serve the entire defaulted load, National Fuel shall assign the defaulted load to non-defaulting SCO Suppliers to be served at the initial Auction SCO Price. The maximum increase in the share of the SCO Supply Rights originally awarded each non-defaulting SCO Supplier shall be 50%, *i.e.*, a non-defaulting supplier shall only be obligated to serve at most the equivalent of 1.5 times the SCO Supply Rights it was originally awarded in the Auction. Non-defaulting Suppliers may voluntarily provide more than 1.5 times the SCO Supply Rights originally awarded by the Auction, subject to National Fuel approval. In conjunction with, and under the supervision of the Commission and its staff, National Fuel shall conduct a supplemental Auction for any portion of the defaulted load that remains. National Fuel shall use the defaulting SCO Supplier's Default Fee Collateral to pay the non-defaulting SCO Suppliers that serve the defaulted load in proportion to the SCO Pool volumes assigned to each such supplier. Such payment shall be made within five (5) Business Days of the date on which the funds become available to National Fuel with no additional documentation required on the part of the SCO Supplier(s) serving the Defaulting SCO Supplier's load.
- 5.6 In the event of a default by another SCO Supplier or a Choice Supplier, Non-Defaulting SCO Supplier agrees that National Fuel shall have the right to coordinate Provider of Last Resort needs using, if necessary, Non-Defaulting SCO Supplier's individual National Fuel -released TCO storage inventory quantities. In such instance, National Fuel will coordinate the replacement of the withdrawn storage inventory quantities at no cost to the Non-Defaulting SCO Supplier.

## **ARTICLE 6**

### **Capacity Release and Recall Provisions**

- 6.1 National Fuel will release 100% of its interstate pipeline transportation and storage capacity to all SCO and Choice Suppliers. SCO Suppliers' acceptance of the release of this interstate capacity is a mandatory requirement in order for SCO Supplier to participate in the SCO Program. Capacity releases of National Fuel interstate pipeline firm transportation and storage capacity to SCO Suppliers, or to any other entity, must

comply with relevant provisions of the pipeline's FERC tariff, and of the FERC's regulations.

- 6.2 National Fuel will include the language listed below on capacity releases in order to provide National Fuel with prompt access to the interstate transportation and storage capacity released:
- 6.3 Recalling National Fuel Columbia interstate capacity releases due to material change(s) in creditworthiness:
  - a. 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.
- 6.4 SCO Supplier agrees to submit monthly Agency Agreements to TCO providing access to Supplier's storage inventory and nomination information in the manner required by National Fuel.

## **ARTICLE 7**

### **Volumes Reconciliation**

- 7.1 National Fuel will reconcile SCO Supplier's deliveries and sales requirements monthly and cash-out any cumulative difference annually according to the methodology established in the SCO Program.
- 7.2 National Fuel will electronically provide SCO Supplier with each SCO Customer's meter reads for the most recent billing period.

## **ARTICLE 8**

### **Customer Billing, True Sale of SCO Accounts Receivable, and Grant of Security Interest**

- 8.1 National Fuel shall include its charges and SCO Supplier's charges on National Fuel -issued bills to SCO Customers. SCO Customer bills will be issued in a manner consistent with standard National Fuel billing practices. National Fuel will remit to SCO Supplier the SCO Accounts Receivable and DSS Sales Revenues. Remittance of such funds will be according to the following schedule: (a) for SCO Customers and DSS Customers that are billed for a portion of the flow Month usage during the flow Month, remittance will be made in the Month immediately following the last Day of the flow Month; and (b) for SCO Customers and DSS Customers that are billed in the Month immediately following the flow Month for consumption pertaining to both the flow Month and the subsequent flow Month, remittance will be made in the second Month following the flow Month. National Fuel will render statements to SCO Supplier each Month by the twenty-fifth (25<sup>th</sup>) Day of the Month, for the prior Month's activity and will pay SCO Supplier for such activity less any charges owed by SCO Supplier to National Fuel, no later than three (3) Business Days following the rendering of the applicable statement. In the event of any net amount due to National Fuel under the applicable statement, SCO Supplier shall pay this net amount to National Fuel within five (5) Business Days of its receipt of such statement.

