

# R97063

Gas Industry Standards Board Request for Initiation of a GISB Standard for Electronic Business Transactions or Enhancement of an Existing GISB Standard for Electronic Business Transactions

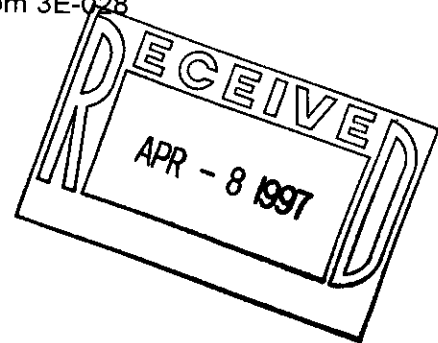
Date of Request: April 02, 1997

1. Submitting Entity & Address:

The United States Department Of Energy  
The Office of Natural Gas And Petroleum Technology, FE-33, Room 3E-028  
Forrestal Building  
1000 Independence Ave. , S.W.  
Washington D.C. 20585

and

Visage Energy Corp  
6345 Green Valley Circle #216  
Culver City, CA 90230



2. Contact Person, Phone #, Fax #, Electronic Mailing Address

DOE	Visage Energy
Christopher J. Freitas	Will Johnson
Program Manager	President
(202) 586-1657	(310) 216-6887
Fax (202) 586-6221	Fax (310) 615-7720
e mail: Christopher.Freitas@HQ.DOE.GOV	

3. Description of Proposed Standard or Enhancement:

Proposal to amend the GISB Model Base Contract for Short-Term Sale and Purchase of Natural Gas to include the Funds Transfer Agency (FTA) concept. This can be accomplished by utilizing GISB Model Base Contract for Short-Term Sale and Purchase of Natural Gas to structure exhibit Agreement #1 between the Producer, Marketer, and the Bank and Agreement #2 between the LDC and the Marketer.

4. Use of Proposed Standard or Enhancement:

Enclosed for your review is Agreement #1 which is between Amoco, Visage Energy Corp., and Union Bank.

Exhibit A Also enclosed for your review is Agreement #2 which is between Con Edison and Visage Energy Corp.

Appendix A of Agreement #1 is the FTA language that authorizes Union Bank to supervise the transaction as Agent; whereas Appendix B of Agreement #2 supplements the "Written Transaction Procedure" to authorize a copy of the Exhibit A is sent to Union Bank and that the payment instructions are irrevocable.

Note: The Special Conditions Box Block with the Funds Transfer Agent

Acknowledgment, Exhibit A of Agreement #1 and Exhibit A of Agreement #2, has been lowered below the signature block and provides for the FTA Payment Confirmation in Agreement #1 and the FTA Acknowledgement in Agreement #2.

The required communication protocols are described in "Diagram of Fax Movement" and "Chart 1."

5. Description of any tangible benefits to the use of the Proposed Standard or Enhancement:

The accommodation of the FTA can eliminate the need to post a letter of credit with some Producers.

6. Estimate of incremental specific costs to implement Proposed Standard or Enhancement:

There does not appear to be any specific costs associated with the implementation of the FTA accommodation. The GISB Model Base Contract for the Short-Term Sale and Purchase of Natural Gas is flexible to accommodate the FTA provisions.

7. Description of any specific legal or other considerations:

The Producer and LDC legal departments will evaluate the acceptability of the proposed FTA.

8. If this proposed Standard or Enhancement is not tested yet, list trading partners willing to test Standard or Enhancement (corporations and contracts):

Currently, Visage Energy Corp, has utilized the FTA documentation for over \$21 million dollars of natural gas sales with Amoco and Southern California Gas Company. The FTA documentaion has also been approved for use by Vastar Gas Marketing.

9. If this proposed Standard or Enhancement is in use, who are the trading partners?

The GISB/FTA documentation has been approved by the legal staffs of both Con Edison and Amoco. Moreover, approvals of the GISB/FTA are also anticipated from Vastar, Southern California Gas Company, Baltimore Gas & Electric, and Washington Gas.

