

# Dane County Contract Cover Sheet

Res 586  
significant

<b>Dept./Division</b>	Department of Waste & Renewables
<b>Vendor Name</b>	Blue Source LLC
<b>Vendor MUNIS #</b>	26798
<b>Brief Contract Title/Description</b>	RFP 118062 - Marketing and monetization of RIN credits for RNG produced at the landfill and dispensed as transportation fuel at Dane County owned CNG stations.
<b>Contract Term</b>	June 30, 2024
<b>Total Contract Amount</b>	\$ 10% Net RIN Proceeds

<b>Contract #</b> <small>Admin will assign</small>	13676
<b>Addendum</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Type of Contract</b>	
<input type="checkbox"/>	Dane County Contract
<input type="checkbox"/>	Grant
<input type="checkbox"/>	County Lessee
<input type="checkbox"/>	County Lessor
<input type="checkbox"/>	Intergovernmental
<input type="checkbox"/>	Purchase of Property
<input type="checkbox"/>	Property Sale
<input checked="" type="checkbox"/>	Other

<b>Purchasing Authority</b>	<input type="checkbox"/> \$10,000 or under – Best Judgment (1 quote required)	
	<input type="checkbox"/> Between \$10,000 – \$36,000 (\$0 – \$25,000 Public Works) (3 quotes required)	
	<input type="checkbox"/> Over \$36,000 (\$25,000 Public Works) (Formal RFB/RFP required)	RFB/RFP # 118062
	<input type="checkbox"/> Bid Waiver – \$36,000 or under (\$25,000 or under Public Works)	
	<input type="checkbox"/> Bid Waiver – Over \$36,000 (N/A to Public Works)	
	<input checked="" type="checkbox"/> N/A – Grants, Leases, Intergovernmental, Property Purchase/Sale, Other	

<b>MUNIS Req.</b>	Org Code	Obj Code	Amount	\$
<b>Req #</b>	Org Code	Obj Code	Amount	\$
<b>Year</b>	Org Code	Obj Code	Amount	\$

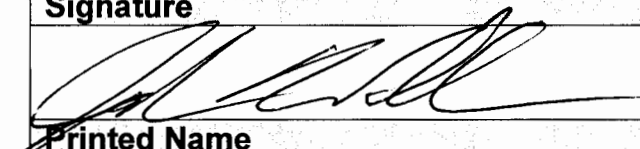
<b>Resolution</b>	<b>A resolution is required if the contract exceeds \$100,000 (\$40,000 Public Works). A copy of the Resolution must be attached to the contract cover sheet.</b>		
	<input type="checkbox"/> Contract does not exceed \$100,000 (\$40,000 Public Works) – a resolution is not required.		
	<input checked="" type="checkbox"/> Contract exceeds \$100,000 (\$40,000 Public Works) – resolution required.	<b>Res #</b>	586
	<input checked="" type="checkbox"/> A copy of the Resolution is attached to the contract cover sheet.	<b>Year</b>	2018

Contract Review/Approvals				
Initials	Dept.	Date In	Date Out	Comments
<i>MA</i>	Received by DOA	4/24/19		
<i>mk</i>	Controller	4/26/19	4/26/19	
<i>Cbc</i>	Purchasing	4/24/19	4/24/19	
<i>///</i>	Corporation Counsel	4/24/19	4/24/19	
<i>VA</i>	Risk Management	4/25/19	4/25/19	
	County Executive			

Dane County Dept. Contact Info		Vendor Contact Info	
<b>Name</b>	Ali Rathsack	<b>Name</b>	Will Overly
<b>Phone #</b>	(608)266-4990	<b>Phone #</b>	(785)760-6117
<b>Email</b>	Rathsack.Allison@countyofdane.com	<b>Email</b>	woverly@bluesource.com
<b>Address</b>	1919 Alliant Energy Center Way Madison, WI 53713	<b>Address</b>	2825 E. Cottonwood Parkway, Suite 400 Cottonwood Heights, UT 84121

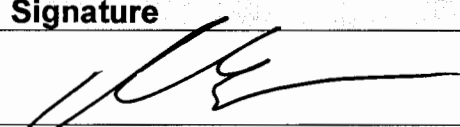
<b>Certification:</b> The attached contract is a:	
<input type="checkbox"/>	Dane County Contract <u>without</u> any modifications.
<input checked="" type="checkbox"/>	Dane County Contract <u>with</u> modifications. <b>The modifications have been reviewed by: Dave Gault</b>
<input type="checkbox"/>	Non-standard contract.

## Contract Cover Sheet Signature

Department Approval of Contract		
<b>Dept. Head / Authorized Designee</b>	<b>Signature</b>	<b>Date</b>
		3/27/19
	<b>Printed Name</b>	
	John Welch, Director of Waste & Renewables	

## Contracts Exceeding \$100,000

Major Contracts Review – DCO Sect. 25.11(3)

<b>Director of Administration</b>	<b>Signature</b>	<b>Date</b>
	<b>Comments</b>	
<b>Corporation Counsel</b>	<b>Signature</b>	<b>Date</b>
		4/24/19
	<b>Comments</b>	

AWARD OF CONTRACT FOR  
OFFTAKE OF RENEWABLE NATURAL GAS (RNG) FROM LANDFILL BIOGAS FOR  
TRANSPORTATION FUEL

The Department of Waste & Renewables reports the receipt of proposals for Offtake of RNG from landfill biogas for transportation fuel, Proposal # 118062.

Dane County previously contracted with Blue Source, partnered with Kwik Trip, to dispense, market, and monetize RIN credits for RNG produced at Dane County Landfill Site No. 2 and consumed at Kwik Trip facilities (RES 2018-552). This contract will allocate a small portion of RNG produced at the landfill for use at Dane County owned CNG stations. County fleet vehicles will consume the fuel and Blue Source will market and monetize RIN credits.

A complete tabulation is on file at the Department of Waste & Renewables office. The most qualified proposer is:

Blue Source LLC  
2825 East Cottonwood Parkway, Suite 400  
Cottonwood Heights, UT 84121

Total: 10% Net RIN Proceeds

The Waste & Renewables staff finds the amount to be reasonable and recommends the contract be awarded to Blue Source.

**NOW, THEREFORE, BE IT RESOLVED** that a Contract be awarded to Blue Source in the amount of 10% Net RIN Proceeds; and

**BE IT FURTHER RESOLVED** that the County Executive and the County Clerk be authorized and directed to sign the Contract; and

**BE IT FINALLY RESOLVED** that the Department of Waste & Renewables be directed to ensure complete performance of the Contract.



## BIOGAS ADDENDUM

This Biogas Supply Addendum (this "Addendum") is made and entered into effective as of \_\_\_\_\_ (the "Effective Date"), by and between **Blue Source, LLC** ("Seller"), a Utah limited liability company, and **Dane County**, a Wisconsin County ("Buyer").

WHEREAS Seller and Buyer are parties to that certain NAESB Base Contract for Sale and Purchase of Natural Gas dated \_\_\_\_\_ (the "Base Contract"); and

WHEREAS, the parties desire to set forth additional terms and conditions related to transactions for the purchase and sale of Biogas whereby Dane County, Inc will be the party purchasing and receiving the Biogas ("Buyer") and Blue Source will be the party selling and delivering the Biogas ("Seller").

NOW, THEREFORE, in consideration of the mutual premises and agreements set forth hereinafter, the sufficiency of such consideration being acknowledged by the parties, the parties hereby agree as aforesaid and as follows:

### ARTICLE I. DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following terms when used herein will have the meanings set forth below. Capitalized terms used in this Addendum but not defined herein are as defined in the Base Contract.

"**Addendum**" has the meaning set forth in the preamble.

"**Advanced Biofuel**" means a renewable fuel as set forth in the EPA RFS program (40 C.F.R. § 80.1401 (2012)), other than ethanol derived from corn starch, and which must achieve a Lifecycle Greenhouse Gas Emission displacement of fifty percent (50%) compared to the baseline Lifecycle Greenhouse Gas Emissions.

"**Affected Party**" has the meaning specified in the definition of Regulatory Event.

"**Affected Transactions**" has the meaning set forth in Section 2.10.

"**Biogas**" means pipeline quality Gas derived from the decomposition of organic matter that meets the EPA RFS eligibility requirements as either an Advanced Biofuel or Cellulosic Biofuel.

"**Biogas Contract**" means a Contract for the supply of Biogas.

"**Biogas Supply Source**" means either the source of raw biogas feeding a Production Facility operated by Seller, or the Production Facility from which Seller receives its Biogas, as listed in Transaction Confirmation under a Biogas Contract between Buyer and Seller.

"**Buyer**" means Dane County LLC.

"**Cellulosic Biofuel**" means a renewable fuel derived from any cellulose, hemi-cellulose or lignin that has lifecycle greenhouse gas emissions that are at least sixty percent (60%) less than the Baseline Lifecycle Greenhouse Gas Emissions (as set forth in the EPA RFS program (40 C.F.R. § 80.1401 (2012)).

"**Claims**" has the meaning set forth in Section 2.9.

"**Conveyed Environmental Attributes**" means all the Environmental Attributes associated with the Biogas being delivered under this Addendum.

"**Disqualified Biogas**" means Gas that was initially determined by the parties upon delivery to be Biogas but subsequently becomes disqualified as Biogas by not satisfying the requirements of the EPA Renewable Fuels Standard.

"**Effective Date**" means the date first written above.

"**EPA**" means the United States Environmental Protection Agency.

"**EPA Renewable Fuels Standard**" or "**EPA RFS**" means the renewable energy program and policies

established by the Environmental Protection Agency and published on March 26, 2010 (at 75 Fed. Reg. 14670) and became effective on July 1, 2010, including but not limited to, the RFS Pathways II and Technical Amendments to the RFS Standards, published July 18, 2014 (at 79 Fed. Reg. 42128).

**“Environmental Attributes”** means any and all environmental attributes, including Lifecycle Greenhouse Gas Emissions, associated with the use of Biogas as an Advanced Biofuel, Cellulosic Biofuel, or low carbon fuel.

**“Gas”** means any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.

**“Greenhouse Gas”** means carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, or any other substance or combination of substances that may become regulated or designated as Greenhouse Gases under any federal, state or local law or regulation, or any emission reduction registry, trading system, or reporting or reduction program for Greenhouse Gas emission reductions that is established, certified, maintained, or recognized by any international, governmental (including U.N., U.S. federal, state, or local agencies), or non-governmental agency from time to time, in each case measured in increments of one metric tonne of carbon dioxide equivalent.

**“Green Premium”** means the price premium per MMBtu of Biogas added to the market Gas price which may account for the generation of RINs as set forth in the relevant Transaction Confirmation.

**“Governmental Authority”** means any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority. Governmental Authority includes, without limitation, the EPA.

**“Lifecycle Greenhouse Gas Emissions”** means the aggregate quantity of Greenhouse Gas emissions (including direct emissions and significant indirect emissions from land use changes), as determined by the EPA RFS, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

**“New Tax(es)”** mean any Taxes that (i) were not in effect on the date the transaction was entered into, or (ii) were not imposed by any taxing entity on a transaction on the date such transaction was entered into.