- 8.2 Subject to the other terms and conditions set forth in this Article 8, National Fuel agrees to purchase from SCO Supplier, and SCO Supplier agrees to sell to National Fuel, SCO Accounts Receivable without discount during the term of this Agreement, and National Fuel agrees to make such purchases on a daily basis during such term. Although the purchase price for SCO Accounts Receivable, in general, shall be owed by National Fuel on the date such receivable came into existence, the actual payment by National Fuel for such SCO Accounts Receivable shall be effected on a monthly basis consistent with the remittance schedule described in the immediately preceding paragraph.
- 8.3 National Fuel and SCO Supplier intend that each purchase of a SCO Accounts Receivable by National Fuel hereunder shall be regarded as a “true sale” of such SCO Accounts Receivable by SCO Supplier to National Fuel. If, however, contrary to the mutual intent of the Parties, some or all such purchase and sale transactions are not properly characterized as “true sales” under applicable law, then, and to that extent, effective as of the date of this Agreement, SCO Supplier shall be deemed to have granted (and SCO Supplier does hereby grant) to National Fuel a security interest in all of its right, title and interest in and to all of such SCO Accounts Receivable not deemed to be the subject of “true sales,” whether now owned and existing or hereafter acquired or arising, all Related Security and Collections with respect thereto and, to the extent not otherwise included in the foregoing, all proceeds of any and all of the foregoing, as security for the prompt and faithful performance by SCO Supplier of each and all of its obligations under this Agreement.
- 8.4 Notwithstanding anything contained in this Agreement to the contrary, National Fuel shall have no obligation to purchase SCO Accounts Receivable hereunder (a) if the sale or the grant of a security interest in the SCO Accounts Receivable by SCO Supplier cannot be effectuated or transferred, as applicable, free and clear of any and all liens, security interests, claims, or other encumbrances; (b) if any person or entity shall successfully challenge National Fuel's right to purchase SCO Accounts Receivables or retain amounts collected from SCO Customers as a result of the sale of SCO Accounts Receivable hereunder, either before Commission or in Federal or State Court; (c) if SCO Supplier is no longer certified to supply natural Gas in Ohio or eligible to supply service on National Fuel's system; or (d) an Event of Default by SCO Supplier under Article 10 of this Agreement has occurred. In the event that National Fuel shall purchase SCO Accounts Receivable, notwithstanding its lack of any obligation or duty to do so and irrespective of its knowledge, or lack thereof, of the existence of events or occurrences relieving it of such obligation or duty, National Fuel, in any such instance, may upon written notice to SCO Supplier require SCO Supplier immediately to repurchase, in whole or in part, uncollected SCO Accounts Receivable previously purchased and paid for by National Fuel hereunder, for the same amount paid by National Fuel therefore.
- 8.4.1 National Fuel agrees to purchase SCO Supplier's SCO Accounts Receivable without discount during the term of this Agreement so long as National Fuel has continuing authority pursuant to Commission entry to recovery of its uncollectible customer receivables. In the event such continuing authority is altered pursuant to Commission entry, National Fuel will purchase SCO Accounts Receivable as of the effective date of Commission alteration of said continuing authority at a discount reflecting the unrecovered portion of the customer accounts receivable, which excludes Percentage of Income Payment Plan (PIPP) uncollectible customer receivables.
- 8.5 National Fuel will calculate applicable state and local sales taxes and place those charges on SCO Customer bills. SCO Supplier, and not National Fuel, shall be fully responsible for all Ohio sales tax deficiencies and audits regarding SCO Supplier's sale of natural Gas to SCO Customers under the SCO Program. National Fuel acknowledges that it is providing a billing service to the SCO Supplier in those situations where National Fuel collects the sales tax and remits the same to SCO Supplier. SCO Supplier is

responsible for remitting such sales tax to the State of Ohio. SCO Supplier is also responsible for collecting and maintaining Ohio sales tax exemption certificates from those SCO Customers who are not required to pay the sales tax and communicating same to National Fuel via EDI files. National Fuel is, however, fully responsible for all Ohio tax deficiencies and audits regarding National Fuel's charges related to the distribution of natural Gas to SCO Customers. To the fullest extent permitted by applicable law, SCO Supplier shall defend, indemnify, and hold National Fuel harmless from any and all costs, claims, damages, fines, taxes and any penalties and interest thereon, relating in any way to (i) National Fuel's reliance on information or directives provided by SCO Supplier to National Fuel, or (ii) National Fuel's collection or remittance or failure to collect or remit sales taxes on SCO Supplier's behalf, or (iii) the failure of SCO Supplier to satisfy its tax obligations related to the sale of natural Gas under the SCO Program. This indemnification obligation shall survive the termination or expiration of this Agreement.