10. Attachments:

See Agreement #1,

# VISAGE ENERGY CORP.

Exhibit 4

CHART 1

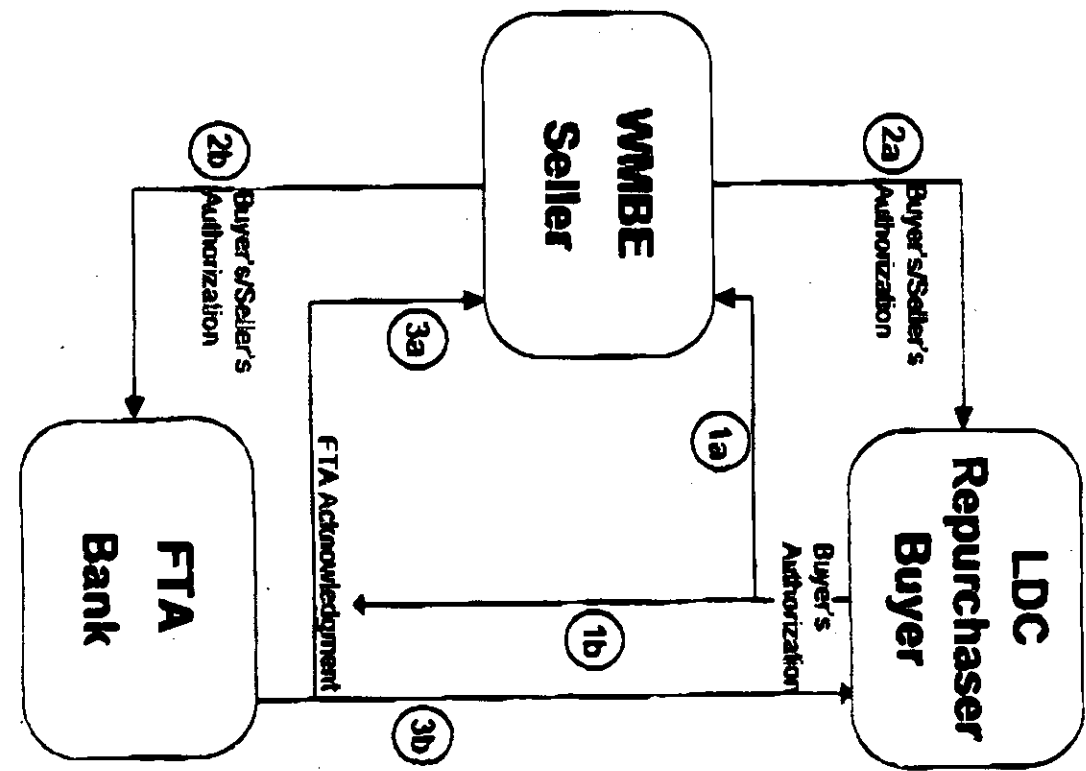
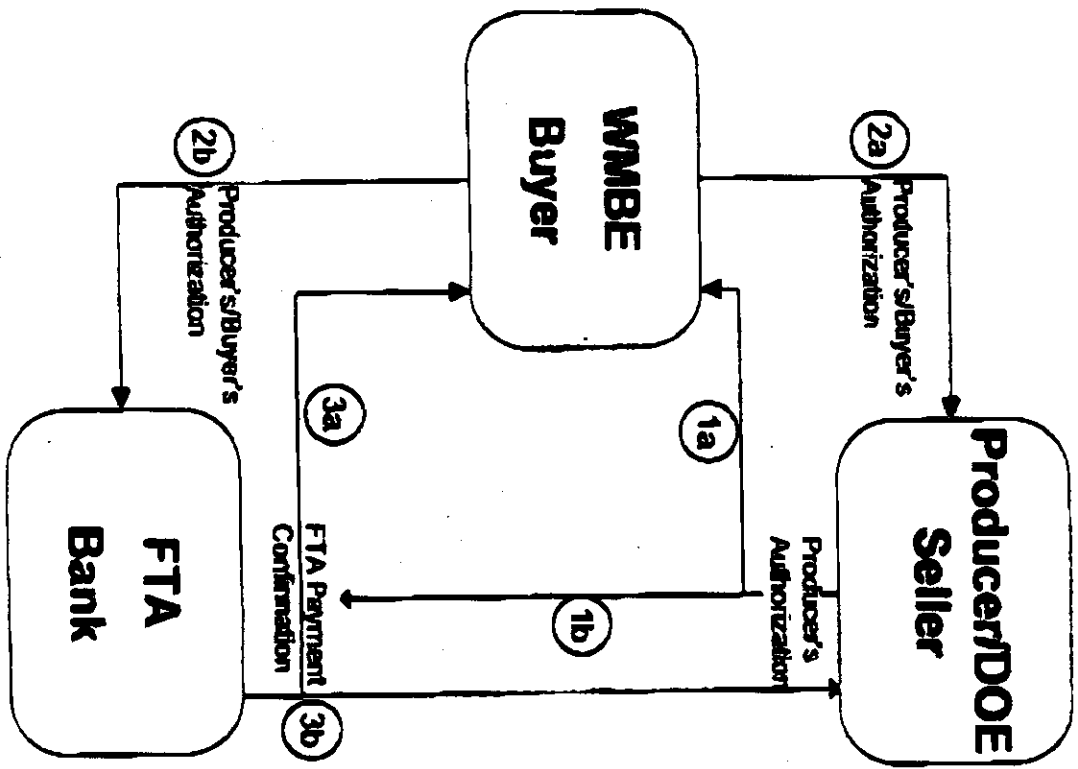
Step	Agreement 1 Participants: WMBE, Producer, FTA	Agreement 2 and FTA Supplement Participants: LDC-Re-Purchaser, WMBE Seller, FTA
1	1a and 1b: Producer and/or DOE faxes signed Producer's Authorization fax to WMBE and FTA	
2	2a and 2b: WMBE Buyer signs Producer's Authorization and faxes Producer's/Buyer's Authorization to Producer and FTA	
3	FTA must receive LDC Re-Purchaser's promise to pay before agreeing to pay Producer for gas	
4		1a and 1b: Re-Purchaser faxes signed Buyer's Authorization to WMBE and FTA
5		2a and 2b: WMBE signs Buyer's Authorization and faxes Buyer's/Seller's Authorization to Buyer and FTA
6		3a and 3b: FTA sends fully executed FTA Acknowledgment to WMBE and LDC Re-Purchaser confirming LDC Re-Purchaser's obligation to pay for gas delivered in accordance with Buyer's/Seller's Authorization. It should be noted that the Buyer's Authorization is converted into the Buyer's/Seller's Authorization. This document then becomes the FTA Acknowledgment when lower portion of Buyer's/Seller's Authorization is executed by FTA.
7	Now that the FTA has executed FTA Acknowledgment from the LDC Re-Purchaser, it now proceeds with 3a and 3b portions of the Producer's Agreement. The FTA sends fully executed FTA Payment Confirmation to WMBE and Producer confirming the FTA's agreement to pay the Producer for gas delivered in accordance with the Producer's/Buyer's Authorization. It should be noted that the Producer's Authorization was converted into the Producer's/Buyer's Authorization. This document then becomes the FTA Payment Confirmation when the lower portion of the Producer's/Buyer's Authorization is executed by the FTA.	

