



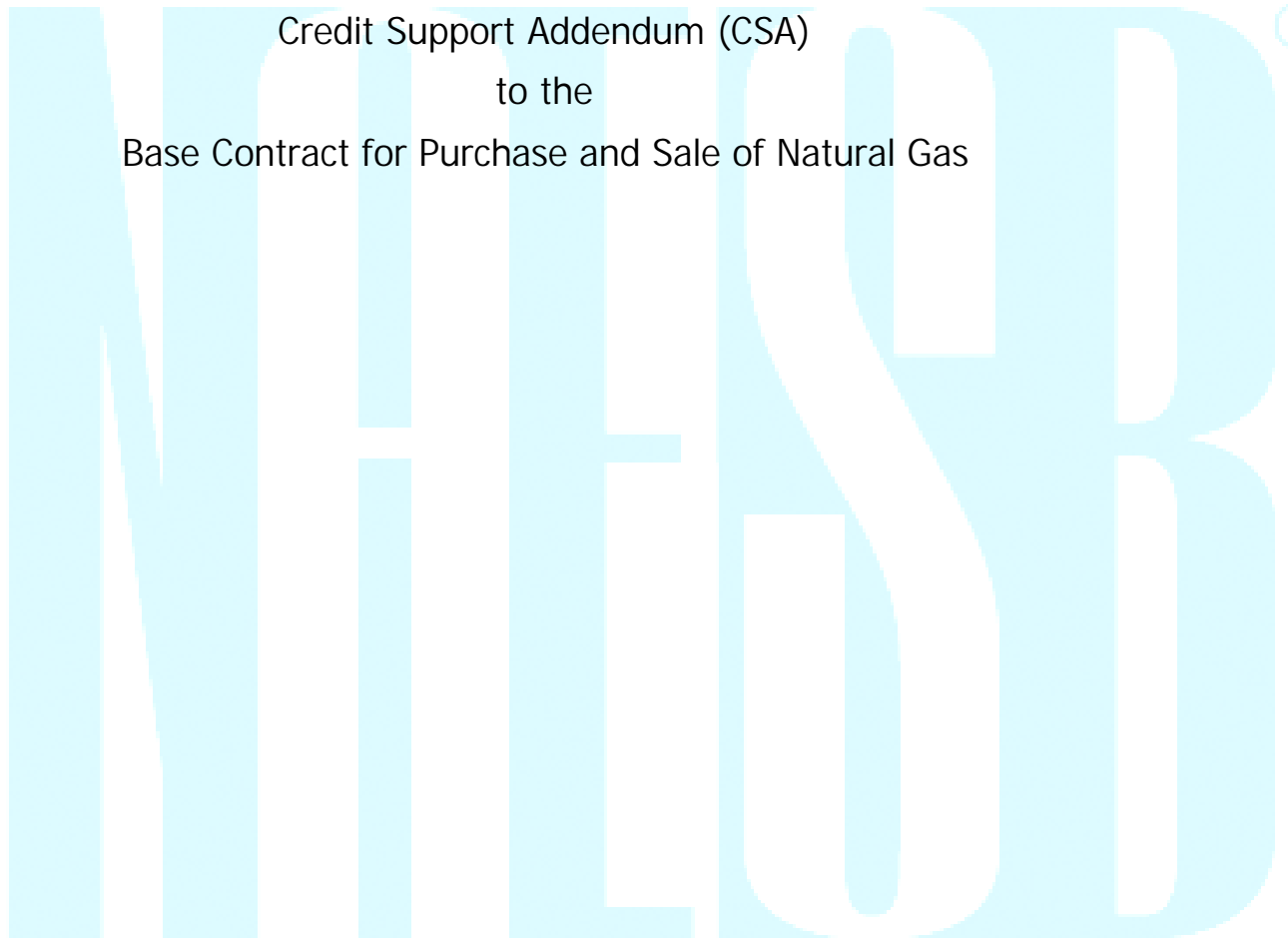
USER'S GUIDE

for the

Credit Support Addendum (CSA)

to the

Base Contract for Purchase and Sale of Natural Gas



August 2003

North American Energy Standards Board, Inc.

1301 Fannin Street, Suite 2350, Houston, Texas 77002

Telephone: (713) 356-0060

<u>Description</u>	<u>Page Number</u>
Introduction and DISCLAIMER	4
Purpose	4
Credit Support Addendum (CSA) structure	5
<u>Adding CSA to concurrent Base Contract</u>	5
<u>Pro Forma Special Provision Text to add CSA to prior existing Base Contract</u>	5
<u>General</u>	5
CSA Party Information	
<u>Identification of Party A and Party B</u>	6
<u>Base Contract for Purchase and Sale of Natural Gas (Base Contract) Date</u>	6
<u>Base Contract Number</u>	6
<u>Credit Related Notices</u>	6
<u>Wire Transfer or ACH Numbers</u>	7
Completing the "Elections"	
<u>General</u>	7
<u>Credit Support Provider</u>	7
<u>Interest Rate</u>	7
<u>Eligible Collateral</u>	7
<u>Minimum Transfer Amount</u>	7
<u>Letter of Credit Issuer Requirements</u>	7
<u>Transfer Method for Other Eligible Collateral</u>	8
<u>Notification Time</u>	8
<u>Close of Business</u>	
<u>Collateral Threshold (Credit Rating)</u>	8
<u>Rounding Amount</u>	9
<u>Eligibility Requirement to Hold Cash (Credit Rating)</u>	9
<u>Custodian Requirements (Credit Rating)</u>	9
<u>OPTION A – OR – OPTION B for CSA Paragraphs 4, 5 & 6</u>	9
<u>Special Provisions</u>	10
CSA Special Provision Text	10
<u>Guaranty</u>	10
<u>Collateral Threshold using "Rating Matrix"</u>	10
<u>Independent Amount</u>	10
<u>Rating Agency and Definitions</u>	10
<u>Specified Letter of Credit Issuers</u>	10
<u>Exclusion of certain Base Contract physical transactions from CSA</u>	10
<u>Limitation on frequency to Transfer Eligible Collateral and Posted Collateral</u>	11
<u>CSA as the Exclusive Method for Transfer of Eligible Collateral and Posted Collateral</u>	11

Appendices

Appendix A-1: OPTION A - Timeline for Collateral Demands	12
Appendix A-2: OPTION A - Timeline for Return of Collateral	13
Appendix A-3: OPTION A - Timeline for Substitution of Collateral	14
Appendix B-1: OPTION B - Timeline for Collateral Demands	15
Appendix B-2: OPTION B - Timeline for Return of Collateral	16
Appendix B-3: OPTION B - Timeline for Substitution of Collateral	17
Appendix C: Pro Forma listing	18
<u>Pro Forma No. 1 Base Contract Amendment Text to add CSA to prior existing Base Contract</u>	19
<u>Pro Forma No. 2, Special Provision Text for Guaranty</u>	20
<u>Pro Forma No. 3, Special Provision Text for Collateral Threshold using "Rating Matrix"</u>	21
<u>Pro Forma No. 4, Special Provision Text for Independent Amount</u>	23
<u>Pro Forma No. 5, Special Provision Text for Rating Agency and Definitions</u>	24
<u>Pro Forma No. 6, Special Provision Text for Specified Letter of Credit Issuers</u>	25
<u>Pro Forma No. 7, Special Provision Text for Exclusion of Base Contract Transaction(s) from CSA</u>	26
<u>Pro Forma No. 8, Special Provision Text for Limitations on Frequency of Transfer of Collateral</u>	27
<u>Pro Forma No. 9, Special Provision Text to Add CSA as the Exclusive Method for Transfer of Collateral</u>	28
<u>Pro Forma No. 10, Letter of Credit Agreement</u>	29
<u>Pro Forma No. 11, Control Agreement</u>	31

Introduction and DISCLAIMER

This Credit Support Addendum (CSA) was completed using the North American Energy Standards Board, Inc.'s (NAESB) processes for development of standards, models or interpretations. The NAESB development process is open to all participants, members and non-members.