- 8.6 National Fuel shall be entitled to collect and retain from SCO Customers any and all late payment fees specified in the Tariff. National Fuel reserves the right to adjust SCO Supplier's account with regard to purchases giving rise to SCO Accounts Receivable for up to twelve (12) months after the original billing date for any individual SCO Customer's bill at issue, for accounting or billing errors, SCO Customer billing disputes, or any other necessary or appropriate adjustments.
- 8.7 In furtherance of the "true sales" or the grants of the security interests contemplated by this Article 8, SCO Supplier hereby certifies and represents to National Fuel that:
- a. SCO Supplier's correct legal name is as set forth in the introductory paragraph of this Agreement;
  - b. SCO Supplier is organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_;
  - c. the SCO Accounts Receivables intended to be sold by SCO Supplier hereunder will be free and clear of any and all liens, security interests, claims, or other encumbrances; and
  - d. under applicable law, National Fuel shall be, and hereby is, entitled to file one or more financing statements in those filing offices deemed necessary or appropriate by National Fuel, naming SCO Supplier as debtor or seller and National Fuel as secured party or buyer and describing the SCO Accounts Receivable, the Collections, and the Related Security as collateral.

## **ARTICLE 9**

### **Offsets by National Fuel**

- 9.1 In the event of a default, National Fuel may offset or recoup any and all amounts owed to it by Defaulting SCO Supplier including those amounts owed to non-defaulting SCO and Choice Suppliers for serving Defaulting SCO Supplier's SCO and DSS Pool demands, or for which it may be held responsible as a result of Defaulting SCO Supplier's participation in the SCO Program (collectively, the "Offset Amounts"), against and from any and all amounts payable by National Fuel to Defaulting SCO Supplier under the Agreement, including without limitation any amounts payable by National Fuel with respect to the SCO Accounts Receivable and DSS Sales Revenues. The Offset Amounts shall include without limitation:
- (1) all amounts being charged to Defaulting SCO Supplier as a result of its participation in this SCO Program,
  - (2) all amounts owed directly to National Fuel by Defaulting SCO Supplier,
  - (3) all amounts for which National Fuel is or may be held responsible if not paid by SCO Supplier, including without limitations any and all capacity charges billed by interstate pipeline companies and
  - (4) all other amounts

which National Fuel is entitled to recoup. National Fuel shall toll its offsetting or recoupment of such amounts out of the SCO Accounts Receivable and DSS Sales Revenues in the event that, and only to the extent that, Defaulting SCO Supplier raises a bona fide dispute as to whether it owes money to National Fuel, pending a good faith review of the dispute. To toll that process, Defaulting SCO Supplier shall provide a detailed written description of the dispute, including disputed amounts, to National Fuel. National Fuel may withhold payment to Defaulting SCO Supplier of any SCO Accounts Receivable or DSS Sales Revenues related to said dispute until it has been resolved.

- 9.2 All charges or penalties related to operational balancing and other services provided by National Fuel are specified in the Tariff.

## **ARTICLE 10**

### **Default**

- 10.1 Each of the following constitutes an Event of Default:
- a. The failure of SCO Supplier to deliver its Firm Delivery Obligations that has not been cured after two (2) Business Days following written notice from National Fuel to cure such failure.
  - b. The failure of one Party to pay to the other Party amounts due under this Agreement on or before the Second Business Day following written notice that such payment is due.
  - c. The failure of SCO Supplier to meet or otherwise maintain the requirements for participating in the SCO Program, including without limitation the provision of any Financial Assurance Obligations, required from time to time pursuant to the Agreement.
  - d. A Party's voluntary filing of a bankruptcy petition, the filing of an involuntary bankruptcy petition by a Party's creditors, or having a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to Party or substantially all of Party's assets.
  - e. A Cross Default.
  - f. To the extent not specifically identified above, the failure of a Party to perform, to a material extent, any of its obligations under the Agreement.
  - g. A material misrepresentation by one Party to the other Party in or pursuant to the Agreement.

## **ARTICLE 11**

### **Title, Warranty, and Indemnity**

- 11.1 With respect to the SCO Pool, SCO Supplier shall have responsibility for, and assume any liability with respect to, the Gas. With respect to the DSS Pool, SCO Supplier shall have responsibility for, and assume any liability with respect to, the Gas prior to its delivery to National Fuel at the specified Delivery

Point(s). Subject to the exceptions set forth herein below, National Fuel shall have responsibility for and any liability with respect to the distribution of said Gas after its delivery to National Fuel at the Delivery Point(s).

- 11.2 SCO Supplier warrants that it will, at the time and place of delivery, have good right and title to all volumes of Gas delivered on its behalf. Except as provided in this Article 11 and in Article 19, all other warranties, express or implied, including any warranty of merchantability or fitness for any purpose with regard to the Gas are disclaimed.
- 11.3 SCO Suppliers agrees to indemnify National Fuel 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 or property damage from said Gas or other charges.
- 11.4 Notwithstanding the other provisions of this Article 11, as between SCO Supplier and National Fuel, SCO Supplier will be liable for all Claims to the extent that such arise from the failure of Gas delivered by SCO Supplier to meet the quality requirements of the Receiving Transport Provider.