Exhibit 3

**AGREEMENT #1**

**DIAGRAM OF FAX MOVEMENT**

**AGREEMENT #2**



**Gas Industry Standards Board**  
**Request for Initiation of a GISB Standard for Electronic Business Transactions**  
or  
**Enhancement of an Existing GISB Standard for Electronic Business Transactions**

Date of Request: January 28, 1997

**1. Submitting Entity & Address**

Visage Energy Corp.  
6345 Green Valley Circle #216  
Culver City, CA 90230

**2. Contact Person, Phone #, Fax #, Electronic Mailing Address:**

Name: Will Johnson  
Title: President  
Phone: 310/ 216-6887  
Fax: 310/ 615-7720

**3. Description of Proposed Standard or Enhancement:**

It is being proposed that the GISB contract be altered to accommodate the Fund Transfer Agency (FTA) concept. This can be accomplished by utilizing GISB to structure Agreement #1 between the Producer, Marketer, and the Bank and Agreement #2 between the LDC and the Marketer.

**4. Use of Proposed Standard or Enhancement (include how the standard will be used, documentation on the description of the proposed standard, any existing documentation of the proposed standard, and required communication protocols):**

Enclosed for your review is Agreement #1 which is between Amoco, Visage Energy Corp., and Union Bank.

Also enclosed for your review is Agreement #2 which is between Con Edison and Visage Energy Corp.

Appendix A of Agreement #1 is the FTA verbiage which provides for Union Bank to supervise the transaction as Agent, whereas Appendix B of Agreement #2 simply supplements the "Written Transaction Procedure" to provide that a copy of the Exhibit A be sent also to Union bank and that the payment instructions are irrevocable.

**BASE CONTRACT FOR SHORT-TERM  
SALE AND PURCHASE OF NATURAL GAS**

This Base Contract is entered into as following date: November 4, 1996

The Parties to this Base Contract are the following:

Amoco Energy Trading Company  
Duns #  
Contract # 178876  
Attn:  
Phone:  
Federal Tax ID Number: 36-3421804  
Invoices  
Amoco Energy Trading Corporation  
550 WestLake Park Blvd  
Houston, TX 77079-2696

Visage Energy Corp.  
Duns #  
Contract # 178876  
Attn: Mr. Will Johnson  
Phone: (310) 216-6887 Fax: (310) 645-7720  
Federal Tax ID Number: 95-4285343

Visage Energy Corp.  
6345 Green Valley Circle, Unit 216  
Culver City, CA 90230  
Attn: Will Johnson  
Phone: (310) 216-6887 Fax: (310) 645-7720

**Payments:**

Wire Transfer or ACH Nos (if applicable)  
Bank: Manhattan Bank, NY  
ABA#: 021000021 Account #: 910-2-548097

Wire Transfer or ACH Nos. (if applicable)  
Bank: Union Bank, Monterey, CA  
ABA #: 122000496 Account #: 0880415026

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Short-Term Sale and Purchase of Natural Gas published by the Gas Industry Standards Board (Form GISB-GTC-2/13/96). The parties hereby agree to the following provisions offered in said General Terms and Conditions (select only one from each box, but see *Note* relating to Section 2.24):

Section 1.2 Transaction Procedure	<input type="checkbox"/> Oral <input checked="" type="checkbox"/> Written	Section 6 Taxes	<input type="checkbox"/> Buyer pays At and After Delivery Point <input checked="" type="checkbox"/> Seller Pays Before and At Delivery Point
Section 2.4 Conform Deadline	<input checked="" type="checkbox"/> 2 Business Days after receipt <input type="checkbox"/> Business Days after Receipt	Section 7.2 Payment Date	<u>26th</u> date of Month following Month of Delivery
Section 2.5 Confirming Party	<input type="checkbox"/> Seller <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Visage Energy Corp.	Section 7.2 Method of Payment	<input checked="" type="checkbox"/> Wire Transfer (WT) <input type="checkbox"/> Automated Clearinghouse (ACH) <input type="checkbox"/> Check
Section 3.2 Performance Obl.	<input checked="" type="checkbox"/> Cover Standard <input type="checkbox"/> Spot Price Standard	Section 13.5 CHOICE OF LAW: State of Delaware	
<i>Note: The following Spot Price Publication applies to both the immediately preceding Standards and must be filled in after a Standard is selected.</i>			
Section 2.24 Spot Price Publication: Gas Daily			
<input checked="" type="checkbox"/> Special Provisions: Number of sheets attached: "Exhibit A," 1 page, "Appendix A," 4 pages			

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

Amoco Energy Trading Corporation

Visage Energy Corp.

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

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

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

**GENERAL TERMS AND CONDITIONS  
BASE CONTRACT FOR SHORT-TERM  
SALE AND PURCHASE OF NATURAL GAS**

**SECTION 1. PURPOSE AND PROCEDURES**

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas.

**The parties have selected either the "Oral" version or the "Written" version of transaction procedure as indicated on the Base Contract.**

**Oral Transaction Procedure:**

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party.

**Written Transaction Procedure:**

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

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2., such receiving party shall notify the sending party via facsimile by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. The entire agreement between the parties shall be those provisions contained in both the Base Contract and any effective Transaction Confirmation. In the event of a conflict among the terms of (i) a Transaction Confirmation, (ii) the Base Contract, and (iii) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

**SECTION 2 DEFINITIONS**

2.1. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein.

2.2. "British thermal unit" or "Btu" shall have the meaning ascribed to it by the Receiving Transporter.

2.3. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.

2.4. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received, or if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.

2.5. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.

2.6. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract and (ii) the provisions contained in any effective Transaction Confirmation.

2.7. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu, as evidenced by the Contract Price on the Transaction Confirmation.