DISCLAIMER:

THIS CREDIT SUPPORT ADDENDUM (CSA) AND THIS USER'S GUIDE WERE DEVELOPED BY THE WHOLESALE GAS QUADRANT (WGQ) OF THE NORTH AMERICAN ENERGY STANDARDS BOARD, INC. (NAESB) AND ITS SUBCOMMITTEES AND ARE PROVIDED FOR THE CONVENIENCE OF NAESB MEMBERS AND ANY OTHER THIRD PARTIES. THE CSA AND THE USER'S GUIDE DO NOT REFLECT ANY POLICY ADOPTED BY NAESB OR ITS MEMBERS AND ARE **INTENDED TO PROVIDE MODEL FORM OF A CSA DOCUMENT AS AN OPTIONAL A POSSIBLE STARTING POINT** FOR PARTIES' NEGOTIATIONS. PARTIES MAY USE OTHER MODEL FORMS OF CREDIT ARRANGMENTS IN CONNECTION WITH NAESB'S *BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS* AND ARE **NOT REQUIRED TO USE THIS MODEL FORM**. PARTIES ARE FREE TO MODIFY THE CSA MODEL FORM FOR THEIR OWN USE. NAESB DOES NOT WARRANT THE LEGAL EFFICACY OF THE CSA OR THE USER'S GUIDE; NOR SHALL THE PROVISIONS OF THESE MODEL FORMS CONSTITUTE THE GIVING OF LEGAL ADVICE. PARTIES ARE ADVISED TO CONSULT WITH THEIR OWN LEGAL COUNSEL TO OBTAIN ADVICE CONCERNING USE OF THESE MODEL FORMS AND OTHERWISE TO ASSURE THE EFFICACY OF ANY CREDIT ARRANGEMENTS THEY MAY MAKE.

Purpose

The CSA is an **optional** addendum to the North American Energy Standards Board, Inc.'s (NAESB) Base Contract for Sale and Purchase of Natural Gas (Base Contract).

During the development of the CSA by members of the NAESB WGQ Contracts Subcommittee, members that expressed interest in proceeding with the development of the CSA offered the following information to support the CSA development and its use.

1. CSA should be a starting point for negotiation of a CSA, if needed, between counterparties.
2. CSA provides a basis for efficient administration of the Transfer of collateral between counterparties.
3. CSA and the User's Guide will provide each party with a check-list of terms and conditions that may be included in a CSA that should minimize the risk of a key term being omitted.
4. The CSA should expedite the negotiation of the final document(s).

Members that expressed concerns on the CSA development and use offered the following information to state when the CSA could be considered as an inappropriate addendum to the Base Contract.

1. The CSA may not be needed when Local Distribution Company's or End-User's primary purpose of the Base Contract is to buy natural gas from a counterparty and there is little or no sale of natural gas by the Local Distribution Company or End-User to the same counterparty.
2. The CSA may not be needed when a natural gas Producer's primary purpose for the Base Contract is to sell natural gas to a counterparty and there is little or no purchase of natural gas by the natural gas Producer from the same counterparty.
3. The CSA is probably not needed when a pipeline or gathering system operator purchases or sells natural gas on a very infrequent basis.
4. The current credit support provision of the Base Contract (Section 10.1) may be adequate for such purposes between the counter parties for the specific Base Contract. For instance, a

CSA to the Base Contract may not be necessary when (1) the Base Contract between counter parties will be used for purchase or sale of natural gas for a term of one month or less, (2) there is no expectation of a long term contractual relationship between the counter parties, or (3) where there is no expectation by either party of reaching an agreement on the CSA terms.

Credit Support Addendum (CSA) structure

The structure of the CSA is an optional addendum to the Base Contract. The CSA is designed to be executed concurrently with the underlying Base Contract. If parties would like to add the CSA to an existing Base Contract they should consider using the pro forma special provision noted below for adding the CSA to prior existing Base Contract.

No Pro Forma Special Provision is required to add CSA to concurrent Base Contract

The CSA is an addendum to the Base Contract and both parties must agree to include the CSA as part of the Base Contract before the CSA terms and conditions would apply to the Base Contract. The only action required by the parties is to check the addendum box at the bottom of the Base Contract and then insert the phrase "CSA dated _____" on the adjacent line space. Similar actions would be performed to add the CSA to a Base Contract that includes a Canadian Addendum. As provided in the CSA, capitalized terms used in the CSA that are not defined will have the meanings ascribed to them in the Base Contract. In the event of a conflict between the terms of this CSA and the Base Contract, the terms of this CSA shall apply for the purposes of this CSA.

Pro Forma Special Provision to add CSA to prior existing Base Contract

The CSA is an addendum to the Base Contract and both parties must agree to include the CSA as part of the Base Contract before the CSA terms and conditions would apply to the Base Contract. Model Pro Forma No. 1 below is a form of text to add the CSA to an existing Base Contract that was executed prior to the CSA.

General

Noted below are certain material terms that are either (1) not defined in the CSA and thus have the meanings ascribed to them in the Base Contract or (2) not included in the CSA or the Base Contract as explained below.

"Event of Default" – The CSA has no separate definition of Event of Default since the group decided the Event of Default under Section 10 of the Base Contract was adequate. Please note there is a definition for "Credit Support Default" under CSA Paragraph 10 and "Letter of Credit Default" under CSA Paragraph 7(b),

"Potential Event of Default" – The CSA does not include any reference or application of a "Potential Event of Default". The group decided that "Event of Default", "Credit Support Default" and "Letter of Credit Default" were sufficient for this CSA.

"OPTION A – OR - OPTION B for CSA Paragraphs 4, 5 & 6." - The CSA includes two alternatives for Paragraphs 4, 5 and 6 covering the transfer of collateral between the parties.

OPTION A alternative language is ~~based on the deletion of "Potential Event of Default" noted above where the group believes it is~~ appropriate if parties desire to set a relatively short time period for
(1) the Pledging Party to Transfer of Collateral after a demand from the Secured Party,

- (2) Secured Party's return of Posted Collateral after a demand for reduction in Posted Collateral by the Pledging Party,
- (3) dispute process for Secured Party's recalculation of Exposure, and
- (4) Pledging Party's opportunity to cure default.

OPTION B alternative language could be used where one party wants to extend one or more of the time periods for the above items by filling in the applicable blank spaces. In this instance, the other party may want to consider reinstating a "Potential Event of Default" provision as additional default triggers in the CSA.

In developing OPTION A and OPTION B alternative for the CSA, the members prepared several timelines related to collateral transfers between the parties. Timelines for Collateral Demands, Return of Collateral and Substitution of Collateral are included in Appendix A for CSA Option A language and in Appendix B for CSA Option B language. These timelines were specifically used to develop Paragraphs 4, 5 and 6 under Option A and B of the CSA. It is suggested that the timelines be reviewed to fully understand the timing and provisions for collateral transfers and disputes for related calculations. The selection of Option A and Option B under the CSA is further explained under the Elections section below.

"Limitations on Frequency of Transfer of Eligible or Posted Collateral" - There was agreement to delete the following limitation on Transfers of Posted Collateral "(but no more frequently than weekly with respect to Letters of Credit and daily with respect to Cash)." The phrase was after the initial phrase "On any Business Day" in the first sentence of the first paragraph of **Paragraph 5. Reduction and Substitution of Posted Collateral**. In part, the group believed the phrase could be deleted since the other limitations on Transfer of Collateral (e.g. "Minimum Transfer Amounts") may be sufficient for most parties. For parties wishing to reinstate this limitation, they may use the Model Pro Forma CSA Special Provision noted below to add the provision to the CSA.

"Credit Rating Definition" - The group agreed to delete the definition of "Credit Rating" and the related definitions for Moody's and S&P due to disputes on the definition for "Credit Rating" and the fact that the definition was referred to only in one location in the CSA. For parties wanting to add a definition for "Credit Rating" to the CSA, Pro Forma Special Provision Text for Collateral Threshold (Rating Matrix alternative), Eligibility to Hold Cash and Custodian Requirements includes applicable language.

CSA Party Information

Identification of Party A and Party B

Party A and Party B should be the same Party A and Party B as set forth in the Base Contract.

Base Contract Date

Base Contract Date is the date of the underlying Base Contract that the CSA is added to as a Special Provision.