## **ARTICLE 12**

### **Remedies**

- 12.1 If an Event of Default occurs and is ongoing, the other Party (the "Non-Defaulting Party") may provide written or faxed notice to the Defaulting Party describing the Event of Default and declaring its intention to terminate this Agreement unless the Event of Default is remedied to the satisfaction of the Non-Defaulting Party within the following time period: (a) For an Event of Default consisting of a failure to deliver a Party's Firm Delivery Obligations or provide, in whole or in part, any Financial Assurance Obligation required from time to time by the Agreement, two (2) Business Days; (b) For all other Events of Default, five (5) Business Days. If the Defaulting Party remedies the Event of Default to the satisfaction of the Non-Defaulting Party within that period, then such notice shall be deemed to have been withdrawn and this Agreement shall continue in full force and effect. If the Defaulting Party fails to so remedy the Event of Default within that period of time, then, at the option of the Non-Defaulting Party, this Agreement may be terminated. This remedy of termination is and shall be without waiver of any other remedy, whether at law or in equity, to which the Non-Defaulting Party may be entitled for breach of this Agreement. SCO Supplier agrees that, in the Event of Default as defined in this Agreement, and in addition to any other rights and remedies National Fuel may enjoy, National Fuel shall have the right to liquidate and use the proceeds from any and all of SCO Supplier's Financial Assurance Obligations and Purchase of Receivables to satisfy SCO Supplier's obligations under the Agreement. In addition, upon the occurrence of an Event of Default, National Fuel shall have the rights of an absolute owner of SCO Accounts Receivable purchased by National Fuel hereunder or, as applicable, the rights of a secured party under Article 9 of the Uniform Commercial Code as is in effect in the State of Ohio with respect to the SCO Accounts Receivable, the Collections, and the Related Security.
- 12.2 To meet the gas supply requirements of National Fuel's Ohio retail customers and thus help ensure adequate and reliable gas utility consumer services, and to avoid irreparable harm to National Fuel or its retail customers, National Fuel may recall permanently or temporarily all or some of its released capacity/service rights, if National Fuel receives notice of material change(s) in creditworthiness of replacement shippers (Supplier and Supplier's Designee), including without limitation:

- (i) their nonpayment of Transporter's invoice relating to these released capacity/service rights;
- (ii) their past due, deficiency, or default status pursuant to Transporter's tariff; suspension of service; receipt of contract termination notice due to default or credit-related issues; receipt of notice that they are no longer creditworthy and have not provided credit alternative(s);
- (iii) an event of default having been declared under a Choice Supplier Pooling Agreement or a Standard Choice Offer Supplier Agreement with National Fuel; or
- (iv) their noncompliance with National Fuel's Tariff; or (v) their imminent or actual filing under bankruptcy laws.

12.3 In the event that, during the term of this Agreement, (i) SCO Supplier files a petition for relief under Federal bankruptcy laws, or (ii) SCO Supplier's creditors file an involuntary bankruptcy petition against SCO Supplier, or (iii) a receiver, provisional liquidator, conservator, custodian, trustee or other similar official is appointed with respect to SCO Supplier or substantially all of SCO Supplier's assets, and this Agreement has not been terminated for non-delivery of Gas supplies, then SCO Supplier shall cause a notice to be filed with the bankruptcy or other appropriate court having jurisdiction, within five (5) Days of the petition having been filed or the appointment having been made, as applicable, indicating its intention either to assume or reject this Agreement and shall promptly thereafter take all actions necessary to effectuate such assumption or rejection; provided, however, that nothing herein shall prohibit National Fuel from objecting to such notice of assumption or rejection. To the fullest extent permitted by applicable law, SCO Supplier's failure to file such notice of intention within said five (5) Days shall constitute notice that SCO Supplier intends to reject this Agreement. SCO Supplier acknowledges that its failure to take action to declare its intent may cause irreparable harm to National Fuel and/or SCO Customers.

12.4 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 as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 12.3.1 of all transactions under the Agreement.

12.4.1 As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner the amount owed (whether or not then due) by each Party with respect to all Gas delivered and received between the Parties on and before the Early Termination Date 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 Agreement. In addition, the Non-Defaulting Party shall be entitled to collect from the Defaulting Party, all costs incurred (including but not limited to Transport Provider's capacity charges, fuel and demand charges, imbalance and cash out charges, Transport Provider penalties and reservation charges, and SCO Program charges) due to the termination and liquidation under this Section.

- (i) The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the Parties under Section 12.4.1, 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 owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Financial Assurance Obligations relating to the Agreement; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the Parties.

12.4.2 If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 12.3.2 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 12.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

- 12.5 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 such 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 shall be paid by the close of business on the second (2nd) 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 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.