- 2.8. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as set forth in the Transaction Confirmation.
- 2.9. "Cover Standard", if applicable, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the non-defaulting party shall use commercially reasonable efforts to obtain Gas or alternate fuels, or sell Gas, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the defaulting party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the defaulting party.
- 2.10. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.11. "Delivery Period" shall be the period during which deliveries are to be made as set forth in the Transaction Confirmation.
- 2.12. "Delivery Point(s)" shall mean such point(s) as are mutually agreed upon between Seller and Buyer as set forth in the Transaction Confirmation.
- 2.13. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.14. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm."
- 2.15. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3. related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.16. "Gas" shall mean any mixture of hydrocarbons and non-combustible gases in a gaseous state consisting primarily of methane.
- 2.17. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.18. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3. related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- 2.19. "MMBtu" shall mean one million British thermal units which is equivalent to one dekatherm.
- 2.20. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.21. "Payment Date" shall mean a date, selected by the parties in the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.22. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.23. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.24. "Spot Price" as referred in Section 3.2 shall mean the price listed in the publication specified by the parties in the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.
- 2.25. "Transaction Confirmation" shall mean the document, substantially in the form of Exhibit A, setting forth the terms of a purchase and sale transaction formed pursuant to Section 1. for a particular Delivery Period.
- 2.26. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular Transaction Confirmation.

### **SECTION 3 PERFORMANCE OBLIGATION**

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



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

**Cover Standard:**

3.2. In addition to any liability for Imbalance Charges, which shall not be recovered twice by the following remedy, the exclusive and sole remedy of the parties in the event of a breach of a Firm obligation shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard for replacement Gas or alternative fuels and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s); or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s); or (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available, then the exclusive and sole remedy of the non-breaching party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s).

**Spot Price Standard:**

3.2. In addition to any liability for Imbalance Charges, which shall not be recovered twice by the following remedy, the exclusive and sole remedy of the parties in the event of a breach of a Firm obligation shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s) multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price.

3.3. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS CONTRACT, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.

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

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s) and for delivering such Gas at a pressure sufficient to effect such delivery but not to exceed the maximum operating pressure of the Receiving Transporter. Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

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

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's actions or inactions (which shall include, but shall not be limited to, Buyer's failure to accept quantities of Gas equal to the Scheduled Gas), then Buyer shall pay for such Imbalance Charges, or reimburse Seller for such Imbalance Charges paid by Seller to the Transporter. If the Imbalance Charges were incurred as a result of Seller's actions or inactions (which shall include, but shall not be limited to, Seller's failure to deliver quantities of Gas equal to the Scheduled Gas), then Seller shall pay for such Imbalance Charges, or reimburse Buyer for such Imbalance Charges paid by Buyer to the Transporter.

#### SECTION 5. QUALITY AND MEASUREMENT

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

#### SECTION 6. TAXES

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

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

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

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

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

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

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

7.2. Buyer shall remit the amount due in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 days after receipt of the invoice by Buyer, provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. If Buyer fails to remit the full amount payable by it when due, interest on the unpaid portion shall accrue at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum from the date due until the date of payment; or (ii) the maximum applicable lawful interest rate. If Buyer, in good faith, disputes the amount of any such statement or any part thereof, Buyer will pay to Seller such amount as it concedes to be correct; provided, however, if Buyer disputes the amount due, Buyer must provide supporting documentation acceptable in industry practice to support the amount paid or disputed.

7.3. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with Section 7.2. above.

7.4. A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine the books and records of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This examination right shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate unless objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7. shall be paid in full by the party owing payment within 30 days of notice and substantiation of such inaccuracy.

**SECTION 8. TITLE, WARRANTY AND INDEMNITY**

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

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims.

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

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

**SECTION 9. NOTICES**

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

9.2. All Notices required hereunder may be sent by facsimile or mutually acceptable electronic means, a nationally recognized

overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission, if the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered two Business Days after mailing.

## SECTION 10. FINANCIAL RESPONSIBILITY

10.1. When reasonable grounds for insecurity of payment or title to the Gas arise, either party may demand adequate assurance of performance. Adequate assurance shall mean sufficient security in the form and for the term reasonably specified by the party demanding assurance, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset acceptable to the demanding party or a performance bond or guarantee by a creditworthy entity. In the event either party shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment obligation to the other party; (iii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); or (v) be unable to pay its debts as they fall due; then the other party shall have the right to either withhold and/or suspend deliveries or payment, or terminate the Contract without prior notice, in addition to any and all other remedies available hereunder. Seller may immediately suspend deliveries to Buyer hereunder in the event Buyer has not paid any amount due Seller hereunder on or before the second day following the date such payment is due.

10.2. Each party reserves to itself all rights, set-offs, counterclaims, and other defenses which it is or may be entitled to arising from the Contract.

## SECTION 11. FORCE MAJEURE

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

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

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary firm transportation unless primary, in-path, firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

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

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

## SECTION 12. TERM

This Contract may be terminated on 30 days' written notice, but shall remain in effect until the expiration of the latest Delivery Period of any Transaction Confirmation(s). The rights of either party pursuant to Section 7.4., the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any Transaction Confirmation.

## SECTION 13. MISCELLANEOUS

13.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party, which consent will not be unreasonably withheld or delayed; provided, either party may transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any transfer and assumption, the transferor shall not be relieved of or discharged from any obligations hereunder.

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

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

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

13.5. The interpretation and performance of this Contract shall be governed by the laws of the state specified by the parties in the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

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

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

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

AMO-#1 110696

TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

EXHIBIT A

Amoco Energy Trading Corporation	Date: _____ Transaction Confirmation #: _____
----------------------------------	--

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated \_\_\_\_\_.  
 The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.