Base Contract Number

Base Contract Number is the contract number for the Base Contract that the CSA is added to as a Special Provision.

Credit Related Notices

Party A and Party B should identify person(s) in their respective companies that are authorized to receive notices, demands pursuant to the CSA. These persons are typically credit managers or their equivalent. If a Secured Party wants different persons to receive Eligible Collateral from a Pledging Party, the Secured Party's demand notice should include the name of such persons in the demand notice instructions. Likewise, if a Pledging Party

wants a different person to receive returned Posted Collateral from the Secured Party, the Pledging Party's demand notice should include the name of such persons in the demand notice instructions. For electronic message systems such as Internet e-mail, each party should designate the e-mail address of its internal email box or person(s) authorized to receive such notice in the "Credit Related Notices" election on Page 1 of the CSA. It is presumed that when a party includes the Internet e-mail address under the "Credit Related Notices" election on Page 1 of the CSA that such party is agreeing to use of Internet e-mail as a form of notice under the CSA. Each party should manage their own internal distribution of any notices received by Internet e-mail.

Wire Transfer or ACH Numbers

Party A and Party B should identify the specific accounts for receipt of funds transfer made by the counterparty pursuant to the CSA.

Completing the "Elections"

General

All the blank election spaces for each party to the CSA should be completed or noted as "not applicable (N/A)". Some election spaces are required to be completed as noted below.

Credit Support Provider

Credit Support Provider - The entity that is evaluated from a credit standpoint i.e. based on financial statements and/or unsecured credit ratings. For example, a Credit Support Provider can be either the party's parent company or some other entity agreed upon by the parties. If an entity is identified as a Credit Support Provider, then the other party to the CSA will probably require a Guaranty from the Credit Support Provider.

Interest Rate

Interest Rate - this is the rate that the parties agree will be applied to Posted Collateral in the form of Cash and, subject to certain conditions, paid to the Pledging Party by the Secured Party. A common interest rate election is "Federal Funds Effective Rate – the rate for that day opposite the caption 'Federal Funds (Effective)' as set forth in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System."

Eligible Collateral

Eligible Collateral - Each party will specify the types of collateral that a party will deliver to the other party. The most common types of collateral are cash and letters of credit. Only what is specified on page 1 of the NAESB Credit Support Addendum shall be considered Eligible Collateral between the parties unless the parties agree otherwise.

Minimum Transfer Amount

Minimum Transfer Amount – the minimum amount of exposure that must be realized before a transfer of additional Eligible Collateral is required when either (i) a Party's Exposure exceeds the sum of the Posted Collateral held by such Party on behalf of the other Party plus the other Party's Collateral Threshold, OR (ii) a Party's Exposure is less than the sum of the Posted Collateral held on behalf of the other Party plus the other Party's Collateral Threshold. Default Minimum Transfer Amount = ~~(0)~~\$1.00. [\[Not true, no default currently state d\]](#)

Letter of Credit Issuer Requirements

Letter of Credit Issuer Requirements – the minimum criteria that must be met by a Letter of Credit Issuer to issue a Letter of Credit to the Secured Party. A typical Letter of Credit Issuer Requirement is:

"Major U.S. commercial bank or a U.S. branch office of a foreign bank, in either case, with a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and

Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's, but not both."

A form of Letter of Credit is included in Appendix C, Pro Forma No. 10 "Letter of Credit Agreement". The above provision outlines the requirement for the issuer of the Letter of Credit. The use of this language and form should minimize later disputes and enable parties to safely meet the timelines outlined in the CSA with respect to the transfers of collateral.

Transfer Method for Other Eligible Collateral

Transfer Method for Other Eligible Collateral – The CSA provides the parties the election to identify "Other" forms of Eligible Collateral. When the parties agree to "Other" forms of Eligible Collateral each party should describe the method of transfer for such "Other" Eligible Collateral. For example, if parties identify "Guaranty" as an "Other" Eligible Collateral, the parties should include a description such as "Guaranty shall be Transferred in the manner as set forth in the applicable Special Provisions attached hereto."

Notification Time

Notification Time – the time by which notification must be effective pursuant to the Transfer definition in Paragraph 1. The Notification time triggers the rights and obligations of the Parties, including determining deadlines for responding to demands. Default Notification Time is 1 p.m. Eastern Prevailing Time.

Close of Business

Close of Business – the time by which the Party responsible to transfer new or additional collateral or return Posted Collateral must complete such transfer or return to the other Party. Default Close of Business corresponds to the Default Notification Time above and is 5 p.m. Eastern Prevailing Time.

Collateral Threshold

Collateral Threshold - This is the amount of unsecured credit that a party is willing to tolerate without holding any Eligible Collateral provided by the other party. This amount is often related to the credit quality of the party and/or the long term business relationships of the parties. Once a party exceeds its set Collateral Threshold, the other party may request the first party to post Eligible Collateral to cover the difference between the party's Exposure and the Collateral Threshold. ~~If a Threshold is not specified, it is deemed to be zero (0).~~ [Note: No Default] The elections provide for two alternatives for the amount Collateral Threshold for the Pledging Party. A flat amount for each party is set by the other party or both parties agree to use a Rating Matrix where the amounts for each party is based on the Credit Rating of such party. For the flat amount, it is suggested that parties consider setting the Credit Threshold in excess of one (1) month receivables for transactions under the Base Contract(s) between the parties to insure that inadvertent late payments under the Base Contract does not trigger a collateral demand under the CSA. [Note: I wouldn't add this; this is a credit decision] Further, if one party is a Local Distribution Company **(PETE CONNOR TO FURNISH DEFINITION)** or other regulated entity that is authorized to recover all its gas costs from their ratepayers under a Gas Cost Recovery (GCR) mechanism (or its equivalent), the other party in setting the Credit Threshold amount should recognize the ability of the local distribution company to recovery all its gas costs and related transportation and storage costs in setting the Credit Threshold for the local distribution company. In this event, it is suggested that the local distribution company's Credit Threshold could equal the quantity of gas delivered to its customers during the relevant time period times the local distribution company's GCR Rate(s) authorized under the GCR. [Note: I wouldn't add this since you can have both a matrix for one party and a flat amount for another.]

If the parties elect the Rating Matrix alternative, the CSA needs special provisions for to add the following:

- 1, A CSA Special Provision to add the terms below and the Rating Matrix to the CSA (See Pro

- Forma No. 3, Special Provisions Text),
2. Definition of Credit Rating,
 3. Definition of S&P, and
 4. Definition of Moody's.

Rounding Amount

Rounding Amount – the amount to which each transfer of Eligible Collateral will be rounded for a Party.

Eligibility Requirements to Hold Cash

Eligibility requirements to Hold Cash - Each party, as the Secured Party, is entitled to hold Cash, provided that it satisfies the conditions specified in the Agreement. The conditions can be based on external credit ratings given to a party by the various rating agencies, financial ratios based on the most recent financial statements or any other condition agreed to by both parties. If the party does not meet the conditions, such party must hold the Cash with a Custodian. Suggested provision text is:

"A party shall be entitled to hold Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2) the party has a Credit Rating from **[INSERT CREDIT RATING AGENCY]** and the lowest Credit Rating for the party is **[INSERT CREDIT RATING FOR A PARTY]** or higher from **[INSERT SAME CREDIT RATING AGENCY ABOVE]**; (3) Cash shall be held only in any jurisdiction within the United States; and (4) **[INSERT OTHER CONDITIONS, IF ANY]**."

When a Credit Rating Agency is included in the above language it is suggested that the following complete names for S&P and Moody's be used:

Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor (S&P)
Moody's Investors Services, Inc. or its successor (Moody's)

Custodian Requirements

Custodian Requirements – the minimum criteria which must be met by the Secured Party, or its designated Custodian, to hold Posted Collateral. Suggestion provision text for Custodian Requirements is:

"A commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A-" by Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor (S&P) and "A3" by Moody's Investors Services, Inc. or its successor (Moody's), if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital and surplus of at least \$1,000,000,000."

OPTION A - OR - OPTION B: For Paragraphs 4, 5 & 6

OPTION A or OPTION B check boxes – Parties are to select by a check mark either the box before OPTION A or the box before OPTION B.