## **ARTICLE 13**

### **Force Majeure**

- 13.1 Except for actual delivered costs, plus shrinkage, of replacement supplies and flow through of penalty charges, if any, neither Party shall be liable in damages to the other for any act, omission, or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, storms, floods, washouts, civil disturbances, explosions, breakage, or accident to machinery or lines of pipe, Gas curtailment imposed by interstate or intrastate pipelines, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the Party claiming suspension and which by the exercise of due diligence such Party is unable to prevent or overcome. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the Party claiming suspension.
- 13.2 Such causes or contingencies affecting the performance hereunder by either Party hereto, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and to remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve SCO Supplier from its obligations to make payments of amounts due hereunder, including without limitation the provision of any Financial Assurance Obligations required under the Agreement.

## **ARTICLE 14**

### **Customer Information and Data Requests**

- 14.1 SCO Supplier agrees to use any customer information provided to SCO Supplier by National Fuel pursuant

to SCO Supplier's participation in the SCO Program solely for the purpose of SCO Supplier's performance of its obligations pursuant to this Agreement and for the purpose of soliciting conversion of its SCO Pool Customers served pursuant to its SCO Supply Rights to SCO Supplier's competitive products offered by SCO Supplier in the National Fuel market pursuant to the National Fuel Choice Program. Further, SCO Supplier agrees not to disclose or permit to be disclosed the customer-specific information to any person other than those employees or agents of SCO Supplier who are responsible for soliciting customers and to limit use of such disclosed information by such employees or agents to those purposes stated herein. In the event SCO Supplier ceases to act as an SCO Supplier, said SCO Supplier shall, at the direction of National Fuel, either return customer specific information to National Fuel or destroy such customer specific information.

- 14.2 National Fuel does not guarantee the accuracy of the customer information provided in response to SCO Supplier's request for a list of customers eligible to participate in the Choice Program, and shall not be liable for any errors in such information.
- 14.3 National Fuel, at its discretion, may decline to provide SCO Supplier with any customer information or data of any kind that is not already provided by National Fuel. Requests by SCO Supplier for additional information or data may be granted by Company at an agreed-upon fee to reimburse Company for any costs incurred in providing the information or data. Any type of data provided to any SCO Supplier may also be provided, upon request, to other SCO or Choice Suppliers.

## **ARTICLE 15**

### **Limitations on Remedies and Damages**

- 15.1 This Agreement is entered into solely for the benefit of National Fuel and SCO Supplier and is not intended and should not be deemed to vest any rights, privileges or interests of any kind or nature in any third party, including, but not limited to the SCO Customers and DSS Customers that SCO Supplier supplies under this Agreement.
- 15.2 FOR BREACH OF ANY PROVISION FOR WHICH ONE OR MORE EXPRESS REMEDIES OR AN EXPRESS MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR REMEDIES OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMED(IES). 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, 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 AGREEMENT, 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,

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.

- 15.3 NOTWITHSTANDING ANYTHING CONTAINED IN THE IMMEDIATELY PRECEDING PARAGRAPH TO THE CONTRARY, THE FOREGOING LIMITATIONS ON REMEDIES AND/OR DAMAGES SHALL NOT APPLY TO ANY PROVISIONS OF THIS AGREEMENT EXPRESSLY SETTING FORTH A DIFFERENT RULE AS TO REMEDIES OR DAMAGES, AND UPON AN EVENT OF DEFAULT HEREUNDER, THE NON-DEFAULTING PARTY SHALL BE ENTITLED TO RECOVER FROM THE DEFAULTING PARTY ITS REASONABLE ATTORNEY'S FEE IN VINDICATING AND ENFORCING ITS RIGHTS HEREUNDER, WHETHER OR NOT LITIGATION IS COMMENCED.

## **ARTICLE 16**

### **Succession and Assignment**

- 16.1 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. However, SCO Supplier shall not assign this Agreement, in whole or in part, without the prior written approval of National Fuel, which shall not be unreasonably withheld.

## **ARTICLE 17**

### **Applicable Law and Regulations**

- 17.1 The Agreement shall be construed under the laws of the State of Ohio and shall be subject to all valid applicable State, Federal and local laws, rules, orders, and regulations. Nothing herein shall be construed as divesting or attempting to divest any regulatory body of any of its rights, jurisdiction, powers or authority conferred by law. The Agreement is subject to the continuing jurisdiction of the Commission. In the event that there is a change in any law, rule or regulation that National Fuel determines, in its sole and absolute discretion, materially affects the purpose of the Agreement or National Fuel's ability to perform its obligations pursuant to the Agreement, the Parties agree to attempt to negotiate modifications to the Agreement for the purpose of minimizing or eliminating those impacts on National Fuel. If the Parties are unable to agree to modifications to the Agreement within fourteen (14) Days of entering negotiations, National Fuel shall have the right to terminate this Agreement.
- 17.2 All civil disputes between the Parties shall be filed in Franklin County, Ohio after administrative remedies have been exhausted.

