

*Contract No.* \_\_\_\_\_

**GAS MANAGEMENT AGREEMENT  
FOR  
FIRM SERVICE**

between

**ANY NEW COMPANY**

and

**NSL ENERGY MARKETING, a Joint Venture**

\_\_\_\_\_, 200\_

**GAS MANAGMENT AGREEMENT FOR FIRM SERVICE**

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## **GAS MANAGEMENT AGREEMENT FOR FIRM SERVICE**

This **GAS MANAGEMENT AGREEMENT FOR FIRM SERVICE** (together with all Individual Transaction(s), collectively this "Agreement") dated this \_\_\_\_ day of \_\_\_\_\_, 2007 is entered into by and between **NSL ENERGY MARKETING, A JOINT VENTURE** by and through its Ventures, Atmos Pipeline and Storage, LLC, a Delaware limited liability company and ETC Gas Company, LTD., a Texas limited partnership (hereinafter collectively referred to as "NSLEM" and \_\_\_\_\_ ("Producer"). NSLEM and Producer may hereinafter be referred to individually as a "Party" and collectively as the "Parties".

### **RECITALS**

WHEREAS, Producer owns and controls certain quantities of Gas; and

WHEREAS, NSLEM has entered into an agreement with Atmos Pipeline – Texas, a division of Atmos Energy Corporation ("Atmos") and Energy Transfer Fuel, LP ("ETF") (collectively, "Transporters") wherein Transporters agree to transport Gas owned or controlled by NSLEM in and through the North Side Loop Pipeline (the "Subscription Agreement"); and

WHEREAS, contemporaneously with the execution of the Subscription Agreement, NSLEM and Transporters have also entered into an intrastate transportation agreement and an NGPA Section 311 interruptible gas transportation agreement under which such transportation services on the NSL Pipeline will occur (herein each is referred to as the "Transportation Contract"); and

WHEREAS, the Subscription Agreement gives NSLEM the right to have Gas transported, whether belonging to NSLEM or to third parties contracting with NSLEM, under the terms and conditions set forth in the Subscription Agreement and the applicable Transportation Contract; and

WHEREAS, Producer desires to utilize NSLEM's transportation rights under the Transportation Contracts and NSLEM desires to utilize such transportation rights for the benefit of Producer and provide Gas Management Services, in accordance with the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **1. DEFINITIONS**

The following definitions of terms shall apply for all purposes of this Agreement:

- 1.1 **"Adequate Assurance of Performance"** is defined in Section 12.1.
- 1.2 **"Authorized Overrun Fee"** is defined in Section 6.2.
- 1.3 **"Btu"** The term **"Btu"** shall mean British Thermal Unit.

- 1.4 **"Business Day"** The term **"Business Day"** shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 1.5 **"CCT"** The term **"CCT"** shall mean **Central Clock Time** and is defined as current time in the Central Time Zone taking into consideration the seasonal changes back and forth between Daylight Savings and Standard time.
- 1.6 **"Commodity Fee"** is defined in Section 6.1.
- 1.7 **"Cumulative Operational Imbalance Fee"** is defined in Section 4.6.
- 1.8 **"Cumulative Operational Imbalance Tolerance"** is defined in Section 4.6.
- 1.9 **"Daily Contract Quantity (DCQ)"** The term **"Daily Contract Quantity"** means the aggregate daily quantity of Gas Producer may nominate for receipt and redelivery under this Agreement.
- 1.10 **"Daily Operational Imbalance Fee"** is defined in Section 4.6.
- 1.11 **"Day"** The term **"Day"** shall mean a period of time beginning at 9:00 a.m. **Central Clock Time (CCT)** on each calendar Day and ending at 9:00 a.m. **CCT** on the next succeeding calendar Day.
- 1.12 **"Firm" or "Firm Service"** shall mean that Producer's Contract Quantity are not subject to a prior claim by another similarly situated party or class of parties or service.
- 1.13 **"Force Majeure"** shall have the meaning set forth in Section 10.
- 1.14 **"Gas"** The term **"Gas"** shall mean natural Gas as produced from wells classified as gas wells or oil wells.
- 1.15 **"Gas Management Services"** shall mean services provided to Producer by NSLEM under this Agreement.
- 1.16 **"Gross Heating Value"** The term **"Gross Heating Value"** shall mean the number of Btu's liberated by the complete combustion, at constant pressure, of one (1) cubic foot of Gas at a base temperature of sixty degrees Fahrenheit (60°F.) and a referenced pressure base of fourteen and sixty-five hundredths (14.65) p.s.i.a. with air of the same temperature and pressure of the Gas, after products of combustion are cooled to the initial temperature of the Gas, and after the water of the combustion is condensed to the liquid state. The Gross Heating Value of the Gas shall be corrected for the water vapor content of Gas being delivered provided, however, that if the water vapor content of the Gas is seven (7) pounds or less per one million (1,000,000) cubic feet the Gas shall be assumed to be dry and no correction shall be made.
- 1.17 **"Gas Imbalance Account"** The term **"Gas Imbalance Account"** means the aggregate daily imbalances that may occur on a daily basis.
- 1.18 **"Hourly Overrun Charge(s)"** is defined in Section 4.5.
- 1.19 **"Individual Transaction(s)"** The term **"Individual Transaction(s)"** means an effective and unexpired agreement(s) documented by written means, including but not limited to facsimile, e-mail, or other electronic means evidencing an agreement between NSLEM and Producer on all key terms and conditions, specifying whether

the arrangement utilizes NSLEM's rights under its intrastate transportation agreement or its NGPA Section 311 interruptible gas transportation agreement. In the event of a conflict between the terms of this Agreement and an Individual Transaction, the terms of the Individual Transaction(s) shall control.