Selection of OPTION A box means that the parties agree to apply Paragraphs 4, 5 & 6 under OPTION A in the General Terms and Conditions to the CSA starting on Page 4 of the CSA. If parties select OPTION A then all dates and timeline in Paragraphs 4, 5 & 6 are predetermined as written, unless specifically modified by the parties. Parties should refer to the timelines in Appendix A for review and understanding of the dates and timelines used for the developments of OPTION A: Paragraphs 4, 5 & 6.

Selection of OPTION B box means the parties agree to apply Paragraphs 4, 5 & 6 under OPTION B

in the General Terms and Conditions to the CSA starting on Page 7 of the CSA. If parties select OPTION B, then all dates and timelines in Paragraphs 4, 5 & 6 are **NOT** predetermined and must be agreed to by the parties and inserted in the blank spaces noted in the text of OPTION B: Paragraphs 4, 5 & 6. Parties should refer to the timelines in Appendix B to assist them in the determining the dates and timelines to be inserted in the blank spaces.

Special Provisions

Special Provisions – additional provisions agreed to between the Parties with respect to performance of the terms and conditions of the CSA. Since the CSA will usually be the starting point for negotiation of a document for credit support, it is highly probable that there will be at least one or more special provisions added to the CSA. Parties are to check the box adjacent to the Special Provisions box and insert a phrase describing the number of sheets attached to the CSA as CSA Special Provisions (e.g. “4 sheets of CSA Special Provisions are attached.”).

CSA Special Provision Text

The Model Pro Forma documents described under this section are Special Provision language that members of the NAESB WGQ Contracts Subcommittee have found in their experience to be commonly negotiated between the parties. These are offered for information only as starting points for negotiation between the parties for the specific Special Provisions noted below.

Special Provision Text for Guaranty

Party A and Party B should identify their respective Credit Support Providers, if any. If that Credit Support is to be in the form of a Guaranty, the parties may include a provision to identify the Guarantor and provisions related to the Transfer and requirements of the Guaranty and the obligations of the Pledging Party and Secured Party. See Pro Forma No. 2 for suggested form of Special Provision Text.

Special Provision Text for Collateral Threshold using “Rating Matrix”

Party A or B may elect to use a Rating Matrix to define the Collateral Threshold. The use of the Rating Matrix may be adapted to apply to Party A and Party B, or each party individually, as the parties mutually agree. See Pro Forma No. 3 for suggested form of Special Provision Text.

Special Provision Text for Independent Amount

The parties may elect to utilize the concept of an “Independent Amount” to address the lack of credit for either party. This concept is similar to a provision in the ISDA credit support documents. See Pro Forma No. 4 for suggested form of Special Provision Text.

Special Provision Text for Rating Agency and Definitions

The Parties may want to amend the definition of Credit Rating to include rating agencies other than S&P and Moody's. See Pro Forma No. 5 for suggested form of Special Provision Text.

Special Provision Text for Specified Letter of Credit Issuers

Party A and Party B may choose to identify their specific Letter of Credit Issuer and/or the general requirements for an acceptable LC issuer and/or the form of LC to be used. A party would do this to minimize any concerns of the other party, if and when such Letter of Credit Issuer issues a Letter of Credit. See Pro Forma No. 6 for suggested form of Special Provision Text.

Special Provision Text for Exclusion of certain Base Contract transactions from inclusion in CSA

Party A and Party B may choose to exclude certain transactions of either Party A or Party B from all calculations for Exposure under the CSA. The exclusion of transactions may be based on a party's desire to limit applicability of the CSA to (1) transaction(s) where

natural gas is directly delivered into the party's facilities and not at a remote physical location, (2) where certain transactions are for terms of less than one month or (3) for any other reason. See [Pro Forma No. 7](#) for suggested form of Special Provision Text.

Special Provision Text for Limitations on Frequency of Transfer of Eligible or Posted Collateral

Party A and Party B may choose to limit the frequency of the Transfer of Eligible or Posted Collateral. See [Pro Forma No. 8](#) for suggested form of Special Provision Text.

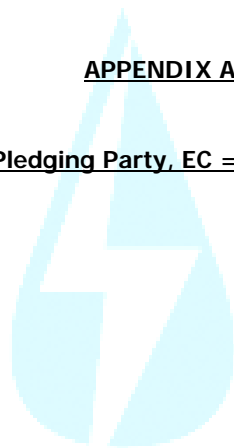
Special Provision Text for CSA as Exclusive Method for transfer of Eligible Collateral or Posted Collateral

Party A and Party B may agree to have the CSA be the exclusive method to transfer Eligible Collateral or Posted Collateral under the NAESB Base Contract and the CSA. See [Pro Forma No. 9](#) for suggested form of Special Provision Text.

NOTE: The group did not include this provision in the CSA since many believed this provision would limit the ability of parties to demand and receive Eligible Collateral under Section 10.2 of the Base Contract for additional adequate assurances. This transfer of Eligible Collateral was felt to be an additional right to calculation of Eligible Collateral determined under Paragraphs 4, 5 & 6 of the CSA.

APPENDIX A-1: OPTION A for Paragraph 4, Timeline for Collateral Demands

SP = Secured Party, PP = Pledging Party, EC = Eligible Collateral, RMM = Reference Market Marker, NT = Notification Time



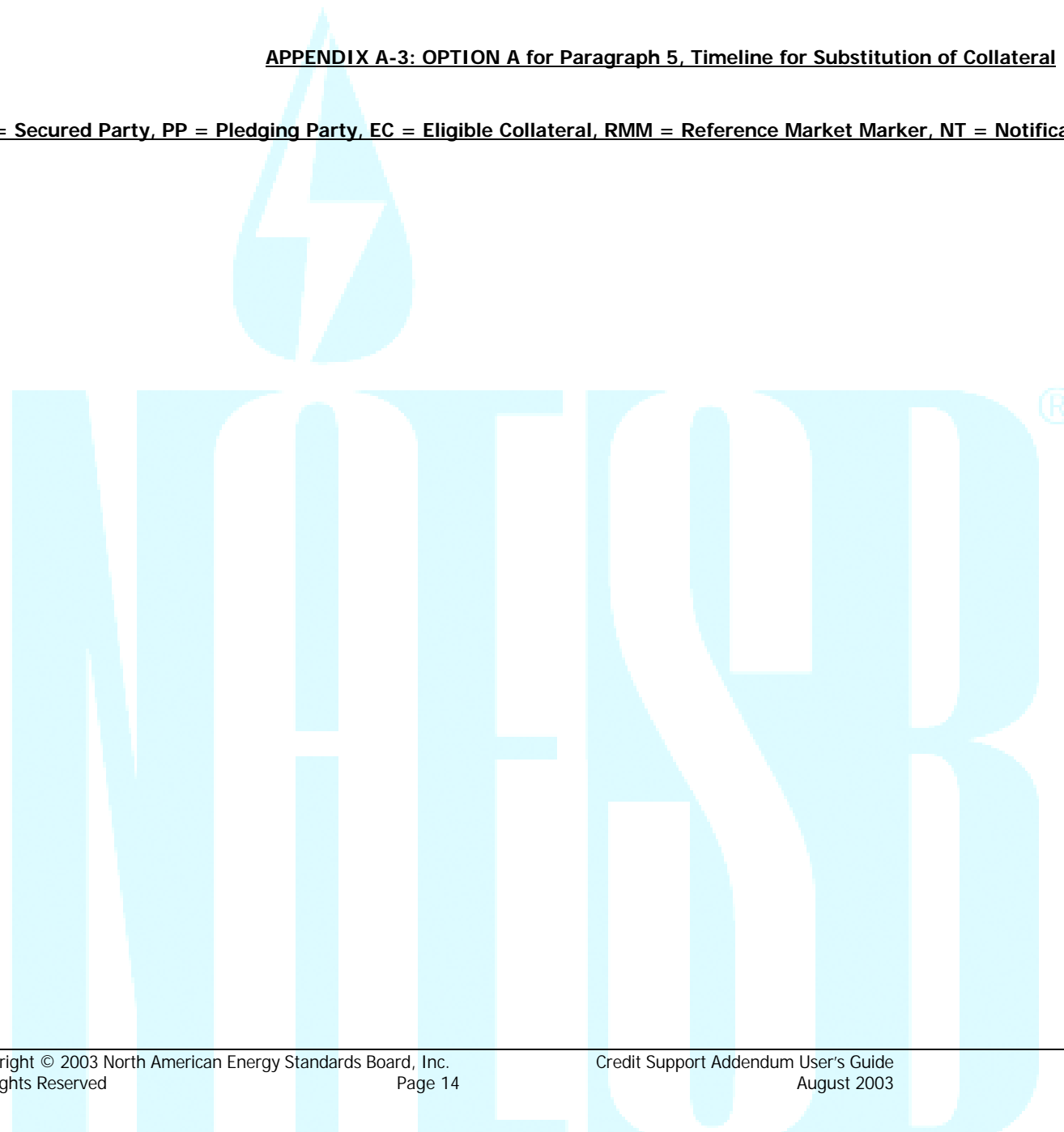
APPENDIX A-2: OPTION A for Paragraph 5, Timeline for Return of Collateral