## **ARTICLE 18**

### **Notices and Correspondences**

- 18.1 Legal and Agreement-related notices to National Fuel shall be addressed as follows and sent via fax, U.S. mail or certified mail:

National Fuel Gas Distribution of Ohio, LLC  
6363 Main Street Williamsville, NY 14221  
Attention: General Counsel

With a copy to:

National Fuel Gas Distribution of Ohio, LLC  
6363 Main Street  
Williamsville, NY 14221  
Attention: Gas Supply Administration – Transportation Services  
E-mail: [TSOhio@natfuel.com](mailto:TSOhio@natfuel.com)

- 18.2 Daily operational notices and correspondence to National Fuel shall be addressed as to:

National Fuel Gas Distribution of Ohio, LLC  
6363 Main Street  
Williamsville, NY 14221  
Attention: Gas Supply Administration - Transportation Services  
E-mail: [TSOhio@natfuel.com](mailto:TSOhio@natfuel.com)

- 18.3 Legal and Agreement-related notices and correspondence to SCO Supplier shall be addressed as follows and sent via fax, U.S. mail, email or certified mail:

Attention/Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City State, ZIP: \_\_\_\_\_

Fax Notice to Supplier shall be directed to: ( \_\_\_\_\_ ) \_\_\_\_\_

Email Address: \_\_\_\_\_

- 18.4 Daily operational notices and correspondence to SCO Supplier shall be addressed to the party identified by the SCO Supplier when enrolling in National Fuel's Marketer Extranet. Either Party may change the aforementioned information for legal and contractual notices, effective upon receipt, by written notice to the other Party.
- 18.5 All invoices, Monthly Statements, payments and other communications made pursuant to the Agreement ("Notices") shall be made to the addresses specified in writing by the respective Parties identified in Article 18 of this Agreement, as updated from time to time.
- 18.6 All Notices required hereunder may be sent by facsimile or mutually acceptable electronic means, a

nationally recognized overnight courier service, first class mail or hand delivered.

- 18.7 Notice shall be effective upon receipt, provided that if the Day on which the Notice is received is not a Business Day or if the Notice is received after 5:00 p.m. (EST) on a Business Day, such Notice will be deemed to be effective on the next Business Day. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending Party's receipt of its facsimile machine's confirmation of successful transmission. If the Day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving Party. Notice via first class mail shall be considered delivered five Business Days after mailing.

## **ARTICLE 19**

### **Miscellaneous**

- 19.1 If any provision in this Agreement 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 of this Agreement.
- 19.2 No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.
- 19.3 This Agreement sets forth all understandings between the Parties respecting each transaction subject hereto, and any prior Agreements, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Agreement. This Agreement may be amended only by a writing executed by both Parties.
- 19.4 This Agreement 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 Agreement or transaction or any provisions thereof, including without limitation the terms and provisions of the SCO Supplier Service Rate Schedule and the SCO Supplier Terms and Conditions of the Tariff and the terms and provisions of the SCO Program.
- 19.5 Each Party represents and warrants that it has full and complete authority to enter into and perform this Agreement. Each person who executes this Agreement on behalf of either Party represents and warrants to the other Party that he or she has full and complete authority to do so and that such Party will be bound thereby.
- 19.6 The headings and subheadings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement between the Parties and shall not be used to construe or interpret the provisions of this Agreement.
- 19.7 In the event of any conflict between one or more of the (i) SCO Supplier Rate Schedule and SCO Supplier Terms and Conditions of the Tariff, (ii) the SCO Program, and (iii) this SCO Supplier Agreement, the terms of these documents shall govern in the priority listed in this sentence.
- 19.8 Neither Party shall disclose directly or indirectly, without the prior written consent of the other Party, the

terms of this Agreement to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of a Party, or prospective purchasers of all or substantially all of a Party's assets or of any rights under this Agreement, 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 Agreement , (iii) to the extent necessary to implement this Agreement, or (iv) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each Party shall notify the other Party of any proceeding of which it is aware which may result in disclosure of the terms of this Agreement (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Agreement is not subject to this confidentiality obligation. Subject to Article 15, 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 this Agreement shall be kept confidential by the Parties hereto for one year after the expiration of the Agreement. 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 Agreement 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.

IN WITNESS WHEREOF, the Parties hereto executed this Agreement on the Day and year first above written.

