

Execution Version

**SUBSTITUTE NATURAL GAS
PURCHASE AND SALE AGREEMENT**

by and between

Indiana Gasification, LLC

as Seller

and

Indiana Finance Authority

as Buyer

dated as of

January 14, 2011

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SUBSTITUTE NATURAL GAS PURCHASE AND SALE AGREEMENT

This Substitute Natural Gas Purchase and Sale Agreement (as amended from time to time, together with all Exhibits and Schedules, this "Agreement") is entered into as of January 14, 2011 (the "Execution Date") by and between INDIANA GASIFICATION, LLC, a Delaware limited liability company ("Seller") and the INDIANA FINANCE AUTHORITY, an independent body politic and corporate and an independent instrumentality of the State of Indiana ("Buyer" and together with Seller, the "Parties" and individually each of Seller and Buyer is referred to as a "Party"). The capitalized terms used in this Agreement not otherwise defined herein have the meanings specified in Schedule I.

RECITALS:

WHEREAS, Seller is developing a project in Indiana that contemplates, among other things, the design and construction of a coal gasification facility (the "Plant") that will use coal to manufacture methane gas of pipeline quality, suitable as a substitute for natural gas, and is entering into this Agreement pursuant to which Seller will sell such substitute natural gas ("SNG") produced by the Plant to Buyer and Buyer will purchase Conforming SNG (as defined herein) produced by the Plant; and

WHEREAS, Seller has applied for a federal loan guarantee through the United States Department of Energy Loan Guarantee Program Office, Solicitation Number DE-FOA-0000008 to obtain a federal loan guarantee in respect of the financing of the Plant; and

WHEREAS, pursuant to Indiana Code 4-4-11.6, the general assembly of the Indiana legislature has determined that (a) the furnishing of reliable supplies of reasonably priced natural gas for sales to Retail End Use Customers is essential for the well being of the people of Indiana because natural gas prices are volatile, and energy utilities have been unable to mitigate completely the effects of the volatility; (b) long term contracts for the purchase of SNG between Buyer and SNG producers will enhance the receipt of federal incentives for the development, construction, and financing of new coal gasification facilities in Indiana, (c) Buyer's participation in and oversight of the purchase and sale of SNG for the benefit of Retail End Use Customers is critical to obtain low cost financing for the construction of new coal gasification facilities, and (d) obtaining low cost financing for the construction of new coal gasification facilities is necessary to allow Retail End Use Customers to enjoy the benefits of a reliable, reasonably priced, and long term energy supply; and

WHEREAS, Buyer is authorized pursuant to Indiana Code 4-4-11.6 to enter into certain contracts for the purchase, transportation and delivery of SNG from coal gasification facilities that meet certain requirements; and

WHEREAS, Buyer has determined that Seller is a producer of SNG from a "coal gasification facility" within the meaning of the Statute and that entering into this Agreement is consistent with the authority granted to Buyer under Indiana Code 4-4-11.6; and

WHEREAS, Seller and Buyer desire to enter into this Agreement for the purchase and sale of the SNG for thirty (30) years on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the promises and the covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
TERM AND TERMINATION

1.1. Term.

(a) Subject to satisfaction of the conditions precedent set forth in Sections 8.1 (Initial Conditions Precedent) and 8.2 (Subsequent Conditions Precedent), this Agreement shall become effective upon execution by both Parties and, if not earlier terminated in accordance with Section 1.2 (Termination by Buyer) or Section 1.3 (Termination by Seller) below, this Agreement shall continue in effect for a term ending on the date that is the thirtieth (30th) anniversary of the Commercial Production Date. Notwithstanding the effectiveness of this Agreement, the Parties shall not have any binding obligations under this Agreement other than the confidentiality and cooperation obligations under Section 15.14 (Confidentiality) and Section 15.15 (Mutual Cooperation), respectively, and only the provisions set forth in Article XV (General Provisions) (excluding Section 15.2 (Non-Severability), Section 15.4 (Replacement of Indices) and Section 15.11 (Limitations on Damages)) shall be binding upon the Parties until all conditions precedent set forth in Sections 8.1 (Initial Conditions Precedent) and 8.2 (Subsequent Conditions Precedent) have been satisfied in full.

(b) If there is no Contract Savings Guaranty Shortfall Amount at the end of the Primary Term, or at the point in the Shortfall Term at which the Contract Savings Guaranty Shortfall Amount has been reduced to zero, Buyer shall have the option to extend this Agreement beyond the Primary Term or Shortfall Term, as the case may be, on the same terms and conditions as the Primary Term, for the following quantities and time periods, except that the O&M Component of the Adjusted Base Contract Price will be replaced with an O&M Component for the pass-through of the actual operating and maintenance expenses incurred by Seller for the relevant period, as determined by Seller's books and records and subject to verification by an independent advisor chosen by Buyer:

<u>Buyer Option</u>	<u>Monthly Quantity</u>
<u>Extension Years</u>	
1-5	Up to 80% of MCQ
6-10	Up to 60% of MCQ
11-15	Up to 40% of MCQ
16-20	Up to 20% of MCQ

Buyer may exercise the option described in this Section by giving Seller one hundred eighty (180) days' written notice prior to the end of the Primary Term or Shortfall Term, as the case may be.

1.2. Termination by Buyer. Buyer may terminate this Agreement prior to the end of the Term as follows:

(a) upon thirty (30) days' prior written notice to Seller if Seller fails to achieve any of Seller's Milestones by the Outside Completion Date for such Milestone; provided, however, that (i) the Outside Completion Date for any Milestone shall be extended (A) on a day for day basis for the effects of any Force Majeure or for any action or omission by Buyer or Marketer to the extent that such action or omission directly and materially adversely affected or affects Seller's ability to achieve such Milestone, and (B) to permit the execution and/or implementation of any Recovery Plan put into effect by Seller so long as the Recovery Plan shall be reasonably projected by the Independent Engineer to permit the Commercial Production Date to occur on or before the Long Stop Date; (ii) to be effective, any such notice must be delivered by Buyer to Seller not later than ninety (90) days after Buyer first has written notice from Seller of Seller's failure to meet such Milestone; and (iii) within such ninety (90) day period Buyer may notify Seller that it waives the then existing Milestone deadline for a specified period of time, after which Buyer will have a renewed right to terminate if the Milestone is not met at the end of the extension period (without the requirement that Buyer provide any additional advance notice);

(b) upon thirty (30) days' prior written notice to Seller if an Event of Default by Seller has occurred and is continuing (provided that such written notice shall be immediately effective upon delivery in the case of an Event of Default by Seller under Section 12.1(a) (Events of Default));

(c) immediately upon delivery of notice of termination as provided under Section 8.1 (Initial Conditions Precedent);

(d) upon thirty (30) days' prior written notice to Seller as provided in Section 13.4 (Maximum Duration); or

(e) upon thirty (30) days' prior written notice to Seller if the Commercial Production Date has not occurred by the Long Stop Date.

1.3. Termination by Seller. Seller may terminate this Agreement prior to the end of the Term:

(a) upon thirty (30) days' prior written notice to Buyer at any time after Seller determines through its engineering and design work or for any other reason that the construction of the Plant is not economically feasible or at any time that Seller determines that it will not be able to satisfy any of Seller's Milestones by the Target Completion Date for such Milestone and therefore abandoned;

(b) upon thirty (30) days' prior written notice to Buyer as provided in Section 13.4 (Maximum Duration); or

(c) upon thirty (30) days' prior written notice if an Event of Default of Buyer has occurred and is continuing (provided that such written notice shall be immediately effective upon delivery in the case of an Event of Default by Buyer under Section 12.1(a) (Events of Default)).

If Seller terminates this Agreement for any reason other than pursuant to Section 1.3(b) or (c) (Termination by Seller), Seller acknowledges and agrees that it shall not have the right to sell

SNG or Additional Products to any Person other than Buyer as a result or consequence of such termination.

Notwithstanding anything to the contrary in this Agreement, Seller's termination of this Agreement pursuant to this Section 1.3(a) (Termination by Seller) at any time prior to the Financial Closing Date or the commencement of construction of the Plant shall be without liability of any kind whatsoever to Buyer, except that Seller shall remain obligated to pay certain fees and expenses of Buyer that Seller has expressly agreed in advance to pay upon an early termination of this Agreement pursuant to Section 15.13 (Preparation of Agreement; Costs and Expenses) subject to the agreed upon maximum liability amount set forth in Section 15.13 (Preparation of Agreement; Costs and Expenses) that Seller has agreed to pay thereunder. For the avoidance of doubt, Seller shall not have any obligation under this Agreement for Remediation of or Remediation Costs relating to the Plant site (other than Remediation Costs for any environmental liability caused by Seller) if this Agreement is terminated prior to the commencement of construction of the Plant, so long as the Plant site is in substantially the same or better condition as it was prior to Seller's ownership.

1.4. Survival. The following rights and provisions shall survive the termination of this Agreement: (a) the rights of either Party that have accrued during the Term prior to the effective date of the termination of this Agreement, including the right to receive payment for amounts due in respect of the period prior to the effective date of the termination of this Agreement, (b) setoff rights, (c) the audit rights set forth in Section 9.6 (Audits), (d) dispute resolution provisions in Article X (Dispute Resolution), (e) the limitation of liabilities in Section 12.6 (Limitation on Liability), (f) the rights as to Collateral granted to either Party pursuant to Section 12.8(a) (Consumer Protection Reserve Account), (g) the right of either Party to indemnification by the other Party, (h) the governing law clause in Section 15.7 (Governing Law), and (i) the confidentiality obligations in Section 15.14 (Confidentiality).

ARTICLE II PURCHASE AND SALE

2.1. Purchase Obligation. Subject to the provisions of this Agreement, including, but not limited to Article XIII (Force Majeure), from the Commercial Production Date and thereafter during the Primary Term, Buyer shall be obligated to purchase and take or pay for the Annual Contract Quantity from Seller in accordance with this Article II (Purchase and Sale).

(a) Buyer shall purchase and take or pay for all of the Conforming SNG tendered at the Title Transfer Point by Seller on a monthly basis, up to the Applicable MCQ; provided, however, that if the Monthly Actual Annualized Average as of the first day of any month is less than the Monthly Annualized Average applicable as of such date, then the monthly quantity to be sold in such month and the subsequent following months shall be increased from the MCQ to the Increased MCQ for each such month until the Monthly Actual Annualized Average as of the beginning of any subsequent month is equal to or higher than the Monthly Annualized Average. Notwithstanding anything to the contrary in the foregoing, in each month Buyer shall be obligated to take and pay for all Conforming SNG tendered by Seller at the Title

Transfer Point for Buyer (or Marketer on behalf of Buyer) but in all cases subject to the Applicable MCQ and the ACQ limitations in each Contract Year. Buyer shall be liable for the cover damages described in Section 12.5 (Cover Damages) for any failure to take the Conforming SNG tendered by Seller in accordance with this Section 2.1(a) (Purchase Obligation) on any Gas Day. Buyer shall have no obligation to purchase or accept delivery of SNG or Conforming SNG that is not delivered to Buyer at the Title Transfer Point except to the extent that Buyer designates an alternative delivery point in accordance with Section 2.4(c) (Alternative Delivery During State Emergency).

(b) Buyer shall pay for Conforming SNG tendered by Seller to the Title Transfer Point up to the Applicable MCQ in any contract month and up to the ACQ in any Contract Year based on the product of (i) the applicable MDQ times (ii) the Monthly Invoice Contract Price. Notwithstanding anything herein to the contrary, Seller shall be solely responsible for any cost or charge from the Marketer or any Receiving Pipeline attributable to the failure of the SNG to satisfy minimum specifications or output requirements, including the Output Quality Requirements.

2.2. Manufacture, Delivery, Sale, and Acceptance.

(a) Manufacture. Seller shall operate the Plant in accordance with Good Industry Practice and will use Commercially Reasonable Efforts to manufacture and produce Conforming SNG up to its design capacity subject to (a) Planned Outages, (b) Force Majeure, (c) unplanned or forced outages not attributable to Seller's willful misconduct or failure to follow Good Industry Practice, or (d) as provided in Section 4.4 (Limitation on Delivery). Seller acknowledges and agrees that as soon as it has received notice from the Receiving Pipeline that SNG being delivered to the applicable pipeline by Seller is not Conforming SNG, Seller shall immediately stop production of SNG at Seller's expense until it can deliver Conforming SNG to the Receiving Pipeline. Seller or Seller's agent shall be responsible for monitoring the quality of the Conforming SNG and any charges imposed by any Marketer or Receiving Pipeline based on a failure of the Conforming SNG to meet the Output Quality Requirements. Any such charges shall be paid by Seller and shall not be recouped as an expense included in the Base Contract Price or Net Incremental Revenues.

(b) Delivery. Subject to the provisions of this Agreement, including, but not limited to Article XIII (Force Majeure) and Force Majeure, commencing on the Commercial Production Date and continuing thereafter during the Term, Seller shall sell Conforming SNG to Buyer, prior to selling Conforming SNG to any third party, each month at the Title Transfer Point in an amount up to the Applicable MCQ in any month (but not to exceed the ACQ in any Contract Year). Subject to the limitations in the Marketing and Services Agreement, the Parties may designate additional or different Title Transfer Points from time to time as recommended by the Marketer; provided, however that if firm transportation arrangements are not available in respect of any such proposed additional liquid market points, Marketer shall only be obligated to use its good faith and Commercial Reasonable Efforts to deliver to such liquid market points.

(c) Sale. Subject to Force Majeure and the sale of Incremental Production, Seller shall not sell or deliver SNG or Conforming SNG in any contract month to any Person other than Buyer (or to Marketer on behalf of Buyer and Seller in accordance with the Marketing

and Services Agreement); provided that any Conforming SNG up to the Applicable MCQ delivered to the Title Transfer Point for, or made available to, Buyer (or Marketer on behalf of Buyer) that Buyer (or Marketer on Buyer's behalf) fails to accept for any reason (including Force Majeure), may be sold by Seller in mitigation of its damages.

(d) Acceptance and Title Transfer. Buyer shall accept and assume title to Conforming SNG that is delivered to the Marketer at the Title Transfer Point and sold to Buyer in accordance with Section 2.1(a) (Purchase Obligation) or at the alternative delivery point designated by Buyer pursuant to Section 2.4(c) (Alternative Delivery During State Emergency). Seller shall transfer to Buyer title to any Conforming SNG that is delivered to the Marketer for Buyer's behalf at the Title Transfer Point.

2.3. Excess SNG Production. Any SNG produced by the Plant in any month in excess of the Applicable MCQ or in any Contract Year in excess of the ACQ shall be marketed and sold as Incremental Production by the Marketer in accordance with the Marketing and Services Agreement.

2.4. Third Party Marketing and Services. Marketer, Buyer and Seller will enter into the Marketing and Services Agreement, pursuant to which the Marketer will, *inter alia*, (a) accept deliveries of all Conforming SNG from the Plant at the Title Transfer Point; (b) sell such Conforming SNG into the market in accordance with Section 2.4(a) (Marketing Services) below; and (c) provide the accounting services described below. The initial Marketing and Services Agreement shall (i) provide for an initial term of ten (10) years from the CPD, subject to early termination for Marketer's breach or event of default thereunder and subject to the renewal options set forth therein; (ii) establish general parameters by which the Marketer will market the SNG for the Parties for their respective quantities; and (iii) permit termination thereof by either Buyer or Seller for Marketer's failure to meet performance standards agreed to by Buyer and Seller therein. At least one year prior to the expiration of the term of the initial Marketing and Services Agreement, the Parties shall meet to determine whether such Marketing and Services Agreement shall be renewed pursuant to the renewal options set forth therein or whether to consider proposals for a replacement Marketer. The Parties shall cooperate and coordinate with each other to ensure that a Marketing and Services Agreement as contemplated by and meeting the requirements of this Agreement is in place at all times during the Term.

(a) Marketing Services. The Marketer shall market and sell all SNG from the Plant tendered at the Title Transfer Point, in accordance with the terms and conditions set forth in, and subject to Force Majeure provisions of, the Marketing and Services Agreement, with the objective of obtaining the maximum price possible for the Parties. For the avoidance of doubt, on a monthly basis for each Contract Year, Buyer will purchase one hundred percent (100%) of the output of the Plant for each and every day of each month until Buyer shall have purchased the Applicable MCQ from Seller for each such month or until Buyer shall have purchased the ACQ for such Contract Year. Any amounts produced by the Plant in a given month in excess of the Applicable MCQ or in any Contract Year in excess of the ACQ will be sold by the Marketer on behalf of Seller as Incremental Production.

(b) Accounting Services. The Marketing and Services Agreement shall obligate Marketer to perform the following accounting services on a monthly basis:

(i) track the price received per MMBtu for the sale of SNG in each month and provide a calculation of the Monthly Weighted Average Market Price for each month;

(ii) track the quantities of Conforming SNG delivered to the Title Transfer Point;

(iii) track the revenues based on the Monthly Weighted Average Market Price (A) allocated to Buyer based on the MDQ of Conforming SNG and (B) allocated to Seller based on all Conforming SNG in excess of the MDQ, in each case for each month;

(iv) provide Buyer and Seller daily price, quantity and revenue information on a monthly basis, including a calculation of the Monthly Weighted Average Market Price for each month; and

(v) maintain books and records with respect to the calculation of the foregoing amounts and accounts, which books and records shall be subject to audit by both Buyer and Seller.

(c) Alternative Delivery During State Emergency. For purposes of enhancing state energy security, Seller acknowledges that the Marketing and Services Agreement will provide that Buyer may elect during a State Emergency to take delivery of Conforming SNG at the Title Transfer Point or, to the extent permitted by the Marketing and Services Agreement, at another location designated in writing by Buyer in lieu of having the Marketer sell such Conforming SNG in the market on Buyer's behalf. Notwithstanding the election of Buyer to take delivery of the Conforming SNG, the calculation of the Adjusted Market Differential in any month in which Buyer elects to take physical delivery of the Conforming SNG shall be calculated as if the Marketer had sold such Conforming SNG in the market at the applicable index price determined in accordance with the Marketing and Services Agreement. Buyer shall be solely responsible for arranging for distribution, transportation, and storage of the physical SNG purchased under this Agreement in accordance with this Section 2.4(c) (Alternative Delivery During State Emergency). Buyer shall be solely responsible for entering into appropriate distribution, transportation, storage and management contracts as defined in and contemplated by Section 15 of the Statute that are necessary for the delivery and storage of SNG after receipt of SNG at the Title Transfer Point and as contemplated by Section 22 of the Statute for collection of rates from Retail End Use Customers and for enforcing such contracts pursuant to Section 7.2 (Marketing and Services Agreements and Management Agreements). Buyer's failure to comply with any of its foregoing obligations shall not relieve Buyer of its obligation to purchase and pay for Conforming SNG that is made available to Buyer at the Title Transfer Point (or any applicable alternative delivery point).

(d) Replacement Marketer. If for any reason the Marketer is no longer able or willing to perform the services under the Marketing and Services Agreement on behalf of both

Parties or is in breach of its obligations thereunder, Buyer and Seller shall jointly cooperate with each other to find a replacement gas marketer to perform the services under the Marketing and Services Agreement. In the event that Buyer and Seller cannot agree upon a replacement Marketer, Buyer shall have the right to select the replacement Marketer. Buyer shall have the right to enter into an agreement with a replacement Marketer and Seller shall agree to become party to such agreement so long as the terms and conditions for the sale for SNG from the Plant on behalf of Buyer and Seller shall be identical in all material respects to the predecessor Marketing and Services Agreement. If the terms and conditions of any replacement marketing and services agreement otherwise varies from the original or immediate predecessor Marketing and Services Agreement, Buyer and Seller shall have the right to approve such new terms (which approval shall not be unreasonably withheld, conditioned or delayed by either Party). For the avoidance of doubt, Buyer will not be relieved from its purchase obligations under this Agreement if it is unable to find a suitable replacement Marketer, therefore Buyer retains the ultimate authority to select such replacement Marketer.

2.5. Contract Savings Guaranty. Over the course of the Primary Term, Seller guarantees that Buyer will realize the Contract Savings Guaranty Amount.

2.6. Contract Savings Reconciliation.

(a) At the end of the Primary Term (or the earlier date of termination of this Agreement), the Parties shall determine whether or not a Contract Savings Guaranty Shortfall Amount exists.

(b) If a Contract Savings Guaranty Shortfall Amount exists at the expiration of the Primary Term (or the earlier date of termination of this Agreement), Seller shall inform Buyer whether or not Seller will rebate Buyer the amount of such Contract Savings Guaranty Shortfall Amount in cash within thirty (30) days after the expiration of the Primary Term.

(c) If Seller rebates Buyer in cash for the Contract Savings Guaranty Shortfall Amount at the expiration of the Primary Term, Seller shall pay the Contract Savings Guaranty Shortfall Amount in cash within forty-five (45) day after the expiration of the Primary Term.

(d) If Seller does not rebate the Contract Savings Guaranty Shortfall Amount in cash at the expiration of the Primary Term, then Buyer shall, within sixty (60) days of receipt of Seller's written notice of its election not to rebate the Contract Savings Guaranty Shortfall Amount, notify Seller of Buyer's intent to either (i) extend the Term during which period of time Seller shall continue operations of the Plant in accordance with Good Industry Practice and continue to sell Conforming SNG to Buyer under this Agreement based on the Discounted Contract Price until the Contract Savings Guaranty Shortfall Amount has been reduced to zero (the "Shortfall Term") or (ii) require Seller to sell the Plant and apply the sale proceeds from such sale first to satisfy the Contract Savings Guaranty Shortfall Amount; provided that in all instances, Seller can elect to satisfy the Contract Savings Guaranty Shortfall Amount by a direct payment of any then remaining Contract Savings Guaranty Shortfall Amount to Buyer and provided, further, that no sale of the Plant can be required by Buyer without the DOE's consent, which consent shall not be unreasonably withheld or delayed, as provided in the Subordination

and Intercreditor Agreement. For the avoidance of doubt, a Shortfall Term will not impact any future renewal terms under this Agreement.

(e) In the event that this Agreement is terminated prior to the end of the Primary Term, if a Contract Savings Guaranty Shortfall Amount exists as of such earlier date of termination of this Agreement, Buyer's claims against Seller for any such savings amount shall be subordinated to the rights of the Financing Parties to be repaid in full for all amounts owing in connection with the DOE Guaranteed Financing.

2.7. Use of Slag. Seller agrees that Buyer shall have the right at its option to utilize (but not sell, market or distribute except to another agency or instrumentality of the state of Indiana) all slag generated by the Plant for road and other public infrastructure projects without any obligation to compensate Seller for such usage; provided that Buyer shall reimburse or pay Seller, as applicable, for any and all incremental costs incurred by Seller in effectuating the transfer of such slag from Seller's slag pile located on the Plant site to a location designated by Buyer. If Buyer does not intend to utilize any portion of slag generated by the Plant, then Buyer shall inform Seller of such intent and Seller shall have the right to sell any or all of such slag to any third party. Notwithstanding the foregoing, Buyer agrees that if Seller has identified a party willing to purchase the slag generated by the Plant for a term of one year or greater, then Seller shall grant Buyer a right of first offer to use such slag by providing written notice of such offer to Buyer. Within thirty (30) days after any such offer, Buyer shall give written notice to Seller of the amounts of slag it desires to use and the associated delivery schedule. Any amount of slag not identified by Buyer to be used in accordance with this Section 2.7 (Use of Slag) may be sold by Seller to a third party purchaser. At the expiry of the term of any such third party contract, Seller shall once again offer Buyer the right of first offer by providing written notice to Buyer, and Buyer shall have thirty (30) days to either accept or reject such offer. The net revenues generated from the sale of slag by Seller to any third party purchasers shall be included in the calculation of Incremental Revenues. All slag which is not sold to third parties will be considered waste and any costs relating to processing and/or disposal will be included in the O&M Component. Transportation costs pertaining to slag which is sold to third party purchasers shall be offset against revenues for sale of slag to third parties except to the extent that Seller has already included such costs pursuant to the O&M Component.

2.8. Security for Contract Savings Guaranty Amount. Seller shall grant Buyer a lien over the Plant and the other non-cash assets of Seller to secure the Contract Savings Guaranty Shortfall Amount existing as of the end of the Primary Term (or the earlier date of expiration of this Agreement, subject to the senior prior rights of the Financing Parties providing the DOE Guaranteed Financing), which lien will not be recorded in any case until the DOE Guaranteed Financing has been repaid in full and which lien will not be effective unless and until a Contract Savings Guaranty Shortfall Amount remains unpaid by Seller at the expiration of the Primary Term. The lien and security interest contemplated by this Section 2.8 (Security for Contract Savings Guaranty Amount) shall be documented in a Mortgage and Security Agreement in form and substance mutually agreeable to Seller and Buyer, which Mortgage and Security Agreement will be executed and delivered by Seller concurrently with this Agreement, provided that any lien documents executed by Seller in advance of the repayment in full of the DOE Guaranteed Financing must specifically provide

that they are not effective unless and until the date that the DOE Guaranteed Financing has been repaid in full. Buyer shall have the right to delivery the original copy of the Mortgage and Security Agreement evidencing such lien to the trustee acting as the collateral agent in connection with the DOE Guaranteed Financing to hold in escrow with instructions to record upon payment in full of the DOE Guaranteed Financing. Such lien and security interest shall include all accessions to and substitutions and replacements for and proceeds of, any of such collateral. Subject to the foregoing, such Mortgage and Security Agreement shall include an agreement of Seller to promptly from time to time give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, instruments, documents, control agreements, pledges, escrow agreements or consents or other papers as may be necessary or desirable in the reasonable judgment of Buyer to create, preserve, perfect, maintain the perfection of, reinstate the perfection of, or validate, the lien and security interest granted pursuant thereto or to enable Buyer to exercise and enforce its rights thereunder with respect to such lien and security interest. The Mortgage and Security Agreement granted in favor of Buyer under this Agreement shall be granted in favor of Buyer (or to a collateral agent acting on its behalf) solely to secure the Contract Savings Guaranty Amount existing as of the end of the Primary Term (or the earlier date of expiration of this Agreement, subject to the senior prior rights of the DOE). If there are any amounts outstanding under the DOE Guaranteed Financing, the Mortgage and Security Agreement granted in favor of Buyer (or to a collateral agent acting on its behalf) shall be subordinated to the lien and mortgage and security agreement executed in favor of the Financing Parties providing the DOE Guaranteed Financing to secure amounts outstanding under the DOE Guaranteed Financing pursuant to a subordination and intercreditor agreement in substantially the form of Exhibit A (the "Subordination and Intercreditor Agreement").

ARTICLE III COMMERCIAL PRODUCTION

3.1. Determination of Commercial Production Date. Seller shall provide Buyer with at least sixty (60) days' prior written notice of the proposed date of commencement of performance testing of the Plant and at least three (3) Business Days' written notice prior to the conduct of the initial Production Test and each subsequent Production Test; and shall permit Buyer to be present and to monitor such tests; provided, that Buyer's presence or monitoring of such Production Test shall not be a prerequisite to Seller's ability to commence and conduct a Production Test.

3.2. Independent Engineer Certification. The Independent Engineer shall certify the results of each Production Test conducted pursuant to Section 3.1 (Determination of Commercial Production Date).