**“Non-Affected Party”** has the meaning the party who is not the Affected Party.

**“Pathing”** has the meaning set forth in Section 2.6.

**“Production Facility”** means the facility specified in the Transaction Confirmation where Seller’s RNG supply originates.

**“Project”** means a Biogas facility which produces Biogas for purchase and sale under a Contract that includes this Addendum.

**“Regulatory Event”** means a Governmental Requirement(s) (including but not limited to ones related to market rate caps (whether temporary or permanent), regulatory market requirements (such as those occurring under Dodd Frank), New Taxes, climate change assessments, environmental regulations, export/import assessments, etc.) promulgated after the date of a transaction, which renders a party (the “Affected Party”) unable to continue to perform, either in whole or in part, because (i) such transaction is illegal or unenforceable, or (ii) the Government Requirement(s) materially changes the commercial and economic circumstances existing as of the date of the transaction and as a result negatively and significantly impacts the Affected Party’s original economic expectations under the transaction.

**“Renewable Identification Number (RIN)”** is a number generated to represent a volume of renewable fuel as set forth in Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program, 75 Fed. Reg. 16484 (March 26, 2010) (codified at 40 C.F.R. § 80.1425 (2011); 40 C.F.R. § 80.1426 (2012)).

**“Seller”** means Blue Source.

**“Vehicle Fuel”** means compressed natural gas (CNG) or liquefied natural gas (LNG) derived from Biogas and used in transportation vehicles.

**“Vehicle Fueling Station”** means a fuel dispensing station owned, operated or controlled by buyer and listed in a Transaction Confirmation.

## **ARTICLE II. SPECIFIC TERMS OF PURCHASE AND SALE**

In addition to the terms and conditions set forth in the Base Contract, the following terms and conditions will govern the purchase and sale of Biogas.

2.1 Environmental Attributes Associated with Biogas. For all Biogas sold and purchased under a Biogas Contract hereunder, Seller represents and warrants that it has the rights to all Environmental Attributes and will convey to Buyer all Conveyed Environmental Attributes for such Biogas. Seller represents and warrants that (i) the Biogas delivered to Buyer hereunder is from a facility that produces Biogas and pipeline quality Gas derived from Biogas, (ii) the Biogas shall be delivered to Seller in accordance with the requirements of the Renewable Fuels Standard in order to preserve the Environmental Attributes, (iii) each facility producing the Biogas has provided to Seller and/or Buyer the Biogas fuel production facility registrations consistent with Section 2.6, and (iv) upon sale of the Biogas by Seller to Buyer, Seller shall transfer all Environmental Attributes associated with the production of such Biogas.

2.2 Daily Contract Quantity Nominations. For the Contract Quantity set forth in the Transaction Confirmation, Buyer will provide Seller with its nominated daily quantity of Biogas at the Delivery Point set forth in the Transaction Confirmation for the delivery Month by no later than the twentieth (20<sup>th</sup>) Day of the Month prior to the delivery Month. Biogas quantities will be nominated ratably over the course of the Month, but Buyer will have the option to change its daily nominations at the Delivery Point for any delivery day during the Month as long as such nominations are made by Buyer by no later than 5:00 a.m. Pacific Prevailing Time the day before the delivery Day. Weekend and holiday volumes will be nominated ratably over the Saturday – Monday or applicable period.

2.3 Transaction Confirmation. A Transaction Confirmation will be entered into by the parties for each transaction under this Addendum and will be governed by the provisions of this Addendum, together with the Base Contract. Each Transaction Confirmation for the purchase and sale of Biogas shall include the identification of the relevant Biogas Supply Source(s). Notwithstanding any provision of the Base Contract concerning transaction procedures, the parties agree that any Transaction Confirmation for the purchase and sale of Biogas under the Contract must be executed by both parties in order for the Transaction to be binding upon the parties.

2.4 Disqualified Biogas. Either party will promptly notify the other party if any Biogas delivered under a Transaction Confirmation is determined to be Disqualified Biogas. If occurrence is not due to a Force Majeure event or a Regulatory Event, Buyer shall have the right to cease taking delivery of Disqualified Biogas and have the right to terminate the affected Transaction Confirmation and any such termination shall be considered to an Event of Default with the Buyer being the Affected Party. In addition to any other remedies under the Contract, if Biogas sold by Seller and purchased by Buyer hereunder becomes classified as Disqualified Biogas, Buyer will be entitled to a refund in an amount equal to the Green Premium multiplied by the quantity of Disqualified Biogas in MMBtus.

2.5 Failure to Produce Vehicle Fuel. In the event that Buyer cannot utilize any Biogas for the production of a Vehicle Fuel, including but not limited to an event of Force Majeure or Event of Default, Buyer shall promptly notify Seller in writing. Any disruption due to an event of Force Majeure shall not be considered an Event of Default resulting in Early Termination under the Base Contract. In addition to all other remedies under the Base Contract and hereunder, if Gas sold by Seller and purchased by Buyer hereunder originally deemed to be Biogas is not processed into a Vehicle Fuel, Buyer or Seller, as the case may be, will be entitled to a refund of any Green Premium payment made to the other party for the volume of Biogas that was not processed into a Vehicle Fuel and for which no Green Premium may be claimed under the relevant regulation.

2.6 Biogas Registration. Prior to the first delivery of the Biogas to Buyer, Seller or its designee shall submit to the EPA and provide Buyer with copies of any and all documentation required by the EPA to certify that the Biogas is an Advanced Biofuel or Cellulosic Biofuel that can generate D Code 3 or D Code 5 RINS (with respect to the EPA RFS). This documentation will include, but is not limited to, all documentation required to certify that production and the transportation of the Biogas from its point of production to the Delivery Point stated in the Transaction Confirmation is compliant with the transportation routing requirements ("Pathing") of the EPA RFS. Such documentation may include, but is not limited to any affidavits, reporting or attestations required by the EPA, such as assertions that the registration requirements as outlined by the Renewable Fuels Standard Registration Compliance Guidelines Engineering Review (40 C.F.R. § 80.1450 (2012).) have been met. The successful completion of the EPA registration described herein is a condition precedent to the effectiveness of this Addendum. Buyer agrees to provide Seller with all affidavits and other documents required for such registration and to submit to any audits or other reviews required by the EPA as part of the RFS program.

2.7 Further Assurances. Each party will provide the other party such cooperation, additional documentation, certifications or other information as may be reasonably necessary to carry out the purposes of this Addendum (including pursuant to any audit of this Addendum and/or the Transaction Confirmation by a third party) and in order for title to the Conveyed Environmental Attributes to vest in the Buyer in connection with the purchase and sale of the Contract Quantity of Biogas.

2.8 Seller and Buyer Performance Obligations. Buyer acknowledges that the delivered quantities of Biogas will fluctuate and agrees to purchase and receive all Biogas, up to the Buyer's receipt capacity and Contract Quantity, subject to any minimum Contract Quantity specified in the applicable Transaction Confirmation. Notwithstanding the foregoing, (i) Seller and Buyer acknowledge that the Biogas sales to a Buyer will fluctuate; and (ii) Seller agrees that Buyer will have no obligation to purchase or receive Biogas in excess of the Buyer's total receipt capacity.

2.9 Indemnifications.

2.9.1 *Seller.* Notwithstanding any other provisions in the Contract, including, without limitation, any and all limitations on damages, Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities, penalties, fines, charges or claims, including, without limitation, reasonable attorneys' fees and costs of court (collectively, "Claims"), from any and all persons, arising from or out of (i) claims of title, registrations, attestations and other representations and warranties concerning the Biogas, including, without limitation, the quality thereof; (ii) the transportation of the Biogas to the Delivery Point; (iii) all claims or losses of any kind and all persons arising from any Seller provided falsehood, material inaccuracy or misleading statement in any supporting documentation, including, without limitation, registrations required in Section 2.6 or related to any attestation related to RIN creation delivered under this Addendum, (iv) personal injury (including death) or property damage from said Biogas or other charges thereon which attach before title passes to Buyer; (v) Seller's gross negligence or willful misconduct; (vi) Seller's breach of this Addendum, but only to the extent such Claims are not based upon (a) any breach by Buyer hereunder (b) any breach by Buyer of Transaction Confirmation or (c) any Claim arising out of Buyer's indemnity; (vii) Seller provided falsehood, misrepresentation, material inaccuracy or misleading statement in any supporting documentation, including, without limitation, registrations or any attestation related to RIN, if applicable, production based on Biogas purchased from Buyer and subject to the Contract which includes this Addendum; or (viii) Seller's gross negligence or willful misconduct. For avoidance of doubt, this Section 2.9.1 applies to Biogas as defined in this Addendum and shall not supersede or otherwise replace Section 8 of the Base Contract at it relates to Gas as defined therein.

2.9.2 *Buyer.* Notwithstanding any other provisions in the Contract, including, without limitation, any and all limitations on damages, and subject to any applicable statutory limitations including but not limited to those in Wis. Stat. s. 893.80, Buyer agrees to indemnify Seller and save it harmless from all Claims from any and all persons, arising from or out of (i) Claims regarding payment, personal injury (including death) or property damage from said Biogas which occurred after title passed to Buyer, or other charges thereon which attach after title passes to Buyer to the extent such Claims are not based upon (a) any breach by Seller hereunder (b) any breach by Seller of Transaction Confirmation or (c) any Claim arising out of Seller's indemnity; (ii) Buyer provided falsehood, misrepresentation, material inaccuracy or misleading statement in any supporting



documentation, including, without limitation, registrations or any attestation related to RIN, if applicable, production based on Biogas purchased from Seller and subject to the Contract which includes this Addendum; (iii) Buyer's gross negligence or willful misconduct; or (iv) Buyer's breach of this Addendum.

2.10 Regulatory Event. If a Regulatory Event occurs and the Affected Party is unable, after using commercially reasonable efforts, to avoid the inability to perform or the negative and significant economic impacts, the Affected Party shall be entitled to terminate and liquidate the transaction(s) affected by such Regulatory Event (the "Affected Transaction(s)"), subject to the following conditions:

2.10.1 The Affected Party must give the Non-Affected Party at least ten (10) Business Days prior written notice of its intent to terminate and liquidate the Affected Transaction(s). The Notice shall be the "Regulatory Event Notice to Terminate", and shall specify the Early Termination Date, which shall be not more than twenty (20) Business Days after the date of the Regulatory Event Notice to Terminate. On the Early Termination Date, the Affected Party shall determine damages in accordance with Section 10 of the Contract; provided however, that any and all costs otherwise allowed under Section 10.3.1. shall be excluded from the calculation, and provided further that the Market Value for each Terminated Transaction shall be determined by using the mid-point, as it may be estimated, between the bid price and the ask price for each Terminated Transaction; and

2.10.2 Nothing herein shall prevent the other party from disputing whether the Affected Party has the right to terminate and liquidate the Affected Transaction(s)."