**NATIONAL FUEL GAS DISTRIBUTION OF OHIO, LLC**

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

SCO SUPPLIER COMPANY NAME: \_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

## Attachment A

|                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>National Fuel Gas Distribution of Ohio, LLC</u><br><u>6363 Main Street</u><br><u>Williamsville, NY 14221</u><br>Duns Number: <u>00-486-6344</u><br>Contact Number: _____<br>U.S. Federal Tax ID Number: <u>35-2107003</u>                                                                         | <b>SCO Supplier:</b><br>_____<br>_____<br>_____<br>Duns Number: _____<br>Contract Number: _____<br>U.S. Federal Tax ID Number: _____                                                                                                                                                       |
| <b>Notices:</b><br><u>6363 Main Street, Williamsville, NY 14221</u><br>Attn: <u>Gas Supply Administration – Transportation Services</u><br>Phone: <u>716-857-7446</u> Fax: <u>716-857-7479</u><br>eMail: <a href="mailto:TSOhio@natfuel.com">TSOhio@natfuel.com</a>                                  | <b>Notices:</b><br>_____<br>Attn: _____<br>Phone: _____ Fax: _____<br>A copy of this notice shall also be sent to:<br>_____<br>_____<br>_____<br>_____                                                                                                                                     |
| <b>Invoices and Payments:</b><br><u>National Fuel Gas Distribution of Ohio, LLC</u><br>Attn: <u>Transportation Billing</u><br><u>6363 Main Street</u><br><u>Williamsville, NY 14221</u><br>Phone: <u>716-857-7432</u><br>eMail: <a href="mailto:TSD-Billing@natfuel.com">TSD-Billing@natfuel.com</a> | <b>Invoices and Payments:</b><br>_____<br>Attn: _____<br>_____<br>Phone: _____ Fax: _____<br>eMail: _____                                                                                                                                                                                  |
| <b>Wire Transfer or ACH Numbers (if applicable):</b><br><u>National Fuel Gas Distribution of Ohio, LLC</u><br>Bank: _____<br>ABA: _____<br>ACCT: _____<br>Other Details: _____                                                                                                                       | <b>Wire Transfer or ACH Numbers (if applicable):</b><br>Vendor Name: _____<br>Vendor Mailing Address: _____<br>_____<br>Bank: _____<br>Bank Location: _____<br>Wire ABA Routing #: _____<br>ACH ABA Routing #: _____<br>Wire ACCT #: _____<br>ACH Account #: _____<br>Other Details: _____ |

## FORM LETTER OF CREDIT

(Exhibit A)

**NOTE: All drafts must be approved by National Fuel PRIOR TO final execution.**

National Fuel Eligible Letter of Credit Guideline.

National Fuel business units must ensure that any letter of credit accepted by National Fuel meets the guidelines listed below:

An “Eligible Letter of Credit” means an irrevocable standby letter of credit which has been

- a) duly executed and issued by a “Qualified Institution”
- b) duly authenticated
- c) in favor or for the benefit of the Secured Party/Beneficiary
- d) in an amount which is an integral multiple of US\$10,000.00
- e) available unconditionally on demand in writing (including a written request transmitted by facsimile or electronic mail)
- f) with an expiration date no earlier than 120 calendar days after the date of its issue and delivered to the Secured Party/Beneficiary
- g) substantially in the form attached hereto as Exhibit A, and
- h) otherwise satisfactory to the Secured Party/Beneficiary in all respects.

“Qualified Institution” means a United States of America (USA) state or federally chartered bank or a non-USA. bank acting through a USA branch or agency office, which at the time when the relevant Letter of Credit is issued, has assets of at least US\$10Billion and a Credit Rating of at least “A” by Standard and Poor's Rating Group (a division of the McGraw-Hill Companies, Inc.) or its successor and/or at least “A2” by Moody's Investors Service, Inc.

Each Eligible Letter of Credit shall be provided in such manner as is mutually agreed in writing by the parties or is customary in the relevant market, and each Eligible Letter of Credit shall be maintained for the benefit of the Beneficiary.

When providing Eligible Letters of Credit, the Applicant may amend the amount of an outstanding Eligible Letter of Credit or procure one or more additional Eligible Letters of Credit.

In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses and attorneys' fees of the Beneficiary) of establishing, renewing, substituting, canceling and increasing the amount of one or more Eligible Letters of Credit (as the case may be) shall be borne by the Applicant.

**NOTE: For Standard Choice Offer Auction (SCO), beneficiary is  
National Fuel Gas Distribution of Ohio, LLC**

EXHIBIT A  
IRREVOCABLE STANDBY LETTER OF CREDIT

[Letterhead of L/C issuing bank]

Letter of Credit NO. \_\_\_\_\_

Date: \_\_\_\_\_

Ref: \_\_\_\_\_

Amount: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Applicant: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Beneficiary: National Fuel Gas Distribution of Ohio, LLC  
Attention: Credit Department  
6363 Main Street Williamsville, NY 14221  
Email: [CCRMOhio@natfuel.com](mailto:CCRMOhio@natfuel.com)

-----  
At the request of and for the account of \_\_\_\_\_ (the  
"Applicant"), we \_\_\_\_\_ *[name of counterparty on contract]*  
*[name of Bank]* hereby establish this irrevocable transferable standby Letter of Credit in  
your favor for the aggregate amount of up to \_\_\_\_\_ available to you at sight upon demand at our counters at  
(location) against presentation to us of a sight draft referencing this Letter of Credit and the following:

1. Beneficiary's signed sight draft and certificate purportedly signed by one of Beneficiary's authorized officers:

"I am, authorized representative of \_\_\_\_\_ ,  
*[insert full name of Beneficiary]*  
with respect to \_\_\_\_\_ Irrevocable Standby Letter of No. \_\_\_\_\_ ,  
*[insert issuing Bank Details]*  
hereby certify that:

A. Applicant is in default under one or more agreements and/or applicable tariff(s) between Applicant and Beneficiary and the amount of this drawing USD \_\_\_\_\_ is due and owing and remains unpaid (beyond the time allowed for such payment, including following any related notice or grace periods or both) under said agreement(s). Beneficiary has notified applicant, or its successor(s) or assign(s), by certified mail or overnight courier of such default and such default has not been cured. The amount of this draw represents the amount that is immediately due and payable to Beneficiary as a result of the continuing default. We therefore demand payment of (insert amount) as same is due and owing.

OR

B. The Letter of Credit will expire less than twenty (20) days from the date hereof, Beneficiary has requested alternate security from Applicant and Applicant has failed to provide alternate

alternate security in accordance with the terms of the relative agreement(s). Beneficiary is therefore entitled to draw USD \_\_\_\_\_ under the Letter of Credit.”

2. Photocopy of this original Letter of Credit, and amendments if any (if the drawing is for less than the full amount available for drawing under the Letter of Credit), or this original Letter of Credit, and amendments if any (if the drawing is for the full amount available for drawing under the Letter of Credit).

All presentation under this Letter of Credit shall be made at our office located at \_\_\_\_\_.  
*[insert issuing Bank Details]*

We hereby agree with you that documents presented for drawing in compliance with the terms of this Letter of Credit will be duly honored upon presentation at our counters if presented on or before the expiration date. Presentations for drawing may be delivered in person, by mail, by express courier delivery, or by facsimile.

Partial and multiple drawings are allowed hereunder. The amount that may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through the Issuing Bank referencing this Letter of Credit.

All Issuing Bank charges are for the account of the Applicant.

Notices, including claims but excluding drawings, concerning this Letter of Credit may be sent to a party by express courier, certified mail, registered mail or facsimile to its respective address set out below. All such notices and communications shall be effective when received by the intended recipient party as evidenced by courier receipt, certified or registered mail receipt or facsimile confirmation report, as applicable.

If to the Beneficiary:

National Fuel Gas Distribution of Ohio, LLC  
Attention: Credit Department  
6363 Main Street, Williamsville, NY 14221  
Email: CCRMOhio@natfuel.com

If to the Applicant: \_\_\_\_\_

If to Issuing Bank: \_\_\_\_\_

This standby Letter of Credit is subject to the 1998 International Standby Practices, International Chamber of Commerce Publication No. 590 (“ISP98”). As to matters not addressed by the ISP98, this Letter of Credit is subject to and governed by the laws of the State of Texas and applicable U.S. federal law.

With respect to Article 5.01a.i of the ISP98, Issuing Bank shall have a reasonable amount of time, not to exceed three (3) banking days following the date of its receipt of documents from the Beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform the Beneficiary accordingly.

In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business and causes the location for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

This Letter of Credit is transferable (whether one or more times), and we hereby consent to such transfer, but otherwise may not be amended, changed or modified without the express written consent of the Beneficiary, the Issuing Bank and the Applicant. Any transferee of the Beneficiary shall become a Beneficiary under this Letter of Credit.

BANK SIGNATURE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**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 Ohio 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 facsimile with date and sending Party identified to the following addresses:

National Fuel Gas Distribution of Ohio, LLC  
6363 Main Street, Williamsville, NY 14221

Attn: Office of the General Counsel  
Phone: 716-857-7000 Fax: 716-857-7206

A copy of this notice shall also be sent to:

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](mailto:TSOhio@natfuel.com)

Potential Supplier:

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

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: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_