3.3. Notices by Seller and Buyer During Period Prior to the Commercial Production Date.

(a) Seller shall provide Buyer with a report, no less frequently than quarterly, setting forth in reasonable detail, Seller's progress with respect to financing, permitting and construction of the Plant and all activities relating to commencement of commercial production

of SNG. Without limiting the generality of the foregoing, Seller shall provide Buyer with timely written notices of the following events and information (including copies of all relevant documentation), specifying the subject matter thereof in reasonable detail:

(i) the date on which Seller receives written notice from the DOE that the DOE has decided not to proceed with negotiations or a commitment on a loan guarantee with respect to the financing of the Project;

(ii) the date on which the DOE issues a Record of Decision concerning an Environmental Impact Statement on the Project, if applicable;

(iii) the date, if any, on which Seller receives a commitment for the Federal Loan Guarantee or the DOE Guaranteed Financing;

(iv) the date on which the Construction Commencement Milestone is achieved;

(v) the date and nature of any suspension or substantial curtailment of material work under the EPC Contract or the suspension or substantial curtailment of funding under the Equity Commitments or the DOE Guaranteed Financing;

(vi) commencing twelve (12) months prior to the expected Commercial Production Date, written notice every month of the date on which the Commercial Production Date is projected by Seller to occur (based on Seller's most recent projections as of each such notice);

(vii) the date of execution of any interconnect agreement with the Receiving Pipeline;

(viii) the date of execution of any contract or agreement for the sale of Additional Products or Incremental Production;

(ix) the date of execution of any contract or agreement for fuel or any other material contract or agreement

(x) the date of first production of SNG from any portion of the Plant;

(xi) the date that is thirty (30) days prior to the projected start of the Production Test;

(xii) the date that is three (3) Business Days prior to the actual start of the initial Production Test;

(xiii) not later than twenty-four (24) hours after receipt of written certification from the Independent Engineer of the satisfactory completion of the Production Test, notice and the results thereof, and the proposed Commercial Production Date;

(xiv) promptly, but in no event later than five (5) Business Days after the failure to successfully complete any Milestone by its Target Completion Date or Outside Completion Date, a written notice of such failure including any relevant information as to the cause of such failure;

(xv) the occurrence of the Commercial Production Date.

(b) Buyer shall provide Seller with timely written notices of the following events and information, specifying the subject matter thereof in reasonable detail:

(i) the date on which Buyer has put in place all gas management, distribution, and transportation arrangements required by Section 7.2 (Marketing and Services Agreements) and the terms of such service; and

(ii) the date on which each material Governmental Approval for Buyer's performance of its obligations under this Agreement has been obtained;

3.4. Seller Milestone Target Dates. Subject to Article XIII (Force Majeure), Seller shall use Commercially Reasonable Efforts to complete each of the Milestones identified in the following table on or before the Target Completion Date opposite such Milestone and shall be required to complete each Milestone by the applicable Outside Completion Date, (provided that each Milestone shall be extended on a day for day basis for each day after June 30, 2011 that issuance of the IURC Order is delayed beyond such date):

<u>Milestone</u>	<u>Target Completion Date</u>	<u>Outside Completion Date</u>
Financial Closing and Construction Commencement	December 31, 2011	June 30, 2014
Satisfactory Passage of the Production Test	June 30, 2015	March 31, 2018

The Outside Completion Dates above will also be extended to the extent that achievement thereof is prevented or delayed as a result of Force Majeure; provided, that Seller delivers and implements a Recovery Plan in accordance with Section 1.2(a) (Termination by Buyer) that is reasonably projected by the Independent Engineer to permit the Commercial Production Date to occur on or before the Long Stop Date.

ARTICLE IV OPERATION AND MAINTENANCE

4.1. Quality. Seller shall, consistent with Good Industry Practice, at its cost and using such methods and means in its sole discretion, manufacture, compress, dehydrate, process, treat or condition the SNG so as to meet the applicable quality standards required for delivery of Conforming SNG to Marketer and as required by the Receiving Pipeline (collectively, the "Output Quality Requirements").

4.2. Delivery Point. Seller shall deliver to Buyer the Conforming SNG at the Title Transfer Point. No delivery shall be deemed made if the SNG is not accepted at the Title Transfer Point because it does not conform.

4.3. Plant Design and Maintenance. Seller agrees that the EPC Contract shall require the construction of a Plant with the components specified on Schedule 4.3 consistent with Good Industry Practice. Seller shall use Commercially Reasonable Efforts to maintain the Plant in good and efficient working order at all times in accordance with Good Industry Practice (including training of employees, safety procedures, recordkeeping, scheduling maintenance and major maintenance expenditures) and in such manner that the Plant should be able at all times during the Term, be able to produce the amount of SNG contemplated to be delivered by Seller to Buyer under this Agreement (subject to Section 2.2 (Manufacture, Delivery, Sale, and Acceptance) and Section 4.4 (Limitation on Delivery)). Seller will apply for, obtain and maintain, at its cost, all necessary Governmental Approvals (and renewals of the same) required to operate the Plant and to sell and deliver Conforming SNG to Buyer; provided that Buyer will apply for, obtain and maintain, at its cost, all necessary Governmental Approvals (and renewals of the same) required to accept Conforming SNG from Seller. In addition, Seller shall use Commercially Reasonable Efforts to ensure that all operations and maintenance employees at the Plant will be trained and certified through a training program that is in accordance with Good Industry Practice and meets all federal, state and local certification requirements.

4.4. Limitation on Delivery. Seller shall not be obligated to deliver Conforming SNG hereunder or to produce SNG at a rate or a quantity which in the opinion of Seller, acting as a reasonably prudent operator, is not consistent with Good Industry Practice.

4.5. Annual Meeting. At least one year prior to the expected Commercial Production Date, the Parties shall establish the Coordination Committee which will meet to discuss, coordinate and agree to relevant issues and decisions under this Agreement, including day-to-day communications, proposed changes to the Scheduling and Nominating Protocol, reporting requirements, costs relating to compliance with changes in Governmental Requirements, fuel costs (and any other costs that are passed through to Buyer in the calculation of the Adjusted Base Contract Price), selection of an Independent Engineer when necessary under this Agreement (consistent with the procedure set forth in the definition of Independent Engineer), the adequacy of pipeline transportation to receive and deliver Seller's SNG at the Title Transfer Point, and such other matters as the Parties deem appropriate. The Coordination Committee shall agree upon such relevant issues and determine such decisions at least six (6) months prior to the expected Commercial Production Date.

(a) Each Party shall have the right to have other representatives and employees present at any meeting of the Coordination Committee to discuss issues and matters requiring input from the Coordination Committee. Any individual appointed as a representative of a Party to the Coordination Committee may be removed and a replacement thereof appointed by such Party at any time and from time to time upon written notice to the other Party. The Marketer will also be included in any meetings of the Coordination Committee to the extent necessary to discuss and resolve relevant issues impacting the Marketing and Services Agreement.

(b) The Coordination Committee shall meet from time to time upon fourteen (14) days' prior written notice by Seller or Buyer at the Plant or a mutually acceptable location.

In May of each year during the Term, after the information in respect of the immediately ended Contract Year is available to Buyer and Seller, the Coordination Committee shall meet to discuss, among other things, but not limited to, (i) the forecast of projected Net Incremental Revenues for the following Contract Year, (ii) the current balance in the Cumulative Real Contract Savings Tracking Account, (iii) day-to-day communications, (iv) the scheduling of meetings, (v) any proposed changes to the Scheduling and Nominating Protocol, (vi) reporting requirements, (vii) the past and future operational reliability of the Plant, and (viii) the proposed Annual Fuel Procurement Plan and other matters identified in Section 4.6 (Fuel Procurement Plans). Pending a recommendation as to any dispute on matters before the Coordination Committee, Buyer acknowledges and agrees that nothing in the foregoing shall limit or affect Seller's obligation to operate the Plant in accordance with Good Industry Practice and Seller's right to take such actions as it deems reasonable necessary to avoid the loss of life or damage to the Plant. Meetings of the Coordination Committee (other than the annual meeting to be held in May which shall be conducted in person) may be conducted in person or by conference telephone calls in which all participants can hear all other participants and be heard by them.

(c) Each Party acknowledges and agrees that in no event shall any recommendation of the Coordination Committee constitute an amendment, supplement or modification of the terms and conditions of this Agreement.

4.6. Fuel Procurement Plans.

(a) Annual Fuel Outlook. In connection with each Annual Meeting, Seller shall prepare and present to Buyer the Annual Fuel Outlook no later than ten (10) Business Days prior to the Annual Meeting. The Annual Fuel Outlook shall (i) describe the Plant's current and projected fuel inventories; (ii) indicate any expected changes in fuel inventories, (iii) describe, assess and analyze pricing trends of various Illinois basin coals and the coal market in general; (iv) analyze and forecast potential sources and prices of petcoke, how various levels of petroleum coke could be used and how use of petcoke would impact the forecast price for SNG and the Indiana coal industry; and (v) propose to Buyer an annual fuel procurement plan covering the contents described in Section 4.6(b) (Contents of the Annual Fuel Procurement Plan) below for the following Contract Year (as approved by Buyer, such approved annual plan, the "Annual Fuel Procurement Plan"). Seller shall deliver the initial Annual Fuel Procurement Plan no later than twenty-four (24) months prior to the expected CPD. Buyer shall review, approve or provide comments to the initial Annual Fuel Procurement Plan within twenty-one (21) months of the expected CPD. Seller shall consider in good faith the comments and recommendations of Buyer and shall revise the initial Annual Fuel Procurement Plan within thirty (30) days and deliver the same to Buyer. Upon delivery of such revised plan, Buyer shall have thirty (30) days to review and approve the revised plan; provided that the initial Annual Fuel Procurement Plan must be approved no later than eighteen (18) months prior to the CPD. Beginning with the second full Contract Year after the CPD and each Contract Year thereafter, Seller shall submit to Buyer an Annual Fuel Procurement Plan no later than six (6) months prior to the beginning of such Contract Year. Buyer shall review, approve or provide comments to such Annual Fuel Procurement Plan within thirty (30) days following receipt from Seller. Seller shall consider in good faith the comments and recommendations of Buyer and shall revise the Annual Fuel Procurement Plan within thirty (30) days and deliver the same to Buyer. Upon delivery of such revised plan, Buyer shall have thirty (30) days to review and approve the revised

plan; provided that the Annual Fuel Procurement Plan must be approved no later than ninety (90) days prior to the beginning of such Contract Year.

(b) Contents of the Annual Fuel Procurement Plan. Seller's proposed annual fuel procurement plan for each Contract Year shall (i) specify the percentage of any petroleum coke based on annual fuel utilization totals to be used in the fuel blend (it being agreed that at the discretion of Seller, Seller may include up to fifteen (15%) of annual total use (on a dry ton basis) of petroleum coke in its Annual Fuel Procurement Plan so long as it does not result in any economic detriment to Retail End Use Customers); (ii) the mix of fuel to be acquired pursuant to longer term contracts with a term of more than three (3) years, shorter term contracts with a term of one (1) – three (3) years, and spot purchases; and (iii) the amount of coal to be supplied from reserves owned or controlled by Seller in accordance with Section 4.6(f) (Special Requirement Applicable to Seller Owned Coal Reserves). For purposes of clause (i), the Parties agree that Seller's right to include up to fifteen (15%) of annual total use (on a dry ton basis) of petroleum coke in its Annual Fuel Procurement Plan shall be permitted so long as Seller provides Buyer with reasonable evidence that the cost to consumers for using such percentage of petroleum coke is lower than the cost of using a one hundred percent (100%) Indiana coal fuel plan. Seller shall develop the Annual Fuel Procurement Plan in good faith, bearing in mind the objective of balancing (A) the need to minimize the value of the Fuel Component of the Base Contract Price (B) the need to manage volatility of the Fuel Component of the Base Contract Price and (C) the operational limits and economics of operating and maintaining the Plant. In addition to identifying proposed procurement of coal and petcoke, the Annual Fuel Procurement Plan will include a five (5) year look ahead of planned fuel procurement.

(c) Approval of the Annual Fuel Procurement Plan.

(i) Buyer shall confirm or reject Seller's proposed Annual Fuel Procurement Plan by prompt written notice to Seller; provided that Buyer's failure to confirm or reject Seller's proposed plan within thirty (30) days of receipt of Seller's proposed plans shall be deemed an approval of such Annual Fuel Procurement Plan. Any notice of rejection of Seller's proposed Annual Fuel Procurement Plan shall be accompanied by a reasonably detailed explanation and justification for the reason(s) for such disapproval.

(ii) If Buyer timely provides notice of rejection of Seller's proposed Annual Fuel Procurement Plan, the Parties shall negotiate the contents of the Annual Fuel Procurement Plan in good faith. The Parties agree that at the discretion of Buyer and subject to Section 4.6(g) (Consequences of Use of Petroleum Coke) and to any limitations imposed by applicable Governmental Requirements or contained in any applicable Governmental Approvals, Buyer may require that petroleum coke be used to supply up to forty-nine percent (49%) of the Plant's fuel input (on a dry ton basis) on an annual basis unless limited by the design of the Plant and the opportunity for savings to Retail End Use Customers; provided that, in no event shall coal provide less than fifty-one percent (51%) of the fuel input (on a dry ton basis) for the Plant on an annual basis.

(iii) If the Parties are unable to agree upon a mutually acceptable Annual Fuel Procurement Plan within ten (10) Business Days after Buyer's rejection of Seller's proposed Annual Fuel Procurement Plan, the Parties shall submit the disputed elements of the Annual Fuel Procurement Plan to the Fuel Expert for resolution, with the cost of the Fuel Expert to be borne equally by the Parties; provided that, in any case, the Annual Fuel Procurement Plan must incorporate any previously agreed upon long-term fuel contracts that are binding upon Seller and which are part of a Fuel Plan previously agreed to by the Parties.

(iv) If there is a Fuel Plan Deadlock and until the Fuel Expert has rendered his final decision, (A) all pre-existing long-term contracts shall remain in place and (B) the balance of the Plant's fuel needs during the period of such dispute shall be purchased by Seller on the market in accordance with Good Industry Practice and using Commercially Reasonable Efforts to minimize the Fuel Component on a month-to-month basis.

(d) Periodic Analysis of Fuel Plans. In addition to the Annual Fuel Outlook, Seller covenants and agrees to provide to Buyer on a basis no more frequently than quarterly in such detail as Buyer may reasonably request an analysis of the consequences of different levels of petroleum coke use and Seller owned coal reserve use as fuel inputs for the purposes of determining whether (and in what amounts) Seller shall use petroleum coke and the impact of the usage of Seller owned coal reserves. Such analyses shall include an assessment of the prospective SNG price implications of using petroleum coke and/or Seller owned coal as fuel for the Plant, the health of the Indiana coal industry, and other statewide economic impacts.

(e) Buyer's Right to Direct Use of Petroleum Coke. Notwithstanding the applicable Annual Fuel Procurement Plan, Buyer may require that the level of petroleum coke to be used in the fuel mix increase or decrease during any particular month, subject to any obligations or limitations imposed on Seller by any pre-existing fuel supply agreements; provided that Buyer may change the level of petroleum coke to be used in the fuel mix no more than two (2) times per year; and provided further that, in no event shall coal provide less than fifty-one percent (51%) of the fuel input (on a dry ton basis) for the Plant on an annual basis. Seller shall implement such Buyer directed adjustments to the Annual Fuel Procurement Plan as soon as practicable.

(f) Special Requirement Applicable to Seller Owned Coal Reserves. Seller shall notify Buyer immediately in writing at any point in time that it enters into any agreement or investment relating to a potential supplier of coal or petcoke to the Plant. Coal or petcoke to be supplied from reserves or production capacity owned or controlled by Seller, or in which Seller has a financial interest must be approved in advance by Buyer and incorporated in the Annual Fuel Procurement Plan in accordance with Section 4.6(b) (Contents of the Annual Fuel Procurement Plan). Seller shall propose the use of Seller-owned coal reserves or petcoke supplies with the objective of lowering or stabilizing the Fuel Component of the Base Contract Price. Upon Buyer's approval of the usage of any Seller owned or controlled coal reserves or petcoke sources, including approval of any associated coal supply contract or petcoke supply agreement entered into between Seller and its Affiliate or proposed cost-recovery formula, the usage of such approved coal reserves or petcoke supply shall be deemed to be approved as part

of subsequent Annual Fuel Procurement Plan for the duration of the approved period of such usage of Seller owned or controlled coal reserves. The price paid for coal or petcoke to be supplied from reserves owned or controlled by Seller shall be at Seller's cost without any profit (other than a return on capital as negotiated and approved by Buyer) and shall not exceed the then current market price for similar coal or petcoke under contracts with similar terms and conditions, as determined by a competitive bidding process conducted by Seller at its cost and expense. Buyer shall have the option to require that such competitive bidding process be reviewed by an independent third party expert chosen by Buyer, at Seller's cost; provided that, such independent third party expert will meet minimum experience requirements mutually acceptable to the Parties. In the event that such independent third party expert determines that such competitive bidding process does not result in a valid determination of the then current market price for similar coal, Seller shall not be permitted to use such coal until Buyer is satisfied that the price meets the requirements described in this Section.

(g) Consequences of Use of Petroleum Coke. In the event that Buyer directs a change to the applicable Annual Fuel Procurement Plan accordance with clauses (b), (c) and (e) of this Section 4.6 (Fuel Procurement Plans), the Monthly Invoice Contract Price shall be adjusted to compensate Seller for the amount of the Indiana tax credit forgone because of the implementation of such change that is not otherwise recouped by Seller through (i) additional Positive Adjusted Market Differential to be applied to increase the Adjusted Base Contract Price resulting from the use of petroleum coke as a fuel input and (ii) additional positive Net Incremental Revenues resulting from the implementation of petroleum coke as a fuel input, in either case, where such "additional" Positive Adjusted Market Differential refers to amounts over and above what would have occurred relative to the amount of petroleum coke recommended by Seller in its proposed Annual Fuel Procurement Plan (up to the fifteen percent (15%) annual basis limitation described in Section 4.6(b) (Contents of the Annual Fuel Procurement Plan) above).

4.7. Scheduling and Nominating Protocol. The Marketing and Services Agreement shall set forth the Scheduling and Nominating Protocol. The Marketer, Seller, and Buyer may further refine or modify the Scheduling and Nominating Protocol from time to time by mutual written agreement. Any penalty either Party incurs to a third party as a result of a breach of the Scheduling and Nominating Protocol shall be the responsibility and obligation of the Party that caused the breach and shall not be included in the determination of Base Contract Price.

4.8. Transportation Contracts. Prior to the CPD, Seller shall enter into a firm capacity transportation agreement reasonably acceptable to Buyer for firm transportation service with respect to the delivery of SNG from the Plant to the Title Transfer Points agreed to by the Parties with input from the Marketer on the optimal delivery points for sales of SNG from the Plant. Except as otherwise provided in this Agreement, including without limitation, in Section 5.2 "D" (Pipeline Transportation Charge), all of the costs incurred by Seller in connection with such transportation agreements (including capacity charges, pipeline commodity transportation costs, and any associated fuel costs) shall be included in the Pipeline Transportation Charge Component of the Base Contract Price.

4.9. Operational Balancing. Buyer shall be liable for any payments and balancing penalties assessed against Seller by the Receiving Pipeline or otherwise payable by Seller pursuant to its gas transportation agreements if and when Buyer fails to take delivery of any Conforming SNG that has been nominated for delivery to Buyer by Seller in accordance with the Scheduling and Nominating Protocol. All such imbalance payments and penalties incurred by Seller with respect to imbalances resulting from Buyer's failure to take deliveries of Conforming SNG that has been nominated to Buyer shall be added to the O&M Component of the Base Contract Price in the month incurred. Seller shall be liable for all imbalance payments and penalties incurred by Buyer, if any, with respect to imbalances resulting from Seller's failure to deliver SNG in the quantities nominated. Seller shall also be liable for all other such payments and penalties assessed in connection with the imbalances resulting from any or associated with the nomination of any Incremental Production. Seller shall use Commercially Reasonable Efforts to eliminate and/or mitigate imbalances with the Receiving Pipeline.

4.10. Buyer's Right to Inspect Plant. At no cost to Seller, and with not less than one Business Day's prior written notice, Buyer may engage the Inspector to inspect the Plant (and the records maintained and procedures followed in accordance with Section 4.12 (Operating Records and Procedures Manuals) during normal business hours no more than once every two (2) years, except Buyer shall have the right to inspect at its option if (i) the Plant is shut down for four (4) consecutive weeks other than for scheduled maintenance or Force Majeure or (ii) Seller fails to deliver at least fifty percent (50%) of the MCQ during three (3) consecutive months; provided that Buyer's right to inspect the Plant shall be limited to such activities reasonably necessary to ensure Seller's compliance with its obligation to operate and maintain the Plant in accordance with Good Industry Practices and shall be subject to the Inspector's compliance with Seller's Site safety and security regulations. In the event that the Inspector reasonably determines that Seller has failed to operate and maintain the Plant in accordance with Good Industry Practices, Seller shall implement the recommendations of the Inspector to operate and maintain the Plant in accordance with Good Industry Practices and any disputes concerning the need to implement recommendations made by the Inspector shall be resolved in accordance with Section 10.4 (Arbitration). Notwithstanding the foregoing, Buyer shall not have the right to dictate the operational and maintenance obligations undertaken by Seller in the ordinary course of business.

4.11. SNG Title Transfer Point Data. Seller shall provide to Buyer, within five (5) Business Days' of receipt of Buyer's request and during each inspection described in Section 4.10 (Buyer's Right to Inspect Plant), detailed reports of Seller's data relating to the amount and quality of SNG delivered, and all related supporting documentation, including all information required to understand the basis for determining the amount of SNG delivered from the project to address related commercial and technical requirements and any adjustments or reconciliation of this data with other parties engaged in the sale of SNG from the Plant.

4.12. Operating Records and Procedures Manuals.

(a) Seller shall prepare and maintain daily operating logs, records and reports documenting the operation and maintenance of the Plant consistent with Good Industry Practices and the DOE Financing. Such operating data shall include meter and gauge readings, maintenance records, inspection reports, spare parts inventories and fuel records and information known to Seller regarding the Plant's availability, outages, circuit breaker trip operations requiring a manual reset, and any other significant events related to the operation and maintenance of the Plant. Seller shall also prepare reports and data which are related to the maintenance of any hazardous materials on the Plant site in a manner complying with Applicable Laws and shall maintain as-built drawings and update specifications, lists and other documents provided to Seller by the BPC Contractor in the manner provided in this Section. To the extent consistent with Good Industry Practice, Seller shall keep accurate records of any accident or other occurrence at the Plant site that results in injury to persons or damage to property. Seller shall implement a Plant Cost Accounting System which collects actual expenditures and support reporting of expenditures as required in other parts of this Agreement.

(b) Seller shall retain and preserve all records, reports, documents and data collected or created in accordance with Section 4.12(a); provided that in the case of any routine operating records, Seller shall only be obligated to retain same for a period of three (3) years from the end of the Contract Year in which such operating records were created. Notwithstanding the foregoing, Seller shall notify Buyer in writing at least sixty (60) days prior to the destruction or other disposition by Seller of any such routine operating records.

(c) Seller shall maintain Plant operations and maintenance procedures manuals and plans consistent with Good Industry Practice, which shall include administrative procedures, environmental, health and safety procedures, start-up procedures, a quality plan, personnel and training records, recommended spare parts manual, and documentation provided by technology and equipment suppliers. The operation and maintenance procedures manual shall include, but shall not be limited to: (i) operating instruction and procedures, (ii) maintenance instruction and procedures, (iii) organization and reporting procedures, (iv) correspondence and review procedures, (v) procurement and contracting procedures, (vi) accounting, bookkeeping and recordkeeping systems, (vii) personnel policies for Seller's activities at the Plant site, (viii) laboratory procedures, (ix) safety procedures and instructions, (x) administration procedures, (xi) incident reporting procedures, (xii) security procedures and instructions, (xiii) performance testing procedures, (xiv) community response plan, (xv) emergency response plan, (xvi) environmental management plan, including spill prevention and waste disposal plan; (xvii) staffing plan and organization, including qualification and training requirements; (xviii) risk management plan and risk register; (xix) reporting plan, including plans to produce monthly and annual technical and financial reports to be issued to Buyer; (xx) community response plan, (xxi) emergency response plan and (xxii) environmental management plan, including spill prevention and waste disposal plan.

(d) Seller shall prepare and maintain an annual Plant Operations and Maintenance Plan consistent with Good Industry Practice. The Plant Operations and Maintenance Plan shall include, but shall not be limited to: (i) detailed operating maintenance budgets, (ii) spare parts utilization and replenishment, (iii) training plans, (iv) maintenance and outage planning including routine inspections, repairs and replacements, (v) plans for securing

technology support from suppliers and consultants and (vi) procurement plan for equipment, materials and outside services.

ARTICLE V PRICE

5.1. Contract Price. Commencing as of the Commercial Production Date and continuing during the Term, for each month of production of Conforming SNG, Buyer agrees to pay Seller an amount equal to the product of (i) the Monthly Invoice Contract Price, times (ii) the total MMBtus of Conforming SNG delivered or made available to the Title Transfer Point for Buyer's account up to the Applicable MCQ as provided in this Agreement, up to the ACQ on an annual basis. Subject to Article XIII (Force Majeure), Buyer's failure to comply with the foregoing obligation will result in liability to Seller as described in Section 12.5 (Cover Damages).

5.2. Determination of Base Contract Price. The Base Contract Price shall be established at the Commercial Production Date using a four-component formula comprised of each of the Capital Component, O&M Component, Fuel Component and Pipeline Transportation Charge as further described below, and the Base Contract Price shall be adjusted in any month for any changes to any of the components (except the Capital Component) in such month:

$$\text{Base Contract Price} = A + B + C + D$$

Where:

"A" is the Capital Component. The Capital Component is fixed at \$3.50 per MMBtu in nominal dollars.

"B" is the O&M Component. The O&M Component shall initially be \$1.88 per MMBtu in 2008 dollars and will be subject to annual adjustment. The O&M component is comprised of those costs described on Schedule 5.2. The O&M Component excludes all costs (including without limitation, any operating and maintenance costs and any general and administrative costs) related to Net Incremental Revenues, Additional Products and/or Incremental Production and the costs described in Schedule 5.4(c) related to Net CO₂ Revenues. The annual adjustment will occur irrespective of the actual O&M Expenses incurred by Seller in any Contract Year, commencing on the first day of such Contract Year based on the changes in the O&M Indices for the previous Contract Year, unless adjusted pursuant to Section 5.5(b) (Procedure for Review and Adjustment of the O&M Component). In addition, the O&M Component may be reviewed and revised periodically as set forth in Section 5.5 (Special Adjustments to Base Contract Price). The O&M Component will exclude depreciation expenses, sales and marketing expense (including any administrative costs of the Marketer), costs to administer this Agreement by Seller, any interest and other costs related to financing (other than financing which is on then prevailing market terms at a then prevailing market interest rate and which is exclusively used to provide working capital) and any interest, fines, penalties or assessments imposed on Seller for its failure to comply with its agreements or with

any Governmental Requirements. The O&M Component shall be adjusted annually based on the below basket of indices:

O&M Indices		
Category	% of O&M	Indices
Labor	40%	Employment Cost Index (Midwest)
Catalyst	8%	Producer Price Index WPU 102504 – Nickel Alloy Mill Shapes
Chemicals & Lubricants	12%	Producer Price Index WPU 061 – Industrial Chemicals
Maintenance Materials	15%	Producer Price Index WPU 101506 – Stainless Steel, Carbon, Alloy
Materials & Misc.	10%	Producer Price Index WPU 1149 – Miscellaneous General Purpose Equipment
Refractory	15%	Producer Price Index WPU 1353 – Refractory, non-clay
	100%	

Seller will maintain detailed, line item records of its calculation of each item comprising the O&M Component for review by Buyer and/or the Independent Engineer as described in this Agreement.

"C" is the Fuel Component. On and after the Commercial Production Date, the Fuel Component for each month shall be established based on the actual fuel costs incurred (expensed) by Seller in accordance with the Annual Fuel Procurement Plan described in Section 4.6 (Fuel Procurement Plans) during each month and the Btu content for each such month in accordance with the formula below:

$$\{ (\$/MMBtu \text{ delivered fuel cost}) \times \{0.965 \text{ fuel allocation to SNG}\} \} / \{ \text{Efficiency Percentage} \}$$

The Fuel Component shall be determined on a monthly basis pursuant to Schedule 5.2.

