



Contracts, Purchasing,  
and Risk Management

**REQUEST FOR PROPOSAL  
NUMBER P21AM008**

**FOR**

**NATURAL GAS SERVICES**

**DUE DATE AND TIME**

**THURSDAY JUNE 10, 2:00 PM, ARIZONA LOCAL TIME**

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## PROPOSAL ACKNOWLEDGEMENT RECEIPT

<b>NAU</b> NORTHERN ARIZONA UNIVERSITY Contracts, Purchasing, and Risk Management	<b>Proposal Acknowledgement Receipt</b>
CONTRACTS, PURCHASING, AND RISK MANAGEMENT SERVICES	

**Request for Proposal number:** P21AM008

**Request for Proposal description:** Natural Gas Services

Complete, sign, and submit this Proposal Acknowledgement Receipt to Contracts, Purchasing, and Risk Management. This completed and signed Proposal Acknowledgement Receipt may be emailed to [nau-purchasing@nau.edu](mailto:nau-purchasing@nau.edu) or delivered through any other method.

Name of Offeror		
Name of Contact		Title of Contact
Address 1		Address 2
City	State	Zip Code
		-
Telephone Number		
(     )     -		
E-mail address, if available		
Print Name of Offeror's Authorized Agent		Signature of Offeror's Authorized Agent
Title of Authorized Agent		Date

## **SECTION A                      REQUEST FOR PROPOSAL**

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Northern Arizona University (the University) is requesting sealed Offers from qualified firms and/or individuals for Natural Gas Services.

Offers shall be received in the Office of the Associate Vice President of Procurement, Northern Arizona University, Building 98B, Box 4124, 545 E. Pine Knoll Drive., Flagstaff, AZ 86011-4124 until 2:00 P.M., Arizona Local Time, on Thursday, June 10, 2021, at which time a representative of Contracts, Purchasing, and Risk Management shall publicly announce the names of those firms submitting Offers on Zoom Meeting Link provided below. In person attendance shall not be permitted at this time. No other public disclosure shall be made until after award of the Contract resulting from this Request for Proposal (RFP).

Any and all questions regarding this RFP shall be directed to Contracts, Purchasing, and Risk Management and to no other office or individual at the University. The University may answer informal questions orally. The University makes no warranty of any kind as to the correctness of any oral answers and uses this process solely to quickly provide minor clarifications. Oral statements or instructions shall not constitute an addendum to this RFP. Offeror shall not be entitled to rely on any verbal response from the University. Formal questions regarding any part of this RFP that may result in a material issue or a formal addendum must be submitted in writing. All correspondence regarding this RFP shall be directed to Contracts, Purchasing, and Risk Management, contact information is below:

Join Zoom Meeting:

Link: <https://nau.zoom.us/j/82690836783>

Topic: Bid Opening for P21AM008, Natural Gas Services

Day and Time: Thursday June 10, 2021, 02:00 p.m., Local Arizona Time

Meeting ID: 826 9083 6783

Password: 888888

Dial by PHONE:

1-669-900-6833 US

877-853-5247 US Toll-free

Contact: Andrea McLean

Telephone: 928-523-7921

E-Mail: [NAU-purchasing@nau.edu](mailto:NAU-purchasing@nau.edu); [Andrea.McLean@nau.edu](mailto:Andrea.McLean@nau.edu)

## **SECTION B                      BACKGROUND INFORMATION**

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### **1.     UNIVERSITY BACKGROUND**

The University is governed by the Arizona Board of Regents (ABOR) and is a fully accredited institution of higher learning supported by the State of Arizona. Additional information on the University may be accessed from the following link:

<https://nau.edu/Institutional-Research/Quick-Facts/>

### **2. PROPOSAL BACKGROUND**

#### **2.1. RFP Overview**

This RFP is part of a competitive negotiation process intended to allow the University to obtain goods and/or services as outlined herein in a manner which is most advantageous to the University. This RFP provides the University the flexibility to negotiate with Offerors, if desired, to arrive at a mutually agreeable relationship. Price may weigh heavily in the evaluation process but will not be the only factor under consideration and may not be the determining factor. All Offers will be considered public record and available for review, as allowed by law, during regular office hours after award by contacting the University's Associate Vice President of Procurement.

#### **2.2. Term**

The term of a resulting Contract shall be one (1) year, from date of award, with an option to renew for four (4) additional one (1) year periods with a total term not to exceed five (5) years.

#### **2.3. Intent**

2.3.1.        It is the University's intent to select the Offer(s), which are most favorable in all respects, including scope, availability of services, quality of services, reputation and price. If not otherwise stated herein, multiple awards may be made or an award(s) may be made partial, by part, by line item, or by any combination of parts if identified as being in the best interest of the University.

2.3.2.        The successful Offeror(s) will be expected to work closely with the University's designated representative(s) to administer an effective and efficient program.

## SECTION C

## INSTRUCTIONS TO OFFERORS

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1. No department, school, or office at the University has the authority to solicit official RFPs other than Contracts, Purchasing, and Risk Management. All solicitations shall be performed under the direct supervision of the Associate Vice President of Procurement and in accordance with University policies and procedures.
2. Offer shall be submitted in the format shown in Section D. Offers in any other format may be rejected. Conditional Offers shall not be considered. Submit Offer signed by an authorized individual. Offer that is not signed may be rejected.
3. Offers to be submitted as:
  - 3.1. One (1) complete Offer, printed and bound, clearly marked as original; and
  - 3.2. One (1) copies of the complete Offer on electronic storage devices. Limit individual files on each device to no more than three (3).
4. Submit Offer, sealed and marked on the outside as follows:

**Offeror's Name**  
**Offeror's Title**  
**RFP Number**  
**Date And Time Offer Is Due**
5. No telephonic, electronic, or facsimile Offer shall be considered. Offer received after the date and time set for opening will be rejected. The University reserves the right to extend the time and date set for opening.
6. If responding by United States Postal Services mail, allow additional time for on-campus delivery.
7. Any person, firm, corporation, and/or association submitting an Offer shall be deemed to have read and understood all the terms, conditions, and requirements specified herein.
8. Definitions:
  - 8.1. "Contract" - shall mean the agreement entered into between the ABOR for and on behalf of Northern Arizona University and the successful Offeror as a result of this RFP.
  - 8.2. "Dekatherm" - (Dth) shall be the unit of energy to measure natural gas.
  - 8.3. "May" - indicates something that is not mandatory but permissible/desirable.

- 8.4. "Offer" - shall mean the proposal from an individual or firm for the provision outlined in this RFP.
- 8.5. "Offeror" - shall mean a person or firm submitting an Offer in response to this RFP.
- 8.6. "Shall", "Must", "Will" - indicates mandatory requirements. Failure to meet these mandatory requirements will result in rejection of Offer as non-responsive.
- 8.7. "Should" - indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the University may, at its sole option, ask Offeror to provide the information or evaluate the Offer without the information.
9. Any information considered to be proprietary by the Offeror shall be placed in a separate envelope and marked "Proprietary Information". To the extent the Associate Vice President of Procurement concurs, this information shall be considered confidential and not public information. The Associate Vice President of Procurement shall be the final authority as to the extent of material, which will be considered confidential. Pricing information shall not be considered confidential.
10. Offer may be withdrawn at any time prior to the time and date set for opening.
11. Offer and accompanying documentation will become the property of the University at the time the Offer is opened.
12. The University reserves the right to cancel this solicitation, reject any or all Offers or any part thereof, or to accept any Offer or any part thereof and to waive or decline to waive irregularities in any Offer when it determines that it is in its best interest to do so. The University has the right to hold Offer for a period of ninety (90) days after the opening date, the right to accept an Offer not withdrawn before the date set for opening, to negotiate with any Offeror considered qualified, or make any award without written discussion.
13. The University reserves the right to conduct discussions and negotiations with Offeror, to accept revisions of Offer, and to negotiate price changes. The University shall not disclose any information derived from Offers or from discussions with Offerors prior to issuance of a Notice of Intent to Award.
14. The University may request a presentation, demonstration or samples be given to a selection committee in the event the Offer is deemed to be among the most advantageous to the University. Contracts, Purchasing, and Risk Management will schedule all presentations and in the event a presentation is scheduled, evaluation criteria and scoring may be included in the presentation invitation.
- 14.1. If presentation is to be held as a webinar, Offeror will indicate information required to provide such presentation to the University, for example; University User

Login.

15. Offeror may submit requests for changes or additions to the University terms and conditions set forth in Section F. Any such changes must be submitted with the Offer as required in Section D.10., or the Offeror will have waived the right to object or add to the University's terms and conditions. Additions may not be submitted as the Offeror's standard terms and conditions, license agreement or any other agreement, but rather as additional terms that do not conflict with the University's terms and that are necessary for the success of the Contract. An Offer contingent upon changes or additions to University terms and conditions may, if the University at its sole discretion determines not to accept the alternate terms and conditions, be rejected as non-responsive.
16. By submitting an Offer, the Offeror agrees that any information provided within the Offer and accepted by the University shall become a binding part of a resulting Contract.
17. The University will require the Offeror to sign a Contract in such form as set forth in Exhibit A ("Sample NAESB Agreements with Provisions") hereto. Offers that are contingent upon any changes to these Mandatory Terms and Conditions may be deemed to be non-responsive and may be rejected. Offer must state, in detail, any exceptions taken to the terms and conditions included in the form contract in Exhibit A.
18. The University is committed to the development of Small Business and Small Disadvantaged Business (SB & SDB) suppliers. If subcontracting is necessary, the Offeror shall make every effort to use SB & SDB in the performance of the Contract.
19. Requests for clarification of information to be received no later than five (5) days prior to the time and date set for opening. If applicable, addenda shall be issued to each Offeror of record. Failure to request clarification within this timeframe will constitute a waiver of the right to object and shall not be grounds for a protest.
20. Any objections to alleged errors, irregularities, improprieties, specifications or content shall be made prior to the time and date set for opening. Failure to object prior to the time and date set for opening will constitute a waiver of the right to object and shall not be grounds for a protest.
21. Failure to receive an addendum shall give Offeror the option of:
  - 21.1. Accepting the resulting Contract, if offered, including all addenda, at the proposed price.
  - 21.2. Withdrawing its Offer without penalty.
22. Failure to receive addenda shall not constitute a basis for claim, protest, or reissuance of the RFP.
23. Unless specifically stated to the contrary, manufacturer's names, trade names, brand names, or catalog numbers used in the specifications of this RFP shall be for the purpose



of describing and/or establishing the quality, design, and performance required. Such reference shall not be intended to limit or restrict an Offer. Any Offer, which proposes like quality, design, and/or performance, shall be considered.

24. The University will not guarantee any minimum purchase volumes of any kind from the resulting Contract.
25. The University shall not reimburse the Offeror the costs associated with responding to the RFP.
26. Offeror shall acquire and maintain, at their sole expense, all necessary parking permits required by the University. Parking permits along with regulations governing traffic and parking are available from University Transit Services (928-523-6623) located at 113 W Dupont Ave., Flagstaff, AZ 86011. Permit applications and vehicle registration may also be accessed on-line at <https://in.nau.edu/university-transit-services/>. Regulations shall be applicable to all employees of Offeror and will be strictly enforced. All fines incurred shall be the sole responsibility of the Offeror.
27. Offeror shall acquire and maintain all necessary permits and licenses and shall adhere strictly to all Federal, State, County, or City laws, codes, regulations, and ordinances as applicable.
28. As with any work site, the University campus buildings have the potential to house hazards including, but not limited to, hazardous building materials, chemical, biological, or physical hazards, or conditions which may become hazardous based on specific work scope or practices. The University Hazard Inspection program exists to provide hazard information on a location and scope specific basis. Prior to commencement of any construction/renovation, repair, installation, or other services which are deemed to have the potential to impact building or infrastructure components or result in worker exposure to hazards, contractor must review, sign, and return the project specific hazard inspection and communication form prepared by the University Environmental Health and Safety (EH&S) department. Requests for inspection may be placed by any University employee or contractor at <https://in.nau.edu/facility-services/asbestos-lead-and-pcbs/>, or by contacting the EH&S Material Safety Office at (928) 523-6435.

A limited number of specific exclusions to the University's Hazard Inspection policy can be found in the NAU Policy for Hazard Inspections <https://nau.edu/Facility-Services/Planning/Asbestos,-Lead,-and-PCBs/>. Any work not specifically excluded, or any changes of scope to previously approved work must be inspected prior to commencement of the work activities.