- 1.20 **"Interruptible"** The term **"Interruptible"** or **"Interruptible Service"** as used herein means that NSLEM, in its sole discretion, shall have the right to interrupt, curtail or suspend the receipt, transportation or delivery of Gas hereunder at any time and from time to time without any liability to Producer by reason thereof.
- 1.21 **"Maximum Hourly Quantity"** is defined in Section 4.2.
- 1.22 **"Mcf"** The term **"Mcf"** shall mean one thousand (1,000) cubic feet of Gas measured at a base temperature of sixty degrees Fahrenheit (60°F), and at a pressure base of fourteen and sixty-five one-hundredths (14.65) pounds per square inch absolute.
- 1.23 **"MMBtu"** The term **"MMBtu"** shall mean one million (1,000,000) British Thermal Units.
- 1.24 **"Month"** The term **"Month"** shall mean a period of time beginning at 9:00 a.m. CST on the first Day of a calendar Month and ending at 9:00 a.m. CST on the first Day of the next succeeding calendar Month.
- 1.25 **"NSLEM"** shall have the meaning set forth in the preamble.
- 1.26 **"NSL Pipeline"** shall mean that certain 30-in pipeline approximately 45 miles in length, running from an interconnection with Atmos' Line W near Justin in Denton County, Texas to a point at or near the ETF Collin Line and the Atmos D17-9 pipeline, both in Collin County, Texas and those certain upstream and downstream pipelines owned by Atmos, a portion of which are included in a receipt and delivery area for Gas transported with the North Texas area, and further described in the Subscription Agreement as the NSL Pipeline and NSL Pipeline Zone.
- 1.27 **"Operational Flow Order"** is defined in Section 4.7.
- 1.28 **"Primary Term"** shall have the meaning set forth in Section 5.
- 1.29 **"Producer"** shall have the meaning set forth in the preamble.
- 1.30 **"Producer's Contract Quantity"** means the maximum quantity of Gas in MMBtu, exclusive of applicable Retention Volume, specified in this Agreement or Individual Transaction that Shipper may nominate to NSLEM and deliver to Transporters each Day at a Receipt Point(s) and that NSLEM shall cause to be delivered at the Delivery Point(s) at a relatively uniform hourly rate over the course of such Day.
- 1.31 **"Retention Volume"** The term **"Retention Volume"** means the quantity of Gas deducted for fuel and other unaccounted for volumes by NSLEM from the quantity delivered to NSLEM at the Receipt Point.

## 2. USE OF TRANSPORTATION RIGHTS

**2.1** NSLEM agrees to utilize its transportation rights under the Transportation Contracts and Subscription Agreement to cause Transporters to receive Gas at the Receipt Point(s) as nominated and tendered by Producer under the terms of this Agreement and deliver equivalent quantities of Gas on a Firm basis to Producer at the Delivery Point(s), as set forth herein, less the Retention Volumes. NSLEM's obligations are subject to: (i) Producer's Contract Quantity; (ii) an event of Force Majeure; (iii) Producer's failure or refusal to deliver Gas to, or receive Gas from, NSLEM as required under this Agreement; (iv) any laws, rules, orders, or requirements of any governmental or regulatory authority, which limit, prevent, or interfere with Transporters' or NSLEM's performance; and (v) as otherwise provided under any other terms and conditions of this Agreement.

**2.2** Producer will tender the quantities of Gas nominated under this Agreement at the Receipt Point(s), and accept the Gas, less the Retention Volumes, at the Delivery Point(s). Producer's obligations set forth in the preceding sentence are subject to: (i) an event of Force Majeure; (ii) NSLEM's or Transporters' failure or refusal to receive Gas from, or deliver Gas to, Producer as required under this Agreement; (iii) any laws, rules, orders, or requirements of any governmental or regulatory authority, which limit, prevent, or interfere with Producer's performance; and (iv) as otherwise provided under any other terms and conditions of this Agreement.

## 3. RECEIPT POINT(S), DELIVERY POINT(S), CONTROL OF GAS

**3.1** The Receipt Point(s) for all Gas delivered or caused to be delivered by Producer to NSLEM for receipt and redelivery hereunder shall be at such mutually agreeable existing points on the existing NSL Pipeline in the State of Texas as may be established from time to time under the terms of this Agreement (hereinafter called "**Receipt Point(s)**") and listed in each specific Individual Transaction under this Agreement.

**3.2** The Delivery Point(s) for all Gas that NSLEM causes to be redelivered for the account of Producer hereunder shall be at such mutually agreeable existing points on the existing NSL Pipeline in the State of Texas as may be established from time to time under the terms of this Agreement (hereinafter called "**Delivery Point(s)**") and listed in each specific Individual Transaction under this Agreement.

**3.3** Producer recognizes that quantities of Gas may be received and redelivered through the Receipt Point(s) and/or the Delivery Point(s) by third parties, and therefore, the measurement of Gas under this Agreement may involve the allocation of Gas receipts or deliveries. As between NSLEM and Producer, NSLEM will, in its sole discretion, determine the allocation of all Gas deliveries hereunder. Each Party will furnish or cause to be furnished to the other Parties all data required to accurately account for all Gas received and delivered hereunder.

**3.4** Producer hereby grants NSLEM the exclusive right to direct and control Producer's Gas after such Gas is delivered to the Receipt Point(s) and prior to that Gas being redelivered at the Delivery Point(s), such direction and control to be in accordance with Producer's nominations and instructions hereunder. The Parties acknowledge and agree that NSLEM shall be an independent contractor and has no authority to act as agent for or on behalf of Producer with regard to any other contract or in any other manner not authorized herein, without the express prior consent of Producer

#### 4. QUANTITY, NOMINATIONS, BALANCING

**4.1** All quantities subject to this Agreement shall be balanced between the Receipt Point(s) and the Delivery Point(s) at consistent hourly and daily volumes based on the nominated volumes as specified herein.

