This Agreement is effective and binding upon the parties this 1st day of December, 2008 (the “Effective Date”), by and between ProLiance Energy, LLC (“Seller” or “ProLiance”) and Monroe County Community School Corporation (“Buyer” or “Customer”). Certain defined terms used in this Agreement are set forth in Exhibit A.

1. **Term.** The term of this Agreement begins on the Effective Date and shall remain in full force and effect for an initial period of one (1) year. Unless terminated in writing by either party not less than thirty (30) days prior to the expiration of the initial term, or any subsequent term, this Agreement shall automatically renew for successive one (1) year terms. Notwithstanding anything in this paragraph to the contrary, all terms and conditions of this Agreement shall survive until and govern the full completion of the transaction(s) memorialized in any Transaction Confirmation in effect on the date on which the initial term or any subsequent term of this Agreement would otherwise terminate. Renewal of this Agreement shall not extend any price or other term of a Transaction Confirmation beyond the express terms of such Transaction Confirmation. During any subsequent term, pricing and delivery terms shall be in accordance with the respective effective Transaction Confirmation(s).

2. **Subject Matter.** This Agreement, including any exhibits and properly executed amendments, establish the terms and conditions governing all sales of gas by Seller to Buyer pursuant to a Transaction Confirmation(s), on the specimen form attached hereto as Exhibit A. The Transaction Confirmation sets forth the applicable service level, quantity, price, receipt and nomination point(s), and such other terms and conditions as Seller and Buyer may mutually agree. Seller is under no obligation to deliver any gas absent a Transaction Confirmation. If no applicable Transaction Confirmation is active, then future delivery is conditioned upon the issuance of a new Transaction Confirmation by ProLiance. Whenever ProLiance and Customer reach an agreement regarding the sale of gas, including, but not limited to agreements made orally, by email or by instant messenger, ProLiance will submit to Customer a written Transaction Confirmation memorializing the sale by facsimile transmission or email pursuant to Paragraph 18. Customer shall execute the Transaction Confirmation and promptly return it to ProLiance by facsimile transmission pursuant to Paragraph 18. The submitted Transaction Confirmation shall become effective unless Buyer submits a written objection to such Transaction Confirmation to Seller by facsimile transmission pursuant to Paragraph 18 within two (2) business days of Customer's receipt of such Transaction Confirmation. Notwithstanding the above, Customer waives any objection to a Transaction Confirmation and shall be deemed to have accepted a Transaction Confirmation if Customer accepts delivery of any quantity of any gas specified in the confirmation. ProLiance is the only party that may issue a Transaction Confirmation and any purported Transaction Confirmation not issued by ProLiance shall be of no effect. Buyer is obligated to inform Seller promptly if any gas is delivered without a Transaction Confirmation in place, and shall inform Seller immediately if gas is delivered for two or more days without a Transaction Confirmation in place.

3. **Nature and Level of Service Provided.** During the term of this Agreement, ProLiance shall sell and deliver to Customer, and Customer shall purchase and receive all of Customer’s gas from ProLiance as described on the effective Transaction Confirmation(s). All gas purchased by Buyer from Seller is for Buyer's own use and not for resale. Sales of gas from Seller to Buyer shall be made pursuant to one or more of the following mutually agreed Service Levels which shall be specified in each Transaction Confirmation. If specified on an effective Transaction Confirmation, ProLiance may purchase and receive from Customer, and Customer may sell and deliver to ProLiance, gas, and such transaction shall be governed by the terms of this Agreement; provided that for the purposes of such transaction, ProLiance shall be deemed “Buyer” (but not “Customer”) and “Customer” shall be deemed Seller (but not “ProLiance”).

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3.1 **Fixed Quantity Service.** Fixed quantity service means that Seller agrees to use commercially reasonable efforts to provide Buyer only the quantity of gas identified in the Quantity Box shown on an effective Transaction Confirmation. Unless otherwise specified in the Special Provisions Box of the effective Transaction Confirmation, Seller has no obligation to sell or deliver gas required by Buyer in excess of the quantities identified in the Quantity Box on an effective Transaction Confirmation.

3.2 **Variable Quantity Service.** Variable quantity service shall mean that Seller will use commercially reasonable efforts to provide Buyer the quantity of gas identified in the Quantity Box shown on an effective Transaction Confirmation, with the Buyer having the option to “swing down” or “swing up” from the quantity identified. Buyer may select one or both types of variable quantity service which shall be indicated on the Transaction Confirmation. The types of variable quantity service are:

3.2.1 **Specified Quantity with Swing Down.** Under this service type, Buyer may “swing down” from the quantity identified in the Quantity Box shown on an effective Transaction Confirmation by the percent of allowed swing down specified on the Transaction Confirmation.