29. Offeror and Offeror subcontractors will adhere to the University's COVID-19 requirements for [Contractors and Suppliers](#).
30. Unless reasonable objection is made in writing as part of the Offer, the resulting award shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible municipalities, counties, universities, political subdivisions

and nonprofit educational or public health institutions may participate at their discretion. In order to participate in any resultant Contract, applicable entities must have entered into a cooperative purchasing agreement with either the Arizona Board of Regents for and on behalf of Northern Arizona University or the State of Arizona pursuant to ARS 41-2632.

31. The University treats Offerors in a fair, honest, and consistent manner by conducting the RFP process in good faith and by granting all Offerors a comparable opportunity to win an award. In the event Offeror feels the process did not follow established policies and the Offeror qualifies as an interested party, Offeror may file a protest pursuant to the Arizona Board of Regents (ABOR) procurement policy, Section 3-809. The University takes protests seriously and expects Offerors to do so as well. Frivolous protests shall not result in gain for the Offeror and shall not be considered.

Protests shall be received in the Office of the Associate Vice President of Procurement, Becky McGaugh, Northern Arizona University, Building 98B, Box 4124, 545 E. Pine Knoll Drive., Flagstaff, AZ 86011-4124.

## **SECTION D                      OFFER FORMAT**

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In order to facilitate direct comparison, submit Offer using this format, listed in order, and index tabbed to match. Failure to follow instructions regarding format may result in rejection of Offer. Include the following with Offer:

1. Completed and signed RFP Certification (refer to Section K).
2. Completed and signed Legal Worker Certification (refer to Section L).
3. Completed and signed Anti-Lobbying Certification (refer to Section M).
4. Completed and signed Federal Debarred List Certification (refer to Section N).
5. Completed and signed Participation in Boycott of Israel (refer to Section O).
6. Offeror's Qualifications and Experience (refer to Section E.1.).
7. Project Resources (refer to Section E.2.).
8. Client References (refer to Section E.3.).
9. A detailed technical Offer (refer to Section E.4 – E.19).
10. Exceptions to the Terms and Conditions of the RFP (refer to Section F).
11. Pricing Proposal (refer to Section H).
12. Vendor Information (refer to Section J).

## SECTION E REQUIREMENTS

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The data, specifications, and requirements outlined herein are intended to serve as a general guideline for the University's requirements. Submit a fully detailed Offer that adequately describes the advantages and benefits to the University.

Provide a detailed response to each requirement in Sections 1.- 19. of Section E, individually numbered to match each requirement. At minimum, in such case where a detailed response is not applicable, indicate ability to comply with and/or agreement to the numbered requirement. Offeror is encouraged to provide any additional information that is not specifically identified in this RFP.

### 1. QUALIFICATIONS/EXPERIENCE

- 1.1. Provide a corporate history/management summary and evidence that the Offeror and/or its officers have been engaged for a minimum of three (3) years in providing similar products and services as described herein. Describe Offeror's growth for the past three (3) years.
- 1.2. Describe any restructuring, mergers, and/or downsizing that has occurred over the past three (3) years or is anticipated in the next two (2) years, and if selected for negotiations, Offeror may be required to provide the last two (2) years of audited financial statements.
- 1.3. Describe the material issues of any current patent or copyright lawsuits or legal actions against Offeror including, but not limited to, parties of dispute, description of technology involved, equipment affected, jurisdiction, and date of legal complaint.
- 1.4. Detail experience with similar/like projects.

### 2. PROJECT RESOURCES

- 2.1. Provide sufficient personnel, knowledge, and experience required to maintain an appropriate level of professionalism and coverage for performance of requirements outlined herein. The University reserves the right to review Offeror's staff assigned for relevant qualifications and experience.
- 2.2. Provide a list of proposed personnel with resumes specifying qualifications and relevant experience. Describe assignment of account representatives and/or key personnel.
- 2.3. Offeror will be required to conduct relevant and appropriate background checks and fingerprinting according to the [University's policies](#) on all assigned employees and new hires to ensure that it does not assign any employee or agent to the University who may reasonably be considered to pose a threat to the safety or welfare of the University community or its property. Offeror will share background check information and other supporting documentation including disciplinary action for any

employee upon written request by the University.

- 2.4. Offeror may subcontract installation, training, warranty, or maintenance service with prior University authorization. List and describe any subcontractor's qualifications and relevant experience. Describe how Offeror guarantees subcontractor performance. Offeror shall remain solely responsible for the performance of a resulting Contract from this RFP. All University payments for goods and/or services shall be made directly to the Offeror.

Offeror shall require Offeror subcontractors to meet the same insurance requirements required of the Offeror as outlined in this RFP under the Terms and Conditions Section. Subcontractor certificates of insurance shall be submitted to the University for review and approval prior to subcontractor providing services to the University.

### 3. CLIENT REFERENCES

Provide, at minimum, three (3) references, not including Northern Arizona University, identifying firms with requirements similar to those of the University. Provide the name of the firm, contact person, email and the telephone number. The University reserves the right to contact additional references not provided by Offeror. Preference may be given for those references which are most similar to the University.

### 4. PREFERRED PAYMENT METHOD

The University prefers to pay for goods and/or services via the Corporate VISA liability card. Describe in detail Offeror's ability to accept this preferred method of payment and any additional fees. Describe how the University can utilize its Corporate Visa card to pay for goods and/or services.

### 5. GENERAL SPECIFICATIONS

- 5.1. The University receives natural gas through Unisource Energy Services under NSP-T1 distribution rate with the following services information:

- 5.1.1. University's Service Address: 575 E. Pine Knoll Drive, Building 77  
Flagstaff, Arizona 86011.
- 5.1.2. Account number: 7772430000.
- 5.1.3. Billing aggregate meter: CONG-12.
- 5.1.4. Physical Meter Numbers: 990904, 2386, 810560 and 990957.

- 5.2. The University is seeking to purchase natural gas in the following blocks:

- 5.2.1. August 2021 to July 2022 (12 months).
- 5.2.2. August 2021 to July 2022 (24 months).
- 5.2.3. August 2021 to July 2022 (36 months).
- 5.2.4. August 2021 to July 2022 (48 months).
- 5.2.5. August 2021 to July 2022 (60 months).

5.3. Estimated purchase of Natural Gas for the first year, to be the following:

August 2021	14,250 Dth
September 2021	18,380 Dth
October 2021	31,800 Dth
November 2021	42,880 Dth
December 2021	52,710 Dth
January 2022	54,800 Dth
February 2022	50,660 Dth
March 2022	46,690 Dth
April 2022	34,950 Dth
May 2022	22,600 Dth
June 2022	14,210 Dth
July 2022	12,320 Dth
Total	396,250 Dth

6. HEDGING

6.1. Offeror to describe the following:

- 6.1.1. Options for the University to fix commodity pricing during the term of the contract.
- 6.1.2. Fees for hedging.
- 6.1.3. Minimum volumes required to hedge.
- 6.1.4. Any limitations to a maximum number of hedges per month or for the following term options:
  - 6.1.4.1. One (1) year term.
  - 6.1.4.2. Two (2) year term.
  - 6.1.4.3. Three (3) year term.
  - 6.1.4.4. Four (4) year term.
  - 6.1.4.5. Five (5) year term.
  - 6.1.4.6. Six (6) year term.
  - 6.1.4.7. Seven (7) year term.
  - 6.1.4.8. Eight (8) year term.
  - 6.1.4.9. Nine (9) year term.
  - 6.1.4.10. Ten (10) year term.
- 6.1.5. Premium charges for fix commodity pricing as it relates to market pricing at time of hedge.

## 7. NOMINATIONS

7.1. Offeror to manage daily and monthly nominations, make nominations to appropriate pipeline(s) to ensure delivery of scheduled volumes and maintain compliance with utility pipeline operating procedures and tariff requirements.

### 7.2. Nomination Approach

7.2.1. Describe in detail, approach to nominating natural gas to the University's account(s) with Load-Following Nomination.

7.2.1.1. Offeror to set the initial daily nomination based on the monthly contract volume divided by the number of days in the month.

7.2.1.2. Offeror to adjust the nominated quantity so that the account stays within daily/monthly balancing tolerances defined by the utility and/or pipeline and the sum of the nominated quantity for the month approximates usage, as necessary on behalf of the University.

7.2.2. Offeror to invoice the University for contract volume and price; the difference between the final nominated quantity and the contract volume will be invoiced at the excess/shortfall price.

## 8. PERFORMANCE

8.1. Describe the Offeror's ability to provide adjustments in the monthly contract quantities prior to the beginning of the month.

8.2. Offeror to describe, if the University adjusts quantities will it be priced at existing contract rate provided in Section H, Pricing or at current market prices.

8.3. Offeror to identify the number of days required to provide notice of changes quantities, not to include quantities for fixed price gas.

## 9. BALANCING

9.1. Offeror to be responsible for daily and monthly balancing of the University's gas volumes.

9.1.1. Offeror to specify how over or undertake outside the utility imbalance requirement is handled.

## 10. TELEMETERING

10.1. Unisource Energy Services is the Utility provider to campus. University to provide authorization for awarded Offeror to access to its metered natural gas usage.

## 11. POOLING

11.1. Offeror to indicate whether the University will be in a pool of customers (see note in 12.1.5 below).

11.2. If required, indicate approximate load served on the utility system.

## 12. PRICING

12.1. Offeror to submit pricing for [New York Mercantile Exchange](#) (NYMEX) [Last Day Settle](#) plus [Fixed Basis](#), and Index plus fixed adder using El Paso Permian, SoCal Border, SoCal Citygate or El Paso San Juan, to include the following:

- 12.1.1. Swing Tolerance of 0%, 10% and/or 100% (where available).
- 12.1.2. Actual usage.
- 12.1.3. Monthly contract volumes.
- 12.1.4. Published daily index.
- 12.1.5. Each day's excess/shortfall quantity to be multiplied by each day's gas daily average index and must be tied to a Published Index Point not the Supplier Pooled Pricing.
- 12.1.6. Pipeline fuel to be included in the pricing.
- 12.1.7. Utility fuel to be excluded from the pricing.
- 12.1.8. Primary firm transport.

12.2. Offeror to indicate additional charges to include but not limited to:

- 12.2.1. State and local taxes.
- 12.2.2. Gross receipts taxes.

12.3. Define penalties that could be billed to the University by the Offeror or utility company.

## 13. NORTH AMERICAN ENERGY STANDARDS BOARD AGREEMENTS

13.1. A Base Contract for Sale and Purchases of Natural Gas Agreement (NAESB) and the Special Provision to the Base Contract for Sale and Purchase of Natural Gas will be negotiated between the University and the successful Offeror.

## 14. ADDITIONAL AGREEMENTS

Refer to Section C.15.

## 15. WARRANTY

Provide warranty information to the University for all materials, equipment, and labor furnished under this Contract. The warranty period for Offeror provided materials shall be no less than a period of one (1) year after completion of the installation or within the



manufacturer's warranty, whichever is later. The warranty period shall commence upon date of acceptance by the University. Offeror shall provide the University with all manufacturers' warranty documents upon completion of installation and prior to leaving the job site.

#### 16. QUALITY ASSURANCE PLAN

Provide a quality assurance plan that details the methods by which the Offeror guarantees performance.

#### 17. SUSTAINABILITY

The University is committed to buying products with recycled content or environmentally sustainable alternatives. Identify environmentally sustainable features and supply relevant specifications of products Offered. Include information regarding Offeror's overall sustainable efforts.

#### 18. ADDITIONAL SERVICES

Offeror may provide additional goods and/or services that are not addressed herein. The University shall determine which additional goods/service options are most beneficial from both a cost and service standpoint, and may further negotiate these options to include or omit dependent on University needs.

**SECTION F****CONTRACT AND TERMS AND CONDITIONS**

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The University will require the Offeror to sign the form Contract set forth in Exhibit A hereto. Offers that are contingent upon any changes to these mandatory terms and conditions may be deemed to be non-responsive and may be rejected. Offers must state, in detail, any exceptions taken to the terms and conditions included in the form agreement in Exhibit A.

## **SECTION G                      EVALUATION CRITERIA**

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It is the University's intent to make an award to Offeror(s) that, in the opinion of the University, present Offers that appear to be favorable to the University, based upon the scope, availability of services, quality of services, reputation, and price offered. The criteria for evaluation of responses will be based on the following point structure:

1. Offeror's Qualifications, Project Resources, Client References (refer to Section E.1. – E.3.).

20 Points

2. A detailed technical Offer including, but not limited to, clarity and reasonableness of proposed method of accomplishing the requirements and the ability to satisfy all components specified (refer to Section E.1. – E.19).