"D" is the Pipeline Transportation Charge. Seller shall pay for the cost of pipeline transportation to the Title Transfer Points and the aggregate monthly actual interstate and intrastate pipeline transportation costs (including all applicable capacity charges, pipeline commodity transportation costs and associated fuel costs) based on applicable pipeline tariff rates for transportation service from the Plant to the Title Transfer Point (collectively, the

"Pipeline Transportation Charge"), and the costs, other than any cost or charge due to the quality of the Conforming SNG delivered from the Plant (including relating to compression) and any demand charge or other charge relating to a failure to meet the Output Quality Requirements under an agreement with a Marketer or the Receiving Pipeline, directly related to Conforming SNG actually delivered to Buyer will be included in the Base Contract Price; provided that, (i) in the event Buyer and Marketer elect in any month for an Operational Agency structure under the Marketing and Services Agreement, the Pipeline Transportation Charge shall include any demand charges and variable transportation charges required to be paid to the pipeline and (ii) in the event Buyer and Marketer elect in any month for an Asset Management Agreement structure under the Marketing and Services Agreement, the Pipeline Transportation Charge shall not include any variable transportation charges required to be paid to the pipeline as these charges shall be paid by the Marketer.

5.3. Adjustments to Base Contract Price for New Taxes and Change in Governmental Requirements.

(a) Adjustments for Payment of New Taxes. Seller shall pay or cause to be paid all Excluded Taxes, without reimbursement by Buyer or inclusion in any adjustment to the Base Contract Price. All New Taxes relating to the production of Conforming SNG sold to Buyer imposed on Seller shall be included in the calculation of the Adjusted Base Contract Price; provided, however, that any adjustment of the Base Contract Price for New Taxes shall be net of any offsetting Tax benefits resulting from New Taxes. As soon as reasonably possible after Seller is aware of any New Taxes, Seller will notify Buyer in writing of such New Taxes, as well as an estimate of the economic effects of such New Taxes. Buyer shall be responsible for Buyer's share of all New Taxes other than Excluded Taxes, regardless of whether assessed before or after the Title Transfer Point, including, but not limited to, Buyer's share of all sales, use or excise taxes; provided that, payment for Buyer's share of all New Taxes other than Excluded Taxes or Buyer's share of all New Taxes that Seller is required to remit or pay shall be satisfied solely through an increase in the Base Contract Price which shall be adjusted on a per MMBtu basis to reflect the required payment of such New Taxes commencing in the month in which such New Taxes are assessed. If Buyer is entitled to purchase Conforming SNG free from any such New Taxes, Buyer shall furnish Seller with copies of the necessary exemption or resale certificate if and to the extent that the law provides for the issuance of exemption or resale certificates. Seller shall utilize its Commercially Reasonable Efforts to minimize any New Taxes that are recoverable by Seller from Buyer pursuant to this Section 5.3(a) (Adjustments for Payment of New Taxes and Change in Governmental Requirements), including any reasonable steps to mitigate such New Taxes which may be suggested by Buyer. Any refunds received by Seller of New Taxes previously paid by Buyer either directly or through an adjustment to the Base Contract Price shall be passed-through to Buyer as an adjustment to the Base Contract Price.

(b) Adjustments for Change in Governmental Requirements. If at any time there is a Change in Governmental Requirements that has a material effect on the cost (whether determined on an overall MMBtu or other basis) to Seller of providing Conforming SNG to Buyer under this Agreement (whether by increasing or decreasing such cost, and whether such Change in Governmental Requirements directly imposes costs or imposes restrictions on operations that require increased expenditure or results in reduced output without a

commensurate decrease in costs), Seller shall provide written notice (i) that such a determination has been made to Buyer at any time within thirty (30) days after Seller becomes aware of such Change in Governmental Requirements, and (ii) of the detailed cost impact as soon as Seller determines such cost impact, which shall in no event be more than one hundred eighty (180) days after Seller becomes aware of such Change in Governmental Requirements. Seller shall adjust the Base Contract Price under this Agreement to account for the increased costs required to be incurred by Seller in connection with the production of Conforming SNG under this Agreement effective as of the effective date of the Change in Governmental Requirements. The adjustment to the Base Contract Price shall include an aggregate return to Seller (determined with regard to Seller and each owner (direct and indirect) and Affiliate of Seller, on a consolidated basis) on any additional capital employed by Seller to comply with such Change in Governmental Requirements at a twelve percent (12%) levelized after income tax unlevered rate of return determined based on the pro-forma income statement of the overall capital investment, and taking into account the actual cost of any debt and applicable federal and state tax rates calculated on a stand-alone basis; provided that the value of any tax benefit actually received shall be taken into account in determining the effects of any Change in Governmental Requirements; and provided further that, in the event that that a capital investment described in this Section becomes necessary, Buyer shall have the option to either: (A) provide financing, (B) arrange for third party financing, or (C) provide support in a form that has the effect of reducing Seller's financing costs, in each case for such capital investment. If Buyer chooses to take any action set forth in the preceding sentence, Buyer shall be entitled to receive the same return as contemplated for Seller above (the difference between Buyer's actual and the prescribed return shall be passed along by Buyer to Retail End Use Customers) or Buyer may pass through the actual costs with no return, as applicable, on the portion of the capital investment subject to clauses (A), (B) or (C). For the avoidance of doubt, Seller shall be entitled to the specified twelve percent (12%) levelized after income tax unlevered rate of return described above for any portion of the capital investment for which Seller contributes new equity, after giving effect to the actions Buyer has elected to take with respect to such capital investments. The adjustments to the Base Contract Price required under this Section 5.3(b) (Adjustments to Base Contract Price for New Taxes and Change in Governmental Requirements) shall be calculated on an "open book" basis. For purposes of determining the Adjusted Base Contract Price, any CO₂ Taxes that are imposed after the Execution Date shall be considered a Change in Governmental Requirements rather than a New Tax, and any other Taxes that do not fall within the definition of CO₂ Taxes shall be considered New Taxes rather than a Change in Governmental Requirements. The Independent Engineer shall determine the economic effect of each such Change in Governmental Requirements, and the appropriate adjustments to the Base Contract Price that the Independent Engineer has in good faith determined to be necessary to reflect the cost impact resulting from such Change in Governmental Requirements and the value of any associated tax benefits. If compliance with the Change in Governmental Requirements can be accomplished through the payment of a Tax or some other action by Seller, then in that circumstance Seller shall conduct a cost-benefit analysis of paying the Tax versus the other action, which may include modifications to the Plant, and Seller shall choose the option that minimizes any increase in the Adjusted Base Contract Price.

(c) Maximum Adjustment for Change in Governmental Requirements. Any increases or decreases to the Base Contract Price for any Changes in Governmental Requirements shall be limited, in the aggregate, to thirteen and one-half percent (13.5%) of the

then current Base Contract Price (excluding the Pipeline Transportation Charge) prior to giving effect to any proposed adjustment (the "Increase Cap") unless the Change in Governmental Requirements (i) is not a CO₂ Tax and (ii) is confirmed by an independent third party expert mutually appointed by Buyer and Seller not to be reasonably capable of mitigation, in which case, the Base Contract Price shall be adjusted to include the effect of such tax and such adjustment will not be subject to the Increase Cap; provided, however, that the amount of such adjustment must be determined and approved by the Independent Engineer to be the actual and verifiable amount necessary to reflect the effects of such Change in Governmental Requirements, and further provided that any impact a Change in Governmental Requirements may have on the price of SNG under this Agreement is only taken into account once. In subsequent years as the Base Contract Price is adjusted and the limitation is in effect, the amount of the limitation would also adjust as a result of applying the Increase Cap to a Base Contract Price that has been adjusted in accordance with this Agreement. If Seller has the option to take affirmative action in a commercially reasonable manner (which shall mean using Seller's Commercially Reasonable Efforts) to bring the Plant into compliance with the Change in Governmental Requirements above, including physical action, then Seller will be obligated to pursue the course of action for compliance that will result in the lowest cumulative cost over time and, in that event, the Base Contract Price will be adjusted up to the Increase Cap and any expenditure required beyond such Increase Cap shall be borne by Seller. To the extent a capital expenditure is evaluated as an option or ultimately undertaken for the purposes of the foregoing adjustment, the Parties will use a mortgage style amortization of the capital over the useful life of such capital expenditure as determined in accordance with the United States Internal Revenue Code and then current Internal Revenue Service rules and regulations.

5.4. Adjustments for Allocation of Net Incremental Revenues and Net CO₂ Revenues.

(a) Reduction for Buyer's Share of Net Incremental Revenues and Net CO₂ Revenues. Subject to Section 5.4(b) (Limitation on Adjustments) below, the Base Contract Price shall be adjusted monthly by the amount of Net Incremental Revenues and Net CO₂ Revenues in each case allocable to Buyer in each such month. The calculation of the Adjusted Base Contract Price shall be determined by reducing the Base Contract Price by Buyer's share of the monthly positive Net Incremental Revenues and Buyer's share of the monthly positive Net CO₂ Revenues on a per-MMBtu basis to the extent such revenues are not needed to pay the Debt Service Shortfall for such month pursuant to Section 5.4(b) (Limitation on Adjustments) below or by increasing the Base Contract Price by Buyer's share of the monthly negative Net CO₂ Revenues on a per MMBtu basis. Notwithstanding anything herein to the contrary, the maximum increase in the Adjusted Base Contract Price that can be applied to address negative Net CO₂ Revenues if there has not been a Change in Governmental Requirements is \$0.51/MMBtu in 2008 dollars.

(b) Limitation on Adjustments. If in any month Seller has determined that there is or will be a Debt Service Shortfall, the adjustments to the Base Contract Price contemplated in Section 5.4(a) (Reduction for Buyer's Share of Net Incremental Revenues on Net CO₂ Revenues) for such month shall be limited to the amount of Buyer's share of Net Incremental Revenues and Buyer's share of positive Net CO₂ Revenues remaining after being applied by Seller to pay the Debt Service Shortfall. Neither this Section 5.4(b) (Limitation on

Adjustment) nor the existence of a Debt Service Shortfall shall excuse Seller from refunding to Buyer any amounts to be refunded pursuant to Section 9.3 (Payment Due Date).

(c) Allocation of Net Incremental Revenues and Net CO₂ Revenues. Subject to Section 5.4(d) (Treatment of Negative Net Incremental Revenues), for each Additional Product or type of Incremental Production, on a monthly basis, (i) all positive Net Incremental Revenues, if any, will be allocated equally between Seller and Buyer and (ii) all negative Net Incremental Revenues shall be allocated to Seller. All positive Net CO₂ Revenues, if any, will be allocated equally between Seller and Buyer. All negative Net CO₂ Revenues shall be allocated to Buyer and shall be applied to increase the Base Contract Price in accordance with Section 5.4(a) (Reduction for Buyer's Share of Net Incremental Revenues on Net CO₂ Revenues) but subject to the limitations set forth in Section 5.4(b) (Limitation on Adjustment). A sample calculation is set forth in Schedule 5.4(c).

(d) Treatment of Negative Net Incremental Revenues. Beginning with the first anniversary of the CPD, with respect to any Additional Product or type of Incremental Production, if Net Incremental Revenues for a particular month are negative and Net Incremental Revenues for such Additional Product or type of Incremental Production for the twelve (12) month period immediately preceding such month were, in the aggregate, positive, then Seller may offset such negative Net Incremental Revenues for such month against any positive Net Incremental Revenues from other Additional Products or types of Incremental Production during such month, prior to the allocation of any positive Net Incremental Revenues between Buyer and Seller. Except as provided in the preceding sentence, no negative Net Incremental Revenues for any Additional Product or type of Incremental Production will be aggregated with or offset against any positive Net Incremental Revenues for any other Additional Product or type of Incremental Production.

5.5. Special Adjustments to Base Contract Price.

(a) Requests to Review and Adjust the O&M Component. The O&M Component shall be subject to review every five (5) years, commencing after the conclusion of the seventh (7th) Contract Year (i) at the request of Buyer, if the monthly balances in the Cumulative Real Contract Savings Tracking Account are not accruing in accordance with the Monthly Target Balance, or (ii) at the request of Seller, if there is a positive balance in the CRCSTA.

(b) Procedure for Review and Adjustment of the O&M Component. If either Buyer or Seller requests that the O&M Component be reviewed and adjusted in accordance with Section 5.5(a) (Requests to Review and Adjust the O&M Component) the O&M Component shall be reviewed by a mutually agreed upon third party expert and paid for by the requesting Party. For purposes of the O&M Component, the Parties agree that during the term of the DOE Guaranteed Financing that the amounts reserved for major maintenance activities recommended by the Independent Engineer utilized for purposes of the DOE Guaranteed Financing shall be deemed to be a reasonable reserve to be maintained by Seller for purposes of this Agreement. If the mutually agreed upon third party expert finds that the actual operating and maintenance costs (taking into consideration cost accruals in accordance with GAAP) for the prior five (5) years exceeds or is less than the total operating and maintenance costs reimbursed by the O&M

Component for the prior five (5) years by more than five percent (5%), then the O&M Component going forward shall be reduced or increased, as applicable, to a level that reflects the actual annual operating and maintenance costs. The procedure for such adjustment will involve adjusting the actual operating and maintenance costs for each year of the measurement period to real 2008 dollars using the O&M Indices, calculating the five-year average of such real costs, then readjusting such average to then-current-year dollars using the O&M Indices. Pending resolution of the determination of the appropriate adjustment to the O&M Component, if any, and any dispute related thereto, Buyer shall continue to pay the undisputed amount in accordance with this Agreement. Any disputed amount due to Seller shall be promptly paid to Seller (together with any applicable interest thereon) once a final determination has been made in accordance with Article XI in respect of the appropriate adjustment to the O&M Component.

5.6. Adjustments for Monthly Positive Market Differential.

(a) Buyer shall establish the CRCSTA to track the Savings Tracking Amount from time to time. The Savings Tracking Amount will be credited or debited on a monthly basis to the CRCSTA in real 2008 dollars, with the adjustment factors for converting nominal Savings Tracking Amount amounts to real amounts based on the GDP Deflator in accordance with the procedure described in Schedule 5.6.

(b) When the balance in the CRCSTA is zero or greater as of the start of any month, the following percentage of the Monthly Positive Market Differential shall be used to calculate the Monthly Positive Market Differential Price:

(i) one hundred percent (100%) until Seller has received an aggregate amount equal to the CPR Commitment Amount; and

(ii) after Seller has received an aggregate amount equal to the CPR Commitment Amount, fifty percent (50%).

(c) When the balance in the CRCSTA is less than zero as of the start of any month, the following percentage of Monthly Positive Market Differential shall be used to calculate the Monthly Positive Market Differential Price:

(i) fifty percent (50%) until Seller has received an aggregate amount equal to the CPR Commitment Amount; and

(ii) after Seller has received an aggregate amount equal to the CPR Commitment Amount, zero percent (0%).

(d) Based on the percentages identified in subsections (b) and (c) of this section, the Monthly Positive Market Differential Price will be determined and applied to the Adjusted Base Contract Price to arrive at the Monthly Invoice Contract Price. For purposes of subsections (b) and (c) of this section, references to the CPR Commitment Amount shall mean the CPR Commitment Amount calculated based on real dollars as of the Financial Closing Date.

5.7. No Adjustments for DOE Required Changes.

For the avoidance of doubt, to the extent that any of the final terms and conditions contained in the DOE Financing deviate from the terms and conditions contemplated in the Conditional Commitment delivered pursuant to Section 8.1(c) (Initial Conditions Precedent), such deviation will not increase the Monthly Invoice Contract Price or impact the calculation of Net Incremental Revenues.

ARTICLE VI
COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER

6.1. Marketing and Services Agreements. By no later than the Initial Conditions Precedent Deadline, Seller shall have entered into, and shall maintain throughout the Term, one or more Marketing and Services Agreements with Marketer and Buyer as further set forth in Section 2.4 (Third Party Marketing and Services).

6.2. Insurance.

(a) During the Term, Seller will obtain and maintain insurance meeting the requirements set forth in Schedule 6.2(a), and identifying Buyer as named or additional insured on a primary and noncontributory basis. Seller shall deliver to Buyer certificates evidencing such insurance prior to the time such insurance is required, and renewal certificates not less than thirty (30) days prior to expiration of any such insurance policy. All insurance policies required to be maintained pursuant to this Agreement shall contain a provision stating that such policies may not be canceled, not renewed, modified or have any coverages or limits reduced unless thirty (30) days' prior written notice of such cancellation, non-renewal, modification or reduction has been provided to Buyer.

(b) Seller also shall either obtain and maintain, or require those under contract with Seller to provide design services, construction management services, and/or construction work for the construction of the Plant (collectively, "Plant Construction Participants"), to procure and maintain the minimum coverages and limits set forth in Schedule 6.2(b), which policies shall identify Buyer as an additional insured on a primary and noncontributory basis. Seller shall provide Buyer with copies of certificates of insurance evidencing the coverages and limits set forth in Schedule 6.2(b) for any such Plant Construction Participants before they are permitted on the Plant site.

(c) Commercial general liability insurance limits and deductibles shall be reasonably acceptable to Buyer subject in all cases to the requirement that such limits and deductibles must be commercially available in the insurance market. Seller will place all insurance with companies reasonably acceptable to Buyer and will document such insurance with certificates of insurance. Notwithstanding anything to the contrary in the foregoing, the insurance coverage obligations of Seller in this Section 6.2 (Insurance) shall be no more onerous than the insurance coverage obligation of Seller under the DOE Guaranteed Financing, so long as such obligations require Seller to maintain insurance with a policy limit in an amount equal to the replacement value of the Plant or at least sufficient to cover the Maximum

Foreseeable Loss (MFL) scenario as calculated by a qualified loss control engineering firm and shall include within such MFL calculation an amount sufficient to provide for Remediation of the Plant as described in Section 6.2(d) (Insurance) and Section 12.8(e) (Consumer Protection Reserve Account) subject in all cases to the requirements that such limits and deductibles are commercially available in the insurance market, and any insurance carrier acceptable to Seller's Financing Parties shall be deemed satisfactory to Buyer. Seller shall annually certify in writing to Buyer its compliance with this Section and, simultaneously with such certification, deliver to Buyer insurance certificates issued by Seller's insurance broker evidencing all insurance coverage maintained by Seller.

(d) If during the Term the Plant suffers a casualty event that results in Seller not being able to produce and deliver Conforming SNG sufficient to meet the Applicable MCQ in effect immediately prior to such event and such condition persists for more than ninety (90) days, Seller shall notify Buyer no later than one hundred eighty (180) days following such casualty event whether Seller intends to restore the Plant such that it will again be capable of delivering Conforming SNG to Buyer sufficient to meet the Applicable MCQ in effect immediately prior to the casualty event. If Seller elects to restore the Plant, Seller will provide Buyer with good faith estimates of the repair schedule and Seller shall use Commercially Reasonable Efforts to cause such repairs to be completed within the schedule provided. If Seller elects not to restore the Plant as set forth in the preceding sentence, then any insurance proceeds will be used (i) first, to repay all debt service and other amounts owing to the Financing Parties in respect of the DOE Guaranteed Financing (including all prepayment costs, breakage costs, etc.), (ii) then, to pay any costs or expenses incurred in connection with the casualty event, including Remediation Costs of the Plant site damaged by such casualty event, and (iii) last, to repay the amount of any Contract Savings Guaranty Shortfall Amount. Any amounts remaining after making the foregoing transfers shall revert to Seller.

6.3. Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer on each of the Execution Date, the Initial Conditions Precedent Satisfaction Date, and the Financial Closing Date that:

(a) It is a limited liability company (i) duly organized, (ii) validly existing, (iii) in good standing under the laws of its jurisdiction of organization, and (iv) where applicable, in good standing as a foreign entity in all jurisdictions where the nature of its properties or business so requires.

(b) It has the power and authority (i) to own its respective properties and carry on its respective business as now being conducted and as intended to be conducted, and (ii) to execute, deliver and perform, as applicable, its obligations under this Agreement and any other documents contemplated hereby to which it is or will be a party.

(c) The execution, delivery and performance of this Agreement and the other documents contemplated hereby (i) have been duly authorized by all necessary corporate action (or similar action) on its part, (ii) will not constitute a violation of any provision of Applicable Law in any material respect or any order of any Governmental Authority applicable to it, or any of its properties or assets in any material respect, (iii) will not violate any provision of its organizational documents, (iv) will not violate any provision of any indenture, agreement, bond,

note or other similar instrument to which it is a party or by which it or any of its properties or assets are bound, (v) will not be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or create any right to terminate, any such indenture, agreement, bond, note or other similar instrument, and (vi) will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its properties or assets other than pursuant to this Agreement or any Financing.

(d) All authorizations, approvals, registrations or filings from or with any Governmental Authority (other than the Governmental Approvals to be obtained after the date hereof with respect to the construction and operation of the Plant) required for the consummation or the execution, delivery and performance by it of this Agreement have been duly obtained or made or duly applied for, and are in full force and effect, and if any further authorizations, approvals, registrations or filings should hereafter become necessary, it reasonably expects to obtain or make all such authorizations, approvals, registrations or filings.

(e) This Agreement when executed, will constitute its legal, valid and binding obligations, enforceable against it in accordance with its terms, subject, as to the enforcement of remedies, to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(f) There are no actions, suits or other proceedings at law or in equity by or before any arbitrator, arbitration panel or Governmental Authority (including, but not limited to, matters relating to environmental liability) or, to the best of its knowledge, any investigation by any Governmental Authority of its affairs, or threatened action, suit or other proceeding against or affecting, it or its properties or rights, which in either case, if adversely determined could have a material adverse effect on its ability to perform its obligations under this Agreement.

(g) It has dealt with no broker or finder who is entitled to a commission or other compensation in connection herewith, which in either case, if adversely determined could have a material adverse effect on its ability to perform its obligations under this Agreement.

(h) As of the Execution Date, Seller is a wholly-owned subsidiary of Baldwin Indiana Energy, Inc.

(i) As of the Execution Date, the documents, reports and other information provided to Buyer and Buyer's advisors and described in the report prepared in connection with Buyer's due diligence review by Buyer's independent professional engineering and technical advisor, Shaw Consultants International, Inc., are, to Seller's Knowledge, accurate, true and complete in all material respects except to the extent that any such documentation was provided as of an earlier date, in which case such representation and warranty shall be deemed made as of such earlier date; provided, that with respect to any performance calculations, projections and forecasts provided to Buyer and/or Buyer's advisors, Seller represents that it has no reason to believe that such information is inaccurate in any material respect or was prepared other than in accordance with Good Industry Practice based on good faith and reasonable assumptions. For the avoidance of doubt, Seller is not providing any representation or warranty as to the Plant's

actual operating costs, performance results or the actual cash flows or actual financial results to be achieved by the Plant.

6.4. Permitted Indebtedness/Permitted Liens. Seller agrees that it shall not (a) incur any additional secured indebtedness other than the DOE Guaranteed Financing and Permitted Indebtedness nor (b) grant any additional liens or encumbrances over the Plant that would have priority over the liens in favor of the Financing Parties or Buyer's lien granted pursuant to this Agreement other than Permitted Liens.

6.5. Indiana Content. Seller agrees to use Commercially Reasonable Efforts to comply with the Indiana content (Buy Indiana/Employ Indiana) goals set forth on Schedule 6.5.

6.6. Refinancing Limitations. Seller shall not refinance the DOE Guaranteed Financing without Buyer's prior written consent, which consent shall not be unreasonably withheld or delayed if such refinancing does not increase the amount of debt or extend the original maturity date of the DOE Guaranteed Financing; provided that Buyer's consent shall not be required for: (a) the Financing Parties and Seller to restructure the DOE Guaranteed Financing in connection with any restructuring required to forestall a material breach under the DOE Guaranteed Financing or by the DOE as the result of an Event of Default that has occurred under the terms of the DOE Financing, including in connection with such restructuring, to extend the original maturity date of the DOE Guaranteed Financing, or (b) Seller to implement a leveraged lease transaction, partnership flip structure or other similar tax oriented structured financing transaction, as long as such leveraged lease transaction, partnership flip structure or other similar tax oriented structured financing transaction, as the case may be, does not extend the original maturity date and/or term of the DOE Guaranteed Financing or increase the amount thereof.

6.7. Compliance with Laws. Seller (and any Owner of Seller) agrees to comply with all federal, state, and local laws, rules, and regulations applicable to Seller in operating the Plant and fulfilling its obligation pursuant to this Agreement, (including but not limited to, those relating to discrimination in employment) conflicts of interest, prevailing wages, public notice, accounting records and requirements. This provision shall not apply to matters described in Section 6.8 (Federal Non-Discrimination Laws) through Section 6.11 (Ethics and Conflict of Interest Requirements), Section 6.13 (MBE/WBE Requirements) and Section 6.14 (Telephone Solicitation).

6.8. Federal Non-Discrimination Laws. Seller shall comply with all applicable federal laws regarding non-discrimination, including: (i) the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq. (1981); (ii) the Civil Rights Act of 1991, P.L. 102-166; (iii) Executive Order Number 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000(e) note, as amended by Executive Order Number 11375, 32 Fed. Reg. 14,303 (1967) and by Executive Order Number 12086, 43 Fed. Reg. 46,501 (1978); (iv) the Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); (v) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34 (1967); (vi) the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); and (vii) the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (1990).

6.9. State Non-Discrimination Laws. Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Seller and its contractors shall not discriminate against any employee or applicant for employment at the Plant or during the construction of the Plant. Seller and its contractors shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry.

6.10. Maintaining a Drug Free Workplace.

(a) Seller hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Seller will give written notice to Buyer within ten (10) days after receiving actual notice that Seller or an employee of Seller has been convicted of a criminal drug violation occurring in Seller's workplace.

(b) Seller certifies and agrees that it will provide a drug-free workplace by:

(i) Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Seller's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

(ii) Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) Seller's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

(iii) Notifying all employees in the statement required by subparagraph (i) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify Seller of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

(iv) Notifying in writing Buyer within ten (10) days after receiving notice from an employee under subdivision (iii)(2) above, or otherwise receiving actual notice of such conviction;

(v) Within thirty (30) days after receiving notice under subdivision (iii)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

(c) Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (i) through (v) above.

6.11. Ethics and Conflict of Interest Requirements.

(a) Seller and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004 and Executive Order 05-12, dated January 10, 2005.

(b) As used in this Section:

(i) "Immediate family" means the spouse and the unemancipated children of an individual.

(ii) "Interested party" means:

(A) The individual executing this Agreement;

(B) An individual who has an interest of three percent (3%) or more of Seller; or

(C) Any member of the immediate family of an individual specified under subdivision (A) or (B).

(c) Seller has an affirmative obligation under this Agreement to disclose to Buyer when an Interested Party is or becomes an employee of the State of Indiana. The obligation under this Section extends only to those facts that Seller knows or reasonably could know.

6.12. Non-Collusion and Acceptance. Seller attests, subject to the penalties for perjury, that no employee, representative, agent or officer of Seller (or any Owner of Seller), directly or indirectly, to the best of Seller's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay any sum of money or other consideration for the execution of this Agreement other than that which is expressly set forth in this Agreement.

6.13. MBE/WBE Requirements. Seller shall comply with the requirements of IC 4-13-16.5 and 25 IAC 5 to maximize the utilization of minority and women business enterprises ("M/W.B.E.s") in the procurement and contracting processes. Seller agrees to a goal for participating minority business enterprises of seven percent (7%) and women's business enterprises of five percent (5%). All M/WBEs must be certified by the Indiana Department of Administration, Minority and Women Business Enterprises Division. This policy shall be stated in all contracts related to the construction and operation of the Plant, circulated to all employees of Seller in affected departments, and made known to minority and women business enterprises.

6.14. Telephone Solicitation. As required by IC 5-22-3-7, Seller agrees that it shall not violate the terms of IC 24-4.7 during the Term, even if IC 24-4.7 is preempted by federal law.

6.15. Ownership of IG. Unless otherwise permitted pursuant to Section 15.1 (Assignment and Transfer), Seller shall remain a wholly-owned subsidiary of Baldwin Indiana Energy, Inc., provided that, Baldwin Energy Indiana, Inc. may transfer ownership of Seller to a to-be-formed intermediate holding company which is formed for the purpose of owning the equity interests in Seller.

6.16. Updates of Diligence Information. Seller shall, as soon as reasonably practicable after they become available, deliver to Buyer any updates and/or material changes to the documents, reports and information provided to Buyer and/or Buyer's advisors as described in Section 6.3(i) (Representations and Warranties of Seller) during the period from the Execution Date through the Financial Closing Date.

ARTICLE VII COVENANTS, REPRESENTATIONS AND WARRANTIES OF BUYER

7.1. Buyer's Purchase Obligations. Buyer covenants that, subject to the terms and conditions of this Agreement, it shall be obligated to purchase and pay for (directly or indirectly through its agent and subcontractor) Conforming SNG that Seller delivers or makes available to Marketer, as agent for Buyer (or Buyer if there is not a Replacement Marketer) at the Title Transfer Point up to the Applicable MCQ in any month and the ACQ in any year.

7.2. Marketing and Services Agreements and Management Agreements. By no later than the Initial Conditions Precedent Deadline, Buyer shall have entered into, and shall maintain throughout the Term, (a) one or more Marketing and Services Agreements with Marketer and Seller as further set forth in Section 2.4 (Third Party Marketing and Services) and (b) one or more Management Agreements with each applicable local gas distribution company for delivery of SNG to Retail End Use Customers and billing and collection of the Contract Charges. Buyer shall collaterally assign its rights under the Management Agreements to Seller to secure its purchase obligations under this Agreement and Seller shall also be granted the contractual right to enforce such distribution, transportation, storage contracts and management contracts as a third party beneficiary.

7.3. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller on each of the Execution Date, the Initial Conditions Precedent Satisfaction Date, and the Financial Closing Date that:

(a) It is an independent body politic and corporate and an independent instrumentality of the State of Indiana (i) duly organized, (ii) validly existing and (iii) in good standing under the laws of Indiana.

(b) It has the power and authority to execute, deliver and perform, as applicable, its obligations under this Agreement and any other documents contemplated hereby to which it is or will be a party.

(c) The execution, delivery and performance of this Agreement and the other documents contemplated hereby (i) have been duly authorized by all necessary actions on its part, including all actions required under the Statute, bylaws or other rules applicable to Buyer and (ii) will not violate any non-public rule or regulation.

(d) Neither the Fund nor the CPR Reserve Account are or will be used to secure any debt or obligation of Buyer, other than those relating to this Agreement or any related agreement.

(e) To the Knowledge of Buyer, there is no litigation of any nature now pending or threatened, in any way relating to, affecting, or questioning either the execution or delivery of this Agreement or the transactions contemplated by this Agreement, or otherwise affecting or questioning the validity of this Agreement or the transactions contemplated by this Agreement; neither the corporate existence of Seller nor the title of the undersigned officers to their respective offices is being contested; and no proceedings or authority relating to this Agreement or the transactions contemplated by this Agreement have or has been repealed, rescinded, or revoked.

7.4. [Reserved].

7.5. Information. Buyer shall promptly provide to Seller, and in no event later than fifteen (15) Business Days after Seller's request, all information reasonably requested by Seller pertaining to billing and collections from Retail End Use Customers, the Marketing and Services Agreement, the Management Agreements, and such other information related to this Agreement.

7.6. No Indebtedness. Buyer shall not agree in any contract payable from the Fund to grant (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Fund for the payment thereof, or (iii) payment priority to any Person with respect thereto that are equal or superior to that of Seller.

ARTICLE VIII CONDITIONS PRECEDENT

8.1. Initial Conditions Precedent. On or before the Initial Conditions Precedent Deadline, the following conditions precedent (the "Initial Conditions Precedent") shall be satisfied, and if each is not satisfied by the Initial Conditions Precedent Deadline, this Agreement may be terminated by either Party upon written notice to the other Party delivered within thirty (30) days after the Initial Conditions Precedent Deadline (provided that no such notice may be given solely for the failure of the condition set forth in clause (c) until the date ninety (90) days after the Initial Conditions Precedent Deadline):

(a) Seller shall have obtained approval of this Agreement by its Board of Directors (the adequacy of which shall be determined by Seller in its sole discretion) and, if

advisable or necessary, by the Board of Directors of its ultimate corporate parent, which approval may, for the avoidance of doubt, be expressly subject to the Board of Directors' confirmation of the satisfaction of the condition precedent in clause (d) below.

(b) Buyer shall have obtained approval of this Agreement by its Board (the adequacy of which shall be determined by Buyer in its sole discretion), which approval may, for the avoidance of doubt, be expressly subject to the Board confirmation of the satisfaction of the condition precedent in clause (d) below.

(c) Buyer, Seller and Marketer shall have entered into the Marketing and Services Agreement and Buyer shall have entered into the Management Agreements; and.

(d) The IURC shall have issued the IURC Order and each of the Seller and the Buyer shall be satisfied with the contents of the IURC Order.

(e) Seller shall have obtained a Conditional Commitment from the DOE to provide the DOE Guaranteed Financing in an amount sufficient for Seller to finance the construction of the Plant, the commercial terms (i.e., interest rate, tenor, principal amount, coverage ratios and reserve requirements) of which (i) Buyer shall have confirmed to be consistent with the financial model provided by Seller to Buyer for the Project and (ii) are satisfactory to Buyer in its sole discretion.

(f) Seller shall have delivered to Buyer a certificate of the President of Seller which certifies that all the representations and warranties of Seller set forth in Section 6.3 (Representations and Warranties of Seller) are, after giving effect to the updates and/or material changes described in Section 6.16 (Updates of Diligence Information), true and correct in all material respects, (other than any representation and warranty which is qualified by materiality shall be true and correct in all respects) as of the Initial Conditions Precedent Date as if made by Seller as of such date.

8.2. Subsequent Conditions Precedent. On or before the date one hundred eighty (180) days after Seller notifies Buyer that front end engineering and design work for the Plant has been completed or such later date as may be agreed between the Parties (the "Subsequent Conditions Precedent Date"), the following conditions precedent shall be satisfied, and if not satisfied by such date, this Agreement may be terminated by Seller (with respect to the conditions described in subsections (a) and (b)) upon written notice to Buyer, or Buyer (with respect to the condition described in subsection (c)) upon written notice to Seller, delivered within ninety (90) days after the Subsequent Conditions Precedent Date:

(a) Seller shall have determined, in its sole discretion, that available terms and conditions for DOE Guaranteed Financing are satisfactory to Seller.

(b) Seller shall have determined in its sole discretion that it intends to issue an unlimited Notice to Proceed for the full scope of construction work for the Plant.

(c) Seller shall have delivered to Buyer a certificate of the President of Seller which certifies that all the representations and warranties of Seller set forth in Section 6.3 (Representations and Warranties of Seller), other than those set forth in Section 6.3(i)

(Representations and Warranties of Seller), are true and correct in all material respects, (other than any representation and warranty which is qualified by materiality shall be true and correct in all respects) as of the Subsequent Conditions Precedent Date as if made by Seller as of such date.

ARTICLE IX STATEMENTS AND PAYMENT

9.1. Monthly Invoice. On or before the fifth (5th) day of each calendar month after the Commercial Production Date, Seller shall render to Buyer a statement showing the MDQ of Conforming SNG delivered by Seller to, and confirmed by, Marketer for Buyer's account for the previous calendar month, the calculation of the Monthly Invoice Contract Price applicable to such Conforming SNG, showing separately each component and adjustment set forth in Sections 5.2 (Determination of Base Contract Price), 5.3 (Adjustments to Base Contract Price for New Taxes and Change in Governmental Requirements), 5.4 (Adjustments for Allocations of Net Incremental Revenues and Net CO₂ Revenues), 5.5 (Special Adjustments to Base Contract Price) and 5.6 (Adjustments for Monthly Positive Market Differential) and an invoice for the amount due in a form mutually agreed upon by Buyer and Seller prior to the Initial Conditions Precedent Date. Each monthly statement shall include metering data, as well as the calculation of the Adjusted Market Differential, Buyer shall provide Seller a monthly statement summarizing the withdrawals from the Consumer Protection Reserve Account made each month to enable Seller to determine the Adjusted Market Differential.

9.2. Protest of Statement. If either Party believes the metering data or the invoice to be incorrect or inaccurate, that Party may protest the amount of the invoice no later than ninety (90) days after the end of the Contract Year in respect of which month the applicable monthly invoice relates; provided that, nothing in this Section shall limit or restrict any audit rights Buyer has under this Agreement, including without limitation, as set forth in Section 9.6 (Audits), or the right to make any adjustments as a result of any such audit.

9.3. Payment Due Date. On or before the second Business Day after Buyer receives its monthly payment from the Marketer, Buyer shall wire transfer or direct deposit payment to Seller (or cause Marketer to wire transfer or direct deposit payment on behalf of Buyer to Seller) the amount due for the preceding month; provided, however, if there is a good faith dispute between the Parties, Buyer shall pay the disputed amount with a reservation regarding such dispute and Seller shall be obligated, whether or not a Debt Service Shortfall then exists, to refund any amounts determined pursuant to the dispute resolution provisions in Article X (Dispute Resolution) to have been overpaid, together with interest at the rate set forth in Section 9.5 (Interest on Past Due Amounts).

9.4. Payment. Unless otherwise provided for in this Agreement, all payments pursuant to this Agreement shall be made by wire transfer or direct deposit of immediately available funds for the payee's account in accordance with its written instructions. For the avoidance of doubt, Buyer shall be obligated to ensure that it has sufficient working capital to pay for Conforming SNG under this Agreement and Seller shall not bear the risk of Buyer's lack of sufficient working capital.

9.5. Interest on Past Due Amounts. Interest on any unpaid portion of any amount due, which shall be defined as any monetary amount due by either Party for any reason under this Agreement (including, but not limited to liquidated damages, and whether on account of payments withheld or due to be refunded), shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the Prime Rate; or (ii) the maximum applicable lawful interest rate.

9.6. Audits. Upon at least five (5) Business Days' prior written notice to Seller, Buyer shall have the right to audit the books, records and accounts of Seller to the extent they relate to the Plant and Seller's sale of SNG hereunder and such audit is reasonably necessary to verify (a) the determination of the Base Contract Price and any of the adjustments made to the Base Contract Price in Article V (Price), including the calculation of Net Incremental Revenues and Net CO₂ Revenues, (b) the calculation of the Adjusted Market Differential, (c) the determination of the Contract Savings Guaranty Shortfall Amount, (d) the amounts invoiced by Seller pursuant to Section 9.1 (Monthly Invoice) and (e) Seller's use of Commercially Reasonable Efforts under this Agreement. Upon at least five (5) Business Days' prior written notice to Buyer, Seller shall have the right to audit the books, records and accounts of Buyer to verify the amounts in the CRCSTA; provided, that Buyer's audit rights in respect of each Contract Year shall be limited to a period not to exceed three (3) years from the end of the most immediately completed Contract Year (except for reviews and adjustments in connection with Section 5.5(b) (Special Adjustments to Base Contract Price) which shall permit a review of the books, records and accounts of Seller for the prior five (5) year period for this purpose only). Notwithstanding the foregoing, in the event that as a result an audit of a particular Contract Year, Buyer determines that it is necessary to conduct an audit of any previous Contract Year with respect to one or more revenue or expense items (or any component thereof), the three (3) year time limitation described in the previous sentence shall be extended to three (3) years for such items or components. Nothing in this provision will preclude either Party from pursuing discovery of documents and information relevant to the resolution of a dispute pursuant to Article X (Dispute Resolution).

9.7. Monthly Reconciliation Process. The Parties and the Marketer shall comply with their respective obligations in connection with the monthly reconciliation process described in Schedule 9.7.

ARTICLE X DISPUTE RESOLUTION

10.1. Negotiation. If a Party alleges that a dispute exists with respect to the performance of either Party under this Agreement, or arising out of or relating to this Agreement, including but not limited to issues relating to the interpretation or breach of this Agreement, a "Dispute" the Parties shall enter negotiations in an attempt to resolve the dispute. Such negotiations will be between the President and Vice President of Seller, as representatives of Seller and the Public Finance Director of the State of Indiana and the Chairman of the Board of Buyer, as representatives of Buyer. Each Party may change its representatives at any time by providing written notice of any change to the other Party. Such negotiations will occur no later than fifteen (15) Business Days after written notice of

such dispute by a Party and shall be concluded within forty-five (45) days after the date of such written notice (or such other period as shall be agreed by the Parties). Neither the obligation of the Parties under the immediately preceding sentences of this Section nor the existence of binding arbitration under Section 10.4 (Arbitration) shall restrict or limit to any extent the right of a non-defaulting Party to exercise any one or more of the remedies provided under this Agreement, subject to the obligation to arbitrate those matters below the dollar threshold set forth in Section 10.3 (Material Disputes).

10.2. Mediation. If the Parties are unable to resolve the Dispute as provided for in Section 10.1 (Negotiation) above, then either Party may initiate the mediation by providing to the other Party a written request for mediation that sets forth the subject of the Dispute and the relief requested. The Dispute shall be submitted to JAMS, its successor, or any other mutually agreeable neutral for non-binding mediation. The Parties will cooperate with one another in selecting a mediator from the JAMS' panel of neutrals, or in selecting a mutually acceptable non-JAMS neutral, and in scheduling the time and place of the mediation. Unless otherwise agreed to by the Parties, however, the mediation shall occur within one hundred twenty (120) days from the date of the initial written demand for mediation. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in the costs of mediation (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs shall be borne by such Party). All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the mediator and any of the mediator's agents, representatives and employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between the Parties or either of them shall be maintained in confidence; provided, that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

10.3. Material Disputes. Unless otherwise expressly provided herein, Disputes related to amounts in excess of Five Million Dollars (\$5,000,000) shall not be subject to arbitration under Section 10.4 (Arbitration) and shall be resolved by legal proceedings as set forth in Section 15.7 (Governing Law). In any legal proceeding, the prevailing Party shall be entitled to recover all of its costs and expenses of such litigation.

10.4. Arbitration.

(a) Except as set forth in Section 10.3 (Material Disputes), if the Parties are unable to resolve the Dispute through mediation as provided for in Section 10.2 (Mediation) above, then either Party may initiate the mandatory binding arbitration by providing to the other Party a written Arbitration Demand. Any such Arbitration Demand shall state specifically the nature of the claim(s), the relevant time periods, a specific dollar amount alleged to be owing, if any, and any other specific information that may be necessary to define the nature of the dispute. The Party receiving the Arbitration Demand shall provide a written Arbitration Response within ten (10) days after receiving the Arbitration Demand. The Response may be a simple denial or may set forth in writing any counterclaims including the same type of information required in an original Arbitration Demand. If an Arbitration Response includes any counterclaims or

proposes, then the Party originally demanding the Arbitration may reply within ten (10) days after receiving the Arbitration Response. If any Party fails to respond to any notice, the Party shall be deemed to deny the demand.

(b) With respect to any arbitration, there will be a single arbitrator, appointed by the Parties within twenty-one (21) days of the demand for arbitration. The arbitrator shall be an attorney who has five (5) years or more experience in the gas industry or representing clients in the gas industry. If the Parties are unable to agree on a single arbitrator then each Party shall select one (1) arbitrator, and the two selected Arbitrators shall jointly select a third Arbitrator (who need not be an attorney). The three Arbitrators shall serve as a panel of three Arbitrators who shall jointly decide all issues.

(c) Each Party shall have the right to engage in reasonable pre-arbitration discovery in the form of requests for production of documents and at least five (5) depositions, and other discovery as allowed by the arbitration panel. Presentation of the case shall include: opening statements, testimony of necessary witnesses, stipulated or properly authenticated documents, and closing statements. No documents may be submitted as evidence unless the documents have been provided to the opposing Party in advance of the Arbitration as allowed by the Arbitrators. Either Party may demand that a transcript of the hearing be prepared. If such a demand is made, then the parties shall each pay one-half of the cost of the transcript.

(d) The place of arbitration hearings shall be Indianapolis, Indiana. The arbitrator(s) shall issue a decision no later than thirty (30) days from the conclusion of the hearing. The arbitrator(s) shall be governed by and shall apply the substantive law of the State of Indiana in making the award. All awards shall be in writing and shall state the reasoning on which the award rests unless the Parties agree otherwise. It is expressly agreed that the arbitrator shall have no authority to award consequential, special, indirect, exemplary, or punitive damages of any type under any circumstances regardless of whether such damages may be available under Indiana law or any other Applicable Law, federal law, or under the Federal or Indiana Arbitration Act, the Parties hereby waiving their rights, if any, to recover consequential, special, indirect, exemplary, and punitive damages with respect to this Agreement. The arbitrator(s) shall award attorneys' fees and disbursements to the prevailing Party in any arbitration and, if there is no clearly prevailing Party, the arbitrator may award attorney's fees and disbursements in such amounts as the arbitrator may determine. The Parties agree that all arbitration proceedings conducted hereunder and the decision of the arbitrator shall be kept confidential and not disclosed, except to Parties, Affiliates, accountants, lawyers, and regulatory bodies and in connection with regulatory proceedings or as otherwise required by law or to the extent necessary to enforce the decision. Notwithstanding the foregoing, any controversies or claims arising out of the same alleged breach, or involving the same or substantially similar factual circumstances shall be consolidated and concurrently submitted to arbitration per the provisions of this Section.

(e) The award shall be final and binding on the parties, except that either Party may appeal as provided in the Indiana Arbitration Act and/or the Federal Arbitration Act.

10.5. Equitable Relief. For any dispute or claim hereunder for which money damages would not provide an adequate remedy or is not available, including in the case of

any willful or repeated breach hereof, a Party may seek specific performance, injunction, or other equitable relief from a court of competent jurisdiction.

10.6. Arbitration Expenses. The compensation and expenses of the arbitrator appointed jointly by the Parties shall be shared by the Parties, otherwise the Party selecting an Arbitrator shall pay all of the fees and expenses of that Arbitrator, and the fees and expenses of the neutral Arbitrator shall be split by the parties.

10.7. Independent Engineer Determinations. Each Party preserves its right to dispute or contest any finding or determination by the Independent Engineer under this Agreement and to retain, at its respective expense, its own engineer to review the findings or work of the Independent Engineer. If there is any disagreement between the Independent Engineer and the engineer retained by Buyer regarding any findings or determinations made by the Independent Engineer under this Agreement which cannot be resolved by the Parties after thirty (30) days, the Parties shall mutually agree upon a third engineer to independently assess the matter underlying the disputed finding or determination. The finding or determination of such third engineer shall not be binding upon the Parties unless the Parties mutually agree and each Party shall have the right to challenge any determination of the third engineer if it disagrees with such third engineer's findings.

10.8. Survival of Dispute Resolution. The Parties agree that the provisions of this Article X (Dispute Resolution) shall survive the expiration or early termination of the Agreement.

ARTICLE XI TITLE, RISK OF LOSS, WARRANTY, AND INDEMNITY

11.1. Title, Risk of Loss. Title and risk of loss for Conforming SNG shall pass from Seller to Buyer at the Title Transfer Point. As between Buyer and Seller, Seller shall have responsibility for risk of loss and shall assume any liability with respect to Conforming SNG prior to and at the Title Transfer Point. As between Buyer and Seller, Buyer shall have responsibility for risk of loss and shall assume any liability with respect to Conforming SNG after the Title Transfer Point. Buyer shall have no liability of any kind with respect to any loss, liability or Claim arising out of or in connection with any SNG that is not Conforming SNG that is produced, delivered or attempted to be delivered by Seller. Following the Commercial Production Date, the Parties will exchange a memorandum stating the meter number and otherwise definitively locating the Delivery Meter.

11.2. Warranty. Seller warrants that (a) it will have the right to convey and will transfer good and merchantable title to all SNG sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims, and (b) the SNG sold hereunder shall satisfy the quality standards of the Receiving Pipeline.

11.3. Indemnity; Contribution.

(a) Seller's Indemnity. Seller agrees to indemnify Buyer and save Buyer harmless from and against any and all Claims, from any and all persons, arising from or out of (a) claims of title, personal injury or property damage from the sale of Conforming SNG under

this Agreement which attach before risk of loss to such Conforming SNG passes to Buyer or which involve the condition of the SNG when delivered to the Title Transfer Point or (b) any delivery of contaminated or non-Conforming SNG to Marketer.

(b) Buyer's Indemnity or Contribution. Subject to and except as expressly provided in Section 11.3(a) (Seller's Indemnity), to the extent permitted by law, Buyer agrees to indemnify Seller and save Seller harmless from and against any and all Claims from any and all persons, arising from or out of claims of title, personal injury or property damage which attach after risk of loss to such Conforming SNG passes to Buyer at the Title Transfer Point. To the extent such indemnification is not legally available, then the Parties agree that there will be joint contributions with each Party contributing based on their respective responsibility for the SNG after the Title Transfer Point. The Parties acknowledge that Seller has no obligation after title to SNG is passed at the Title Transfer Point so long as such SNG is Conforming SNG.

ARTICLE XII EVENTS OF DEFAULT AND SECURITY

12.1. Events of Default. Each of the following events shall constitute an "Event of Default" as to the affected Party:

(a) the Defaulting Party shall (i) make an assignment for the benefit of creditors, or any arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors; (iii) have such petition filed or proceeding commenced against it; and have such petition or proceeding not dismissed within ninety (90) days after its filing or commencement; (iv) otherwise become bankrupt or insolvent (however evidenced); (v) be generally unable to pay its debts as they fall due (equitable insolvency); or (vi) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets;

(b) the Defaulting Party shall fail to perform any obligation to the other Party with respect to any collateral posting obligations required under this Agreement or Defaulting Party shall fail to perform any credit support obligations relating to this Agreement; within ten (10) Business Days of a written request by the other Party;

(c) the Defaulting Party shall not have paid any undisputed amount due to the other Party hereunder on or before the thirtieth (30th) day following written notice that such payment is due;

(d) any representation or warranty by the Defaulting Party shall be incorrect in any material respect when made and shall not be remedied within thirty (30) days after written notice thereof is delivered to the Defaulting Party;

(e) the Defaulting Party shall fail to perform any of its material obligations under this Agreement (which, in the case of Seller, shall not include the obligations set forth in Section 6.5 (Indiana Content) or Sections 6.8 (Federal Non-Discrimination Laws) through 6.14 (Telephone Solicitation) of this Agreement) and such default continues without cure for a period of thirty (30) days after written notice thereof is delivered to the Defaulting Party, or if

such Event of Default is not capable of cure within thirty (30) days, then for such longer period of time as the Defaulting Party is diligently pursuing a Recovery Plan not to exceed an aggregate of ninety (90) days; provided that a material obligation for purposes of this clause (e) shall mean an obligation under this Agreement which if not performed in material respects by the Defaulting Party had or could reasonably be expected to have a material and adverse effect on the rights and obligations of the other Party under this Agreement; or

(f) any collateral security document or first priority lien in the Collateral granted to Seller shall in either case fail to be in full force and effect or Buyer shall otherwise be in default of any of its material obligations under any collateral security document.

12.2. Remedies. Subject to any right to cure, if an Event of Default with respect to a Defaulting Party shall occur and be continuing, then the Non-Defaulting Party shall have the right: (a) to terminate this Agreement pursuant to Section 1.2 (Termination by Buyer) or Section 1.3 (Termination by Seller), as applicable; (b) subject to the limitations set forth in Section 15.11 (Limitation of Damages), to pursue any other remedy provided under this Agreement or now or hereafter existing at law or in equity or otherwise; (c) to immediately withhold and/or suspend deliveries or payments upon notice, in addition to any and all other remedies available hereunder; provided, however, that the Non-Defaulting Party shall immediately reinstate deliveries or payments upon receipt of written notice from the Defaulting Party (and reasonably acceptable evidence) that the Event of Default has been rectified or that the fact or condition giving rise to the Event of Default is no longer continuing.

12.3. Setoffs. If an Event of Default has occurred and is continuing and if the Defaulting Party is or would be owed any outstanding obligation, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to set off against such outstanding obligation any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under this Agreement or any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates relating to (a) this Agreement, (b) the transactions contemplated in or relating to this Agreement, or (c) the Project. The remedy provided for in this Section 12.3 (Setoffs) shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

12.4. Financing Party Cure Rights. The Financing Parties or the collateral agent acting on their behalf under any Financing shall have the right (but not the obligation) for sixty (60) days after the expiration of the deadline for performance or cure (or thirty (30) days in the event of an Event of Default involving a monetary obligation), including any applicable grace period provided in Section 12.1 (Events of Default), to prevent termination of this Agreement by curing the Event of Default on behalf of Seller; provided that such sixty (60) day period shall be extended for up to an additional ninety (90) days if possession of the Plant is required for the Financing Parties or collateral agent acting on their behalf to effect a cure of an Event of Default. Notwithstanding the foregoing, following the expiration of the cure periods granted to Seller under this Agreement with respect to the breach of any monetary obligation, Buyer shall have the right to suspend its obligation to purchase

Conforming SNG under this Agreement until such monetary obligation is cured. Buyer agrees to provide to the Financing Parties or collateral agent acting on their behalf under a Financing a consent to assignment and estoppel certificate as reasonably requested by such persons.

12.5. Cover Damages. Buyer shall be liable to Seller for cover damages in the event that Buyer fails to take Conforming SNG delivered by or on behalf of Seller in accordance with Section 2.1 (Purchase Obligation). The cover damages payable to Seller by Buyer shall be calculated based on the positive difference (if any) between the Monthly Invoice Contract Price and the price received by Seller in purchase and sale contract entered into by Seller with another purchaser for the quantities not taken plus costs incurred by Seller in such effectuating such disposition.

12.6. Limitation on Liability. Each Party shall utilize Commercially Reasonable Efforts to mitigate its damages under this Agreement. Neither Party shall have any liability to the other Party as a result of a termination of this Agreement pursuant to Section 1.2 (Termination by Buyer) or Section 1.3 (Termination by Seller) other than a termination made pursuant to Section 1.2(b) (Termination by Buyer) or Section 1.3(c) (Termination by Seller) as a result of an Event of Default. Except for claims involving fraud or willful misconduct, no individual, officer, director, limited partner, shareholder, parent company, corporate or partnership affiliate or other similar entity of either Party shall have any personal liability or responsibility for, relating to or in connection with said Party's failure to properly perform any term, covenant, condition or provision of this Agreement. Except in the case of a claim for fraud or willful misconduct, in pursuing any remedy for a Party's breach of any of the terms, covenants and conditions of this Agreement, a Party shall not have recourse against any Person other than the defaulting or breaching Party itself or its assignees or successors. For the avoidance of doubt, Seller acknowledges and agrees that the obligations of Buyer are not backed by the full faith and credit of the State of Indiana and payment for Seller's damages against Buyer shall be limited to (a) the Fund; (b) amounts received by Buyer that were required by statute to be collected and deposited in the Fund, but which were not collected or deposited in the Fund; and (c) amounts in the Consumer Protection Reserve Account and (d) enforcement of its obligations under this Agreement and the Statute. The foregoing limitation of liability of Seller's recourse to Buyer is not intended to allow Buyer the right to avoid or ignore its obligations to establish and maintain the Fund as contemplated by the Statute. The limitations of liability set forth in this Section 12.6 (Limitation on Liability) shall survive the expiration or early termination of the Agreement.

12.7. Security.

(a) Grant of Security Interest. As collateral security for the payment in full (whether at stated maturity, by acceleration or otherwise) of all amounts due by Buyer to Seller under this Agreement, Buyer hereby pledges and grants to Seller a security interest in all of Buyer's right, title and interest in, to and under the Fund and the Consumer Protection Reserve Account and a general first lien upon and right of set off against (the "Collateral"). Such security interest shall include all interest and proceeds of any of the Collateral, and all accessions to and substitutions and replacements for, any of the Collateral. In furtherance of the grant of the security interest under this Section 12.7(a) (Security), Buyer hereby agrees promptly from time

to time to give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, instruments, documents, control agreements, pledges, escrow agreements or consents or other papers as may be necessary in the judgment of Seller to create, preserve, perfect, maintain the perfection of, reinstate the perfection of or validate the security interest granted pursuant hereto or to enable Seller to exercise and enforce its rights hereunder with respect to such security interest. Seller shall have all of the rights and remedies with respect to the Collateral as set forth in this Agreement and such additional rights and remedies to which a secured party is entitled under Applicable Law, including the Uniform Commercial Code as in effect in Indiana, including without limiting the foregoing: (i) Seller in its discretion may, in its name or in the name of Buyer or otherwise, demand, sue for, collect or receive any money or other property at any time payable or receivable on account of or in exchange for any of the Collateral, but shall be under no obligation to do so; and Seller may make any reasonable compromise or settlement deemed desirable with respect to any of the Collateral. The security interest granted by this Section 12.7(a) (Security) shall survive the termination of this Agreement to the extent there remains any outstanding obligations from Buyer to Seller.

12.8. Consumer Protection Reserve Account. Seller will establish and maintain a special interest bearing escrow account with a third party depository financial institution mutually acceptable to Parties in accordance with the following:

(a) Upon the closing of the DOE Guaranteed Financing and prior to commencement of construction, Seller shall provide its CPR Commitment to fund the CPR Commitment Amount to the Consumer Protection Reserve Account, which commitment shall be available to provide funds for Remediation of the Plant site in the event Seller abandons the Plant prior to achieving the Commercial Production Date. The CPR Commitment Amount will either be paid in cash into an escrow account maintained for the benefit of Buyer consistent with the terms and conditions of this Agreement or in the form of a letter of credit in a form acceptable to Buyer issued by an institution with a rating of AA or higher and payable to Buyer consistent with the terms and conditions of this Agreement.

(b) At the commencement of the Primary Term and as a condition to achieving the Commercial Production Date, Seller shall deposit the CPR Commitment Amount into the CPR Reserve Account.

(c) Amounts in the Consumer Protection Reserve Account shall be available to Buyer to eliminate or reduce to the maximum extent any applicable Monthly Negative Market Differential and to provide working capital funds to Buyer for the first five (5) years of the Primary Term; provided that the maximum amount of working capital funds to provided to Buyer pursuant to this Section 12.8(c) (Consumer Protection Reserve Account) shall not exceed Twenty Million Dollars (\$20,000,000) in the aggregate, and provided further that the maximum period of time in which Buyer may utilize amounts in the Consumer Protection Reserve Account for working capital on an interest-free basis shall not exceed five (5) consecutive Business Days.

(d) In the event Buyer does not replenish the Consumer Protection Reserve Account for amounts withdrawn for working capital funds in accordance with Section 12.8(c) (Consumer Protection Reserve Account) within five (5) Business Days, such amount shall be

tracked and credit to the balance of the Consumer Protection Reserve Account as if available in the Consumer Protection Reserve Account until such funds have been repaid.

(e) Prior to the CPD, if for any reason Seller abandons the construction or operation of the Plant, the CPR Commitment Amount shall be funded into the Consumer Protection Reserve Account and be made available to the extent needed to pay for the costs of dismantling the Plant and/or Remediation of the Plant site to the extent liquidation of installed assets does not provide adequate funding. Notwithstanding the foregoing, Seller's CPR Commitment to fund and make available the CPR Commitment Amount shall be net of (i.e. reduced by) any revenues received from the sale of equipment, scrap metal value, etc. to the extent such proceeds are utilized to fund the dismantling of the Plant and the Remediation of the Plant site and the costs expended to dismantle the Plant and for Remediation of the Plant site by third parties counterparty to contracts with Seller, pursuant to which such third parties are obligated to bear the costs of dismantling the Plant and/or the Remediation of the Plant site.

(f) Interest and investment income earned in respect of the amounts held in the Consumer Protection Reserve Account (including for such adjustments for un-replenished withdrawals of working capital) shall be distributed to Seller pro-rata based on the amount of the CPR Commitment Amount that has not yet been recovered by Seller from Positive Adjusted Market Differential, relative to the balance in the Consumer Protection Reserve Account, such that interest and investment income shall first be distributed to Seller until the CPR Commitment Amount has been fully recovered and thereafter, all remaining and future interest and investment income earned shall be deposited in the Consumer Protection Reserve Account.

(g) Any funds held in Consumer Protection Reserve Account in excess of (i) \$100 million at the end of Contract Year 10, (ii) \$50 million at the end of Contract Year 20, and (iii) zero at the end of the Primary Term, shall be distributed (A) first, to Seller, until Seller has fully recouped the CPR Commitment Amount not already recouped pursuant to the allocation of Monthly Positive Market Differential in accordance with Section 5.6(b) (Adjustments for Monthly Positive Market Differential) and (B) then, to Buyer to satisfy any Contract Savings Guaranty Shortfall Amount, and (C) finally, any remaining amounts shall be allocated to Buyer and Seller equally. For purposes of determining whether any distribution is necessary under subsection (B) of this section, the Contract Savings Guaranty Amount shall be calculated as of the end of Contract Year 10 and as of the end of Contract Year 20.

12.9. Plant Evaluation. At the end of twenty-fifth (25th) Contract Year, Seller and Buyer shall mutually agree upon a qualified third party appraiser to prepare an independent valuation of the fair market value of the Plant after the expiration of the Primary Term based on a mutually agreeable valuation methodology. If the sum of the value of the Plant determined by such appraiser plus the projected Contract Savings Reconciliation Amount is negative, then, when the debt service payments under any DOE Guaranteed Financing have been fully discharged, the cash flows previously dedicated to such debt service payments shall instead be deposited into the Consumer Protection Reserve Account for application in accordance with Section 12.8 (Consumer Protection Reserve Account). If the Parties cannot agree on a qualified third party appraiser within thirty (30) days after the end of the twenty-fifth (25th) Contract Year, such fair market value shall be determined by conducting three (3) independent valuations of the Plant, on the basis set forth above, made

by qualified third party appraisers, one of whom shall be selected and compensated by Seller, one of whom shall be selected and compensated by Buyer and one of whom shall be selected jointly by the appraiser selected by Seller and the appraiser selected by Buyer and whose compensation shall be shared equally by Seller and Buyer, and taking the average of the two (2) appraisals which are the closest together.

ARTICLE XIII FORCE MAJEURE

13.1. No Liability; Definition. Neither Party shall be liable to the other Party for failure to perform an obligation under this Agreement to the extent such failure was caused by Force Majeure. Seller and Buyer shall make Commercially Reasonable Efforts to mitigate the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance. Notwithstanding any other provision hereof, the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and the requirement that any Force Majeure shall be remedied with the exercise of due diligence shall not require the settlement of strikes or lockouts by a Party when such course is inadvisable in the discretion of such Party.

13.2. Exclusions. 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: (a) failure of Seller to obtain firm transportation service or the failure of Buyer to obtain firm transportation service when Buyer is electing to have alternative deliveries pursuant to Section 2.4(c) (Alternative Delivery During State Emergency), (b) the curtailment of interruptible or secondary firm transportation unless primary or in-path secondary firm transportation is also curtailed; (c) the Party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; (d) economic hardship, including, without limitation, Seller's ability to sell SNG at a higher or more advantageous price than the Adjusted Base Contract Price or Buyer's ability to purchase gas at a lower or more advantageous price than the Adjusted Base Contract Price; (e) the failure of the Plant as a result of the failure of Seller to design, construct, maintain or operate the Plant in accordance with Good Industry Practices; (f) any circumstance or event to the extent such circumstance or event could have been prevented or mitigated by a diligent operator or resulted from the negligence of such Party or its employees or contractors, and (g) freezing of Seller's coal inventory pile.

13.3. Notice Required. The Party whose performance is prevented by Force Majeure must provide notice as promptly as reasonably possible to the other Party. Initial notice may be given orally; provided, however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible and in any event no later than ten (10) Business Days from the commencement of such Force Majeure. The notice will (a) identify the Force Majeure, (b) include an estimate of the duration of the event, and (c) specify the likely effect (e.g. on production capability (Seller) or the ability to take Conforming SNG (Buyer)). Upon providing written notice of a Force Majeure to the other Party, the affected Party will be relieved of its obligation, from the onset of the Force Majeure, to make or accept delivery of Conforming SNG, as applicable, to the extent and for the duration of the Force Majeure, and neither Party shall be deemed to have failed in such

obligations to the other Party during such occurrence or event. The Party providing notice of a Force Majeure shall update the notice if new information renders the previous notice materially inaccurate.

13.4. Maximum Duration. If a Party's performance hereunder is suspended for Force Majeure for more than three hundred sixty-five (365) continuous days, the other Party may, at its option, terminate this Agreement effective thirty (30) days after written notice to the Party whose performance was suspended.

ARTICLE XIV RATE COVENANT AND STATUTORY PROTECTIONS

14.1. No Immunity Claim. To the extent allowable under Applicable Law, Buyer agrees that it will not assert any immunity it may have as a state agency against lawsuits, disputes, claims, or causes of action, whether legal or equitable, filed in state or federal courts by Seller to enforce this Agreement.

14.2. Nature of Payments. Except for the pledge in favor of Seller, Buyer shall not pledge or encumber the Fund or the CPR Reserve Account to secure any bonds, notes or other indebtedness of the Buyer.

14.3. Rate Covenant. In accordance with the Statute, Buyer covenants that it will, establish the Fund, and at least annually, and more frequently as required, issue invoices for payment under the Management Agreements in amounts sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which Buyer has incurred, including any payments owed by Buyer pursuant to this Agreement (such payments, the "Contract Charges"). Buyer further covenants that it shall do all things lawfully within its power and, if and when necessary, shall exhaust all available reviews and appeals, in order to enforce and administer the Marketing and Services Agreement, the Management Agreements, and all other management contracts and any other required contracts entered into by Buyer related to the delivery, transportation and storage of SNG, including, without limitation, to collect the monthly charges under the Management Agreements sufficient to pay the Contract Charges. The Parties acknowledge and agree that the covenant of the State of Indiana (the "State") set forth in Section IC 4-4-11.6-24 is a fundamental premise upon which Seller has relied in entering into this Agreement and committing to the development, financing and construction of the Plant as provided herein and that, but for the existence of such covenant of the State, Seller would not be willing to develop, finance and construct the Plant or to enter into this Agreement. Buyer covenants and agrees that Buyer will not take or permit any action or fail to take or permit any action that would (a) impair this Agreement or (b) otherwise limit, alter or impair the ability of Buyer to satisfy its contractual obligations hereunder, including the establishment and collection of the price of SNG from retail end use customers, in each case, until this Agreement has been terminated. Buyer further acknowledges and agrees that any action, omissions or failure to act by the State or any agency thereof to cause Buyer not to establish a sufficient revenue requirement, or not to collect rates or to pay Seller, in each case would constitute a breach of this Agreement and a taking by the State of the investment of Seller in the Project.

14.4. Source of Payment. Subject to Buyer's compliance with its obligations in Section 14.3 (Rate Covenant), Buyer's obligation to make payments under this Agreement shall be limited solely to (a) the Fund, (b) amounts received by Buyer that were required by the Statute to be collected and deposited in the Fund but which were not so collected and deposited in the Fund, and (c) amounts in the Consumer Protection Reserve Account. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF INDIANA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT.

14.5. Special Pass-Through of Certain Expenses. In the event that a Person (other than Buyer or Seller) institutes a legal action which challenges the validity or enforceability of this Agreement and Seller obtains a final, non-appealable judgment upholding this Agreement, Seller shall be entitled to reimbursement for the reasonable costs and expenses incurred in connection with defending such action (including court costs and legal fees) which are not otherwise reasonably recoverable by Seller and for which Seller is not otherwise reasonably likely to receive reimbursement. Any reimbursement to Seller shall be solely through an adjustment to the Base Contract Price on a per MMBtu basis to reflect such costs and expenses pro rata over a twelve (12) month period.

ARTICLE XV GENERAL PROVISIONS

15.1. Assignment and Transfer. This Agreement shall be binding upon and inure to the benefit of the successors, permitted assigns, personal representatives, and heirs of the respective Parties hereto, and the covenants, conditions, rights and obligations of this Agreement shall run for the full Term.

(a) Buyer shall not transfer, convey or assign its rights and obligations under this Agreement without the prior written consent of Seller, except that Buyer may assign or otherwise transfer all its rights and obligations to a statutory successor; provided that the successor entity shall be the independent body politic and corporate instrumentality of the State of Indiana that is responsible for managing the debt of state entities.

(b) Except for a transfer, sale, pledge, encumbrance or assignment of its rights under this Agreement in connection with any debt or equity financing (including, for the avoidance of doubt, a sale-leaseback or leverage lease financing) or a transfer of its interest to any Affiliate, Seller may not (i) sell, transfer, or convey the Plant or (ii) transfer, convey or assign its rights or obligations under the Agreement without the prior written consent of Buyer, provided that, such consent shall not be unreasonably withheld or delayed, and provided further that, Buyer may not withhold or delay granting such consent if the sale, transfer, conveyance or assignment of the Plant is to a person or entity that (1) at the time of such transfer or sale is a Qualified Transferee and (2) meets the operational and experience criteria set forth on Schedule 15.1(b).

(c) Without Buyer's prior written consent, Seller shall not permit a change-in-control of Seller to occur, provided that a change in control of Seller may occur without Buyer's prior written consent if the resulting majority owner of the equity or voting interest (direct or

indirect) in Seller is (i) Qualified Transferee and not a Prohibited Transferee or (ii) the directors or managers of the resulting owner are appointed by Baldwin Indiana Energy, Inc., the sole member of Seller. For purposes hereof, the term "change-in-control of Seller" shall mean the occurrence of any of the following: (x) any sale, transfer, conveyance or assignment, individually or in combination with prior occurrences, by operation of law or otherwise, of more than fifty percent (50%) in total of the equity or voting interests (direct or indirect) in Seller, or (y) the occurrence of an event or any series of events in which individuals who are either directors, officers or managers of Seller as of the Commercial Production Date or who are directors or managers appointed by the initial sole member of Seller, in either case cease to constitute a majority of the directors, officers or managers following such event. Notwithstanding anything herein to the contrary, Seller shall under no circumstances permit a change-in-control transaction of the type described above to occur which would result in the transfer of ownership (whether direct or indirect, beneficial or otherwise) being a Prohibited Transferee.

15.2. Non-Severability. All of the provisions of this Agreement constitute a material integral part of the Parties' agreements and this Agreement shall be construed in whole and not in part so that if individual provisions, agreements or covenants are determined to be invalid, void or unenforceable by any court having jurisdiction, then such determination shall invalidate, void, and make unenforceable this Agreement in its entirety.

15.3. Waiver. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

15.4. Replacement of Indices. If any publication or published index or reference on which any provision of this Agreement relies for any purpose ceases to be available, the Parties agree to promptly negotiate on a good faith basis an agreeable alternate publication or published index or reference to take effect as of the date the prior publication or published index or reference is unavailable. If the Parties cannot agree on an alternative publication or published index or reference within thirty (30) days of the prior publication or published index or reference ceasing to be available, then each Party shall in good faith, within ten (10) days thereafter, prepare and submit to the other Party a written list of up to five alternate publication or published index or reference setting forth the preferred ranking the highest preference listed first. The first listed publication or published index or reference appearing in each Party's list shall constitute the alternate publication or published index or reference. If either Party fails to provide a list of that Party's alternative publication or published index or reference as provided above, such Party's list shall not be considered and the first listed publication or published index or reference appearing in the other Party's submitted list shall constitute the alternate publication or published index or reference.

15.5. Amendments. Any amendments to this Agreement must be in writing executed by both Parties.

15.6. Imaged Agreement. Any original executed Agreement or other related document may be photocopied and stored on computer tapes and disks. The imaged agreement stored on such computer tapes and disks, if introduced as evidence on paper will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall

object to the admissibility of such imaged agreements or photocopies of such imaged agreement on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or any other rule of evidence.

15.7. Governing Law; Submission to Jurisdiction. This Agreement and all disputes and causes of action between the Parties (including actions in aid of arbitration) whether in contract, warranty, tort, strict liability, by statute or otherwise, shall exclusively be governed by the laws of the State of Indiana (exclusive of conflicts of law principles). Except for disputes to be resolved pursuant to Sections 10.1 (Negotiation), 10.2 (Mediation) and 10.4 (Arbitration), the sole and exclusive venue for any disputes, claims or causes of action, legal or equitable, shall be a court located in Marion County, Indiana and each Party irrevocably consents to the jurisdiction of any such court in any such dispute, claim or cause of action. Each Party (on behalf of itself and on behalf of its Affiliates) hereby waives any right to stay or dismiss any action or proceeding under or in connection with any or all of this Agreement brought before the foregoing court on the basis of forum non-conveniens. This Section 15.7 (Governing Law) and its requirements shall survive the term or any extension terms of this Agreement.

15.8. Rules of Interpretation. The singular includes the plural and the plural includes the singular. The word "knowledge" shall include any knowledge known by, or attributable or imputable to, such Person. A reference to an entity or any Governmental Authority includes its successors and permitted assigns. Accounting terms have the meanings assigned to them by Generally Accepted Accounting Principles, as applied by the accounting entity to which they refer. The words "include," "includes" and "including" are not limiting. References to articles, Sections (or subdivisions of Sections), exhibits, annexes or schedules are to this Agreement. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time. The words "hereof," "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document. References to "days" mean references to calendar days, unless the term "Business Days" shall be used. The words "will" and "shall" shall/will be construed to have the same meaning and effect.

15.9. No Third Party Beneficiaries. The Parties expressly acknowledge and agree that there are no third party beneficiaries to this Agreement.

15.10. Headings. The headings and subheadings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement between the Parties and shall not be used to construe or interpret the provisions of this Agreement.

15.11. Limitation of Damages. 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 DAMAGE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES SHALL BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THIS SECTION SHALL NOT AFFECT THE RIGHTS OF EITHER PARTY TO SEEK SPECIFIC PERFORMANCE OR OTHER EQUITABLE RELIEF.

15.12. Notices. Unless specified otherwise in this Agreement, all invoices, payments, notices and other communications made pursuant to this Agreement shall be made in writing and delivered to the addresses set forth below or as specified in writing by the respective Party from time to time. All notices required hereunder may be sent by facsimile, a nationally recognized overnight courier service, first class mail or hand delivered. Notice shall be deemed to 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 5:00 p.m. in the receiving Party's time zone on a Business Day, then such facsimile shall be deemed to have been received on the next Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving Party. Notice via first class mail shall be considered delivered five (5) Business Days after mailing. Address for notices are as follows:

If to Seller:
Indiana Gasification, LLC
315 Park Avenue, South
New York, NY 10010
Attn: Donald Maley,
Vice President
Telephone: (212) 460-1910
Facsimile: (212) 598-4869

If to Buyer:
Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, IN 46204
Attn: Public Finance Director of
the State of Indiana
Telephone: (317) 233-4338
Facsimile: (317) 232-6786

15.13. Preparation of Agreement; Costs and Expenses. This Agreement was prepared by the Parties to this Agreement and not by any individual Party to the exclusion of the other Party. The rule of contractual construction construing a contract against the drafting party is hereby waived as this Agreement is the product of the joint drafting efforts of both Parties collectively. Each Party shall be liable for all of its respective costs and expenses incurred in connection with the negotiation and preparation of this Agreement, except that Seller shall be responsible for paying or reimbursing Buyer as invoiced, in an

amount up to \$750,000 in the aggregate, for all fees, costs and expenses relating to this Agreement and the transactions contemplated herein, including without limitation, legal fees incurred after June 30, 2010, due diligence fees, costs and expenses and costs and expenses relating to the IURC approval process. On the Initial Conditions Precedent Satisfaction Date, Buyer shall be entitled to reimbursement, in an amount up to \$250,000 in the aggregate, for all fees, costs and expenses relating to this Agreement and the transactions contemplated herein, including without limitation, legal fees incurred after June 30, 2010, due diligence fees, costs and expenses and costs and expenses relating to the IURC approval process. On the Financial Closing Date, Buyer shall be entitled to reimbursement from the CPR Commitment Amount up to an additional \$500,000 (a) to the extent the costs, fees and expenses described in the preceding sentences exceed \$1,000,000, an amount equal to any such excess and (b) an amount equal to the legal fees and expenses of Buyer incurred prior to June 30, 2010. After the Financial Closing Date and until the CPD, Buyer shall be entitled to reimbursement from the CPR Commitment Amount for any costs, fees and expenses incurred by Buyer in connection with this Agreement and the transactions contemplated herein, to the extent any such costs, fees or expenses are approved in advance by Seller.

15.14. Confidentiality. The Parties acknowledge that this Agreement may in whole or in part be filed with the IURC as a public document. Any non-public information relating to this Agreement provided by one Party to the other Party deemed by the providing Party to be proprietary or confidential information shall be clearly marked "CONFIDENTIAL" and shall be held confidential and not be disclosed to any third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the Party, regulating authorities, credit rating agencies, or prospective purchasers of all or substantially all of a Party's assets or of any rights under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, such confidential information may be disclosed without the providing Party's prior written consent (i) in order to comply with any Applicable Law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Agreement, (iii) to the extent necessary to implement any transaction in connection with the transactions described in this Agreement, (iv) to the extent such information is delivered to such third party for the sole purpose of calculating a published index, (v) in connection with the IURC and any other Governmental Authority approval contemplated in the Statute, or (vi) in connection with judicial proceedings or arbitration. Each Party shall (A) promptly notify the providing Party of any disclosure of confidential information of the providing Party that such Party proposes to make pursuant to clauses (i) through (vi) of the preceding sentence or in response to any request for confidential information of the providing Party received by such Party in any of the foregoing matters to the extent such prior notification is feasible and (B) use reasonable efforts to prevent or limit the disclosure by use of protective orders and confidentiality procedures as may be available in such matters. Subject to Section 15.11 (Limitation of Damages), the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with the confidentiality obligations under this Section 15.14 (Confidentiality). The confidentiality obligations of the Parties under this Section 15.14 (Confidentiality) shall continue to apply for two (2) years after the termination of this Agreement.

15.15. Mutual Cooperation. Each of the Parties agrees to reasonably cooperate with each other with respect to, and not take actions which could reasonably be expected to have an adverse effect upon, (a) Seller's development, permitting, start-up, commissioning, construction, operation and maintenance of the Plant, (b) Buyer's arrangements for the transportation of SNG delivered under this Agreement, and (c) each Parties' performance of any of its respective obligations under this Agreement.

15.16. Complete Agreement. This Agreement 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, including without limitation the Term Sheet by and between Seller and Buyer dated as of June 30, 2010, are merged into and superseded by this Agreement and any effective transaction(s).

***** Signature Page Follows *****

IN WITNESS WHEREOF, this Agreement is duly executed and effective as of the date first written above:

SELLER
INDIANA GASIFICATION, LLC,
a Delaware limited liability company

BUYER
INDIANA FINANCE AUTHORITY, an
independent body politic and corporate and
independent instrumentality of the State of
Indiana

By: Thomas E. MARRA
Name: T. MARRA
Title: President

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, this Agreement is duly executed and effective as of the date first written above:

SELLER
INDIANA GASIFICATION, LLC,
a Delaware limited liability company

BUYER
INDIANA FINANCE AUTHORITY, an
independent body politic and corporate and
independent instrumentality of the State of
Indiana

By: _____

Name: _____

Title: _____

By: Jennifer M. Alvey

Name: Jennifer M. Alvey

Title: Public Finance Director
of the State of Indiana

SCHEDULE I

DEFINITIONS

For the purpose of this Agreement, the following words and terms are defined as follows:

"Additional Products" means any and all products and/or services produced by the Plant other than (a) Conforming SNG that Buyer is obligated to purchase in accordance with this Agreement; (b) Incremental Production; and (c) Net CO₂ Revenues. Examples of Additional Products are: argon, rare gases and sulfuric acid.

"Adjusted Base Contract Price" means, the Base Contract Price adjusted for payment of New Taxes, Changes in Governmental Requirements, allocations of Net Incremental Revenues and allocations of Net CO₂ Revenues in accordance with Sections 5.3 (Adjustments to Base Contract Price for New Taxes and Change in Governmental Requirements) and 5.4 (Adjustments for Allocation of Net Incremental Revenues and Net CO₂ Revenues).

"Adjusted Market Differential" means, for each month of determination, the positive or negative Market Differential (in total dollar amounts) determined as of such month after applying all available funds in the Consumer Protection Reserve Account, if any (including, for the avoidance of doubt, any amount utilized by Buyer pursuant to Section 12.8(c) (Consumer Protection Reserve Account)), in order to reduce any Monthly Negative Market Differential in such month to zero).

"Adjusted O&M Component" means the O&M Component as adjusted from time to time by the O&M Indices in accordance with Section 5.2 (Determination of Base Contract Price), and to the extent applicable, in accordance with Section 5.5(b) (Procedure for Review and Adjustment of O&M Component).

"Affiliate" means, with respect to any entity, another entity which Controls, is Controlled by, or is under common Control with, such entity.

"Agreement" has the meaning specified in the Preamble of this Agreement.

"Annual Contract Quantity" or "ACQ" means, for each Contract Year, an amount equal to 38 million MMBtus of Conforming SNG, which amount shall be prorated for any Contract Year which is less than twelve (12) months.

"Annual Fuel Outlook" means an annual fuel report to be prepared by Seller pursuant to Section 4.6(a) (Adjustments for Monthly Positive Market Differential) ("Annual Fuel Outlook").

"Annual Fuel Procurement Plan" has the meaning in Section 4.6(a) (Annual Fuel Outlook) and means, for each Contract Year, the annual fuel procurement plan covering the contents in Section 4.6(b) (Contents of the Annual Fuel Procurement Plan) adopted by Seller with respect to the procurement of fuel for the Plant for such Contract Year as approved by Buyer pursuant to Section 4.6(c) (Approval of the Annual Fuel Procurement Plan).

"Annual Meeting" means the annual meeting of the Coordination Committee.

"Applicable Law" means, with respect to any entity, any applicable law, statute, regulation, ordinance, rule, order, decree, judgment, consent decree, settlement agreement or governmental requirement of any Governmental Authority, that are applicable to or binding upon such entity.

"Applicable MCQ" means either the MCQ or the Increased MCQ, and is the maximum monthly amount of Conforming SNG that Buyer is obligated to purchase in any single month.

"Asset Management Agreement" means an arrangement with the Marketer under the Marketing and Services Agreement where the Marketer takes title to the Conforming SNG directly at the Plant or the interconnect with the Receiving Pipeline and the Marketer is responsible for any variable transportation charges owed to the pipeline.

"Base Contract Price" means the price for Conforming SNG established in accordance with Section 5.2 (Determination of Base Contract Price), as adjusted by Section 5.5 (Special Adjustments to Base Contract Price), but prior to any adjustments contemplated in Section 5.3 (Adjustments to Base Contract Price for New Taxes and Change in Governmental Requirements) or Section 5.4 (Adjustments for Allocation of Net Incremental Revenues and Net CO₂ Revenues).

"BEA" means the United States Bureau of Economic Analysis.

"Btu" means British thermal unit.

"Business Day" means any day other than a Saturday, Sunday or holiday on which commercial banks in the State of Indiana or the State of New York are authorized or required to close.

"Buyer" has the meaning specified in the Preamble of this Agreement.

"Capital Component" has the meaning specified in Section 5.2 (Determination of Base Contract Price).

"Capital Lease Obligation" of any Person shall mean the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Carbon Related Products" means CO₂ and any carbon related products, but excluding carbon credits.

"Change-in-Control of Seller" has the meaning specified in Section 15.1(c) (Assignment and Transfer).

"Change in Governmental Requirements" means any of the following events which has an effect on Seller, the development, construction, and/or operation of the Plant or Seller's ability to perform any of its obligations under this Agreement: (a) the enactment of a new Governmental Requirement after the date of this Agreement; (b) a change in interpretation or application of a Governmental Requirement after the date hereof; provided that for purposes of this Agreement, the Parties agree that the Supreme Court's decision in *Massachusetts vs. EPA* (April 2, 2007) finding that the Environmental Protection Agency has the authority to regulate carbon dioxide and other greenhouse gases as pollutants under the Clean Air Act and the EPA's determination on April 17, 2009 that carbon dioxide and five other greenhouse gases constitute pollutants that are harmful to public health and welfare, as well as any resulting regulation and/or interpretation of current laws and regulations based on such Supreme Court decision and EPA determination shall constitute a Change in Governmental Requirements for all purposes of this Agreement; (c) a change in any conditions or requirements of any Governmental Approval or by any Governmental Authority after the date of this Agreement in connection with the permitting of the Plant; provided that Seller shall use Commercially Reasonable Efforts to minimize the effects of any such conditions or requirements and the costs thereof, or (d) the imposition of any condition or requirement by any Governmental Authority in connection with the grant of any financial incentive (including a Federal Loan Guarantee), other than any requirement under the DOE Guaranteed Financing relating to Carbon Related Products and not involving the sale of Carbon Related Products through a pipeline; provided that Seller agrees to use Commercially Reasonable Efforts to minimize the long-term effects of any such conditions or requirements and the costs thereof. For the avoidance of doubt, in each case of clauses (a) – (d) above, the loss or expiration of or reduction in the coal production tax available to Seller under Indiana Code 6-3.1-29 shall be excluded.

"Claim" means any claims, judgment, demand, cause of action, loss, liabilities, interest, awards, penalties, costs, fees and expenses (including, without limitation, reasonable attorneys' fees and legal costs).

"CO₂ Taxes" means any Taxes on CO₂ emissions that are reasonably demonstrated to be capable of mitigation through commercially and technically available alternatives, as determined by the Independent Engineer, and are included in the adjustment for Change in Governmental Requirements as provided for in Section 5.3(b) (Adjustments to Base Contract Price for New Taxes and Change in Governmental Requirements).

"Collateral" means the collateral granted to Buyer from Seller as described in Section 12.8(a) (Consumer Protection Reserve Account).

"Commercial Production Date" or "CPD" means the first Gas Day of the first calendar month after the date that the Independent Engineer certifies in writing, at Seller's cost, to the Financing Parties that the Plant is ready to commence commercial production of SNG pursuant to Article III (Commercial Production).

"Commercially Reasonable Efforts" or "commercially reasonable efforts" means, (a) with respect to Seller as to matters relating to the Plant, efforts equivalent to those that would be exercised by an experienced owner/operator of industrial facilities of similar size and complexity to the Plant acting in good faith and taking into consideration the technology, risks, costs and

benefits inherent in the installation and operation of similar facilities, considering the associated business environment, legal requirements and economics, and in general conformity with the records and operating procedures described in Section 4.12 and (b) with respect to both Parties as to general obligations under this Agreement which are not related to the operations of the Plant, efforts equivalent to those that would be exercised by an equivalent party acting in good faith and in a commercially reasonable manner under the particular circumstances in which such efforts are to be expended. The Parties acknowledge and agree that Buyer is not a privately-owned for profit entity and the foregoing standard applied to Buyer shall take into consideration any limitations that may apply given its status as an independent body politic and corporate and an independent instrumentality of the State of Indiana.

"Conforming SNG" means SNG meeting the minimum requirements for delivery into and transportation of natural gas on the applicable Receiving Pipeline's pipeline system, as such requirements may be amended from time to time.

"Construction Commencement Milestone" means the date on which the contractor engaged by Seller under the EPC Contract is given an unlimited notice to proceed with the construction of the Plant and such contractor in fact commences material work on excavation or foundations for the Plant.

"Consumer Protection Reserve Account" or "CPR Reserve Account" means the escrow account established by Seller at a financial institution mutually acceptable to the Parties for the benefit of Buyer pursuant to Section 12.8 (Consumer Protection Reserve Account).

"Contract Charges" has the meaning specified in Section 14.3 (Rate Covenant).

"Contract Savings Guaranty Amount" means the aggregate savings guaranteed by Seller to Buyer under this Agreement, which is equal to One Hundred Million Dollars (\$100,000,000) in real 2008 dollars, from Buyer's purchase of Conforming SNG pursuant to this Agreement over the Primary Term and any Shortfall Term, which aggregate savings amount shall be prorated if this Agreement is terminated earlier than the thirtieth (30th) anniversary of the Commercial Production Date; provided that in the case of any termination of this Agreement prior to the expiration of the Primary Term, Buyer's claims against Seller for any such savings amount shall be subordinated to the rights of the lenders to be repaid in full for all amounts owing in connection with the DOE Guaranteed Financing. The Contract Savings Guaranty Amount shall be increased on a dollar for dollar basis for any Net Incremental Revenue not used to reduce the Base Contract Price as the result of a Debt Service Shortfall, as provided in Section 5.4(b) (Limitation on Adjustments) only to the extent Seller has not refunded Buyer for any such Debt Service Shortfall pursuant to Section 9.3 (Payment Due Date).

"Contract Savings Guaranty Shortfall Amount" means the absolute value of the Contract Savings Reconciliation Amount when the Contract Savings Reconciliation Amount is less than zero. If the Contract Savings Reconciliation Amount is zero or greater then no Contract Savings Guaranty Shortfall Amount exists. The Contract Savings Guaranty Shortfall Amount will be determined at the end of the earlier of (a) the last day of the Primary Term or (b) the date on which this Agreement is terminated prior to the expiration of the Primary Term pursuant to the terms of this Agreement.

"Contract Savings Reconciliation Amount" means, with respect to any date of determination, an amount equal to (a) the balance in the CRCSTA *less* (b) the Contract Savings Guaranty Amount, in each case determined as of and through the date of determination.

"Contract Year" means (a) for the first Contract Year, the period commencing on the Commercial Production Date and ending on the last day of June, (b) for each Contract Year thereafter other than the last Contract Year, the twelve (12) month period commencing on the first day of July and ending on the last day of June, and (c) for the last Contract Year, the first day of July and ending on the thirtieth (30th) anniversary of the Commercial Production Date.

"Control" (including the terms "Controlled by," and "under common Control with") includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of an entity.

"Coordination Committee" means a four-person committee established by the Parties with each Party appointing two representatives to serve on such committee to address the matters described in Section 4.5 (Annual Meeting).

"CPR Commitment" means the irrevocable, unconditional commitment of Seller to fund the CPR Commitment Amount on or prior to the Commercial Production Date.

"CPR Commitment Amount" means an amount equal to One Hundred Fifty Million Dollars (\$150,000,000) plus interest accrued on such amount for the period commencing on the Financial Closing Date and continuing until the Commercial Production Date, such interest calculated either (a) as the actual interest earned on funds deposited as of such financial closing or (b) if the CPR Commitment is not cash funded prior to the Commercial Production Date, at the three-year Treasury Note rate.

"Cumulative Real Contract Savings Tracking Account" or "CRCSTA" means the non-cash tracking account maintained by Buyer to track the cumulative sum of positive or negative monthly Savings Tracking Amount indexed to 2008 real dollars.

"Debarment Regulations" means (a) Federal Executive Order no. 12549 (Feb. 18, 1986), (b) Federal Executive Order no. 12689 (Aug. 16, 1989), (c) 31 U.S.C. § 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327) and (d) 49 C.F.R. Part 29 "Government wide Debarment and Suspension (Nonprocurement)".

"Debt Service Shortfall" means, for any month of determination, amount by which the sum of principal and interest due and payable to the Financing Parties under the DOE Guaranteed Financing in respect of such month (including monthly amounts set aside to provide for 1/6th of a semi-annual debt payment and excluding, for the avoidance of doubt, any requirements to fund any debt service reserve account, operating reserve account, capital expenditure account or any other similar reserve accounts required by the Financing Parties in connection with the DOE Guaranteed Financing and without regard to any cash sweep requirements imposed by the Financing Parties in connection with the DOE Guaranteed Financing) exceeds the sum of (a) the product of the Adjusted Base Contract Price times the applicable MDQ, plus (b) the aggregate Net Incremental Revenues allocable to Seller in such

month, plus (c) the aggregate Positive Market Differential allocable to Seller in such month, plus (d) the aggregate Net CO₂ Revenues allocable to Seller in such month, plus (e) any other net income available to Seller in such month.

"Defaulting Party" means the Party in respect of which an Event of Default has occurred under Section 12.1 (Events of Default).

"Delivery Meter" means the meter located at the Plant site boundary at which point deliveries of SNG are delivered to the Receiving Pipeline and are measured.

"Discounted Contract Price" means the applicable discounted contract price that applies during the Shortfall Term for Conforming SNG based on the actual fixed and variable operating and fuel costs incurred by Seller in producing Conforming SNG (including any actual costs incurred by Seller in complying with any Change in Governmental Requirements), including a Ten Million Dollar (\$10,000,000) nominal annual operating fee, adjusted annually thereafter for changes in the GDP Deflator occurring after commencement of the Shortfall Term.

"DOE" means the Department of Energy of the United States of America.

"DOE Guaranteed Financing" means the construction and long-term financing to be provided by the Financing Parties and guaranteed by the DOE pursuant to a Federal Loan Guarantee.

"Efficiency Percentage" means the actual fuel efficiency of the Plant, provided that, the Efficiency Percentage shall be no less than the Efficiency Percentage Floor.

"Efficiency Percentage Floor" means forty percent (40%) during the first month after the CPD, increasing by one half percentage point (0.5%) each month for the twenty (20) months thereafter, up to a maximum of fifty percent (50%). After such twenty (20) month period, the Efficiency Percentage Floor for each month shall be equal to fifty percent (50%); provided that the Efficiency Percentage Floor may be less than fifty percent (50%) for a particular month if the average twelve (12) month Efficiency Percentage for that month and the eleven (11) month period immediately preceding such month is fifty percent (50%) or greater.

"EPC Contract" means (a) a turnkey engineering, procurement and construction contract for the construction of the Plant or (b) one or more contracts that are intended to be the equivalent of a turnkey engineering, procurement and construction contract for the construction of the Plant, that in either case is entered into by Seller with a contractor or contractors selected by Seller pursuant to which the Plant is to be constructed and delivered to Seller.

"Equity Commitments" means firm commitments by equity investors in Seller to fund a portion of the development and capital costs of the Plant, which when combined with the proceeds of the DOE Guaranteed Financing will be sufficient to finance the overall development and capital costs of the Plant, including the costs of the permitting, design, engineering, equipment procurement, construction, testing, commissioning and working capital needs of the Plant.

"Event of Default" has the meaning specified in Section 12.1 (Events of Default).

"Excluded Taxes" means (a) Taxes on income, franchise, gross receipts or similar Taxes which in whole or in part are measured by assets, net worth, earnings, dividends, revenues or income of Seller, (b) ad valorem and other property based Taxes assessed in whole or in part on the value of Seller's property or its net worth or capital stock values, (c) sale and use Taxes imposed on Seller's purchase of property or services (excluding sales and use Taxes imposed on the purchase of fuel used to produce SNG under this Agreement), (d) unemployment compensation Taxes imposed on Seller, (e) Taxes attributable to withholding on Seller's employee payroll, and (f) Taxes (including value added taxes) related to the sale or production of Additional Products (provided that such Taxes actually paid on Additional Products shall be treated as a cost of production of such Additional Products and deducted for purposes of determining Net Incremental Revenues); provided, that for purposes of the definition of New Taxes, Excluded Taxes shall exclude any of the foregoing Taxes described in clauses (a), (b), (c) and (d) which are the result of Changes in Governmental Requirements occurring after the Execution Date which are targeted against the Project and would not be assessed against Seller but for the existence of the Project.

"Execution Date" has the meaning provided in the Preamble of this Agreement.

"Extended Term" means the period after the expiration of the Primary Term or the Shortfall Term, as the case may be, during which Buyer has exercised its option to extend the term of this Agreement pursuant to Section 1.1(b) (Term) for the relevant periods described in Section 1.1(b) (Term) or any other extensions of this Agreement as mutually agreed to in writing by Buyer and Seller.

"Federal Loan Guarantee" means a guarantee issued by an agency of the federal government of the United States, supported by the full faith and credit of the United States government, pursuant to the Department of Energy Solicitation Number DE-FOA 0000008 issued pursuant to Title XVII of the Energy Policy Act of 2005, 22 USC 16511-16514.

"Financial Closing Date" means the date on which all conditions precedent to the financial closing of the DOE Guaranteed Financing have been satisfied and Seller is entitled to draw funds thereunder.

"Financing" means the DOE Guaranteed Financing and any other Permitted Indebtedness.

"Financing Parties" means the financial institution(s) providing Financing.

"Force Majeure" means, with respect to each Party claiming relief of its obligations under this Agreement, any cause not reasonably within the control of such Party claiming relief, and shall include, but not be limited to, the following: (a) 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, droughts, floods, washouts, explosions, breakage or accident; (b) weather related events affecting an entire geographic region which cause freezing or failure of facilities or lines of pipe, not to exceed more than ten (10) occurrences per Contract Year; (c) interruption or curtailment of firm transportation by Receiving Pipeline; (d) the loss or disruption of external electricity supply to the Plant; (e) acts of others such as strikes, lockouts or

other industrial disturbances (but excluding any strikes, lockouts or disturbances occurring at the Plant), riots, sabotage, terrorism, insurrections or wars; (f) the failure or interruption of performance by suppliers by reason of such supplier's valid declaration of a Force Majeure permitted under Seller's contract with such supplier; (g) the breach or violation of this Agreement by the other Party or any unlawful action by the other Party that prevents such Party from performing its obligations under this Agreement; (h) delay or failure of any Governmental Authority to issue any Governmental Approval properly and timely applied for (including without limitation any delay or failure by any Governmental Authority to issue any Governmental Approval as a result of any legal challenge or intervention by any third party); and (i) any challenge, proceeding, claim or intervention of any kind by any third party affecting the validity of the issuance or proposed issuance of a Governmental Approval.

"Fuel Component" has the meaning specified in Section 5.2 (Determination of Base Contract Price).

"Fuel Expert" means a mutually agreeable technical expert selected by the Parties from a standing list of recognized experts in the coal and petroleum coke industry to resolve disputes on Seller's proposed Annual Fuel Procurement Plan. In the event that the Parties are not able to agree on the identity of the Fuel Expert, each Party will select a technical expert from such standing list, and those technical experts shall select the Fuel Expert from the remaining technical experts on the standing list.

"Fuel Plan Deadlock" means the inability of Buyer and Seller to agree upon Seller's proposed Annual Fuel Procurement Plan as described in Section 4.6(c) (Approval of the Annual Fuel Procurement Plan).

"Fund" means the "substitute natural gas account" established by Section 27(a) of the Statute, including all revenues under any obligation entered into, and rights to receive such revenues, and moneys on deposit in the Fund and income or revenue derived from the investment thereof.

"GAAP" means generally accepted accounting principles used in the United States consistently applied and in effect from time to time.

"Gas Day" means a period of twenty-four (24) consecutive hours, coextensive with a "gas day" as defined by the Receiving Pipeline.

"GDP Deflator" means the most recent "final" Gross Domestic Product Implicit Price Deflator as published by the BEA approximately three (3) months after the end of the calendar year, or in the event that the BEA discontinues such index, such comparable replacement index as shall be mutually agreed by the Parties.

"Good Industry Practice" means those practices, methods, and acts that are commonly used by a significant portion of the chemical manufacturing, refining, solid fuel gasification and natural gas transportation industries in prudent engineering and operations to design, construct, operate and maintain with safety, dependability, efficiency, and economy solid fuel gasification facilities.

"Governmental Approval" means any approval, consent, waiver, exemption, variance, franchise, permit, authorization, registration, or license to, with or from a Governmental Authority.

"Governmental Authority" means any person, entity, department, commission, board, agency or instrumentality that exercises executive, legislative, judicial or administrative authority of any government, including federal, state, county and local governments and political subdivisions thereof. The Indiana Utilities Regulatory Commission shall be considered a Governmental Authority, but only to the extent it was granted authority pursuant to the Statute.

"Governmental Requirements" means any laws, statutes, rules, regulations, codes, orders, decisions, rulings and judgments of any Governmental Authority with jurisdiction over the Plant, the Parties or any or all of the subject matter of this Agreement, but excludes DOE requirements under the DOE Guaranteed Financing.

"Increase Cap" has the meaning specified in Section 5.3(c) (Maximum Annual Adjustment for Change in Governmental Requirements).

"Increased MCQ" means, in any month in which the Monthly Actual Annualized Average is less than the Monthly Annualized Average, an amount up to 3.483 million MMBtu, which amount is equal to one hundred ten percent (110%) of the Monthly Annualized Average.

"Incremental Production" means (a) production of Conforming SNG in any month in excess of the Applicable MCQ allocated to Buyer for such month or in excess of the ACQ in any Contract Year; (b) electricity supply capacity available for sale in excess of twenty-eight (28) megawatt hours (MWh); and (c) production of electric energy in any clock hour in excess of the electric load of the Plant plus the electricity used for CO₂ compression plus twenty-eight (28) megawatt hours (MWh).

"Incremental Revenues" means, collectively, all revenues derived from (a) the sale of Incremental Production and (b) the sale of Additional Products, but excluding any Monthly Positive Market Differential.

"Indebtedness" of any Person at any date shall mean, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (iv) all obligations of such Person under leases which are or should be, in accordance with GAAP, recorded as Capital Lease Obligations in respect of which such Person is liable, (v) all obligations of such Person under interest rate or currency protection agreements or other hedging instruments, (vi) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (vii) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (viii) all Indebtedness of others secured by a lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person, and (ix) all Indebtedness of others guaranteed directly or indirectly by such Person or as to which such Person has an

obligation substantially the economic equivalent of a guarantee or other arrangement to assure a creditor against loss.

"Independent Engineer" means the independent engineer retained by the Financing Parties providing the DOE Guaranteed Financing or any subsequent Financing for the purposes of evaluating a Recovery Plan and certain other matters under this Agreement; provided that if the Financing Parties providing the DOE Guaranteed Financing cease to retain an independent engineer, the independent engineer who had been serving previously as Independent Engineer shall be jointly retained by the Parties for the purpose of evaluating the matters under this Agreement, unless either Party notifies the other Party that it objects to the continued engagement of the engineer, in which case such objecting Party will provide the non-objecting Party with the names of three nationally recognized independent engineering firms that are qualified to provide the evaluations required under this agreement and the non-objecting Party shall select from the names provided the replacement Independent Engineer. The fees and expenses of the Independent Engineer incurred in connection with the administration of the DOE Guaranteed Financing shall be borne by Seller and shall be included in the O&M Component of the Base Contract Price. All other fees and expenses incurred by either Party in connection with using the Independent Engineer for the purposes contemplated in this Agreement shall be borne by the respective Party requesting such services and will not be included in the O&M Component of the Base Contract Price.

"Initial Conditions Precedent" has the meaning specified in Section 8.1 (Initial Conditions Precedent).

"Initial Conditions Precedent Deadline" means the date that is the ninetieth (90th) calendar day after the date on which the IURC issues the IURC Order, or such later date as may be agreed between the Parties.

"Initial Conditions Precedent Satisfaction Date" means the date on which all of the Initial Conditions Precedent are satisfied.

"Inspector" means a third party independent engineer selected by Buyer and reasonably acceptable to Seller to conduct an inspection of the Plant for purposes of Section 4.10 (Buyer's Right to Inspect Plant).

"IURC" means the Indiana Utility Regulatory Commission or any successor agency.

"IURC Order" means an order issued by the IURC approving this Agreement for purposes of the Statute, and in respect of which all relevant periods for appeal have ended and such order is final, binding and non-appealable.

"JAMS" means JAMS (formerly known as Judicial Arbitration and Mediation Services, Inc.), a private alternative dispute resolution provider selected by the Parties to resolve certain disputes arising under this Agreement as contemplated in Section 10.2 (Mediation).

"Knowledge" or "knowledge" has the meaning specified in Section 15.8 (Rules of Interpretation).

"Long Stop Date" means December 31, 2018, as such date may be extended to reflect the number of days from June 30, 2011 until the date on which the IURC Order is issued but not for any delays associated with Force Majeure.

"Management Agreement" means one or more management agreements entered into by Buyer (or Marketer in its capacity as agent for Buyer), with each applicable local gas distribution company for the delivery of SNG to Retail End Use Customers in Indiana and for the billing and collection of Contract Charges in accordance with the Statute and the IURC Order.

"Market Differential" means (a) for each month during the Primary Term, the positive or negative difference between (i) the product of the Monthly Delivered Quantity times the Monthly Weighted Average Market Price and (ii) the product of the Monthly Delivered Quantity times the Adjusted Base Contract Price, and (b) for each month during the Shortfall Term, the positive or negative difference between (i) the product of the Monthly Delivered Quantity times the Monthly Weighted Average Market Price and (ii) the product of the Monthly Delivered Quantity times the Discounted Contract Price.

"Marketer" means Buyer and Seller's counterparty under the Marketing and Services Agreement and/or such other gas marketer(s) that Buyer and Seller may engage from time to time pursuant to this Agreement to provide marketing services.

"Marketing and Services Agreement" means a tri-party marketing and services agreement to be entered into by and among Buyer, Seller and Marketer pursuant to which Marketer shall market and sell SNG on behalf of Buyer and Seller.

"Maximum Foreseeable Loss" means the largest combined property loss and loss of income (including an amount sufficient to provide for Remediation of the Plant as described in Section 6.2(d) (Insurance)) which can occur under the most adverse conditions reasonably foreseeable.

"Milestone" means any of the milestones listed in Section 3.4 (Seller Milestone Target Dates).

"MMBtu" means one million (1,000,000) Btus.

"Monthly Actual Annualized Average" means, as of date of determination, the aggregate amount of Conforming SNG purchased by Buyer since the beginning of the Contract Year in which such date of determination occurs through the end of the first full calendar month immediately preceding such date of determination, divided by the number of full calendar months that have elapsed in such Contract Year as of the date of determination.

"Monthly Annualized Average" means an amount equal to 3.167 million MMBtus, which is the ACQ divided by 12 months.

"Monthly Contract Quantity" or "MCQ" means, for each month, an amount equal to 3.325 million MMBtus of Conforming SNG, which amount is equal to one hundred five percent (105%) of the Monthly Annualized Average.

"Monthly Delivered Quantity" or "MDQ" means, for each month, the quantity of Conforming SNG produced by the Plant and delivered to Buyer at the Transfer Title Point, not to exceed the Applicable MCQ for such month, as confirmed by the Marketer.

"Monthly Invoice Contract Price" means, for each month, the Adjusted Base Contract Price increased by the Monthly Positive Market Differential Price applicable for such month as described in Section 5.6 (Adjustments for Monthly Positive Market Differential).

"Monthly Negative Market Differential" means, for each month, the amount of the Adjusted Market Differential when such amount is less than zero.

"Monthly Positive Market Differential" means, for each month, the amount of the Adjusted Market Differential when such amount is greater than or equal to zero.

"Monthly Positive Market Differential Price" means, for each month (expressed in terms of \$/MMBtu) Seller's percentage of the Monthly Positive Market Differential determined pursuant to Section 5.6 (Adjustments for Monthly Positive Market Differential) divided by the MDQ for such month.

"Monthly Target Balance" means, for any date of determination, the monthly balance targeted to be on deposit in the CRCSTA for the month in which such date of determination occurs as set forth in Schedule I(a).

"Monthly Weighted Average Market Price" means, for each month, the weighted average price received for sales of Conforming SNG by the Marketer on behalf of Buyer and Seller for such month pursuant to the Marketing and Services Agreement, *less* marketing and other costs provided for in the Marketing and Services Agreement and *less* an administrative charge to be paid to Buyer, which charge shall not exceed \$0.02 per MMBtu in real 2008 dollars.

"Net CO₂ Revenues" means (i) the aggregate (positive or negative) revenues realized from the sale of Carbon Related Products, calculated by multiplying the quantity of Carbon Related Products sold each month by a price for that month that is based on current oil prices and derived from the formula set forth in Schedule 5.4(c)(i) and net of the related costs described on Schedule 5.4(c)(i) and (ii) the economic and/or financial benefit of any available carbon credit, whether realized directly through claiming such carbon credit, through an Owner or Affiliate of Seller using or claiming such credit, through revenue from the sale of any such carbon credit or otherwise. With respect to subsection (i) of this definition, "Net CO₂ Revenues" shall only include the sale of Carbon Related Products through a pipeline as contemplated by the Parties as of the date of this Agreement, unless Buyer provides its prior written consent to the contrary. "Net CO₂ Revenues" shall include any cost savings or other benefit realized by Seller due to the usage for any purpose by any third party of the same pipeline used by the Plant for the sale of Carbon Related Products.

"Net Incremental Revenues" shall be determined each month for each Additional Product and type of Incremental Production and means, for each month and for each Additional Product and type of Incremental Production, (a) the aggregate Incremental Revenues for such month for each such Additional Product and type of Incremental Production, *less* (b) all costs and expenses incurred to generate the applicable Incremental Production or Additional Product such as (i) with

respect to Incremental Production, fuel costs associated with Incremental Production, calculated by (A) multiplying the total expenditure on fuel for the month by 96.5% then (B) subtracting an amount equal to the applicable monthly Fuel Component multiplied by the applicable MDQ, (ii) the actual incremental operating costs (which incremental operating costs shall be subject to verification by an independent third party engineer and audited by Seller and/or Buyer, if there is any disagreement with the verification), (iii) with respect to argon only, the incremental capital costs allocated to the production of argon as set forth in Schedule 5.4(c)(ii), (iv) with respect to incremental power only, fuel costs associated with incremental power, calculated by dividing the cost of fuel associated with Incremental Production for the applicable month by 96.5% and then multiplying the resulting amount by 3.5%, (v) marketing expenses associated with the sale of Incremental Production and Additional Products, and (vi) incremental Taxes assessed against Seller in connection with the generation of Incremental Revenues. The actual expenses, including incremental operating costs, described above incurred in connection with the production of such Incremental Production and Additional Products will be verified by the Independent Engineer within ninety (90) days after the end of the applicable Contract Year (which amount verified by such Independent Engineer shall be subject to audit and verification by Seller and/or Buyer as applicable).

"New Taxes" means any new Taxes (other than Excluded Taxes), or increase in Taxes (other than Excluded Taxes), enacted or otherwise made applicable after the date of this Agreement by any Governmental Authority (whether or not contemplated or introduced as a bill on the date of this Agreement first written above) including any Taxes in the nature of carbon taxes, energy related taxes, Btu taxes, taxes on the heat content of energy, transportation taxes, or similar Taxes on SNG sold under this Agreement, which are otherwise the responsibility of Seller under this Agreement, but excluding any CO₂ Taxes. For avoidance of doubt, all carbon taxes that do not fall within the definition of "CO₂ Taxes" (such as carbon taxes in the form of a societal tax) are for the purposes of this Agreement defined as "New Taxes". Also, "New Taxes" shall not include any interest, fine, penalty or assessment imposed on Seller or the result of Seller's failure to comply with any Governmental Requirement.

"Non-Defaulting Party" means, in the case of that an Event of Default has occurred with respect to either Buyer or Seller, the other Party who has not defaulted in its obligations under this Agreement.

"O&M Component" means the O&M Component described in Section 5.2 (Determination of Base Contract Price) or the alternative O&M Component contemplated in Section 1.1(b) (Term).

"O&M Expenses" means, collectively, in respect of any period, the aggregate operation and maintenance expenses related to the production of Conforming SNG of the Plant for such period.

"O&M Indices" means the basket of indices provided in Section 5.2 (Determination of Base Contract Price) that are used to annually compute the Adjusted O&M Component.

"OFAC" means the United States Office of Foreign Assets Control.

"Operational Agency" means an arrangement with the Marketer under the Marketing and Services Agreement where the Marketer takes title to the Conforming SNG at a liquid market point and is not responsible for any variable transportation charges owed to the pipeline.

"Output Quality Requirements" has the meaning specified in Section 4.1 (Quality).

"Outside Completion Date" means, as to a Milestone, the outside completion date for such Milestone as specified in Section 3.4 (Seller Milestone Target Dates).

"Owner" means, with respect to Seller, (a) any Person who is in a position to control Seller; provided that, a Person shall control another Person if it has the right to twenty percent (20%) or more of the voting interest, economic interest or contract rights of such Person, (b) Baldwin Indiana Energy Inc., together with its permitted successors and assigns and (c) any Person who acquires a direct or indirect membership interest in Baldwin Indiana Energy, Inc.

"Party" or "Parties" has the meaning specified in the Preamble of this Agreement.

"Permitted Indebtedness" means (a) the DOE Guaranteed Financing; (b) surety bonds, performance bonds or similar arrangements with third-party sureties or indemnitors or similar Persons in connection with a good faith contest or otherwise permitted by the terms of the DOE Guaranteed Financing; (c) any additional financing in connection with capital improvements to the Plant expressly permitted under this Agreement (including as a result of Change in Governmental Requirements), (d) any refinancing of the DOE Guaranteed Financing permitted under this Agreement, (e) indebtedness secured by Permitted Liens; and (f) indebtedness for working capital purposes not to exceed \$25 million.

"Permitted Liens" means, collectively, (a) the liens in favor of the Financing Parties under the definitive documents associated with the DOE Guaranteed Financing, (b) liens for (i) taxes, assessments or governmental charges not delinquent and that remain payable without penalty or (ii) taxes, assessments or governmental charges being contested in good faith, if Seller has established adequate reserves consistent with GAAP for such taxes, (c) suppliers', vendors', workmen's, repairmen's, employee's, mechanics', materialmen's, construction or other like liens arising in the ordinary course of business for amounts the payment of which is either (i) not yet delinquent or (ii) being contested in good faith, if (A) Seller has established adequate reserves for the discharge of such liens and (B) such proceedings do not involve a material risk of the sale, forfeiture or loss of the Plant or the Plant site (or any material part of any thereof) or are bonded for the amount required under Applicable Laws to release any such liens, (d) pre-judgment liens for claims against Seller which are contested in good faith and liens arising out of judgments or awards against Seller with respect to which an appeal or proceeding for review is being prosecuted in good faith and to which a stay of execution has been obtained pending such appeal or review and so long as such proceedings do not involve a material risk of the sale, forfeiture or loss of the Plant or the Plant site (or any material part of any thereof) and are bonded for the amount required under Applicable Laws to release any such liens, (e) such defects, easements, rights of way, restrictions, physical irregularities and statutory liens that do not legally or operationally impair the value or utility of the Plant, (f) deposits or pledges to secure (i) statutory obligations or appeals, (ii) release of attachments, stay of execution or injunction, (iii) performance of bids, tenders, contracts (other than for the repayment of borrowed money) or

leases, or (iv) for purposes of like general nature in the ordinary course of business, (g) liens in connection with worker's compensation, unemployment insurance or other social security or pension obligations, (h) other liens incidental to the conduct of Seller's business (other than for borrowed money) which do not in the aggregate materially impair the operation of Seller's business (i) liens of record showing on a title report which have been consented to by Buyer (which consent will not be unreasonably withheld or delayed) and (j) any other liens agreed between the Parties.

"Person" means an individual (including the heirs, beneficiaries, executors, legal representatives or administrator thereof), corporation, unincorporated association, limited liability company, partnership, limited partnership, joint venture, trust, joint stock company, association or any Governmental Authority.

"Pipeline Transportation Charge" is defined in Section 5.2 (Determination of Base Contract Price).

"Planned Outage" means any interruption in service or reduction of output of the Plant that results from any scheduled maintenance of the Plant conducted by or on behalf of Seller.

"Plant" has the meaning specified in the Recitals to this Agreement and means the coal gasification facility being developed by Seller in southern Indiana that will produce SNG and the Additional Products.

"Plant Construction Participants" has the meaning specified in Section 6.2 (Insurance).

"Plant Cost Accounting System" means software or other systems used to account for and track expenditures and maintenance programs at the Plant.

"Plant Operations and Maintenance Plan" means the Plant operations and maintenance plan approved by the DOE.

"Preamble" means the first paragraph of this Agreement.

"Primary Term" means the thirty (30) year period commencing on the Commercial Production Date and ending on the thirtieth (30th) anniversary of the Commercial Production Date.

"Prime Rate" means the rate of interest most recently published from time to time in the Money Rate Table of the Wall Street Journal as the U.S. Prime Rate of interest.

"Production Test" means a performance test of the Plant conducted for a consecutive thirty (30) day period in accordance with the test procedures established under the EPC Contract to measure the average daily quantity of SNG produced by the Plant; provided, however, that if during such thirty (30) consecutive day period there shall occur an event of Force Majeure which adversely affects the production of SNG, the day affected by such event of Force Majeure shall be excluded from the determination period and the thirty (30) consecutive period shall be extended by each such day that SNG production is adversely affected by Force Majeure until there are thirty (30) days in the test period, provided, further, that notwithstanding the extension

provided herein for events of Force Majeure, the thirty (30) days included in the test period must occur within sixty (60) consecutive calendar days. For example if the Production Test commences on day one, and there is an event of Force Majeure that adversely affect SNG production for two (2) days, then the Production Test will be completed on day thirty-three (33) and the test results shall be calculated on the thirty (30) completed test days excluding the test days affected by Force Majeure; provided that all thirty (30) completed test days fall on or before day sixty (60).

"Prohibited Transferee" means a Person who is, or whose officers and directors are (i) debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded (as such terms are defined in any of the Debarment Regulations) from participating in procurement or nonprocurement transactions with the United States federal government or any department, agency or instrumentality thereof pursuant to any of the Debarment Regulations, (ii) indicted, convicted or had a civil or administrative judgment rendered against such Person for any of the offenses listed in any of the Debarment Regulations and no event has occurred and no condition exists that is likely to result in the debarment or suspension of such Person from contracting with the United States federal government or any department, agency or instrumentality thereof, (iii) listed on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs" issued by the U.S. General Services Administration, (iv) located within, or doing business or operating from, a country or other territory subject to a general embargo administered by OFAC, (v) designated on the OFAC list of Specially Designated Nationals, (vi) otherwise targeted under economic or financial sanctions administered by the United Nations, OFAC or any other national economic sanctions authority or any divestment or sanctions program of the State of Indiana.

"Project" means the development, design, construction, equipping, completion, testing, commissioning, ownership, operation and maintenance of the Plant.

"Qualified Transferee" means any Person that is (a) publicly traded and listed on a major exchange or (b) has a tangible net worth in excess of One Hundred Million Dollars (\$100,000,000).

"Receiving Pipeline" means the pipeline or pipelines to which the Plant will be interconnected for deliveries of SNG to Marketer and/or Buyer, as modified from time to time.

"Recitals" means the recitals to this Agreement.

"Recovery Plan" means, with respect to either Party, a plan proposed by such Party to either (i) cure its Event of Default, which plan shall have been received and confirmed by the other Party or (ii) enable such Party to achieve one of its respective Milestones, which plan shall have been reviewed by the Independent Engineer and confirmed by the Independent Engineer to be reasonably likely to effect a cure or to permit such Party to meet such Milestone within the time periods permitted under this Agreement for such cure or achievement.

"Remediation" means the restoration of a site to the same condition as before Seller purchased the site, meeting the standards established by any applicable Governmental Authority, including the Indiana Department of Environmental Management and the U.S. Environmental

Protection Agency and for which the Indiana Department of Environmental Management issues official approval, in the form of a letter or otherwise, and includes any Remediation Costs.

"Remediation Costs" means any and all costs and professional fees associated with the Remediation of a site.

"Retail End Use Customers" for purposes of this Agreement has the meaning set forth in Indiana Code 4-4-11.6-10; provided that, for the absence of doubt, "retail end use customer" means all Indiana customers of each applicable local gas distribution company except for industrial transport customers with an annual volume level of 50,000 dekatherms or greater.

"Savings Tracking Amount" means (a) for each month during the Primary Term, the positive or negative difference between (i) the product of the Monthly Delivered Quantity times the Monthly Weighted Average Market Price and (ii) the product of the Monthly Delivered Quantity times the Monthly Invoice Contract Price, and (b) for each month during the Shortfall Term, the positive or negative difference between (i) the product of the Monthly Delivered Quantity times the Monthly Weighted Average Market Price and (ii) the product of the Monthly Delivered Quantity times the Discounted Contract Price.

"Scheduling and Nominating Protocol" means a detailed scheduling and nomination protocol for use between the Plant operator, Marketer, and Buyer to be agreed upon and set forth in the Marketing and Services Agreements.

"Section" means a numbered Section of this Agreement, unless the context requires otherwise.

"Seller" has the meaning specified in the Preamble of this Agreement.

"Shortfall Term" means the period described in Section 2.6(d) (Contract Savings Reconciliation) after the expiration of the Primary Term if there is a Contract Savings Guaranty Shortfall Amount during which the term of this Agreement shall continue to enable Seller to satisfy any Contract Savings Guaranty Amount by selling Conforming SNG to Buyer at the Discounted Contract Price until the Contract Savings Guaranty Shortfall Amount has been reduced to zero in accordance with Section 2.6(d) (Contract Savings Reconciliation).

"SNG" has the meaning specified in the Recitals to this Agreement and means substitute natural gas.

"State" has the meaning specified in Section 14.3 (Rate Covenant).

"State Emergency" means a state of energy emergency declared by the Governor of the State of Indiana affecting the supply or production of natural gas or SNG in the State of Indiana.

"Statute" means Chapter 11.6 of Indiana Code 4-4, as added by Public Law 2-2009, Section 2.

"Subordination and Intercreditor Agreement" has the meaning specified in Section 2.8 (Security for Contract Savings Guaranty Amount).

"Subsequent Conditions Precedent Date" has the meaning specified in Section 8.2 (Subsequent Conditions Precedent).

"Target Completion Date" means, as to a Milestone, the target completion date for such Milestone as specified in the table set forth in Section 3.4 (Seller Milestone Target Dates).

"Tax" or "Taxes" means all federal, state or local taxes, including any income taxes, sales, use and transfer taxes, the taxable incident of which occurs prior to, at or after the time that title and possession to Conforming SNG passes from Seller to Buyer under this Agreement.

"Term" means the Primary Term, and to the extent applicable, any Shortfall Term or Extended Term.

"Title Transfer Point" means, except as described in Section 2.4(c) (Alternative Delivery During State Emergency), (a) if the Marketer takes title to Conforming SNG pursuant to the Marketing and Services Agreement, the point at which the Marketer takes title to Conforming SNG, (b) if the Marketer does not take title to Conforming SNG pursuant to the Marketing and Services Agreement, the applicable liquid market point where Conforming SNG is sold in respect of the pipeline where Seller has contracted for firm transportation or (c) such other point as the Parties may mutually determine.

GLOSSARY OF ACRONYMS:

<u>Acronym</u>	<u>Defined Term</u>
ACQ	Annual Contract Quantity
BEA	United States Bureau of Economic Analysis
CPD	Commercial Production Date
CPR Reserve Account	Consumer Protection Reserve Account
CRCSTA	Cumulative Real Contract Savings Tracking Account
DOE	Department of Energy of the United States of America
GAAP	Generally Accepted Accounting Principles
IURC	Indiana Utility Regulatory Commission
MCQ	Monthly Contract Quantity
MDQ	Monthly Delivered Quantity
OFAC	United States Office of Foreign Assets Control
SNG	Substitute Natural Gas

SCHEDULE I(a)

MONTHLY TARGET BALANCE OF CRCTSA

End of Contract Year	Buyer can review O&M costs if CRCTSA balance is less than	Seller can review O&M costs if CRCTSA balance is greater than
7	\$0	\$0
12	\$25,000,000	\$0
17	\$100,000,000	\$0
22	\$400,000,000	\$0
27	\$800,000,000	\$0

SCHEDULE 4.3

MAJOR EQUIPMENT LIST

1. Coal handling system, grinding and slurry preparation
2. GE Quench Gasifiers
3. Slag handling system
4. Air separation unit
5. Syngas scrubbers
6. Syngas coolers
7. CO shift reactor
8. Mercury removal system
9. Acid gas removal system
10. Sulfur recovery system
11. Methanation unit
12. Steam turbine generator/condenser
13. Cooling tower
14. Raw water treatment system
15. Wastewater treatment system
16. Electrical switchyard

SCHEDULE 5.2

O&M COMPONENT COSTS; CALCULATION OF FUEL COMPONENT

O&M COMPONENTS

Labor Costs

SNG & SNG Production Related Power:

Operations Labor
Maintenance Labor
Management
Engineering
Administrative/Warehouse Staff
Contract Labor
Technical Services

Repairs and Maintenance Areas

SNG & SNG Production Related Power:

Gasification special equipment
Gasifier Refractory
Rotating Equipment
Plant Piping & Valves
Electrical
Instrumentation (DCS)
Tools & Equipment
Specialty Contractors
Turnaround Accrual
Steam Turbine Major Maintenance
Other Miscellaneous

Operating Expenses

SNG & SNG Production Related Power:

Operating supplies
Safety Compliance
Travel/Training
Equipment rental
Environmental
Security

Environmental Compliance

SNG & SNG Production Related Power:

Environmental (EPA RMP)
Process (OSHA PSM)

Chemicals

SNG & SNG Production Related Power:

ALS
MeOH
Water Treatment
Other Miscellaneous

Catalyst

SNG & SNG Production Related Power:

Shift
Methanation
PPU

Outside Services

Coal Handling
Blasting/Vac

NOTE: IG may consider performing all duties within the Coal handling line item instead of contracting outside services. If so, all monies assigned to this line item will need to be assigned appropriately to labor cost, repairs & maintenance, and operating supplies.

Insurance

Property Tax

General & Administrative (only to the extent specifically utilized in connection with SNG production)

Executive Management
Finance
Legal
Accounting
Fuel Procurement
Asset Management
Contract Administration (other than with respect to this Agreement and any other agreement with Buyer)
Human Resources
Administrative Support
External Audit
Professional Dues and Fees
Government Affairs
Public Relations

CALCULATION OF FUEL COMPONENT

The Fuel Component of the Base Contract Price for each calendar month shall be determined using a delivered fuel cost established each month on a \$/MMBtu basis and converted into the SNG Fuel Component using the following formula from Section 5.2 of the Agreement:

$$\$/\text{MMBtu delivered fuel cost} \times 0.965 \text{ fuel allocation to SNG} / \text{Efficiency Percentage}$$

The \$/MMBtu delivered fuel cost will be determined each month based on measuring the quantity of fuel used each month by type and then applying First-In-First-Out (FIFO) accounting (that will look to the oldest fuel deliveries by type in the fuel inventory first) to establish the cumulative cost and cumulative MMBtus of the fuel consumed that month to calculate a \$/MMBtu delivered fuel cost component, as follows:

1. Quantity Measurement--Real-time measurement and tracking at the Plant of the quantity of fuel (tons of coal and petcoke, gallons or mcf of start-up and other fuel) used during the month for each type of fuel used.
2. Cost Accounting--Calculation of the total dollar cost of fuel consumed in the month for each type of fuel by applying a \$/ton (for coal and petroleum coke fuel), \$/gallon (in the case of liquid fuel), or \$/mcf (in the case of gaseous fuel) cost based on the fuel cost terms specified in fuel procurement contracts and using FIFO accounting that applies the cost of the oldest fuel in the inventory first (by fuel type) until the total quantity of fuel by fuel type used during the month has been accounted for.
3. Energy Content Accounting--Conversion of the monthly measured quantity of fuel by fuel type used during the month into an MMBtu energy equivalent by applying the average fuel heat content of measured fuel samples (btu/lb for coal and petroleum coke, btu/gallon for liquid fuel, or btu/mcf for gaseous fuel), or if sampling data are not available, guaranteed levels specified in fuel procurement contracts and using FIFO accounting that applies the heat content of the oldest fuel in the inventory first (by fuel type) until the total quantity of fuel by fuel type used during the month has been accounted for.
4. Delivered Fuel Cost--the \$/MMBtu delivered fuel cost for the month will be determined based on dividing the total cost of all fuels consumed during the month (the sum of item 2 above) by the total MMBtus of all fuel consumed during the month (the sum of item 3 above) to arrive at the \$/MMBtu delivered fuel cost for the month.

The fuel cost allocation to SNG will remain fixed at 96.5%.

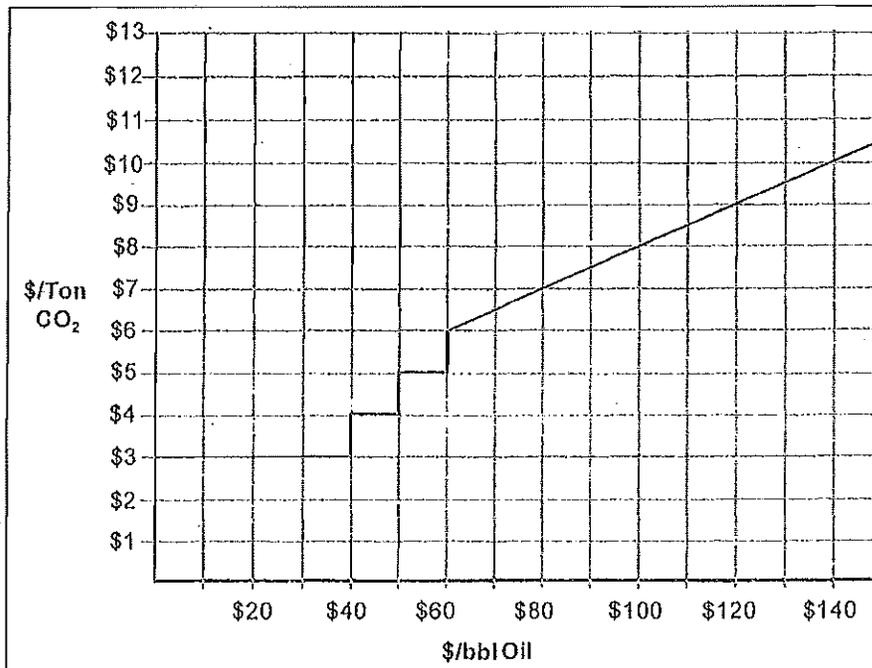
For purposes of determining the Efficiency Percentage, the actual fuel efficiency of the Plant will be calculated each month by dividing the total MMBtus of Conforming SNG delivered to the Receiving Pipeline in such month by the total MMBtus of all fuel consumed during that same month (sum of item 3 above). Such calculation shall be subject to the Efficiency Percentage Floor.

SCHEDULE 5.4(c)

(i) PRICE FORMULA AND RELATED COSTS
FOR CARBON PRODUCTS; SAMPLE CALCULATION OF NET CO₂ REVENUES

Average Light Sweet Crude Settlement Price for Calendar Month (\$/bbl)	<30.00	30.00-39.99	40.00-49.99	50.00-59.99	> or equal to 60.00
Carbon Related Products Price (\$/ton)	3.00	3.00	4.00	5.00	6.00 plus 5% of the average crude settlement price in excess of 60.00

Revenue formula illustration:



Costs associated with the sale of Carbon Related Products will be netted from the revenues received from the sale of Carbon Related Products. The Carbon Related Products sales costs to be netted are as follows:

Capital: \$1.74/CO₂ ton
O&M: \$0.24/CO₂ ton

Electricity: \$5.07/CO₂ ton
 Total: \$7.05/CO₂ ton

For every ton of Carbon Related Products sold, \$7.05 of cost will be netted against the revenues received. The table below illustrate the basis for these costs.

Components		
A	CO ₂ Compressors Electric Capacity at Guarantee Performance (iG Engineering Estimate)	51.1 MW
B	Annual SNG Production under Guarantee Performance (iG Engineering Estimate)	42.258 Million MMBtu
C	Annual Contract SNG Sales (PSA)	38.00 Million MMBtu
D	Contract Sales % of SNG Production under Guarantee Performance (C / D)	89.92% Percent
E	Annual CO ₂ Captured at Guarantee Performance (iG Engineering Estimate)	5.30 Million tons
F	Annual CO ₂ Associated with Contract SNG Sales (D * E)	4.76 Million tons
G	Ratio of Contract CO ₂ to Contract SNG (F / C)	0.13 CO ₂ ton / MMBtu SNG
H	Compression Capacity Required for Contract SNG CO ₂ (A * D)	45.927 MW
I	Annual CO ₂ Compressor Electricity Use (H * 8,760 hrs/yr)	402,321 MWh
J	Electricity Price	60.00 \$/MWh as of CDP
K	Annual Capital Charge for Compression (iG Engineering Estimate)	8.30 \$2008 millions
L	Annual Compression O&M Cost (Estimate --to be confirmed by third party engineer)	1.13 \$2008 millions
M	Annual Cost of Electricity ((I * J) / 1,000,000)	24.14 \$2008 millions
Net CO ₂ Revenue per Ton		
N	Compression Capital Charge (K / F)	1.74 \$/ton
O	CO ₂ Compression O&M Charge (L / F)	0.24 \$2008/ton
P	CO ₂ Compression Electricity Charge (M / F)	5.07 \$/ton
Q	Total CO ₂ Cost (N + O + P)	7.05 \$/ton
R	CO ₂ Price Floor (Annex B Formula)	3.00 \$/ton
S	Negative Net CO ₂ Revenue at Floor Price (Q - R)	4.05 \$/ton
T	Maximum SNG Price Increase (S * G)	\$0.51 \$2008/MMBtu

Basis for compression capital charge:

CO ₂	IRR (Adjust Capital Pricing to Solve for IRR)	12.2%	Recovery/Capital					40.5%	10.0%
Year	Contract Year	Capital Recover	Capital	Pro-Tax CF	Depreciation %	Depreciation	Taxable Income	Income Tax	After-Tax CF
1		8,300	88,000	(88,000)					(88,000)
2	1	8,300	8,300	8,300	20.0%	(1,660)	(6,300)	(2,148)	10,448
3	2	8,300	8,300	8,300	32.0%	(2,176)	(1,460)	(6,455)	13,755
4	3	8,300	8,300	8,300	19.2%	(1,056)	(4,756)	(1,926)	10,228
5	4	8,300	8,300	8,300	11.5%	(7,834)	466	189	8,111
6	5	8,300	8,300	8,300	11.5%	(7,834)	466	189	8,111
7	6	8,300	8,300	8,300	6.6%	(3,917)	4,383	1,777	6,523
8	7	8,300	8,300	8,300			8,300	3,364	4,936
9	8	8,300	8,300	8,300			8,300	3,364	4,936
10	9	8,300	8,300	8,300			8,300	3,364	4,936
11	10	8,300	8,300	8,300			8,300	3,364	4,936
12	11	8,300	8,300	8,300			8,300	3,364	4,936
13	12	8,300	8,300	8,300			8,300	3,364	4,936
14	13	8,300	8,300	8,300			8,300	3,364	4,936
15	14	8,300	8,300	8,300			8,300	3,364	4,936
16	15	8,300	8,300	8,300			8,300	3,364	4,936
17	16	8,300	8,300	8,300			8,300	3,364	4,936
18	17	8,300	8,300	8,300			8,300	3,364	4,936
19	18	8,300	8,300	8,300			8,300	3,364	4,936
20	19	8,300	8,300	8,300			8,300	3,364	4,936
21	20	8,300	8,300	8,300			8,300	3,364	4,936
22	21	8,300	8,300	8,300			8,300	3,364	4,936
23	22	8,300	8,300	8,300			8,300	3,364	4,936
24	23	8,300	8,300	8,300			8,300	3,364	4,936
25	24	8,300	8,300	8,300			8,300	3,364	4,936
26	25	8,300	8,300	8,300			8,300	3,364	4,936
27	26	8,300	8,300	8,300			8,300	3,364	4,936
28	27	8,300	8,300	8,300			8,300	3,364	4,936
29	28	8,300	8,300	8,300			8,300	3,364	4,936
30	29	8,300	8,300	8,300			8,300	3,364	4,936
31	30	8,300	8,300	8,300			8,300	3,364	4,936
						(68,000)			

(ii)

INCREMENTAL OPERATING COSTS FOR ARGON

Incremental Capital: \$35.20 million
 Annual Capital Charge for 14 years assuming 12% levelized after income tax unlevered return (see below): \$6.25 million

Argon		17.8% Recovery / Capital		IRR (Adjust Capital Pricing to Solve for IRR) ----->						12.0%
Year	Contract Year	Capital Recover	Capital	Pre-Tax CF	Depreciation %	Depreciation	Taxable Income	Income Tax	After-Tax CF	
1		6,250	35,200	(35,200)					(35,200)	
2	1	6,250		6,250	20.0%	(7,040)	(790)	(320)	6,570	
3	2	6,250		6,250	32.0%	(11,264)	(5,014)	(2,032)	8,282	
4	3	6,250		6,250	19.2%	(8,758)	(500)	(206)	6,450	
5	4	6,250		6,250	11.5%	(4,055)	2,195	890	5,360	
6	5	6,250		6,250	11.5%	(4,055)	2,195	890	5,360	
7	6	6,250		6,250	5.8%	(2,028)	4,222	1,711	4,639	
8	7	6,250		6,250			6,250	2,533	3,717	
9	8	6,250		6,250			6,250	2,533	3,717	
10	9	6,250		6,250			6,250	2,533	3,717	
11	10	6,250		6,250			6,250	2,533	3,717	
12	11	6,250		6,250			6,250	2,533	3,717	
13	12	6,250		6,250			6,250	2,533	3,717	
14	13	6,250		6,250			6,250	2,533	3,717	
15	14	6,250		6,250			6,250	2,533	3,717	
						(35,200)				

SCHEDULE 5.6

INFLATION ADJUSTMENTS APPLICABLE TO THE
CALCULATION OF THE SAVINGS TRACKING AMOUNT

The table below illustrates how the GDP Deflator will be calculated (future values of the GDP Implicit Price Deflator are for illustrative purposes only) and applied to current period Savings Tracking Amount prior to adding it to the CRCSTA.

Data Source	Year (T)	GDP Implicit Price Deflator	GDP Deflator Value (X)	GDP Deflator Formula (X)	1+X Value	1+X formula
BEA Actual	2008	108.619				
BEA Actual	2009	109.615	0.0092	$=(109.615/108.619)-1$	1.0092	$= X + 1$
Assumed	2010	111.083	0.0134	$=(111.083/109.615)-1$	1.0134	$= X + 1$
Assumed	2011	113.065	0.0178	$=(113.065/111.083)-1$	1.0178	$= X + 1$
Assumed	2012	115.735	0.0236		1.0236	
Assumed	2013	118.965	0.0279		1.0279	
Assumed	2014	122.222	0.0274		1.0274	
Assumed	2015	126.261	0.0249		1.0249	
Assumed	2016	127.584	0.0185		1.0185	
Assumed	2017	128.580	0.0078		1.0078	
Assumed	2018	130.980	0.0187		1.0187	
Assumed	2019	133.080	0.0160		1.0160	
Assumed	2020*		0.0142	$=(128.58+130.98+133.08)/3$	1.0071	$= (X + 1)^{N/2}$

*Assumes Current Period Is June 2020 (N=6)

Cummulative GDP Deflator:	1.2683	Product of 1+X Values
Assumed Savings Tracking Amount for June 2020	\$4,000,000	Assumed
Amount Added to CRCSTA In 2008 Dollars	\$3,153,868	$=\$4,000,000/1.2683$

SCHEDULE 6.2(A)

INSURANCE REQUIREMENTS

Coverage	Limit
Property	Total cost of replacement of Plant; maximum deductible of \$1,000,000 if commercially available
Workers Compensation	Statutory
Employer's Liability	\$2,000,000
General Liability	\$2,000,000 per occurrence/\$4,000,000 aggregate
Excess Liability	\$50,000,000
Builder's Risk	Cost of replacement of Plant
Remediation	Cost of remediation of Plant

SCHEDULE 6.2(B)

INSURANCE REQUIREMENTS FOR CONSTRUCTION PARTICIPANTS

Coverage	Limit
Workers Compensation	Statutory
Employer's Liability	\$1,000,000
General Liability	\$2,000,000 per occurrence/\$4,000,000 aggregate
Excess Liability	\$50,000,000
Automobile	\$1,000,000
Errors and Omission	\$10,000,000

SCHEDULE 6.5

INDIANA CONTENT GOALS

- (1) 70-90% of the individuals hired to construct the Plant will be Indiana residents at the time of their employment;
- (2) 70-90% of the individuals hired to operate the Plant will be Indiana residents at the time of their employment;
- (3) contracts representing at least 70-90% of the aggregate expenditures to construct the Plant will be awarded to "Indiana businesses" (as defined by IC 5-22-15-20.5), provided that contracts for special items that either cannot be produced in Indiana or are economically unfeasible to be produced in Indiana shall not count towards this goal (i.e. the gasifiers, air separation units, etc.); and
- (4) if necessary, contracts representing at least 70-90% of the aggregate expenditures to deconstruct and remove the Plant (as required under Item 37) will be awarded to "Indiana businesses".

SCHEDULE 9.7

MONTHLY RECONCILIATION PROCESS

1.	Seller identifies Applicable MCQ for month and informs Buyer and Marketer (105% of MCQ; 110% of MCQ or stub month at end of year).	2 business days prior to beginning of Contract Month
2.	SNG is produced by Plant and sold by Marketer on daily basis during the month.	Begin 1st minute of Contract Month; End 12 midnight last day of Contract Month
3.	Marketer informs Buyer & Seller of total quantity of gas sold and Applicable MCQ and Incremental Production quantities for the month.	Within 2 business days after the end of Contract Month
4.	Marketer informs Buyer & Seller of the Monthly Weighted Average Price From Market Sales.	Within 2 business days after the end of Contract Month
5.	Buyer provides Seller a statement of the balance in the CSTRAs as of the end of the prior month.	Within 2 business days after the end of Contract Month
6.	Seller provides Buyer a statement of the status of repayment of the Initial Deposit into the CPR.	Within 2 business days after the end of Contract Month
7.	Seller calculates Adjusted Contract Price and invoices Buyer for MCQ at the Adjusted Contract Price and for Market Differential owed Seller.	5 th day of month following applicable Contract Month
8.	Buyer sends notice to Utilities regarding credit/debit to consumers' bills in upcoming month.	10 th day of month following applicable Contract Month
9.	Marketer sends payment to Buyer for MCQ (MCQ times Monthly Weighted Average Price From Market Sales less Marketer Fee) along with a statement indicating calculation.	25 th day of month following applicable Contract Month
10.	Marketer sends payment to Seller for Incremental Production quantities (Incremental Production quantity times Monthly Weighted Average Price From Market Sales less Marketer Fee) along with a statement indicating calculation.	25 th day of month following applicable Contract Month
11.	Buyer draws funds from CPR as needed and available to pay Seller.	2 nd day following receipt of the funds from the Marketer
12.	Buyer pays Seller amounts owed.	2 nd day following receipt of the funds from the Marketer
13.	Utilities collect any additional payment required from customers and remit to Buyer.	Within 45 days from end of Contract Month

SCHEDULE 15.1(b)

MINIMUM QUALIFICATIONS FOR TRANSFEREES AND REQUIREMENTS FOR FACILITY TRANSFER

The IG Project is a complex facility and requires considerable know how and experience for effective and reliable operations. A Transferee shall demonstrate in writing, for review by an Independent Engineer, that a qualified Management Team will be provided and that an effective Operational Plan has been developed. Transfer of ownership will require a transition period where existing plant staff, spares, supplies and related items cannot be removed by the prior owner.

A qualified **Management Team** will consist of key individuals that will be responsible for planning and management of technical and business activities associated with operations, maintenance, key technology support, SNG delivery, fuel procurement, byproduct sales, environmental compliance, safety, contract responsibilities, public relations, accounting and related business activities. Transferee will submit a proposed organization chart with resumes for key positions to demonstrate that individuals with adequate education, training, skills, and experience are included who will be fully capable to manage the Project.

An **Operational Plan** will consist of a written description of how the Management Team will work with the Project's contractors, licensors, employees, suppliers, offtakers and other stakeholders including government agencies to successfully operate the Project to achieve the objectives of the SNG Purchase and Sale Agreement. The plan will describe how the Management Team will be organized; key responsibilities, Project accounting and reporting approach, records management, training, O&M staffing, spare parts management, fuel purchasing approach, byproduct sales approach, environmental compliance, and public relations.

The Operational Plan will include a detailed **O&M Plan**, which will include an O&M organization chart, staffing plan, annual budgets, operating and maintenance practices and procedures, including a long term O&M budget and schedule showing anticipated major maintenance and overhauls.

This information will be assembled into formal documents submitted to IFA to support independent review.

IG must not remove from the facility operating and maintenance manuals, procedures, inspection reports, maintenance records, facility design documents and drawings or any items needed for facility operation and maintenance including spare parts and supplies.

**EXHIBIT A
FORM OF SUBORDINATION AND
INTERCREDITOR AGREEMENT**

See attached.

Exhibit A

EXHIBIT A

FORM OF SUBORDINATION AND INTERCREDITOR AGREEMENT

[NOTE: DOCUMENT TO BE FORMATTED FOR RECORDATION OR A MEMORANDUM OF THIS AGREEMENT WILL BE RECORDED AS REQUIRED BY THE DEPARTMENT OF ENERGY]

This SUBORDINATION AND INTERCREDITOR AGREEMENT (this "Agreement"), dated as of [____], 2011, is made by and among INDIANA GASIFICATION, LLC, a Delaware limited liability company ("Seller"), the INDIANA FINANCE AUTHORITY, an independent body politic and corporate, not a state agency but an independent instrumentality exercising essential public functions ("Buyer"), the U.S. DEPARTMENT OF ENERGY, acting by and through the Secretary of Energy (the "DOE") and [____], as Collateral Agent (in such capacity, and including any permitted successors or assigns, the "Collateral Agent") under the Loan Guarantee Agreement, dated as of [____], 2011, by and among Seller, in its capacity as Borrower, the DOE, the Collateral Agent and each other party thereto (as amended, supplemented or otherwise modified from time to time, the "Loan Guarantee Agreement").

WITNESSETH

WHEREAS, the DOE has agreed to guarantee the loans to be made by the Federal Finance Bank ("FFB") to Seller to fund certain eligible costs associated with the design and construction of a coal gasification facility (the "Plant") that will use coal and/or petroleum coke to manufacture methane gas of pipeline quality, suitable as a substitute for natural gas on the terms and subject to the conditions set forth in the Loan Guarantee Agreement (the "DOE Guaranteed Financing");

WHEREAS, Seller has entered into certain security documents and other financing documents more particularly described in Exhibit A attached hereto (the "Senior Financing Documents") with the FFB, the Collateral Agent, the DOE and the other parties thereto, pursuant to which Seller has pledged substantially all of its assets as collateral security to secure its obligations under the FFB loan documents and the Loan Guarantee Agreement;

WHEREAS, Seller has executed a [Name of Senior Mortgage/Deed of Trust], dated [____], 2011 in favor of the Collateral Agent on behalf of the DOE (as amended, supplemented or otherwise modified from time to time, the "Senior Mortgage") as a condition to the DOE Guaranteed Financing;

WHEREAS, Seller has executed a [Name of Subordinated Mortgage/Deed of Trust], dated [____], 2011 in favor of Buyer (as amended, supplemented or otherwise modified from time to time, the "Subordinated Mortgage"), but such Subordinated Mortgage is not intended to be recorded until after all of the obligations under the Senior Financing Documents have been indefeasibly paid in full in cash and the Senior Mortgage has been reconveyed;

WHEREAS, Buyer will indirectly benefit from the financing accommodation made by the DOE under the Loan Guarantee Agreement; and

WHEREAS, Buyer agrees to unconditionally subordinate the lien of the Subordinated Mortgage on the real property described in Exhibit B attached hereto (the "Real Property") to the lien of the Senior Mortgage in the Real Property.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS; RULES OF INTERPRETATION

1.1 Rules of Interpretation.

The singular includes the plural and the plural includes the singular. The word "knowledge" shall include any knowledge known by, or attributable or imputable to, such Person. A reference to an entity or any Governmental Authority includes its successors and permitted assigns. The words "include," "includes" and "including" are not limiting. References to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to this Agreement. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to such document as a whole and not to any particular provision.

1.2 Certain Defined Terms.

As used in this Agreement, the following terms have the following meanings:

"Buyer" has the meaning specified in the preamble of this Agreement.

"Collateral Agent" has the meaning specified in the preamble of this Agreement.

"Contract Savings Guaranty Amount" has the meaning set forth in the Purchase and Sale Agreement.

"DOE" has the meaning specified in the preamble of this Agreement.

"DOE Guaranteed Financing" has the meaning specified in the recitals of this Agreement.

"FFB" has the meaning specified in the recitals of this Agreement.

"Governmental Authority" means any person, entity, department, commission, board, agency or instrumentality that exercises executive, legislative, judicial or administrative authority of any government, including federal, state, county and local governments and political subdivisions thereof. The Indiana Utilities Regulatory Commission shall be considered a

Governmental Authority, but only to the extent it was granted authority pursuant to Indiana Code 4-4-11.6.

"Loan Guarantee Agreement" has the meaning specified in the preamble of this Agreement.

"Person" means an individual (including the heirs, beneficiaries, executors, legal representatives or administrator thereof), corporation, unincorporated association, limited liability company, partnership, limited partnership, joint venture, trust, joint stock company, association or any Governmental Authority.

"Plant" has the meaning specified in the recitals of this Agreement.

"Purchase and Sale Agreement" means that certain Substitute Natural Gas Purchase and Sale Agreement, dated as of January 14, 2011, by and between Seller and Buyer.

"Real Property" has the meaning specified in the recitals of this Agreement.

"Seller" has the meaning specified in the preamble of this Agreement.

"Senior Financing Documents" has the meaning specified in the recitals of this Agreement.

"Senior Mortgage" has the meaning specified in the recitals of this Agreement.

"Subordinated Mortgage" has the meaning specified in the recitals of this Agreement.

2. AGREEMENT TO SUBORDINATE

2.1 Subordination.

The parties to this Agreement agree that, so long as any amounts are outstanding under the Senior Financing Documents, the Senior Mortgage securing the obligations of Seller under the Loan Guarantee Agreement and the Senior Financing Documents, shall unconditionally be and remain at all times a lien on the Real Property, prior, and superior, to the lien on the Real Property of the Subordinated Mortgage. The subordination provisions set forth in this Agreement are for the benefit of, and enforceable by, the DOE and the FFB. This Agreement shall remain in full force and effect as long as any obligations are outstanding under the Senior Financing Documents, irrespective of any defect in effectiveness of the Senior Mortgage. Buyer acknowledges and agrees that the provisions of this Agreement are, and are intended to be, an inducement and a consideration to the DOE and the FFB to entering into the Senior Financing Documents and each of the DOE and the FFB shall be deemed conclusively to have relied on such subordination provisions in entering into the Senior Financing Documents.

2.2 Consent to Security.

Buyer acknowledges and consents to the pledge by Seller of substantially all of its assets as collateral security under the Senior Financing Documents.

The DOE, on behalf of itself and the FFB, hereby acknowledges and consents to the execution of the Subordinated Mortgage securing Seller's obligation in respect of the Contract Savings Guaranty Amount on the condition that the Subordinated Mortgage will not be recorded until after all of the obligations under the Senior Financing Documents have been indefeasibly paid in full in cash.

2.3 Subordination and Proceedings Against Seller.

(a) Buyer agrees that so long as any amounts are outstanding under the Senior Financing Documents, the lien on the Real Property of the Subordinated Mortgage, and all rights of Buyer against Seller to receive the Contract Savings Guaranty Amount or as otherwise secured under the Subordinated Mortgage (excluding for the avoidance of doubt those rights of Buyer to receive reimbursement of certain costs and expenses as described in Section 15.13 of the Purchase and Sale Agreement), are expressly made subordinate and subject in right of payment to the prior indefeasible and unconditional payment in full in cash of all the obligations under the Senior Financing Documents (including, without limitation, post-petition interest and post-petition fees and costs, whether or not allowable in bankruptcy). Buyer agrees that it will not ask, demand, sue for, take or receive from Buyer, by set-off or in any other manner, or retain payment (in whole or in part) of the Contract Savings Guaranty Amount from Buyer, unless and until all of the obligations under the Senior Financing Documents have been paid in full in cash and the commitments thereunder have expired or been terminated. Buyer further agrees that no amounts will be paid in respect of the Contract Savings Guaranty Amount upon the occurrence of an event of default under the Senior Financing Documents and that the Contract Savings Guaranty Amount may not be prepaid prior to the indefeasible and unconditional payment in full in cash of all the obligations under the Senior Financing Documents. Notwithstanding the foregoing, all amounts due and payable to Buyer (i) from the sale to third parties of substitute natural gas produced by the Plant and purchased by Buyer and (ii) from Seller related to Buyer's portion of Incremental Revenues (as defined in the Purchase and Sale Agreement) are not subordinated under the Senior Financing Documents.

(b) In furtherance of paragraph (a) above, Buyer shall not, until all of the obligations under the Senior Financing Documents have been paid in full in cash and the commitments thereunder terminated:

(i) take, pursue or commence or otherwise engage, undertake or institute any judicial or other steps, action or proceedings against Seller (whether by itself or joined with any other creditor), with a view to commencing any insolvency or other proceedings for the winding up or liquidation of Seller (including, without limitation, the appointing, or procuring the appointment of, an administrator or administrative receiver, liquidator, receiver, trustee in bankruptcy or other such enforcement officer in respect of Seller or any of its assets);

(ii) take any collateral security (other than the Subordinated Mortgage) in respect of the Contract Savings Guaranty Amount;

(iii) attack the validity or enforceability of the Senior Mortgage.

(c) Neither FFB nor Collateral Agent in making or recommending disbursements pursuant to the DOE Guaranteed Financing has any obligation or duty to, nor has either represented that it will, see to the application of such proceeds by the person or persons to whom such proceeds are disbursed, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part.

2.4 Payment Upon Dissolution, Etc.

Without in any way limiting the provisions of Section 2.3 above, in the event of any liquidation, dissolution or other winding up of Seller (whether partial or complete and whether voluntary or involuntary and whether or not involving insolvency or bankruptcy), any insolvency or bankruptcy case or proceeding, any receivership, liquidation, reorganization, any assignment for the benefit of creditors, or other similar case or proceeding in connection therewith, relative to Seller or to any of its creditors as such, or to any of its assets, then and in any such event the DOE shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all of the obligations under the Senior Financing Documents before Buyer shall be entitled to receive any payment on account of the Contract Savings Guaranty Amount (whether in respect of premium, fees, or otherwise) and to that end, any payment of any kind or character, whether in cash, property or securities which may be payable or deliverable in respect of the Contract Savings Guaranty Amount in any such case, proceeding, dissolution, liquidation or other winding up or event shall instead be paid or delivered directly to the Collateral Agent for application to the obligations under the Senior Financing Documents, whether or not due, until such obligations shall have first been fully, indefeasibly and unconditionally paid and satisfied in cash.

2.5 Authorizations to DOE.

Buyer hereby (a) appoints the Collateral Agent as its attorney-in-fact to take such actions as may be necessary to effectuate the subordination provided for in this Agreement, (b) irrevocably authorizes and empowers (without imposing any obligation) the DOE to vote the Contract Savings Guaranty Amount in favor of or in opposition to any matter which may come before any meeting of creditors of Seller generally or in connection with, or in anticipation of, any insolvency or bankruptcy case or proceeding, or any proceeding under any laws relating to the relief of debtors, readjustment of indebtedness, arrangements, reorganizations, compositions or extensions relative to Seller), and (c) agrees to execute and deliver to the DOE and the Collateral Agent all such further instruments confirming the above authorization, and all such powers of attorney, proofs of claim, assignments of claim and other instruments, and to take all such other action, as may be requested by the DOE in order to enable the DOE to enforce all claims upon or in respect of the Contract Savings Guaranty Amount.

2.6 Turnover.

If Buyer receives (a) a payment in respect of the Contract Savings Guaranty Amount or (b) the proceeds of any enforcement of any security, guarantee or other assurance against financial loss for the Contract Savings Guaranty Amount, in each case, from Seller or any other source, whether in cash, securities or other property, on account of subrogation, contribution, reimbursement, indemnity or similar right, Buyer will hold such payment or proceeds in trust (as

property of the DOE) for the benefit of, and immediately upon receipt thereof, shall pay over or deliver to the Collateral Agent such payment in precisely the form received (except for the endorsement or assignment by Buyer where necessary) for application in accordance with the Senior Financing Documents. In the event of failure of Buyer to make any such endorsement or assignment, the Collateral Agent is irrevocably authorized and empowered by and on behalf of Buyer to make the same.

2.7 Defenses Waived.

Buyer hereby absolutely, unconditionally and irrevocably waives, to the fullest extent permitted by law, (a) any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance hereof in any action brought therefor by the DOE and (b) any requirement that the DOE protect, secure, perfect or insure any collateral security or any property subject thereto or exhaust any right or take any action against Seller or any other Person or any collateral.

2.8 Notice; Disclosure.

Buyer agrees, promptly upon obtaining actual knowledge thereof, that it will give the Collateral Agent notice of any default by Seller in respect of the Contract Savings Guaranty Amount. Buyer further agrees that it will give the Collateral Agent (or its nominee or designee) a reasonable period in which to cure any default by Seller in respect of the Contract Savings Guaranty Amount.

2.9 No Waiver; Modification to the Senior Financing Documents.

(a) No failure on the part of the DOE, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof by the DOE, nor shall any single or partial exercise by the DOE of any right, remedy or power hereunder preclude any other or future exercise of any other right, remedy or power. Each and every right, remedy and power hereby granted to the DOE or allowed to the DOE by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the DOE from time to time. All rights and interests of the DOE hereunder and all agreements and obligations of Buyer and Seller hereunder shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of the Senior Financing Documents;

or

(ii) any other circumstance that might otherwise constitute a defense available to, or discharge of, Buyer.

(b) Subject to Buyer's rights set forth in Section 6.6 of the Purchase and Sale Agreement, without in any way limiting the generality of the foregoing paragraph (a), the DOE and/or the FFB may, at any time and from time to time, without the consent of or notice to Buyer, without incurring responsibility to Buyer, and without impairing or releasing the subordination provided herein or the obligations hereunder of Buyer, do any one or more of the following:

(i) change the manner, place or terms of payment of, or extend the time of payment of, or renew or alter, the obligations under the Senior Financing Documents or any collateral security or guarantees therefor, or otherwise amend or supplement in any manner the obligations under the Senior Financing Documents or any instruments evidencing the same or any agreement under which the obligations under the Senior Financing Documents are outstanding;

(ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing the obligations owed to the DOE under the Senior Financing Documents;

(iii) release any Person liable in any manner for the obligations under the Senior Financing Documents;

(iv) exercise or refrain from exercising any rights against Seller or any other Person;

(v) amend, modify, supplement, renew, replace, or extend the terms of all or any part of the obligations under the Senior Financing Documents or any other document required or contemplated thereunder in any respect whatsoever;

(vi) sell or otherwise transfer, release, realize upon or enforce or otherwise deal with, all or any part of the obligations under the Senior Financing Documents or any other document required or contemplated thereunder or any collateral securing or guaranty supporting all or any part of the obligations under the Senior Financing Documents;

(vii) settle or compromise all or any part of the obligations under the Senior Financing Documents or any other liability of Seller to Collateral Agent or any such holder and apply any sums received with respect to the obligations under the Senior Financing Documents or any such liability in such manner and order as Collateral Agent may determine consistent with the terms of the Senior Financing Documents; or

(viii) fail to take or to perfect, for any reason or for no reason, any lien or encumbrance securing all or any part of the obligations under the Senior Financing Documents, exercise or delay in or refrain from exercising any remedy against Seller or against any security or guarantor for all or any part of the obligations under the Senior Financing Documents, or make any election of remedies or otherwise deal freely with respect to all or any part of the obligations under the Senior Financing Documents or any security or guaranty for all or any part of the obligations under the Senior Financing Documents.

Subject to Section 6.6 of the Purchase and Sale Agreement, Buyer waives notice of the incurring of the obligations under the Senior Financing Documents or any part thereof.

2.10 Transfers of or Amendments to Contract Savings Guaranty Amount.

Buyer shall not sell, assign, pledge, encumber or transfer the Contract Savings Guaranty Amount unless such sale, assignment, pledge, encumbrance or transfer is to a party that agrees to be bound by the terms hereof. Buyer shall not enter into any amendments of the Purchase

Agreement to amend or modify the Contract Savings Guaranty Amount without the prior written consent of the FFB and the Collateral Agent.

2.11 Waiver of Subrogation.

Buyer hereby waives any and all of its rights of subrogation against Seller with respect to the obligations under the Purchase Agreement arising out of this Agreement and the liens of the Subordinated Mortgage and the transactions contemplated hereby and thereby until the indefeasible payment of the obligations under the Senior Financing Documents.

3. REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Buyer.

Buyer represents and warrants to the DOE, FFB and the Collateral Agent as of the date hereof as follows:

(a) It is an independent body politic and corporate and an independent instrumentality of the State of Indiana (i) duly organized, (ii) validly existing and (iii) in good standing under the laws of Indiana.

(b) It has the power and authority to execute, deliver and perform, as applicable, its obligations under this Agreement and any other documents contemplated hereby to which it is or will be a party.

(c) The execution, delivery and performance of this Agreement and the other documents contemplated hereby (i) have been duly authorized by all necessary actions on its part, including all actions required under applicable laws, bylaws or other rules applicable to Buyer and (ii) will not violate any non-public rule or regulation.

(d) The execution and delivery of this Agreement and compliance with the terms and provisions hereof will not conflict with or result in a breach of, or require any consent under, the organizational documents of Buyer or any applicable law, or the Purchase and Sale Agreement or the instrument creating the Subordinated Liens, or constitute a default under the Purchase and Sale Agreement or the instrument creating the Subordinated Liens.

(e) There is no litigation of any nature now pending or threatened, in any way relating to, affecting, or questioning either the execution or delivery of this Agreement or the transactions contemplated by this Agreement, or otherwise affecting or questioning the validity of this Agreement or the transactions contemplated by this Agreement; neither the corporate existence of Buyer nor the title of the undersigned officers to their respective offices is being contested; and no proceedings or authority relating to this Agreement or the transactions contemplated by this Agreement have or has been repealed, rescinded, or revoked.

4. MISCELLANEOUS

4.1 Governing Law; Submission to Jurisdiction; Venue; Waiver of Jury Trial.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF INDIANA (WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES).

4.2 Consent to Jurisdiction; Venue.

By execution and delivery of this Agreement, Buyer and Seller irrevocably and unconditionally:

(a) submits for itself in any legal action or proceeding against it arising out of or in connection with this Agreement, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of Indiana located in Indianapolis, Indiana;

(b) consents that any such action or proceeding may be brought in or removed to such courts, and waives any objection, or right to stay or dismiss any action or proceeding, that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to a party hereto at the address "Address for Notices" specified beneath its name on the signature pages hereto, or at such other address and contact number as is designated by such party in a written notice to the other parties hereto.;

(d) agrees that nothing herein shall (i) affect the right of any party to effect service of process in any other manner permitted by law or (ii) limit the right of any party to commence proceedings against or otherwise sue another party hereunder or any other Person in any other court of competent jurisdiction nor shall the commencement of proceedings in any one or more jurisdictions preclude the commencement of proceedings in any other jurisdiction (whether concurrently or not) if, and to the extent, permitted by the applicable law; and

(e) agrees that judgment against it in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction within or without the U.S. by suit on the judgment or otherwise as provided by law, a certified or exemplified copy of which judgment shall be conclusive evidence of the fact and amount of the applicable party's obligation.

4.3 Waiver of Jury Trial.

Each of the parties hereto hereby knowingly, voluntarily and intentionally waives any rights it may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with, this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party hereto. This provision is a material inducement for each party to enter into this Agreement.

4.4 Amendments.

This Agreement may not be amended, modified or supplemented without the prior written consent of each of the parties hereto.

4.5 Successors and Assigns.

This Agreement shall be binding and inure to the benefit of the parties to this Agreement, and their respective successors and permitted assigns.

4.6 Counterparts.

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any party hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

4.7 Severability.

If any provision of this Agreement is declared invalid or unenforceable by any lawful tribunal, then it shall be construed, to the extent feasible, to conform to legal requirements of that tribunal. If no feasible interpretation would save such provision, it shall be severed from the remainder of this Agreement as though never included in this Agreement and the remaining provisions of this Agreement shall remain in full force and effect unless such invalidity or unenforceability causes substantial deviation from the underlying intent of the parties expressed in this Agreement, in which case the parties thereto shall replace the invalid or unenforceable provision with a valid or enforceable provision which corresponds as far as possible to the spirit and purpose of the invalid or unenforceable provision.

4.8 Notices.

Except as otherwise expressly provided herein, all notices and other communications provided for hereunder shall be (i) in writing (including by facsimile) and (ii) facsimile or sent by overnight courier (if for inland delivery) or international courier (if for overseas delivery) to a party hereto at the "Address for Notices" specified beneath its name on the signature pages hereto, or at such other address and contact number as is designated by such party in a written notice to the other parties hereto.

All such notices and communications shall (in the absence of manifest error) be effective (i) if sent by facsimile, when sent (on receipt of confirmation) and (ii) if sent by courier, (x) two (2) Business Days after deposit with an overnight courier if for inland delivery and (y) three (3) Business Days after deposit with an international courier if for overseas delivery.

[remainder of page left intentionally blank; signature pages follow]

IN WITNESS WHEREOF, this Agreement is duly executed and effective as of the date first written above:

INDIANA GASIFICATION, LLC

By: _____

Name:

Title:

Address for Notices:

[NOTARY ACKNOWLEDGEMENT]

INDIANA FINANCE AUTHORITY

By: _____

Name:

Title:

Address for Notices:

[NOTARY ACKNOWLEDGEMENT]

[_____] ,
as Collateral Agent

By: _____
Name:
Title:

Address for Notices:

[NOTARY ACKNOWLEDGEMENT]

U.S. DEPARTMENT OF ENERGY

By: _____
Name:
Title:

Address for Notices:

[NOTARY ACKNOWLEDGEMENT]

Exhibit A

Description of Senior Finance Document

Exhibit B

Description of Real Property