SELLER: \_\_\_\_\_ BUYER: \_\_\_\_\_

Attn: \_\_\_\_\_ Attn: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Base Contract No. \_\_\_\_\_ Base Contract No. \_\_\_\_\_

\_\_\_ Firm (Fixed Quantity) \_\_\_ Interruptible

<u>Transporter</u>	<u>Transporter Contract Number</u>	<u>Maximum Daily Quantity (dt)</u>	<u>Delivery Point(s) to Pipeline(s)</u>	<u>Price \$/dt</u>	<u>Delivery Period</u>
--------------------	--	--	---	------------------------	------------------------

Seller: \_\_\_\_\_ Buyer: \_\_\_\_\_  
 By: \_\_\_\_\_ By: \_\_\_\_\_  
 Title: \_\_\_\_\_ Title: \_\_\_\_\_  
 Date: \_\_\_\_\_ Date: \_\_\_\_\_

Special Conditions:

**FUND TRANSFER AGENT PAYMENT CONFIRMATION**

Union Bank, as the Fund Transfer Agent, has reviewed the foregoing Seller's and Seller's/Buyer's Transaction Confirmations and hereby confirms to Seller and Buyer that it shall make payment on behalf of Buyer to the Seller on the terms and conditions set forth above and in the Agreement. The FTA confirms that Buyer has obtained a contract with an LDC Re-Purchaser with corresponding Volume, Delivery Point(s), and at a price which is greater than the price charged to Buyer above and that the LDC Re-Purchaser has agreed to pay for gas delivered in accordance with the terms and conditions of this Agreement.

Date: \_\_\_\_\_ UNION BANK  
 By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Appendix A  
ADDENDUM TO GENERAL TERMS AND CONDITIONS BASE CONTRACT FOR  
SHORT-TERM SALE AND PURCHASE OF NATURAL GAS  
(Agreement #1)

This Addendum Agreement ("Agreement") to the General Terms and Conditions Base Contract for Short-Term Sale and Purchase of Natural Gas is made and entered into as of \_\_\_\_\_, 199\_\_\_\_, by Visage Energy Corp. ("Buyer"), a California corporation, Union Bank of California N.A. ("Fund Transfer Agent" or "FTA"), a California corporation and the Amoco Energy Trading Corporation (Seller), a Delaware corporation.

NOW, THEREFORE in consideration of the promises and mutual understandings set forth in this Addendum Agreement, the parties hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

1.1 **SELLER'S TRANSACTION CONFIRMATION** - The Seller's Transaction Confirmation is the Exhibit A of the Base Contract for Short-Term Sale and Purchase of Natural Gas which has been sent to both Buyer and FTA by Seller .

1.2 **SELLER'S/BUYER'S TRANSACTION CONFIRMATION** - The Seller's/Buyer's Transaction Confirmation is the Seller's Transaction Confirmation which has been signed by Buyer and forwarded to the FTA.

1.3 **FTA PAYMENT CONFIRMATION** - The FTA Payment Confirmation is the Seller's/Buyer's Transaction Confirmation which has been signed by the FTA and forwarded to both Buyer and Seller.

1.4 **BUYER'S RE-PURCHASER** - Shall mean the Buyer's local distribution company re-purchaser under the General Terms And Conditions Base Contract For Short-Term Sale And Purchase Of Natural Gas which is the corollary to this Agreement and with whom Buyer has entered into an agreement for the resale of gas purchased hereunder.

**ARTICLE II**  
**SCOPE OF AGREEMENT**

2.1 **SALE/PURCHASE ARRANGEMENT** - This Agreement, along with the General Terms and Conditions Base of the Contract for Short Term Sale and Purchase of Natural Gas sets forth the terms and conditions under which Buyer will, from time to time, supplement its existing supplies of natural gas with purchases of Gas from Seller on a Monthly basis.

2.2 **TERM** - Except as otherwise provided herein, this Agreement shall commence on \_\_\_\_\_, 199\_\_\_\_ and continue through \_\_\_\_\_, 199\_\_\_\_. Thereafter, this Agreement shall continue on a Month-to Month basis until terminated. Each party shall have the right to terminate this Agreement after \_\_\_\_\_, 199\_\_\_\_, by giving at least thirty (30) Days' prior written notice to the other parties; provided, however, that this Agreement shall not terminate during the term of any Seller's Transaction Confirmation under which Seller is then selling Gas to Buyer. The provisions contained in this Agreement that by their sense and context are intended to survive the performance hereof by any party shall survive the completion of performance or termination or cancellation of this Agreement.

2.3 **APPOINTMENT OF FUNDS TRANSFER AGENT (FTA)** - Subject to Section 4.7 below, Seller and Buyer hereby irrevocably designate and appoint FTA as the Agent under this Agreement and all related documents, instruments and agreements (collectively, the "Related Agreements" and individually a "Related Agreement"), and irrevocably authorize FTA, in such capacity, to take such action on their behalf under the provisions of this Agreement and the Related Agreements and to exercise such powers and perform such duties as are expressly delegated to FTA by the terms of this Agreement and the Related Agreements, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this

Agreement, FTA shall not have any duties or responsibilities, or any fiduciary relationship with Buyer or Seller, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any Related Agreement or otherwise exist against FTA, except those expressly set forth herein.

2.4 **ROLE OF FUND TRANSFER AGENT (FTA)** - The FTA shall confirm directly to Seller and Buyer that Buyer's local distribution company re-purchaser has agreed to make payment through the FTA of the funds due as payment under this Agreement so long as the gas sold hereunder is delivered to and accepted at the specific Delivery Point(s) in accordance with the terms and conditions of this Agreement. The FTA's obligation to make payment hereunder is specifically conditioned upon the receipt of funds from the Buyer's local distribution company re-purchaser, after which, the FTA will transfer the funds to the Seller on the next business day following receipt thereof.

### **ARTICLE III OPERATIONS**

3.1 **FTA PAYMENT VERIFICATION** - Upon receipt of the telefaxed Seller's Transaction Confirmation from Seller and Seller's/Buyer's Transaction Confirmation from Buyer, the FTA shall verify that both documents are identical with the exception of the signatures. The FTA shall also verify that the Buyer has obtained a contract from a local distribution company re-purchaser with a corresponding volume, Delivery Point(s) and a price not less than the price the Seller is charging Buyer ..

3.2 **TRANSMISSION OF FTA PAYMENT CONFIRMATION** - Within twenty-four (24) hours from receipt of the telefaxed Seller's Transaction Confirmation from Seller and Seller's/Buyer's Transaction Confirmation from Buyer, and upon the verification set forth in Sections 3.1 and 2.4 above, the FTA shall execute the FTA Payment Confirmation portion of the telefaxed Seller's/Buyer's Transaction Confirmation and telefax to Seller and Buyer the FTA Payment Confirmation.