SP = Secured Party, PP = Pledging Party, EC = Eligible Collateral, RMM = Reference Market Marker, NT = Notification Time



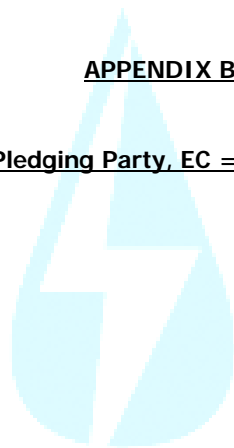
APPENDIX A-3: OPTION A for Paragraph 5, Timeline for Substitution of Collateral

SP = Secured Party, PP = Pledging Party, EC = Eligible Collateral, RMM = Reference Market Marker, NT = Notification Time



APPENDIX B-1: OPTION B for Paragraph 4, Timeline for Collateral Demands

SP = Secured Party, PP = Pledging Party, EC = Eligible Collateral, RMM = Reference Market Marker, NT = Notification Time



NAESB[®]

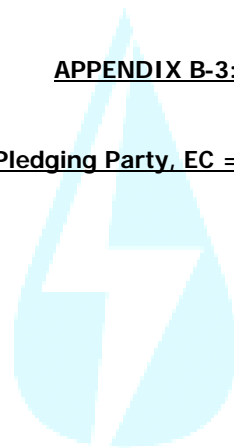
APPENDIX B-2: OPTION B for Paragraph 5, Timeline for Return of Collateral

SP = Secured Party, PP = Pledging Party, EC = Eligible Collateral, RMM = Reference Market Marker, NT = Notification Time



APPENDIX B-3: OPTION B for Paragraph 5, Timeline for Substitution of Collateral

SP = Secured Party, PP = Pledging Party, EC = Eligible Collateral, RMM = Reference Market Marker, NT = Notification Time



NAESB®

APPENDIX C, Pro Forma Listing

1. Pro Forma Special Provision Text No. 1 – Base Contract Amendment Text to add CSA to prior existing Base Contract
2. Pro Forma Special Provision Text No. 2 – CSA Special Provision Text to add Guaranty to CSA
3. Pro Forma Special Provision Text No. 3 – CSA Special Provision Text to add Collateral Threshold using “Rating Matrix” to CSA
4. Pro Forma Special Provision Text No. 4 – CSA Special Provision Text to add Independent Amount to CSA
5. Pro Forma Special Provision Text No. 5 – CSA Special Provision Text to add Rating Agency and Definitions to CSA.
6. Pro Forma Special Provision Text No. 6 – CSA Special Provision Text to add Specified Letter of Credit Issuer to CSA.
7. Pro Forma Special Provision Text No. 7 – CSA Special Provision Text to exclude certain Base Contract Transactions from the CSA.
8. Pro Forma Special Provision Text No. 8 – CSA Special Provision Text to limit frequency of the Transfer of Eligible Collateral and Posted Collateral
9. Pro Forma Special Provision Text No. 9 – CSA Special Provision Text to add CSA as the Exclusive Method for Transfer of Eligible Collateral and Posted Collateral
10. Pro Forma No. 10 – Letter of Credit Agreement
11. Pro Forma No. 11 – Control Agreement

PRO FORMA No.1, Base Contract Amendment Text to
Add CSA to prior existing Base Contract

Amendment to North American Energy Standard Board, Inc.'s (NAESB) Base Contract for Sale and Purchase of Natural Gas dated _____, 20____ ("Base Contract") between _____ (Party A) and _____ (Party B)

The parties hereby agree to amend the Base Contract to incorporate the Credit Support Addendum dated _____, 20____ ("CSA") between the parties attached hereto and made a part of the Base Contract.

Capitalized terms used in the CSA and the CSA's Special Provisions shall have the meanings ascribed to them in the Base Contract. Sections referenced in these Special Provisions refer to a Section of the General Terms and Conditions of the Base Contract, unless specified otherwise.

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

Party A Name _____

By _____

Name: _____

Title: _____

Party B Name _____

By _____

Name: _____

Title: _____

PRO FORMA No. 2, Special Provision Text to
Add Guaranty to CSA

Elections on Page 1 of CSA

1. Party's A Credit Support Provider will provide a Guaranty to the Secured Party in accordance with the requirements set forth in this CSA.
2. Party's B Credit Support Provider will provide a Guaranty to the Secured Party in accordance with the requirements set forth in this CSA.
3. Add Guaranty as Other "Eligible Collateral" for both parties with a Valuation Percentage of 100%.

Paragraph 2 – Definitions

4. Add the following provisions to the defined terms in the CSA:
 "Guarantor" shall mean an entity who shall be a Credit Support Provider, eligible to provide a Guaranty in accordance with the requirements set forth herein."
 "Guaranty" shall mean a guaranty of payment and not performance, issued by a Guarantor and in form and for an amount reasonably acceptable to the Secured Party."
5. Under "Transfer" or "Transferred" deleted item (iv) and substitute therefor:
 "(iv) In any case in which Eligible Collateral or Posted Collateral is in the form of a Letter of Credit or Guaranty, the deadlines set forth for providing such collateral to the other party may be met by providing a facsimile copy of the Letter of Credit or Guaranty with an original transmitted by overnight courier for delivery on the next Business Day."
6. Add the following term under the definition of "Transfer" or "Transferred":
 "(v) in the case of Guaranties, Transfer of the Guaranty or an amendment thereto to the recipient."

Paragraph 10 – Credit Support Default

7. Delete the word "or" at the end of the sentence under Paragraph 10 (a) (ii).
8. Add the following terms under "Credit Support Default", Paragraph 10 (a):
 "(iv) any representation or warranty made by a Guarantor in connection with a Guaranty issued as Credit Support pursuant to this CSA or Base Contract is false or misleading in any material respect when made or when deemed made or repeated;
 (v) the failure of a Guarantor's Guaranty to be in full force and effect for purposes of this CSA (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such Guaranty shall relate without the written consent of the other Party;
 (vi) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty issued as Credit Support pursuant to this CSA; or
 (vii) the failure of the Guarantor to make any payments required or to perform any other material covenant or obligation in any Guaranty made in connection with the Base Contract."

Paragraph 11 – Representations and Warranties

9. Delete the parenthetical phrase "(other than Letters of Credit)" on lines 5, 12 and 13 and substitute therefor the parenthetical phrase "(other than Letters of Credit or Guaranties)."

Paragraph 13 – General

10. Delete the parenthetical phrase "(other than Letters of Credit)" on lines 3 and 4 and substitute therefor the parenthetical phrase "(other than Letters of Credit or Guaranties)."

[End of CSA Special Provision Text]

**PRO FORMA No. 3, Special Provision Text to
Add Collateral Threshold "Rating Matrix" to CSA**

Elections on Page 1 of CSA

1. The Rating Matrix for [Party A] [Party A's Credit Support Provider] selected below shall define the Collateral Threshold for such designated party(ies).
 - The amount set forth below under the heading "Party A Collateral Threshold" opposite the Credit Rating for [Party A][Party A's Credit Support Provider] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party A][Party A's Credit Support Provider] does not have a Credit Rating from the rating agency specified below.