3.2.2 **Specified Quantity with Swing Up.** Under this service type, Buyer may “swing up” from the quantity identified in the Quantity Box shown on an effective Transaction Confirmation by the percent of allowed swing up specified on the Transaction Confirmation.

Unless otherwise specified in the Special Provisions Box of the effective Transaction Confirmation, Seller has no obligation to sell or deliver gas required by Buyer in excess of the maximum quantities identified in the Quantity Box shown on the effective Transaction Confirmation, as adjusted for any swing up specified on the Transaction Confirmation.

4. **Remedy for Ordinary Course Failures to Provide or Buy.** In the usual and ordinary course of business, Seller may be unable to provide, and Buyer may be unable to buy, all gas required by an effective Transaction Confirmation. In these events, the remedies provided by this Paragraph shall apply.

4.1 **Remedy for Failure to Provide.** Subject to Paragraph 9.1 below, the exclusive remedy of Buyer in the event Seller is unable to provide the quantity of gas shown in the Quantity Box (as adjusted by any specified swing up or swing down) on an effective Transaction Confirmation is Buyer’s recovery of the least of: (i) an amount equal to the difference between the purchase price paid by Buyer for replacement gas per Dth and the price per Dth specified in this Agreement, multiplied by the quantity of gas in Dths agreed upon in such Transaction Confirmation but not delivered by Seller; (ii) an amount equal to the difference between Buyer’s cost of replacement fuel adjusted to an MMBtu cost equivalent and the price shown on the Transaction Confirmation converted to an MMBtu basis, multiplied by the quantity of gas agreed upon in such Transaction Confirmation converted to an MMBtu basis but not delivered by Seller; or (iii) an amount equal to Twenty five Dollars ($25.00) times the quantity of gas in Dths agreed upon in such Transaction Confirmation but not delivered by Seller.

4.2 **Remedy for Failure to Buy.** Subject to Paragraph 9.1 below, the exclusive remedy of Seller in the event Buyer fails or is unable to buy the quantity of gas shown in the Quantity Box (as adjusted for any specified swing up or swing down) on an effective Transaction Confirmation shall be the recovery of an amount equal to the difference between the price per Dth shown on such Transaction Confirmation and the resale value per Dth determined by Seller related to the disposition of the gas not purchased by Buyer, multiplied by the quantity of gas in Dths agreed upon in such Transaction Confirmation but not bought by Buyer and adjusted for all reasonable incremental transportation costs to the new delivery point(s).

5. **General Service Terms.** The following terms apply to the sale of gas from Seller to Buyer regardless of the Service Level indicated on the Transaction Confirmation.

5.1 **Maximum Daily Quantity.** Seller will use commercially reasonable efforts to deliver up to the “Maximum Daily Quantity.” The Maximum Daily Quantity under a Transaction Confirmation will be either: (i) the maximum
daily quantity indicated on the Transaction Confirmation (in either the Quantity Box or the Special Provisions Box), as adjusted for any specified swing up; or (ii) if no maximum daily quantity is indicated on the Transaction Confirmation, the Uniform Daily Quantity. Notwithstanding anything in this Agreement to the contrary, Seller provides no assurance on deliveries of any gas in excess of the Maximum Daily Quantity under the respective effective Transaction Confirmation, and delivery of the Maximum Daily Quantity is subject to Paragraphs 10, 11 and 12.

5.2 Uniform Daily Quantity. Unless otherwise specified in the Transaction Confirmation, Seller will deliver nominated gas at the Uniform Daily Quantity covered by the Transaction Confirmation.

5.3 Price.

5.3.1 Nominated Gas. Buyer agrees to pay Seller the Price set forth on an effective Transaction Confirmation for all gas nominated and actually delivered at the Nomination Point(s) under such Transaction Confirmation (excludes Excess Gas). If no price is specified on an effective Transaction Confirmation, the price for natural gas sold by Seller and purchased by Buyer with respect to such Transaction Confirmation shall be equal to the then prevailing market price of gas for surplus or excess takes at the appropriate pool plus applicable transportation costs and a commercially reasonable profit margin assessed by Seller (the "Excess Pool Price"). Buyer understands and agrees that the Excess Pool Price will vary from time to time and that there is no assurance regarding the Excess Pool Price, either expressed or implied. If a Transaction Confirmation requests that Seller fix the price of gas relative to the New York Mercantile Exchange (NYMEX) Natural Gas Contract Price (the "NYMEX Price") prior to the monthly settlement for less than 100% of the quantity of gas to be delivered under such Transaction Confirmation, then the NYMEX Price will be applied to the first gas through the meter up to the quantity of gas to be sold at the NYMEX Price, as specified in such Transaction Confirmation. The Seller will apply the other price specified in the respective Transaction Confirmation to any quantities of gas sold under the Transaction Confirmation in excess of the quantity to be sold at the NYMEX Price.

5.3.2 Excess Gas. Unless otherwise specified on a Transaction Confirmation [in the Special Provisions Box], Excess Gas shall be priced in accordance with the Excess Price provision shown on the Transaction Confirmation. If no price is specified on an effective Transaction Confirmation, or if no Transaction Confirmation exists, the price for Excess Gas shall be equal to the Excess Pool Price.

5.4 Gas Quality and Measurement. Buyer and Seller agree that gas delivered hereunder shall be deemed to meet the quality specifications of the entity physically transporting and delivering gas to the Delivery Point(s) and that measurement of quantities of gas delivered hereunder shall be performed in accordance with procedures governing custody transfers between the parties receiving and delivering gas at the Delivery Point(s).

5.5 Title. Title to gas and risk of loss shall pass from Seller to Buyer at the Delivery Point(s) specified in the Transaction Confirmation. Notwithstanding the foregoing, in the event that Buyer has its own transportation capacity and such capacity is used to transport the gas to the Delivery Point(s), title and risk of loss shall pass from Seller to Buyer at the first point in the supply path where Buyer’s capacity is used ("Receipt Point"), which will also be specified in the Transaction Confirmation. Seller represents to Buyer that it has good and marketable title to sell all gas delivered hereunder and that such gas is free and clear from all liens and encumbrances.


6.1 Transportation Services. ProLiance will, as required, act as Customer’s agent for the limited purpose of arranging deliveries to the Delivery Point(s) specified in the Transaction Confirmation for Customer’s account. Customer shall be liable for all costs, fees and expenses with respect to the deliveries arranged by ProLiance in its capacity as Customer’s agent. The nature of the relationship between Customer and ProLiance regarding transportation services is established by Paragraph 6.4 below.
6.2 Balancing Service. ProLiance will use commercially reasonable efforts to balance Customer's account(s) within operational tolerances of the last transporter to Customer's facility(ies). Customer agrees to appoint and hereby appoints ProLiance as its agent for the purposes of balancing, including the receipt of consumption data collected by third parties, nominations to the last transporting entity, and confirmations of receipts. Customer also agrees to assist ProLiance in gaining access to timely consumption data either directly or through a third party. ProLiance, in its sole discretion, shall specify the frequency of consumption data to be provided by Customer to ProLiance, which may be daily or more frequently if requested. In addition to this consumption data, Customer must notify ProLiance if its historical usage for upcoming days or months will change by more than 5% as a result of alterations in facilities, operating schedules, and/or equipment, which affect gas usage. Customer shall mail or fax to ProLiance a copy of all pages of its gas bill from its Local Distribution Company (LDC) within five (5) days of the ISSUE date listed on the gas bill. Customer may request that its LDC provide a copy of its gas bill directly to ProLiance. If third party consumption data is unavailable, then Customer agrees to send to ProLiance periodic meter readings as requested by ProLiance.

ProLiance, under this balancing service, will be responsible for all balancing charges, fees, penalties, and cashouts ("Balancing Fees") charged to Customer that result from ProLiance's failure to use commercially reasonable efforts to balance Customer's account(s) under this balancing service, up to the indicated monthly amount on the Transaction Confirmation. Customer will be responsible for all Balancing Fees charged to Customer that are not ProLiance's responsibility pursuant to this Paragraph. If Customer does not respond in a timely manner to requests for meter readings by ProLiance, or Customer's third party consumption data collections fail, ProLiance will not be held responsible for any Balancing Fees charged to Customer. If ProLiance receives or incurs any Balancing Fees by a third party, this result of Customer not providing a timely response to requested meter readings to ProLiance, or Customer's third party consumption data collections fail, then ProLiance will charge such costs to Customer, and Customer agrees to pay such costs.

6.3 Burnertip Billing. Burnertip billing means that Customer has appointed ProLiance as its agent to reconcile and pay Customer's distribution company invoice including any taxes, as Customer's agent, the distribution company invoice may be sent directly to ProLiance. ProLiance's duties as Customer's agent under this provision are no greater than that defined with regard to the agency relationship discussed in Paragraph 6.4 of this Agreement. The distribution company charges will be itemized on ProLiance's monthly invoice and will be charged to the Customer. If the distribution charges are adjusted for any reason, ProLiance will adjust the customer's invoices to reflect these adjustments. The original distribution company invoice will be kept on file by ProLiance for twelve (12) months.

6.4 Duties and Agency Relationship. It is expressly understood by Customer and ProLiance, that ProLiance's actions in arranging transportation pursuant to Paragraph 6.1 above, providing balancing service under Paragraph 6.2 above, and implementing Burnertip Billing under Paragraph 6.3 above creates only a limited agency whereby ProLiance shall act in its own economic interest, and does not create any general fiduciary duty of any kind from ProLiance to Customer. ProLiance's duties to Customer are fixed solely by the written terms of this agreement, and there are no further implied or expressed duties between the parties, nor any reliance on the part of Customer other than as expressly provided in this Agreement.

7. Billing and Payment. On or before the fifth (5th) business day following each month, Seller shall render billing(s) to Buyer by United States mail, facsimile, overnight delivery, electronic means, or other commercially reasonable method, stating the quantity of gas delivered in the preceding month and the dollar amount due Seller pursuant to this Agreement. Billing(s) shall be based upon and calculated using the Available Delivery Information possessed by Seller at the time an invoice is rendered. Available Delivery Information means the information possessed by Seller, which Seller, in its sole discretion, deems most applicable. Such information includes but is not limited to: (1) actual metered quantities; (2) telemetry data; (3) LDC Bulletin Board data; (4) data provided by Buyer; (5) first of the month scheduled quantities; (6) contract and/or Transaction Confirmation quantities or any synthesis or combination thereof. Seller will later re-calculate the billing or invoice using the actual delivered information, if applicable, and include any adjustment for the prior period on the next billing if then available. Buyer agrees to make payment, by check or electronic funds transfer, to Seller not later than the fifteenth (15th) calendar day following each month or the tenth calendar day following receipt of Seller's billing(s), whichever is later (the "Due Date"). If the due date falls on a weekend or holiday, payment is due on the previous business day.
Notwithstanding the foregoing, Buyer’s payment will not be deemed late if made on or before the 20th day of the month. In the event Buyer fails to pay when due any amount due Seller, interest shall accrue on the unpaid balance at the then current prime rate of Citibank of New York, plus three percent (3%), compounded monthly, or the maximum lawful rate, whichever is less. For any late payment which is not received within seven days from the due date, a minimum late fee of one hundred and twenty-five dollars ($125.00) or one percent (1%) of the amount due, whichever is greater, will also be billed on Buyer’s next invoice. Buyer shall pay all costs associated with the collection of amounts due Seller, including reasonable attorney’s fees. Seller reserves the right to cease or suspend deliveries to Buyer immediately and without notice if any payment is not made when due.

No adjustment, audit or correction of any billing(s) or payment will be made by Seller unless written notice of such request for audit or adjustment or correction is made within twelve (12) months of the date of the statement or payment for which adjustment or correction is requested. Audits may be requested by Buyer not more than once in every twelve-month period. In the event an invoice(s) or portion thereof, is disputed, payment of the undisputed portion of the invoice will be paid when due, with notice of the objection given to Seller. Notice of a billing dispute must be in writing and state the basis for the dispute. Upon resolution of the dispute, any required payment shall be made within three (3) business days along with the interest accrued at the rate set forth in this Paragraph 7.

Buyer and Seller agree that each party shall have the right to offset and net any amounts such party owes under this Agreement and the Transaction Confirmations against the amounts to such party by the other party under this Agreement and the Transaction Confirmations. The Buyer and Seller agree that no party shall be required to pay the other party more than the excess, if any, of (i) such party’s obligations to the other party under this Agreement and the Transaction Confirmations over (ii) the other party’s obligations to such party under this Agreement and the Transaction Confirmations.

8. Taxes and Royalties. In addition to the consideration provided herein, Buyer agrees to pay amounts equal to any sales, use, excise, utilities receipt or other taxes or any custom duties levied against or imposed upon the transport, transfer or sale of gas to Buyer, or otherwise resulting from this Agreement, or any activities hereunder, but Buyer shall not be obligated to pay any taxes based on Seller’s net income or taxes related to employment. If Buyer challenges the applicability of any tax, Buyer shall have the option of either (i) paying Seller the amount of the disputed tax and thereafter challenging the tax and seeking a refund thereof; or (ii) paying the tax on its own behalf, if permitted by law, and under protest directly to the taxing entity and thereafter seeking a refund thereof. Buyer agrees to indemnify and hold harmless Seller from any cost, fee, penalty or expense in connection with any assertion by any taxing authority that Buyer has failed to collect and remit their sales, use, excise, utilities receipt or other taxes (except for taxes based on Seller’s net income or related to employment) on transactions hereunder but shall have no such obligation to Seller with respect to any amount paid by Buyer to Seller by the due date and not remitted to the relevant taxing authority.

9. Remedies.

9.1 Settlement of Future or “Hedge” Positions. In the Event of Default under this Agreement by either party, the Non-Defaulting Party shall have the right to terminate this Agreement and all Transaction Confirmations by giving notice to the Defaulting Party of the default and the Non-Defaulting Party’s intent to terminate. The date upon which notice of the default is sent shall constitute the “Early Termination Date.” As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Variable Services), for which payment has not yet been made by the party that owes such payment under this Agreement and (ii) the Market Value of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination.
Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to “evergreen provisions”) shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the unilateral right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

9.2 Limitations of Remedies, Liability and Damages. Unless expressly herein provided, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. The parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy, the obligor’s liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein or in a Transaction Confirmation, the obligor’s liability shall be limited to direct actual damages only, such direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Seller shall not be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract, under any indemnity provision or otherwise. It is the intent of the parties that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes related thereto, including the negligence of any party, whether such negligence be sole, joint or concurrent, or active or passive. To the extent any damages required to be paid hereunder are liquidated, the parties acknowledge that the damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss. In no event will the Seller’s liability for any total amount of damages exceed twenty-five dollars ($25.00) per Dth for the quantity of gas not delivered, or otherwise at issue, measured in Dth.

10. Operational Flow Orders or Other Critical Gas Days. Should any transporter (interstate pipeline, intrastate pipeline, distribution company or other entity whose performance is required to effectuate deliveries of gas to Buyer) upstream of the Buyer’s facility(s) issue or declare an Operational Flow Order, including but not limited to orders or notices of curtailments and/or constraints, Critical Gas Day, Force Majeure, or any restriction or similar event, then Buyer must notify Seller concerning the extent of the event and an estimate of the amount of gas Buyer will consume during the event. Such notice will be made immediately to Seller after the receipt of any such notice by Buyer. Seller will use commercially reasonable efforts to advise Buyer of any Operational Flow Orders, including curtailments and/or constraints, of which it becomes aware. Seller will use commercially reasonable efforts to deliver Buyer’s estimated quantity or a portion thereof. Seller will only be liable for any charges and penalties charged to the Buyer or Seller by the transporter as a result of Seller’s willful default or willful neglect in failing to act in a commercially reasonable manner to supply the Buyer’s estimated quantity or portion thereof, to the extent Seller is obligated to supply any quantity. Normal service will be restored after the event is cancelled by the transporter, and Seller receives notice of such cancellation, which is adequate to reasonably inform Seller of the cancellation and in a manner to provide Seller sufficient time to react to the notice of cancellation.

11. Curtailment Priority. Buyer and Seller agree and acknowledge that factors and circumstances wholly outside the control of the parties may negatively impact, impair or prevent the physical delivery of gas. Such factors include, but are not limited to, events of Force Majeure as described in Paragraph 12 or Operational Flow Orders or Critical Gas Days as described in Paragraph 10. In the event Seller’s ability to physically deliver gas is impaired or prevented, gas supply will be curtailed generally in accordance with the following priority:
No “swing up” quantities above the uniform daily quantity without reference to any “swing up” quantity will be available under any service type and Buyer will receive only the specified quantity of gas shown on the applicable Transaction Confirmation.

In the event additional curtailment is necessary, Seller will make such additional curtailment as it deems is necessary and in such manner as it determines is commercially appropriate in its sole discretion. Seller has no duty to implement pro-rata curtailment.

12. **Force Majeure.** All obligations of the parties to this Agreement, except for the obligation to make payments when due, shall be suspended while and only for so long as compliance is prevented by a cause beyond the reasonable control of the party claiming Force Majeure. If Buyer claims Force Majeure, Buyer will provide notice as soon as reasonably possible by electronic means, fax or telephone, followed by written notice within twenty-four (24) hours, with reasonably full particulars to the Seller describing the event of Force Majeure. Notice of Force Majeure by Buyer must be sent without regard to standard business hours to each of the representatives for Buyer or Seller designated in Exhibit B to this Agreement. If Seller claims Force Majeure, Seller will give notice of the Force Majeure event in a timely fashion consistent with its commercially reasonable abilities in connection with the scope and circumstances of the existing Force Majeure event in the same manner as set out above. Buyer and Seller recognize, however, that a Force Majeure event affecting Seller may result in delays in notification as it will place a larger administrative burden on Seller rather than Buyer since such a Force Majeure event will likely impact multiple customers in one or more segments of Seller’s business operations. The term “Force Majeure” shall include, but not be limited to, (i) acts of God, war, civil disturbance, riot, fires, strikes, floods, storms or storm warnings, such as hurricanes which result in evacuation of the affected area, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of transportation, supply, and/or storage including interruptions caused by transporters or by sabotage, acts of terrorism or war; and (iv) governmental actions such as compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. In the event that a claim of Force Majeure is made by Buyer on the grounds of labor unrest, Buyer is not excused from the obligation to timely purchase gas at the agreed price. Seller will however use commercially reasonable efforts to reschedule delivery of gas.

Buyer shall not be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any of the following circumstances (i) Buyer’s ability to purchase gas at a lower or more advantageous price than the Contract Price, (ii) the loss of Buyer’s demand market(s), (iii) Buyer’s inability to use any gas purchased hereunder for any reason, or (iv) damage to a facility of Buyer caused by a fire, flood, storm or other casualty.

13. **Financial Responsibility.** When reasonable grounds for insecurity of payment for gas arise, Seller may demand adequate assurance of payment from Buyer. Adequate assurance shall mean sufficient security in the form and for the term reasonably specified by the Seller, which includes, but is not limited to, a standby irrevocable letter of credit, cash deposit, prepayment for gas, a security interest in an asset acceptable to Seller or a performance bond or guarantee by a creditworthy entity.

14. **Bankruptcy.** In the event Buyer shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in any payment obligation to Seller; (iii) otherwise become insolvent (however evidenced); or (iv) be unable to pay its debts as they fall due; then Seller shall have the right, in addition to any and all other remedies available hereunder, to immediately suspend all gas deliveries and/or terminate the Agreement (including the Transaction Confirmations) without prior notice and the date on which Seller takes that action shall be an Early Termination Date pursuant to Section 9.1. In the event Buyer shall 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 debtors or have such petition filed or proceeding commenced against it, (i) the Agreement (and the Transaction Confirmations) shall terminate immediately, and (ii) Seller shall have no further obligation to Buyer under this Agreement or any Transaction Confirmation. Customer acknowledges that ProLiance is not a utility for purposes of 11 U.S.C. Section 366.
15. **Waiver of Automatic Stay.** Customer and ProLiance acknowledge that the transactions undertaken pursuant to Transaction Confirmations are undertaken pursuant to forward contracts as defined in Section 101(25) of the Bankruptcy Code. In consideration of ProLiance entering into this Agreement and acknowledging that the promises set forth in this Paragraph are a material inducement causing ProLiance to enter into this Agreement, Customer hereby acknowledges and agrees that in the event that Customer shall file, or have filed against Customer, a petition for relief under the Bankruptcy Code or under any other similar federal or state law, and there is an assertion that this Agreement and the Transaction Confirmations are not forward contracts, Customer unconditionally and irrevocably consents to relief from the automatic stay of 11 U.S.C. Section 362, or of any similar provision of the Bankruptcy Code or of any similar federal or state law, if and to the extent any such stay may apply, to permit ProLiance to exercise its rights and remedies under this Agreement, including but not limited to the right of ProLiance to terminate this Agreement. In such event, Customer hereby agrees that it shall not, in any manner, oppose or otherwise delay any motion filed by ProLiance for relief from the automatic stay.

16. **Dispute Resolution.** The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the person with direct responsibility for the administration of this Agreement. Either party may give the other written notice of any dispute not resolved in the normal course of business. Within five (5) days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall summarize the party’s position and its support for the position stated. The notice shall also identify the executive for the party who will be responsible for the representation and potential resolution of the matter which is the subject of the notice. Within ten (10) days after the delivery of the notice the executives of both parties shall confer in person or telephonically in an attempt to resolve the dispute. The parties shall cooperate in good faith to accomplish resolution.

17. **Conflicting Terms.** If, for any reason, the terms stated in a Transaction Confirmation conflict with the terms of this Agreement, then the terms of this Agreement shall dictate the obligations and responsibilities of the parties.

18. **Correspondence.** Any notice, statement, billing, or invoice made or given under this Agreement must be in writing (which includes electronic equivalents), or if made or given orally, must be confirmed as soon as reasonably possible in writing by the party giving such notice, and will be considered as duly delivered, unless otherwise provided herein, when received by the other party by (1) facsimile, (2) U.S. Mail, postage prepaid, by registered, certified, or first class mail, or (3) prepaid overnight delivery to the applicable address designated in Exhibit B to this Agreement. The correspondence information will be contained on Exhibit B and may be changed from time to time by written notice to the other party.

19. **Assignment.** Seller may assign its rights or obligations under this Agreement to a corporate affiliate without consent of the other party. This Agreement, and the responsibilities associated with any transaction under this Agreement, is otherwise non-assignable except with the prior written consent of Buyer and Seller.

20. **Choice of Law and Forum.** Seller and Buyer expressly agree that the law of the State of Indiana is the sole and exclusive law that governs any and all claims, suits or disputes related in any way to this agreement including any tort and statutory claims including claims and issues involving the validity, construction, interpretation and effect of this agreement and any and all other claims or actions at law or in equity which may arise between Buyer and Seller, without regard to principles of conflicts of law. The sole and exclusive venue for any disputes, claims, or causes of action, legal or equitable, shall be the state or federal courts located in Indianapolis, Indiana.

21. **Entire Agreement.** This Agreement, (i) is valid, binding and enforceable against Buyer and Seller in accordance with its provisions and no conditions exist as to its legal effectiveness; (ii) constitutes (in conjunction with any properly executed and effective Transaction Confirmations) the entire Agreement between the parties; and (iii) is the final expression of the Intentions of Buyer and Seller. Seller and Buyer agree that this Agreement and the Transaction Confirmations constitute a single agreement. No promises, either express or implied, exist between Buyer and Seller, unless contained herein. No reliance has been placed by either party on any statement or representation by the other party other than as explicitly set forth in this Agreement. This Agreement supersedes all

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negotiations, representations, warranties, commitments, offers, contracts (of any kind of nature, whether oral or written) prior or contemporaneous with the execution hereof.

22. Amendments; Waivers. ProLiance reserves the right to unilaterally alter or amend the terms and conditions of this Agreement (except terms related to price) to keep pace with changes in the industry or market, including changes designed to address regulatory, tax and other legal changes. ProLiance will forward any change, in writing, to Customer. The proposed change will become effective seven (7) days from the date such change is issued by ProLiance. In the event Customer objects to the proposed change, Customer must notify ProLiance of its objection within seven (7) days of issuance and invoke the dispute resolution provisions contained in Paragraph 16. No other amendment, modification, termination, discharge or waiver of any provision of this Agreement or of any properly executed and effective Transaction Confirmation, shall in any event be effective unless the same shall be in writing and signed by ProLiance, and then such waiver or consent shall be effective only for the specific purpose for which given.

23. Authority. Each party has the full power and authority to enter into and perform this Agreement, and the persons signing this Agreement on behalf of Buyer and Seller have been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it and agrees to be bound by same. ProLiance is authorized to rely on any written, verbal, electronic, facsimile or telexcopy requests or instructions of Customer which it reasonably believes in its good faith and fair judgment to emanate from a properly authorized representative of the Customer, whether or not that is in fact the case.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate originals as of the date first set forth above.

Seller: ProLiance Energy, LLC
By: __________________________
Title: _______________________
Date: __________

Buyer: Monroe County Community School Corporation
By: __________________________
Title: _______________________
Date: __________
EXHIBIT C

Balancing Fees has the meaning set forth in Paragraph 6.2.

Bankruptcy Code means Title 11 of the United States Code, as may be amended from time to time.

British Thermal Unit or Btu means the international British thermal unit, which is also called ITBtu.

Contract Price or Price means the price identified on the respective Transaction Confirmation, or if no price is specified therein, the price otherwise established by the Agreement.

Contract Value means the amount of gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, as valued at the Nomination Point.

Commercially Reasonable means that the efforts expended or the manner in which any obligation task or duty is undertaken where same is specified in this Agreement to be “Commercially Reasonable” shall generally be:

1) in the usual manner on any recognized market;
2) at the price current in any recognized market at the time of the disposition;
3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that is the subject of the disposition;
4) is generally in conformance with the business and accounting practices of market participants engaged in the sale or resale of natural gas;
5) are efficient, economically viable and in accordance with applicable laws or regulations.

Critical Gas Days means any day or days, designated by any entity affecting gas deliveries by Seller to Buyer, during which certain actions by Seller or Buyer are specifically mandated or proscribed. Such mandates or proscriptions may relate to the quantities of gas to be delivered or to be consumed, to the creation or elimination of imbalances, to the utilization of storage or of banked quantities, or to other aspects of performance hereunder. To the extent the entity designating such day or days is a regulated entity, operating pursuant to approved service tariffs and/or operating procedures which assign a specific, different meaning to the phrase “Critical Gas Day,” then this definition shall be interpreted in conjunction with such meaning.

Defaulting Party means the party in whose act or omission has triggered an Event of Default.

Delivery Period means the delivery period identified on the respective Transaction Confirmation.

Delivery Point(s) means the delivery point(s) identified on the respective Transaction Confirmation.

Dth means decatherm, a unit of measure equal to one million Btus.

Due Date has the meaning set forth in Paragraph 7.

Early Termination Date has the meaning set forth in Paragraph 9.1.

Event of Default means the occurrence of any of the following events:

(a) any representation or warranty made by or on behalf of one party to the other party under this Agreement shall be false in any material respect as of the date on which made;

(b) Buyer’s failure to make any payment or any fee or other amount owed to Seller in connection with this Agreement;

(c) the breach by any of any such party’s covenants contained in this Agreement (together with the Transaction Confirmations) which breach remains uncured for a period of ten (10) days after written notice to the breaching party (provided, however, that with respect to a breach of a party’s obligations to provide or buy gas,
payment of the remedy required by Paragraph 5 within such ten (10) day period shall be deemed to cure such breach;

(d) Buyer shall (i) have an order for relief entered with respect to it under the Bankruptcy Code, (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property, (v) institute any proceeding seeking an order for relief under the Bankruptcy Code or seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, or (vi) suspend operations as presently conducted or discontinue doing business as an ongoing concern;

(e) Customers’ rating falls below Baa3 on the Moody’s rating scale or BBB on the S&P rating scale. In such event, Seller may request assurance of payment consistent with paragraph 13 of this agreement.

(f) without the application, approval or consent of Buyer, a receiver, trustee, examiner, liquidator or similar official shall be appointed for Buyer, or any substantial part of its property, or a proceeding described in item (d) above shall be instituted against Buyer and such appointment continues undischarged or such proceeding continues un-dismissed or un-stayed for a period of thirty (30) consecutive days;

(g) Buyer shall fail within thirty (30) days to pay, bond or otherwise discharge any judgment or order for the payment of money which is not stayed on appeal; or

(h) this Agreement shall cease to be in full force and effect or shall be declared null and void, or be revoked or terminated, or the validity or enforceability thereof shall be contested by Buyer or any shareholder of Buyer, or Buyer shall deny that it has any or further liability hereunder.

Excess Gas means the gas delivered to Buyer in excess of the quantity set forth on the respective Transaction Confirmation.

Excess Pool Price has the meaning set forth in Paragraph 5.3.1.

Excess Price means the price identified as the excess price on the respective Transaction Confirmation, or if no excess price is specified therein, the excess price otherwise established by the Agreement.

Excluded Transaction means any transaction or portion of a transaction: (i) that is not in the current delivery period stated in any active transaction confirmation; (ii) where title to the gas has passed to Buyer and Buyer has made full payment for that gas; (iii) that cannot be liquidated in a commercially reasonable fashion because of market conditions, market limitations or any other economic or commercial condition which would prevent, frustrate or impair an orderly liquidation as is determined in the sole discretion of the Non-Defaulting Party; or (iv) to the extent the parties agree that any quantity of gas in the current delivery period stated in any active transaction confirmation should be excluded.

Market Value means the amount of gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point(s) determined by the Non-Defaulting Party in a commercially reasonable manner.

Maximum Daily Quantity has the meaning set forth in Paragraph 5.1.

MMBtu means one million British Thermal Units, which is equivalent to one decatherm.

Non-Defaulting Party means the party other than the Defaulting Party.
NYMEX Price has the meaning set forth in Paragraph 5.3.1.

Operational Flow Order means any order or notice, given by any entity involved in the movement, transportation, storage allocation, control, distribution or performance of any other task related to the delivery of gas to or by Seller for ultimate delivery to Buyer, which has the effect of limiting, restricting, curtailing or otherwise preventing or frustrating performance of Seller hereunder. To the extent the entity giving such order or notice is a regulated entity, operating pursuant to approved service tariffs and/or operating procedures which assign a specific, different meaning to the phrase “Operational Flow Order,” then this definition shall be interpreted in conjunction with such meaning.

Quantity Box means the box marked “Quantity” on the respective Transaction Confirmation.

Service Level means the type of service indicated on the respective Transaction Confirmation which may include Fixed Quantity Service, Specified Quantity with Swing Down or Specified Quantity with Swing Up.

Special Provisions Box means the box marked “Special Provisions” on the respective Transaction Confirmation.

Terminated Transaction means any transaction or portion of any transaction which is not an “Excluded Transaction” which is terminated because of an “Event of Default.”

Transaction Confirmation means a transaction confirmation in the form specified on Exhibit A.

Uniform Daily Quantity means the total nominated quantity specified on a Transaction Confirmation divided by the total delivery days for the nominated period specified on such Transaction Confirmation.
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