30 Points

3. Exceptions to the Terms and Conditions of the RFP (refer to Section F). Points will not be assigned to this category, however Offers that are contingent upon changes to the University's terms and conditions may, if the University at its sole discretion determines not to accept the alternate terms and conditions, be considered non-responsive.

4. Price Proposal (refer to Section H).

35 Points

5. Overall responsiveness to RFP.

15 Points

## SECTION H                      PRICING PROPOSAL

---

1. Offeror to describe cost included, to include but not limited to the following:

1.1. Pipeline Transport.

1.2. Pipeline Fuel

City Gate Basis

Term: August 2021 to July 2022		Description
Adder	\$ _____ (Dth)	_____
Capacity	\$ _____ (Dth)	_____
Fuel	\$ _____ (Dth)	_____
Other Fees	\$ _____ (Dth)	_____
Total Cost	\$ _____ (Dth)	_____

Term: August 2021 to July 2023		Description
Adder	\$ _____ (Dth)	_____
Capacity	\$ _____ (Dth)	_____
Fuel	\$ _____ (Dth)	_____
Other Fees	\$ _____ (Dth)	_____
Total Cost	\$ _____ (Dth)	_____

Term: August 2021 to July 2024		Description
Adder	\$ _____ (Dth)	_____
Capacity	\$ _____ (Dth)	_____
Fuel	\$ _____ (Dth)	_____
Other Fees	\$ _____ (Dth)	_____
Total Cost	\$ _____ (Dth)	_____

Term: August 2021 to July 2025

Description

Adder        \$\_\_\_\_\_ (Dth) \_\_\_\_\_

Capacity     \$\_\_\_\_\_ (Dth) \_\_\_\_\_

Fuel          \$\_\_\_\_\_ (Dth) \_\_\_\_\_

Other Fees    \$\_\_\_\_\_ (Dth) \_\_\_\_\_

Total Cost    \$\_\_\_\_\_ (Dth) \_\_\_\_\_

Term: August 2021 to July 2026

Description

Adder        \$\_\_\_\_\_ (Dth) \_\_\_\_\_

Capacity     \$\_\_\_\_\_ (Dth) \_\_\_\_\_

Fuel          \$\_\_\_\_\_ (Dth) \_\_\_\_\_

Other Fees    \$\_\_\_\_\_ (Dth) \_\_\_\_\_

Total Cost    \$\_\_\_\_\_ (Dth) \_\_\_\_\_

Regional Index: Inside FERC El Paso Permian, SoCal Border or SoCal Citygate, or El Paso San Juan. Utilize separate bid sheets to propose more than one (1) index pricing point.

Term: August 2021 to July 2022

Description

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

Adder \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Capacity \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Fuel \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Other Fees \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Total Cost \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Term: August 2021 to July 2023

Description

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

Adder \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Capacity \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Fuel \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Other Fees \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Total Cost \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Term: August 2021 to July 2024

Description

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

Adder \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Capacity \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Fuel \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Other Fees \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Total Cost \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Term: August 2021 to July 2025

Description

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

Adder \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Capacity \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Fuel \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Other Fees \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Total Cost \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Term: August 2021 to July 2026

Description

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

Adder \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Capacity \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Fuel \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Other Fees \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Total Cost \$ \_\_\_\_\_ (Dth) \_\_\_\_\_

Include any additional pricing and/or options not considered above: \$ \_\_\_\_\_

Alternative pricing formats may be offered in addition to above.

## **SECTION I                      PRE-PROPOSAL CONFERENCE**

---

A Pre-Proposal conference shall be held at:

DATE:	Tuesday June 1 <sup>st</sup> , 2021
TIME:	3:00 PM, Arizona Local Time
LOCATION:	<p>ZOOM Video Conference, 555555</p> <p>Advanced registration is required. Register using the link below:</p> <p><a href="https://nau.zoom.us/meeting/register/tZcuf-yprD4qHtdVJ_bWYcOv7QPQHrgHv4x0">https://nau.zoom.us/meeting/register/tZcuf-yprD4qHtdVJ_bWYcOv7QPQHrgHv4x0</a></p> <p>After registering, you will receive a confirmation email containing information about joining the meeting.</p>


Offeror to attend the scheduled Pre-Proposal conference. Attending the Pre-Proposal Conference is highly advised and attendance will be taken.

The purpose of the Pre-Proposal conference is to clarify the contents of this RFP to prevent any misunderstanding of the University's intent and/or position and to provide information that may serve useful to Offeror in submitting its response to the University in a manner that minimizes the likelihood of irregularities. Oral statements or instructions shall not constitute an addendum to this RFP.



## SECTION J

## VENDOR INFORMATION

	<b>NORTHERN ARIZONA UNIVERSITY</b> SUBSTITUTE W-9 & VENDOR AUTHORIZATION FORM Contracts, Purchasing and Risk Management Services 928-523-4557		<b>DO NOT SEND TO IRS RETURN TO NAU</b>	
Foreign individuals/business entities doing business within the U.S. should complete the Foreign Substitute W-9 available at <a href="http://nau.edu/Contracting-Purchasing-Services/Forms/">http://nau.edu/Contracting-Purchasing-Services/Forms/</a> .				
<b>1. Taxpayer Identification Number (TIN):</b>			<input type="checkbox"/> Employer ID Number (EIN) <input type="checkbox"/> Social Security Number (SSN)	
<b>2 LEGAL NAME:</b> (must match TIN above)				
<b>3. DUNS #</b> (If applicable)				
<b>4. LEGAL MAILING ADDRESS:</b>		(Where check, tax information, and general correspondence is to be sent)		
DBA (Doing Business As):				
Address:				
Address Line 2:				
City:	State:	ZIP Code:		
<b>5. Remit to Address:</b>		<input type="checkbox"/> Same as Legal Mailing Address		
Address:				
Address Line 2:				
City:	State:	ZIP Code:		
<b>6. Contact Name:</b>				
Phone Number:				
Email Address:				
<b>7. ENTITY TYPE</b>				
<input type="checkbox"/> Individual (not a business)	<input type="checkbox"/> Sole proprietor (Individually owned business) or sole proprietor organized as LLC or PLLC	<input type="checkbox"/> Corporation (NOT providing health care, medical or legal services)	<input type="checkbox"/> Corporation (providing health care, medical or legal services)	
<input type="checkbox"/> The US or any of its political subdivisions or instrumentalities	<input type="checkbox"/> A state, a possession of the US, or any of their political subdivisions or instrumentalities	<input type="checkbox"/> Tax-exempt organizations under IRC §501	<input type="checkbox"/> Partnership, LLP or partnership organized as LLC or PLLC	
<b>8. Business Purpose:</b>				
<input type="checkbox"/> Medical	<input type="checkbox"/> Merchandise	<input type="checkbox"/> Legal	<input type="checkbox"/> Other, Specify:	
<b>9. Product or Service Provided/ Purpose of Payment:</b>				



Contracts, Purchasing,  
and Risk Management

**NORTHERN ARIZONA UNIVERSITY**  
SUBSTITUTE W-9 & VENDOR AUTHORIZATION FORM  
Contracts, Purchasing and Risk Management Services  
928-523-4557

DO NOT  
SEND TO IRS  
RETURN TO  
NAU

**10. FEDERAL INFORMATION – REQUIRED**

What is the Federal classification type of your business? – see definitions on link below.  
(S.B.A. Small Business definition FAR 19.001 and size standards FAR 19.102)  
<http://www.sba.gov/size>

LARGE Business? YES ☐ NO ☐

SMALL Business? YES ☐ NO ☐

Please check all that apply to your business for Federal Supplier Type:

Service Disabled Veteran Owned (VD)  
☐

Small Disadvantaged (SD)  
☐

Women Owned (WO)  
☐

Veteran Owned (VO)  
☐

Minority Institution (MI)  
☐

HUB Zone (HZ)  
☐

Note: Supplier type will be verified through the System for Award Management  
<https://www.sam.gov>

**11. Residency (Select one):**

☐ U.S. Person, Includes Resident Alien

☐ Nonresident Alien performing services outside the U.S.

**12. CERTIFICATION**

Under penalties of perjury, I certify that :

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me),
2. I am not subject to backup withholding.
3. I am a U.S. person (including a resident alien). Cross '3' if non-resident doing business outside the U.S.
4. I certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from doing business with the federal government. See Federal Acquisition Regulation section [52.209-6](#) for more information regarding debarment.

**The Internal Revenue Service does not require your consent to any provision of this document other than the certification required to avoid backup withholding.**

Payment Term: Net 30 in accordance with A.R.S. [35-342](#)

**PRINT NAME:**

**SIGNATURE:**

Title:

Date:

NAU Contact Name and Phone/Email:

**AN AUTHORIZED AGENT OF THE OFFEROR  
SHALL SIGN THE VENDOR INFORMATION**

Northern Arizona University is an Equal Opportunity/Affirmative Action Institution.

## SECTION K REQUEST FOR PROPOSAL CERTIFICATION

Date:

Contracts, Purchasing, and Risk Management  
Northern Arizona University

The undersigned certifies, pursuant to Arizona Revised Statute [38-503](#), that to the best of his/her knowledge (check one):

- ☐ There is no officer or employee of Northern Arizona University who has, or whose relative has, a substantial interest in any Contract award subsequent to this RFP.
- ☐ The names of any and all public officers or employees of Northern Arizona University who have, or whose relative has, a substantial interest in any Contract award subsequent to this RFP are identified by name as part of the submittal.

The undersigned further certifies, in accordance with Federal Acquisition Regulation 52.209-5, that Offeror (check one) ☐ **IS** or ☐ **IS NOT** currently debarred, suspended, or proposed for debarment by any federal entity. The undersigned agrees to notify the University of any change in this status, shall one occur, until such time as an award has been made under this procurement action. The debarred list (List of Parties Excluded from Federal Procurement and Non-Procurement Programs) can be found at: <https://www.sam.gov/portal/SAM/#1>.

In compliance with RFP Number: \_\_\_\_\_ and after carefully reviewing all the terms and conditions imposed therein, the undersigned agrees to furnish such goods and/or services in accordance with the specifications/scope of work according to the Offer submitted or as mutually agreed upon by subsequent negotiation.

Name of Offeror		
Name of Contact		Title of Contact
Address 1		Address 2
City	State	Zip Code
		-
Telephone Number		E-mail address
(     )     -		
Print Name of Offeror's Authorized Agent		Signature of Offeror's Authorized Agent
Title of Offeror's Authorized Agent		Date
<b>AN AUTHORIZED AGENT OF THE OFFEROR SHALL SIGN THE PROPOSAL CERTIFICATION</b>		

## SECTION L                      LEGAL WORKER CERTIFICATION

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Pursuant to ARS §41-4401 the University is prohibited after September 30, 2008 from awarding a Contract to any Offeror who fails, or whose subcontractors fail, to comply with ARS § 23-214-A. Offeror warrants that it complies fully with all federal immigration laws and regulations that relate to its employees, that it shall verify, through the U.S. Department of Homeland Security's E-Verify program, the employment eligibility of each employee hired after December 31, 2007, and that it shall require its subcontractors and sub-subcontractors to provide the same warranties to the Offeror.

Offeror acknowledges that a breach of this warranty by Offeror or by any subcontractor or sub-subcontractor under this Contract shall be deemed a material breach of this Contract, and is grounds for penalties, including termination of this Contract, by the University. The University retains the right to inspect the records of any Offeror, subcontractor and sub-subcontractor employee who performs work under this Contract, and to conduct random verification of the employment records of the Offeror and any subcontractor and sub-subcontractor who works on this Contract, to ensure that the Offeror and each subcontractor and sub-subcontractor is complying with the warranties set forth above. The portion of this provision dealing with the Offeror's warranty is not applicable where the Offeror is a governmental entity nor is the Offeror required to pass this provision through to subcontractors and sub-subcontractors who are governmental entities.

Name of Offeror		
Name of Contact		Title of Contact
Address 1		Address 2
City	State	Zip Code
		-
Telephone Number		E-mail address
(     )     -		
Print Name of Offeror's Authorized Agent		Signature of Offeror's Authorized Agent
Title of Offeror's Authorized Agent		Date
<b>AN AUTHORIZED AGENT OF THE OFFEROR SHALL SIGN THE LEGAL WORKER CERTIFICATION</b>		

## SECTION M                      ANTI-LOBBYING CERTIFICATION

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Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Sept 2007). In accordance with the Federal Acquisition Regulation, 52.203-11:

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The Offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989.

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of this contract;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

Name of Offeror		
Name of Contact		Title of Contact
Address 1		Address 2
City	State	Zip Code
		-

Telephone Number	E-mail address
(     )     -	
Print Name of Offeror's Authorized Agent	Signature of Offeror's Authorized Agent
Title of Offeror's Authorized Agent	Date
<b>AN AUTHORIZED AGENT OF THE OFFEROR SHALL SIGN THE ANTI-LOBBYING CERTIFICATION</b>	

## **SECTION N                      FEDERAL DEBARRED LIST CERTIFICATION**

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### **Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (Dec 2001)**

In accordance with the Federal Acquisition Regulation, 52.209-5:

(a) (1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) (check one) Are (    ) or are not (    ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; (The debarred list (List of Parties Excluded from Federal Procurement and Nonprocurement Programs) is at <http://epls.arnet.gov> on the Web.)

(B) (check one) Have (    ) or have not (    ), within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) (check one) Are (    ) or are not (    ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) The Offeror (check one) has (    ) or has not (    ), within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) “Principals,” for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror’s responsibility. Failure of

the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

Name of Offeror		
Name of Contact		Title of Contact
Address 1		Address 2
City	State	Zip Code
		-
Telephone Number		E-mail address
(      )      -		
Print Name of Offeror's Authorized Agent		Signature of Offeror's Authorized Agent
Title of Offeror's Authorized Agent		Date

**AN AUTHORIZED AGENT OF THE OFFEROR  
SHALL SIGN THE FEDERAL DEBARRED LIST CERTIFICATION**



## SECTION O PARTICIPATION IN BOYCOTT OF ISRAEL

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Legislation has been enacted to prohibit the University from contracting with firms currently engaged in a Boycott of Israel. To ensure compliance with A.R.S. §35-393 and §35-393.01 this form to be completed and returned with Offer.

By signing this form, Offeror certifies that it is not currently engaged in and agrees, for the duration of the Contract, to not engage in a Boycott of Israel.

Name of Offeror		
Name of Contact		Title of Contact
Address 1		Address 2
City	State	Zip Code
		-
Telephone Number		E-mail address
(     )     -		
Print Name of Offeror's Authorized Agent		Signature of Offeror's Authorized Agent
Title of Offeror's Authorized Agent		Date
<b>AN AUTHORIZED AGENT OF THE OFFEROR SHALL SIGN THE PARTICIPATION IN BOYCOTT OF ISRAEL</b>		

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: \_\_\_\_\_, 2015

The parties to this Base Contract are the following:

<b>PARTY A</b> <b>World Fuel Services, Inc.</b>	<b>PARTY NAME</b>	<b>PARTY B</b>
605 North Highway 169 Suite 1200 Plymouth, MN 55441	<b>ADDRESS</b>	
www.wfscorp.com	<b>BUSINESS WEBSITE</b>	
	<b>CONTRACT NUMBER</b>	
60-603-6481	<b>D-U-N-S® NUMBER</b>	
<input checked="" type="checkbox"/> US FEDERAL: 76-0291977 <input type="checkbox"/> OTHER:	<b>TAX ID NUMBERS</b>	<input checked="" type="checkbox"/> US FEDERAL: <input type="checkbox"/> OTHER:
<b>Texas</b>	<b>JURISDICTION OF ORGANIZATION</b>	
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	<b>COMPANY TYPE</b>	<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
	<b>GUARANTOR (IF APPLICABLE)</b>	TBD
<b>CONTACT INFORMATION</b>		
<b>Same as Above</b> <b>ATTN:</b> <u>Contract Administration</u> <b>TEL#:</b> <u>763-543-4600</u> <b>FAX#:</b> <u>763-543-4603</u> <b>EMAIL:</b> <u>contracts@usenergyyservices.com</u>	<input checked="" type="checkbox"/> <b>COMMERCIAL</b>	<b>Same as Above</b> <b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____
<b>Same as Above</b> <b>ATTN:</b> <u>Manager, Gas Operations</u> <b>TEL#:</b> <u>763-543-4601</u> <b>FAX#:</b> <u>763-543-4603</u> <b>EMAIL:</b> <u>nominations@usenergyyservices.com</u>	<input checked="" type="checkbox"/> <b>SCHEDULING</b>	<b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____
<b>Same as Above</b> <b>ATTN:</b> <u>Contract Administration</u> <b>TEL#:</b> <u>763-543-4600</u> <b>FAX#:</b> <u>763-543-4603</u> <b>EMAIL:</b> <u>contracts@usenergyyservices.com</u>	<input checked="" type="checkbox"/> <b>CONTRACT AND LEGAL NOTICES</b>	<b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____
<b>Same as Above</b> <b>ATTN:</b> <u>WFS VP of Land Credit</u> <b>TEL#:</b> <u>305-351-4733</u> <b>FAX#:</b> <u>305-392-5601</u> <b>EMAIL:</b> <u>JLightbourn@wfscorp.com</u>	<input checked="" type="checkbox"/> <b>CREDIT</b>	<b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____
<b>Same as Above</b> <b>ATTN:</b> <u>Contract Administration</u> <b>TEL#:</b> <u>763-543-4600</u> <b>FAX#:</b> <u>763-543-4603</u> <b>EMAIL:</b> <u>Contracts@usenergyyservices.com</u>	<input checked="" type="checkbox"/> <b>TRANSACTION CONFIRMATIONS</b>	<b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____
<b>ACCOUNTING INFORMATION</b>		
<b>Same as Above</b> <b>ATTN:</b> <u>Accounts Payable</u> <b>TEL#:</b> <u>763-543-4600</u> <b>FAX#:</b> <u>763-201-7818</u> <b>EMAIL:</b> <u>invoices@usenergyyservices.com</u>	<input checked="" type="checkbox"/> <b>INVOICES</b> <input checked="" type="checkbox"/> <b>PAYMENTS</b> <input checked="" type="checkbox"/> <b>SETTLEMENTS</b>	<b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#:</b> _____ <b>EMAIL:</b> _____
<b>BANK:</b> <u>Bank of America</u> <b>ABA:</b> <u>026009593</u> <b>ACCT:</b> <u>8666687054</u> <b>OTHER DETAILS:</b> <u>Name on Acct: U.S. Energy Services, Inc.</u>	<b>WIRE TRANSFER NUMBERS (IF APPLICABLE)</b>	<b>BANK:</b> _____ <b>ABA:</b> _____ <b>ACCT:</b> _____ <b>OTHER DETAILS:</b> _____
<b>BANK:</b> <u>Bank of America</u> <b>ABA:</b> <u>071000039</u> <b>ACCT:</b> <u>8666687054</u> <b>OTHER DETAILS:</b> <u>Name on Acct: U.S. Energy Services, Inc.</u>	<b>ACH NUMBERS (IF APPLICABLE)</b>	<b>BANK:</b> _____ <b>ABA:</b> _____ <b>ACCT:</b> _____ <b>OTHER DETAILS:</b> _____
<b>ATTN:</b> _____ <b>ADDRESS:</b> _____	<b>CHECKS (IF APPLICABLE)</b>	<b>ATTN:</b> _____ <b>ADDRESS:</b> _____

# Base Contract for Sale and Purchase of Natural Gas

(Continued)

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select the appropriate box(es) from each section:

<b>Section 1.2</b> Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default <input checked="" type="checkbox"/> No Additional Events of Default (default) <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____
<b>Section 2.7</b> Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> _____ Business Days after receipt	
<b>Section 2.8</b> Confirming Party <input checked="" type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer <input type="checkbox"/> _____	
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>	
<b>Section 2.31</b> Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____	<b>Section 10.3.2</b> Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b> Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	
<b>Section 7.2</b> Payment Date <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 15.5</b> Choice Of Law <b>Delaware</b>
<b>Section 7.2</b> Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) X    Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	<b>Section 15.10</b> Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.7</b> Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply	
<input type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: _____ <input type="checkbox"/> <b>Addendum(s):</b> _____	

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

<b>World Fuel Services, Inc.</b>	<i>PARTY NAME</i>	<b>[INSERT COUNTERPARTY LEGAL ENTITY NAME]</b>
By: _____	<i>SIGNATURE</i>	By: _____
	<i>PRINTED NAME</i>	[Insert Name]
	<i>TITLE</i>	[Insert Title]

# General Terms and Conditions

## Base Contract for Sale and Purchase of Natural Gas

### SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

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

#### **Oral Transaction Procedure:**

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

#### **Written Transaction Procedure:**

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

### SECTION 2. DEFINITIONS

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

2.1. "Additional Event of Default" shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.

2.2. "Affiliate" shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.

- 2.3. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.
- 2.4. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.
- 2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.13. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.18. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.23. "Indebtedness Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.

- 2.24. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.27. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.28. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.
- 2.31. "Spot Price " as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.
- 2.32. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.
- 2.33. "Transactional Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.
- 2.34. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.
- 2.35. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

### SECTION 3. PERFORMANCE OBLIGATION

- 3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

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

**Cover Standard:**

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.



**Spot Price Standard:**

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

## **SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES**

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

## **SECTION 5. QUALITY AND MEASUREMENT**

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

## **SECTION 6. TAXES**

**The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.**

**Buyer Pays At and After Delivery Point:**

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

**Seller Pays Before and At Delivery Point:**

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

## **SECTION 7. BILLING, PAYMENT, AND AUDIT**

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed without undue delay. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

8.5. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

## SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payment instructions, and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. 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.

9.4. The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

## SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or guaranty. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; or ix) be the affected party with respect to any Additional Event of Default; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

**The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.**

### **Early Termination Damages Apply:**

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and

Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

**Early Termination Damages Do Not Apply:**

10.3.1. 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 under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

**The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.**

**Other Agreement Setoffs Apply:**

**Bilateral Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

**Triangular Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option, and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff (i) any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; (ii) any Net Settlement Amount against any amount(s) (including any excess cash margin or excess cash collateral) owed by or to a party under any other agreement or arrangement between the parties; (iii) any Net Settlement Amount owed to the Non-Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Non-Defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement; (iv) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party to the Non-Defaulting Party or its Affiliates under any other agreement or arrangement; and/or (v) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party or its Affiliates to the Non-Defaulting Party under any other agreement or arrangement.

**Other Agreement Setoffs Do Not Apply:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

## SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

## SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.



## SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

## SECTION 15. MISCELLANEOUS

15.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

15.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

15.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

15.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

15.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

15.7. There is no third party beneficiary to this Contract.

15.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

15.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency's reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure,

and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties

15.12. Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

**DISCLAIMER:** The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.**

TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

EXHIBIT A

Letterhead/Logo	Date: _____, ____ Transaction Confirmation #: _____			
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.				
<b>SELLER:</b> _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	<b>BUYER:</b> _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____			
Contract Price: \$_____/MMBtu or _____				
Delivery Period: Begin: _____, ____ End: _____, ____				
<b>Performance Obligation and Contract Quantity: (Select One)</b>  <table style="width: 100%;"> <tr> <td style="width: 33%; vertical-align: top;"> <b>Firm (Fixed Quantity):</b>            _____ MMBtus/day  <input type="checkbox"/> EFP         </td> <td style="width: 33%; vertical-align: top;"> <b>Firm (Variable Quantity):</b>            _____ MMBtus/day Minimum            _____ MMBtus/day Maximum            subject to Section 4.2. at election of  <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller         </td> <td style="width: 33%; vertical-align: top;"> <b>Interruptible:</b>            Up to _____ MMBtus/day         </td> </tr> </table>		<b>Firm (Fixed Quantity):</b> _____ MMBtus/day <input type="checkbox"/> EFP	<b>Firm (Variable Quantity):</b> _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	<b>Interruptible:</b> Up to _____ MMBtus/day
<b>Firm (Fixed Quantity):</b> _____ MMBtus/day <input type="checkbox"/> EFP	<b>Firm (Variable Quantity):</b> _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	<b>Interruptible:</b> Up to _____ MMBtus/day		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			

**SPECIAL PROVISIONS TO THE  
BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS  
BETWEEN**

**[Party A'S Legal Name] ("Party A")**

**AND**

**[Party B'S Legal Name] ("Party B")**

**DATED AS OF  
("Effective Date")**

These "Special Provisions" supplement and amend the Base Contract for Sale and Purchase of Natural Gas as published by North American Energy Standards Board, Inc., September 5, 2006. In the event of an inconsistency between the Base Contract and the Special Provisions, these Special Provisions shall govern. Except as amended herein, the Base Contract shall remain in full force and effect. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Base Contract.

**1. Term.**

- a. The Contract shall commence on \_\_\_\_\_, for an initial one (1) year period with the option to renew for four (4) additional one (1) year periods for a total term not to exceed five (5) years.
- b. The University may terminate the Contract, in whole or in part, with or without cause, upon thirty (30) days written notice to Offeror. Subject to the provision of any Transition Services (as defined below), upon termination, Offeror will refund to the University all prepaid amounts for Goods/Services not delivered or performed. If the Contract is terminated pursuant to this section, subject to the provision of any Transition Services, the University will pay Offeror, as full compensation under the Contract: (1) the portion of Goods/Services delivered or performed and accepted prior to the effective date of termination based on the unit prices in the Contract, or, if no unit prices are provided, the pro rata amount of the total order price based on the amount delivered or performed; and (2) a reasonable amount, not otherwise recoverable from other sources by Offeror, and as approved by the University, with respect to the undelivered, unperformed, or unacceptable portion of the Goods/Services. In no event will compensation paid previously under the Contract together with compensation paid under this section exceed the total purchase order or Contract price.
- c. The University may terminate the Contract, in whole or in part, if Offeror defaults on any of its obligations in the Contract and fails to cure such default within seven (7) days after receiving notice of default from the University. In the event of such a default, the University may procure the Goods/Services from other sources and Offeror will be liable to the University for any excess costs the University incurs.
- d. The University shall have the right to terminate this Contract at any time in the event the Offeror files a petition in bankruptcy, or is adjudicated bankrupt; or if a petition in

bankruptcy is filed against the Offeror and not discharged within thirty (30) days; or if the Offeror becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law; or if a receiver is appointed for the Offeror or its business.

- e. Upon termination of the Contract or termination of any Services (regardless of the reason for termination), the parties will work in good faith to transition the terminated Services to the University or its designee(s), with minimum interruption to the University's business. At the University's option, Offeror will continue to provide Services and will provide transition support at rates consistent with the terms of the Contract for a period of no longer than one-hundred and eighty (180) days following the termination date (the Transition Period). Offeror will provide the post-termination Services (the Transition Services) at least at the same levels of quality and timeliness of performance as Services were provided prior to termination, in a professional manner, with high quality, and in accordance with industry standards. The parties may, by written agreement, modify the Transition Services to be provided and the length of the Transition Period.
2. **Survival.** All provisions of the Contract that anticipate performance after the termination of the Contract, and all provisions necessary or appropriate to interpret and enforce such provisions, will survive termination of the Contract.
3. **Settlement Method and Terms.** Payment will be subject to the provisions of Title 35 of the Arizona Revised Statutes (ARS), as amended from time to time, relating to time and manner of submission of claims. The University's obligation will be payable only and solely from funds appropriated for the purpose of the Contract. After delivery and acceptance of the Goods/Services, Offeror will submit an acceptable invoice to the University. Invoices must be itemized, reference the appropriate University purchase order number, and include sufficient detail to document the invoiced amount. The University will pay Offeror for the Goods/Services delivered and accepted net 30 days after receipt by the University of an invoice meeting the requirements of this section. Invoices will be electronically delivered to the University's Accounts Payable department by email to [AccountsPayable@nau.edu](mailto:AccountsPayable@nau.edu).
4. **Independent Contractor.** Offeror is an independent contractor. Neither the University nor Offeror may bind the other. None of the Offeror Parties will be employees, agents, partners, or joint venturers of the University. None of the Offeror Parties will be eligible for any benefits from the University, including worker's compensation coverage. Offeror is responsible to the University for compliance with the Contract by the Offeror, or any of its owners, officers, directors, members, managers, agents, employees, contractors or subcontractors at all tiers (together with Offeror, the "Offeror Parties"). Offeror will determine Offeror's hours of work, and will provide all tools, equipment, and supplies Offeror determines to be necessary to deliver and perform the Goods/Services. Offeror will maintain all business registrations and licenses required to deliver and perform the Goods/Services. Offeror is using its own knowledge, skill, and technical know-how in the delivery and performance of the Goods/Services and is not being supervised by the University. The conduct and control of the Services lies solely with Offeror, and the University is interested only in final results.



5. **Conflict of Interest.** The parties agree that this Contract may be canceled for conflict of interest in accordance with A.R.S. § 38-511.
6. **Dispute Resolution.** If a dispute arises under the Contract, the parties will exhaust all applicable administrative remedies provided for under Arizona Board of Regents Policy 3-809.
7. **Arbitration.** The parties agree to arbitrate disputes filed in Arizona Superior Court that are subject to mandatory arbitration pursuant to ARS § 12-133.
8. **Indemnification.**
  - a. Offeror will indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities, and its and their officials, agents and employees (collectively, Indemnatee) for, from, and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation, and litigation) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property to the extent caused, or alleged to be caused, by (i) the negligent or willful acts or omissions of Offeror Parties; (ii) a breach of the Contract; or (iii) failure to comply with any applicable law, rule, or regulation. Offeror will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.
  - b. Notwithstanding any expiration or termination of this Contract, this indemnification shall remain in effect indefinitely without termination as to acts and omissions actually occurring or alleged to have occurred prior to expiration of termination of this Contract.
9. **Non-Appropriation.** This Contract may be canceled without any further obligation on the part of the University in the event that sufficient appropriated funding is unavailable to assure full performance of its terms. Offeror shall be notified in writing of any such non-appropriation at the earliest opportunity.
10. **Inspection.** To the extent required by ARS § 35-214, all books, accounts, reports, files and other records relating to this Contract shall be subject at all reasonable times to inspection and audit by ABOR, the University, or the Auditor General of the State of Arizona, or their agents for five (5) years after completion of this Contract. Such records shall be produced at the University, or other location as designated by the University, upon reasonable notice to the Offeror.
11. **Authorized Presence Compliance.** As required by ARS § 41-4401, the University is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with ARS § 23-214(A) (verification of employee eligibility through the e-verify program). Offeror warrants that it and its subcontractors comply fully with all applicable federal immigration laws and regulations that relate to their employees and their compliance with ARS § 23-214(A). A breach of this warranty will be a material breach of this Contract that is subject to penalties up to and including termination of this Contract. The University retains the legal

right to inspect the papers of any Offeror or Offeror Party employee who works hereunder to ensure that the Offeror or Offeror Party is complying with the above warranty.

12. **No Boycott of Israel.** If the Goods/Services provided under this Contract include the acquisition of services, supplies, information technology or construction with a value of at least \$100,000 and Offeror is engaged in for-profit activity and has 10 or more full-time employees, then, to the extent required by ARS § 35- 393.01, Offeror certifies it is not currently engaged in, and during the term of this Contract will not engage in, a boycott of goods or services from Israel.
13. **Insurance Requirements.** Without limiting any liability of or any other obligation of Offeror, Offeror shall procure and maintain (and cause its subcontractors to procure and maintain), until all of their obligations have been discharged or satisfied, including any warranty periods under this Contract, insurance against claims that may arise from or in connection with the performance of work hereunder by Offeror, its agents, representatives, employees or subcontractors, the minimum insurance coverages listed below, unless otherwise agreed to in writing. Offeror's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Authorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The University in no way warrants that the above required minimum insurer rating is sufficient to protect the Offeror from potential insurance insolvency. Self-insurance may be accepted in lieu of or in combination with the insurance coverage requested.
  - a. **Commercial General Liability** of \$1,000,000 minimum limit for each occurrence and \$2,000,000 general aggregate, to include coverage for bodily injury, property damage, personal and advertising injury, and broad form contractual liability coverage.

Each Occurrence	\$1,000,000
Damage to Rented Premises	\$50,000
Personal and Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Liquor Liability (if applicable)	\$1,000,000
  - b. **Automobile Liability** of \$1,000,000 minimum Combined Single Limit each occurrence, to include coverage for bodily injury and property damage for any owned, hired, and/or non-owned automobiles assigned to or used in the performance of this Contract.
  - c. **Workers Compensation** coverage for all employees which meets Arizona statutory benefits and Employers' Liability insurance with a minimum limit of \$1,000,000 each accident, \$1,000,000 disease – each employee, and \$1,000,000 disease – policy limit.
    - i. This requirement shall not apply to each Offeror or subcontractor that is exempt under ARS § 23-901 and when such Offeror or subcontractor executes the appropriate form (Sole Proprietor Waiver or Independent Contractor Agreement).

- d. Policies for Commercial General Liability and Automobile Liability shall be endorsed to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of Offeror. Such additional insured shall be covered to the full limits of liability purchased by the Offeror, even if those limits are in excess of those required by this Contract.
- e. Policies for Commercial General Liability, Automobile Liability, and Workers Compensation shall contain a waiver of subrogation endorsement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of Offeror.
- f. Such coverage shall stipulate that the insurance afforded the Offeror shall be primary and that any insurance carried by Northern Arizona University, the Arizona Board of Regents, or the State of Arizona shall be excess and not contributory insurance, as provided by ARS §41-621(E).
- g. With the exception of ten (10) days' notice of cancellation for non-payment of premium, Offeror's insurance shall not be permitted to expire, be suspended, be cancelled, or materially changed for any reason without thirty (30) days prior written notice to the University.
- h. Offeror will furnish the University with valid certificate(s) of insurance required by this Contract and coverage must be in effect at or prior to commencement of work under this Contract and remain in effect for the term of this Contract.
- i. The University's project or purchase order number and project description will be noted on each certificate of insurance.
- j. The Certificate Holder shall be listed as "State of Arizona, Arizona Board of Regents and Northern Arizona University".
- k. Failure on the part of Offeror to maintain these requirements or provide evidence of renewal, shall constitute a material breach of this Contract upon which the University may immediately terminate this Contract, or, in the University's sole discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the University shall be repaid by Offeror to the University upon demand, or the University may offset the cost of the premiums against any monies due to Offeror.
- l. Costs for coverage broader than those required or for limits in excess of those required shall not be charged to the University.

- m. The University reserves the right to request and receive proof of insurance and/or certified copies of any or all of the above policies and/or endorsements at any time throughout the term of this Contract.
  - n. Offeror's certificate(s) of insurance may include all subcontractors as insureds under its policies as required by this Contract, or Offeror will furnish to the University upon request, copies of valid certificates and endorsements for each subcontractor. Coverages for subcontractors will be subject to the minimum requirements identified above.
14. **Governing Law and Venue.** The Contract will be governed by the laws of the State of Arizona without regard to any conflicts of laws principles. The University's obligations hereunder are subject to the regulations/policies of the Arizona Board of Regents. Any proceeding arising out of or relating to the Contract will be conducted in Coconino County, Arizona. Each party consents to such jurisdiction and waives any objection it may now or hereafter have to venue or to convenience of forum.
15. **Public Records.** The University, as a public institution, is subject to ARS §§ 39-121 to 39-127 regarding public records. Any provision regarding confidentiality is limited to the extent necessary to comply with Arizona law.
16. **Interpretation-Parol Evidence.** The Contract is intended by the parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade will be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under the Contract will not be relevant to determine the meaning of the Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.
17. **Privacy; Educational Records.** Student educational records are protected by the U.S. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and its implementing regulations (**FERPA**). Offeror will not require any University students or employees to waive any privacy rights (including FERPA or the European Union's General Data Protection Regulation (**GDPR**)) as a condition for receipt of any educational services, and any attempt to do so will be void. Offeror will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from the University or as otherwise provided by law. If the Contract requires or permits Offeror to access or release any student records, then, for purposes of the Contract only, the University designates Offeror as a "school official" for the University under FERPA, as that term is used in FERPA.
18. **Privacy; No Waivers or End User Agreements.** Offeror will not require any University faculty, staff, or students to waive any privacy rights (including under FERPA or the European Union's General Data Protection Regulation (**GDPR**)) as a condition for receipt of any Goods/Services, and any attempt to do so will be void. If Offeror requires University faculty, staff or students to accept a clickwrap, click-through, end user license, or other similar agreement (End User Agreement), the terms of the End User Agreement that conflict

or are inconsistent, with the terms of this Contract or the University's Privacy Statement will be void.

19. **Health Insurance Portability and Accountability Act.** Offeror shall abide by all laws and regulations that protect the privacy of healthcare information to which Offeror obtains access under this Contract. Offeror and the University acknowledge that certain portions of the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as codified at 42 U.S.C. § 1320d through d-8, and the federal privacy regulations as contained in 45 CFR Part 164 may apply to Offeror and the University, and their relationships and operation under this Contract. If necessary, Offeror and the University will enter into a standard Business Associate Contract, and any other required Health Insurance Portability Accountability Act agreements. To the extent the terms thereof relate to Offeror's performance under this Contract, the provisions of such Business Associate Contract shall control.
20. **Americans with Disabilities Act and Rehabilitation Act.** To the extent applicable, Offeror will comply with all applicable provisions of the Americans with Disabilities Act, the Rehabilitation Act of 1973, and all applicable federal regulations, as amended from time to time (ADA Laws). All electronic and information technology and products and services to be used by University faculty/staff, students, program participants, or other University constituencies must be compliant with ADA Laws. Compliance means that a disabled person can acquire the same information, engage in the same interactions, and enjoy the same services as a nondisabled person, in an equally effective and integrated manner, with substantially equivalent ease of use.
21. **No Waiver.** No waiver by the University of any breach of the provisions of this Contract by the Offeror shall in any way be construed to be a waiver of any future breach or bar the University's right to insist on strict performance of the provisions of the Contract.
22. **Modifications.** This Contract shall be modified or rescinded only by a writing signed by both parties or their duly authorized agents.
23. **Assignment.** Offeror may not transfer or assign the Contract or any of Offeror's rights or obligations thereunder, either directly or indirectly, or by operation of law, without the University's prior written consent, and any attempt to the contrary will be void.
24. **Assignment of Anti-Trust Overcharge Claims.** In actual economic practice, overcharges resulting from anti-trust violations are borne by the ultimate purchaser. Therefore, Offeror hereby assigns to the University any and all claims for such overcharges.
25. **Prices.** All Prices will be as listed in a University purchase order, if not listed in the purchase order, prices will be as otherwise set forth in the Contract. Unless otherwise specified in the Contract: 1) all prices are in US Dollars; 2) prices include any cost for shipping, and handling; and 3) prices will include any travel, labor, interest, import/export fees, and other costs associated with providing the Goods/Services. The University will reimburse Offeror for expenses that are specifically identified in the purchase order. To obtain reimbursement for pre-

approved expenses, Offeror must submit all receipts and any required backup documentation to the University within sixty (60) days after the applicable expenses were incurred. If the University agrees to reimburse Offeror for any travel expenses, all reimbursable travel expenses must be authorized in writing by the University in advance of the planned travel and must be consistent with the [University travel policy](#).

26. **Taxes.** Unless otherwise specified in the Contract, prices will include all taxes and fees, including, without limitation, sales, use, or excise taxes, import duties, value added taxes, permit fees, license fees, or similar charges (Taxes). Taxes do not include the University income taxes or taxes related to the University's employees.
27. **Responsibility.** Each party is responsible for the negligent or willful acts or omissions of its employees and contractors when acting under such party's direction and supervision. In addition, Offeror is responsible to the University for compliance with the Contract by the Offeror Parties. The University recognizes an obligation to pay attorneys' fees or costs only when assessed by a court of competent jurisdiction. Notwithstanding the terms of the Contract or any other document, other than for employees and contractors acting under the University's direction and supervision, the University is not responsible for any actions of any third parties, including its students.
28. **Intellectual Property Ownership.** All Intellectual Property (as defined below) that Offeror or any of the Offeror Parties make, conceive, discover, develop or create, either solely or jointly with any other person or persons including the University, specifically for or at the request of the University in connection with the Contract (Contract IP), will be owned by the University. To the extent any Contract IP is not considered work made for hire for the University (or if ownership of all rights therein does not otherwise vest exclusively in the University), Offeror hereby irrevocably assigns, and will cause the Offeror Parties to so assign, without further consideration, to the University all right, title and interest in and to all Contract IP, including all copyright rights of ownership. Intellectual Property means all the University Data, as defined below, any and all inventions, designs, original works of authorship, formulas, processes, compositions, programs, databases, data, technologies, discoveries, ideas, writings, improvements, procedures, techniques, know-how, and all patent, trademark, service mark, trade secret, copyright and other intellectual property rights (and goodwill) relating to the foregoing. Offeror will make full and prompt disclosure of the Contract IP to the University. Offeror will, and will cause the Offeror Parties to, as and when requested by the University, do such acts, and sign such instruments to vest in the University the entire right, title and interest to the Contract IP, and to enable the University to prepare, file, and prosecute applications for, and to obtain patents and/or copyrights on, the Contract IP, and, at the University's expense, to cooperate with the University in the protection and/or defense of the Contract IP.
29. **Offeror's Intellectual Property.** Offeror will retain ownership of its pre-existing Intellectual Property, including any that may be incorporated into the Contract IP, provided that Offeror informs the University in writing before incorporating any pre-existing Intellectual Property into any Contract IP. Offeror hereby grants to the University a perpetual, irrevocable, royalty- free, worldwide right and license (with the right to sublicense), to freely use, make, have made, reproduce, disseminate, display, perform, and create derivative works based on such pre-

existing Intellectual Property as may be incorporated into the Contract IP or otherwise provided to the University in the course of performing under the Contract.

**30. Data Use, Ownership, and Privacy.**

- a. The terms of this section apply if Offeror receives, has access to, stores, or analyzes any the University Data (as defined below). As between the parties, the University will own, or retain all of its rights in, all data and information that the University provides to Offeror, as well as all data and information managed by Offeror on behalf of the University, including all output, reports, analyses, and other materials relating to, derived from, or generated pursuant to the Contract, even if generated by Offeror, as well as all data obtained or extracted through the University's or Offeror's use of such data or information (collectively, the "University Data"). the University Data also includes all data and information provided directly to Offeror by the University students and employees, and includes personal data, metadata, and user content.
- b. University Data will be the University's Intellectual Property and Offeror will treat it as the University Confidential Information (as defined below). Offeror will not use, access, disclose, or license, or provide to third parties, any the University Data, except: (i) to fulfill Offeror's obligations to the University hereunder; or (ii) as authorized in writing by the University. Without limitation, Offeror will not use any the University Data, whether or not aggregated or de-identified, for product development, marketing, profiling, benchmarking, or product demonstrations, without, in each case, the University's prior written consent. Offeror will not, directly or indirectly: (x) attempt to re-identify or de- aggregate de-identified or aggregated information; or (y) transfer de- identified and aggregated information to any third party unless that third party agrees not to attempt re-identification or de-aggregation. For the University Data to be considered de-identified, all direct and indirect personal identifiers must be removed, including names, ID numbers, dates of birth, demographic information, location information, and school information. Upon request by the University, Offeror will deliver, destroy, and/or make available to the University, any or all the University Data.

**31. Nondisclosure and Trade Secrets.**

- a. Offeror may receive (or has received) from the University and otherwise be exposed to confidential and proprietary information relating to the University's business practices, strategies, and technologies, the University Data, as well as confidential information of the University necessary to perform and/or provide the Goods/Services (collectively, the University Confidential Information). University Confidential Information may include, but is not limited to, confidential and proprietary information supplied to Offeror with the legend "the University Confidential and Proprietary," or other designations of confidentiality. As between Offeror and the University, the University Confidential Information is the sole, exclusive, and valuable property of the University. Accordingly, Offeror will not reproduce or otherwise use any of the University Confidential Information except in the performance or provision of the Goods/Services, and will not disclose any of the University Confidential Information in any form to any third party, either during or after

the Term, except with the University's prior written consent. Upon termination of the Contract, Offeror will cease using, and will return to the University, all originals and all copies of the University Confidential Information, in all forms and media, in Offeror's possession or under Offeror's control.

- b. Offeror will not disclose or otherwise make available to the University any confidential information of Offeror or received by Offeror from any third party.
- c. Offeror will have no obligation to maintain as confidential the University Confidential Information (other than the University Data) that Offeror can show: (i) was already lawfully in the possession of or known by Offeror before receipt from the University; (ii) is or becomes generally known in the industry through no violation of the Contract or any other agreement between the parties; (iii) is lawfully received by Offeror from a third party without restriction on disclosure or use; (iv) is required to be disclosed by court order following notice to the University sufficient to allow the University to contest such order; or (v) is approved in writing by the University for release or other use by Offeror.

32. **Background Checks.** Offeror will exclude from any direct participation in Offeror's performance under the Contract, any unqualified persons. In addition, Offeror will, at Offeror's expense, conduct relevant and appropriate background checks and fingerprinting according to the [University's policies](#) on all assigned employees and new hires to ensure that it does not assign any employee or agent to the University who may reasonably be considered to pose a threat to the safety or welfare of the University community or its property. Offeror is required to maintain hereunder, all background and fingerprint information and all documentation relating to work performance for each employee or contractor who performs work hereunder. Offeror will abide by all applicable laws, rules and regulations including the Fair Credit Reporting Act and any equal opportunity laws, rules, and regulations.

33. **Information Security.**

- a. This section applies if: 1) the University is purchasing or leasing software, or processing a software renewal; 2) Offeror is creating any code for the University; 3) Offeror receives, stores, or analyzes the University Data (including if the data is not online); 4) Offeror is hosting, or managing by infrastructure outside of the University, including in the cloud, University Data; or 5) Offeror is collecting PII or University Data via a link on an NAU.edu or another the University managed webpage.
- b. All systems, software, services, and devices that store, transmit, or otherwise process University Data (each, a System) must be designed, managed, and operated in accordance with information security best practices and in compliance with all applicable laws, rules, and regulations. University Data means: all data and information that University provides to Offeror, as well as all data and information managed by Offeror on behalf of University, including all output, reports, analyses, and other materials relating to, derived from, or generated pursuant to this Contract, even if generated by Offeror, as well as all data obtained or extracted through University's or Offeror's use of such data or information. University Data also includes all data and information provided directly to Offeror by University



students and employees, and includes personal data, metadata, and user content.

- c. With respect to each System, Offeror and its contractors at all tiers (directly and through their third-party service providers) will meet the following requirements:
- i. Access Control. Control access to University's resources, including University Data, limiting access to legitimate business need based on an individual's job-related assignment, approve and track access to ensure proper usage and accountability, and make such information available to University for review, upon University's request.
  - ii. Incident Reporting. Report information security incidents that affect University Data immediately to University (including those that involve information disclosure incidents, unauthorized disclosure of University Data, successful network intrusions, malware infection, and unauthorized access or modifications).
  - iii. Off shore. Ensure (i) that all development or modification of software for the University is performed only within the borders of the United States, and (ii) all University Data (including any backup copies) are stored, accessed from, and otherwise processed only within the borders of the United States.
  - iv. Patch Management. Carry out updates and patch management for all Systems in a timely manner and to the satisfaction of University. Updates and patch management must be deployed using an auditable process that can be reviewed by University upon University's request.
  - v. Encryption. Ensure all Systems use an industry standard encryption protocol for sensitive data, personal data, or personally identifiable data, as those terms may be defined in applicable laws, rules and regulations (PII), in transit and at rest (as documented in NIST 800-57, or equivalent).
  - vi. Notifications. Notify University immediately if Offeror receives any kind of subpoena for or involving University Data, if any third-party requests University Data, or if Offeror has a change in the location or transmission of University Data. All notifications to University required in this Information Security paragraph will be sent to University Information Security at its-soc@nau.edu, in addition to any other notice addresses in this Agreement.
  - vii. Backup and Restoration. Ensure that all University Data is available and accessible, and that adequate systems are in place to restore the availability and accessibility of all University Data in a timely manner in the event of a physical or technical threat.
  - viii. Privacy by Design. When developing, designing, selecting, and using Systems for processing sensitive data, personal data, or personally identifiable data, as those terms may be defined in applicable laws, rules and regulations (PII), Offeror will, with due regard to the state of the art, incorporate and implement data privacy best practices.

- d. In addition to Section 34.c. above, the following provisions apply if: (i) Offeror receives, stores, or analyzes University Data (including if the data is not online); or (ii) Offeror is hosting, or managing by infrastructure outside of University, including in the cloud, University Data:
  - i. Third Party Security Audits. Complete certified third-party audit (such as SOC2 Type II or substantially equivalent) in accordance with then current industry standards, which audits are subject to review by University upon University's request. Currently, no more than two audits per year are required.
  - ii. Penetration Tests. Perform periodic third party scans, including penetration tests, for unauthorized applications, services, code, and system vulnerabilities on each System in accordance with industry standards and University standards (as documented in NIST 800-115 or equivalent), and Offeror must provide proof of testing to University upon University's request.
  - iii. Vulnerability Scanning. All web-based Systems are required to have a remediation plan and third-party web application security scans in accordance with then current industry best practices or when required by applicable industry regulations or standards. Offeror must correct weaknesses within a reasonable period of time, consistent with applicable industry regulations or standards, and consistent with the criticality of the risk, and Offeror must provide proof of testing to University upon University's request.
- e. In addition to Sections 34.c.-d. above, the following provision applies if: (i) University is purchasing or leasing software, or processing a software renewal; (ii) Offeror is creating any code for University; or (iii) Offeror is hosting, or managing by infrastructure outside of University, including in the cloud, University Data:
  - i. University Rights. Allow University (directly or through third party service providers) to scan and/or penetration test any System regardless of where it resides.
- f. In addition to Sections 34.c.-e. above, the following provision applies if: (i) University is purchasing or leasing software, or processing a software renewal; (ii) Offeror is creating any code for University; (iii) Offeror is hosting, or managing by infrastructure outside of University, including in the cloud, University Data; or (iv), Offeror is collecting PII or University Data via a link on an University.edu or other University managed webpage:
  - i. Secure Development. Use secure development and coding standards including secure change management procedures in accordance with industry standards. Prior to releasing new software versions, Offeror will perform quality assurance testing and penetration testing and/or scanning. Offeror will provide to University for review, upon University request, evidence of a secure software development life cycle (SDLC).

34. **Foreign Corrupt Practices Act/UK Bribery Act/ Local Anti-corruption Law Compliance.** Offeror warrants that it is familiar with the U.S. laws prohibiting corruption and bribery under the U.S. Foreign Corrupt Practices Act and the United Kingdom laws prohibiting corruption and

bribery under the UK Bribery Act. In connection with Offeror's work under the Contract, Offeror will not offer or provide money or anything of value to any governmental official or employee or any candidate for political office in order to influence their actions or decisions, to obtain or retain business arrangements, or to secure favorable treatment in violation of the Foreign Corrupt Practices Act, the UK Bribery Act, or any other local anti-corruption law, either directly or indirectly. Any breach of the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, or other local anti-corruption law, will be a material breach of the Contract.

35. **Export Controls.** If any of the Goods/Services are export-controlled under the U.S. Export Administration Regulations, U.S. International Traffic in Arms Regulations, or through the sanctions and embargoes established through the Office of Foreign Assets Control (collectively, the Export Control Laws), Offeror will provide the University with written notification that identifies the export-controlled goods and such goods export classification. None of the work undertaken pursuant to the Contract will require either party to take or fail to take any action that would cause a violation of any of the Export Control Laws. The parties will cooperate to facilitate compliance with applicable requirements of the Export Control Laws.
36. **Business Continuity Plan.** If requested by the University, Offeror will provide to the University, within thirty (30) days after such request, a comprehensive plan for continuing the performance of its obligations during a public or institutional emergency (the Business Continuity Plan). The Business Continuity Plan, at a minimum, will address the following: 1) identification of response personnel by name; 2) key succession and performance responses in the event of sudden and significant decrease in workforce; 3) contingency plans for the Offeror to continue the performance of its obligations under the Contract, despite the emergency and 4) if Offeror will store, have access to, or otherwise process any the University Data, a data recovery plan that includes the following: identification of data recovery personnel by name, how the University Data will be recovered, recovery point and recovery time objectives, and steps to be taken to recover the University Data. If the University requires a data recovery plan, upon the University's request, Offeror will provide the University with evidence that Offeror annually tests the data recovery plan. In the event of a Public or Institutional Emergency, Offeror will implement the applicable actions set forth in the Business Continuity Plan and will make other commercially practicable efforts to mitigate the impact of the event. For clarification of intent, Offeror will not be entitled to any additional compensation or extension of time by virtue of having to implement a Business Continuity Plan, unless otherwise agreed to by the University in writing. A Public or Institutional Emergency means a natural or human made event that creates a substantial risk to the public, that causes or threatens death or injury to the general public, or that causes a significant disruption to the day-to-day business operations of the University.
37. **Payment Card Industry Data Security Standard.**
- a. The terms of this section apply if Offeror is processing credit or debit card transactions as part of the Contract. For e-commerce business and/or payment card transactions, Offeror will comply with the requirements and terms of the rules of all applicable payment card industry associations or organizations, as amended from time to time (PCI Security Standards), and be solely responsible for security and maintaining confidentiality of

payment card transactions processed by means of electronic commerce up to the point of receipt of such transactions by a qualified financial institution.

- b. Offeror will, at all times during the Term, be in compliance with the then current standard for Payment Card Industry Data Security Standard (PCI DSS), Payment Application Data Security Standard (PA-DSS) for software, and PIN Transaction Security (PCI PTS) for hardware. Offeror will provide attestation of compliance to the University annually by delivering to the University current copies of the following: (i) Offeror's "Attestation of Compliance for Onsite Assessments – Service Providers;" (ii) an attestation that all University's locations are being processed and secured in the same manner as those in Offeror's "PCI Report on Compliance;" and (iii) a copy of Offeror's PCI Report on Compliance cover letter. Offeror will notify the University immediately if Offeror becomes non-compliant, and of the occurrence of any security incidents (including information disclosure incidents, network intrusions, successful virus attacks, unauthorized access or modifications, and threats and vulnerabilities).
- c. Offeror's services must include the following:
  - i. Offeror maintains its own network operating on its own dedicated infrastructure. Offeror's network includes a firewall that (i) includes access control rules that separate Supplier's PCI network from the University, and (ii) restricts any communication between Offeror's network devices and University systems.
  - ii. Offeror treats the University network as an untrusted network and no unencrypted cardholder data traverses or otherwise is stored on the University's network, and the University has no ability to decrypt cardholder data.
  - iii. All devices must be SRED (secure reading and exchange of data), EMV (Europay, MasterCard and VISA) and PTS POI compliant.

- 38. **Offeror Identification.** Offeror vehicles and personnel will be clearly identifiable when performing Services on University premises. Offeror's employees shall always be in uniform with visible company identification and Offeror's vehicles must be clearly identified with company name, phone number and or logo and with any applicable state license numbers.
- 39. **Parking.** Offeror shall acquire and maintain, at their sole expense, all necessary parking permits required by the University. Parking permits along with regulations governing traffic and parking are available from University Transit Services (928-523-6623) located at 113 W Dupont Ave., Flagstaff, AZ 86011. Permit applications and vehicle registration may also be accessed on-line at <https://in.nau.edu/university-transit-services/>. Regulations shall be applicable to all employees of Offeror and will be strictly enforced. All fines incurred shall be the sole responsibility of the Offeror.
- 40. **Campus Deliveries and Mall Access.** Offeror will familiarize itself with University parking, campus delivery options, and loading zones. Not all campus buildings are directly accessible

and some require Offeror to unload at lots or loading areas that may not be adjacent to the delivery or work location. As a result, Offeror must then transport Goods by using electric style golf carts, dolly, or other manual device.

41. **Permits.** Offeror shall acquire and maintain all necessary permits and licenses and shall adhere strictly to all Federal, State, County, or City laws, codes, regulations, and ordinances as applicable.
42. **Hazard Inspection.** University buildings have the potential to house hazards including, but not limited to hazardous building materials, chemical, biological, or physical hazards, or conditions which may become hazardous based on specific work scope or practices. Prior to commencement of any Services Offeror will review, sign, and return a University hazard inspection and communication form. Requests for inspection may be placed by any University employee or by the Offeror at <https://in.nau.edu/facility-services/asbestos-lead-and-pcbs/>, or by contacting the EH&S Material Safety Office at (928) 523-6435.
43. **Title IX Obligation.** Title IX protects individuals from discrimination based on sex, including sexual harassment. The University fosters a learning and working environment built on respect and free of sexual harassment. The University's Title IX Guidance is available online. Offeror will: (i) comply with the University's Title IX Guidance; (ii) provide the University's Title IX Guidance to any Supplier Parties reasonably expected to interact with University students or employees, in person or online; and (iii) ensure that all Supplier Parties comply with the University's Title IX Guidance.
44. **Non-Discrimination.** The parties will comply with all applicable laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. If applicable, the parties will abide by the requirements of 41 CFR §§ 60- 1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.
45. **Data Protection.** Offeror will ensure that all Services undertaken pursuant to the Contract are performed in compliance with applicable privacy and data protection laws, rules, and regulations. In addition, Offeror is responsible to the University for compliance with the Contract by all Offeror Parties. If Offeror will serve as a Processor of the University Data that includes Personal Data of Data Subjects in the European Union, Offeror will cooperate with the University to comply with the GDPR with respect to such Personal Data and Data Subjects. This includes ensuring that all Data Subjects have signed appropriate Consents and signing and complying with all documents and agreements reasonably requested by the University, including any data processing agreements. All capitalized terms in this section not otherwise defined in the Contract are defined in the GDPR.

46. **Small Business.** If subcontracting (Tier 2 and higher) is necessary, Offeror will make commercially reasonable efforts to use Small Business (SB) and Small Diverse Business (SDB) in delivery or performance of the Goods/Services. The University may request a report at each annual anniversary date and at the completion of the Contract indicating the extent of SB and SDB participation.
47. **Third Party Arrangements.** From time to time, the University may enter into arrangements with third parties that may require Offeror to work cooperatively with and/or connect and use infrastructure with third parties. On a case-by-case basis, the University and Offeror will work cooperatively, timely, and in good faith to take such actions as may be necessary or appropriate to give effect to the University's third-party agreements. Offeror will not be bound to terms and conditions of a third party that are different from this Contract unless expressly agreed in writing. If the third party terms and conditions conflict with this Contract's terms, impact Offeror's ability to meet service level agreements of this Contract, or may cause Offeror to incur additional costs, then the parties will enter into good faith negotiations for an amendment to this Contract prior to Offeror agreeing to comply with the third party terms and conditions.
48. **Gratuities.** Offeror will not give or offer any gratuities, in the form of entertainment, gifts or otherwise, or use an agent or representative of Offeror to give or offer a gratuity, to any officer or employee of the State of Arizona with a view toward securing an agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such Contract. If the University determines that the Offeror has violated this section, the University may, by written notice to Offeror, cancel the Contract. If the Contract is canceled by the University pursuant to this section, the University will be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the costs incurred by Offeror in providing gratuities.
49. **Packaging.** Offeror shall package Goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (a) Offeror's name and address; (b) the University's name, address and purchase order number; (c) Container number and total number of containers, e.g., box 1 of 4 boxes; and (d) The number of the container bearing the packing slip. Offeror shall bear cost of packaging unless otherwise provided.
50. **Shipment Under Reservation Prohibited.** Offeror shall not be authorized to ship the goods under reservation and no tender of a bill of lading shall operate as a tender of the goods.
51. **Liens.** All goods delivered and labor performed under this Contract shall be free of all liens and, if the University requests, a formal release of all liens shall be delivered to the University.
52. **No Replacement of Defective Tender.** Every tender of goods shall fully comply with all provisions of this Contract as to time of delivery, quantity, quality, and the like. If a tender is made which does not fully conform, this shall constitute a breach and Offeror shall not have the right to substitute a conforming tender.

53. **Title and Risk of Loss.** The title and risk of loss of the Goods will not pass to the University until they are delivered, received, and the contract of coverage has been completed. All risk of transportation and all related charges will be the responsibility of the Offeror. Offeror will insure and file all claims for visible and concealed damage. The University will notify Offeror promptly of any damaged Goods and will assist Offeror in arranging for inspection. Notice of rejection may be made to Offeror at any time within 1 month after delivery to the University.
54. **Inspection.** Offeror will supply the Goods/Services to the University exactly as specified in the Contract and applicable purchase order. The Goods/Services will meet the highest and best industry practices. The University will have the right to inspect any Goods/Services prior to and a reasonable amount of time after delivery. If the University determines that any Goods/Services are incomplete, defective, or not in compliance with the specifications or other requirements of the Contract or specific purchase order, the University may reject such Goods/Services in whole or in part without liability.
55. **Warranties.** In addition to any implied warranties, Offeror warrants to the University that: 1) the Goods/Services will be free from any defects in design, workmanship, materials, or labor; 2) all of the Services will be performed in a professional and workmanlike manner and in conformity with highest and best industry standards by persons reasonably suited by skill, training and experience for the type of services they are assigned to perform; 3) Offeror will comply, and will be responsible for ensuring Offeror Parties comply with all applicable laws, rules, and regulations, including any policies of ABOR and the University, in the performance of the Contract; 4) Offeror owns or has sufficient rights in the Goods/Services that they do not infringe upon or violate any intellectual property of any third parties, and are free and clear of any liens or encumbrances; 5) any data, code, or software developed or delivered by Offeror to the University will not contain any viruses, worms, Trojan Horses, or other disabling devices or code; 6) all sensitive data, personal data, and personally identifiable data, as those terms may be defined in applicable laws, rules and regulations (PII) provided by Offeror to the University was obtained legally and Offeror has obtained all requisite permissions from the individuals whose PII is being provided for (a) Offeror to provide the PII to the University, and (b) the University to use the PII for the purposes and in the jurisdictions set forth in the Contract; 7) the prices of Goods/Services in the Contract are the lowest prices at which these or similar goods or services are sold by the Offeror to similar customers in similar quantities. In the event of any price reduction between execution of the Contract and delivery of the Goods/Services, the University shall be entitled to such reduction, and 8) all Goods/Services delivered by Offeror will conform to the specifications, drawings, and descriptions set forth in the Contract and applicable purchase order, and to any samples furnished by Offeror. In the event of a conflict among the specifications, drawings, samples, and description, the specifications will govern.
56. **Sales and Use Tax.** The Offeror shall comply with and require all Offeror Parties to comply with all the provisions of the applicable state and sales excise tax law and compensation use tax law and all amendments to same. The Offeror further agrees to indemnify and save harmless the University, of and from any and all claims and demands made against it by virtue of the failure of the Offeror or any Offeror Party to comply with the provisions of any

or all said laws in amendments. the University is not exempt from state sales excise tax and compensation use tax.

57. **Changes.** Within the limits allowed by law, Offeror agrees that the University may order additional Goods/Services, or make changes by altering, adding to, or deducting from the proposed Goods/Services, the Contract sum being adjusted accordingly, and Offeror shall enter into a modification of the Contract to reflect said changes.
58. **Price Adjustment.** Price changes shall only be considered at the end of one Contract period and the beginning of another. Price change requests shall be supported by evidence of increased costs to the Offeror. The University shall not approve price increases that shall merely increase the gross profitability of the Offeror at the expense of the University. Price change requests shall be a factor in the Contract extension review process. The University shall determine whether the requested price increase or an alternate option shall be in the best interest of the University.
59. **Liquidated Damages.** The University and the Offeror agree that in the event that the Offeror fails to perform under this Contract, the University shall be damaged. The extent of the damage is very difficult to calculate. Therefore, the Offeror agrees to pay the University liquidated damages if the agreed upon delivery and installation dates shall not be met and liquidated damages are specified on the purchase order.
60. **Service Marks and Trademarks.** For purposes of this provision, the phrase "the University Mark" means any trade name, trademark, service mark, logo, domain name, and any other distinctive brand feature owned or used by the University. Offeror agrees to comply with the University's trademark licensing program concerning any use or proposed use by Offeror of any of the University Mark on goods, in relation to Goods/Services, and in connection with advertisements or promotion of Offeror or its business. Except as expressly authorized in this Contract, Offeror is not permitted to use any the University Mark without prior written approval of the University. Prior to any use of an the University Mark by Offeror or its affiliates or successors or assigns, Offeror will comply with the University's Licensing Policy <http://nau.edu/licensing>.
61. **Advertising/Publishing.** Offeror shall not advertise or publish, without the University's prior consent, the fact that the University had entered into this Contract, except to the extent necessary to comply with proper request for information provided by appropriate statutes.
62. **Weapons.** The University prohibits the use, possession, display, or storage of any weapon, explosive device, or fireworks on all land and buildings owned, leased, or under the control of the University or its affiliated or related entities, in all the University residential facilities (whether managed by the University or another entity), in all the University vehicles and at all the University or the University-affiliate sponsored events and activities, except as provided in §12-781 of the Arizona Revised Statutes or unless written permission is given by the University Police Department. Notification by Offerors to all persons or entities who are employees, officers, subcontractors, Offerors, agents, guests, invitees, or licensees of Offeror Parties of this policy is a condition and requirement of the Contract. Offeror further agrees to



enforce this contractual requirement against all Offeror Parties.

63. **Tobacco Free.** The University recognizes that tobacco use is a public health hazard and is dedicated to providing a healthy, comfortable and productive living, learning and working environment. Use of all tobacco products, including those not approved by the FDA for cessation is prohibited on the University property, facilities, grounds, parking structures, the University-owned vehicles and structures owned or leased by the University. This includes, but is not limited to, the use of cigarettes, e-cigarettes, hookah, e-hookah, chew, dip, snuff, cigars, pipes, vaporizers, etc. For additional information, go to <http://nau.edu/Tobacco-Free/Policy/>.
64. **Academic Freedom and Accreditation.** The University will maintain ultimate authority over all curriculum. Nothing in this Contract will limit the University's academic freedom or require the University to violate any of the policies, standards, and requirements of the Arizona Board Of Regents or any accrediting entities.
65. **Essence of Time.** Time shall be of the essence as to matters related to this Contract.
66. **COVID-19 Pandemic.** When providing services on University owned or leased property, Offeror shall and shall cause its subcontractors to abide by the CDC guidelines for COVID-19 safety and ensure 1) face masks or cloth face coverings are worn at all times, 2) health screenings are conducted daily for all Offeror and subcontractor employees, 3) ill employees are not assigned to provide services and 4) the University's [Risk Management](#) department is notified within 24 hours, if an employee reports i) being tested for COVID-19 or ii) testing positive for COVID-19 and for cases follow all CDC guidance for quarantine or isolation. Do not provide personally identifiable information of the employee in the notification, an official representative will follow-up if needed.
67. **Federal Funding Provisions.** If a purchase order issued for Goods/Services under this Contract involves the use of United States federal funds, including from a government grant or funds from a subcontract at any tier relating to a federal government grant, the following terms apply to the Contract:
- a. Byrd Anti-Lobbying Amendment. If the Contract is for \$100,000 or more, Offeror will file the certifications required by 31 U.S.C 1352 and associated regulations. Each tier certifies to the tier above that it will not or has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31U.S.C. 1352. Each tier will also disclose any lobbying with non-federal funds that takes place in connection with obtaining a federal award. Such disclosures are forwarded from tier to tier up to the University.
  - b. Debarment & Suspension. Offeror represents and warrants that neither it nor any of its subcontractors supplying the Goods/Services have either directly or indirectly or through subcontractors, been suspended, debarred, or otherwise excluded from participation in or

penalized by any federal or state procurement, non-procurement, or reimbursement program. Offeror affirms that it has confirmed the above statement by checking The System for Award Management (SAM) [www.uscontractorregistration.com](http://www.uscontractorregistration.com) within 180 days prior to commencing work under the Contract. Offeror will provide immediate written notice to the University upon learning that it or any of its subcontractors are under any investigation or proposed action that could result in such exclusion, suspension, or debarment.

- c. Rights to Inventions Made Under a Contract. If this Contract is a “funding agreement” under 37 CFR 401.3, the Parties agree to incorporate by this reference the standard patent rights clause found in 37 CFR 401.14 and any implementing regulations issued by the awarding agency.
- d. Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. To the extent any of the provisions of 2 CFR Appendix II to Part 200 apply to this Contract, such provisions are incorporated by reference.

**68. Government Subcontract Provisions.**

- a. If a purchase order issued for a Service performed under this Contract is a subcontract under a U.S. government prime contract, the clauses referenced below of the Federal Acquisition Regulations (FAR) and the Defense Federal Acquisition Regulations (DFAR), or the Armed Services Procurement Regulations (ASPR) are incorporated into the Contract by this reference. Each regulation contains criteria for determining applicability of the regulation to a particular contract.
- b. In the following clauses, the terms "Government" and "Contracting Officer" will mean the University; the term "Contract" will mean the Contract and the term “Contractor” will mean Offeror. Offeror will comply with all applicable federal laws and regulations, including but not limited to Uniform Guidance (2 CFR Part 200) and Debarment and Suspension (45 CFR 620).
- c. For purchases funded with federal funds, the following provisions are incorporated into the Contract by reference where applicable and form a part of the terms and conditions of the Contract. Offeror agrees to flow down all applicable clauses to lower-tier entities.

**Federal Acquisition Regulations (FAR)\*\***

52.202-1 Definitions

52.203-3 Gratuities

52.203-5 Covenant Against Contingent Fees

52.203-6 Restrictions on Subcontractor Sales to the Government

52.203-7 Anti-Kickback Procedures

52.203-12 Limitation on Payments to Influence Certain Federal Transactions

52.204-2 Security Requirements

52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.  
 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.  
 52.204-26 Covered Telecommunications Equipment or Services-Representation.  
 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment  
 52.211-15 Defense Priority and Allocation Requirements  
 52.214-27 Price Reduction For Defective Cost or Pricing Data  
 52.215-1 Instructions to Offerors—Competitive Acquisition.  
 52.215-2 Audit and Records - Negotiation  
 52.215-12 Subcontractor Cost or Pricing Data  
 52.215-13 Subcontractor Cost or Pricing Data – Modifications 5  
 2-215-14 Integrity of Unit Prices 5  
 2-219-8 Utilization of Small Business Concerns  
 52-219-9 Small Business Subcontracting Plan  
 52.222-1 Notice to the Government of Labor Disputes  
 52.222-4 Contract Work Hours and Safety Standards Act Overtime Compensation  
 52.222-6 Davis-Bacon Act [Construction Wage Rate Requirements]  
 52.222-20 Walsh Healey Public Contracts Act [Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000.]  
 52.222-21 Prohibition of Segregated Facilities  
 52.222-26 Equal Opportunity  
 52.222-35 Equal Opportunity for Veterans  
 52.222-36 Equal Opportunity for Workers with Disabilities  
 52.222-37 Employment Reports on Veterans  
 52.222-40 Notification of Employee Rights Concerning Payment of Union Dues or Fees  
 52.222-41 Service Contract Act of 1965, as Amended  
 52.222-50 Combating Trafficking in Persons  
 52.223-3 Hazardous Material Identification and Material Safety Data  
 52.223-6 Drug-Free Workplace  
 52.225-1 Buy American Act – Supplies  
 52.225-13 Restrictions on Certain Foreign Purchases  
 52.227-1 Authorization and Consent (Alt I in all R&D)  
 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement  
 52.227-3 Patent Indemnity  
 52.227-10 Filing of Patent Applications--Classified Subject Matter  
 52.227-11 Patent Rights – Ownership by the Contractor (Alt I-V)  
 52.227-13 Patent Rights - Ownership by the Government  
 52.227-14 Rights in Data – General  
 52.233-1 Disputes  
 52.242-1 Notice of Intent to Disallow Costs  
 52.242-15 Stop-work order 52.243-1 Changes - Fixed Price (43.205 (a) (1) Alts may apply)  
 52.243-2 Changes - Cost Reimbursement (43.205 (b) (1) Alts may apply)  
 52.244-2 Subcontracts

52.244-5 Competition in Subcontracting  
52.244-6 Subcontracts for Commercial Items  
52.245-2 Government Property – Installation Operation Services  
52.246-15 Certificate of Conformance  
52.247-63 Preference for U.S. Flag Air Carriers  
52.247-64 Preference for U.S. Flag Commercial Vessels  
52.249.1 Termination for Convenience of the Government (Fixed Price) less than simplified acquisition threshold  
52.249-2 Termination for Convenience of the Government (Fixed Price) more than simplified acquisition threshold  
52.249.4 Termination for Convenience of the Government (Services)  
52.249-5 Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions)  
52.249- 14 Excusable Delays

Defense Federal Acquisition Regulations (DFAR)\*\* DFAR CIT. TITLE

252.203-7001 Prohibition on Persons convicted of Fraud or Other Defense-Contract-Related Felonies  
252.222- 7000 Restrictions on Employment of Personnel  
252.225-7000 Buy American Act and Balance of Payments program  
252.227-7013 Rights in Technical Data and Computer Software  
252.227-7016 Rights in Bid or Proposal Information  
252.227-7018 Rights in Noncommercial Technical Data and Computer Software  
252.227-7019 Validation of Asserted Restrictions – Computer Software  
252.227-7037 Validation Technical Data  
252.243-7001 Pricing of Contract Modifications  
252.244-7000 Subcontracts for Commercial Items and Commercial Components

\*Full text of the FAR clauses can be found at <http://www.arnet.gov/far>

\*\*Full text of the DFAR clauses can be found at <http://farsite.hill.af.mil/VFDFARs.htm>

SIGNATURES ON FOLLOWING PAGE

WHEREFORE, the parties have executed these Provisions on the date set forth below.

ARIZONA BOARD OF REGENTS  
for and on behalf of  
Northern Arizona University

OFFEROR

By \_\_\_\_\_ By \_\_\_\_\_

Name \_\_\_\_\_ Name \_\_\_\_\_

Title \_\_\_\_\_ Title \_\_\_\_\_

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