3.3 **NO MODIFICATION** - In the event Seller does not receive the FTA's Payment Confirmation within the twenty-four (24) hour-period indicated in Section 3.2 above, Seller shall give telephonic notice to Buyer and the FTA of such non-receipt and shall provide FTA another twenty-four (24) hours to telefax the FTA's executed Payment Confirmation. Seller shall have no obligation to deliver any gas under this Agreement unless it has received an FTA Payment Confirmation related to such gas in a timely manner. If none is received, the Authorized Volume for that month shall be reduced to zero. Except in these circumstances, no party shall modify the terms and conditions contained in the Seller's/Buyer Transaction Confirmation without the written consent of the other parties.

3.4 **FORM OF PAYMENT** - FTA shall pay Seller by wire transfer for the benefit of Buyer on the next day following the payment day indicated in the Base Contract For Short-Term Sale And Purchase Of Natural Gas indicated therein, and in accordance with FTA wire instructions contained in Section 4.5 below. Seller's address is as specified in Section 4.4 below. In no event shall Buyer be required to enter into any other contractual or other arrangements in order to effectuate payment to Seller. Only the Seller may request revisions to the address specified for payment in Section 4.5 below, which requests shall not be made more than two (2) times per Year unless due to merger or mandated by State or Federal regulations.

### **ARTICLE IV NOTIFICATIONS/BILLINGS**

4.1 **NOTICES** - Any notice provided for in this Agreement, or any notice which any party may desire to give to the others, shall be in writing and shall only be deemed to be duly delivered upon receipt. Such notice shall in each instance be sent by a telefax and confirmed by a telephone call as soon as possible during common business hours, and addressed to the other parties hereto, as the case may be, as follows:

**FUND TRANSFER AGENT:**

Mailing Address and Invoice Address: Union Bank, Energy Capital Services  
445 S. Figueroa Street  
Los Angeles, CA 90071-1602  
Attn: Paula Maguire Reese  
Telephone / Fax Numbers: (213) 236-5531 Fax: (213) 236-4096

**BUYER:**

Mailing Address: Visage Energy Corp.  
6345 Green Valley Circle #216  
Culver City, CA 90230  
Attn: Will Johnson  
Telephone / Fax Numbers: (310) 216-6887 Fax: (310) 645-7720

**SELLER :**

Mailing Address: Amoco Energy Trading Corporation  
550 WestLake Park Blvd  
Houston, TX 77079-2696  
Attn: Ann Joseph  
Telephone / Fax Numbers: (713) 366-3806 Fax: (713) 366-4932

4.2 TELEPHONE CALLS - At any time a telephone call is required for operational emergencies, or to confirm the sending and receipt of any notices telefaxed, the following telephone numbers shall be utilized:

**BUYER:**

Emergency Contact/Telephone: Will Johnson (310) 216-6887  
Confirmation Telephone: (310) 216-6887

**SELLER :**

Emergency Telephone: (713) Fax: (713)  
Contact: Gas Control:

**FUND TRANSFER AGENT:**

Emergency Telephone: (213) 236-5772  
Contact: Walter Roth  
Confirming Telephone: (213) 236-5531  
Contact: Paula Maguire Reese

4.3 BUYER'S BILLING ADDRESS - All invoices from Seller to Buyer shall be sent to:  
Visage Energy Corp.  
Attn: Will Johnson  
46345 Green Valley Circle #216  
Culver City, CA 90230  
Telephone / Fax Numbers: (310) 216-6887 Fax: (310) 645-7720

4.4 SELLER'S ADDRESS - All notices to Seller from Buyer shall be sent to:



4.5 **REMITTANCE** - All payments from Buyer to Seller shall be sent to through FTA via Fed Funds transfer to:

Amoco Energy Trading Corporation - Wire Transfer Account  
Bank: Chase Manhattan Bank,  
Account No. 910-2-548097      ABA # 021000021  
New York, NY

Invoice Reference No. \_\_\_\_\_  
Please include invoice reference number \_\_\_\_\_ in the text field of your wire transfer.

4.6 **CHANGES** - The addresses (other than for payment designations), telefax, and telephone numbers specified herein may be changed, subject to Section 4.5, by the party affected after seven (7) Days' written notice.

4.7 **FTA RESIGNATION** - FTA may resign as agent upon 90 days' notice to Seller and Buyer, however, the FTA will not resign without reasonable cause. If the FTA shall resign as agent under this Agreement and the Related Agreements, then Buyer shall appoint a successor Agent, whereupon such successor agent shall succeed to the rights, powers and duties of the FTA and the term "FTA" shall mean such successor agent effective upon such appointment and approval, and the former agent's rights, powers and duties as the agent shall be terminated, without any other or further act or deed on the part of such former agent or any of the parties to this Agreement. After any retiring agent's resignation as agent, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was FTA under this Agreement and the Related Agreements.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in triplicate originals by their authorized representatives as of the date first written above.