### **ARTICLE III. FORCE MAJEURE**

Force Majeure. In an event of Force Majeure under a Biogas Contract between Buyer and Seller where Buyer cannot receive any or all Biogas from Seller based solely on such Force Majeure event at a Vehicle Fueling Station (a "Buyer Force Majeure Event") or Seller cannot deliver any or all Biogas based solely on such Force Majeure event at the Production Facility (a "Seller Force Majeure Event"), such Force Majeure Event shall continue until such time as the Vehicle Fueling Station or Production Facility is no longer impacted by the Force Majeure event affecting the party's performance, provided that the party declaring Force Majeure has used reasonable efforts to avoid the adverse impacts of a force majeure and to resolve the Force Majeure event or occurrence once it has occurred in order to resume performance.

### **ARTICLE IV. TERMINATION**

4.1. Cross Default. In the event that a Biogas Supply Source is in default under a Biogas Contract with Biogas Buyer and such Biogas Contract terminates solely because of such default, Seller shall have the right to suspend the Transaction Confirmation(s) with Buyer under which the defaulting Biogas Supply Source is listed upon written notice to Buyer with the Seller as the Non-Defaulting Party. During such suspension, Seller shall deliver sufficient quantity of Gas to meet Buyers demand consistent with the Transaction Confirmation(s). Seller shall attempt to meet Buyers demand with Biogas first, expediting applicable registration and assurances for RIN generation, and Gas from conventional sources only until such Biogas becomes available. Upon identification of qualifying Biogas, the Transaction Confirmation shall be amended to reflect a new Biogas Supply Source.

4.2. Cross Regulatory Event Termination. In the event that a Regulatory Event causes the termination of a Transaction Confirmation under a Biogas Contract with a Biogas Supply Source which is a Biogas Supply Source and Seller, Seller shall have the right to suspend the Transaction Confirmation(s) under a Biogas Contract with Buyer upon written notice to Buyer as if a Regulatory Event had impacted Seller. During such suspension, Seller shall deliver sufficient quantity of Gas to meet Buyers demand consistent with the Transaction Confirmation(s). Seller shall attempt to meet Buyers demand with Biogas first, expediting applicable registration and assurances for RIN generation, and Gas from conventional sources only until such Biogas becomes available. Upon identification of qualifying Biogas, the Transaction Confirmation shall be amended to reflect a new Biogas Supply Source.

### **ARTICLE V. MISCELLANEOUS**

5.1. Authority to Execute. Each of the parties to this Addendum represents and warrants that, as of the Effective Date, (i) it has full and complete authority to enter into and perform this Addendum; (ii) the person who executes this Addendum on its behalf has full and complete authority to do so and is empowered to bind it thereby; and (iii) it is not insolvent and has not sought protection from its creditors under the United States Bankruptcy Code, or under any similar laws.

5.2. Miscellaneous. This Addendum may be executed in multiple counterparts, each of which will constitute an original and all of which together will constitute one and the same instrument. The headings and subheadings contained in this Addendum are used solely for convenience and shall not be used to construe or interpret the provisions of this Addendum. Except as expressly otherwise provided in this Addendum, all covenants, representations, warranties, acknowledgments, agreements, rights and obligations of the parties under this Addendum, that are capable of having effect after the termination of this Addendum for any reason, will survive and remain in full force and effect beyond, and not be affected by, the termination of this Addendum. The language used in this Addendum is the product of both parties' efforts and each party irrevocably waives the benefit of any rule of contract construction which disfavors the drafter of a contract or the drafter of specific language in a contract.

5.3. Entirety and Amendments. This Addendum, the Base Contract and the applicable Transaction Confirmation constitutes the entire agreement between the parties (save and except for a Transaction Confirmation for the purchase and sale of Biogas) regarding the purchase by Buyer and sale by Seller of Biogas, and supersedes and replaces any prior and contemporaneous communications, understandings and agreements between Seller and Buyer related to such subject matter, whether written or verbal, express or implied. No modification, amendment, supplementation or alteration of the terms and provisions of this Addendum will be or become effective except by written amendment executed by the duly authorized representative of both parties. Except as set forth herein, the Base Contract will remain unchanged.

5.4. Assignment. Notwithstanding anything in the Base Contract to the contrary, neither party may assign the Base Contract, necessarily including this Addendum, without the prior written consent of the other party, which consent will not be unreasonably withheld.

5.5. One Agreement. The parties agree and acknowledge that this Addendum shall be effective for any and all Biogas purchases and sales commencing on the date first written above and shall be considered part of the Contract as such term is defined in the NAESB General Terms and Conditions, but shall not be considered an "addendum" so as to constitute a part of the Base Contract. Accordingly, the parties agree and acknowledge that this Addendum is part and parcel to the Contract involving the purchase and sale of Biogas, and accordingly the Base Contract, this Addendum and any Biogas Transaction Confirmation shall be deemed to constitute one integrated agreement for all purposes; provided however, that this Addendum may be terminated, separate and apart from the Gas transactions under the Contract, in accordance with the terms and conditions set forth in this Addendum, necessarily resulting in the termination of any and all Biogas transactions, as a result of (i) an Event of Default under the Base Contract, (ii) pursuant to the termination rights set forth herein; or (iii) the parties otherwise mutually agree in writing to terminate this Addendum. To the extent that either of the foregoing in (i) or (ii) occurs, the Addendum will terminate on the date the event in (i) or (ii) occurs.

5.6. Survival of Terms. To the extent that this Addendum is terminated, the parties agree that any and all terms and conditions of this Addendum that are necessary to effectuate the parties' rights and remedies as a result of an Event of Default will survive the termination of this Addendum until such time as the rights and remedies and all disputes related thereto are fully and finally resolved.

5.7. Conflicting Terms. The parties agree that to the extent any terms and conditions set forth in this Addendum conflict with any terms set forth in the Base Contract, this Addendum will govern for all purposes with respect to the purchase and sale of Biogas. With respect to any conflicts between the Transaction Confirmation for the purchase and sale of Biogas and this Addendum, the provisions of the Transaction Confirmation shall have priority over the Addendum.

5.8. Governing Law. The law governing the Base Contract shall apply to this Addendum, except to the extent that the EPA Renewable Portfolio Standard, together with regulations and decisions promulgated thereunder, is applicable to the purchase and sale of Biogas.

IN WITNESS WHEREOF, and with the intent to be legally bound, the parties hereto have caused this Addendum to be executed by their duly authorized officers or representatives as of the Effective Date.

**BUYER: County of Dane, Wisconsin**

SIGNATURE: \_\_\_\_\_

NAME: Joseph Parisi TITLE: Dane County Executive

**SELLER: Blue Source, LLC**

SIGNATURE: Will O'Leary

NAME: Will O'Leary TITLE: Vice President

*cmp*



### Base Contract for Sale and Purchase of Natural Gas

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

The parties to this Base Contract are the following:

<b>PARTY A</b> Blue Source, LLC	<i><b>PARTY NAME</b></i>	<b>PARTY B</b> County of Dane
2825 Cottonwood Parkway, Suite 400 Cottonwood Heights, UT 84121	<i><b>ADDRESS</b></i>	1919 Alliant Energy Center Way Madison, WI 53713
www.bluesource.com	<i><b>BUSINESS WEBSITE</b></i>	www.countyofdane.com
801-438-1533	<i><b>CONTACT NUMBER</b></i>	608-266-5953
041609723	<i><b>D-U-N-S® NUMBER</b></i>	076148766
X US FEDERAL: 87-0676638 <input type="checkbox"/> OTHER:	<i><b>TAX ID NUMBERS</b></i>	<input type="checkbox"/> US FEDERAL: <input type="checkbox"/> OTHER:
Utah	<i><b>JURISDICTION OF ORGANIZATION</b></i>	Wisconsin
<input type="checkbox"/> Corporation      X LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:	<i><b>COMPANY TYPE</b></i>	<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP      X Other:
	<i><b>GUARANTOR (IF APPLICABLE)</b></i>	None
<b>CONTACT INFORMATION</b>		
Blue Source ATTN: Will Overly TEL#: 801-438-1533 FAX#: EMAIL: woverly@bluesource.com	<i><b>COMMERCIAL</b></i>	County of Dane ATTN: John Welch TEL#: 608-516-4154 FAX#: EMAIL: welch@countyofdane.com
Blue Source ATTN: Will Overly TEL#: 801-438-1533 FAX#: EMAIL: woverly@bluesource.com	<i><b>SCHEDULING</b></i>	County of Dane ATTN: John Welch TEL#: 608-516-4154 FAX#: EMAIL: welch@countyofdane.com
Blue Source ATTN: Matt Harmer TEL#: 801-438-1541 FAX#: EMAIL: mharmer@bluesource.com	<i><b>CONTRACT AND LEGAL NOTICES</b></i>	County of Dane ATTN: John Welch TEL#: 608-516-4154 FAX#: EMAIL: welch@countyofdane.com
ATTN: TEL#: FAX#:	<i><b>CREDIT</b></i>	ATTN: _____ TEL#: FAX#:

<b>EMAIL:</b>		<b>EMAIL:</b>
Blue Source <b>ATTN:</b> Will Overly <b>TEL#:</b> 801-438-1533 <b>FAX#:</b> <b>EMAIL:</b> woverly@bluesource.com	<b>TRANSACTION CONFIRMATIONS</b>	County of Dane <b>ATTN:</b> John Welch <b>TEL#:</b> 608-516-4154 <b>FAX#:</b> <b>EMAIL:</b> welch@countyofdane.com
<b>ACCOUNTING INFORMATION</b>		
<b>ATTN:</b> Jen Stirling <b>TEL#:</b> 801-438-1592 <b>FAX#:</b> 801-363-3248 <b>EMAIL:</b> jstirling@bluesource.com	<b>INVOICES PAYMENTS SETTLEMENTS</b>	<b>ATTN:</b> Meg Krohn <b>TEL#:</b> 608-266-4110 <b>FAX#:</b> 608-266-4425 <b>EMAIL:</b> krohn@countyofdane.com
<b>BANK:</b> JP Morgan Chase Bank <b>ABA:</b> 124001545 <b>ACCT:</b> 900833248 <b>OTHER DETAILS:</b> Blue Source, LLC	<b>WIRE TRANSFER NUMBERS (IF APPLICABLE)</b>	<b>BANK:</b> _____ <b>ABA:</b> _____ <b>ACCT:</b> _____ <b>OTHER DETAILS:</b> _____
<b>BANK:</b> JP Morgan Chase Bank <b>ABA:</b> 124001545 <b>ACCT:</b> 900833248 <b>OTHER DETAILS:</b> Blue Source, LLC	<b>ACH NUMBERS (IF APPLICABLE)</b>	<b>BANK:</b> _____ <b>ABA:</b> _____ <b>ACCT:</b> _____ <b>OTHER DETAILS:</b> _____

# **Base Contract for Sale and Purchase of Natural Gas**

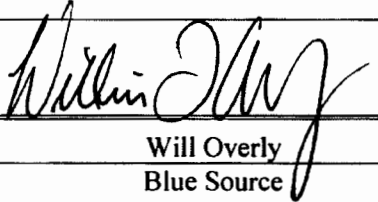
(Continued)

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: 3% of Shareholders Equity  <input type="checkbox"/> Party B: 3% of Shareholders Equity  <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u>  'Specified Transaction(s)' shall mean any obligation of a party to this Contract incurred under any other agreement(s) between the parties to this Contract in relation to the purchase or sale of power, natural gas, or other commodity or any financial transaction related to such commodity.
<b>Section 2.7</b> Confirm Deadline	<input type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> 5 Business Days after receipt		
<b>Section 2.8</b> Confirming Party	<input type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer  _____		
<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 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 2.31</b> Spot Price Publication	<input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____		
<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"/> 45 Days from Month's close of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 15.5</b> Choice Of Law	<u>Wisconsin</u>

<b>Section 7.2</b> Method of Payment	<input checked="" type="checkbox"/> Wire transfer (default) <input type="checkbox"/> 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 checked="" type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: <u>4</u>			
<input type="checkbox"/> <b>Addendum:</b> _____			

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

By: 		By: _____
Will Overly Blue Source		Joseph Parisi County of Dane

CMP



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.

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

**Oral Transaction Procedure:**

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:**

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 or Environmental Attributes 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 or Environmental Attributes. 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 30 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 or Environmental Attributes 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 or Environmental Attributes 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 or Environmental Attributes 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 or Environmental Attributes 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 Environmental Attributes or other charges thereon which attach before title passes to Buyer. Subject to any applicable statutory limitations including but not limited to those in Wis. Stat. s. 893.80, 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 Environmental Attributes 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 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  
SAMPLE – NOT FOR EXECUTION

EXHIBIT A

Letterhead/Logo	Date: _____, ____ Transaction Confirmation #: _____	
<p>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.</p>		
<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: Refer to Biogas Sales Addendum		
Delivery Period: Begin: _____, ____ End: _____, ____		
<b>Performance Obligation and Contract Quantity: (Select One)</b>		
<b>Firm (Fixed Quantity):</b> _____ MMBtus/day to _____ 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
<b>Delivery Point(s):</b>		
<b>Special Conditions:</b>		

<b>Seller:</b> <hr/>	<b>Buyer:</b> <hr/>
<b>By:</b> <hr/>	<b>By:</b> <hr/>
<b>Title:</b> <hr/>	<b>Title:</b> <hr/>
<b>Date:</b> <hr/>	<b>Date:</b> <hr/>

**SPECIAL PROVISIONS TO THE  
2006 NAESB BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

**BY AND BETWEEN**

Blue Source  
("Party A")

**And**

County of Dane  
("Party B")

**Dated:** \_\_\_\_\_, \_\_\_\_\_

**Section I. Purpose & Procedures**

In Section 1.3 delete "mutually agreeable electronic means" in the second line and replace it with "other electronic means of communication."

In Section 1.4 add the following before the "." at the end of the second sentence: "; provided, that the party responsible for obtaining the consent of its agents and employees to such recordings shall indemnify, defend and hold the other party harmless from any and all losses, liabilities, claims, damages, judgments, costs and expenses, including, but not limited to, reasonable attorney's fees and costs of court, arising from or out of such party's failure to obtain the consent of its agents and employees to such recordings."

**Section 2. Definitions**

Add the following to the end of Section 2.12:

"For purposes of this Section 2.12 and respective to each applicable Transaction Confirmation, "Gas" shall mean equivalent Biogas and affiliated Green Attributes if and as such terms are defined in any Transaction Confirmation."

Definition of "Payment Date" in Section 2.27 shall be deleted and replaced with the following:

"Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due from one party to the other as set forth in Section 7."

Definition of "Spot Price" in Section 2.31 shall be amended by deleting the last sentence and replacing it with the following:

"If no price or range of prices is published for such Day, then the Spot Price shall be determined in accordance with Section 14 as modified herein."

Add the following at the end of Section 2:

**"2.36. "Biogas Supply Source" shall be the source of Gas as defined in each respective Transaction Confirmation.**

**2.37. "Governmental Requirement(s)" shall mean any applicable laws, statutes, ordinances, orders, rules, regulations, rulings, decrees, or policies having the effect of law and/or official governmental actions, whether of a federal, state, local or tribal nature.**

**2.38. "Taxes" shall mean any and all taxes, charges, licenses, levies, fees, penalties, permits, assessments or charges, or increases on any of the foregoing, (whether sales, use, gross receipts, excise, customs, duties or otherwise) which are claimed to be due by any federal, state, local or tribal government or any other governmental agency having jurisdiction to do so, whether or not in effect on the date the transaction is entered into. The term "Taxes" shall not include any employment or franchise taxes imposed upon either party, nor any tax based upon a party's income or net worth."**

**Section 3. Performance Obligation**

Add the following as Section 3.5:



**“3.5.** Any Gas sold and, or delivered by Seller to Buyer at the Delivery Point(s), and purchases made and, or received from Seller by Buyer at the Delivery Point(s), shall be deemed delivered in the following order: (i) Gas where the Contract Price is a fixed price or has a fixed price component, (ii) Firm (Fixed Quantity) (iii) Firm (Variable Quantity) and (iv) Interruptible.

## **Section 6. Taxes**

Add the following three (3) paragraphs at the end of the first paragraph of “Buyer Pays At and After the Delivery Point.”:

“Seller bears all responsibility to make disbursements to all interest owners, and is responsible for any severance tax reporting and/or payment associated with the gas purchased hereunder. Where law prescribes that Buyer may be required to report and pay severance tax, Seller shall take all steps necessary to enable Seller to report and/or pay the severance tax, including making any necessary filings or showings before taxing authorities administering such severance tax. Pursuant to any approval granted by any taxing authority to absolve Buyer of severance tax reporting and/or payment responsibilities, Seller shall report and/or pay the severance tax for the entire term of this contract, unless written consent of Buyer is first obtained.

*Gross Receipts and Consumption, and Compensating Taxes.* The Contract Price includes the reimbursement of severance taxes (whether such tax is paid by the Seller pursuant to the applicable statute, or due to Seller reporting and paying such tax on Buyer’s behalf under the foregoing paragraph) and other similar taxes, which the Seller will pay to the applicable taxing authority. For clarity, the Contract Price does not include any applicable state or local, gross receipts, compensating, utility, transaction privilege, sales or use tax which may be assessed as a result of sales of or use of Gas hereunder, whether measured by quantity or revenues (“Gross Receipts” or “Compensating Tax”). If there is such a Gross Receipts and/or Compensating Tax, either of which being applicable to that quantity of Gas sold to or used by Buyer hereunder, Seller will invoice Buyer and Buyer will pay Seller the amount of the Gross Receipts or Compensating Tax, and Seller will remit same as required by the applicable law.

*“Protest and Payment.* 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, except to the extent either party has filed, or provides prior notice to the other party that it will timely file, a good faith protest, contest, dispute or complaint with the taxing authority or applicable court with jurisdiction, which tolls the requirement to pay such Taxes. Any party is entitled to make such good faith protests, contests, disputes or complaints with the applicable taxing authority or applicable court with jurisdiction or to file for a request for refund for such Taxes already paid in a timely manner as to any Taxes that it is responsible to pay or remit or for which it is responsible to pay or reimburse the other party. In the event either party makes such filings, the other party shall cooperate with such filing party by providing any relevant information within that party’s possession, which will support the filing party’s filing upon request by and as specified by the filing party. Upon the issuance by the taxing authority or court of a final, non-appealable order, which lifts the tolling of an obligation to pay and requires payment of the applicable Taxes, and absent a stay of such order, the responsible party shall either pay directly to the applicable taxing authority, or reimburse the other party for, such Taxes and any other amounts (including interest) required by such order. 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**

In Section 7.6, add the following at the end of the next to last sentence before the “.”:

“; provided, however, that the finality of all invoices and billings shall not apply to Taxes or any adjustments made by Transporter(s) under the terms of its applicable tariff, and the responsible party under the Contract shall continue to be responsible for such amounts.”

## **Section 8. Title, Warranty, and Indemnity**

In Section 8.2, following the first sentence, add the following sentence: “Seller further warrants that all Gas sales hereunder shall constitute a “first sale” as defined by the Natural Gas Act and §§ 2 and 601 of the Natural Gas Policy Act.

In Section 8.3:

- (i) insert “(i)” before the word “claims” in the second line,
- (ii) insert “, or (ii) Seller’s failure to timely report and pay any severance taxes as required under Section 6.1 of this Contract” before the “.” at the end of the first sentence, and
- (iii) add to the end of the paragraph, “Subject to any applicable statutory limitations including but not limited to those in Wis. Stat. s. 893.80, each party further agrees to indemnify, defend and hold harmless the other party and each of its affiliates, directors, officers, employees, and agents (each individually, an “Indemnified Party”) from and against any and all Claims incurred by any Indemnified Party in connection with or arising from or out of (i) any breach of a representation or warranty or failure to perform any covenant or agreement in a Transaction Confirmation; (ii) any violation of applicable law, regulation or order by the non-Indemnified Party or its agents; or (iii) any material misrepresentation or inaccuracy or misleading statement in any supporting documentation, including, without limitation, registrations or any attestation related to compliance with any Governmental Requirement.”

## **Section 10. Financial Responsibility**

In Section 10.2:

- (i) In clause (vii), delete “48 hours but at least one Business Day” and replace with “five (5) Business Days”,
- (ii) Immediately following clause (viii), delete “or ix)” and replace with “(ix)”, and
- (iii) Immediately following “Additional Event of Default;”, add “(x) commit any fraudulent act in connection with its purchase or use of the Gas; (xi) make any material misrepresentation under a Transaction Confirmation or materially breach any representation or covenant under a Transaction Confirmation; (xii) make any material misrepresentation or inaccuracy or misleading statement in any supporting documentation, including, without limitation, registrations or any attestation related to compliance with any Governmental Requirement; or (xiii) solely with respect to Seller, default on any contractual obligations with a third party pertaining to the construction or operation of a Biogas Supply Source, including a default arising from delayed payment to any such third party; provided that no suspension of performance shall continue for more than ten (10) Days unless an Early Termination Date has been declared and the Defaulting Party given Notice thereof in accordance with Section 10.3.”

In Section 10.3.2, under “Triangular Setoff Option:”, in the third line delete “without” and replace with “upon”.

In Section 10.4, (i) replace “second” in the sixth line with “fifth,” and (ii) add the following at the end thereof: “Notwithstanding the foregoing, if the Non-Defaulting Party owes the Net Settlement Amount to the Defaulting Party, the obligation of the Non-Defaulting Party to pay to the Defaulting Party the Net Settlement Amount, shall not arise until, and shall be subject to the condition precedent that, (i) all transactions are terminated in accordance with this Contract and (ii) all obligations (contingent or absolute, matured or unmatured) of the Defaulting Party and any Affiliate of the Defaulting Party to the Non-Defaulting Party or any Affiliate of the Non-Defaulting Party shall have been fully and finally performed.”

In Section 10.5, add “Each Party further agrees that the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party agrees to waive and not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding involving such Party.”

## **Section 11. Force Majeure**

Add the following as Section 11.7:

“**11.7** If an event of Force Majeure prevents a party from delivering or purchasing Gas under this Contract and such event continues (i) for more than ninety (90) consecutive Days or (ii) for more than one hundred and eighty (180) cumulative Days during any calendar year, the party not claiming the event of Force Majeure may terminate and liquidate the transactions affected utilizing the same methodology set forth under Section 3.6.

## **Section 15. Miscellaneous**

Delete Section 15.3 in its entirety and replace it with the following:

“15.3. No waiver of any breach of this Contract, or delay, failure or refusal to exercise or enforce any rights under this Contract (including any rights to claim excused performance as a result of an event of Force Majeure), shall be held to be a waiver of any other or subsequent breach, or be construed as a waiver of any such right then existing or arising in the future.”

Add the following to the end of Section 15.8:

“In addition, each Party will be deemed to represent to the other Party each time a Transaction Confirmation is entered into that: (a) it has full and complete corporate authority to enter into and perform this Transaction Confirmation; (b) the person who executes this Transaction Confirmation on its behalf has full and complete authority to do so and is empowered to bind it thereby; (c) it is acting for its own account, and it has made its own independent decisions to enter that Transaction Confirmation and as to whether that Transaction Confirmation is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary; (d) it is not relying on any communication (written or oral) of the other Party as investment advice or as a recommendation to enter into that Transaction Confirmation; it being understood that information and explanations related to the terms and conditions of a Transaction Confirmation shall not be considered investment advice or a recommendation to enter into that Transaction Confirmation; (e) no communication (written or oral) received from the other Party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction Confirmation; (f) it is capable of assessing the merits and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction Confirmation; (g) it is capable of assuming, and assumes, the risks of that Transaction Confirmation; (h) the other Party is not acting as a fiduciary for, or an advisor to, it in respect of that Transaction Confirmation; and (i) it is not insolvent and has not sought protection from its creditors under the United States Bankruptcy Code, or under any similar laws.”

In Section 15.10: (i) In the second line, add “or any financial information provided by a party under the terms of this Contract” after “the terms of any transaction” and (ii) in the third line add “Affiliates,” before “employees.”

Add the following as Section 15.13:

**“15.13. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR IN ANY WAY RELATING TO THIS CONTRACT OR THE PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS ARISING UNDER OR IN CONNECTION WITH THIS CONTRACT.”**

Add the following as Section 15.14:

**“15.14. This Contract shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the manner in which this Contract was negotiated, prepared, drafted or executed.”**

Add the following as Section 15.15:

**“15.15. *Mobile-Sierra.*** To the extent, if any, that a transaction does not qualify as a “first sale” as defined by the Natural Gas Act and §§ 2 and 601 of the Natural Gas Policy Act, each party irrevocably waives any rights, including rights under §§ 4-5 of the Natural Gas Act, unilaterally to seek or support a change to any terms and conditions of the Contract, including but not limited to the rate(s), charges, or classifications set forth therein. By this provision, each party expressly waives its right to seek or support, either directly or indirectly, and by whatever means: (i) an order from the U.S. Federal Energy Regulatory Commission (“FERC”) seeking to change any of the terms and conditions of the Contract agreed to by the parties; and (ii) any refund from the other party with respect to the Contract. Each party further agrees that this waiver and covenant shall be binding upon it notwithstanding any regulatory or market changes that may occur after the date of the Base Contract or any transaction entered into between the parties. Absent the agreement of both parties to the proposed change, the standard of review for changes to any terms and conditions of the Contract proposed by (a) a party, to the extent that the waiver set forth in this Section 15.13 is unenforceable or ineffective as to such party due to a final determination being made under applicable law that precludes the party from waiving its rights to seek or support changes from the FERC to the terms and conditions of this Contract, (b) a non-party, or (c) the FERC acting *sua sponte*, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the “*Mobile-Sierra Doctrine*”), as the *Mobile-Sierra Doctrine* has been clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 128 S.Ct. 2733 (2008) and NRG Power Marketing, LLC v. Maine Public Utilities Commission, 130 S.Ct. 693 (2010).”

Add the following as Section 15.16:

**“15.16. *Non-Circumvention.*** Seller agrees that, upon execution of this Contract and for a period of one (1) year following termination of any and all Transaction Confirmations hereunder, it will not, directly or indirectly, circumvent, avoid or bypass Buyer, either directly or indirectly, in order to avoid payments of fees, commissions or other financial benefits to Buyer, or otherwise benefit, either financially or otherwise, from information supplied to it by Buyer, or through any form of relationship with Buyer’s customers, vendors or representatives, or in any manner interfere with any agreement or contract between Buyer and such third parties.”



**TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY**

	<b>Trade Date:</b> <b>Contract:</b> Blue Source, LLC / County of Dane
<p>This Transaction Confirmation is subject to the Base Contract for Sale and Purchase of Natural Gas or Environmental Attributes between Seller and Buyer dated . The terms of this Transaction Confirmation are binding.</p>	
<b>BUYER:</b> County of Dane 1919 Alliant Energy Center Way Madison, WI 53713  Attn: John Welch Email: welch@countyofdane.com	<b>SELLER:</b> <b>Blue Source, LLC</b> 2825 Cottonwood Parkway, Ste 400 Cottonwood Heights, UT 84121  Attn: Will Overly Phone: 801-438-1533
<p>This Transaction Confirmation regards the sale and purchase of Gas or Environmental Attributes, as defined herein, and which meets the applicable pipeline quality standards for the relevant Transporters. All references to "Gas" in the Base Contract, and the Special Provisions of the Base Contract, will include "Biogas" and apply to the Gas sale and purchase transactions discussed herein.</p>	
<p><b><u>Contract Price:</u></b></p> <ul style="list-style-type: none"><li>• <b>Gas Contract Price:</b> The Contract Price for Gas ("Gas Contract Price") shall be the Posted Price (as defined in this TC) plus the Environmental Attribute Contract Price.  <div style="text-align: center;"><math>\text{Gas Contract Price} = \text{Posted Price (\\$/MMBtu)} + \text{Environmental Attribute Price}</math></div></li><li>• <b>Environmental Attribute Contract Price:</b> The Contract Price for Environmental Attributes ("Environmental Attribute Price") shall be 50% of Net RIN Proceeds.  <div style="text-align: center;"><math>\text{Environmental Attribute Price} = \text{Net RIN Proceeds} \times 0.50.</math></div></li></ul>	
<p><b><u>Delivery Period ("Delivery Period"):</u></b> Delivery of Gas, if any, and Environmental Attributes sold by Seller and purchased by Buyer shall begin within 72 hours of EPA RIN registration approval ("Commencement Date") and continue until December 31, 2024, ("Delivery Period"), unless extended by the parties.</p>	
<p><b><u>Contract Quantity:</u></b></p> <ul style="list-style-type: none"><li>• <b>Maximum Daily Quantity (Gas).</b> Buyer shall have a Firm obligation to purchase and receive Gas from the Dane County Landfill Gas to Renewable Natural Gas Facility at the Dane County Rodefield No. 2 Landfill in Madison, Wisconsin ("Facility") up to the maximum daily quantity during the Delivery Period, which shall be <b>0 MMBtu/Day</b> ("MaxDQ").</li><li>• <b>Maximum Daily Quantity (Environmental Attributes).</b> Buyer shall have a Firm obligation to purchase and receive Environmental Attributes from the Dane County Landfill Gas to Renewable Natural Gas Facility at the Dane County Rodefield No. 2 Landfill in Madison, Wisconsin ("Facility") up to the maximum daily quantity during the Delivery Period, which shall be the quantity of Environmental Attributes associated with the use of <b>42 MMBtu/Day</b> of Gas ("MaxDQ").</li><li>• <b>Minimum Daily Quantity (Gas).</b> Seller shall have a Firm obligation to sell and deliver at least the minimum daily quantity of Gas from the Facility during the Delivery Period, which shall be <b>0 MMBtu/Day</b> ("MinDQ").</li><li>• <b>Minimum Daily Quantity (Environmental Attributes).</b> Seller shall have a Firm obligation to sell and deliver at least the minimum daily quantity of Environmental Attributes from the Facility during the Delivery Period, which shall be the quantity of Environmental Attributes associated with the use of <b>0 MMBtu/Day</b> of Gas ("MinDQ").</li></ul>	
<p><b><u>Performance Obligation:</u></b></p> <p><b>Sale and Purchase Obligation.</b> Seller shall deliver to the Buyer the Contract Quantity of Gas or Environmental Attributes as specified herein produced by the Project(s). Buyer shall pay Seller the Gas Contract Price. Within thirty (30) days following Seller's receipt of RIN Proceeds, Seller shall retain the Environmental Attribute Price and distribute to Buyer 50% of Net RIN Proceeds. This Transaction Confirmation is contingent upon the operation of the Facility complying with all necessary procedures to avoid any of its Gas being disqualified from the EPA Renewable Fuels Standard program.</p> <p>Seller represents that all Gas or Environmental Attributes produced from the Project(s) are intended for ultimate end-use as Vehicle Fuel by Vehicle Fuel Producers as is allowed by and in accordance with EPA Renewable Fuel Standard and, if applicable, the Low Carbon Fuel</p>	

Standard or any other applicable state-level regulatory program that the Parties have agreed upon in writing, at locations that are capable of being connected by pipeline to the Delivery Point.

Buyer shall not buy any Gas or any Environmental Attributes from any other supply sources to supply a Vehicle Fueling Station set forth in Section 4 of this Transaction Confirmation, if such purchases would prevent Buyer from meeting its purchase obligation.

If Seller fails to deliver the MinDQ, as measured during any twelve-month rolling period, Seller shall have the right to cure the supply shortfall during the next six (6) months by restoring its operations or otherwise procuring alternate qualifying supply to achieve delivery of the MinDQ amount thereafter.

If after six (6) months the Seller has not yet cured the shortfall but demonstrates to Buyer a commercially reasonable plan to do so, the cure period shall be extended another three (3) months. In the event that Seller fails to cure the supply shortfall, Buyer shall have a Termination Option as set forth in Paragraph 10 of the Special Provisions herein.

**Delivery Point:**

Gas or Environmental Attributes delivered to the Delivery Points shall be sourced from the following Project(s):

Dane County RNG Facility at the Dane County Landfill Site No. 2 (Rodefild) in Madison, Wisconsin owned and operated by Dane County, Wisconsin.

Seller's meters ("**Delivery Points**"), are as follows:

Dane County CNG Fueling Stations						
No.	Site Name	Address	City	State	Zip Code	Meter No.
1	Luds Lane	3103 Luds Ln	McFarland	WI	53718	1452064 (S/N)
2	Robertson Rd	4318 Robertson Rd	Madison	WI	53714	9443259 (S/N)

**Special Provisions:**

**1. Definitions.**

"**Affected Party**" shall have the meaning set forth in Section 3.F of the Special Provisions in this Transaction Confirmation.

"**Alternative Biogas Supply Source**" means the Biogas sources identified in Exhibit A.

"**Alternative Fuel**" means any transportation fuel that is not California reformulated gasoline or a diesel fuel, including but not limited to, those fuels specified in the California LCFS Regulations.

"**Approved Storage Facilities**" means Buyer's storage facility locations approved by the applicable QAP.

"**ARGUS**" means the Argus Americas Biofuels publications and daily reports covering the physical spot market for ethanol, other renewable fuels, and related environmental credit/carbon values across the US, including, but not limited to the *US Products* and *Air Daily* reports.

"**Biogas**" means, as measured in MMBtus, Gas that (i) meets the applicable pipeline quality standards for the relevant Transporters; (ii) is coupled with the equivalent quantity of Environmental Attributes of Gas derived from the decomposition of organic matter; (iii) when converted to Vehicle Fuel, meets EPA's RFS eligibility requirements as a Cellulosic Biofuel; (iv) when converted to Vehicle Fuel, meets CARB's eligibility requirements as an Alternative Fuel, as applicable; and (v) transfers the equivalent quantity of Environmental Attributes to Buyer.

"**CARB**" means the California Air Resources Board or its successor agency.

"**Carbon Intensity**" means the amount of Lifecycle Greenhouse Gas Emissions, per unit of energy of fuel delivered, expressed in grams of carbon dioxide equivalent per megajoule (gCO<sub>2</sub>E/MJ) as calculated in the applicable version of the California GREET model and approved by CARB.

"**Cellulosic Biofuel**" means a renewable fuel derived from any cellulose, hemi-cellulose or lignin that has Lifecycle Greenhouse Gas Emissions that are at least sixty percent (60%) less than the Baseline Lifecycle Greenhouse Gas emissions (as set forth in the EPA RFS program (40 C.F.R. § 80.1401 (2012)) and which has an EPA approved pathway to generate RINs.

"**Claims**" shall have the meaning set forth in Section 3. H. of the Special Provisions in this Transaction Confirmation.

"**CNG**" means compressed natural gas.

"**Credit Generator**" means the party with the firm claim and responsibility for generating RINs, LCFS credits and any other environmental credits or such equivalent, as applicable, from the Biogas delivered from Seller to Buyer in this Transaction Confirmation. Specifically, Seller shall generate credits as an agent on behalf of the County of Dane pursuant to the Renewable Identification Number Marketing and Development Agreement.

"**Credit Monetization Party**" means the party, in this case the Seller (explicitly not Buyer or Buyer's affiliate) responsible for the sale of, and distribution of cash proceeds for, RINs, LCFS credits and any other environmental credits or such equivalent, as applicable, from the Biogas delivered from Seller to Buyer in this Transaction Confirmation.

***“Delivery Period”*** shall have the meaning set forth in the Section titled Delivery Period in this Transaction Confirmation.

***“Delivery Point(s)”*** shall have the meaning set forth in the Section titled Delivery Point in this Transaction Confirmation.

***“Disqualified Biogas”*** means Gas that was initially determined by the parties upon delivery to be Biogas but subsequently becomes disqualified as Biogas and ineligible to generate RINs and/or Incremental LCFS Credits because it does not qualify as a renewable fuel under the EPA Renewable Fuel Standard or the CARB LCFS, as applicable.

***“Environmental Attributes”*** means any and all environmental attributes, including the avoidance of Lifecycle Greenhouse Gas Emissions, associated with the use of Biogas as an Advanced Biofuel, Cellulosic Biofuel, low carbon fuel or Alternative Fuel, including but not limited to any and all attributes required to generate RINs, Q-RINs, or verified LCFS credits, and including any and all reporting rights associated therewith.

***“EPA”*** means the United States Environmental Protection Agency or its successor.

***“EPA Renewable Fuels Standard” or “EPA RFS”*** means the renewable energy program and policies established by the EPA and published on March 26, 2010 (at 75 Fed. Reg. 14670 and codified at 40 C.F.R. § 80.1400, et seq.), which became effective on July 1, 2010, as amended, restated or supplemented from time to time.

***“Extension Term”*** shall have the meaning set forth in the Section 8 of the Special Provisions in this Transaction Confirmation.

***“Gas Contract Price”*** shall have the meaning set forth in the Section titled Contract Price in this Transaction Confirmation.

***“Lifecycle Greenhouse Gas Emissions”*** means the aggregate quantity of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, or any other substances or combination of substances that may become regulated as greenhouse gases under any federal, state or local laws, in each case measured in increments of one metric tonne of carbon dioxide equivalent (collectively, ***“Greenhouse Gases”***), emissions, as determined by the EPA or another regulatory agency, related to the full fuel lifecycle, where mass values for all Greenhouse Gases are adjusted to account for their relative global warming potential.

***“Low Carbon Fuel Standard” or “LCFS”*** means the California Air Resources Board Low Carbon Fuel Standard set forth in the California Code of Regulations at Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, §§95480 – 95497, as amended from time to time (hereinafter the ***“California LCFS Regulations”***).

***“Low Carbon Fuel Standard Credits” or “LCFS Credits”*** means credits generated and traded under the Low Carbon Fuel Standard, with each credit equal to one metric tonne of Carbon Dioxide equivalent reductions as compared to the baseline CO<sub>2</sub>e emissions under the Low Carbon Fuel Standard.

***“LNG”*** means liquefied natural gas.

***“Material Adverse Event”*** means any change, circumstance or effect not in control of Buyer, individually or together with other such changes, circumstances or effects, that results or could reasonably be expected to result in Buyer or Buyer’s affiliate being unable to receive or source any Biogas (with the associated Environmental Attributes) because of either: (a) restrictions in the amount of Biogas, Gas, and/or associated Environmental Attributes the Buyer is allowed to receive and/or source at the Delivery Point by the applicable local distribution company or pipeline authority; or (b) any reduced demand by Seller’s VFP(s).

***“MaxDQ”*** shall have the meaning set forth in the Section titled Contract Quantity in this Transaction Confirmation.

***“MinDQ”*** shall have the meaning set forth in the Section titled Contract Quantity in this Transaction Confirmation.

***“Non-Affected Party”*** shall have the meaning set forth in Section 3.F(a) of the Special Provisions in this Transaction Confirmation.

***“Net RIN Proceeds”*** means RIN Proceeds minus RIN Expenses.

***“Party(ies)”*** means, singularly, Buyer or Seller and, plurally, both Buyer and Seller.

***“Posted Price”*** means the Daily Index price for daily deliveries into the ANR Pipeline system as published by the McGraw-Hill Companies, or any successor-in-interest thereto, in the Platts publication, *Daily Price Survey*, under the table “Upper Midwest”, for the delivery day under the column “MidPoint” under the row labeled “Chicago city-gates” (***“Daily Index”***).

***“Product Transfer Document” or “PTD”*** means a document or a set of documents that authenticates the transfer of ownership of fuel from a regulated party to the recipient of fuel. A PTD is created by a regulated party to contain information collectively supplied by other fuel transaction documents, including bills of lading, invoices, contracts, meter tickets, rail inventory sheets, etc. per 40 CFR 80.1453 of the Renewable Fuel Standard (RFS2) and as per Section 95491(c) of the California LCFS Regulations.

***“Project(s)”*** means one or more of the Biogas supply sources set forth in Exhibit A to this Transaction Confirmation.

***“Project Owner”*** means the party which owns the Biogas supply source set forth in Exhibit A to this Transaction Confirmation.

***“Q-RIN”*** means a RIN that has been reviewed and validated by an approved QAP provider

***“Quality Assurance Plan” or “QAP”*** means the voluntary RIN and/or LCFS Credit validation program whereby independent third-parties audit the production of the renewable fuel and monitor on a monthly and quarterly basis to ensure that RINs and/or LCFS Credits have been validly generated, which as applies to RINs under the EPA RFS was published on July 18, 2014 (at 79 Fed. Reg. 42078) and which became effective on September 16, 2014.



**"Renewable Fuel"** shall have the same meaning set forth in 40 C.F.R. § 80.1401.

**"Renewable Fuel Producer"** means a Third Party who produces Renewable Fuel and who, when linked to County of Dane as a transportation end user, provides those additional components necessary for RIN generation.

**"Renewable Fuel Producer Fees"** means all fees and costs (including but not limited to a percentage of Net RIN Proceeds) paid to a Renewable Fuel Producer to secure a supply of Renewable Fuel to enable the creation of RINs. Renewable Fuel Producer Fees will typically be a percentage of RIN Proceeds and will be a majority of such RIN Proceeds.

**"Renewable Identification Number" or "RIN"** is a number generated to represent a volume of renewable fuel as set forth in Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program, 75 Fed. Reg. 16484 (March 26, 2010) (codified at 40 C.F.R. § 80.1425 (2011); 40 C.F.R. § 80.1426 (2012)).

**"RIN Expenses"** means all commercially reasonable costs paid by Bluesource to Third Parties in order to fulfill its obligations pursuant to this Agreement. RIN Expenses include, without limitation: (1) Engineering Report; (2) Quality Assurance Plan; and (3) Annual Attest Engagement. RIN Expenses also include all Renewable Fuel Producer Fees.

**"RIN Proceeds"** means all funds received from the sale of RINs generated from Gas or Environmental Attributes delivered to the Delivery Points.

**"Secondary Firm (variable quantity)"** means Buyer may interrupt performance without liability to the extent that one or more of the following conditions are present: (i) Force Majeure, (ii) curtailment of supply by Seller, or (iii) a Material Adverse Event.

**"Vehicle Fuel"** means compressed natural gas (CNG) or liquefied natural gas (LNG) derived from Biogas or Gas and used in transportation vehicles.

**"Vehicle Fuel Producer" ("VFP")** means an entity with which Seller is contractually engaged to sell and deliver Environmental Attributes of Biogas purchased from Seller under this Transaction Confirmation to be combined with Gas and consumed as Vehicle Fuel.

**2. [Intentionally Omitted.]**

**3. Additional Terms and Conditions.**

**A. Nominations.** Seller will provide Buyer with its nominated daily quantity of Gas or Environmental Attributes, based on the Project(s)'s projected production schedule and Seller's projected deliveries at the Delivery Point at no less than the MinDQ and up to the MaxDQ, unless otherwise accepted by Buyer and Seller, for each Month of the Delivery Period per the conditions as provided below:

- (a) No less than thirty (30) days prior to the end of any calendar year, Seller shall nominate daily expected quantities to Buyer for the subsequent year.
- (b) No less than ten (10) days prior to each delivery month, Seller shall submit to Buyer changes to daily nominated quantities for said upcoming delivery month.
- (c) Mid-month changes to daily nominated quantities are due from Seller to Buyer by 8:00am Eastern Standard Time, one (1) day prior to each said daily delivery or weekend/holiday trading period.
- (d) Any material changes to expected deliveries above shall be reported from Seller to Buyer promptly following Seller identifying such changes.

**B. Delivery and Use of Environmental Attributes.**

For all Environmental Attributes sold and purchased under this Transaction Confirmation between Seller and Buyer, Seller represents and warrants that (i) it has the rights and title to all Environmental Attributes transferred hereunder which were produced from the Project(s) and will convey to Buyer all such Environmental Attributes in accordance with the requirements of the EPA RFS and LCFS in order to preserve the ability to generate RINs and, as applicable, LCFS Credits, (ii) the Environmental Attributes have not been sold or transferred by Seller to, or used by, any party prior to transfer to Buyer, (iii) the Environmental Attributes delivered to Buyer hereunder are from Biogas of pipeline quality that, if they are to be consumed as Vehicle Fuel, meet the requirements of the EPA RFS and LCFS, as applicable, and (iv) upon sale by Seller to Buyer, Seller shall transfer all Environmental Attributes to Buyer.

**C. Disqualified Biogas.** As applies to end-use as Vehicle Fuel, each Party will promptly notify the other Party in the event that any Biogas subject to this Transaction Confirmation is determined to be Disqualified Biogas. Buyer and Seller acknowledge and agree that each Party will promptly provide any documentation or supporting information reasonable requested by the Credit Generator related to the Disqualified Biogas. In the event any Biogas is deemed to be Disqualified Biogas, Buyer shall remain obligated to pay Seller the Contract Price under this Transaction Confirmation.

**D. Regulatory Certifications.** Seller shall or cause Credit Generator and/or Project Owner to provide all documentation required by the EPA and/or CARB as applicable to (i) certify that the Biogas is a Cellulosic Biofuel that can generate RINs or Q-RINs (with respect to EPA) and, as applicable, create a low Carbon Intensity pathway (with respect to CARB) for generation of LCFS Credits, (ii) certify that the Biogas has been generated and delivered in accordance with the EPA and/or CARB requirements, and (iii) generate Q-RINs and/or verified LCFS



Credits provided that such Biogas is used for Vehicle Fuel. This documentation will include, but is not limited to, all documentation required to certify that production and transportation of the Biogas from its point of production to the Delivery Point is compliant with the transportation routing requirements ("pathing") of the EPA RFS and LCFS and any documentation required following delivery of Biogas to Buyer. Such documentation may include, but is not limited to any affidavits, reporting or attestations required by the EPA and/or CARB as applicable, such as (x) assertions that the registration requirements as outlined by the RFS Registration Compliance Guidelines Engineering Review (40 C.F.R. § 80.1450 (2012).) have been met and (y) documentation confirming the Seller and Credit Generator are (to the extent necessary) registered under the California LCFS Regulations as regulated parties under the LCFS.

**E. Regulatory Event.** If the implementation of new, or changes to existing, Laws or other requirements or changes in administration or interpretation of Laws ("**Regulatory Event**") occurs and the affected party ("**Affected Party**") is unable, after using commercially reasonable efforts, to avoid the inability to perform or the negative and material economic impacts, the Affected Party shall be entitled to terminate this Transaction Confirmation, subject to the following conditions:

- (a) The Affected Party must give the non-affected party ("**Non-Affected Party**") prior written notice of its intent to terminate the Transaction Confirmation, and shall specify the Early Termination Date, which shall be not more than thirty (30) Business Days after the date of the notice to terminate. On the Early Termination Date, (i) Buyer shall source Environmental Attributes that are in storage to Seller with the Seller still owing Buyer any applicable Environmental Attributes Storage Service Fee for such applicable quantities; and; (ii) the Affected Party shall determine the amounts owed (whether or not then due) by each Party with respect to all Biogas and associated Environmental Attributes delivered and received between the Parties under the terminated Transaction Confirmation 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 of the Base Contract), for which payment has not yet been made by the Party that owes such payment under the Contract.
- (b) Nothing herein shall prevent the Non-Affected Party from disputing whether the Affected Party has the right to terminate the Transaction Confirmation. "**Law**" means any law, rule, regulation, ordinance, statute, judicial decision, administrative order, Transporter business practices or protocol, Transporter tariff, or rule of any commission or agency with jurisdiction in the state in which the Project(s) or Seller is located. Termination of this Transaction Confirmation will not affect either Party's obligations accruing, due and owing hereunder on or prior to the effective date of the termination. For avoidance of doubt, no early termination damage calculation would take place pursuant to Section 10.3.1, under this termination.

**F. Records.** Both Parties shall maintain all records relevant to the purchase of Gas or Environmental Attributes from Seller including all records relevant to the production, purchase and sale, transportation, storage, and delivery of Gas or Environmental Attributes purchased hereunder and for end-use, including end-use as Vehicle Fuel, maintain information as it applies to the creation and sale of RINs and/or Q-RINs in accordance with the requirements of the EPA RFS and LCFS Credits in accordance with the requirements of CARB. Seller shall maintain records related to the Gas or Environmental Attributes production process, feedstocks used, Project commissioning and registration, treatment of Biogas to pipeline quality, Biogas deliveries along the pathway including use as Vehicle Fuel, as applies, QAP compliance and certifications, and the registration, generation and monetization of RINs and/or Q-RINs and LCFS Credits associated to Gas or Environmental Attributes deliveries in this Transaction Confirmation, as applies.

As may be requested from time to time by Buyer, Seller will, and cause Credit Generator to, provide to Buyer access and rights to audit the records related to Gas or Environmental Attributes production and deliveries that are associated with Biogas deliveries in this Transaction Confirmation, including but not limited to, compliance manuals and execution logs, meter readings, meter calibrations, chromatography readings at locations of deliveries, and registration documentation. As may be requested from time to time by Seller, Buyer will provide to Seller or Credit Generator access and rights to audit the records related to Environmental Attributes storage and deliveries that are associated with Biogas deliveries and storage in this Transaction Confirmation.

**G. Additional Acknowledgements.** Each Party will provide the other Party with such cooperation, additional documentation, certifications or other information as may be reasonably necessary to carry out the purposes of this Transaction Confirmation. Buyer and Seller each acknowledge and agree that any and all obligations set forth in this Transaction Confirmation of either Buyer or Seller, including, but not limited to, the obligation to provide information, data, documentation or other cooperation to the other Party shall also be applicable with respect to an agent or subcontractor of the other Party in the event such Party retains another party to perform any obligations under this Transaction Confirmation. Such Party shall ultimately be responsible for its agent's or subcontractor's actions or inactions. Notwithstanding anything in this Transaction Confirmation to the contrary, Seller acknowledges and understands that Buyer takes no responsibility for any action or inaction of the Project Owner, Credit Generator, Credit Monetization Party, or VFP(s). As applies to end-use as Vehicle Fuel, the Parties understand and agree that the Credit Generator and Credit Monetization Party shall be solely responsible for the generation and marketing of RINs and LCFS Credits, including but not limited to all compliance responsibilities with respect thereto, and that Seller shall have no Claims against Buyer associated with any failure of Project Owner, Credit Generator, Credit Monetization Party, or VFP(s) to comply with their obligations with respect thereto. Buyer and Seller acknowledge that if there needs to be a transfer of title of the Environmental Attributes from Seller to any other party, Seller is solely responsible for such transfer. Seller agrees to HOLD HARMLESS Buyer, Buyer's parent, and/or affiliated companies and each of their respective officers, directors, representatives, agents, and employees from any and all liabilities or claims, losses, expenses (including reasonable attorney's fees), damages, demands, judgments, causes of action or suits (collectively, "**Claims**") of any kind, including but not limited to, violation of law/regulation/ordinance, breach with regard to any responsibility of the Project Owner, Credit Generator, Credit Monetization Party, or VFP(s) arising as a result of

any action or inaction of such Project Owner, Credit Generator, Credit Monetization Party, or VFP(s).

**H. [Intentionally Omitted.]**

**I. [Intentionally Omitted.]**

4. **RIN Compliance.** As applies to end-use as Vehicle Fuel, Credit Generator shall register with EPA and comply with the relevant regulatory provisions of the EPA RFS, including, but not limited to, pathway registration, RIN generation, completing ongoing QAP requirements and certifications, registering Q-RINs in the EPA Moderated Transaction System ("EMTS"), monthly progress reporting, and annual compliance reporting. Credit Generator is required to maintain its registered status with EPA and maintain Q-RIN Status with all regulated bodies and QAP provider. All costs for such QAP services paid directly to the QAP provider and registrations relevant to the EPA RFS are the responsibility and obligation of the Credit Generator. Credit Generator shall have a compliance monitoring plan for each Project(s) to include a schedule and checklist of key compliance functions. Credit Generator will provide to Buyer, upon request from time to time, a copy of said compliance monitoring plan for each project and documentation supporting historical execution of compliance related to the generation of RINs.
5. **Process for Generation and Allocation of RINs.**
  - A. **Seller Responsibilities and EPA EMTS Account.**
    - (a) During the first week of the Month following the Month of Gas or Environmental Attribute deliveries, or other mutually agreeable Day during the Delivery Period, Seller shall facilitate access for Buyer to any and all records relevant to determining the quantity of Gas or Environmental Attributes sold and delivered by Seller and purchased and received by Buyer during the prior Month so that Buyer can prepare the data regarding RIN generation for submission to the Seller and/or the Seller's agent.
    - (b) Based on the data submission in 11(b)(i), on a mutually agreeable Day during the Delivery Period, Seller shall prepare and submit a product transfer document ("PTD") substantially similar to Exhibit B to the Buyer and Seller's agent, and Seller's agent shall submit such data to the EPA EMTS account, detailing the following:
      - (i) RIN transferor and transferee company information and EPA company ID;
      - (ii) Product information including Fuel Code;
      - (iii) RIN quantity to generate and transfer;
      - (iv) RIN Year;
      - (v) PTD number
      - (vi) Any other data as required by the EPA RFS to generate and allocate RINs as requested by Seller or Seller's agent
    - (c) After the PTD has been executed within the EPA EMTS account, the Seller's Agent shall supply a screenshot of the executed transfer detailing the following:
      - (i) RIN submission identification number and date;
      - (ii) Transaction identification number date;
      - (iii) Quantity of RINs generated and transferred to EPA EMTS Account 4320;
      - (iv) PTD number;
      - (v) Other data necessary to document the generation and transfer of RINs to EPA EMTS Account 4320.
  - B. **Buyer Responsibilities.**
    - (a) During the first week of the Month following the Month of Gas or Environmental Attribute deliveries, or other mutually agreeable Day, during the Delivery Period, Buyer shall analyze the Gas or Environmental Attribute quantity sold and delivered by Seller and purchased and received by Buyer under this Transaction Confirmation and sold at a Vehicle Fueling Station cited herein which sold a Vehicle Fuel to determine how many RINs were generated during the prior Month.
    - (b) Based on the analysis in 11(a)(i), Buyer shall prepare a report, for submission to Seller and/or Seller's agent, detailing the following:
      - (i) Gas or Environmental Attributes sold and delivered by Seller and purchased and received by Buyer at the Delivery Points
      - (ii) Total Gas or Environmental Attributes sold under this Transaction Confirmation during the applicable Month that was subsequently sold by Buyer at a Vehicle Fuel Station cited in this Transaction Confirmation and distributed as a Vehicle Fuel.
      - (iii) Gas or Environmental Attributes that Seller has delivered to Buyer but has not yet been converted Vehicle Fuel ("Virtual Storage")
      - (iv) RINs to be created from Gas or Environmental Attributes purchased by Buyer from Seller.
  - C. **EPA EMTS Account:** The EPA EMTS account number to which RINs allocated to Buyer should be allocated and deposited is 4320.
6. **[Intentionally Omitted.]**
7. **Payments.** The Contract Price for Gas or Environmental Attribute quantities delivered to Buyer by Seller at the Delivery Point shall be invoiced by Seller and paid by Buyer. Seller shall invoice Buyer for Gas or Environmental Attribute delivered and received in the preceding Month, providing supporting documentation acceptable in industry practice to support the amount charged. Buyer shall remit the amount

due under in immediately available funds, on or before the later of the Payment Date or thirty (30) 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.

8. [Intentionally Omitted.]

9. [Intentionally Omitted.]

10. **Termination of this Transaction Confirmation.** This Transaction Confirmation may be terminated in its entirety under the following circumstances:

A. If Seller and/or the Project Owner fails to commence commercial operation of the Project(s) by September 1, 2019, Buyer may terminate this Transaction Confirmation effective immediately upon written notice to Seller, without either Party incurring any penalty or any obligation or liability to the other.

B. Buyer may terminate this Transaction Confirmation, effective immediately upon written notice to Seller anytime following nine (9) months after the Start Date, if: (i) Project Owner, or its assignee, fails to obtain approval of the EPA to be classified as a Renewable Fuel Producer capable of producing Biogas that generates RINs when used as Vehicle Fuel or, as applicable, fails to create a low Carbon Intensity pathway for generation of LCFS Credits with CARB; or fails to notify Buyer of either such approval or pathway creation; or (ii) Credit Generator fails to obtain approval of the EPA to generate (directly or indirectly) RINs from the Biogas deliveries associated with this Transaction Confirmation or if, as applicable, fails to receive confirmation from the CARB that its application for approval of a pathway under the LCFS for the generation of LCFS Credits has been "deemed complete" or, in the alternative, Credit Generator is unable to utilize the generic "CNG to Biogas pathway"; or fails to notify Buyer of either such approval or completion. Upon such termination, the Buyer shall source all Environmental Attributes that are in storage back to Seller. Termination of this Transaction Confirmation will not affect either Party's obligations accruing, due and owing hereunder on or prior to the effective date of the termination. For avoidance of doubt, no early termination damage calculation would take place pursuant to Section 10.3.1, under this termination.

C. Buyer may terminate this Transaction Confirmation after giving prior written notice to other Party if a Material Adverse Event occurs and could continue longer than one hundred and eighty (180) consecutive Days during any twelve (12) Month period. Upon such termination, Buyer shall source the Environmental Attributes that are in storage back to Seller. Termination of this Transaction Confirmation will not affect either Party's obligations accruing, due and owing hereunder on or prior to the effective date of the termination. For avoidance of doubt, no early termination damage calculation would take place pursuant to Section 10.3.1, under this termination.

D. The non-breaching Party (or Non-Defaulting Party, as applicable) may terminate this Transaction Confirmation on the occurrence of a material breach of the Transaction Confirmation that is not cured within thirty (30) days of receiving written notice of such breach, if an Event of Default as defined in the Base Contract is not cured within the time frame as specified in the Base Contract, or if the other party provides a known falsehood, misrepresentation, material inaccuracy or misleading statement in any supporting documentation or fails to perform any material obligation set forth in this Transaction Confirmation (other than obligations that are specifically covered as a separate Event of Default or for which a specific remedy is contemplated in this Transaction Confirmation). Upon such termination, the non-breaching Party (or Non-Defaulting Party) shall also determine damages in accordance with Section 10.3.1 of the Base Contract (with Contract Value and Market Value including any delivered quantities affected by the Default or breach); provided however, that the Market Value for each Terminated Transaction shall not include any value associated with the RINs, Q-RINs, LCFS Credits or other Environmental Attributes, as it is agreed that the Contract Price does not include any value associated with the RINs, Q-RINs, LCFS Credits or other Environmental Attributes. If Buyer is the breaching Party, then Seller shall be due an amount equal to the Environmental Attributes Storage Service Fee for the quantity affected by Buyer's breach for which Seller has already paid to Buyer. Under no circumstances shall any amounts be payable by the non-breaching Party (or Non-Defaulting Party) to the breaching Party (or Defaulting Party) pursuant to this Section 10.D.

E. For reasons due to a Regulatory Event as defined in Section 3. F. of the Special Provisions herein.

F. If an event of Force Majeure continues (i) for a continuous period of time greater than ninety (90) Days or (ii) for more than one hundred and eighty (180) cumulative Days during any twelve (12) Month period, the party not claiming the event of Force Majeure may terminate upon written notice to the other party. Upon such termination, Buyer shall source the Environmental Attributes that are in storage back to Seller. Termination of this Transaction Confirmation will not affect either Party's obligations accruing, due and owing hereunder on or prior to the effective date of the termination. For avoidance of doubt, no early termination damage calculation would take place pursuant to Section 10.3.1, under this termination.

G. Buyer may terminate this Transaction Confirmation upon written notice to Seller if at any time during the Delivery Period or Extension Term that: (a) Buyer does not receive any Biogas from Seller due to the Project(s) failing to produce Biogas for more than ninety (90) cumulative Days during any twelve (12) Month period; or (b) in the event the separate agreement between Buyer and Seller for nominations and scheduling services is terminated. Upon such termination, Buyer shall source the Environmental Attributes that are in storage back to Seller. Termination of this Transaction Confirmation will not affect either Party's obligations accruing, due and owing hereunder on or prior to the effective date of the termination. For avoidance of doubt, no early termination damage calculation would take place pursuant to Section 10.3.1, under this termination.

H. Seller may terminate this Transaction Confirmation after giving prior written notice to Buyer if Buyer provides notice to Seller that it deems storage of Environmental Attributes to no longer be commercially viable as detailed in Section 3.C. of the Special Provisions of this Transaction Confirmation. Upon such termination, Buyer shall source the Environmental Attributes that are in storage back to Seller. Termination of this Transaction Confirmation will not affect either Party's obligations accruing, due and owing hereunder on or prior to the effective date of the termination. For avoidance of doubt, no early termination damage calculation would take place pursuant to Section 10.3.1, under this termination.

I. Amount(s) owed as a result of early termination, as detailed this Section 10 of the Special Provisions of this Transaction Confirmation, shall be due for such amount(s) within thirty (30) days upon receipt of an invoice by the owing Party for such amount due to the non-owing Party. The Parties acknowledge and agree that any termination payment under the Transaction Confirmation constitutes a reasonable approximation of harm or loss and is not a penalty or punitive in any respect.

**11. Additional Indemnifications.**

A. **Seller.** In addition to any other provisions in the Base Contract, Seller agrees to defend, indemnify and hold harmless Buyer and all its affiliates, and all of their respective officers, directors, shareholders, associates, employees, agents, representatives, successors and assigns from and against all third party Claims based on (i) Seller-provided falsehood, misrepresentations, material inaccuracy or misleading statement in any documentation (including, but not limited to, in claims of title, registrations, attestations and other representations and warranties concerning the Biogas); (ii) Seller's gross negligence or willful misconduct; (iii) violation of any applicable law/regulation/ordinance, (including but not limited to, failure to comply with any applicable obligation or requirement of the EPA or CARB); or (iv) Seller's breach of this Transaction Confirmation.

B. **Buyer.** In addition to any other provisions in the Base Contract, Subject to any applicable statutory limitations including but not limited to those in Wis. Stat. s. 893.80, Buyer agrees to defend, indemnify and hold harmless Seller and all its affiliates, and all of their respective officers, directors, shareholders, associates, employees, agents, representatives, successors and assigns from all third party Claims based on (i) Buyer-provided falsehoods, misrepresentations, material inaccuracies or misleading statement in any documentation delivered under this Transaction Confirmation; (ii) Buyer's gross negligence or willful misconduct; (iii) violation of any applicable law/regulation/ordinance; or (iv) Buyer's breach of this Transaction Confirmation.

**12. Confidentiality.** This Transaction Confirmation includes proprietary and confidential information belonging to Seller. Buyer agrees to treat such information as a confidential trade secret of Seller except as required by applicable Laws, the orders or directions of tribunals having jurisdiction; Seller acknowledges that Dane County is subject to the Wisconsin Public Records Law. If Seller asserts that any information constitutes a trade secret as that term is defined in s. 134.901(1)(c), Wis. Stats., Dane County will not release such records without first notifying Seller and affording them an opportunity to challenge in a court of competent jurisdiction the requester's right to access to such information. The entire burden of maintaining and defending the trade secret designation shall be upon Seller. Seller acknowledges and agrees that if it shall fail, in a timely manner, to initiate legal action to defend the trade secret designation or be unsuccessful in its defense of that designation, Dane County shall be obligated to and will release the information.

Please confirm the foregoing correctly sets forth the terms of our agreement with respect to this Transaction by signing in the space provided below and returning a copy of the executed confirmation by emailing it to [woverly@bluesource.com](mailto:woverly@bluesource.com).

**Buyer: County of Dane, Wisconsin**

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

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

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

Date: \_\_\_\_\_, 20\_\_\_\_

**Seller: Blue Source, LLC**

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

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

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

Date: \_\_\_\_\_, 2019

**Exhibit A**  
**Biogas Supply Source(s)**

Biogas delivered to the Delivery Point(s) shall be sourced from the following Project(s).

<b>Biogas Supply Source:</b>	<b>Location:</b>	<b>Production Capacity</b>
Dane County Landfill Site No. 2 (Rodefald), Madison, WI (Project Owner: County of Dane, Wisconsin)	7102 US Highway 12, Madison, WI 53718	2,000 MMBtu/day

<b>Alternative Biogas Supply Source:</b>	<b>Location:</b>	<b>Production Capacity:</b>
None	n/a	n/a

**Exhibit B**

**[DRAFT]**

**RIN Production Transfer Document**

Seller (Transferor): Blue Source, LLC

EPA Company ID No.: 6086

Address: Blue Source, LLC,

Contact Information:

Name: Will Overly

Telephone: 801-438-1533

Email: [woverly@bluesource.com](mailto:woverly@bluesource.com)

Product Information:

Transfer Period:

Tracked Data:

No.	Parameter	Data
1	Transaction Partner Organization Identifier	
2	Transaction Partner Organization Name	
3	RIN Quantity	
4	Batch Volume	
5	Fuel Code	
6	Assignment Code	
7	RIN Year	
8	Sell Reason Code	
9	RIN Price Amount	
10	Gallon Price Amount	
11	Transaction Date	
12	Production Transfer Number	
13	Transaction Detail Comment	
14	Supporting Document (Text 1)	
15	Supporting Document Number (Text 1)	
16	Supporting Document Number (Text 2)	
17	Supporting Document Number (Text 3)	