**4.2** **Producer's Daily Contract Quantity of each Individual Transaction under this Agreement will be agreed to by the Parties and confirmed in writing, facsimile or by email.** Subject to the terms, conditions and limitations contained herein, Producer agrees to deliver, or cause to be delivered, to the Receipt Point(s), and NSLEM agrees to accept, or cause to be accepted, on a Firm basis those daily quantities of Producer's Gas scheduled in accordance with this Section 4 and tendered daily at the Receipt Point(s); however, in no event shall Producer tender volumes of Gas for receipt and redelivery hereunder on any Day in excess of the volumes of received and redelivered Gas that Producer has nominated at the Delivery Point(s) each Day. Subject to the terms, conditions and limitations contained herein, Producer agrees to accept, or cause to be accepted, at the Delivery Point(s), and NSLEM agrees to redeliver, or cause to be redelivered, on a Firm basis all volumes received for redelivery to the Delivery Point(s) a scheduled hourly and daily volume of Gas, in terms of MMBtu, equal to the scheduled hourly and daily volume of Gas, in terms of MMBtu, delivered by or for the account of Producer at the Receipt Point(s). The maximum quantity of Gas that NSLEM is obligated to cause to be received, transported and redelivered by Transporters during any given hour of any Day is 1/24 of the Producer's scheduled volume not to exceed Producer's Daily Contract Quantity at an instantaneous standard volumetric flow rate at any point in time during the hour (the "**Maximum Hourly Quantity**"); provided, however, NSLEM and Producer may agree for NSLEM to cause Transporters to deliver quantities of Gas in excess of Producer's Daily Contract Quantity or the Maximum Hourly Quantity on a Firm basis and subject to an Authorized Overrun Fee. Any variation will be confirmed in writing via fax or email by NSLEM, with an acknowledgment returned to NSLEM by the Producer.

**4.3** Producer shall submit nominations to receive and redeliver Gas via NSLEM's **Web based online nomination system (ETConnect)** located at its designated website (see Section 11.3 herein). **NSLEM will send Producer a confirmation for each Individual Transaction, Producer must acknowledge each Individual Transaction in writing, facsimile or by email and return same to NSLEM before any nomination is valid. Producer must have confirmed Individual Transaction(s) in place before a nomination can be entered into ETConnect.** The deadline for submitting nominations for the first (1<sup>st</sup>) of each Month via **ETConnect** is 11:30 a.m. (CCT), one (1) Business Day prior to the beginning of each Month. Producer will use reasonable efforts to notify NSLEM by no later than 9:00 a.m. (CCT) on the Day prior to the Day(s) of the scheduled flow, of the capacity and path (area that the receipt volumes will be nominated from for the next Gas Day) that the Producer plans to utilize. Producer has the right to nominate volume up to Producer's DCQ. The deadline for submitting timely nominations via **ETConnect** is 11:30 a.m. (CCT), for next Day flow. NSLEM may allow same Day/intra-Day nomination changes at the Receipt Point(s) and Delivery Point(s). The same-Day/intra-Day nomination deadline will be 9:00 p.m. of the same Day. However, notwithstanding the previous sentence, the Producer must request approval from NSLEM to use this service. NSLEM may withhold this service in its sole discretion.

**4.4** Producer will balance, on an hourly and daily basis, between the Gas tendered to NSLEM at the Receipt Point(s), less the Fuel Retention Volumes, and the Gas delivered at the Delivery Point(s). Producer must monitor and adjust its nominations, deliveries, and receipts to

maintain the hourly and daily balances between the Receipt Point(s) and Delivery Point(s), and notify NSLEM of any imbalances or situations that may cause imbalances. If NSLEM is unable to receive Gas at any Receipt Point in the quantities scheduled, or deliver Gas at any Delivery Point in the quantities scheduled, as provided for herein, NSLEM will notify Producer as soon as practicable. NSLEM has no obligation to effectuate receipt or delivery of quantities of Gas on an hourly or daily basis that differ from the scheduled volumes.

**4.5** If NSLEM's deliveries to Producer hereunder differ from the quantities scheduled by Producer for the Receipt Point(s), excluding Retention Volumes, by more than the percentage limits, specified in the Individual Transaction, over or under such scheduled Receipt Point quantities, exclusive of the Retention Volumes, during any hour, then Producer must pay NSLEM the fee, specified in the Individual Transaction, for each MMBtu in excess of each respective percentage limit over or under such scheduled Receipt Point quantities, exclusive of the Retention Volumes ("Hourly Overrun Charge" or collectively "Hourly Overrun Charges"). The Hourly Overrun Charges will be calculated for each hour that deliveries are not within the limits provided in this Section 4.5. Deliveries will not be averaged over more than one hour for the purpose of determining if Hourly Overrun Charges are due, or the amount of the Hourly Overrun Charges.

**4.6** Any variance or imbalance between the volume of Gas delivered at the Delivery Point(s) and the volume of Gas received at the Receipt Point(s) (less the Fuel Retention Volumes) during a given Day will be recorded in a Gas Imbalance Account. If the over-delivered or under-delivered quantity for any Day is greater than 10% of the daily scheduled receipt volume in MMBtu's, then the Producer must pay NSLEM an amount equal to \$0.15 per MMBtu times the quantity exceeding the 10% tolerance for each and every Day such event occurs, "**Daily Operational Imbalance Fee**". In addition to the Daily Operational Imbalance Fee, if the absolute volume in the Gas Imbalance Accounts are greater than a plus or minus MMBtu tolerance specified in each Individual Transaction (**Cumulative Operational Imbalance Tolerance**), then Producer must pay NSLEM an amount equal to a dollar value specified in each Individual Transaction multiplied by the quantity in the Gas Imbalance Account exceeding the Cumulative Operational Imbalance Tolerance for each and every Day such event occurs, "**Cumulative Operational Imbalance Fee**". Any physical flow adjustments will be made as mutually agreed to by the Parties (which shall be confirmed in writing via fax or email by NSLEM, with an acknowledgment to be returned to NSLEM by Producer) to adequately control imbalance levels. The daily and cumulative imbalance(s) will be determined at the end of each Gas Day and will be made available via NSLEM's ETConnect online nomination system.