"FTA"  
UNION BANK OF CALIFORNIA  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"SELLER"  
AMOCO ENERGY TRADING CORPORATION  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"BUYER"  
VISAGE ENERGY CORP.  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# BASE CONTRACT FOR SHORT-TERM SALE AND PURCHASE OF NATURAL GAS

This Base Contract is entered into as following date: October 11, 1996

The Parties to this Base Contract are the following:

**Visage Energy Corporation**  
 Duns # 61-543-6078  
 Contract # \_\_\_\_\_  
 Attn: Mr. Will Johnson  
 Phone: (310) 216-6887 Fax: (310) 645-7720  
 Federal Tax ID Number: \_\_\_\_\_

**Consolidated Con Edison Co. of New York**  
 Duns # 00-698-2359  
 Contract # CE015  
 Attn: Director, Fuel Purch. & Trading, Rm. 2315-S  
 Phone: (212) 460-2991 Fax: (212) 529-8230  
 Federal Tax ID Number: 135009340

**Invoices:**

**Visage Energy Corporation**  
6345 Green Valley Circle Unit 216  
Culver City, California 90230  
 Attn: Will Johnson  
 Phone: (310) 216-6887 Fax: (310) 645-7720

**Consolidated Con Edison Company of New York, Inc.**  
4 Irving Place, Room 2615-S  
New York, N.Y. 10003  
 Attn: Manager, Financial Administration  
 Phone: (212) 460-3412 Fax: (212) 777-2959

**Payments:**

Wire Transfer or ACH Nos. (if applicable)  
 Bank: Union Bank, Monterey, California  
 ABA#: 122000496 Account #: 0880415026

Wire Transfer or ACH Nos. (if applicable)  
 Bank: Citibank, 399 Park Avenue, NY, NY 10022  
 ABA#: 021000089 Account #: 0000-0158

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Short-Term Sale and Purchase of Natural Gas published by the Gas Industry Standards Board (Form GISB-GTC-2/13/96). The parties hereby agree to the following provisions offered in said General Terms and Conditions (select only one from each box, but see *Note* relating to Section 2.24.):

<p><b>Section 1.2</b> Transaction Procedure  <input type="checkbox"/> Oral  <input checked="" type="checkbox"/> Written</p> <p><b>Section 2.4</b> Confirm Deadline  <input checked="" type="checkbox"/> 2 Business Days after receipt  <input type="checkbox"/> Business Days after receipt</p> <p><b>Section 2.5</b> Confirming Party  <input type="checkbox"/> Seller  <input type="checkbox"/> Buyer  <input checked="" type="checkbox"/> Consolidated Edison Co. of NY, Inc.</p> <p><b>Section 3.2</b> Performance Obl.  <input checked="" type="checkbox"/> Cover Standard  <input type="checkbox"/> Spot Price Standard</p> <p><i>Note: The following Spot Price Publication applies to both of the immediately preceding Standards and must be filled in after a Standard is selected.</i></p> <p><b>Section 2.24</b> Spot Price Publication: <u>Gas Daily</u></p>	<p><b>Section 6</b> Taxes  <input type="checkbox"/> Buyer pays At and After Delivery Point  <input checked="" type="checkbox"/> Seller Pays Before and At Delivery Point</p> <p><b>Section 7.2</b> Payment Date  <u>25th</u> date of Month following  <u>Month of delivery</u></p> <p><b>Section 7.2</b> Method of Payment  <input checked="" type="checkbox"/> Wire Transfer (WT)  <input type="checkbox"/> Automated Clearinghouse (ACH)  <input type="checkbox"/> Check</p> <p><b>Section 13.5</b> CHOICE OF LAW: <u>State of New York</u></p>
<p>■ <b>Special Provisions:</b> Number of sheets attached: <u>"Appendix A," - 6 pages, "Appendix B", 1 page</u></p>	

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

**Visage Energy Corporation**

*(Party Name)*

**Consolidated Con Edison Co. of New York**

*(Party Name)*

By \_\_\_\_\_  
 Title President

By \_\_\_\_\_  
 Title Vice President

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

**GENERAL TERMS AND CONDITIONS  
BASE CONTRACT FOR SHORT-TERM  
SALE AND PURCHASE OF NATURAL GAS**

**SECTION 1. PURPOSE AND PROCEDURES**

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas.

**The parties have selected either the "Oral" version or the "Written" version of transaction procedure as indicated on the Base Contract.**

**Oral Transaction Procedure:**

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party.

**Written Transaction Procedure:**

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

1.2 Section 1.2 is set forth in Appendix B attached hereto and made a part hereof.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2., such receiving party shall notify the sending party via facsimile by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. The entire agreement between the parties shall be those provisions contained in both the Base Contract and any effective Transaction Confirmation. In the event of a conflict among the terms of (i) a Transaction Confirmation, (ii) the Base Contract, and (iii) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

**SECTION 2 DEFINITIONS**

2.1. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein.

2.2. "British thermal unit" or "Btu" shall have the meaning ascribed to it by the Receiving Transporter.

2.3. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.

2.4. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received, or if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.

2.5. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.

2.6. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract and (ii) the provisions contained in any effective Transaction Confirmation.

2.7. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu, as evidenced by the Contract Price on the Transaction Confirmation.

- 2.8. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as set forth in the Transaction Confirmation.
- 2.9. "Cover Standard", if applicable, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the non-defaulting party shall use commercially reasonable efforts to obtain Gas or alternate fuels, or sell Gas, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the defaulting party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the defaulting party.
- 2.10. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.11. "Delivery Period" shall be the period during which deliveries are to be made as set forth in the Transaction Confirmation.
- 2.12. "Delivery Point(s)" shall mean such point(s) as are mutually agreed upon between Seller and Buyer as set forth in the Transaction Confirmation.
- 2.13. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.14. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm".
- 2.15. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3. related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.16. "Gas" shall mean any mixture of hydrocarbons and non-combustible gases in a gaseous state consisting primarily of methane.
- 2.17. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.18. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3. related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- 2.19. "MMBtu" shall mean one million British thermal units which is equivalent to one dekatherm.
- 2.20. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.21. "Payment Date" shall mean a date, selected by the parties in the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.22. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.23. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.24. "Spot Price" as referred in Section 3.2 shall mean the price listed in the publication specified by the parties in the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.
- 2.25. "Transaction Confirmation" shall mean the document, substantially in the form of Exhibit A, setting forth the terms of a purchase and sale transaction formed pursuant to Section 1. for a particular Delivery Period.
- 2.26. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular Transaction Confirmation.