<p>Party A <u>Collateral Threshold</u></p> <p>\$ _____</p> <p>\$ _____</p> <p>\$ _____</p> <p>\$ _____</p> <p>\$ _____</p>	<p>[Rating Agency] Credit Rating</p> <p>_____ (or above)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Below _____</p>
--	--

- The amount set forth below under the heading "Party A Collateral Threshold" opposite the Credit Rating for [Party A][Party A's Credit Support Provider] on the relevant date of determination, and if [Party A's][Party A's Credit Support Provider's] Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination [Party A][its Credit Support Provider] does not have a Credit Rating from the rating agency(ies) specified below.

<p>Party A <u>Collateral Threshold</u></p> <p>\$ _____</p> <p>\$ _____</p> <p>\$ _____</p> <p>\$ _____</p> <p>\$ _____</p>	<p><u>[Rating Agency] Credit Rating</u></p> <p>_____ (or above)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Below _____</p>	<p><u>[Rating Agency] Credit Rating</u></p> <p>_____ (or above)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Below _____</p>
--	--	--

The amount set forth below under the heading "Party A Collateral Threshold" opposite the ACRV for [Party A][Party A's Credit Support Provider] on the relevant date of determination.

"ACRV" means, with respect to any person, the average of the Numerical Values applicable to the Credit Ratings published (if any) for such person by any of S&P, Moody's and Fitch, as determined in accordance with the matrix below. In determining the ACRV, the average of the

Numerical Values shall be rounded as follows: if the first decimal number is five (5) or below, the ACRV shall be rounded to the next lower integer, and if the first decimal number is six (6) or above, the ACRV shall be rounded up to the next highest integer.

Party A

<u>Collateral Threshold</u>	<u>S&P Credit Rating</u>	<u>Moody's Credit Rating</u>	<u>Fitch Credit Rating</u>	<u>Numerical Value/ACRV</u>
\$ _____	AAA	Aaa	AAA	1
\$ _____	AA+	Aa1	AA+	2
\$ _____	AA	Aa2	AA	3
\$ _____	AA-	Aa3	AA-	4
\$ _____	A+	A1	A+	5
\$ _____	A	A2	A	6
\$ _____	A-	A3	A-	7
\$ _____	BBB+	Baa1	BBB+	8
\$ _____	BBB	Baa2	BBB	9
\$ _____	BBB-	Baa3	BBB1	10
\$ _____	BB+	Ba1	BB+	11
\$ _____	BB	Ba2	BB	12
\$ _____	BB-	Ba3	BB-	13
\$ _____	B+	B1	B+	14
\$ _____	B	B2	B	15
\$ _____	B-	B3	B-	16

If either S&P or Moody's withdraws a Credit Rating assigned to an entity (without assignment of a new Credit Rating), 16 shall be used as the Numerical Value from such rating agency for purposes of calculating the Average Credit Rating Value for such person. If Fitch withdraws a Credit Rating published with respect to a person, the ACRV shall be calculated as if Fitch had never provided a Credit Rating with respect to such person.

[End of CSA Special Provision Text]

PRO FORMA No. 4, Special Provision Test to
Add Independent Amount to CSA

Paragraph 2 – Definitions

1. Add the following definition :
“Independent Amount” shall have the meaning as set forth in the elections below as agreed to by the parties;
 - Party **[A or B]** shall have a Fixed Independent Amount of \$_____. If the Fixed Independent Amount option is selected for Party **[A or B]**, then Party **[A or B]** (which shall be a Pledging Party with respect to the Fixed Independent Amount Credit Support) will be required to Transfer or cause to be Transferred to the other (which shall be a Secured Party with respect to the Fixed Independent Amount Credit Support) Eligible Collateral with a Value equal to the amount of such Independent Amount (the “Fixed IA Credit Support”). The Fixed IA Credit Support shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the CSA, and shall not be taken into account when calculating Party **[A or B]**'s Collateral Requirement, as applicable, pursuant to the CSA. Except as expressly set forth above, the Fixed IA Credit Support shall be held and maintained in accordance with, and otherwise be subject to the CSA.
 - Party **[A or B]** shall have a Full Floating Independent Amount of \$_____. If the Full Floating Independent Amount option is selected for Party **[A or B]**, then for purposes of calculating Party **[A or B]**'s Collateral Requirement, as applicable, pursuant to Paragraph 3 of the CSA, such Full Floating Independent Amount for Party **[A or B]** shall be added to the other party's Exposure.
 - Party **[A or B]** shall have a Partial Floating Independent Amount of \$_____. If the Partial Floating Independent Amount option is selected for Party **[A or B]**, then Party **[A or B]** will be required to Transfer or cause to be Transferred to the other party Eligible Collateral with a Value equal to the amount of such Independent Amount (the “Partial Floating IA Credit Support”) if at any time Party **[A or B]** otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the CSA. The Partial Floating IA Credit Support shall not be reduced so long as Party **[A or B]** has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the CSA. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the CSA.

[End of CSA Special Provision Text]

PRO FORMA No. 5, Special Provision Text to
Add new Rating Agency to CSA

Paragraph 2 – Definitions

1. Under the definition of "Credit Rating" delete the last phrase "or any other specified rating agency." and substitute therefor:
" or **[Insert name of Rating Agency]**."

[End of CSA Special Provision Text]

***PRO FORMA No. 7, Special Provision Text to
Exclude certain Base Contract transactions from CSA***

Paragraph 2 – Definitions

1. Under the definition of "Exposures" at the end of the sentence after the phrase "between the bid price and the offer price" add the following phrase:

"; provided further, that the Net Settlement Amount shall not include any Transaction under the Base Contract designated by the Pledging Party to be excluded from the CSA as noted in the "Special Conditions" portion of the Base Contract's "Transaction Confirmation for Immediate Delivery" document"

[End of CSA Special Provision Text]

PRO FORMA No. 8, Special Provision Text to
Add limits on frequency of Collateral Transfers to CSA

Paragraph 5 – Reduction and Substitution of Posted Collateral

1. Under Paragraph 5 (a) after the beginning phrase “On any Business Day” in the first sentence insert the parenthetical phrase (but not more frequently than weekly for Letters of Credit **[Insert the phrase “and Guaranties” if applicable]** and daily with respect to Cash)”

[End of CSA Special Provision Text]

***PRO FORMA No. 9, Special Provision Text to
Add CSA as the Exclusive Method for Collateral Transfers to CSA***

Paragraph 13 – General

1. Under Paragraph 13 add the following provision:
 - “(f) Unless otherwise agreed in writing, the parties agree that this CSA is the sole and exclusive method for Transfer of Eligible Collateral, return of Posted Collateral and any transactions related thereto.”

[End of CSA Special Provision Text]

PRO FORMA No. 10, Letter of Credit Agreement

IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUANCE: _____

[Address]

Re: Credit No. _____

We hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of _____ (the "Account Party"), for the aggregate amount not exceeding _____ United States Dollars (\$ _____), available to you at sight upon demand at our counters at (Location) on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by your representative:

"An Event of Default (as defined in the Base Contract for Sale and Purchase of Natural Gas dated as of _____ between the beneficiary hereof and the Account Party, as the same may have been amended (the "Master Agreement")) has occurred and is continuing with respect to the Account Party under the Master Agreement. Wherefore, the undersigned beneficiary does hereby demand payment of the entire undrawn amount of the Letter of Credit."; or

"An Early Termination Date (as defined in the Base Contract for Sale and Purchase of Natural Gas dated as of _____ between the beneficiary hereof and the Account Party, as the same may have been amended (the "Master Agreement")) has occurred and is continuing with respect to the Account Party under the Master Agreement. Wherefore, the undersigned beneficiary does hereby demand payment of the entire undrawn amount of the Letter of Credit."

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings previously paid by us hereunder. Partial drawings are permitted hereunder.

This Letter of Credit shall expire _____ (____) Days from the date of issuance, but shall automatically extend without amendment for additional _____ (____)-Day periods from such expiration date and from subsequent expiration dates, if you, as beneficiary, and the Account Party have not received due notice of our intention not to renew ninety (90) Days prior to any such expiration date.

We hereby agree with you that drafts drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, in which case the terms of this Letter of Credit shall govern.