**4.7** If NSLEM, upon one hour prior notice, notifies Producer with respect to a particular hour that Gas quantities delivered at the Delivery Point(s) must be within 10% of the scheduled quantities for such hour at the Receipt Point(s), exclusive of the Retention Volumes, "**Operational Flow Order**" (**OFO**), then Producer must pay to NSLEM \$2.00 for each MMBtu delivered hereunder at such Delivery Point(s) during each hour in excess of 10% over or under the scheduled Receipt Point(s) quantities, (less the Retention Volumes) while the OFO order is in effect.

**4.8** Notwithstanding the foregoing, NSLEM expressly reserves the right, at any time in the future, upon at least 60 Days' prior written notice to Producer, to institute new, and from time to time revise, the fees and volumes or percentages associated with any Operational Flow Order and the Daily or Cumulative Operational Imbalances Fees set forth above.



**4.9** Notwithstanding anything in this Agreement to the contrary, service to Producer hereunder may, at any time and from time to time, with notice to Producer, be restricted, interrupted, or reduced and NSLEM has the right to direct Producer to make adjustments in its receipts or deliveries, in order to maintain a daily and hourly balance or to correct an imbalance. If Producer fails or refuses to follow any such request from NSLEM, NSLEM may, without liability hereunder, cease accepting or delivering Gas under this Agreement until the conditions causing the imbalance are corrected.

**4.10** In the event Producer receives or delivers Gas to NSLEM which Gas originates from, or that is destined to be sold, dedicated, committed to or delivered in, interstate commerce, whether immediately upstream or downstream of NSLEM, then Producer shall notify NSLEM of such event by designating such on its nomination. NSLEM shall then make arrangements to receive Gas from the Receipt Point(s) and redeliver to the Delivery Point(s) in such a manner as to be in compliance with Section 311(a)(2) of the Natural Gas Policy Act of 1978.

## **5. TERM**

**5.1** This Agreement shall govern all Individual Transactions and be in effect for a term of \_\_\_\_\_ year from \_\_\_\_\_ (the "Primary Term"). It shall then continue in effect from Month to Month, unless terminated by a Party (as to that Party) upon 30 Days prior written notice to the other Parties; provided, this Agreement shall continue to apply to all Individual Transactions then in effect until all Individual Transactions are completed. This Agreement may be terminated if the contract is inactive (currently has no active term) by either Party with a 30-Day notice to the other Party. In the event there is an existing imbalance in the Gas Imbalance Account on the date of termination of this Agreement, then the term of this Agreement shall be extended for the sole purpose of resolving the imbalance as specified in the Individual Transaction.

## **6. FEE**

**6.1** NSLEM shall on a Monthly basis charge Producer and Producer shall pay a **fee specified in the Individual Transactions which may consist of a rate per MMBtu of Producer's Contract Quantity (Demand Fee), a rate per MMBtu of volumes actually received and redelivered (Commodity Fee) and/or a Retention Volume for the receipt and redelivery of Gas.** All Commodity Fees will be billed and/or calculated on the receipt volume of Producer's Gas that NSLEM receives or is allocated. .

**6.2 Authorized Overrun Fee:** In the event that Producer receives authorization to overrun Producer's DCQ, Producer shall be subject to an authorized overrun charge per MMBtu as specified in the Individual Transaction(s) (the "Authorized Overrun Fee").

**All Demand Fees, Commodity Fees and Authorized Overrun Fees of each Individual Transaction under this Agreement will be agreed to and confirmed by the Parties in writing, facsimile or by email.**

**6.3** In addition to the other fees and charges set forth in this Agreement, Producer must reimburse NSLEM for any delivery point, or metering fee charged by any third party for deliveries at the Delivery Point(s); provided, that NSLEM has given Producer written notice of the amount of such fee and Producer has agreed to reimburse NSLEM for such fee. If Producer has not given

NSLEM written notice of its agreement to reimburse NSLEM for any such third-party fee, then NSLEM will have no obligation to redeliver Gas to Producer at the Delivery Point(s) if it is subject to the third-party fee. Should any third party with the right to control the Delivery Point(s), or any other facilities needed for the delivery of Gas hereunder fail to authorize the use of any such facilities to perform the services provided herein, then NSLEM will have no obligation hereunder to perform any receipt and redelivery services, or receive or deliver Gas hereunder, where NSLEM's ability to perform such services is in any way adversely affected by such third party's refusal.

**6.4** In addition to the other fees and charges set forth in this Agreement, Producer will pay, in advance, all applicable filing, reporting, and application fees, if any, that will be required of NSLEM, or any other Party, including Producer, in providing receipt and redelivery services hereunder.

## **7. PRESSURES**

**7.1** Producer will deliver Gas to the Receipt Point(s) at pressures sufficient to enter the NSL Pipeline against the operating pressures maintained in the NSL Pipeline from time to time, but such delivery pressures may not exceed the MAOP of the pipeline at such point. NSLEM shall not have any obligation to alter pipeline capacity pressures, provide compression, or modify pipeline operations in order to effectuate the receipt or delivery of Gas.

## **8. QUALITY**

**8.1** Producer agrees that all Gas delivered at the Receipt Point(s) hereunder shall be merchantable Gas which shall meet the highest standard quality specifications of any downstream pipeline to which such Gas is nominated, but at a minimum shall meet the following specifications:

(a) Each Party will deliver to the other Party Gas that is of merchantable quality and is commercially free from water, hazardous substances, hydrocarbon liquids, bacteria and other objectionable liquids, solids and/or gas components. In addition, the Gas delivered by each Party will specifically contain not more than:

- (i) 0.05% oxygen,
- (ii) not more than five grains of total sulphur consisting of not more than ¼ grain of hydrogen sulphide and one grain of mercaptan sulphur per 100 cubic feet of gas,
- (iii) not more than 2% by volume of carbon dioxide,
- (iv) not more than 4% by volume total non-hydrocarbon and inert gases, and
- (v) not more than seven pounds of water vapor per one million cubic feet of gas;

provided, however, if Producer tenders Gas for transportation upstream of a dehydration plant, Transporters may, at its option, waive Producer's obligation to deliver dehydrated Gas, subject to Transporters' continuing right to withdraw such waiver at any time in the future. The Gas will be at temperatures not in excess of 120 degrees Fahrenheit nor less than 40 degrees Fahrenheit, provided that the Gas will have a hydrocarbon dew point not to exceed 40 degrees Fahrenheit at the delivery pressure, and will have a heat content of not less than 950 nor more than 1,100 Btu per cubic foot under the conditions of measurement contained herein. NSLEM will not be obligated to accept any Gas delivered by Producer (or its designee) hereunder that is not interchangeable with other Gas in Transporters' pipeline at the Point(s) of Receipt hereunder. The determination of such interchangeability will be based upon a factor that is equivalent to the quotient obtained by dividing

the total heating value of such Gas, expressed in Btu, by the square root of the specific gravity of such Gas. Such factor must be within  $\pm 7\%$  of the interchange factor established by Transporters for its system at the Receipt Point(s); provided, however, Transporters may, at its option, waive the obligation to meet these interchangeability conditions, subject to Transporters' continuing right to withdraw such waiver at any time in the future.

**8.2** If at any time the Gas fails to meet the quality specifications enumerated herein, the Party receiving such Gas will notify the Party delivering such Gas, and the delivering Party will immediately correct such failure. If the delivering Party is unable or unwilling to deliver Gas according to such specifications, the Party receiving such Gas may refuse to accept delivery of Gas hereunder for so long as such condition exists.

**8.3** Producer shall be responsible for odorizing any part of the Gas delivered hereunder at the Delivery Point(s) which is diverted and/or used for any purpose for which odorization is required pursuant to regulations of the Texas Railroad Commission.

**8.4** Notwithstanding anything contained herein, NSLEM reserves the right, at any time and from time to time, to unilaterally amend, on a nondiscriminatory basis, the quality specifications set forth above upon giving Producer at least 30 days' prior written notice of any such change(s).

## **9. MEASUREMENT**

### **9.1 Measuring Equipment and Testing**

(a) The Gas delivered to NSLEM at the Receipt Point(s) and the Gas redelivered to Producer at the Delivery Point(s) will be measured by meters of standard type that will be installed, operated and maintained by Transporters (or its designee). Measurement devices and equipment will be tested and adjusted for accuracy on a regular schedule by Transporters (or its designee).

(b) If adequate metering facilities are already in existence at the Receipt and/or Delivery Point(s) hereunder, such existing metering facilities may be used for so long as, in Transporters' sole opinion, they remain adequate. However, if new or additional facilities ever are required to effectuate the receipt or delivery of Gas hereunder, Producer will be responsible for the cost of such facilities. If Producer desires new or continued service hereunder at any such point(s), Producer will enter into a Facilities Construction Agreement with Transporters to provide and install the necessary facilities. NSLEM will not be obligated to expend any monies to install, repair and/or replace any facilities located at the Receipt and/or Delivery Point(s) hereunder.

(c) Producer will have access to the metering equipment at all times, but the maintenance, calibration and adjustment of the Delivery Point and Receipt Point metering equipment, will be done only by Transporters (or its designee). Records from all such metering equipment will remain the property of Transporters (or its designee) and will be kept on file by NSLEM for a period of not less than two years. However, upon request of Producer, NSLEM will make available to Producer volume records from the metering equipment, together with calculations therefrom, for inspection and verification, subject to return to NSLEM within 30 days after receipt thereof.

(d) The measurement of Gas for the purpose of this Agreement will be by Transporters' (or its designee's) Receipt Point(s) and Delivery Point(s) meters only, except as hereinafter specifically provided. The meters, check meters, instruments and equipment installed by each Party will be subject at all reasonable times to inspection or examination by the other Party, but the calibration and adjustment thereof will be done only by the installing Party.

(e) Each Party will give to the other Party notice of the time of all tests of such notifying Party's meters at the Delivery Point(s) sufficiently in advance of such tests so that the other Party may conveniently have its representatives present; provided, however, that if either Party has given such notice to the other Party and such other Party is not present at the time specified, then the Party giving the notice may proceed with the test as though the other Party were present.

(f) Meter measurements computed by Transporters (or its designee) will be deemed to be correct except where the meter is found to be inaccurate by more than one percent (1%), fast or slow, or to have failed to register, in either of which cases Transporters (or its designee) repairs or replaces the meter. The quantity of Gas delivered while the meter was inaccurate or failed to register will be determined by the readings of the check meter, if installed and in good operating condition, or, if not installed and in good operating condition, then by correcting the error if the percentage of error is ascertainable by calibration or mathematical calculation. If not so ascertainable, then it will be determined by estimating the quantity on the basis of deliveries under similar conditions when the meter was registering accurately. Such adjustments or corrections will be made only for 1/2 of the period that has elapsed since the previous test; provided, however, no such adjustment or correction will be made for a time period in excess of 30 days.

## **9.2 Measurements**

(a) For metering points for which the daily volume is expected to exceed 50,000 cubic feet per day, Transporters (or its designee) will, at Producer's expense, properly install and operate a device of standard make to continuously determine or record flowing temperature; provided, however, Transporters (or its designee) may install such temperature equipment at metering points that are not anticipated to exceed 50,000 cubic feet per day. The temperature values will be used in gas measurement computations.

(b) The meters for measurement of quantities at the Receipt and Delivery Points hereunder will be installed and operated, and gas measurement computations will be made, in accordance with current industry standards. Orifice metering will be done in accordance with the latest version of **A.G.A. Report No. 3 - ANSI/API 2530**. Positive displacement and turbine metering will be done in accordance with the latest version of **ANSI B 109.1, B 109.2, or B 109.3**. Turbine metering will be done in accordance with the latest version of **A.G.A. Report No. 7**. Ultrasonic metering will be done in accordance with the latest version of **AGA Report No. 9**. Electronic Gas Measurement (EGM) will be done in accordance with the latest version of **API Manual of Petroleum Measurement Standards Chapter 21 - Flow Measurement Using Electronic Metering Systems**. The unit of measurement of gas will be 1,000 cubic feet at a base pressure of 14.65 pounds per square inch absolute and a temperature base of 60 degrees Fahrenheit. Meter measurements will be computed by Transporters (or its designee) into such units in accordance with the Ideal Gas Laws for volume variations due to metered pressure and corrected for deviation using average values of recorded relative density and flowing temperature, or by using the calculated relative density determined by the method mentioned in Section 11(c) below. In no circumstance will the average value of flowing temperature or relative density be determined for a period of less than one day.

(c) The average heating value (Btu) and relative density of the gas delivered hereunder by either Party may be determined by the use of recording instruments of standard type, which may be installed and operated by Transporters (or its designee) at the Receipt or Delivery Point(s), or at such other point or points as are mutually agreeable to both parties; provided, however, if there is no Btu/relative density instrument at a particular Receipt or Delivery Point agreed upon hereunder,

then the heating value and relative density of the gas at such point may be determined by "on-site" sampling and laboratory analysis.

(d) In gas measurement computations, the determinations for the average values for meter pressure, relative density and temperature will be determined only during periods of time when gas is actually flowing through the meter(s).

## **10. FORCE MAJEURE**

**10.1** If either Party is rendered unable, wholly or in part, by **Force Majeure** (defined below) or other causes herein specified, to carry out its obligations under this Agreement other than the obligation to make payment of amounts due hereunder, it is agreed that on such Party's giving notice and reasonably full particulars of such force majeure in writing or facsimile or by email to the other Party within a reasonable time after the occurrence of the cause relied on, then the obligations of the Party giving such notice, so far as they are affected by such force majeure or other causes herein specified, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied with all reasonable dispatch.

**10.2** The term **Force Majeure** as employed herein means acts of God; strikes, lockouts or other industrial disturbances; acts of the public enemy; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; arrests and restraints of the government, either federal or state, civil or military; civil disturbances; explosions; breakage; breakdown or accident to machinery, equipment or lines of pipe; demands in excess of the capacity of equipment or pipelines; the necessity of altering, maintaining, inspecting, replacing, changing the size of, substituting or removing pipelines or appurtenant facilities; and any other causes, whether of the kind herein enumerated or otherwise, not reasonably within the control of the Party claiming suspension, and which by the exercise of due diligence such Party is unable, wholly or in part, to prevent or overcome. Such term likewise includes (1) in those instances where either Party hereto is required to obtain servitudes, right-of-way grants, permits or licenses to enable such Party to fulfill its obligations hereunder, the inability of such Party to acquire, or the delays on the part of such Party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, right-of-way grants or licenses, and (2) in those instances where either Party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permission from any governmental agency (federal, state or municipal, civil or military) to enable such Party to fulfill its obligations hereunder, the inability of such Party to acquire or the delays on the part of such Party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permissions. It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing Party when such course is inadvisable in the discretion of the Party having the difficulty.

**10.3** Force Majeure does not include: mechanical failure or breakdown of electric generation plants, changes in market conditions or changes in demand for electricity at electric generation plants such as increases or decreases in electric generation that are required by the Electric Reliability Council of Texas, or any other agency or body having such authority, or failure of upstream transportation prior to delivery hereunder at the Receipt Point(s). Neither party shall be

entitled to the benefit of the provision of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the party claiming excuse failed to remedy the condition and to resume the performance of its covenants or obligations with reasonable dispatch; or (ii) economic hardship, to include, without limitation, Producer's ability to sell its Gas at a higher or more advantageous price to a market not requiring the services contracted for herein; or (iii) the loss of Producer's market or Producer's inability to use or resell Gas received and redelivered hereunder, or (iv) the loss or failure of Producer's Gas supply or depletion of reserves.

**10.4** Either Party may partially or entirely interrupt its performance hereunder for the purpose of making necessary or desirable inspections, alterations and repairs which are described as a maintenance event, but only for such time as may be reasonable and unavoidable; and the Party requiring such relief shall give to the other Party five (5) Days notice of its intention to suspend its performance hereunder, except in cases of emergency where such notice is impracticable and shall endeavor to arrange such interruption so as to inconvenience the other Party as little as possible. **Should a Force Majeure or maintenance event occur the volumes to be delivered and / or received at the Receipt Point(s) and Delivery Point(s) by NSLEM must be balanced with the hourly and daily nominated quantities.**

## **11. WARRANTIES AND INDEMNIFICATIONS**

**11.1** Producer warrants title to all Gas delivered by it hereunder and that it has the right to deliver same hereunder and that such Gas is free from liens and adverse claims of every kind. Producer shall be deemed to be in control and possession of the Gas prior to the receipt of the Gas by NSLEM at the Receipt Point. NSLEM shall be deemed to be in control and possession of the Gas after its receipt by NSLEM at the Receipt Point and prior to its delivery to Producer or for Producer's account at the Delivery Point. The Party in control and possession of the Gas will be responsible for and shall indemnify the other Party with respect to any losses, injuries, claims, liabilities or damages caused thereby or on account of royalties, taxes, payments, or other charges applicable and occurring while the Gas is in its possession. Each Party hereto covenants that with respect to the Gas delivered or redelivered by it hereunder, it will indemnify and save the other Party harmless from and against any and all suits, actions, causes of actions, claims and demands arising from or out of any adverse claims by third parties claiming ownership of or an interest in the Gas so delivered or redelivered. Notwithstanding the foregoing, neither Party shall be indemnified for its own negligence, and the Parties acknowledge and agree that Producer shall at all times have title to all Gas received and redelivered hereunder.

**11.2** Producer represents and warrants to NSLEM:

(a) (i) in the event the Producer does not specify, when submitting its nomination, that Gas is destined for NGPA 311 Service then Producer represents and warrants that such Gas will be produced in the State of Texas from reserves not dedicated or committed to interstate commerce, and (ii) that the Gas which Producer delivers or receives hereunder will not have been or be sold, consumed, receive and redelivered or otherwise utilized in interstate commerce at any point upstream of the Receipt Point(s) or downstream of the Delivery Point(s), nor have been or be commingled at any point upstream of the Receipt Point(s) or downstream of the Delivery Point(s) with other Gas which is or may be sold, consumed, receive and redelivered or otherwise utilized in interstate commerce in such a manner which will subject the Gas subject to this Agreement or the NSL Pipeline, or any portion thereof, to the jurisdiction of the Federal Energy Regulatory Commission or any successor authority under the Natural Gas Act. Producer agrees to indemnify

and hold NSLEM harmless from and against any and all suits, actions, damages, costs, losses and expenses sustained by NSLEM relative to any breach by Producer of the covenants herein expressed,

OR

(b) in the event Producer specifies, when submitting its nomination, that Gas originates from, or that is destined to be sold, dedicated, committed to or delivered in, interstate commerce, whether immediately upstream or downstream of NSLEM or ultimately, Producer represents and warrants that such Gas shall be eligible for transportation in interstate commerce under applicable rules, regulations, or orders of the FERC and that the service which it requests qualifies as a bona fide transportation service under §311(a)(2) of the NGPA and the related rules and will continue to qualify under such section for the entire term of the Individual Transaction(s) and shall be subject to all valid rules and regulations of duly constituted governmental authorities having jurisdiction or control over the matter related hereto including, without limitation, the provisions of Subpart C of Part 284 of FERC's Regulations implementing Section 311(a)(2) of the NGPA (18 CFR Section 284.121, et seq). NSLEM shall then make arrangements to receive Gas from the Receipt Point(s) and redeliver to the Delivery Point(s) in such a manner as to be in compliance with Section 311(a)(2) of the Natural Gas Policy Act of 1978.

**11.3** NSLEM shall make its website and ETConnect system available to Producer for the purpose of performing operational functions, including but not limited to: (a) nominating quantities of Gas for receipt and delivery by NSLEM pursuant to this Agreement; (b) confirming quantities of natural Gas for receipt and delivery by NSLEM; (c) viewing imbalance statements; (d) viewing invoices; and (e) viewing such other information as NSLEM may from time to time make available to Producer through the website. Producer will access and utilize the website solely for its own internal business and commercial purposes and in accordance with this Agreement, any procedures established by NSLEM with respect to the access and utilization of the website and any other terms and conditions specified or referred to on the website from time to time. Use of website user identification and website passwords by Producer shall be limited to only those individuals who have been authorized by the Producer to utilize the website. It is Producer's responsibility and obligation to monitor its users and request changes in user identification and website passwords at appropriate times to prevent the unauthorized use of the ETConnect system. Producer agrees to protect, defend, indemnify, and hold harmless NSLEM against any and all loss, costs, damages, and expenses of any nature whatsoever (including court costs and reasonable attorney's fees), resulting from or otherwise related to any claim, demand, or action asserted against NSLEM, arising from or connected with Producer's use of the ETConnect system except for the negligence, bad faith, fraud or willful misconduct of NSLEM.

**11.4** Limitation of Liability. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES HEREBY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES IN TORT, CONTRACT UNDER ANY INDEMNITY PROVISION OR

**OTHERWISE PROVIDED HOWEVER NSLEM MAY RECOVER CONSEQUENTIAL DAMAGES RESULTING FROM THE DELIVERY BY PRODUCER OF GAS THAT DOES NOT CONFORM TO THE QUALITY SPECIFICATIONS IN SECTION 8 HEREOF OR BREACH OF SECTION 11.2 ABOVE..**

## **12. CREDIT ASSURANCE**

**12.1** In the event NSLEM determines Producer's credit to be unsatisfactory in NSLEM's sole opinion at any time during the term of this Agreement, NSLEM may demand "Adequate Assurance of Performance" which shall mean sufficient security in an amount and for a term reasonably specified by NSLEM. Producer at its option may provide one of the following forms of security:

- (a) Post an irrevocable standby letter of credit in a form and from a bank satisfactory to NSLEM; or,
- (b) Provide a prepayment or a deposit by wire transfer in immediately available funds.

**12.2** NSLEM will not be required to perform or continue to perform service hereunder in the event: (i) Producer has voluntarily filed for bankruptcy protection under any chapter of the Bankruptcy Code; (ii) Producer is the subject of an involuntary petition of bankruptcy under any chapter of the Bankruptcy Code, and such involuntary petition has not been settled or otherwise dismissed within 90 Days of such filing; or (iii) Producer otherwise becomes insolvent, whether by an inability to meet its debts as they come due in the ordinary course of business or because its liabilities exceed its assets on a balance sheet test; and/or however such insolvency may otherwise be evidenced.

**12.3** Should Producer fail to provide Adequate Assurance of Performance within two (2) Business Days after receipt of written demand for such assurance, then NSLEM shall have the right to suspend performance under this Agreement until such time as Producer furnishes Adequate Assurance of Performance. If such assurance is not provided by Producer within ten (10) Days from written demand, NSLEM may terminate this Agreement in addition to having any and all other remedies available hereunder.

## **13. BILLING, PAYMENT AND NOTICES**

**13.1** On or before the fifteenth (15th) Day of each calendar Month, NSLEM will render a statement to Producer setting forth, in terms of Mcf and MMBtu, the total quantity of Gas received hereunder at the Receipt Point(s), the quantity of Gas retained by NSLEM and the quantity of Gas delivered hereunder at the Delivery Point(s) during the immediately preceding calendar Month and the amount payable therefore. Producer agrees to pay NSLEM by wire transfer in immediately available funds (identifying the invoice number) the full amount payable according to such statement on or before ten (10) Days following the receipt thereof by Producer. In the event such quantities are estimated for any period, corrected statements shall be rendered by NSLEM to Producer and paid by Producer or refunded or credited by NSLEM, as the case may be, in each instance in which the actual quantity received or delivered hereunder with respect to a Month shall



be determined to be at variance with the estimated quantity theretofore made the basis of billing and payment hereunder. If an error is discovered in the amount billed in any statement rendered by NSLEM, then such error will be adjusted within 30 Days of the discovery of the error.

**13.2** If a bonafide dispute arises as to the amount payable in any statement rendered, then Producer will nevertheless pay the total amount payable to NSLEM under the statement rendered pending resolution of the dispute. Such payment will not be deemed to be a waiver of the right by Producer to recoup any overpayment.

**13.3** In addition to all other remedies available to NSLEM, should Producer fail to pay any amount when the same becomes due, interest shall accrue thereon at a rate equal to the prime rate from time to time in effect and charged by the **Citibank, N.A., New York, New York, plus two percent (2%) per annum**, (but in no event greater than the maximum rate of interest permitted by law) with adjustments in such rate to be made on the same Day as any change in such prime rate, for any period during which the same shall be overdue, such interest to be paid when the amount past due is paid. Each Party hereto or its representative shall have the right at all reasonable times to examine the books and records of the other Party to the extent necessary to verify the accuracy of any statement, charge, computation or demand made under or pursuant to this Agreement. Any statement shall be final as to all Parties unless questioned within two (2) years after payment thereof has been made. Any notice, request or statement provided pursuant to this Agreement shall be in writing and shall be considered as having been given if delivered personally or, if mailed by United States mail, postage prepaid, or if sent by express mail or overnight delivery or electronic mail or if sent by facsimile to the other Party when sent to the following:

**NSLEM:**

**For Remittance:**

**By Wire Transfer:**

**NSLEM Energy Marketing JV**  
Wells Fargo Bank N.A.  
Federal ID Number – 053000219  
Acct. # 2000032601379  
ABA # 121000248

**For Notices and Correspondence:**

**NSLEM Energy Marketing, a Joint Venture**  
800 East Sonterra Blvd. Ste 400  
San Antonio, Texas 78258  
Telephone (210) 403-7300  
FAX (210) 403-7692

**For Accounting Matters:**

**NSLEM Energy Marketing, a Joint Venture**  
800 East Sonterra Blvd. Ste 400  
San Antonio, Texas 78258

**Federal Tax ID Number: 20-4761424**

**For Invoices and Statements:**

**NSLEM Energy Marketing, a Joint Venture**  
800 East Sonterra Blvd. Ste 400  
San Antonio, Texas 78258

**Producer:**

#### **14. ASSIGNMENT**

**14.1** This Agreement shall be binding upon and inure to the benefit of the successors, assigns and legal representatives of the Parties hereto; provided, however, Producer shall not assign this Agreement, or any portion hereof, or any of its rights and obligations hereunder without first securing the prior written consent of NSLEM which will not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement to an affiliated entity without consent.

## **15. TAXES**

**15.1** Producer agrees to reimburse NSLEM upon invoice for the full amount of any taxes or charges (of every kind and character except franchise and excess profits taxes and taxes measured by net income) levied, assessed or fixed by any municipal or governmental authority against NSLEM or its business in connection with or attributable to the volumes, value or gross receipts from the receipt and redelivery of the Gas received from Producer hereunder or against such Gas itself or the act, right or privilege of ownership, production, severance, handling, transmission, compression, treating, distribution, sale, delivery or redelivery of such Gas, whether such tax or charge is based upon the volume, value or gross receipts from the receipt and redelivery of such Gas or upon some other basis.

## **16. MISCELLANEOUS**

**16.1** To the extent this Agreement is used to effectuate transportation pursuant to NGPA 311, this Agreement and service hereunder will be subject to Atmos' Statement of Operating Conditions, as such may be amended from time to time. This Agreement contains the entire agreement between the Parties hereto on the date hereof, respecting the subject matter hereof, and there are no prior or contemporaneous agreements or representations affecting such subject matter other than those therein expressed.

**16.2** It is further agreed that no modification or change herein shall be enforceable unless reduced to writing and executed by both Parties.

**16.3** No waiver by either Party hereto of any one or more defaults by the other in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any future default or defaults whether of a like kind or different nature.

**16.4** This Agreement is subject to all present and future laws, orders, rules and regulations of any regulatory body having jurisdiction. This Agreement shall be construed, enforced and performed in accordance with the laws of the State of Texas, disregarding any conflict of laws, principles, that would refer to the laws of any different jurisdiction for any interpretation or construction of this Agreement. If any provision hereof conflicts with such laws or with public policy that cannot be or is not waived hereby, then to the extent of such conflict this Agreement shall be deemed modified to conform therewith. Service interruptions on the part of either Party which are sanctioned by the provisions of this section are expressly included within the definition of Force Majeure for the purposes of this Agreement.

**16.5** The provisions of this Agreement shall not impart rights enforceable by any person, firm or organization not a Party or not bound as a Party, or not a successor or assignee of a Party bound to this Agreement.

**16.6** This Agreement was prepared jointly by the Parties hereto. This Agreement was prepared with each of the Parties having access to their own legal counsel, and the Parties waive any claim they may have now or in the future based on this Agreement not having been prepared jointly by the Parties.

**16.7** NSLEM or NSLEM's affiliates shall have the right to setoff any sum(s) or quantities owed by Producer to NSLEM that is thirty (30) Days or more overdue under this Agreement or any other agreement or contract between NSLEM or NSLEM's affiliates and Producer, and apply any

such sum(s) or quantities against any obligation or sum(s) owed to Producer by NSLEM or NSLEM's affiliates under this Agreement or any other agreement or contract between NSLEM or NSLEM's affiliates and Producer.

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**IN WITNESS WHEREOF**, the Parties hereto have caused this instrument to be executed in multiple originals effective and operative as of the date first hereinabove written.

**NSL Energy Marketing, a Joint Venture**

**BY:**

Atmos Pipeline & Storage, LLC a Delaware limited liability company

Signature: \_\_\_\_\_  
Mark Bergeron, President

**AND**

ETC Gas Company, Ltd  
By: LG PL, LLC its general partner

Signature: \_\_\_\_\_  
Mackie McCrea, President

**ANY COMPANY NAME**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_