### **SECTION 3 PERFORMANCE OBLIGATION**

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

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

**Cover Standard:**

3.2. In addition to any liability for Imbalance Charges, which shall not be recovered twice by the following remedy, the exclusive and sole remedy of the parties in the event of a breach of a Firm obligation shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard for replacement Gas or alternative fuels and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s); or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s); or (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available, then the exclusive and sole remedy of the non-breaching party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s).

**Spot Price Standard:**

3.2. In addition to any liability for Imbalance Charges, which shall not be recovered twice by the following remedy, the exclusive and sole remedy of the parties in the event of a breach of a Firm obligation shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price.

3.3. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS CONTRACT, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.

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

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s) and for delivering such Gas at a pressure sufficient to effect such delivery but not to exceed the maximum operating pressure of the Receiving Transporter. Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

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

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's actions or inactions (which shall include, but shall not be limited to, Buyer's failure to accept quantities of Gas equal to the Scheduled Gas), then Buyer shall pay for such Imbalance Charges, or reimburse Seller for such Imbalance Charges paid by Seller to the Transporter. If the Imbalance Charges were incurred as a result of Seller's actions or inactions (which shall include, but shall not be limited to, Seller's failure to deliver quantities of Gas equal to the Scheduled Gas), then Seller shall pay for such Imbalance Charges, or reimburse Buyer for such Imbalance Charges paid by Buyer to the Transporter.

**SECTION 5. QUALITY AND MEASUREMENT**

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

**SECTION 6. TAXES**

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

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

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

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

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

## SECTION 7. BILLING, PAYMENT AND AUDIT

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

7.2. Buyer shall remit the amount due in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. If Buyer fails to remit the full amount payable by it when due, interest on the unpaid portion shall accrue at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum from the date due until the date of payment; or (ii) the maximum applicable lawful interest rate. If Buyer, in good faith, disputes the amount of any such statement or any part thereof, Buyer will pay to Seller such amount as it concedes to be correct; provided, however, if Buyer disputes the amount due, Buyer must provide supporting documentation acceptable in industry practice to support the amount paid or disputed.

7.3. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with Section 7.2. above.

7.4. A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine the books and records of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This examination right shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate unless objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7. shall be paid in full by the party owing payment within 30 days of notice and substantiation of such inaccuracy.

## SECTION 8. TITLE, WARRANTY AND INDEMNITY

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

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims.

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

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

## SECTION 9. NOTICES

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

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

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission, if the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered two Business Days after mailing.

## **SECTION 10. FINANCIAL RESPONSIBILITY**

10.1. When reasonable grounds for insecurity of payment or title to the Gas arise, either party may demand adequate assurance of performance. Adequate assurance shall mean sufficient security in the form and for the term reasonably specified by the party demanding assurance, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset acceptable to the demanding party or a performance bond or guarantee by a creditworthy entity. In the event either party shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment obligation to the other party; (iii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); or (v) be unable to pay its debts as they fall due; then the other party shall have the right to either withhold and/or suspend deliveries or payment, or terminate the Contract without prior notice, in addition to any and all other remedies available hereunder. Seller may immediately suspend deliveries to Buyer hereunder in the event Buyer has not paid any amount due Seller hereunder on or before the second day following the date such payment is due.

10.2. Each party reserves to itself all rights, set-offs, counterclaims, and other defenses which it is or may be entitled to arising from the Contract.

## **SECTION 11. FORCE MAJEURE**

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

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

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary firm transportation unless primary, in-path, firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

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

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

## **SECTION 12. TERM**

This Contract may be terminated on 30 days' written notice, but shall remain in effect until the expiration of the latest Delivery Period of any Transaction Confirmation(s). The rights of either party pursuant to Section 7.4., the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any Transaction Confirmation.

## SECTION 13. MISCELLANEOUS

- 13.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party, which consent will not be unreasonably withheld or delayed; provided, either party may transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any transfer and assumption, the transferor shall not be relieved of or discharged from any obligations hereunder.
- 13.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.
- 13.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.
- 13.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective Transaction Confirmation(s). This Contract may be amended only by a writing executed by both parties.
- 13.5. The interpretation and performance of this Contract shall be governed by the laws of the state specified by the parties in the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.
- 13.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any Federal, State, or local governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or Transaction Confirmation or any provisions thereof.
- 13.7. There is no third party beneficiary to this Contract.
- 13.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.



**TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY**

EXHIBIT A

Consolidated Edison Company of NY, Inc.	Date: _____  Transaction Confirmation #: _____
--	--

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated \_\_\_\_\_. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.

SELLER: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Base Contract No. \_\_\_\_\_

BUYER: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Base Contract No. \_\_\_\_\_

Firm (Fixed Quantity)       Interruptible

Transporter	Transporter Contract Number	Maximum Daily Quantity (dt)	Delivery Point(s) to Pipeline(s)	Price \$/dt	Delivery Period
-------------	--------------------------------	--------------------------------	-------------------------------------	----------------	-----------------

Seller: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Buyer: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Special Conditions:

**FUND TRANSFER AGENT ACKNOWLEDGMENT**

Union Bank has reviewed the foregoing Seller's Transaction Confirmation and confirms that Seller has obtained a contract with a producer with a corresponding volume, Delivery Point(s), and a price not more than the price charged to Buyer above.

Union Bank shall accept payment from Buyer on behalf of Seller under the terms and conditions of the Base Contract For Short-Term Sale And Purchase Of Natural Gas and this Seller's Transaction Confirmation.

Union Bank

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

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

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

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

## Appendix B

### GENERAL TERMS AND CONDITIONS BASE CONTRACT FOR SHORT-TERM

**Written Transaction Procedure:**

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, both parties shall, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party and to Union Bank of California, Energy Capital Services, 445 South Figueroa Street, Los Angeles, CA 90071-1602, Attn: Paula Maguire Reese, facsimile # (213) 236-4096, by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of non-conflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3. The parties also agree that the payment instructions herein are irrevocable during the operative period of the binding Transaction Confirmation.