With respect to Article 13(b) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed three (3) banking Days following the date of its receipt of documents from the beneficiary hereof, to examine the documents and determine whether to take up or refuse the documents and to inform the beneficiary hereof accordingly.

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

This Letter of Credit is transferable, and we hereby consent to such transfer, in connection with a permitted transfer under the Master Agreement but otherwise may not be amended, changed or modified without the express written consent of the beneficiary hereof, the Issuing Bank and the Account Party.

Typographical errors other than in amounts are not considered discrepancies.

[BANK SIGNATURE]



PRO FORMA No. 11, Control Agreement

**CONTROL AGREEMENT
(Cash and Securities as Collateral)**

Control Agreement dated as of _____ 2003, by and among _____ (“Secured Party”), _____ listed on Attachment A hereto (“Pledgor”), and _____ (“Custodian”) (the “Agreement”).

WHEREAS, pursuant to a custodian contract between Custodian and Pledgor (as amended, the “Custodian Agreement”), Custodian acts as custodian for Pledgor’s assets and, as such Custodian, has established a custodial account in the name of Pledgor, in which the Collateral (together with other assets of Pledgor) will be held; and

WHEREAS, Secured Party and Pledgor have entered into a NAESB Base Contract for Sale and Purchase of Natural Gas and Credit Support Annex, dated as of _____, 2003 (as amended from time to time, the “Master Agreement”); and

WHEREAS, pursuant to the terms of the Master Agreement, Pledgor will from time to time pledge certain assets specified by Pledgor and identified to the Custodian as Collateral (as defined below) to secure Pledgor’s obligations under the Master Agreement; and

WHEREAS, Secured Party, Pledgor and Custodian are entering into this Agreement to provide for the control of the Collateral;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed as follows:

1. **Collateral Account.** Pledgor, from time to time, shall instruct the Custodian by any of the means mutually agreed to between Pledgor and the Custodian (which shall constitute “Proper Instructions” under the Custodian Agreement), to segregate U. S. Cash, certain U.S. Government securities or other U.S. securities acceptable to Secured Party (“Collateral”) for the benefit of Secured Party. Such Collateral (other than cash Collateral) shall be identified and segregated on the Custodian’s books and records under the name “_____ for the benefit of _____” (the “Securities Account”). The Custodian shall hold such Collateral as financial assets under Article 8 of the Uniform Commercial Code (the “UCC”), as in effect from time to time in an account assigned by US Bank. The Custodian shall identify and segregate in a separate deposit account (as defined in Section 9-102 of the UCC) any cash Collateral and hold it under the name “_____ for the benefit of _____” (the “Deposit Account” and, together with the Securities Account, the “Collateral Account”). The Custodian agrees not to change the name on the Collateral Account without the prior written consent of Secured Party. The Custodian shall have no responsibility for determining the adequacy of any Collateral required hereunder or under the Master Agreement, nor will it assume responsibility for any calculations related to any Collateral requirements under the Master Agreement.

2. **Account Control.**

2.1 Security Interest. This Agreement is intended by Secured Party and Pledgor to grant “control” of the Collateral Account to Secured Party for purposes of perfection of Secured Party’s security interest in such Collateral pursuant to Article 8 and Article 9 of the UCC, and the Custodian hereby acknowledges that it has been advised of Pledgor’s grant to Secured Party of a security interest in the Collateral Account. Notwithstanding the foregoing, the Custodian makes no representation or warranty with respect to the creation or enforceability of any security interest in the Collateral Account.

2.2 Joint Control by Secured Party and Pledgor. Unless and until the Custodian receives written notice from Secured Party pursuant to Section 2.3 below instructing the Custodian that Secured Party is exercising its right to exclusive control over the Collateral Account, which notice is substantially in the form attached hereto as Exhibit A (a “Notice of Exclusive Control”), or if all

previous Notices of Exclusive Control have been revoked or rescinded in writing by Secured Party: (i) the Custodian shall take actions with respect to the Collateral in the Collateral Account upon the joint instructions of Secured Party and Pledgor, and (ii) the Custodian shall have no responsibility or liability to Secured Party or Pledgor for actions taken in accordance with such joint instructions.

2.3 Control by Secured Party.

(i) Upon receipt by the Custodian of a Notice of Exclusive Control, the Custodian shall thereafter follow only the instructions of Secured Party with respect to the Collateral Account and shall comply with any entitlement order or instructions (within the meaning of Sections 8-102 and 9-106 of the UCC) received from Secured Party, without further consent of Pledgor or any other person, and Custodian will not comply with entitlement orders or instructions concerning the Collateral originated by Pledgor without the prior written consent of Secured Party.

(ii) Secured Party represents and warrants to Pledgor that Secured Party will only issue to the Custodian a Notice of Exclusive Control if Secured Party has determined in good faith that an event or default or other authorized event has occurred under the Master Agreement which entitles Secured Party to exercise its rights as a secured party with respect to the Collateral in the Collateral Account.

(iii) **The Custodian shall have no responsibility or liability to Pledgor for complying with a Notice of Exclusive Control or complying with entitlement orders originated by Secured Party concerning the Collateral Account. The Custodian shall have no duty to investigate or make any determination to verify the existence of an event of default or compliance by either Secured Party or Pledgor with applicable law or the Master Agreement, and the Custodian shall be fully protected in complying with a Notice of Exclusive Control whether or not Pledgor may allege that no such event of default or other like event exists.**

(iv) As between Secured Party and the Custodian, notwithstanding any provision contained herein or in any other document or instrument to the contrary, the Custodian shall not be liable for any action taken or omitted to be taken at the instruction of Secured Party, or any action taken or omitted to be taken under or in connection with this Agreement, except for the Custodian's own gross negligence or willful misconduct in carrying out such instructions.

3. **[Distributions.** The Custodian shall, without further action by Pledgor or Secured Party, credit to Pledgor's custodial account all interest, dividends and other income received by the Custodian on the Collateral, unless the Custodian has received a Notice of Exclusive Control and until such Notice of Exclusive Control has been revoked or rescinded in writing by Secured Party. Pledgor and Secured Party agree that any such instructions from Secured Party shall be pursuant to the terms of the Master Agreement.]

4. **Final Returns; Release of Security Interest.**

4.1 Returns. If there are no transactions outstanding under the Master Agreement, Pledgor may request Secured Party to instruct Custodian to release all Collateral held in the Collateral Account. Custodian will effect such release as soon as reasonably practicable after receiving instructions from Secured Party and Pledgor.

4.2 Release of Security Interest. Secured Party agrees to notify the Custodian promptly in writing when all obligations of Pledgor to Secured Party under the Master Agreement have been fully paid and satisfied (and any commitment of Secured Party to advance further amounts or credit thereunder has been terminated) or Secured Party otherwise no longer claims any interest in the Collateral in the Collateral Account, whichever is sooner; at which time the Custodian shall have no further liabilities or responsibilities hereunder and the Custodian's obligations under this Agreement shall terminate.

