

This Master Retail Natural Gas Supply Agreement (“**Master Agreement**”) is entered into as of [REDACTED], 201[REDACTED] (“**Effective Date**”) by and between **CUSTOMER NAME** (“**Customer**”) and Constellation NewEnergy – Gas Division, LLC (“**CNEG**”). CNEG and Customer are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**.”

This Master Agreement sets forth the general terms and conditions governing transactions for the purchase and sale of natural gas and related products and services (each a “**Transaction**”) to one or more of Customer’s facilities (each a “**Facility**”) as agreed to from time to time. Each Transaction may be evidenced by a transaction confirmation (each a “**TC**”) or a rider executed by the Parties which may also provide for the implementation of certain strategies or related services as agreed by the Parties (each a “**Rider**”). Each TC and Rider shall constitute part of and shall be subject to this Master Agreement. This Master Agreement and each TC and Rider shall constitute a single integrated agreement between the Parties (collectively referred to as the “**Agreement**”). In the event of a conflict between (i) a TC, (ii) a Rider and, (iii) the terms and conditions of this Master Agreement the terms shall govern in the priority listed in this sentence. **[NOTE TO TEMPLATE: A TC WILL ONLY BE APPLICABLE IF THE SMARTPORTFOLIO PLUS RIDER IS BEING EXECUTED (ALLOWING CUSTOMER TO SEPARATELY TRANACT WITH CNEG (OUTSIDE OF THE SMARTPORTFOLIO PROGRAM) FOR A PORTION OF ITS VOLUMES). GIVEN THAT THE TC WILL HAVE PRIORITY IN THE EVENT OF A CONFLICT OF BETWEEN THE TERMS OF THE THREE DOCUMENTS, THE TERMS OF THE TC MUST BE CAREFULLY REVIEWED AND AGREED.]**

The Parties intend that they are legally bound by the terms of each Transaction from the moment both Parties execute a Rider and/or a TC. Nothing in this Agreement obligates either Party to enter into a Transaction at any time. “**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time. **[NOTE TO TEMPLATE: WHEN AND IF A TC IS APPLICABLE, THE TERMS SET OUT THEREIN WILL HAVE A CLEAR DEADLINE BY WHICH THE TC MUST BE COUNTER-SIGNED FOR THE OFFER TO REMAIN VALID AND THE TRANSACTION CONFIRMED. THIS MECHANISM IS IN LIEU OF A PROCESS IN WHICH A TC IS EFFECTIVE UNLESS OBJECTED TO WITHIN A SPECIFIED TIME FRAME.]**

## **1. CNEG and Customer Obligations.**

**Natural Gas Supply.** CNEG shall sell and supply, and Customer shall purchase and receive, the Contract Quantity for each Facility identified in a TC or Rider. “**Contract Quantity**” means the quantity of gas to be delivered and received pursuant to a TC or Rider. Such deliveries of natural gas shall be on a Firm, Secondary Firm or Interruptible basis, or otherwise as described in a TC or Rider. “**Firm**” means deliveries may not be interrupted without liability except for reasons of Force Majeure. “**Interruptible**” means deliveries may be interrupted at any time for any reason except for CNEG’s obligation to honor the price set forth in the TC or Rider. The terms of any Transaction between CNEG and Customer shall be as set forth on the applicable TC or Rider, but CNEG will procure gas from its suppliers on terms CNEG deems appropriate. CNEG holds title to the gas and has the sole responsibility to deliver, or cause to be delivered, the natural gas to the applicable Delivery Point. Title shall pass to Customer at the Delivery Point and Customer shall have the sole responsibility for transporting the gas from the Delivery Point. “**Delivery Point**” means the city gate interconnection between the Utility and the upstream Transporter or such other delivery point(s) as are agreed in a TC or Rider. However, to the extent that Customer owned transportation capacity is used to deliver natural gas to the Customer, the Delivery Point shall be the receipt point of such capacity. “**Utility**” means the local distribution company owning and/or controlling and maintaining the distribution system required for delivery of gas to the Facility(ies). “**Transporter**” means a gas gathering or pipeline company, or Utility.

**Failure to Deliver.** If CNEG fails to deliver gas (other than Interruptible) for a reason other than Customer’s breach, CNEG shall pay Customer the “**Replacement Cost**,” which is the amount Customer actually pays to replace the undelivered Contract Quantity (including any brokerage, consulting, administrative, transport and other costs incurred in procuring replacement supply), less the amount Customer would have paid under this Agreement for such Contract Quantity. Subject to Section 6(b) below, this is Customer’s sole and exclusive remedy for CNEG’s failure to deliver gas. If the calculation of the Replacement Cost results in a negative number, then the amount shall be deemed to equal zero. Except to the extent expressly set out in a Rider or TC, Customer is not obligated to take a minimum quantity of gas and shall have no liability for any failure to receive gas, receipt of excess quantities of gas, or other deviations from nominated, planned, or scheduled quantities of gas.

**Nominations and Balancing.** Customer may provide a non-binding estimate of its monthly requirements for each Facility and will use commercially reasonable efforts to advise CNEG of any known ongoing changes to Customer’s requirements. CNEG shall be responsible for all nominations and balancing. Customer shall not be subject to any fees, penalties, cash-outs, costs or charges (in cash or in kind) assessed by CNEG, a Transporter or any other third party relating to nominations, balancing, operational flow orders or any usage or operating instructions requirements (“**Imbalance Charges**”). All Imbalance Charges shall be borne by CNEG. CNEG shall defend, indemnify and hold harmless Customer and all its affiliates, and all of their respective officers, directors, shareholders, associates, employees, agents, representatives, successors and assigns, from and against all Imbalance Charges. If Customer receives an invoice from a Transporter that includes Imbalance Charges, Customer shall promptly provide a copy of such invoice to CNEG. If a Facility continues to receive natural gas from CNEG beyond the Delivery Period, CNEG shall continue to be responsible for nominations and balancing.

**Transporter Restrictions.** If either Party receives an operational flow order or any other usage or operating instructions, restrictions or similar notice (each an “**OFO**”) from a Transporter requiring action to be taken in connection with the flow and/or consumption of gas covered by this Agreement, such party will use commercially reasonable efforts to notify the other party of such event in a timely manner. Such notice may be given by electronic means. Each Party will take all commercially reasonable actions required by the OFO within the time prescribed. CNEG shall be responsible for OFO penalties, charges, fees, costs or expenses. Both Parties agree that OFOs may require CNEG to buy or sell gas quantities in the then-current market conditions, which may be appreciably higher or lower than the original pricing. As CNEG is responsible for nominations and balancing, CNEG shall increase or decrease nominations, as appropriate, to avoid penalties.

## **2. Term of Master Agreement.** The term of this Master Agreement will commence on [the Effective Date] and, unless terminated earlier as provided in this Master Agreement, will continue until terminated by either Party upon thirty (30) days prior written notice to the other Party; provided any TC or Rider will continue to be governed by this Master Agreement until the TC or Rider has been separately terminated or expired.

**Term of TC or Rider.** Each TC or Rider shall set forth the applicable “**Delivery Period**” or term during which deliveries of natural gas are to be made and/or services are to be provided.

**[NOTE TO TEMPLATE: THE EXPECTATION IS THAT THE SMARTPORTFOLIO RIDER (OR SMARTPORTFOLIO PLUS RIDER) WILL BE APPLICABLE FROM A SPECIFIED START DATE, COMMENCING WHEN CUSTOMER’S EXISTING ARRANGEMENT FOR GAS SUPPLY ENDS. CUSTOMER SHOULD TAKE CARE TO CONFIRM WHEN EXISTING ARRANGEMENTS END AND ANY ACTION THAT MAY NEED**

**TO BE TAKEN IN THAT REGARD (E.G. NOTICE TO TERMINATE, NOTICE OF NON-RENEWAL, ETC.). FURTHER IF THERE IS AN EXISTING MASTER AGREEMENT IN PLACE BETWEEN CUSTOMER AND CNEG, THIS CLAUSE SHOULD BE AMENDED SUCH THAT THIS MASTER AGREEMENT COMMENCES ON THE START DATE SPECIFIED IN THE SELECTED RIDER, IN ORDER TO AVOID ANY OVERLAP OR CONFUSION WHICH WOULD ARISE IF TWO MASTER AGREEMENTS WERE IN FORCE AT THE SAME TIME.]**

**3. Information and Authorization.** Customer hereby authorizes CNEG to take such actions CNEG reasonably deems necessary to enroll each Facility with the Utility, to enable the Customer to be supplied by CNEG and to otherwise meet CNEG's obligations under the Agreement, including executing on Customer's behalf any documents necessary to effectuate any Facility enrollment or election, undertaking the management of any storage or transportation capacity allocated to Customer by the Utility or other transporters, disposing of storage balances, adding or deleting Facility(ies) as necessary, receiving usage nominations from the Utility relating to Customer's natural gas requirements, and other similar documents. Customer's signature on this Master Agreement constitutes Customer's written authorization for CNEG to obtain from time to time from the applicable Utility all current and historical natural gas billing, usage data and other related information. Customer shall take any actions, execute any documents and shall provide to CNEG any information as CNEG may reasonably require to facilitate the transactions governed by this Agreement.

**4. Billing and Payment.**

**Billing.** Customer will be billed for natural gas usage and related products and services supplied under the Agreement in one of the following ways based on availability and eligibility of each Facility, which may change from time to time: (a) **Dual Billing:** Customer will receive two invoices, one from CNEG for the natural gas supply and one from the Utility for the amounts payable by Customer for services provided by the Utility ("**Delivery Charges**"); (b) **CNEG Consolidated Billing:** Customer will receive one invoice from CNEG that includes both the natural gas supply charges and the Delivery Charges, each listed separately. In the case of CNEG Consolidated Billing, Customer agrees that (i) Customer remains exclusively liable to the Utility for all Delivery Charges (other than any Imbalance Charges or similar charges, penalties, or costs due to consumption above or below estimated or nominated quantities, which are the sole responsibility of CNEG) provided that CNEG shall remit all Delivery Charges paid to CNEG by Customer, (ii) CNEG shall notify Customer of any discrepancy or inaccuracies in the Delivery Charges given the nomination, usage and other information available to CNEG, provided that the Utility and not CNEG shall be liable for such discrepancies or errors, and (iii) should Customer dispute Delivery Charges, CNEG shall use commercially reasonable endeavors to assist Customer in resolving such issues with the Utility, but the dispute is ultimately a matter for Customer and the Utility to resolve.

**Taxes.** Customer shall pay all federal, state, municipal and local taxes, duties, fees, levies, premiums or other charges imposed by any governmental authority, directly or indirectly, on or with respect to the natural gas and related products and services provided under the Agreement, including without limitation any production, severance or ad valorem taxes, and including any taxes enacted after the Effective Date (collectively, "**Taxes**") at and after the Delivery Point. CNEG shall pay all Taxes prior to the Delivery Point. The term "Taxes" shall include any amounts imposed on Customer directly or on CNEG in its function as Customer's supplier, and that are associated with the supply of gas to Customer. The term "Taxes" shall not include taxes imposed on either Party's business, assets, activities, operations, income, profits or capital generally, any franchise taxes, any taxes in lieu of income taxes and any other taxes imposed on a Party generally; such taxes shall be borne by the Party such taxes are imposed on. If Customer is exempt from any Taxes, Customer shall provide CNEG with any state and/or local exemption certificate prior to the issue date of Customer's first invoice. All Taxes invoiced to Customer under this Agreement will be included on the invoice or in the applicable fixed price as allowed by Law. **[NOTE TO TEMPLATE: CUSTOMER SHOULD NOTE THAT TAXES (SUCH AS SALES AND USE TAX) AND LOCAL DISTRIBUTION CHARGES (SUCH AS THOSE CHARGED BY THE UTILITY) WILL BE PASSED ON TO CUSTOMER AS STATED ABOVE. SCHOOL DISTRICTS SHOULD CONFIRM WHETHER THEY ARE ELIGIBLE FOR AN EXEMPTION FROM TAXES, IN PARTICULAR SALES AND USE TAX, AND IF SO, ENSURE THEY PROVIDE CNEG WITH THE APPROPRIATE CERTIFICATE OF EXEMPTION.]**

**Estimates.** CNEG's ability to invoice Customer is dependent on the Transporter's ability to furnish CNEG with all necessary information, including Customer's metered usage. When there is a delay in receiving information from the Transporter, CNEG will, to the extent necessary, estimate charges and credits for a billing period and reconcile such estimates against actual charges and credits in a future invoice(s). Each invoice is also subject to adjustment for errors in arithmetic, computation, meter readings or other errors. Interest shall not accrue on such adjustments.

**Payment.** All amounts set forth in an invoice are payable to the Party issuing the invoice and will include, in addition to the natural gas supply charges, Delivery Charges, and Taxes, all other amounts related to the purchase and delivery of natural gas which are specifically identified in a Rider or TC. CNEG's invoices will be sent to Customer in accordance with CNEG's normal billing cycle, as adjusted from time to time. CNEG's invoices are due and payable on the the forty-fifth (45th) day after the date of invoice; for payments received and available to CNEG on or before the twenty-fifth (25th) day of the month of gas delivery, a \$0.0015 per billed therm discount will be credited to Customer on the next invoice or such other date as set forth in a Rider (the "**Payment Date**"), to the address set forth on the invoice. Invoices not paid on or before the Payment Date will accrue interest daily on outstanding amounts from the Payment Date until paid in full, at the lesser of 1.5% per month or the highest rate permitted by law. **[NOTE TO TEMPLATE: EACH SCHOOL DISTRICT SHOULD CONSIDER AND AGREE WITH CNEG PAYMENT TERMS APPROPRIATE FOR ITS BUSINESS AND PROCESSES.]**

**Pricing Structures.** "**Contract Price**" means the price for gas as set forth in the applicable TC or Rider. To the extent (a) a Facility requires additional natural gas quantities in excess of the Contract Quantity set forth in a TC or Rider, or (b) a Facility continues to receive natural gas from CNEG beyond the Delivery Period (where such deliveries will be considered month to month), all such natural gas will be priced at Market Price unless otherwise set forth in a Rider. "**Market Price**" means a price comprised of (i) the spot commodity cost of gas as determined by CNEG in its reasonable discretion, (ii) all related interstate and intrastate pipeline charges required to deliver gas to the Delivery Point (other than any Imbalance Charges or similar charges, penalties, or costs due to consumption above or below estimated or nominated quantities, which are the sole responsibility of CNEG), and (iii) a reasonable market based margin. Market Price does not include any applicable Utility charges, unless otherwise agreed upon.

**Market Disruption.** If the Contract Price is based in whole or in part upon a specified index and a Market Disruption Event occurs on a day on which the relevant source published or was to publish the relevant price, then the Parties shall negotiate in good faith to agree on an alternative method of determining the Contract Price. A "**Market Disruption Event**" is any one of the following: (a) failure of the specified index to announce or publish information necessary for determining the Contract Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the exchange or market acting as the specified index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the specified index; or (e) a material change in the formula for or the method of determining the relevant price component.

**Price Locks.** Unless otherwise set forth in a TC or a Rider, Customer can request to lock in the commodity price for any month(s) at any time

during the Delivery Period, prior to 12:00 p.m. EST/EDT on the final day of NYMEX last day settlement for each applicable delivery month. Commodity purchase/sale prices exclude pipeline and Utility distribution charges. Customer also has the right to lock basis at a fixed price and at predetermined volumes. Basis includes interstate and intrastate pipeline transportation but does not include the commodity cost or the Delivery Charges.

5. **Further Assurances.** If CNEG has reasonable grounds: (i) to believe that Customer's creditworthiness has become unsatisfactory; or (ii) for insecurity with respect to Customer's performance under the Agreement, CNEG may demand, in writing, adequate assurance of future performance in the form of a 1-month prepayment of Customer's average estimated consumption of gas, such pre-payment to be made within thirty (30) days following the date of the CNEG demand. If at any time CNEG requires Customer to prepay for gas, then CNEG shall be under no obligation to deliver gas if Customer fails to pay any prepayment by its due date unless and until such prepayment has been made.
6. **Event of Default.** An "Event of Default" means any one of the following: (a) Customer's failure to make, when due, any payment required under the Agreement if not paid within thirty (30) days (or such longer period required by applicable law) following written notice to Customer that a payment is past due; (b) CNEG's failure to deliver gas for a reason other than Customer's breach or Force Majeure on six(6) or more occasions in any twelve-month period; (c) any representation or warranty made by a Party in the Agreement is false or misleading in any material respect when made or ceases to remain true in all material respects during the term of the Agreement, if not cured within thirty (30) days after written notice from the other Party; (d) Customer fails to make a prepayment as provided in this agreement; (e) the failure by a Party to perform any material obligation set forth in this Agreement (other than the events that are otherwise specifically covered as a separate Event of Default hereunder or a failure to deliver or receive gas) which is not cured within thirty (30) days after receipt of written notice thereof; or (f) a Party: (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed for it or any substantial portion of its property or assets (iii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law for the protection of creditors, or has such petition filed against it; (iv) otherwise becomes bankrupt or insolvent (however evidenced); (v) is unable to pay its debts as they fall due; or (vi) is dissolved (other than pursuant to a consolidation, amalgamation or merger).
7. **Remedies Upon Event of Default.** If an Event of Default occurs with respect to a Party (the "Defaulting Party"), the other Party (the "Non-Defaulting Party") may, in its discretion, at any time, (i) withhold any payments or suspend any deliveries hereunder and/or (ii) terminate the Agreement including any Rider, TC and associated Transactions, either in whole or solely with respect to those Facility(ies) adversely affected by such Event of Default (at the Non-Defaulting Party's election), upon written notice to the Defaulting Party setting forth the effective date of termination (the "Early Termination Date"). Further, if Customer is the Defaulting Party, then CNEG may, without waiving any rights or remedies it may have, to the extent applicable, remove Customer from CNEG's managed balancing and/or storage pools and/or apply any storage balance at prevailing market prices as an offset against the amount owed to CNEG by Customer. If this Agreement is terminated, the Non-Defaulting Party will in good faith calculate a termination payment as set forth below and the owing Party shall pay such amount within thirty (30) days of receipt of notice of the amount due. The Parties acknowledge and agree that any termination payment under the Agreement constitutes a reasonable approximation of harm or loss, and is not a penalty or punitive in any respect. The remedies under this Section 7 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Event of Default. The Defaulting Party may issue a notice to the Non-Defaulting Party disputing the calculation of the termination payment within fifteen (15) days of receipt of notice from the Non-Defaulting party of the amount due. The Non-Defaulting Party shall respond to the matters set out in the Defaulting Party's notice within ten (10) days. If the Defaulting Party still disputes the calculation, it may exercise its rights and remedies under applicable law.

As of the Early Termination Date, the Non-Defaulting Party shall determine: (i) the difference between the Contract Value and the Market Value, such that the difference shall be due to the Customer (if, and only if, Customer is the Non-Defaulting Party) if the Market Value exceeds the Contract Value and to CNEG (if, and only if, CNEG is the Non-Defaulting Party) if the opposite is the case; (ii) the Non-Defaulting Party's Costs; (iii) the amount owed (whether or not then due) by each Party with respect to all gas delivered and received; and (iv) any Replacement Cost amounts owing under Section 1. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the Parties under this Section, so that all such amounts are netted or aggregated to a single liquidated amount payable by one Party to the other.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party as a result of the Event of Default. The "Contract Value" shall be the Contract Price (net of all transportation, fuel, and other delivery costs, charges, and taxes), multiplied only by the amount of gas, as determined by the Non-Defaulting Party, that would have been delivered under a terminated TC associated with a SmartPortfolio Plus Rider and any Volatility Protection Volumes as to which the price has been fixed in accordance with a Rider as of the Early Termination Date, had it not been terminated early (the "Terminated Volumes"), and shall not include any other quantities estimated or expected to be delivered under a Rider. The "Market Value" shall be the amount, as of the Early Termination Date, a third party would pay for the Terminated Volumes at the Delivery Point(s) at current market prices. The Non-Defaulting Party may determine the Market Value of a terminated transaction by reference to information either available to it internally or supplied by one or more third parties including, without limitation, any or all of the settlement prices of NYMEX gas futures contracts, quotations from leading dealers, energy swap agreements or physical gas trading markets, similar sales or purchases, and any other bona fide offers from either third parties or affiliates of the Party, all as commercially available to the Party and adjusted for the length of the term and differences in transportation costs and other factors, as the Party reasonably determines. The Non-Defaulting Party shall not be required to enter into a replacement transaction in order to determine or be entitled to a termination payment.

8. **Change in Law.** CNEG may pass through or allocate, as the case may be, to Customer any increase or decrease in CNEG's costs related to the natural gas and related products and services sold to Customer that results from the implementation of new, or changes (including changes to transportation rates as established or approved by a governmental authority) to existing, Laws, or other requirements or changes in administration or interpretation of Laws or other requirements. "Law" means any law, rule, regulation, ordinance, statute, judicial decision, administrative order, or rule of any commission or agency with jurisdiction in the state in which the Facility(ies) is located. Such adjusted amounts will be included in subsequent invoices to Customer.
9. **Representations and Warranties.** Each Party warrants and represents to the other (now and deemed repeated by each Party on each date on which a Rider or TC is executed) that: (i) it is duly organized, validly operating and in good standing under the laws of the jurisdiction of its formation; (ii) it is authorized and qualified to do business in the jurisdictions necessary to perform under the Agreement; (iii) execution, delivery and performance of the Agreement are duly authorized and do not violate any governing documents or any of its contracts or any applicable Law; and (iv) there is no material event(s) or agreement(s) which would impair that Party's right, authority or ability to execute the



Agreement and otherwise perform under the Agreement.

Furthermore, Customer warrants, represents and covenants that: (i) the data given concerning its Facility(ies) are true and correct to the best of its knowledge at the time given and that any estimates of requirements or gas usage have been provided in good faith but are non-binding; (ii) it is entering into this Agreement to purchase its natural gas requirements only and not for speculative or resale purposes; and that the natural gas purchased under this Agreement will be consumed at the Facility(ies); (iii) it is the party of record of the Facility(ies), or if it is not the party of record, it has the authority to enter into and bind its principal to the Agreement; and (iv) if any Transaction hereunder gives Customer the right to adjust the Contract Quantity, or to require CNEG to provide some other quantity of gas, Customer's election to exercise such right is based predominantly on supply and demand factors related to Customer's business. If it is a Governmental Entity, Customer covenants to obtain all necessary budgetary approvals, appropriations and funding for all of its obligations under this Agreement, the failure of which shall not be an excuse for Governmental Entity's performance or failure to perform hereunder and upon request will provide proof of such authority. "**Governmental Entity**" means a municipality, county, governmental board, governmental department, commission, agency, bureau, administrative body, joint action agency, court or other similar political subdivision (including public school districts or special purpose district or authority), or public entity or instrumentality of the United States or one state.

- 10. Force Majeure.** Notwithstanding any other provision of this Agreement, where a Party is unable to carry out any obligation under the Agreement due to a Force Majeure event, the Agreement will remain in effect but such obligation will be suspended for the period and to the extent that performance remains impossible as a result of the Force Majeure event, provided that: (i) the Claiming Party gives the other Party, as soon as possible, written notice describing the particulars of the Force Majeure event; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and (iii) the Claiming Party uses reasonable efforts to remedy its inability to perform. "**Force Majeure**" means an event that is not within the reasonable control or anticipation of the Party claiming Force Majeure ("**Claiming Party**"), and that by the exercise of due diligence, the Claiming Party is unable to overcome or avoid by commercially reasonable means, and such event will not be deemed a breach or default under the Agreement. Force Majeure includes, but is not limited to, acts of God; fire; war; terrorism; flood; earthquake; civil disturbance; sabotage; facility failure; strike; curtailment, disruption or interruption of transportation by the Utility or a Transporter directly interconnected to the Utility provided that, (i) such curtailment, disruption or interruption directly prevents performance of the specific obligation(s) in respect of which the Claiming Party is claiming Force Majeure, (ii) CNEG shall use reasonable endeavors to effect alternative arrangements in order to perform the affected obligation(s) (including but not limited to securing alternative transportation at CNEG's cost), and (iii) Customer shall not bear a disproportionate adverse impact in relation to similarly-situated customers of CNEG; regulatory, administrative, or legislative action, or action or restraint by court order or governmental authority; or any act or omission of a third party not under the control of the Claiming Party (including without limitation the Utility), but only to the extent that such act or omission otherwise satisfies the requirements of Force Majeure hereunder.
- 11. Indemnification.** Before title passes to Customer at the Delivery Point CNEG shall defend, indemnify and hold harmless Customer and all its affiliates, and all of their respective officers, directors, shareholders, associates, employees, agents, representatives, successors and assigns, from and against all claims, losses, expenses (including reasonable attorneys' fees and court costs), damages, demands, judgments, causes of action or suits of any kind, including but not limited to, claims for personal injury, death, or property damage, to the extent arising out of or related to this Agreement ("**Claims**").
- 12. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT TO THE CONTRARY, THE ENTIRE LIABILITY OF EACH PARTY FOR ANY AND ALL CLAIMS WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUBJECT IN ALL CASES TO AN AFFIRMATIVE OBLIGATION ON THE PART OF EACH PARTY TO MITIGATE ITS DAMAGES, AND NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST OPPORTUNITIES OR LOST PROFITS NOT CONTEMPLATED BY THE TERMINATION CALCULATION IN SECTION 7 ABOVE. Customer acknowledges and agrees that the Utility is exclusively responsible for the gas distribution and delivery system, that CNEG has no independent control over the Utility's systems and will have no liability for any of the Utility's acts or omissions.
- 13. DISCLAIMER.** CUSTOMER ACKNOWLEDGES AND AGREES THAT NO WARRANTY, DUTY, OR REMEDY, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, IS GIVEN OR INTENDED TO ARISE OUT OF THIS AGREEMENT EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, AND CNEG SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.
- 14. Waiver and Severability.** Failure to provide notice of, or object to, any default under this Agreement will not operate or be construed as a waiver of any future default, whether like or different in character. If any portion of this Agreement, or application thereof to any person or circumstance, is held legally invalid, the remainder will not be affected and will be valid and enforced to the fullest extent permitted by law and equity, and there will be deemed substituted for the invalid provisions such provisions as will most nearly carry out the mutual intent of the Parties as expressed in this Agreement to the fullest extent permitted by applicable Law; provided, however, that this severability provision will not be applicable if any provision of Sections 6 and 7 of this Master Agreement (or any definition or provision in this Agreement to the extent it relates to, or is used in connection with, such sections) is held invalid or unenforceable.
- 15. Assignment.** Customer may assign all its rights and obligations under this Agreement; *provided* (a) it gives CNEG forty-five (45) days prior written notice of its intent to do so; (b) the assignee satisfies in full CNEG's credit requirements; (c) the assignee assumes in writing all of Customer's obligations under the Agreement; and (d) Customer continues to be liable for performance, including payment for goods and services received, prior to the assignment date. CNEG may assign, sell, pledge, transfer, or encumber any of its rights and obligations under this Agreement or the accounts, revenues, or proceeds hereof to: (a) a bank, insurer or other financial institution; or (b) any person, entity or affiliate of CNEG (i) succeeding to all or substantially all of CNEG's assets or business or the division or region of CNEG to which this Agreement relates or (ii) into which CNEG is merged or otherwise combined or reorganized.
- 16. Confidentiality.** Each Party agrees to keep all terms and provisions of this Agreement and all communication provided in connection with this Agreement, including the pricing offered to Customer, confidential to the extent not otherwise publicly available and not to disclose them to any third parties without the prior written consent of the other Party, except as reasonably necessary to perform its obligations under this Agreement or as otherwise required by Law. Each Party may disclose such information to its affiliates, to its affiliates, and to each of their respective employees, agents, advisors, and on a need to know basis, to its independent contractors, provided each such recipient agrees to hold such information in the strictest confidence. CNEG may disclose information respecting Customer to third parties that are representing Customer in the purchase of gas or related services. Furthermore, CNEG may make such other disclosures to third parties of information, including aggregate consumption data, provided they are in a manner that cannot be reasonably expected to specifically identify Customer. If disclosure of confidential information is sought through a court, or a state or federal regulatory agency or other legal compulsion, the Party receiving such request will notify the other Party immediately to afford it the opportunity to oppose such disclosure via a protective order or

other relief as may be available and will provide reasonable support. Notwithstanding the foregoing, CNEG acknowledges that Customer is obligated to abide by Section 149.43 of the Ohio Revised Code, among other applicable laws.

**17. Choice of Law, Venue, Attorney Fees and Expenses.** This Agreement will be governed and interpreted in accordance with the laws of the State of Ohio, without giving effect to conflict of law principles. TO THE EXTENT ALLOWED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY OR TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION CLAIMS IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. If either Party pursues court action to enforce its rights under this Agreement, the non-prevailing Party shall promptly reimburse the prevailing Party for all its reasonable attorney fees, expenses and costs.

**18. Miscellaneous.** The Agreement embodies the Parties' entire agreement and understanding and may not be contradicted by any prior or contemporaneous oral or written agreement. Notwithstanding any provision to the contrary in a prior agreement, the Parties agree that this Master Agreement shall supersede and replace all prior written and oral agreements or arrangements between the Parties with respect to the purchase and sale of gas and related services. A facsimile or e-mailed copy of either Party's signature will be considered an original for all purposes under this Agreement, and each Party will provide its original signature upon request. No purchase order, or any amendment or edit to this Agreement, will be valid or given any effect unless signed by both Parties or expressly contained in a TC or Rider executed by the Parties. The applicable provisions of this Agreement will continue in effect after termination or expiration hereof to the extent necessary, including but not limited to providing for final billing, billing adjustments and payments, limitations of liability, the forum and manner of dispute resolution(if any), and with respect to any indemnification obligations under the Agreement. The section headings used in this Master Agreement are for reference purposes only and will in no way affect the meaning of the provisions of the Master Agreement. The Parties acknowledge that any document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically and such imaged documents may be introduced as evidence in any proceeding as if such were original business records and neither Party shall contest their admissibility as evidence in any proceeding on the basis that they are not original business records. The rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by Law. Each Party shall have the right to set-off and net against any amounts owed to it under the Agreement, including without limitation any early termination payment. Except for Section 11 above, no third party will have any rights under this Agreement whatsoever and each Party will be fully responsible for any compensation owing any third party representing such Party in connection with this Agreement. To the extent Customer is represented by a broker, agent, association or other third party (collectively, "Broker"), Customer acknowledges and understands that: (i) Customer may notify CNEG that Broker represents Customer and request that CNEG make a payment to Broker in connection with Broker's efforts to facilitate Customer and CNEG entering into a Transaction; (ii) such payment requested by Customer, if any, will be included on an invoice issued to Customer, and (iii) Broker is acting on Customer's behalf as Customer's representative and is not a representative or agent of CNEG.

**19. Affirmation; Acknowledgements.** Customer affirms that it has read this Agreement in its entirety and it agrees to the terms and conditions contained herein. The Parties acknowledge and agree that: (i) CNEG is an independent contractor under this Agreement and except as otherwise explicitly provided in this Agreement, neither Party has the authority to execute documents that purport to bind the other, and nothing in this Agreement will be construed to constitute a joint venture, fiduciary relationship, partnership or other joint undertaking; (ii) TCs and Riders entered into hereunder will constitute "forward contracts" and/or "swap agreements" under the U.S. Bankruptcy Code, as amended, the rights of the Parties under Section 7 above will constitute contractual rights to liquidate them, and the Parties are entities entitled to the rights and protections afforded to "forward contracts" by the U.S. Bankruptcy Code; (iii) CNEG is not Customer's consultant or advisor with respect to the value or advisability of trading in "commodity interests" as defined in the Commodity Exchange Act, 7 U.S.C. §§ 1-25, et seq., as amended (the "CEA"), including futures contracts and commodity options or any other activity which would cause CNEG or any of its affiliates to be considered a commodity trading advisor under the CEA; (iv) Customer is making its own decisions based upon its own analysis and the advice of its advisors.

**20. Notices.** To be effective, all notices must be in writing delivered by hand, by certified mail return receipt requested, by first class mail, or express carrier to the addresses provided in this Agreement. CNEG shall send invoices and TCs to the notice address provided herein unless otherwise directed by Customer. Notice by hand delivery shall be effective on the date it is delivered. Notice by certified mail, return receipt requested, by first class mail, or express carrier shall be effective on the date that mail is delivered or its delivery is attempted. A Party may change its address by providing notice of change in accordance herewith or by other means agreed by the Parties.

**CNEG Notice Information**  
9960 Corporate Campus Drive, Suite 2000  
Louisville, KY 40223  
Phone: (502) 426-4500  
Facsimile: (502) 214-6381

**Customer Notice Information**  
Legal Notice Information  
Attention: Title:  
Address:  
Phone: Facsimile:  
Email:

For Invoices (if different from Notice Information)  
Attention: Title:  
Address:  
Phone: Facsimile:  
Email:

For Transaction Confirmations (if different from Notice Information)  
Attention: Title:  
Address:  
Phone: Facsimile:  
Email:

**[NOTE TO TEMPLATE: TRANSACTION CONFIRMATIONS (WHICH ARE APPLICABLE IF CUSTOMER HAS SELECTED THE SMARTPORTFOLIO PLUS RIDER) WILL ESSENTIALLY BE AN OFFER FROM CNEG IN RESPECT OF SPECIFIED VOLUMES TO BE TRANSACTED OUTSIDE THE SMARTPORTFOLIO STRATEGY AND WILL ONLY BE EFFECTIVE IF AGREED, AND THE TC SIGNED BY CUSTOMER, WITHIN THE SPECIFIED TIME (DUE TO CONSTANTLY FLUCTUATING GAS MARKET CONDITIONS). THE TRANSACTION CONFIRMATION NEEDS TO BE REVIEWED BY THE PERSON RESPONSIBLE FOR GAS SUPPLY ON BEHALF OF THE SCHOOL DISTRICT AND SIGNED BY AN AUTHORIZED PERSON. ACCORDINGLY, IT IS LIKELY THAT A TRANSACTION CONFIRMATION SHOULD BE DIRECTED TO A DIFFERENT CONTACT/ADDRESS THAN AN INVOICE AND CONSIDERATION SHOULD BE GIVEN TO WHO THE**

{SIGNATURES FOLLOW ON NEXT PAGE}

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IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS DOCUMENT THROUGH THEIR DULY AUTHORIZED REPRESENTATIVES.

**CNEG**

Sign and Print Name: \_\_\_\_\_

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

**CUSTOMER**

Sign and Print Name: \_\_\_\_\_

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

**EXHIBIT A – FORM OF TRANSACTION CONFIRMATION\***

*\*The actual Transaction Confirmation entered into between Customer and CNEG may differ from this form to reflect state regulatory and other local requirements and terms applicable to the Facility. This Form of Transaction Confirmation is for illustrative purposes only and CNEG reserves the right to alter its form of Transaction Confirmation at any time.*

**NOTES TO TEMPLATE:**

**(1) GENERALLY,**

**(A) A TRANSACTION CONFIRMATION IS ONLY REQUIRED WHERE A SMARTPORTFOLIO PLUS PROGRAM RIDER HAS BEEN ENTERED INTO AND CUSTOMER WISHES TO LOCK IN A FIXED PRICE FOR A PORTION OF ITS ESTIMATED VOLUMES. A TC IS NOT REQUIRED FOR A SMARTPORTFOLIO PROGRAM RIDER (WHICH DOES NOT PROVIDE FOR THIS OPTION TO LOCK IN A FIXED PRICE OUTSIDE OF THE GENERAL SMARTPORTFOLIO PURCHASING STRATEGY);**

**(B) A TC SHOULD CLEARLY IDENTIFY THAT GAS IS TO BE DELIVERED ON A FIRM BASIS.**

**(2) CUSTOMER SHOULD ENSURE THAT THE QUANTITIES UNDER THIS TRANSACTION ALIGN WITH QUANTITIES OTHERWISE COVERED BY THE SMARTPORTFOLIO PLUS RIDER, AND IN PARTICULAR, THAT THERE IS NO RISK THAT THE SCHOOL DISTRICT'S REQUIREMENTS COULD BE LESS THAN THE VOLUMES SUBJECT TO THIS TRANSACTION CONFIRMATION.**

**(3) CUSTOMER SHOULD CAREFULLY REVIEW A TRANSACTION CONFIRMATION TO ENSURE THAT ALL FIELDS ARE COMPLETE AND CLEARLY UNDERSTANDABLE BY CUSTOMER, INCLUDING INTERACTION WITH THE SMARTPORTFOLIO PLUS RIDER AND THE MASTER AGREEMENT. THIS IS VERY IMPORTANT GENERALLY AND BECAUSE THE TERMS OF THIS TRANSACTION RIDER WILL HAVE PRIORITY IN THE EVENT OF A CONFLICT WITH THE TERMS OF THE MASTER AGREEMENT OR RIDER. ]**

[In order for this Transaction Confirmation to be binding and effective, it must be executed by both Parties prior to [TIME AND DATE]. If this Transaction Confirmation is not executed by both Parties prior to [TIME AND DATE], it shall be deemed non-binding and of no effect.]

This Transaction Confirmation is delivered pursuant to and in accordance with a Master Retail Natural Gas Supply Agreement effective \_\_\_\_\_, 20\_\_ (the "Master Agreement") and the related SmartPortfolio Plus Rider, by and between Constellation NewEnergy – Gas Division, LLC ("CNEG") and \_\_\_\_\_ ("Customer"), and is subject to and made part of the terms and conditions of such Master Agreement. Capitalized terms used herein but not defined will have the meanings ascribed to them in the Master Agreement.

Trade Date:

Facility Name:

Delivery Period:

Deal Type:

Nature of Parties' Obligation:

Contract Quantity/Price:

<b>Month/Yr</b>	<b>Contract Quantity (in MMBtu)</b>	<b>Contract Price</b>

*US\$ Rounded to four decimal places  
Plus applicable taxes*

Incremental Pricing:

Delivery Point(s):

Utility:

Default Service: To the extent a Facility continues to receive gas from CNEG beyond the Delivery Period, all such gas will be considered month to month purchases and will be priced at the Market Price.

Special Provisions:



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**CONSTELLATION NEWENERGY – GAS DIVISION, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_  
Date: \_\_\_\_\_

**CUSTOMER**

By: SAMPLE \_\_\_\_\_  
Name: NOT FOR EXECUTION \_\_\_\_\_  
Title \_\_\_\_\_  
Date: \_\_\_\_\_