5. **Duties and Services of Custodian.**

(i) Custodian agrees that it is acting as a securities intermediary, as defined in Section 8-102 of the UCC, with respect to the Collateral in the Securities Account, except Identified Securities. The parties acknowledge that the Custodian Agreement is governed by the laws of _____ and that, as a consequence, the jurisdiction of the Custodian as securities intermediary and bank

- is _____. The Custodian agrees that, with respect to the Collateral in the Deposit Account, it is acting as a “bank” as such term is used in Section 102(a)(29) of the UCC.
- (ii) The Custodian shall have no duties, obligations, responsibilities or liabilities with respect to the Collateral Account except as and to the extent expressly set forth in this Agreement and the Custodian Agreement, and no implied duties of any kind shall be read into this Agreement against the Custodian including, without limitation, the duty to preserve, exercise or enforce rights in the Collateral and the Collateral Account. The Custodian shall not be liable or responsible for anything done or omitted to be done solely by it in good faith and in the absence of gross negligence and may rely and shall be protected in acting upon any notice, instruction or other communication which it reasonably believes to be genuine and authorized.
- (iii) As between Pledgor and the Custodian, except for the rights of control in favor of Secured Party agreed to herein, nothing herein shall be deemed to modify, limit, restrict, amend or supercede the terms of the Custodian Agreement, and Custodian shall be and remain entitled to all of the rights, indemnities, powers, and protections in its favor under the Custodian Agreement, which shall apply fully to the Custodian’s actions and omissions hereunder. Instructions under this Agreement from Pledgor’s authorized representative given in accordance with the terms of the Custodian Agreement shall also constitute Proper Instructions under the Custodian Agreement.
- (iv) Secured Party agrees to provide to Custodian, on Exhibit B attached hereto, the names and signatures of authorized parties who may give instructions or entitlement orders concerning the Collateral Account.
- (v) Custodian agrees to provide to Secured Party daily statements, via facsimile or electronic mail, of the collateral (including cash and securities) pledged by Secured Party held in the account.
- (vi) The parties hereto acknowledge that no “security entitlement” under the UCC shall exist with respect to any cash or any financial asset held in the Collateral Account which is registered in the name of Pledgor, payable to the order of the Pledgor, or specially indorsed to Pledgor or any third party (each such asset an “Identified Security”), except to the extent such Identified Security has been specially indorsed by Pledgor to the Custodian or in blank. Furthermore, Pledgor agrees to specially indorse any such Identified Security to the Custodian or in blank. The parties further acknowledge and agree that any such cash and/or Identified Securities received by the Custodian and credited to the Collateral Account from time to time shall (so long as so credited to the Collateral Account and so long as this Agreement remains in effect) be held by the Custodian for the benefit of Secured Party, not in its capacity as a “securities intermediary” (as defined in the UCC), but in its capacity as a custodial agent under and subject to the terms of this Agreement.
6. **Force Majeure.** The Custodian shall not be liable for delays, errors or losses occurring by reason of circumstances beyond its control, including, without limitation, acts of God, market disorder, terrorism, insurrection, war, riots, failure of transportation or equipment, or failure of vendors, communication or power supply. In no event shall the Custodian be liable to any person for consequential or special damages, even if the Custodian has been advised of the possibility or likelihood of such damages.
7. **Compliance with Legal Process and Judicial Orders.** **The Custodian shall have no responsibility or liability to Secured Party or Pledgor or to any other person or entity for acting in accordance with any judicial or arbitral process, order, writ, judgment, decree or claim of lien relating to the Collateral Account subject to this Agreement notwithstanding that such order or process is subsequently modified, vacated or otherwise determined to have been without legal force or effect.**
8. **Custodian Representations.** **The Custodian agrees and confirms, as of the date hereof, and at all times until the termination of this Agreement, that it has not entered into, and until the termination of this Agreement will not enter into, any agreement (other than the Custodian Agreement) with any other person or entity relating to the Collateral or the Collateral Account under which it has agreed to comply with entitlement orders (as defined in Section 8-102 of the UCC) of such other person or entity.**
9. **Access To Reports.** **Upon any pledge, release, or substitution of Collateral in the Collateral Account, Custodian shall notify Secured Party within one business day of such change. The Custodian will**

provide to Secured Party a copy of a statement of the Collateral Account within five (5) business days of the end of the calendar month; provided, however, that the Custodian's failure to forward a copy of such statement to Secured Party shall not give rise to any liability hereunder.

10. Interpleader. Notwithstanding any provision contained in this Agreement to the contrary, in the event of any dispute concerning this Agreement or the disposition of any of the Collateral or the Collateral Account, the Custodian shall have the absolute right, at its election, to (a) refrain from taking any action (other than to hold the Collateral in accordance with the Custodian Agreement) until directed by written instructions signed by Pledgor and Secured Party or by final order of a court of competent jurisdiction; or (b) in the event of litigation between Pledgor and Secured Party, deliver all of the Collateral in the Collateral Account to the clerk of any court in which such litigation is pending, or file suit in interpleader and deliver the Collateral in the Collateral Account to the court in which the action is commenced, and obtain an order from the court requiring the parties to interplead and litigate in such court their claims and rights among themselves, whereupon the Custodian shall thereby be relieved from any further liability respecting the Collateral and the Collateral Account.

11. Fees and Expenses of Custodian.

11.1 Reimbursement For Costs. In addition to the terms of the Custodian Agreement, Pledgor hereby agrees to pay and reimburse the Custodian for any advances, fees, costs, expenses (including, without limitation, reasonable attorney's fees and costs) and disbursements that may be paid or incurred by the Custodian in connection with this Agreement or the arrangement contemplated hereby, including any that may be incurred in performing its duties or responsibilities pursuant to the terms of this Agreement.

11.2 Advances. It is hereby expressly acknowledged and agreed by the parties that the Custodian (including its agents) shall not be obligated to advance cash or investments to, for or on behalf of Pledgor in the Collateral Account, provided, however, that if the Custodian does advance cash or investments to the Collateral Account for any purpose (including but not limited to securities settlements, foreign exchange contracts, assumed settlement or account overdraft) for the benefit of Pledgor, any property at any time held pursuant to this Agreement and the Custodian Agreement shall be security therefore and, should Pledgor fail to repay the Custodian promptly, the Custodian shall be entitled to utilize available cash and to dispose of Collateral in the Collateral Account to the extent necessary to obtain reimbursement.

12. Notices. Any notice, instruction or other instrument required to be given hereunder, or requests and demands to or upon the respective parties hereto, shall be in writing and may be sent by hand, or by facsimile transmission, telex, or delivery by any recognized delivery service, prepaid or, for termination of this Agreement only, by certified or registered mail, and addressed as follows, or to such other address as any party may hereafter notify the other respective parties hereto in writing:

If to Secured Party, then:

If to Pledgor, then:

If to Custodian, then:

13. Amendment. No amendment or modification of this Agreement will be effective unless it is in writing and signed by each of the parties hereto.

14. Termination. This Agreement shall continue in effect until five (5) business days following notice by Secured Party to the Custodian in writing that this Agreement is to be terminated. Upon the fifth business

day after such notice, Secured Party shall have no further right to originate entitlement orders concerning the Collateral Account and Pledgor shall be entitled to originate entitlement orders concerning the Collateral for any purpose and without limitation except as may be provided in the Custodian Agreement. This Agreement may also be terminated by the Custodian, Secured Party or Pledgor, and shall terminate in the event of the termination of the Custodian Agreement, following thirty (30) days prior written notice to the other parties hereto. Upon termination of this Agreement by any party, all Collateral in the Collateral Account that has not been released by Secured Party shall be transferred, within 30 days of such termination, to a successor custodian designated in writing by Pledgor and acceptable to Secured Party. In the event no successor is agreed upon, the Custodian shall be entitled to petition a court of competent jurisdiction to appoint a successor custodian and shall be indemnified by Pledgor for any costs and expenses (including, without limitation, attorneys' fees) relating thereto.

15. Severability. In the event any provision of this Agreement is held illegal, void or unenforceable, the remainder of this Agreement shall remain in effect.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of New York, without giving effect to the conflict of law provisions thereof.

18. Headings. Any headings appearing on this Agreement are for convenience only and shall not affect the interpretation of any of the terms of this Agreement.

19. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all such counterparts taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or duly authorized representatives as of the date first above written.

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

Exhibit A

NOTICE OF EXCLUSIVE CONTROL

We hereby instruct you pursuant to the terms of that certain Control Agreement dated as of _____, 2003 (as from time to time amended and supplemented, the "Control Agreement") among the undersigned, _____ (together with its successors and assigns, "Pledgor") and you, as Custodian, that you (i) shall not follow any instructions or entitlement orders of Pledgor with respect to the Collateral or the Collateral Account held by you for Pledgor, and (ii) unless and until otherwise expressly instructed by the undersigned, shall exclusively follow the entitlement orders and instructions of the undersigned with respect to the Collateral or the Collateral Account.

Very truly yours,

By: _____
Authorized Signatory

By: _____
Authorized Signatory

Exhibit B

AUTHORIZED PERSONS

with respect to Collateral Control Agreement dated _____ 2003

_____ **BANK** is directed to accept and act upon instructions received from any one of the following persons at _____:

Name

Telephone/Fax Number

Signature

Authorized by: _____, as authorized agent of _____

Name:

Title: