

FILED
January 24, 2011
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION BY THE INDIANA FINANCE)
AUTHORITY (“AUTHORITY”) AND INDIANA)
GASIFICATION, LLC (“INDIANA)
GASIFICATION”) FOR THE INDIANA UTILITY)
REGULATORY COMMISSION TO (1) APPROVE)
A SUBSTITUTE NATURAL GAS PURCHASE)
AND SALE AGREEMENT ENTERED INTO BY)
THE AUTHORITY AND INDIANA)
GASIFICATION FOR THE SALE BY INDIANA)
GASIFICATION AND PURCHASE BY THE)
AUTHORITY OF SUBSTITUTE NATURAL GAS)
 (“SNG”) OVER A 30-YEAR TERM PURSUANT)
TO I.C. §4-4-11.6; (2) IF NECESSARY, ORDER)
INDIANA REGULATED ENERGY UTILITIES TO)
ENTER INTO A MANAGEMENT CONTRACT)
WITH THE AUTHORITY; (3) DECLINE TO)
EXERCISE JURISDICTION PURSUANT TO I.C.)
§8-1-2.5-5 OVER INDIANA GASIFICATION)
WITH RESPECT TO ITS FINANCING,)
CONSTRUCTING, OWNING AND OPERATING)
SNG PRODUCTION AND TRANSPORTATION)
FACILITIES, AND AN ANCILLARY)
INTEGRATED COAL GASIFICATION)
POWERPLANT (“ICGP FACILITIES”) AND)
ELECTRIC GENERATION FACILITIES WHICH)
USE CLEAN COAL TECHNOLOGY IN)
CONNECTION THEREWITH, AND WHICH)
PRODUCES SNG TO BE SOLD TO THE)
AUTHORITY AND OTHER PERSONS, AND)
PRODUCES ELECTRICITY WHICH WILL BE)
SOLD TO ENERGY UTILITIES; AND (4) GRANT)
ALL OTHER APPROPRIATE AND ASSOCIATED)
APPROVALS AND RELIEF.)
)
RESPONDENTS: ALL INDIANA REGULATED)
NATURAL GAS LOCAL DISTRIBUTION)
COMPANIES)

CAUSE NO. 43976

SUBMISSION OF INDIANA FINANCE AUTHORITY
DIRECT TESTIMONY AND EXHIBITS

Joint Petitioner Indiana Finance Authority (“IFA”), by counsel, respectfully files its Direct Testimony and Exhibits with the Indiana Utility Regulatory Commission (“Commission”). IFA’s Direct Testimony and Exhibits include the Direct Testimony of Jennifer M. Alvey (Testimonial Exhibit JMA) and Exhibits JMA-1 through JMA-10, inclusive, identified in the Direct Testimony, and the Direct Testimony and Exhibits of Reiner W. Kuhr (Testimonial Exhibit RWK) and Exhibit RWK-1, identified in the Direct Testimony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by hand delivery, electronic service or prepaid U.S. first-class mail this 24th day of January, 2011:

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An Attorney for Indiana Finance Authority

**DIRECT TESTIMONY OF JENNIFER ALVEY
ON BEHALF OF THE INDIANA FINANCE AUTHORITY**

Cause No. 43976

INTRODUCTION

1 **Q1. Please state your name, occupation, and business address.**

2 A1. My name is Jennifer M. Alvey and I was the Public Finance Director of the State of
3 Indiana and chief executive of the Indiana Finance Authority ("IFA" or "Authority")
4 from August, 2007 until Monday, January 17th, 2011. My business address had been One
5 North Capitol, Suite 900, Indianapolis, Indiana 46204. However, I am now the Director
6 of Cash and Debt Management at Clarian Health Partners at the address of 950 N.
7 Meridian Street, Suite 1200, Indianapolis, Indiana 46204. I have been retained as a
8 consultant to continue to manage the project and process discussed herein. I was the
9 primary deal person who managed this negotiation since March 2009. As such, the IFA
10 has determined that I am the best person to explain the transaction and the processes
11 underlying entering into the transaction, and so I am testifying on behalf of the IFA.

12

13 **Q2. What is your educational background?**

14 A2. I received a Bachelors of Science in accounting from the Indiana University Kelley
15 School of Business and a Doctorate of Jurisprudence from Indiana University School of
16 Law – Indianapolis. I am licensed to practice law in Indiana, Illinois, and the District of
17 Columbia. I am also an inactive CPA.

18

1 **Q3. Please describe your employment history.**

2 A3. Beginning on January 17, 2011, I have been employed as and am currently the Director
3 of Cash and Debt Management of Clarian Health Partners. Up until that date, I was the
4 Public Finance Director of the State of Indiana and negotiated and managed the
5 transaction at issue and also signed the agreement between the IFA and the Joint
6 Petitioner, Indiana Gasification, LLC ("IG") in this capacity. I was appointed Public
7 Finance Director of the State of Indiana in August 2007 and as such served as the chief
8 executive of the IFA managing a debt portfolio greater than \$5 billion and had oversight
9 responsibility for all state related debt greater than \$10 billion. I also was responsible for
10 managing a majority of the private partnership and financial related transactions entered
11 into by the State of Indiana. I served on the board of the Indiana Bond Bank and the
12 Indiana Housing and Community Development Authority. Prior to my appointment I
13 served as General Counsel/Chief Operating Officer of the IFA. Before joining the IFA I
14 was an attorney in the municipal finance section of the law firm of Ice Miller LLP. Prior
15 to Ice Miller LLP, I worked in a variety of accounting and treasury-related positions at
16 Indiana University. I have quite a bit of experience in financial analysis, legal analysis,
17 and negotiating large complex transactions. I also have experience and knowledge of
18 financial markets and work related to portfolio diversification and derivatives (including
19 hedges).

20
21 **Q4. Have you previously testified before this or any other state regulatory commission?**

22 A4. No I have not.

23

1 **Q5. What is the purpose of your direct testimony in this proceeding?**

2 A5. The Indiana General Assembly, by Public Law 2-2009, as amended by Public Law 113-
3 2010 ("Public Law"), made a finding that natural gas prices are volatile and that energy
4 utilities have been unable to mitigate completely the effects of that volatility. The
5 General Assembly also found that long term contracts between the IFA and Substitute
6 Natural Gas ("SNG") producers for the purchase of SNG by the IFA will enhance the
7 probability of receiving federal incentives for the development, construction and
8 financing of new coal gasification facilities in Indiana. The General Assembly found that
9 the IFA's participation in an oversight capacity in connection with the purchase, sale and
10 delivery of SNG to retail end use customers in Indiana ("Customers", as further described
11 subsequently in my testimony) would be critical to obtain low cost financing for the
12 construction of new coal gasification facilities and obtaining low cost financing and DOE
13 guarantees for the construction of such facilities. Finally, the General Assembly found
14 that the construction of new coal gasification facilities would allow Customers to enjoy
15 the benefits of a reliable, reasonably priced and long term energy supply.

16
17 As the Public Finance Director of the State of Indiana and the chief executive of the IFA
18 at the time the related agreement was negotiated and entered into, the purpose of my
19 testimony is to explain to the Commission how the IFA has fulfilled its statutory
20 directives and to explain the process undertaken to enter into the transaction with the
21 Joint Petitioner in this Cause, IG.

22

1 My testimony will describe the Substitute Natural Gas Purchase and Sale Agreement
2 which was entered into by the IFA and IG subject to this Commission's approval and
3 completely in compliance with the Public Law ("SNG Contract"). A fully executed copy
4 of the SNG Contract is attached to my testimony as Exhibit JMA-1. Exhibit JMA-1
5 differs from the Form of SNG Contract attached to the Joint Petition filed in this cause in
6 only a few minor ways. Exhibit JMA-2 shows these differences. In explaining all of the
7 material provisions of the SNG Contract, that explanation will cover the purchase and
8 sale of SNG by the IFA as well as the Utility Management Agreements (as subsequently
9 defined) with the Indiana local distribution companies that provide natural gas services to
10 Customers in Indiana. My testimony will also explain the public benefits of this
11 transaction including the financial analysis associated therewith.

12
13 **Q6. What other witnesses are providing testimony on behalf of the IFA in this Cause?**

14 A6. Reiner W. Kuhr, PE, Senior Executive Consultant with Shaw Consultants International,
15 Inc. ("Shaw") will testify to provide the due diligence findings of their Independent
16 Engineer Report. Shaw was engaged by the IFA as its independent professional
17 engineering and technical advisor to assist with the engineering, technical, and in some
18 cases financial due diligence in connection with the SNG Contract and its relationship
19 with IG.

20
21 **FINANCIAL ABILITY AND EXPERIENCE**

22 **Q7. Please provide an overview of the IFA's experience in dealing with complex**
23 **financial transactions.**

1 A7. In addition to being the direct and conduit debt issuer for the State of Indiana, the IFA has
2 managed or directly entered into many State-related transactions. These transactions are
3 similar in that they all have some relationship to a state contract as well as fairly complex
4 legal and/or financial structures, but their subject matter can vary greatly. To highlight
5 this diversity, examples of a few of the IFA's transactions include negotiating contracts
6 related to additional correctional space for maximum-security offenders; managing the
7 complex legal and financial structuring for possible Indiana Lottery debt issuances; credit
8 facility structuring to back up the Marion County Capital Improvement Board of
9 Managers' debt, negotiations of purchases for state natural resource properties as well as
10 sales of other state properties, and the financial structuring and debt issuance for the
11 construction of the Lucas Oil Stadium and Indiana Convention Center Expansion (the
12 IFA also negotiated and entered into SIFMA floating rate swaps for the related debt –
13 which is a very complex hedge). The IFA has conducted privatization review and
14 analysis related to several State facilities or its other assets and has also done multiple
15 requests for proposal processes for private business partners in several of its deals.

16
17 Among the most significant and successful agreements entered into by the IFA is the \$3.8
18 billion lease agreement, which allows the Indiana Toll Road Concession Company
19 ("ITRCC") to maintain, manage and operate the Indiana Toll Road for 75 years. The Toll
20 Road was an underperforming asset. Prior to the Toll Road lease, a study revealed a
21 significant gap in funding necessary road improvements throughout the State. The
22 proceeds from the Toll Road lease corrected that funding deficit, and interest earnings
23 from this lease agreement have funded improvements to Indiana's roads and highways

1 that otherwise could not have been funded. Additionally, each county through which the
2 toll road passes was given a one-time payment to fund transportation projects, and \$500
3 million from the proceeds was dedicated to the Next Generation Fund to be used for later
4 transportation projects. The IFA, in an ongoing capacity, monitors compliance of this
5 Toll Road Lease agreement and the ITRCC through the auditing of Indiana Toll Road
6 operations by the leasing partner and by having internal staff who are very
7 knowledgeable about the agreement and the legal/financial requirements under it.

8
9 The IFA also structures and manages processes related to capital financing incentives for
10 potential major State economic development transactions; the State's capital budgeting
11 and facility engineering review processes; and the centralization of
12 operations/responsibilities at State facilities. The IFA's State Revolving Fund (SRF)
13 Loan Program provides millions of dollars each year to Indiana communities for
14 wastewater and drinking water infrastructure improvements. The financial assistance
15 provided is in the form of grants and loans and assures quality drinking water and
16 wastewater service to Hoosiers. During State fiscal year 2010, the SRF Loan Program
17 awarded over \$456 million to Hoosier communities and has awarded more than \$2.7
18 billion over the program's history. The SRF Loan Program has saved Hoosiers more
19 than \$387 million over the last three State fiscal years alone, by leveraging the federal
20 capitalization grants received from US EPA in order to maximize the amount of funds
21 being provided to Indiana communities. There is currently \$1.785 billion in debt
22 outstanding on this portfolio alone.

23

1 The IFA directly manages approximately \$5 billion in outstanding debt (which includes
2 the SRF and Lucas Oil Stadium debt mentioned above) and it also has oversight
3 responsibility for approximately \$10 billion in state-related outstanding debt. Since
4 2005, the IFA has managed over 17 bond deals for the State of Indiana, with an aggregate
5 issuance size of \$3.7 billion. Deal types have included direct placements, variable rate
6 demand bonds, tax-exempt fixed rate debt, and Build America Bonds. The IFA is
7 responsible for minimizing the State's cost of capital and has been successful in doing so,
8 with refundings over that period resulting in more than \$80 million in present value
9 savings for the State.

10
11 The IFA successfully managed the state's debt portfolio through the municipal market
12 crisis in 2008 and 2009 with a major restructuring of more than \$2 billion in auction rate
13 and bank-backed debt. The IFA was first in the nation to cancel insurance from Financial
14 Guaranty Insurance Company. It also terminated several hedges; entered into several
15 guaranteed investment contracts; restructured debt modes; entered into, terminated, and
16 negotiated complex hedges; and structured, negotiated, and entered into multiple credit
17 facilities with some of the largest banks in the world.

18
19 The IFA crafted the first comprehensive State Debt Management Plan including policies
20 for debt issuance, refunding, State university debt issuance, post issuance compliance,
21 disclosure, derivatives, and investments. The IFA also manages an interest rate swap
22 portfolio that currently has a notional value of \$748 million, and an investment portfolio
23 in excess of \$1.3 billion.

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Q8. Does the IFA possess the financial, technical, and managerial ability to successfully enter into the SNG Contract?

A8. Yes, as demonstrated by its past experience, the IFA has the ability to negotiate and enter into the SNG Contract. There are several employees of the IFA who possess financial and legal expertise to staff the negotiation process. The IFA has several attorneys, CFAs, and CPAs who work in the top two tiers of management, and additional employees participate and support the process as needed. In addition, the IFA has the statutory capacity as an independent body to hire and retain experts as needed.

Q9. Has the IFA consulted with outside counsel or advisors in its negotiations of the SNG Contract?

A9. Yes, the IFA engaged Ice Miller LLP to represent the IFA as counsel on/for the deal, which included interpretation of the relevant statutes, advising on the RFP process, and advising and participating in negotiations. Ice Miller continues to represent the IFA as it completes the remaining approval process and would be expected to remain on retainer throughout the start of the agreement as well as counsel in managing the agreement. Ice Miller LLP has substantial experience in counseling clients on large, complex, financial transactions, and consults with Foley & Lardner LLP to provide specific legal advice with respect to the area of energy purchase and transportation agreements.

1 In addition to its own outside counsel, the IFA, as provided in the Public Law, also met
2 and sought counsel from the Consumer Counselor of the Office of Utility Consumer
3 Counselor (“OUCC”). Initially, the Consumer Counselor with OUCC staff counseled the
4 IFA by providing knowledge about the subject matter and recommendations as to the best
5 way to craft a deal that protected the interests of ratepayers. The IFA then entered into
6 negotiations with IG and consulted the Consumer Counselor as needed throughout
7 negotiations. As the SNG Contract began to take on more final language the Consumer
8 Counselor was consulted more frequently to provide that additional review with their
9 energy expertise.

10 The IFA also consulted with Shaw, as described elsewhere in my testimony, and BP
11 Canada Energy Marketing Corp. (“BP”), after it was chosen to be the third party
12 marketer, as also discussed elsewhere in my testimony.

13
14 **Q10. Did the IFA also consult with Indiana’s local gas distribution companies concerning**
15 **the SNG Project?**

16 A10. During the negotiation of the SNG Contract with IG, the IFA met with several of the
17 utilities to understand any major concerns that a deal might have on their business
18 processes that could result in additional, unintentional costs to or unintended hardships
19 for ratepayers. Major changes to the original enabling legislation were recommended—
20 and implemented—to address concerns expressed by the utilities with respect to
21 reliability, seasonality and asset management. Several provisions in the agreement with
22 IG were included to address comments from the utilities. The IFA then also met with the

1 utilities after its IURC filing date and before the submittal of this testimony to ensure
2 there were no unintended costs that would impact ratepayers before the IFA entered into
3 the SNG Contract.

4 **Q11. Has the IFA sought advice and counsel from other technical advisors?**

5 A11. Yes, the IFA issued a Request for Proposals (an "RFP") to engage a technical advisor.
6 As a result, it engaged Shaw to conduct the technical due diligence, particularly on the
7 major deal points that impact the economics of the deal, and provide additional expertise
8 to the negotiations that the IFA did not possess. The IFA also engaged Shaw to provide
9 additional diligence on its own economic analysis to ensure the modeling process was
10 accurate.

11 **Q12. Has the IFA selected a third party marketer to manage the sale and all marketing**
12 **aspects so as to make sales of the SNG at the highest possible market price?**

13 A12. Yes, the IFA issued a RFP to select a third party marketer that would sell the SNG at the
14 highest possible market price in order to maximize savings realized by Indiana
15 ratepayers. As a result of the RFP, it has entered into negotiations with BP to perform
16 these functions. These negotiations are on-going. BP has provided a significant amount
17 of expertise in the area of marketing SNG as well as many other aspects related to the
18 transaction at issue, including adding its expertise to the negotiating process on the SNG
19 Contract. The IFA and IG plan to enter into a three-party marketing agreement with BP
20 prior to the commercial production date of the SNG if the three parties can agree upon
21 satisfactory terms. If not, there are other qualified marketers that are interested in
22 negotiating such an agreement with the IFA and IG.

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Q13. Does the IFA have a staff capable of managing the SNG with IG?

A13. For negotiation of the SNG Contract the IFA developed a team as mentioned above. The IFA expects to use a similar mixture of internal staff resources and external advisors throughout the management of the SNG Contract. Consistent with many of its other long-term agreements, it contemplates using an independent trustee to administer many of the financial calculations and it will engage an independent auditor to review and audit the process and its calculations and reporting. As done in the management of the Indiana Toll Road lease agreement, which is also a very complex transaction that requires ongoing contract management, the IFA will outsource the required contract management where necessary. The IFA expects to continue to retain Ice Miller LLP or a firm with similar expertise to act as a continued advisor as contract management issues arise or when disputes might arise. The statute contemplates that the IFA will be able to recoup all relevant costs incurred to manage the SNG Contract.

PROJECT BACKGROUND

Q14. Have you signed and verified the Joint Petition Indiana Gasification and the IFA filed initiating this proceeding?

A14. Yes. It is attached as Exhibit JMA-3 to my testimony.

Q15. What legislation enabled the filing of the Joint Petition which seeks Commission approval of the SNG Contract?

1 A15. The Indiana legislature, by the Public Law, provides the legal authority for the filing of
2 the Joint Petition by the IFA and IG, the joint petitioners in this proceeding before the
3 Commission.

4
5 **Q16. Please describe the legislation as you understand it.**

6 A16. The legislation enables the IFA to enter into a contract for the purchase, transportation,
7 and delivery of SNG and allows the IFA to establish and collect rates and charges for
8 SNG. Further the legislation provides the IFA the ability to enter into private
9 professional and technical assistance contracts related to the purchase, transportation, and
10 delivery of SNG. The legislation also gives the IFA the authority to take title to SNG and
11 sell the SNG to third parties instead of Customers (if the IFA determines that sales to
12 third parties are necessary and appropriate), with the net effect of the costs or proceeds of
13 the sales being reflected on the bills of Customers. Additionally, the legislation provides
14 that the IFA may enter into management, and related contracts, as needed to transport,
15 store, deliver, manage, and bill and collect for the delivery and sale of SNG to
16 Customers, which the Commission, upon the request by the IFA, shall order regulated
17 energy utilities to enter into.

18
19 **Q17. What are the IFA's goals for the SNG Contract?**

20 A17. The IFA's main goal was to enter into an agreement that results in a diversification of
21 Indiana's natural gas portfolio which will lessen the volatility of the price impact on
22 Customers in Indiana. The IFA felt the best way to ensure this result would be to partner
23 with an entity who was willing to take on the construction and operating risk while

1 making an enormous equity investment in commodity risk as well. The bulk of the
2 returns to the partner should only happen if it also benefited Customers in Indiana. This
3 meant that the transaction had to be one in which IG's interests aligned with Customers.
4

5 **Q18. What do you understand the Commission's role to be in this proceeding?**

6 A18. The IFA understands that the Commission's role in this proceeding is to approve the
7 SNG Contract if the Commission determines that the SNG Contract is in compliance with
8 the requirements in the enabling legislation, and to order the regulated energy utilities to
9 enter into management agreements with the IFA.
10

11 **Q19. What approvals in addition to the IURC's approval are necessary for the Project to
12 proceed?**

13 A19. The IFA understands that IG will include information about this in its testimony, but the
14 IFA believes that at a minimum, IG will require approval from:

- 15 1. United States Department of Energy Credit Review Board
- 16 2. Office of Management and Budget – Executive Office of the President of the
17 United States
- 18 3. Indiana Department of Environmental Management
19

20 **PURCHASE AND SALE AGREEMENT**

21 **Q20. Please generally describe the IFA's proposed SNG Contract with IG.**

22 A20. The SNG Contract fits within the framework of the Public Law, and the Indiana General
23 Assembly's legislative intent in passing that statute, as described above. Under the SNG

1 Contract, the IFA will purchase up to a fixed annual amount of SNG from IG for a period
2 of thirty (30) years for a price which is determined by a fixed formula, in order to allow
3 the IFA to sell that SNG into the marketplace on behalf of Customers, providing a hedge
4 against the volatility of natural gas prices. The SNG Contract also provides a guarantee
5 of savings to the IFA (which will be passed on to Customers) in the amount of
6 \$100,000,000 over the term of the SNG Contract.

7
8 The following is a summary of the key terms in the SNG Contract, each of which is
9 described in further detail in my subsequent testimony:

10
11 **Purchase/Benefit:** The IFA will purchase SNG from IG at a formulaic price (described
12 below). The SNG will then be sold by a third party marketer at the highest possible price
13 into the marketplace. Half of the difference between the two prices, either a cost or a
14 benefit, will be passed on to Customers through monthly gas bills.

15
16 **Guaranteed Savings:** IG has guaranteed that Customers will realize savings, i.e.
17 aggregate net credits on their monthly bills, of \$100,000,000 (in 2008 dollars) over the
18 initial term of the SNG Contract. The IFA will establish an account which will be
19 updated on a monthly basis to track the actual savings.

20
21 **Consumer Protection Reserve Account:** At the closing of IG's financing, IG will be
22 required to post \$150,000,000 as a "Consumer Protection Reserve." This amount will be
23 drawn down as needed to make up any difference in higher-than-market SNG prices.

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Term: The initial term is thirty (30) years, beginning on the first day of the first full month of commercial production of SNG at the facility IG will construct. At the end of the initial term, (a) if the guaranteed consumer savings of \$100,000,000 has been realized, the IFA can elect to extend the term, or (b) if the guaranteed consumer savings has not been realized, IG may cover the shortfall in cash. If IG does not cash-fund the difference, the IFA may extend the SNG Contract at a lower SNG price for the same quantities until the savings is realized, or the IFA may force a sale of the Plant to make up the difference.

Milestone Dates: The SNG Contract specifies that a target date for the closing of the financing of IG's facility and commencement of construction is December 31, 2011. It further specifies that the target date for commercial production of SNG is June 30, 2015. If commercial SNG production has not begun by December 31, 2018, the IFA can terminate the SNG Contract. All of the dates described above are extended on a day-for-day basis to the extent the IURC order approving the SNG Contract becomes final (unappealable) after June 30, 2011.

Quantity: After commercial production has begun, the IFA will be required to purchase up to 38 million MMBtus of SNG per year. In any month during the term, the IFA will be required to purchase up to 105% of the annualized monthly average of such annual quantity (110% in certain circumstances), until the annual quantity has been reached.

1 **Base Price:** The base price for SNG will be made up of four (4) components:

2 A – Capital Component – this represents the capital costs associated with
3 constructing IG's SNG facility. It is fixed for the 30 year term at \$3.50 per MMBtu.

4 B – O&M Component – this represents IG's operating and maintenance expenses
5 associated with running the plant. For the first seven (7) years of the term of the SNG
6 Contract, this is fixed at \$1.88 per MMBtu, adjusted for inflation by a predetermined
7 basket of market indices. At year seven (7) and thereafter, it is subject to adjustment
8 every five (5) years upon request of the IFA, if the actual consumer savings is less than
9 the targeted savings over that time period, or upon request of IG if any savings have been
10 realized. The adjustment is to the average annual actual O&M costs of IG over the
11 previous five (5) years, adjusted for inflation.

12 C – Fuel Component – this represents the actual fuel costs for the production of
13 SNG, in accordance with an annual fuel procurement plan approved by both IG and the
14 IFA, and calculated in accordance with a predetermined formula based on the actual cost
15 of fuel, the amount allocable to SNG purchased by the IFA and adjusted for the actual
16 efficiency of IG's facility in producing SNG.

17 D – Pipeline Transportation Charge – this represents the actual charge to transport
18 the SNG to the point at which the IFA takes title, excluding any surcharges based on low
19 output or low quality SNG (which shall be paid by IG).

20
21 **Adjustments to the Base Price:** The base price may be adjusted as follows:

22 For the IFA's Share of Net Incremental Revenues – to the extent that IG is able to
23 sell additional SNG and any byproducts from the SNG process (e.g. argon, sulfuric acid,

1 excess electricity, etc.), IG will split the net revenue from such sales 50-50 with
2 consumers, with the consumer share used to reduce the base price of SNG.

3 For the IFA's Share of Net CO₂ Revenues – to the extent IG is able to sell Carbon
4 Related Products (as defined in the SNG Contract) or take advantage of carbon tax
5 credits, the base price will be reduced by one half (1/2) of the net revenue from Carbon
6 Related Products (calculated based on a predetermined formula and net of incremental
7 costs) and one half (1/2) of the benefit of any available carbon tax credits. To the extent
8 the Net CO₂ Revenues are negative, that amount will increase the base price subject to a
9 cap of \$0.51 per MMBtu adjusted for inflation.

10 For New Taxes – to the extent that a "New Tax" (as defined in the SNG Contract)
11 takes effect which is imposed on the sale of SNG to the IFA, the base price will be
12 adjusted for such New Tax, net of any tax benefits.

13 For Changes in Governmental Requirements – to the extent that a "Change in
14 Governmental Requirements" (as defined in the SNG Contract) occurs which has a
15 material effect on the cost of SNG production, the base price will be adjusted to comply
16 with such change, subject to a cumulative cap equal to 13.5% of the sum of items A, B,
17 and C in the Base Contract Price.

18 For Market Differential – In each month, the base price will be adjusted based on
19 the difference between the weighted average market price for natural gas as sold by the
20 third party marketer and the price paid to IG. As long as cumulative savings exist, IG
21 will receive all positive market differential until it has received a repayment amount
22 equal to the \$150,000,000 that funded the Consumer Protection Reserve. After that the
23 savings are split 50% to the IFA to reduce the base price and 50% to IG. If no

1 cumulative savings exist, then each of IG and the IFA will be allocated 50% until IG is
2 repaid the \$150,000,000 deposit in the Consumer Protection Reserve, and then 100% will
3 be allocated to the IFA to reduce the base price thereafter.

4 The resulting price after the calculation of the base price and the adjustments
5 described above will be the price per MMBtu of SNG delivered to the IFA.

6
7 **Emergency Use:** In the event of a declared state emergency, the IFA may take title to
8 the gas and route it directly for any use in the state that is deemed necessary.

9
10 **Q21. How long have you worked on the SNG Contract with IG?**

11 A21. Public Law 2-2009 was signed into law by the Governor on March 24, 2009. The IFA
12 issued a Request for Proposals for Supplier Services for Substitute Natural Gas on
13 March 26, 2009. IG was the only responding entity, and submitted its response on
14 April 9, 2009. The IFA has been in discussions and negotiations with IG since that time,
15 which resulted in the SNG Contract.

16
17 **Q22. Please explain the IFA's specific role in the SNG Contract?**

18 A22. In enacting the Public Law, the General Assembly made several findings, including the
19 finding that the participation by the IFA was critical to obtain low cost financing for the
20 construction of new coal gasification facilities. On a broader scale, however, the role of
21 the IFA is to represent the best interests of the people of the State of Indiana in
22 negotiating the SNG contract and its related agreements, and in monitoring and managing
23 that agreement to ensure that the requirements and obligations set forth in the agreement

1 are adhered to. The IFA will purchase SNG from IG for resale into the marketplace.
2 Currently, that resale will be directly to a natural gas marketer (the “Marketer”), currently
3 expected to be BP, under an asset management or agency agreement. The IFA will pay a
4 price for the SNG based on a fixed formula described in the SNG Contract, using funds it
5 receives from the sale of the SNG and pursuant to the Billing and Collection Services
6 Agreements (the “Utility Management Agreements”), the form of which is attached
7 hereto as Exhibit JMA-4. Exhibit JMA-4 differs from the Form of Utility Management
8 Agreement attached to the Joint Petition filed in this cause. Exhibit JMA-5 shows these
9 differences. IG is guaranteeing savings of at least \$100,000,000 in 2008 dollars in the
10 aggregate to Customers in Indiana over the thirty (30) year term. The IFA will be
11 responsible for passing this savings along to the Customers through the SNG Contract
12 and the Utility Management Agreements (which is outlined later in the testimony). As
13 discussed in detail elsewhere in this testimony, the IFA has broad audit and inspection
14 rights to ensure compliance with the terms of the SNG Contract and the authority under
15 the SNG Contract to require compliance by IG with its terms.

16
17 **Q23. When do you anticipate the beginning of the initial term of the SNG Contract to be?**

18 A23. The initial thirty (30) year term of the SNG Contract begins on the first day of the first
19 month in which IG begins commercial production of SNG at its facility. That date is
20 currently anticipated to be in the first quarter of 2016.

21
22 **Q24. Does either IG or the IFA have the option to extend the SNG Contract after the**
23 **initial term?**

1 A24. Yes, if the full guaranteed savings amount under the SNG Contract has been realized at
2 the end of the initial thirty (30) year term, the IFA can extend the SNG Contract for up to
3 twenty (20) years for incrementally diminishing amounts to accommodate for a smoother
4 return to market prices. In the case of such an extension, except for the incrementally
5 diminishing quantity purchased by the IFA and with respect to the calculation of the
6 O&M Component of the price (more fully described below), the same terms and
7 conditions in effect during the initial term will apply. The O&M Component which is
8 calculated as described below during the initial term will be replaced during such a
9 renewal term with an amount which is a pass-through of the actual operating and
10 maintenance costs incurred by IG for a particular period of such renewal term, as
11 determined by IG's books and records and subject to verification by an independent
12 advisor chosen by the IFA.

13
14 If the full guaranteed savings amount has not been realized at the end of the initial term,
15 IG can elect to either pay the shortfall amount in cash, or, if IG does not make such a
16 cash payment, the IFA can: (i) elect to extend the term of the SNG Contract for a period
17 of time necessary to realize the shortfall, or (ii) force a sale of the SNG facility to pay for
18 the shortfall. If the IFA elects to extend the term for a period of time necessary to realize
19 the shortfall, it will purchase the SNG at a discounted price which is based on the actual
20 fixed and variable operating and fuel costs incurred by IG in producing the SNG
21 (including any actual costs incurred by IG in complying with a Change in Governmental
22 Requirements (as described below)), including a ten million (\$10,000,000) nominal
23 annual operating fee, adjusted annually thereafter for inflation (effectively eliminating

1 most of the capital component). Additionally, if the IFA elects to extend the term of the
2 SNG Contract for a period of time necessary to realize the shortfall, at the end of that
3 shortfall term, the IFA will have the same extension options described above which are
4 effective at the end of the initial term, assuming the full guaranteed savings amount is
5 realized during that shortfall term.

6
7 **Q25. What are the IFA's purchase obligations under the SNG Contract?**

8 A25. The IFA is obligated to purchase an annual amount up to 38 million MMBtus of SNG
9 that is produced from IG. The IFA's monthly purchase requirement is based on the
10 output of the SNG facility, and capped at an amount equal to 110% of the monthly
11 annualized average of the annual quantity described above. In any given year, the IFA
12 will not purchase SNG in excess of the annual quantity, regardless of when during the
13 year the IFA has fulfilled its purchase obligation. It is important to note that Customers
14 take on no risk associated with the IG plant being (or not being) operational because the
15 IFA only pay for SNG that is actually produced.

16
17 **Q26. Are there any situations that would affect the IFA's purchase obligations under the**
18 **SNG Contract?**

19 A26. Yes. The IFA's purchase obligation does not begin until the SNG facility has begun
20 producing SNG. If IG does not obtain adequate financing or the plant is not found to be
21 capable of producing SNG in a manner which would allow IG to perform under the SNG
22 Contract, then IG's obligation to supply and the IFA's obligation to purchase SNG will
23 terminate. Additionally, if one of the conditions defined as a "Force Majeure" in the

1 SNG Contract occurs, the obligations under the SNG Contract of both IG and the IFA are
2 suspended until that condition subsides or is resolved, in accordance with the procedures
3 of Article XIII of the SNG Contract. If a Force Majeure continues for 365 days, either
4 party may terminate the SNG Contract.
5

6 **Q27. At what point will the IFA take title to the SNG?**

7 A27. The "Title Transfer Point" depends on the details of the currently-effective agreement
8 with the Marketer. If the Marketer will take title to the SNG from the IFA (e.g. under an
9 asset management arrangement), then title will transfer to the IFA from IG at the same
10 point where the Marketer takes title. Under the currently contemplated agreement with
11 the Marketer, the Marketer would take title to the SNG from the IFA at the point where
12 the SNG leaves IG's facility, and so that point would be the point where title transfers
13 from IG to the IFA as well. If the Marketer will not take title to the SNG from the IFA
14 (i.e. the Marketer will act as an agent under an agency arrangement), then title to the
15 SNG will transfer from IG to the IFA and from the IFA to the subsequent purchaser at the
16 applicable liquid market point where the SNG will be ultimately sold into the
17 marketplace.
18

19 However, if the Governor of the State of Indiana were to declare an energy emergency in
20 the state, then the IFA, at its option, could take title at another mutually agreed upon
21 point and would not be required to sell it to the Marketer but could choose to use it to
22 mitigate the state emergency.
23

1 **Q28. If the IFA does not purchase all of the SNG produced by the SNG Facilities, does IG**
2 **have the option to sell the SNG to another Buyer?**

3 A28. As long as the SNG Contract is in effect, IG cannot sell SNG to any other buyer until it
4 has sold the entire annual quantity (38 million MMBtus) to the IFA or if IG produces
5 SNG in excess of the monthly cap described above. If IG produces enough gas to allow
6 for sales to other buyers, the net revenue from such sales will be shared equally between
7 the IFA and IG. Any loss from the sale of any such excess SNG will be solely allocated
8 to IG.

9 Additionally, if IG exercises any of its termination rights under the SNG Contract,
10 other than in the event of a continuing Force Majeure, IG cannot then sell SNG to any
11 other buyer after such termination takes effect.

12

13 **Q29. Does the IFA have any guarantees from IG that the IFA will realize the savings**
14 **identified in the SNG Contract?**

15 A29. Yes. Over the course of the initial thirty (30) year term IG has guaranteed a savings of
16 \$100,000,000 in real 2008 dollars as compared to the market price of natural gas. IG is
17 required to pay this net amount at the end of the SNG Contract if savings have not been
18 realized. For example, if at the end of the initial term, the price of SNG over the term had
19 exceeded the price of natural gas by \$50 million (measured in 2008 dollars) then IG
20 would be obligated to pay \$150 million. This obligation is secured in several ways.
21 First, IG will post the Consumer Protection Reserve of \$150 million (the "CPR
22 Commitment Amount") before construction commences on the SNG Facilities. This
23 reserve account will be returned to IG only as savings are realized. In the event that this

1 guaranteed savings is not achieved during the initial term, IG must either rebate the
2 shortfall in cash or the IFA can elect to extend the term at a discounted price to realize the
3 guaranteed savings, as described above or force a sale of the facility to pay for the
4 shortfall. The IFA will have a security interest in IG's plant in the form of a mortgage.
5 IG will also deliver to a trustee a fully executed Mortgage and Security Agreement with
6 respect to the IG plant, which will be filed in the event that the IFA exercises its rights to
7 force a sale of the IG plant if there is a shortfall in the guaranteed savings amount. This
8 lien will be subordinate to the lender in the financing guaranteed by the Department of
9 Energy.

10
11 Further, at the end of the twenty-fifth (25th) year of the term an independent valuation of
12 the fair market value of the plant will be performed. If the fair market value of the plant
13 after the expiration of the term determined by the valuation, plus the contract savings
14 reconciliation amount, is negative, then when the debt service payments under the
15 financing guaranteed by the federal government have been discharged the cash flows
16 previously dedicated to these debt service payments shall be available to the IFA.

17
18 **Q30. How will those guaranteed savings be determined?**

19 A30. The savings will be tracked by establishing an account (referred to in the SNG Contract
20 as the "Cumulative Real Contract Savings Tracking Account" or "CRCSTA"), which the
21 IFA will update on a monthly basis. The CRCSTA will be increased on a monthly basis
22 to the extent the final price of SNG under the SNG Contract is less than the then-current
23 natural gas market price or decreased to the extent the final price of SNG under the SNG

1 Contract is greater than the then-current natural gas market price. The balance in this
2 tracking account will be measured in 2008 dollars.

3
4 **Q31. Is IG responsible for completion of milestones by a date certain under the SNG**
5 **Contract?**

6 A31. Yes. IG is required to use Commercially Reasonable Efforts (as defined in the SNG
7 Contract) to meet target and outside dates for (a) the closing of IG's financing to construct
8 the plant and commencement of construction of the plant and (b) the passage of all
9 testing to determine that the plant is capable of commercial SNG production in
10 accordance with the SNG Contract. The target date for (a) is December 31, 2011, with an
11 outside completion date of June 30, 2014. The target date for (b) is June 30, 2015 with
12 and the outside completion date is March 31, 2018. In the event that commercial
13 production has not occurred by December 31, 2018, the IFA may terminate the SNG
14 Contract. Each of these dates is extended on a day-for-day basis for each day after June
15 30, 2011 that issuance of the IURC Order is delayed beyond that date. Each date may
16 also be delayed by Force Majeure, as long as IG delivers a plan approved by the
17 Independent Engineer (as defined in the SNG Contract) which is reasonably likely to
18 result in commercial production prior to December 31, 2018.

19
20 **Q32. Are there any standards in the SNG Contract concerning the quality of the SNG**
21 **provided by IG?**

22 A32. Yes. The IFA is only required to purchase SNG which is "Conforming SNG" as defined
23 by the SNG Contract. "Conforming SNG" is defined as SNG meeting the minimum

1 requirements for delivery into and transportation of natural gas on the applicable
2 receiving pipeline's pipeline system, as such requirements may be amended from time to
3 time. Additionally, if the receiving pipeline has standards for output and quality which
4 are above the minimum standards for delivery and transportation, and a failure to meet
5 these standards results in additional charges, and the SNG produced by IG meets the
6 minimum standards to be transported by a receiving pipeline but does not meet these
7 minimum standards and therefore results in additional charges, any such additional
8 charges will be the responsibility of IG.

9
10 **Q33. How is the price set for the IFA's purchase of the SNG gas?**

11 A33. The price the IFA pays for SNG, defined as the "Monthly Invoice Contract Price" in the
12 SNG Contract, is determined by starting with the Base Contract Price, adjusting it for
13 New Taxes, Changes in Governmental Requirements, Net Incremental Revenues and Net
14 CO2 Revenues, with the result being referred to in the SNG Contract as the "Adjusted
15 Base Contract Price". Each of these elements of determining price is described in my
16 subsequent testimony.

17
18 The Adjusted Base Contract Price is then adjusted based for any Monthly Positive
19 Market Differential Price for a particular month, which results in the "Monthly Invoice
20 Contract Price". The Monthly Positive Market Differential Price is determined by
21 dividing the percentage of Monthly Positive Market Differential attributable to IG by the
22 actual quantity of SNG delivered to the IFA during the applicable month (the "MDQ").
23 "Monthly Positive Market Differential" is determined by first comparing the cost of the

1 applicable MDQ based on the Base Contract Price to what the applicable MDQ would
2 have cost based on then current natural gas market prices (determined based on a
3 predetermined weighted average formula). To the extent that the cost based on the Base
4 Contract Price is less than the cost based on the market price for natural gas, the
5 difference is the "Monthly Positive Market Differential". The percentage of Monthly
6 Positive Market Differential attributable to IG is determined as follows: (a) when the
7 CRCSTA balance is zero or greater, IG's percentage is 100% until it has received an
8 aggregate amount equal to the CPR Commitment Amount, and 50% thereafter; and (b)
9 when the CRCSTA balance is less than zero, IG's percentage is 50% until it has received
10 an aggregate amount equal to the CPR Commitment Amount and 0% thereafter.

11
12 **Q34. Could you please describe the components of the price?**

13 A34. The Base Contract Price is comprised of four (4) components: the Capital Component,
14 the O&M Component, the Fuel Component and the Pipeline Transportation Charge.

15
16 The Capital Component is fixed at \$3.50 per MMBtu in nominal dollars for the life of the
17 SNG Contract.

18
19 The O&M Component is set initially at \$1.88 per MMBtu in 2008 dollars with
20 adjustments for inflation based on changes in the indices set out in Section 5.2 of the
21 SNG Contract. The O&M Component includes the specific expenses described on
22 Schedule 5.2 of the SNG Contract and generally the operation and maintenance expenses
23 of the SNG facility. The O&M Component does not include depreciation expenses, sales

1 and marketing expense (including any administrative costs of the Marketer), costs to
2 administer the SNG Contract by IG, any interest and other costs related to financing
3 (other than financing which is on then prevailing market terms at a then prevailing market
4 interest rate and which is exclusively used to provide working capital) and any interest,
5 fines, penalties or assessments imposed on IG for its failure to comply with its
6 agreements or with any Governmental Requirements. The O&M Component also
7 excludes any incremental costs relating the Net Incremental Revenues, Additional
8 Products and Net CO2 Revenues. Depending on the amount of the guaranteed savings
9 which has accrued at the time, either or both IG and/or the IFA may, every five years
10 beginning after the seventh (7th) year of the term, elect to have an independent third party
11 review the O&M Component by comparing the actual O&M costs of the plant over such
12 five year period to the O&M Component used during such five year period. If there is a
13 difference, the average of the actual O&M costs, in real dollars, over the five (5) year
14 period will be adjusted for inflation and become the O&M Component.

15
16 The Fuel Component is derived from a formula which multiplies the actual fuel cost per
17 MMBtu for a month by ninety six and one half percent (96.5%) (representing the
18 estimated plant capacity used to manufacture SNG) and divides the result by the actual
19 efficiency percentage of the plant. The efficiency percentage for the plant is subject to a
20 floor which escalates from forty percent (40%) to fifty percent (50%) during the initial
21 twenty (20) months of the term, increasing by one half percentage point (0.5%) each
22 month. After this twenty (20) month period the floor shall be fixed at fifty percent
23 (50%), provided that a particular month may be below fifty percent (50%) if the

1 preceding twelve (12) month average (including the particular month) is above fifty
2 percent (50%).
3

4 The Pipeline Transportation Charge is the cost of pipeline transportation to the point
5 where title transfers to the IFA and the aggregate monthly actual interstate and intrastate
6 pipeline transportation costs (including all applicable capacity charges, pipeline
7 commodity transportation costs and associated fuel costs) based on applicable pipeline
8 tariff rates for transportation service from the plant to the point where the IFA takes title
9 to the SNG.
10

11 **Q35. How are new taxes relating to SNG production handled in the SNG Contract?**

12 A35. The base contract price will be adjusted on a per MMBtu basis for the payment of any of
13 new tax which is specifically defined as "New Tax" under the SNG Contract. The SNG
14 Contract defines "New Taxes" as: "any new Taxes (other than Excluded Taxes), or
15 increase in Taxes (other than Excluded Taxes), enacted or otherwise made applicable
16 after the date of [the SNG Contract] by any Governmental Authority (whether or not
17 contemplated or introduced as a bill on the date of [the SNG Contract] first written
18 above) including any Taxes in the nature of carbon taxes, energy related taxes, Btu taxes,
19 taxes on the heat content of energy, transportation taxes, or similar Taxes on SNG sold
20 under [the SNG Contract], which are otherwise the responsibility of IG under [the SNG
21 Contract], but excluding any CO₂ Taxes. For avoidance of doubt, all carbon taxes that do
22 not fall within the definition of "CO₂ Taxes" (such as carbon taxes in the form of a
23 societal tax) are for the purposes of the SNG Contract defined as "New Taxes". Also,

1 "New Taxes" shall not include any interest, fine, penalty or assessment imposed on IG or
2 the result of IG's failure to comply with any Governmental Requirement. IG is obligated
3 to notify the IFA as soon as reasonably practical of any New Taxes as well as the
4 economic impact of any such New Taxes. Additionally, the adjustments to the contract
5 price will be net of any tax benefit realized in connection with a New Tax.

6
7 **Q36. How are changes in governmental requirements handled in the SNG Contract?**

8 A36. If a "Change in Governmental Requirements" as defined in the SNG Contract occurs
9 which has a material effect on IG's cost to provide the IFA with SNG, the Base Contract
10 Price will be increased on a per MMBtu basis in an amount equal to such costs, subject to
11 the 13.5% cap also described in my testimony. If additional capital is required to comply
12 with the change and IG contributes such additional capital, the increase will also include
13 a 12% levelized after income tax unlevered rate of return based on the pro-forma income
14 statement of the overall capital investment, and taking into account the actual cost of any
15 debt and applicable tax treatment (including taking into account any tax benefit realized),
16 subject to the right of the IFA to either finance the additional capital itself (and realize the
17 return itself) or provide support for IG's financing (in which case the actual costs will be
18 included in the Base Contract Price, with no return).

19 "Change in Governmental Requirements" is defined as: "any of the following events
20 which has an adverse effect on IG, the development, construction, and/or operation of the
21 Plant or IG's ability to perform any of its obligations under [the SNG Contract]: (a) the
22 enactment of a new Governmental Requirement after the date of [the SNG Contract]; (b)
23 a change in interpretation or application of a Governmental Requirement after the date

1 hereof; provided that for purposes of [the SNG Contract], the Parties agree that the
 2 Supreme Court's decision in *Massachusetts vs. EPA* (April 2, 2007) finding that the
 3 Environmental Protection Agency has the authority to regulate carbon dioxide and other
 4 greenhouse gases as pollutants under the Clean Air Act and the EPA's determination on
 5 April 17, 2009 that carbon dioxide and five other greenhouse gases constitute pollutants
 6 that are harmful to public health and welfare, as well as any resulting regulation and/or
 7 interpretation of current laws and regulations based on such Supreme Court decision and
 8 EPA determination shall constitute a Change in Governmental Requirements for all
 9 purposes of [the SNG Contract]; (c) a change in any conditions or requirements of any
 10 Governmental Approval or by any Governmental Authority after the date of [the SNG
 11 Contract] in connection with the permitting of the Plant; provided that IG shall use
 12 Commercially Reasonable Efforts to minimize the effects of any such conditions or
 13 requirements and the costs thereof, or (d) the imposition of any condition or requirement
 14 by any Governmental Authority in connection with the grant of any financial incentive
 15 (including a Federal Loan Guarantee), other than any requirement under the DOE
 16 Guaranteed Financing relating to Carbon Related Products and not involving the sale of
 17 Carbon Related Products through a pipeline; provided that IG agrees to use
 18 Commercially Reasonable Efforts to minimize the long-term effects of any such
 19 conditions or requirements and the costs thereof. For the avoidance of doubt, in each
 20 case of clauses (a) – (d) above, the loss or expiration of or reduction in the coal
 21 production tax available to [IG] under Indiana Code 6-3.1-29 shall be excluded."
 22

23 **Q37. Is there a cap on increases for Changes in Governmental Requirements?**

1 A37. Yes. Any increase or decrease in the Base Contract Price for any Change in
2 Governmental Requirements is capped at 13.5% of components A, B and C of the Base
3 Contract Price, as described previously in my testimony, which is an aggregate cap for all
4 Changes in Governmental Requirements for the entire term of the SNG Contract.

5
6 **Q38. How does the SNG Contract address revenue from production of SNG in excess of**
7 **the SNG purchased by the IFA and from any other products or byproducts**
8 **produced by the plant?**

9 A38. To the extent there are positive net revenues from excess SNG or the sale of excess
10 power (defined in the SNG Contract as "Incremental Production") or other products
11 produced at the facility or byproducts from production of SNG (defined in the SNG
12 Contract as "Additional Products"), one half of such net revenues will reduce the Base
13 Contract Price on a monthly basis and one half will be paid to IG. Negative net revenues
14 from Incremental Production or Additional Products will be allocated to IG. For
15 purposes of determining the net revenues for each type of Incremental Production and
16 each Additional Product, the costs allocable to such Incremental Production or Additional
17 Product which are subtracted from the revenue received from the sale of the same, on a
18 monthly basis. Positive net revenues from one type of Incremental Production or
19 Additional Product may be used to offset negative net revenues from another type of
20 Incremental Production or Additional Product only if the net revenues for the type of
21 Incremental Production or Additional Product proposed to be used to offset other
22 negative net revenues was positive, in the aggregate, for the immediately preceding

1 twelve (12) month period. These positive or negative net revenues are referred to in the
2 SNG Contract as "Net Incremental Revenues".

3
4 Revenues from CO₂ or other carbon related products, including carbon credits (defined
5 in the SNG Contract as "Carbon Related Products") are handled differently. Net
6 revenues from the sale of Carbon Related Products (referred to in the SNG Contract as
7 "Net CO₂ Revenues") are calculated by subtracting the costs related to such revenues
8 described in Schedule 5.4(c)(i) to the SNG Contract from an amount which is equal to the
9 quantity of Carbon Related Products sold in a month multiplied by a price determined in
10 accordance with a predetermined formula, also set forth in Schedule 5.4(c)(i) to the SNG
11 Contract. Positive net revenues from Carbon Related Products are shared equally
12 between the IFA and IG (with the IFA's share serving to reduce the contract price), and
13 negative net revenues from Carbon Related Products are allocated solely to the IFA and
14 serve to increase the contract price, subject to a cap of \$0.51 per MMBtu in 2008 dollars.

15
16 **Q39. What does IG plan to do with the slag generated by the SNG Facilities?**

17 A39. The only solid by-product from SNG production is slag, a non-toxic, non-hazardous,
18 inert, vitrified substance that can be sold for multiple uses. In general, slag generated by
19 the facility will be stored on a slag pile at the plant, until it is processed and disposed of.
20 The associated costs are included in the O&M Component of the contract price. Prior to
21 disposal, the IFA (or any other agency or instrumentality of the State of Indiana) will
22 have the right to take title to the slag and use it reimbursing IG for any costs in excess of
23 the costs to locate the slag on IG's slag pile. If the IFA notifies IG that it will not use

1 slag, then IG may sell such slag to a third party, provided that if IG finds a buyer willing
2 to enter into a purchase agreement for the slag with a term of greater than 1 year, the IFA
3 has a right of first refusal to purchase this slag on the same terms. Net revenue from any
4 slag sold to third parties will be shared equally by IG and the IFA. Only costs in excess
5 of the costs that IG would have incurred and the costs included in the O&M Component
6 may be offset against slag revenue for purposes of determining such net revenue.
7

8 **Q40. Are there limitations on the possible liability of the State of Indiana or the IFA**
9 **under the SNG Contract?**

10 A40. Under the Public Law and under the SNG Contract, the obligations of the IFA under the
11 SNG Contract are not backed by the full faith and credit of the State of Indiana. Payment
12 for damages owed by the IFA to IG generally are limited to (a) the Fund, (b) amounts
13 received by the IFA that were required by statute to be collected and paid into the Fund
14 but which were not collected and paid into the Fund and (c) amounts held in the
15 Consumer Protection Reserve. Additionally, per the SNG Contract the IFA is required to
16 enforce its rights under the marketing agreement and under the Utility Management
17 Agreements.
18

19 **Q41. Can the SNG Contract be assigned or transferred? If so, what are the obligations of**
20 **the parties under such an assignment or transfer?**

21 A41. Assignment of the SNG Contract, whether by actual assignment or changes in the
22 ownership of IG, is governed by the SNG Contract. Generally, neither party may assign
23 or transfer its rights or obligations under the SNG Contract without the other party's

1 consent, subject to some exceptions. Additionally, IG may not sell, transfer or convey
 2 the SNG facility without the IFA's approval. The IFA may assign its rights and
 3 obligations without IG's consent to a statutory successor to the IFA which is the
 4 independent body politic and corporate instrumentality of the State of Indiana responsible
 5 for managing the debt of state entities. IG may, without the IFA's prior consent, sell,
 6 transfer or convey the SNG plant or assign its rights and obligations under the SNG
 7 Contract either (a) in connection with any debt or equity financing (including, for the
 8 avoidance of doubt, a sale-leaseback or leverage lease financing) or (b) to an Affiliate.
 9 "Affiliate" means an entity which Controls, is Controlled by, or is under common Control
 10 with, such entity, where "Control" (including the terms "Controlled by," and "under
 11 common Control with") includes, but is not limited to, the possession, directly or
 12 indirectly and whether acting alone or in conjunction with others, of the authority to
 13 direct or cause the direction of the management or policies of an entity. The IFA is
 14 prohibited from refusing to consent to a proposed transfer by IG if such transfer is to a
 15 "Qualified Transferee" which meets certain operational and experience criteria defined in
 16 Schedule 15.1(b) to the SNG Contract. A "Qualified Transferee" is defined as a person
 17 or entity that is either publicly traded and listed on a major exchange or has a tangible net
 18 worth in excess of One Hundred Million Dollars (\$100,000,000). The same restrictions
 19 apply to a change in control of IG.

20
 21 **Q42. Are the assignment, transfer and change of control provisions in the SNG Contract**
 22 **designed to protect the public and give the IFA broad and necessary review and**
 23 **approval powers over IG's transfer and change of control right?**

1 A42. Yes. Except as previously described, IG may not (i) sell, transfer or convey the SNG
 2 Facilities or (ii) transfer, convey or assign its rights or obligations under the SNG
 3 Contract without the prior written consent of the IFA. These provisions are set out in
 4 Section 15.1 of the SNG Contract which provides a number of safeguards in performance
 5 that relate to transfer, assignment and changing control that the IFA has deemed
 6 necessary to safeguard the public interest of the end use consumers in Indiana. It is the
 7 judgment of the IFA that these safeguards and controls written into the various provisions
 8 of this SNG Contract that relate to assignment, transfer and change of control are
 9 consistent with the notice and approval provisions provided for in the Commission's most
 10 recent orders concerning transfer and change of control in proceedings involving energy
 11 production facilities. The IFA, as a body politic and corporate of the State of Indiana, is
 12 an independent instrumentality of the State exercising essential public functions. As
 13 such, it has negotiated and embedded into the SNG Contract, terms relating to
 14 assignment, transfer and change in control, that the IFA has determined, in exercising its
 15 public functions, to be in the public's interest. Those terms give the IFA the right of
 16 approval in situations involving assignment, transfer and change of control.

17

18

UTILITY AGREEMENT

19 **Q43. Please generally describe the Utility Management Agreements.**

20 A43. Pursuant to IC 4-4-11.6-15, the IFA is authorized to enter into, and pursuant to IC 4-4-
 21 11.6-22, regulated utilities ("Utilities") are required (if ordered by the IURC) to enter
 22 into, a contract which "provide[s] billing, collection, and other services related to the
 23 purchase, distribution and delivery of the SNG." The purpose of the Utility Management

1 Agreements are to provide a mechanism to pass through to Customers the necessary
2 adjustments for differences between the market price for natural gas and the SNG
3 purchased pursuant to the SNG Contract (when negative, "Price Adjustments" and when
4 positive, "Customer Credits"; and together with the Price Adjustments, the "Customer
5 Portion"), as well as for costs of the Utilities in administering the Utility Management
6 Agreements ("Incremental Costs") and the administration costs of the IFA, as allowed by
7 the Public Law.

8
9 **Q44. In what manner were the Utilities involved in the preparation of the form of the**
10 **Utility Management Agreement?**

11 A44. The IFA drafted a form of the Utility Management Agreement (which is attached as
12 Exhibit JMA-4) and provided it to certain representatives of various Utilities for review
13 and comment. The IFA collected, analyzed and reviewed the comments received from
14 the Utilities with its advisors in order to determine needed modifications to the Utility
15 Management Agreement. The Utility Management Agreements will not be subject to
16 negotiation with each individual Utility, but rather all Utilities will enter into the same
17 form of agreement, as contemplated by the Public Law.

18
19 **Q45. What is the term of the Utility Management Agreement?**

20 A45. The term commences once (a) the IURC has approved the form of the Utility
21 Management Agreement and (b) the IFA has provided each Utility with thirty (30) days
22 prior written notice of commencement (which will approximately coincide with the

1 commencement of the purchase of SNG by the IFA under the SNG Contract).
2 Additionally, the IFA will provide the Utilities with notice of various other key
3 milestones leading up to the commencement of the term. The term will continue for so
4 long as the SNG Contract is in effect. Notwithstanding the foregoing, if a party is in
5 default under an applicable Utility Management Agreement, the non-defaulting party
6 may submit a request to the IURC that that particular Utility Management Agreement be
7 terminated.
8

9 **Q46. How will Price Adjustments, Customer Credits and Incremental Costs be allocated**
10 **among the Customers?**

11 A46. Each Utility will be allocated a portion of the overall Customer Portion and Incremental
12 Costs as determined by the IURC based on the proportion of gas delivered to Customers
13 by the Utility to the total amount of gas delivered to Customers by all Utilities in the
14 preceding calendar year (the Utility's "Pro Rata Share"). Within ten (10) days after the
15 end of each month, the IFA will cause to be provided to each Utility a report which
16 summarizes the prior month's SNG sales, states the overall Customer Portion for such
17 month and informs the Utility of the Pro Rata Share of such Customer Portion (the
18 "Monthly Report"). If a Customer Credit is due, the IFA will pay the applicable amount
19 to each Utility within twenty (20) days after the date of the Monthly Report. If a Price
20 Adjustment is due, each Utility must pay the applicable amount to the IFA within thirty
21 (30) days of date of the Monthly Report, regardless of when the Utility actually bills
22 Customers for such amount.
23

1 **Q47. Are any gas customers not "retail end use customers" and therefore excluded from**
2 **the definition of "Customers"?**

3 A47. Yes. Any customer falling into one of the following categories will not be considered a
4 "Customer" for the duration of such Utility Management Agreement, regardless of any
5 restructuring, reorganization or reduction in volume by such customer: (a) an industrial
6 transport customer purchasing an annual volume of gas of 50,000 dekatherms or greater
7 at the beginning of the term of the applicable Utility Management Agreement; or (b) an
8 industrial transport customer who was not an Indiana customer at the beginning of the
9 term of the applicable Utility Management Agreement but who either has annual volume
10 of gas of 50,000 dekatherms at the time it becomes an Indiana customer or has an
11 anticipated annual volume of gas of 50,000 dekatherms or greater after the initial five (5)
12 years of consumption by such Indiana customer. These industrial transport customers are
13 excluded from the definition of "Customers" because the IFA determined (after
14 consultation with its advisors and various other representatives) that this group does not
15 and was not intended to fall within the definition of "retail end use customers" described
16 in the Public Law and therefore is not a beneficiary of the SNG Contract.

17
18 **Q48. How will Customers be billed?**

19 A48. Pursuant to Ind. Code § 4-4-11.6-30(c), the IURC shall determine a just and reasonable
20 method for allocating credits and charges to Customers. Consistent with the IURC's
21 prescribed allocation methodology, each Utility shall include its Pro Rata Share of the
22 Customer Portion identified on the Monthly Report in its gas costs attributable to and to

1 be recovered from Customers, including any applicable taxes. Customers will be billed
2 for the applicable amount on their regular bills. Each Utility will also include its Pro
3 Rata Share of the Customer Portion in its quarterly gas cost recovery filings as a variance
4 to be recovered from or refunded to Customers over a designated period.
5

6 **Q49. How are Incremental Costs handled?**

7 A49. To the extent a Utility incurs Incremental Costs, subject to IURC approval, such Utility
8 may recover such costs from Customers on their bills. Incremental Costs may include
9 information system costs associated with the applicable Utility Management Agreement,
10 customer service costs responding to inquiries relating to the SNG, regulatory and
11 compliance costs relating to the applicable Utility Management Agreement, uncollected
12 Price Adjustments, applicable taxes and carrying costs on payments by Utility to the IFA
13 in advance of recovery from Customers.
14

15 **Q50. How are Customer inquiries and complaints about SNG handled?**

16 A50. The IFA and the Utilities will work together to establish generic or broad based formal
17 communications to Customers relating to the applicable Utility Management Agreement,
18 SNG, the Customer Portion and/or Incremental Costs. Each Utility will agree to use
19 reasonable and diligent efforts to respond to any specific inquiries or complaints from
20 Customers in a manner which is within the spirit of such formal communications. In the
21 event that a Utility is unable to resolve such a Customer inquiry or complaint, it will be
22 referred to the IFA for resolution.

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Q51. Do the IFA and the Utilities have any audit rights?

A51. Yes. The IFA may audit a Utility's books, records, documents, data and information which relate to the applicable Utility Management Agreement and the transactions contemplated therein, upon prior written notice at all reasonable times during normal business hours. Additionally, the IFA will, on an annual basis, hire an independent third party to evaluate, measure and verify the mechanism and process the IFA uses to calculate the Customer Portion. Such auditor will provide a report of its finding and deliver that report to the IURC and the Utilities and to the extent such report identifies any errors, miscalculations, overpayments and/or overcharges, any resulting impact on the Customer Portion may be recognized in the Utility's quarterly gas cost adjustments provided to the IURC. The costs of such independent third party audit will be allocated to the Customers in the same manner as the Customer Portion.

CONTRACT ECONOMICS

Q52. You have pointed out that the legislature authorized the Indiana Finance IFA to enter into this contract.

A52. Yes, section 13 of the Public Law gives the IFA the authority to do three things: to enter into contracts for the purchase transportation and delivery of SNG; to establish and collect rates and charges for SNG; and to enter into contracts for private professional and technical assistance concerning SNG contracts.

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Q53. And is it your understanding that you were *directed* to enter into a contract to purchase SNG?

A53. It was my understanding that the General Assembly and the Administration both supported the addition of SNG as part of the state's natural gas supply portfolio, and that the IFA was supposed to effect this public policy decision.

Q54. Is it your understanding that the IFA was directed to do a deal or that it was free to either do a deal or not?

A54. It was my understanding that the IFA should enter into a contract if it made economic sense for gas consumers. The IFA was not obligated to do a deal it did not believe to be in the best interests of gas consumers.

Q55. And what about the economic development aspects of entering into the contract, wasn't that important too?

A55. The economic development consequences of the SNG Contract are, frankly, gigantic. In the current administration, economic growth for our state is the absolute overarching top priority. However, section 13 of the statute created the threshold criteria for entering into a contract, namely that it provide financial savings to consumers. While the IFA was mindful of the economic development benefits, they did not enter into the decision made by the IFA.

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Q56. And just so the economic benefits are understood, can you give a top-line sense of the economic development benefits?

A56. Yes. The plant would be a \$2.5 billion investment. It would employ 200 people at an average annual compensation of over \$70,000. Added to this would be up to 300 jobs in the Indiana coal industry, assuming that Indiana coal is competitively priced. One way to think of the economic impact is that the IFA's contract will purchase 38MMBtu of SNG. Under the status quo, that is between \$200 and 300 million per year of cash that flows out of Indiana to purchase energy in Texas, Oklahoma, Louisiana, Kansas, etc. About half of that dollar amount is likely to stay here in Indiana under this contract. And that's before you consider the so-called "multiplier effect" of this economic activity.

Q57. OK, so back to how you decided that the contract made economic sense and created savings for consumers, how did you make this judgment?

A57. The IFA modeled the economic result of the contract and that model tells us that over the term of the contract, the IFA can expect "real" savings in 2008 dollars of more than \$500 million. In nominal terms, which is what future ratepayers will actually see on their monthly gas bills over the initial term of the agreement, the savings are more than twice that amount, nearly \$1.2 billion.

Q58. So this is just math, you put all the data into a big formula and it spits out the answer?

1 A58. No, unfortunately it's not that simple. Some of the major inputs to the model require that
2 you make assumptions about the future.

3
4 **Q59. What kind of assumptions?**

5 A59. The biggest assumption is the assumed future price of natural gas, which determines how
6 much the IFA will receive in the market when selling the SNG. The second biggest is the
7 assumed future price of coal, which represents by far the biggest cost to manufacture
8 SNG. And finally, you must make future assumptions about the price of oil, sulfuric
9 acid, argon, and certain rare gases, all of which relate to the value of the by-products of
10 the SNG manufacturing process and to the amount of Net Incremental Revenue.

11
12 **Q60. Why is future gas price the biggest assumption, and why is it a bigger variable than**
13 **coal prices?**

14 A60. Primarily because the economics of the deal are much more sensitive to movements in
15 the price of gas than to movements in other variables. From both the IFA's perspective
16 (consumer savings) and IG's perspective (dividends to their equity investors), a one-
17 standard-deviation change in the selling price of natural gas has 4 to 5 times the impact of
18 a one-standard-deviation change in the cost of coal. And beyond these two variables, the
19 sensitivity of the economics to all of the other pricing inputs drop off sharply.

20
21 **Q61. How do you make judgments about future natural gas prices? Is there a reliable**
22 **forecast for future gas prices?**

1 A61. Well there are certainly forecasts, but reliability is another matter. The most widely
2 known forecast of long term gas prices is produced by the U. S. Energy Information
3 Administration, the EIA. And even the EIA produces data showing their forecasts are
4 notoriously unreliable. The EIA publishes an analysis of its past projections compared to
5 actual prices as they occur. If you go back 15 years and take all the EIA gas price
6 forecasts from 1996 as far forward as the EIA has compiled the data – which is the 2009
7 forecast year – you will see that 92% of the time (84 of 91 instances) the EIA forecasted
8 that prices would be lower than they actually ended up being. Correspondingly, they
9 only missed on the high side 8% of the time (7 of 91 instances). Additionally, the
10 magnitude of the misses was large, and heavily skewed to the downside misses. The
11 average miss on the 84 downside misses was 43% and the average of the 7 high side
12 misses was 6%. In other words, when the actual price of gas turned out to be higher than
13 forecast, it averaged 43% higher than forecast; and when the actual price was lower than
14 forecast, it averaged 6% lower. See Exhibit JMA-6. So clearly the EIA forecast is not
15 completely reliable as a predictor of future gas prices. If anything, you could say that its
16 bias is reliable. In other words, its bias toward underestimation is so pronounced that you
17 might actually rely on that bias and assume that more than 90% of their forecast data
18 points will end up being 40% or more below the actual price.

19
20 **Q62. So, if the most widely known forecast is so unreliable, what did you do to estimate**
21 **future gas prices?**

1 A62. The good news is that there are a number of forecasts out there besides EIA's, but the bad
2 news is that not every forecaster is as forthcoming as the EIA when disclosing their
3 historical accuracy. On top of that, the IFA came to have serious misgivings about the
4 assumptions made in many of these forecasts about the amount of the natural gas supply
5 that is projected to be sourced from shale gas (which is a subject covered at some length
6 in IG's testimony). In the end, the IFA chose to take six publicly available forecasts,
7 including one from EIA, and to create as the IFA's base case a consensus forecast based
8 on the average of those six. Given the IFA's skepticism about the prospects for shale gas,
9 the IFA believes that this consensus forecast is likely to be low, and therefore a
10 conservative projection. The other five projections include one based on actively traded
11 gas futures (so there is actually real money trading on that forecast every day), one
12 published by the World Bank as part of its Global Economic Prospects research effort,
13 and three by private companies that create such forecasts as part of their consulting
14 activities in the oil and gas industries. Another interesting analysis of future forecasts is
15 attached as Exhibit JMA-7. It shows the historical prices with a regression forecast based
16 on history and highlights that all of the forecasts the IFA found are essentially below this
17 line. The IFA believes the base case analysis to be conservative given all of the data
18 points and information available.

19

20 **Q63. And what about your forecast of coal prices?**

21 A63. In my view, coal was the trickier of the two. Forecasts are not as widely available, and
22 even the current price varies dramatically based on its qualities and location. One type of

1 coal might be trading in the spot market at \$15 per ton today, while another trades at \$75.
2 Furthermore, IG is likely to buy a large portion of their coal based on a 5-, 10-, or 20-year
3 contract with a firm that will mine coal close to the SNG facility and deliver it to them at
4 a pre-negotiated price. Nevertheless, the IFA had to settle on a base case forecast, and
5 the IFA chose to use one from EIA. The IFA performed the same analysis on EIA's
6 record of forecasting coal prices as the IFA did on gas prices. With coal, they achieved a
7 much better balance between missing high and missing low – over the same 91 instances,
8 they missed low 57% of the time and high 43% of the time. And the magnitude of the
9 misses was much more reasonable — when the actual price was higher than forecast, it
10 averaged 17% higher; and when it was lower than forecast, it averaged 10% lower.

11 Three other factors are important to keep in mind here. First, as I already testified, the
12 economic impact of an incorrect coal forecast is roughly one-fourth that of a poor gas
13 forecast. Second, in order to eliminate any negative effect that spiking coal prices might
14 have on the economics of the contract, the IFA built in a safety valve of sorts. The IFA
15 assumed that if coal prices were high, then the Indiana coal industry should be relatively
16 healthy and less dependent on incremental demand. In that situation, the IFA has the
17 authority under the contract to switch the fuel for the plant from coal to pet-coke for up to
18 49% of the plant's fuel. Given the historic prices of pet-coke, the IFA would expect this
19 to provide a considerable dampening effect on the fuel component of the SNG price.

20 Third, the IFA has spoken with coal suppliers that are in a position to meet some or all of
21 the coal needs, and they have verbally indicated prices significantly lower than the IFA is
22 using in the base case.

23

1 **Q64. What are the estimated prices and how will these translate onto an average**
2 **Customer's bill?**

3 A.64 In the IFA's base case analysis, the 30 year average Adjusted Base Contract Price for
4 SNG is \$6.64 per MMBtu. The 30 year average market price is \$7.57 per MMBtu. The
5 market differential between these two prices is split 50/50 between IG and the IFA
6 (unless one party is owed and the other isn't) resulting in half the difference being passed
7 through on a Customer's bill. Exhibit JMA-8 is an example of an average Customer's bill
8 over the course of a year and the top part shows the impact of the SNG Contract for a 12
9 month period. The resulting SNG final price is the price the Customer pays for
10 approximately 17% of their natural gas price and this average price for 30 years in the
11 base case is \$7.10.

12
13 **Q65. You called this your "base case" forecast, does that imply that you explored other**
14 **cases?**

15 A65. Absolutely. Given the IFA's expectation that any 35-year forecast will inevitably be
16 wrong, the IFA needed to be certain that this transaction still made sense under a variety
17 of circumstances. The IFA focused on the gas and coal forecasts, as they have by far the
18 most economic impact. Exhibit JMA-9 shows the results of this analysis as a sort of
19 heat-map. Green means there are consumer savings, and you'll notice that there is a lot
20 more green than red on the page. The top number in each box represents an average
21 customer's total annual gas bill as adjusted for the impact of this transaction, and the
22 second number shows whether that bill is higher or lower than it would have been

1 without SNG in the mix. As I previously discussed, Exhibit JMA-8 is an example of an
2 average customer's bill over the course of a year. The bottom part shows how the
3 numbers in the sensitivity are applied and the result of the base case, highest savings case
4 and lowest savings case. All of these figures are averages based on 2008 dollars over the
5 term of the contract. So the \$8.48 in the center square of the heat-map means that in the
6 IFA's base case, an average customer would save an average of \$8.48 per year for 30
7 years. Multiplying that by a couple million customers gets you north of \$500 million in
8 real consumer savings in the base case. An interesting thing to note here is how the
9 "hedge" concept plays out. While red on the heat-map indicates that there are net debits
10 on consumers' bills over the term of the contract, you will notice that the total bills are
11 among the smallest on the page. That is, when the economics of this transaction look the
12 worst, Hoosier gas bills are at their lowest and they have paid insurance to have
13 protection for the converse case. When gas bills are highest this transaction will provide
14 the largest offset. This offsetting process will help Customers with the impact of natural
15 gas price volatility by keeping their bills in a more moderate range.

16
17 **Q66. During the first years of the SNG Contract, will Indiana Customers see a debit or**
18 **credit on their natural gas bills?**

19 A66. Most likely, neither. During the term of the SNG Contract, if the contract price of SNG
20 exceeds the market price of natural gas, the difference will generally be recouped by a
21 charge to Customers. However, the Contract provides that IG will fund the Consumer
22 Protection Reserve with a balance of \$150 million, and during the early years of the SNG
23 Contract, any such negative market differential will be recouped from this account rather

1 than with a charge to Customers. See Exhibit JMA-10 that projects base case savings to
2 better understand how this works. This chart shows how the \$150 million IG investment
3 lasts greater than five (5) years to offset charges to Customers resulting in a zero dollar
4 market differential impact on their bills.

5
6 **Q67. What protections are built into the SNG Contract to keep the costs of fuel as low as**
7 **possible?**

8 A67. The best protection is one I mentioned previously. The IFA has negotiated an
9 arrangement where IG shares in any positive market differential. Since coal is the largest
10 single component of the SNG price over the term of the agreement, they have a huge
11 incentive to buy coal as cheaply as possible in order to minimize the price of SNG and
12 maximize their return. In addition, there are several protections in the SNG Contract for
13 the fuel to remain a competitive price. The preference is absolutely to use Indiana coal
14 and to ensure this resource is maximized as a economic benefit in the state. This
15 preference is also IG's preference because there is an existing tax credit under Indiana
16 law for Indiana coal that it purchased. However, if Indiana coal is doing very well and
17 the industry in Indiana is healthy, there are a few other options. Any other coal in the
18 Illinois Basin may be used if its prices are lower than Indiana coal taking into account the
19 benefit of the tax credit, or a higher percentage of petcoke may be used, which is at the
20 discretion of the IFA.

1 **Q68. Since the SNG Contract also allows the IFA to request increases or decreases in the**
2 **percentage of petroleum coke up to 49% of the fuel mix, what are the consequences**
3 **under the SNG Contract of the use of petroleum coke?**

4 A68. If petroleum coke is used at the request of the IFA, the Monthly Invoice Contract Price
5 will be adjusted to reflect the loss of Indiana tax credits lost by IG as a result, but only to
6 the extent IG has not benefited economically from the use of petroleum coke rather than
7 coal under other provisions of the SNG Contract. If petroleum coke is used at the request
8 of IG, IG shall not receive any adjustment to the Monthly Invoice Contract Price. IG
9 shall have the right to include up to 15% of annual total use (on a dry ton basis) of
10 petroleum coke in its Annual Fuel Procurement Plan, so long as there is no economic
11 detriment to Customers.

12
13 **Q69. Was there an independent analysis on your calculations and computations?**

14 A69. Yes, the IFA asked Shaw to double check the validity and accuracy of the process used to
15 derive the numbers described and Shaw's conclusions are set out in the direct testimony
16 of Reiner W. Kuhr filed on behalf of the IFA in this Cause.

17

18

PUBLIC INTEREST

19 **Q70. Will the SNG Contract purchase of the natural gas produced by IG serve the public**
20 **interest?**

21 A70. Yes. The several benefits of this transaction include: Savings to Hoosier utility
22 customers, Investment in Indiana, jobs for Hoosiers, and homegrown clean energy.

1 During the construction phase, this project will invest approximately \$2 billion in capital
2 in Indiana, which includes providing approximately 1,000 peak construction jobs over a
3 3½ year construction cycle. Over the 30-year life of the agreement, an additional \$4
4 billion will be spent for operations and maintenance, which includes adding 200
5 permanent operating jobs to the local workforce and likely purchasing locally procured
6 materials and services. In addition, the facility will spend \$9 billion on fuel over 30
7 years, much of it in the form of Hoosier coal that could create 300 long-term mining jobs.
8 The multiplier effect will create jobs in transportation, housing, support services, and
9 other related sectors. By adding stable-priced SNG equal to seventeen percent (17%) of
10 the State's natural gas supply portfolio, the price volatility risk borne by the consumer of
11 traditional natural gas can be diminished. Base case price savings exceed \$500 million
12 during the term, and are guaranteed under the contract to be \$100 million or more in real
13 terms. Indiana's leadership in homegrown clean energy production will be further
14 solidified, as this proposed facility will operate with 99 percent fewer pollutants than a
15 traditional coal plant. Should national policy mandate the reduction of carbon dioxide
16 (CO₂), the SNG plant is designed to capture 90 percent of its CO₂ emissions. The only
17 solid byproduct from SNG production is a non-toxic, non-hazardous, inert, vitrified slag
18 that can be utilized by the State for free or be sold for multiple uses (ex. sand blasting
19 grit, cement production, roofing shingles, and asphalt filler). The recovered CO₂ may be
20 sold for reuse in Enhanced Oil Recovery supporting more domestic production of oil.

21
22 A few other good public policy aspects of the SNG Contract are related to risk shifting.

23 To have a private company assume the construction, technology, and operating risk fo a

1 plant of this size is great for Customers. Customers won't pay a dime if SNG is never
2 produced and they won't pay more if there are cost overruns. In fact, if the plant gets
3 built but SNG isn't produced or if IG stops building because of escalating costs, the \$150
4 million that IG has set aside can be used to return the site to its original state. The
5 protections and benefits to Hoosiers are enormous in this deal.

6
7 **Q71. Given the obligations of the IFA to purchase an annual amount of 38 million**
8 **MMBtus of SNG produced, does the IFA have estimates of projected savings to**
9 **Customers.**

10 A71. The contract with IG includes guaranteed savings of \$100 million in real terms (using
11 2008 as a base year). In nominal terms, this could easily equate to \$200 million in
12 savings being passed along. Given the quantity of SNG being purchased, \$200 million
13 would equal about 17½ cents per dekatherm of gas used. If an average customer uses a
14 little over 100 dekatherms annually, and the IFA is purchasing the equivalent of
15 seventeen percent (17%) of total usage, the savings would equate to \$3 per customer, per
16 year, for 30 years. And this is just at the guaranteed level; the IFA's expectation is that
17 the actual savings will be several times these amounts.

18
19 **Q72. Will customers benefit even if the price of SNG stays above the price of natural gas?**

20 A72. Yes, but the benefit is less obvious. In the event that SNG prices remain above market
21 gas prices throughout the term, which the IFA sees as highly unlikely, Customers will see
22 an additional cost passed on to them every month on their gas bills. However, as I

1 pointed out in the heat-map (attached as Exhibit JMA-8), in those instances where the
2 cells were red, the overall bills were among the lowest on the page. The IFA likens this
3 to a 30-year term insurance contract. In hindsight, if you don't die during those 30 years,
4 did you benefit from having the contract? Or did you waste that money? Most would
5 argue that you benefited from the protection, and that you should be happy that you
6 didn't need it. So the IFA is clearly protecting against high gas prices, and there is some
7 cost if that protection is not ultimately needed. In the case of this transaction the IFA
8 takes additional comfort in the fact that along the way will be creating Hoosier jobs and
9 using Hoosier resources, injecting billions of dollars into the economy over 30 years. But
10 at the end of the day the IFA is in this to save money for Customers, not to subsidize
11 others at their cost, and if I did not believe that this transaction is highly likely to achieve
12 that result, I would not have signed the SNG Contract.

13
14 **Q73. Is the SNG Project consistent with the Governor's Homegrown Energy Plan?**

15 A73. The vision of the Governor's Homegrown Energy Plan is to grow Indiana jobs and
16 incomes by producing more of the energy Hoosiers need from our own natural resources
17 while encouraging conservation and energy efficiency. By working towards that vision
18 Indiana will maintain and extend its competitive advantage of reliable, low cost power
19 and will generate more income in Indiana from our energy production potential. Further,
20 one of the major stated goals of the plan is to produce electricity, natural gas and
21 transportation fuels from clean coal and bioenergy by building needed new power plants
22 using clean coal technology, making gas from coal versus importing it, and unlocking
23 biomass and building on biofuels success. The SNG project fits squarely within the scope

1 of the plan by putting Hoosiers to work to convert Indiana coal into natural gas using
2 clean coal gasification technology creating a reliable, low cost fuel source while at the
3 same time lessening Indiana's reliance on imported energy.
4

5 **Q74. Do you believe the SNG Project is in the public interest?**

6 A74. Yes, I believe so in my prior role as Public Finance Director, in my current role a
7 professional in the area of legal and finance as well as in my own personal life as a
8 ratepayer who will be receiving the benefit of this transaction.
9

10 **CONCLUSION**

11 **Q75. How does the SNG Contract carry out the Legislative intent?**

12 A75. The legislation provides a framework for the IFA to carry out the General Assembly's
13 intent in development of the SNG Contract. The resulting SNG contract complies with
14 all requirements contained within this framework. IC 4-4-11.6-30(a) authorizes the IFA
15 to enter into a contract to sell SNG to third parties with the net effect of the proceeds and
16 costs of those sales to be reflected on Customers' bills. As provided in Article II, Section
17 2.4 of the SNG Contract, the IFA intends to purchase SNG from IG and then make such
18 third party sales and pass the net effect of the proceeds and costs through Customers'
19 bills.
20

21 When the IFA enters into a contract under IC 4-4-11.6-30(a), IC 4-4-11.6-30(b)(1)
22 requires that the contract, between the IFA and a producer of SNG for sale and purchase

1 of SNG, must be a purchase contract, as defined therein, and subject to all the
2 requirements of the chapter, IC4-4-11.6. IC 4-4-11.6-7(1) requires a purchase contract,
3 for the sale and purchase of SNG, be between the IFA and a producer of SNG. Section
4 4.1 of the SNG Contract provides that IG will produce SNG, as defined in IC 4-4-11.6-
5 11, at its coal gasification facility in Rockport, Indiana. IC 4-4-11.6-7(2) requires a
6 purchase contract to have a thirty (30) year term, which term is provided for in Section
7 1.1 of the SNG Contract. IC 4-4-11.6-7(2) requires a purchase contract to provide a
8 guarantee of savings for Customers. Section 2.5 of the SNG Contract provides a
9 guarantee of savings to Customers.

10
11 Further, when the IFA enters into contracts under IC 4-4-11.6-30(a), IC 4-4-11.6-30(b)(3)
12 requires that the contract, between the IFA and regulated energy utilities, as defined in IC
13 4-4-11.6-8 for the crediting and charging of the proceeds and costs to all Customers,
14 including the billing and collecting of any net costs, must be management contracts, as
15 defined in IC 4-4-11.6-6, and subject to IC 4-4-11.6-22. IC 4-4-11.6-6(1) requires the
16 management contract be between the IFA and a regulated energy utility. The Utility
17 Management Agreement provides that its will be entered into by the IFA and a regulated
18 energy utility. IC 4-4-11.6-6(2) requires a management contract provide for, (A) the
19 delivery, billing, collection, and remittance of monies received for SNG, and (B)
20 reasonable compensation for services provided by the regulated energy utility. Sections 1
21 and 5 of the Utility Management Agreement, respectively, provide for, (A) the billing,
22 collection, and remittance of monies received for SNG, and (B) reasonable compensation
23 for services provided by the regulated energy utility.

1
2 IC 4-4-11.6-22(a) authorizes the Commission, upon the request of the IFA, to order a
3 regulated energy utility to enter into a management contract with the IFA. As requested
4 in paragraph 4(b) of the Joint Petition, the IFA has requested that, if necessary, the
5 Commission order a regulated energy utility to enter into a management contract with the
6 IFA. IC 4-4-11.6-22(b) requires that a management contract entered into under IC 4-4-
7 11.6-22(a) must include a mechanism by which the regulated energy utility is reimbursed
8 for all costs incurred in performing the management contract in excess of costs that, as
9 determined by the Commission, the regulated energy utility would otherwise have
10 incurred in the ordinary course of business. Section 5 of the Utility Management
11 Agreement provides for a mechanism by which the regulated energy utility is reimbursed
12 for all costs incurred in performing the management contract in excess of costs that, as
13 determined by the Commission, the regulated energy utility would otherwise have
14 incurred in the ordinary course of business.

15
16 Finally, IC 4-4-11.6-30(c) requires that the (1) proceeds of the sales of SNG; (2) costs of
17 purchasing, transporting, and delivering the SNG; (3) the IFA's administrative costs; (4)
18 costs incurred in carrying out IC 4-4-11.6-30 by an agent of the IFA; and (5) costs
19 associated with supplying working capital, maintaining financial reserves, and allowing
20 for defaults by SNG purchasers or Customers be allocated to the Customers of each
21 regulated energy utility based on the proportion of the amount of gas delivered by the
22 regulated energy utility to the total amount of gas delivered by all regulated energy
23 utilities in the immediately preceding calendar year. The Utility Management Agreement

1 requires that the (1) proceeds of the sales of SNG; (2) costs of purchasing, transporting,
2 and delivering the SNG; (3) the IFA's administrative costs; (4) costs incurred in carrying
3 out IC 4-4-11.6-30 by an agent of the IFA; and (5) costs associated with supplying
4 working capital, maintaining financial reserves, and allowing for defaults by SNG
5 purchasers or Customers be allocated to the Customers of each regulated energy utility
6 based on the proportion of the amount of gas delivered by the regulated energy utility to
7 the total amount of gas delivered by all regulated energy utilities in the immediately
8 preceding calendar year. Additionally, IC 4-4-11.6-30(c) also requires that the
9 mechanism and process the IFA used to calculate the costs must be capable of audit and
10 verification. Section 8 of the Utility Management Agreement provides for auditing and
11 verification of a mechanisms, processes and costs contained in the SNG Contract.

12
13 **Q76. Do you believe the IFA has negotiated the best terms possible in the SNG Contract**
14 **for the benefit of Customers in Indiana?**

15 A76. Yes, it is the mission of the IFA to provide effective financing solutions through
16 partnerships, both intergovernmental and private, to facilitate investment in Indiana's
17 economy, infrastructure, and the environment with the ultimate goal of improving the
18 Hoosier quality of life. This project meets all of those criteria offering capital investment
19 in our State, jobs for Hoosiers, a homegrown clean energy solution, and most importantly
20 to retail end-users: rate savings through the use of SNG as a means to stabilize the
21 volatility and reduce the cost of natural gas. The IFA has worked very diligently and
22 called upon energy experts to ensure that each component of this transaction has been

1 thoroughly analyzed and negotiated with the intent that Hoosiers are guaranteed savings
2 and all of the benefits which will come with this project.
3

4 **Q77. Is there anything you would like to add in conclusion?**

5 A77. Yes. The IFA has negotiated the SNG Contract to fulfill the objectives of the Indiana
6 Legislature which were codified into law by its adoption of I.C. 4-4-11.6. The Indiana
7 Legislature made several legislative findings, including that natural gas prices are volatile
8 and that energy utilities have been unable to mitigate completely the effects of that
9 volatility. The legislature concluded that long-term contracts such as that which the IFA
10 is presenting to this Commission for approval, will enhance the probability of federal
11 incentives for the development, construction and financing of new coal gasification
12 facilities in Indiana. The legislature also provided that the IFA's participation in and
13 oversight of the purchase, sale and delivery of SNG to Customers is critical to obtain low
14 cost financing for the construction of new coal gasification facilities and that such
15 financing and DOE guarantees are necessary to allow Customers to enjoy the benefits of
16 a reliable, reasonable priced and long-term energy supply. The legislature also
17 authorized the IFA to achieve these goals through a financial transaction rather than
18 providing for the purchase of the physical gas by Customers. The IFA has followed the
19 direction of the legislature, negotiated the SNG Contract in accordance with law, and is
20 presenting the SNG Contract for approval by the Commission to fulfill the legislature's
21 objectives.
22

1 **Q78. Does this conclude your direct testimony?**

2 A78. Yes, it does.

Exhibit JMA-1

**Substitute Natural Gas Purchase and
Sale Agreement**

Cause No. 43796

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 EPC 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:

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

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(e) (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. MARA
Name: T. E. Mara
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 resolved 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 CRCSTA balance is less than:	Seller can review O&M costs if CRCSTA 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%.

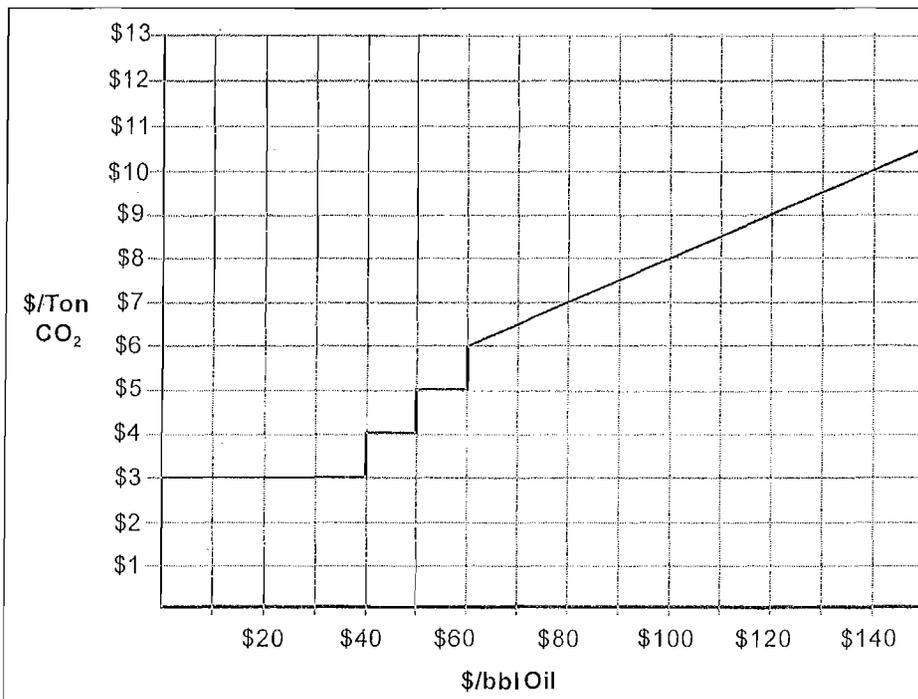
For purposes of determining the Efficiency Percentage, the actual fuel efficiency of the Plant will be calculated each month by dividing the total MMBtus of Conforming SNG delivered to the Receiving Pipeline in such month by the total MMBtus of all fuel consumed during that same month (sum of item 3 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 / B)	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 CO₂ 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	(68,000)	(68,000)					(68,000)
2	1	8,300	8,300	8,300	20.0%	(13,600)	(5,300)	(2,148)	10,448
3	2	8,300	8,300	8,300	32.0%	(21,760)	(13,460)	(5,455)	13,755
4	3	8,300	8,300	8,300	19.2%	(13,056)	(4,756)	(1,928)	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	5.8%	(3,917)	4,383	1,777	5,523
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%	(6,758)	(508)	(206)	6,456		
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	125.261	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	$= (X + 1)^{(6/12)}$

*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 CSTRA 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

Exhibit JMA-2

**Redline Substitute Natural Gas Purchase and
Sale Agreement (Shows Differences from
Version Filed with Verified Joint Petition)**

Cause No. 43796

**FORM OF 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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~~FORM OF~~ 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. ~~Concurrently with the execution of this Agreement, Marketer, Buyer and Seller shall have entered~~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 EPC 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:

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

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(e) (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 *****

CONFIDENTIAL AND PROPRIETARY

Disclosure of Contents subject to Nondisclosure Obligations

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: _____

By: By:
Name: _____

Name: _____

Name: _____

Title: _____

Title: _____

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)**.

Schedule I - i

"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 resolved 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)**.

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"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 93.5996.5% 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 93.5996.5% and then multiplying the resulting amount by 6.413.5%, (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

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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 CRCSTA balance is less than:	Seller can review O&M costs if CRCSTA 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

Seh

Schedule 5.2+

I/2524643.20

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

Shh

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

Seh

Schedule 5.2-3

I/2524643.20

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.

Seh

Schedule 5.2-4

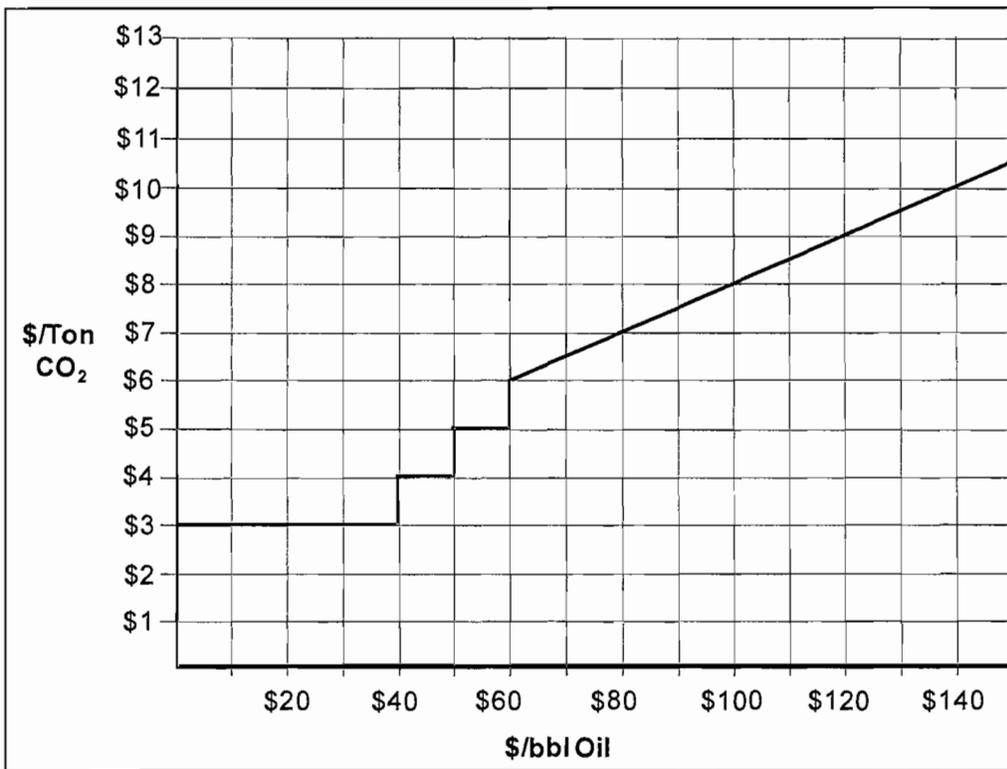
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SCHEDULE 5.4(c)

(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

Seh

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	CO2 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 / B)	89.92%	Percent
E	Annual CO2 Captured at Guarantee Performance (IG Engineering Estimate)	5.30	Million tons
F	Annual CO2 Associated with Contract SNG Sales (D * E)	4.76	Million tons
G	Ratio of Contract CO2 to Contract SNG (F / C)	0.13	CO2 ton / MMBtu SNG
H	Compression Capacity Required for Contract SNG CO2 (A * D)	45.927	MW
I	Annual CO2 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 CO2 Revenue per Ton

N	Compression Capital Charge (K / F)	1.74	\$/ton
O	CO2 Compression O&M Charge (L / F)	0.24	\$2008/ton
P	CO2 Compression Electricity Charge (M / F)	5.07	\$/ton
Q	Total CO2 Cost (N + O + P)	7.05	\$/ton
R	CO2 Price Floor (Annex B Formula)	3.00	\$/ton
S	Negative Net CO2 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:

CO2	12.2%	Recovery /Capital						40.5%	10.0%
Year	Contract Year	Capital Recover	Capital	Pre-Tax CF	Depreciation %	Depreciation	Taxable Income	Income Tax	After-Tax CF
1	1	8,300	68,000	(68,000)					(68,000)
2	1	8,300		8,300	20.0%	(13,600)	(5,300)	(2,148)	10,448
3	2	8,300		8,300	32.0%	(21,760)	(13,460)	(5,455)	13,755
4	3	8,300		8,300	19.2%	(13,056)	(4,756)	(1,928)	10,228
5	4	8,300		8,300	11.5%	(7,834)	466	189	8,111
6	5	8,300		8,300	11.5%	(7,834)	466	189	8,111
7	6	8,300		8,300	5.8%	(3,917)	4,383	1,777	6,523
8	7	8,300		8,300			8,300	3,364	4,936
9	8	8,300		8,300			8,300	3,364	4,936
10	9	8,300		8,300			8,300	3,364	4,936
11	10	8,300		8,300			8,300	3,364	4,936
12	11	8,300		8,300			8,300	3,364	4,936
13	12	8,300		8,300			8,300	3,364	4,936
14	13	8,300		8,300			8,300	3,364	4,936
15	14	8,300		8,300			8,300	3,364	4,936
16	15	8,300		8,300			8,300	3,364	4,936
17	16	8,300		8,300			8,300	3,364	4,936
18	17	8,300		8,300			8,300	3,364	4,936
19	18	8,300		8,300			8,300	3,364	4,936
20	19	8,300		8,300			8,300	3,364	4,936
21	20	8,300		8,300			8,300	3,364	4,936
22	21	8,300		8,300			8,300	3,364	4,936
23	22	8,300		8,300			8,300	3,364	4,936
24	23	8,300		8,300			8,300	3,364	4,936
25	24	8,300		8,300			8,300	3,364	4,936
26	25	8,300		8,300			8,300	3,364	4,936
27	26	8,300		8,300			8,300	3,364	4,936
28	27	8,300		8,300			8,300	3,364	4,936
29	28	8,300		8,300			8,300	3,364	4,936
30	29	8,300		8,300			8,300	3,364	4,936
31	30	8,300		8,300			8,300	3,364	4,936
						(68,000)			

(ii)

INCREMENTAL OPERATING COSTS FOR ARGON

Seh

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

Aroon		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%	(6,758)	(508)	(206)	6,456		
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	4,539		
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)					

Seh

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	125.261	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	$= (X + 1)^{(6/12)}$

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

Cumulative 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	$=\$4,000,000/1.2683$

Seh

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 CSTRA 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

Seh

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.

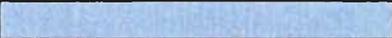
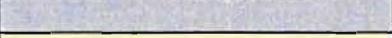
IG must not remove from the facility operating and maintenance manuals, procedures, inspection reports, maintenance records, facility design documents and drawings or any items needed for facility operation and maintenance including spare parts and supplies.

EXHIBIT A
FORM OF SUBORDINATION AND
INTERCREDITOR AGREEMENT

See attached.

Document comparison by Workshare Professional on Tuesday, January 18, 2011
9:39:23 AM

Input:	
Document 1 ID	PowerDocs://INDY/2524643/20
Description	INDY-#2524643-v20-IFA-IG_SNG_Purchase_and_Sale_Agreement
Document 2 ID	PowerDocs://INDY/2524643/22
Description	INDY-#2524643-v22-IFA-IG_SNG_Purchase_and_Sale_Agreement
Rendering set	IM

Legend:	
<u>Insertion</u>	
Deletion	
<u>Moved from</u>	
<u>Moved to</u>	
Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
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Deletions	62
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	225

Exhibit JMA-3

**Verified Joint Petition and Request for
Expedited Treatment**

Cause No. 43796

COPY

FILED

STATE OF INDIANA

DEC 16 2010

INDIANA UTILITY REGULATORY COMMISSION

INDIANA UTILITY
REGULATORY COMMISSION

JOINT PETITION BY THE INDIANA FINANCE)
 AUTHORITY ("AUTHORITY") AND INDIANA)
 GASIFICATION, LLC ("INDIANA)
 GASIFICATION") FOR THE INDIANA UTILITY)
 REGULATORY COMMISSION TO (1) APPROVE)
 A SUBSTITUTE NATURAL GAS PURCHASE)
 AND SALE AGREEMENT ENTERED INTO BY)
 THE AUTHORITY AND INDIANA)
 GASIFICATION FOR THE SALE BY INDIANA)
 GASIFICATION AND PURCHASE BY THE)
 AUTHORITY OF SUBSTITUTE NATURAL GAS)
 ("SNG") OVER A 30-YEAR TERM PURSUANT)
 TO I.C. §4-4-11.6; (2) IF NECESSARY, ORDER)
 INDIANA REGULATED ENERGY UTILITIES TO)
 ENTER INTO A MANAGEMENT CONTRACT)
 WITH THE AUTHORITY; (3) DECLINE TO)
 EXERCISE JURISDICTION PURSUANT TO I.C.)
 §8-1-2.5-5 OVER INDIANA GASIFICATION)
 WITH RESPECT TO ITS FINANCING,)
 CONSTRUCTING, OWNING AND OPERATING)
 SNG PRODUCTION AND TRANSPORTATION)
 FACILITIES, AND AN ANCILLARY)
 INTEGRATED COAL GASIFICATION)
 POWERPLANT ("ICGP FACILITIES") AND)
 ELECTRIC GENERATION FACILITIES WHICH)
 USE CLEAN COAL TECHNOLOGY IN)
 CONNECTION THEREWITH, AND WHICH)
 PRODUCES SNG TO BE SOLD TO THE)
 AUTHORITY AND OTHER PERSONS, AND)
 PRODUCES ELECTRICITY WHICH WILL BE)
 SOLD TO ENERGY UTILITIES; AND (4) GRANT)
 ALL OTHER APPROPRIATE AND ASSOCIATED)
 APPROVALS AND RELIEF.

43976

CAUSE NO. _____

VERIFIED JOINT PETITION AND REQUEST FOR EXPEDITED TREATMENT

The Indiana Finance Authority ("Authority") and Indiana Gasification, LLC ("Indiana Gasification") by counsel, respectfully request that the Indiana Utility Regulatory Commission ("Commission") enter an Order, on an expedited basis, approving a Substitute Natural Gas

Purchase and Sale Agreement (“SNG Contract”) entered into by the Authority and Indiana Gasification for the sale by Indiana Gasification and purchase by the Authority of Substitute Natural Gas (“SNG”) over a thirty (30) year term pursuant to I.C. §4-4-11.6. The Authority, pursuant to I.C. §4-4-11.6-22 and I.C. §4-4-11.6-30, requests the Commission, if necessary, order Indiana regulated gas distribution energy utilities to enter into management contracts with the Authority to allocate to the retail end use customers of each regulated energy utility the proceeds and costs of the Authority’s sale of SNG to third parties on the retail end use customer’s bill and also to provide billing, collection and other services related to the Authority’s purchase, distribution and delivery of the SNG. Additionally, Indiana Gasification requests the Commission to find and order that it declines to exercise jurisdiction pursuant to I.C. §8-1-2.5-5 over Indiana Gasification with respect to its financing, constructing, owning, operating and using SNG production and transportation facilities, and an ancillary Integrated Coal Gasification Powerplant (“ICGP Facilities”) and electric generation facilities which use clean coal technology in connection therewith, and which produces SNG which will be sold to the Authority and to other third parties as well as electricity which will be sold to energy utilities (collectively, the “SNG Facilities”) and with respect to its furnishing and sale of SNG and electricity as herein described. In support of this Joint Petition, Joint Petitioners state that:

1. **Parties.** The Authority is established by I.C. §4-4-11 as a body politic and corporate of the State of Indiana; the Authority is not a state agency, but is an independent instrumentality of the State exercising essential public functions. Although separate and apart from the State in its corporate and sovereign capacity, the exercise by the Authority of its power constitutes an

essential governmental, public and corporate function. The Authority's administrative office is located at One North Capitol Avenue, Suite 900, Indianapolis, Indiana 46204.

The Authority is empowered by I.C. §4-4-11.6 to enter into contracts for the purchase, transportation, sale and delivery of SNG. Pursuant to this authority, the Authority proposes to enter into the SNG Contract with Indiana Gasification, upon Commission approval, for the purchase of SNG from Indiana Gasification for resale to third parties with the net effect of the proceeds and costs of those sales to be reflected on bills to Indiana retail end-use customers, all as more specifically authorized by I.C. §4-4-11.6 and in the form of the SNG Contract (including an Executive Summary) attached hereto as Exhibit A.

Indiana Gasification is a limited liability company organized under the laws of the State of Delaware, and admitted to do business in Indiana, that is indirectly owned and is controlled by Leucadia National Corporation, a publicly traded New York corporation ("Leucadia"). Indiana Gasification was organized for the purpose of developing, financing, constructing, owning and operating SNG facilities in Indiana. Indiana Gasification's office for its gasification operations is located at 315 Park Avenue South, 20th Floor, New York, New York 10010-3607.

Indiana Gasification's ultimate parent company, Leucadia, is a New York Stock Exchange publicly traded company with assets in excess of \$7.3 Billion as of September 30, 2010. Through its parent company and affiliates, Indiana Gasification has the financial, technical and managerial capability to construct, own and operate, and to sell gas and electricity produced by the SNG Facilities.

Leucadia will furnish Indiana Gasification all necessary resources, including equity capital, to design, construct, own and operate the SNG Facilities. Debt capital will also be issued and secured by Indiana Gasification as necessary to construct, own and operate the SNG

Facilities, and it expects to successfully negotiate a federal loan guarantee of all or a portion of the debt from the U.S. Department of Energy (“DOE”).

2. **The Project.** Indiana Gasification’s SNG Facilities (the SNG facilities and their development, construction, ownership, operation, financing and hereby described use are sometimes hereafter referred to collectively as the “Project”) will be located in southwestern Indiana in Spencer County, where Indiana Gasification has acquired rights to more than 1,100 acres of land suitable for construction, ownership and operation of facilities capable of producing pipeline quality SNG from Illinois Basin coal. Indiana Gasification intends to sell all or most of that SNG to the Authority pursuant to the SNG Contract, which has a term of 30 years.

In connection with the Project, Indiana Gasification will also construct, own and operate the ICGP Facilities that will generate electricity as a byproduct of producing SNG. The ICGP Facilities’ electric output not required for use by the Project is expected to be sufficient to provide less than 80 MW of electricity at peak times for its own consumption and sale to one or more energy utilities. Indiana Gasification will self-certify with the Federal Energy Regulatory Commission (“FERC”) as an exempt wholesale generator as set forth in Paragraph 4(d) below.

Indiana Gasification expects to use clean coal technology in connection with its production of SNG and electricity.

The Authority will enter into an agreement with a gas marketer to render gas marketing services to assist in the transportation of, facilitate the marketing and sale of, and perform certain tracking and accounting functions for the SNG produced at the SNG Facility. Additional agreements with the same or replacement gas marketers will be executed during the term of the SNG Contract.

The Authority will also enter into billing and collections services agreements (a form of which is attached hereto as Exhibit B) with local gas distribution companies that provide natural gas services to retail end use customers (as defined in I.C. §4-4-11.6).

3. **Statutory Authority for Relief Requested.** This Joint Petition is presented to the Commission to fulfill the objectives of I.C. §4-4-11.6. By Public Law 2-2009 which added I.C. §4-4-11.6 as a new chapter to the Indiana Code, the Indiana General Assembly made several legislative findings, including that natural gas prices are volatile and that energy utilities have been unable to mitigate completely the effects of that volatility; that long-term contracts between the Authority and SNG producers for purchase of SNG by the Authority will enhance the probability of federal incentives for the development, construction and financing of new coal gasification facilities in Indiana; that the Authority's participation in and oversight of the purchase, sale, and delivery of SNG to retail end use customers is critical to obtain low-cost financing for the construction of new coal gasification facilities; and that obtaining low-cost financing and DOE guarantees 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. By Public Law 113-2010, Sec. 7, the Indiana Code was further amended to authorize the Authority to achieve the goals of the Act through a financial transaction rather than through the purchase of physical gas for resale to retail end use customers.

4.(a) **Commission Approval of SNG Contract.** By I.C. §4-4-11.6-13 the Authority is authorized to enter into contracts for the purchase, transportation, sale and delivery of SNG; establish and collect rates and charges for SNG; and to enter into related contracts for private,

professional and technical assistance concerning SNG contracts (“Related Contracts”).¹ By I.C. §4-4-11.6-14, the Authority is required to submit a final purchase contract to the Commission for approval.

Following enactment of Public Law 2-2009 by which I.C. §4-4-11.6 was established, the Authority issued a request for proposals for supplier services for SNG, and thereafter entered into negotiations with Indiana Gasification for a contract with a 30-year term for the purchase and sale of SNG. In connection with these negotiations, the Authority has consulted with the Office of Utility Consumer Counselor as provided by I.C. §4-4-11.6-17. Subsequently, the Authority and Indiana Gasification reached agreement on the terms of the attached SNG Contract for the purchase and sale of SNG pursuant to the terms of I.C. §4-4-11.6. Joint Petitioners request the Commission approve the SNG Contract and all of the terms of that SNG Contract as such are set out in Exhibit A to this Petition.

4.(b) **Local Gas Distribution Company Contracts**, By I.C. §4-4-11.6-22 and I.C. §4-4-11.6-30, the Authority may request that the Commission order Indiana regulated gas distribution energy utilities to enter into a management contract with the Authority to allocate to the retail end use customers of each regulated gas distribution energy utility the proceeds and costs of the Authority’s sale of SNG to third parties on the retail end use customer’s bill, and also to provide billing, collection and other services related to the Authority’s purchase, distribution and delivery of the SNG.

¹ By P.L. 113-2010, Sec. 7, I.C. §4-4-11.6 was amended by adding I.C. §4-4-11.6-30 to give the Authority additional powers to enter into related contracts to facilitate meeting the objectives of this chapter.

4.(c) **Commission Jurisdiction Over Authority.** I.C. §4-4-11.6-23 provides that the Authority is not considered an energy utility and is not subject to the jurisdiction of the Commission except as provided in Chapter 11.6 of the Code. Additionally, the Authority is not required to obtain approval of the Commission except as specifically provided in I.C. §4-4-11.6-14 which requires the Authority to submit a final purchase contract to the Commission for approval.

4.(d) **Project Certified as Exempt Wholesale Generator (“EWG”).** Petitioner Indiana Gasification, intends to certify the ICGP Facilities as an EWG as provided in 18 C.F.R. §366.7 of the FERC regulations. Requests for any authorizations required to sell the electrical output from the ICGP Facilities into the wholesale market will be made to FERC.

4.(e) **Service Only to Wholesale Power Market.** Indiana Gasification and its Project are designed to serve exclusively the wholesale gas and electric power markets. Indiana Gasification does not intend to recover the cost of the Project from Indiana ratepayers from rate base, rate of return or comparable methods typically associated with retail public utility rates. Indiana Gasification will have no franchises, service territory or retail customers and will make no retail sales in Indiana.

4.(f) **Powerplant Construction and Clean Coal Technology Acts.** The Powerplant Construction Act (I.C. §8-1-8.5 *et seq.*) and the Clean Coal Technology provisions of the Indiana Code (“I.C. §8-1-8.7 *et. seq.* and 8-1-8.8 *et. seq.*”) (the Powerplant and Clean Coal Technology Provisions are referred to herein as the “Construction Permit Provisions”) are not

intended to apply to the construction of a facility such as the Project. The Indiana General Assembly enacted the Construction Permit Provisions to ensure that public utilities providing retail electric service in Indiana do not build unnecessarily “large, expensive power plants with lengthy construction periods ... to meet expanded growth.” *In re Petition of Southern Indiana Gas and Elec. Co.*, 108 P.U.R 4th 494, 1989 Ind. PUC LEXIS 378 (IURC Cause No. 38738, Oct. 25, 1989). The Construction Permit Provisions were designed to protect Indiana’s retail customers of regulated electric utilities from the costs associated with excessive generating capacity, while at the same time ensuring that the utilities serving those retail customers would be allowed to recover their prudent investments in new generating facilities. *See* I. C., §8-1-8.5-6.5 (“a utility shall recover through rates the actual costs the utility has incurred in reliance on a certificate issued” by the Commission); and I.C. §8-1-8.8-12(b) (“An eligible business seeking authority to timely recover the costs described in subsection (1) must apply to the commission for approval of a rate adjustment mechanism in the manner determined by the Commission.”) The Construction Permit Provisions were not intended to apply in the absence of any obligation to serve and any ability to recover costs through regulated rates. No such protections of the ratepayers in Indiana are requested by Indiana Gasification or are required here.

4.(g) **Declination of Jurisdiction.** Indiana Gasification respectfully requests that the Commission, pursuant to I.C. §8-1-2.5-5, decline to exercise any jurisdiction over Indiana Gasification and Indiana Gasification’s construction, ownership or operation of, or any other activity in connection with, the Project under I.C. §8-1-8.5, I.C. §8-1-8.7 and I.C. §8-1-8.8. The circumstances set out in I.C. §8-1-2.5-5 for the Commission to consider, when determining whether the public interest will be served by the Commission’s declining to exercise jurisdiction

over Indiana Gasification and Indiana Gasification's herein described production and sale of SNG and electricity, support such declination. *See* I.C. §8-1-2.5-5(b). Competitive forces in the wholesale power market and FERC's regulatory oversight of Indiana Gasification's operation and wholesale electric rates render the exercise of jurisdiction over such operation and rates by the Commission unnecessary, burdensome and wasteful of the Commission's time and resources. Market forces also will determine who will buy electric energy provided by the Project. In addition, the Project will increase the amount of electricity generated in the State of Indiana. Thus, the Commission's encouragement of this type of facility by its declining to exercise jurisdiction over Indiana Gasification, the Project and its use as herein described will be beneficial to the State of Indiana.

Therefore, and if Indiana Gasification were considered to be a public utility by the Commission under I.C. §8-1-2-1 for its production, transmission or delivery of power, then Indiana Gasification would also be an "energy utility" as defined by I.C. §8-1-2.5-2. If Indiana Gasification is determined to be a public utility, it hereby elects, pursuant to I.C. §8-1-2.5, to be subject to I.C. §8-1-2.5-5, which authorizes the Commission to decline to exercise jurisdiction over Indiana Gasification if it were to be determined to be a public utility. If Indiana Gasification is found to be a public utility by performance of its obligations and exercise of its rights under the SNG Contract, it requests that the Commission decline jurisdiction over it and its production and sale of SNG and electricity based on the foregoing representations that demonstrate (i) it will be certified as an EWG; (ii) it will service only the wholesale power market; (iii) it will have a 30 year contract with the Authority that, by statute, will govern all aspects of the purchase, transportation, sale and delivery of SNG; and (iv) that the Powerplant Permit Provisions were not intended to apply to the Project. Indiana Gasification expects to

finance the Project by equity capital, and short-term and long-term debt, and expects payment of some or all of its long-term debt to be guaranteed by the federal government. If the Commission were to determine that Indiana Gasification is a “public utility” for purposes of the Project, Indiana Gasification requests the Commission to decline to exercise jurisdiction over the issuance of long-term debt instruments, and encumbrances of its property to secure payment thereof.

5. **Additional Statutory Provisions.** In addition to other statutory references herein, Petitioners believe that 6-3.1-29, and 8-1-2-4, -24, and -25 of the Indiana Code, among others, may be applicable to this Petition.

6. **Counsel for Joint Petitioner(s)**

The names and addresses of counsel for the Authority upon whom all correspondence, communications, pleadings, orders and other documents filed or issued concerning this Petition are:

Randolph L. Seger (240-49)
David T. McGimpsey (21015-49)
Casey M. Holsapple (27165-49)
BINGHAM McHALE LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204
Telephone: (317) 635-8900
Facsimile: (317) 236-9907
E-mail: rseger@binghammchale.com
dmcgimpsey@binghammchale.com
cholsapple@binghammchale.com

The names and address of counsel for Indiana Gasification upon whom all correspondence, communications, pleadings, orders and other documents filed or issued concerning this Petition are:

Larry J. Wallace (1110-49)
James A.L. Buddenbaum (14511-49)
Timothy L. Karns (27190-06)
PARR RICHEY OBREMSKEY FRANSEN
& PATTERSON LLP
201 N. Illinois Street, Suite 300
Indianapolis, IN 46204
Telephone: (317) 269-2500
Facsimile: (317) 269-2514
E-mail: lwallace@parrlaw.com
jbuddenbaum@parrlaw.com
tkarns@parrlaw.com

7. Pre-Hearing Conference and Preliminary Hearing Requested to Expedite Proceedings

Pursuant to 170 IAC 1-1.1-15(b) of the Commission's Rules of Practice and Procedure, Petitioners request that a pre-hearing conference and preliminary hearing be scheduled and noticed as soon as reasonably possible for the purpose of fixing and expediting a procedural schedule in this proceeding and considering such other procedural matters as may be appropriate.

WHEREFORE, Petitioners Indiana Finance Authority and Indiana Gasification, LLC respectfully request the Commission to consider this Petition on an expedited basis, conduct a hearing hereon and to thereafter issue an order or orders as soon as reasonably possible that:

- a. approves the SNG Contract attached hereto as Exhibit A;
- b. if necessary, under I.C. §4-4-11.6-22 and I.C. §4-4-11.6-30 orders Indiana regulated gas distribution energy utilities to enter into management contracts with the Authority to allocate to the retail end use customers of each regulated gas distribution energy utility the proceeds and costs of the Authority's sale of SNG to third parties on the retail end use

customer's bill and also to provide billing, collection and other services related to the Authority's purchase, distribution and delivery of the SNG;

c. finds that the Commission decline to exercise its jurisdiction over Indiana Gasification and its financing, construction, operation and use of the Project as long as Indiana Gasification does not sell at retail in the State of Indiana any electricity or SNG generated by the Project without further Order of the Commission;

d. finds that the gross revenues generated by sales for resale by the Project, be judged to be exempt from the public utility fee prescribed by I.C. §8-1-6-1 *et.seq.*;

e. sets a prehearing conference in this Cause as soon as the Commission's calendar and the provision of notice will allow; and

f. grants and issues to Petitioners all approvals and other associated relief required to construct and operate the Project.

Respectfully submitted,

By:



Randolph L. Seger (240-49)
David T. McGimpsey (21015-49)
Casey M. Holsapple (27165-49)
BINGHAM MCHALE LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204

Attorneys for Indiana Finance Authority

By:



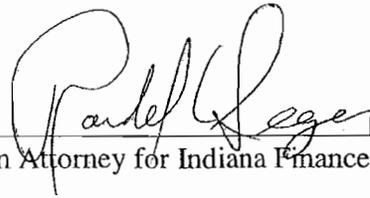
Larry J. Wallace (1110-49)
James A.L. Buddenbaum (14511-49)
Timothy L. Karns (27190-06)
PARR RICHEY OBREMSKEY
FRANDSEN & PATTERSON LLP
201 N. Illinois Street, Suite 300
Indianapolis, IN 46204

Attorneys for Indiana Gasification,
LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by hand delivery or electronic service this 16th day of December, 2010:

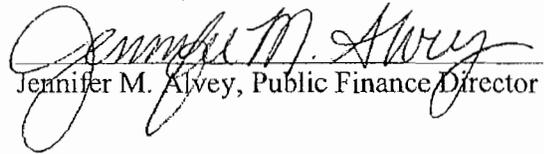
Indiana Office of Utility Consumer Counselor
115 West Washington Street, Suite 1500 South
Indianapolis, IN 46204

A handwritten signature in black ink, appearing to read "Paul J. Lege", is written over a horizontal line.

An Attorney for Indiana Finance Authority

VERIFICATION

The undersigned affirms under the penalty of perjury that she is the Public Finance Director of the Indiana Finance Authority and that the facts applicable to Indiana Finance Authority stated in the foregoing Petition are true to her best information and belief.


Jennifer M. Alvey, Public Finance Director

1548987

VERIFICATION

The undersigned affirms under the penalty of perjury that he is a duly authorized officer of Indiana Gasification, LLC and that the facts applicable to Indiana Gasification, LLC stated in the foregoing Petition are true to his best information and belief.

A handwritten signature in black ink, appearing to read "Donald W. Maley", written over a horizontal line.

Donald W. Maley, Manager

Printed Name and Title

Exhibit JMA-4

**Billing and Collection Services Agreement
("Utility Management Agreement")**

Cause No. 43796

**FORM OF
BILLING AND COLLECTION SERVICES AGREEMENT**

by and between

Indiana Finance Authority

as IFA

and

as Utility

dated as of

_____, _____

FORM OF BILLING AND COLLECTION SERVICES AGREEMENT

This BILLING AND COLLECTION SERVICES AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, _____, by and between the Indiana Finance Authority, an independent body politic and corporate instrumentality of the State of Indiana ("IFA"), and _____ ("Utility").

WITNESSETH:

WHEREAS, Utility is a local gas distribution company, providing natural gas services and billing and collecting fees from the Customers on a periodic basis (collectively, "Utility Services") to "retail end use customers" as defined in Indiana Code 4-4-11.6, as amended (the "Enabling Statute") provided that, for the avoidance of doubt, "retail end use customer" means all Indiana customers of the Utility except for customers that as of the beginning of the Term are (i) industrial, (ii) transport and (iii) have an annual volume level of 50,000 dekatherms or greater (collectively, the "Customers" and individually a "Customer");

WHEREAS, pursuant to the Enabling Statute, as amended, IFA has entered into a Substitute Natural Gas Purchase and Sale Agreement (the "PSA") whereby IFA will purchase substitute natural gas ("SNG") from Indiana Gasification, LLC (the "Seller");

WHEREAS, pursuant to Ind. Code 4-4-11.6-30, IFA has entered into a Marketing and Services Agreement (the "Marketing Agreement") with Seller and a qualified third party gas marketer (the "Marketer"), whereby the Marketer will accept delivery of SNG from Seller on behalf of IFA at designated liquid market points and sell such SNG on behalf of IFA into the market;

WHEREAS, Customers will be eligible for Customer Credits or subject to Price Adjustments, both as hereinafter defined, based on the difference in price of SNG sold by Marketer (adjusted to reflect the cost of transportation and other administrative costs) and the price paid by IFA to Seller for the SNG, as adjusted pursuant to the PSA plus any incremental costs incurred by IFA in administering this Agreement, the PSA or the Marketing Agreement (the "Customer Portion") and will be subject to the Utility's Incremental Costs (as defined herein) incurred under the Agreement, as more fully described hereafter; and

WHEREAS, pursuant to the Enabling Statute, Utility (in addition to other utilities as defined by Ind. Code 4-4-11.6-8; collectively the "Subject Utilities") shall bill and collect from Customers the amount of the Price Adjustment and apply credits to Customer bills in the amounts of the Customer Credits, and shall bill and collect from Customers the amounts of the Incremental Costs on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, IFA and Utility agree as follows:

1. **Obligations of Utility.** Subject to the terms of this Agreement and pursuant to the Enabling Statute, Utility agrees to provide billing, collection, and other services to the IFA related to the crediting and charging to Customers of the proceeds and costs relating to the IFA's sale of SNG pursuant to the Marketing Agreement, in accordance with the Enabling Statute and

any conditions imposed by the Indiana Utility Regulatory Commission or any successor entity ("IURC"), including without limitation, lawfully: (a) billing and collecting the Utility's Pro Rata Share (as defined herein) of Customer Portion from Customers when that amount is a negative number and applying that amount as a charge to Customers' bills (a "Price Adjustment"), (b) applying the Customer Portion as a credit to Customers' bills when it is a positive number (a "Customer Credit"), and (c) billing and collecting for all Incremental Costs, as hereinafter defined.

2. **Allocation of Customer Portion.** The allocation of the Customer Portion among all of the Subject Utilities, including the Utility, shall be determined by the IURC based on the proportion of the amount of gas delivered to Customers by Utility to the total amount of gas delivered to Customers by all Subject Utilities in the preceding calendar year (the "Pro Rata Share"). If an industrial transport customer has an annual volume level of 50,000 dekatherms or greater at the beginning of the Term (an "Exempt Customer"), such Exempt Customer will not be considered a Customer at any future point during the Term regardless of a reduced annual volume level, reorganization or other reclassification, change of control, sale of all or substantially all of its assets or other event that would otherwise enable them to be classified as a Customer. For the avoidance of doubt, an industrial transport customer of the Utility that was not an Indiana customer prior to the beginning of the Term and that has an annual volume level of 50,000 dekatherms or greater or has an anticipated annual volume level of 50,000 dekatherms or greater after the initial five (5) years of consumption by such Indiana customer, shall be an Exempt Customer.

3. **Application of Payments Between IFA and Utility.** Within ten (10) days after the end of each month during the Term, IFA will provide, or cause to be provided, to Utility a summary of the prior month's results from the sale of SNG (the "SNG Monthly Report") which SNG Monthly Report shall include all necessary bill adjustments under Section 1, including without limitation: (i) the amount of the Customer Portion (positive or negative) for all SNG sold in the prior month and (ii) the Pro Rata Share of such Customer Portion to either be added as a Customer Credit or billed as a Price Adjustment. If the Customer Portion results in a Customer Credit, then within twenty (20) days after delivery of the SNG Monthly Report, IFA shall pay to Utility via wire transfer of immediately available funds the Pro Rata Share of the Customer Credit. If the Customer Portion results in a Price Adjustment, then within thirty (30) days after delivery of the SNG Monthly Report, Utility shall pay to IFA via wire transfer of immediately available funds the Pro Rata Share of the Price Adjustment. Such payment by the Utility to the IFA for a Price Adjustment shall be made regardless of whether such amounts are actually collected by Utility from Customers pursuant to Section 4 below, as all risk of collection shall remain with the Utility subject to its statutory bad debt collection procedures and other remedies available under Indiana law. In the event an inaccuracy is discovered in any amount shown on an SNG Monthly Report, the inaccuracy and any payments made based thereon shall be corrected and reconciled as soon as reasonably practicable.

4. **Billing of Customers.** Pursuant to Ind. Code § 4-4-11.6-30(c), the IURC shall determine a just and reasonable method for allocating credits and charges to Customers. Consistent with the IURC's prescribed allocation methodology, Utility shall include its Pro Rata Share of the Customer Portion identified on the SNG Monthly Report in its gas costs attributable to and to be recovered from Customers, including any applicable taxes. Utility shall include its

Pro Rata Share of the Customer Portion, together with Incremental Costs, in its quarterly gas cost recovery filings as a variance to be recovered from or refunded to Customers over a subsequent twelve month period. The Utility's Pro Rata Share of the Customer Portion will be stated separately on regular bills for utility services provided by Utility to Customers; provided, however, if the Enabling Statute is changed in the future to remove the requirement to have a separate line item on the bill, thereafter, it shall be the decision of the Utility whether to include such a separate line item on the bill. If the existing gas cost recovery mechanism is terminated during the term of the Agreement, a new mechanism shall be implemented that will allow adjustments to Customers' bills to reflect Price Adjustments, Customer Credits and Incremental Costs to be updated no less often than monthly.

5. **Recovery of Incremental Costs.** Utility shall have the right to recover all costs Utility incurs in performing its obligations under this Agreement that are incremental to the costs that, as determined by the IURC, the Utility would not otherwise have incurred in the ordinary course of providing gas service to Customers ("Incremental Costs"). Such Incremental Costs shall include, but not be limited to, information system costs associated with the Agreement, customer service costs responding to inquiries relating to the SNG, regulatory and compliance costs relating to the Agreement, uncollected Price Adjustments, applicable taxes and carrying costs on payments by Utility to IFA in advance of recovery from Customers. In the event the PSA is terminated prior to the recovery by Utility of all Incremental Costs, any remaining balance of unrecovered Incremental Costs at the time of such termination shall be recoverable from Customers by Utility over a reasonable period of time. Similarly, in the event Utility has incurred Incremental Costs in anticipation of the commencement of the operation of the SNG project and that project is terminated prior to commencing operation, then the Utility may apply to the IURC for recovery of those costs from Customers over a reasonable period of time. Incremental Costs shall be included in Utility's quarterly gas cost recovery filings, as described in Section 4; provided, however, for purposes of Customers' bills, the Incremental Costs shall not be included as part of the Customer Portion stated on those bills as described in Section 4. In the event of a dispute between the IFA and Utility regarding Incremental Costs, that dispute shall be submitted to the IURC for resolution pursuant to Section 13.

6. **Effect on Provision of Utility Services.** This Agreement shall not affect or in any way impair Utility's rights and obligations with respect to its customers or the provision of Utility Services except as specifically and expressly set forth in the Agreement and as allowed by law.

7. **Customer Inquiries and Complaints.** Utility will use reasonable and diligent efforts to respond to, address and resolve customer inquiries and complaints regarding this Agreement, SNG, Customer Credits or Price Adjustments, or Incremental Costs that would not otherwise be part of the IURC dispute resolution process. Utility agrees to collaborate with IFA regarding any generic or broad based formal communications ("Formal Communications") to Customers relating to the Agreement, SNG, the Customer Portion and/or Incremental Costs. The content of the communications between Utility and its Customers shall be in the reasonable discretion of the Utility as long as the general message is within the spirit of the agreed upon Formal Communications. Customer inquiries and complaints that the Utility is unable to resolve shall be referred to the IFA.

8. **Audit Rights.** Upon prior written notice to Utility, IFA, or its authorized representatives, will have the right, at all reasonable times during normal business hours, to audit, examine or review Utility's books, records, documents, data and information which relate to the billing and collection services described in this Agreement. Any dispute between the Utility and IFA arising from the exercise of these audit rights shall be submitted to the IURC for resolution pursuant to Section 13.

Each year the IFA will select an independent third party to conduct an audit to evaluate, measure and verify the mechanism and process that the IFA uses to calculate the Customer Portion. Such an analysis shall take into account all pertinent costs associated with the transactions. The costs of the auditor's services shall be allocated to the Subject Utilities in the same manner as the Customer Portion. The auditor shall prepare a written report that shall be provided annually in written or electronic form to the IURC, the Indiana Office of Utility Consumer Counselor and the Subject Utilities. If as a result of such audits, there are identified any errors, miscalculations, overpayments and/or overcharges upon the ultimate disposition of those matters, any resulting impact to the Customer Portion shall be recognized in the quarterly gas cost adjustment process as provided in Section 4.

9. **Term and Termination.** This Agreement will commence after (i) the approval by the IURC of the PSA, and (ii) upon thirty (30) days prior written notice to Utility from IFA (which will approximately coincide with the date IFA will begin purchasing SNG pursuant to the PSA). The IFA will provide to Utility all monthly notices provided by Seller to IFA pursuant to Section 3.3(a)(vi) in the PSA beginning with the notice indicating that the Commercial Production Date (as defined in the PSA) is expected to commence within twelve (12) months. This Agreement will remain in effect for as long as the PSA is effective (the "Term"). Notwithstanding the foregoing, if either party is knowingly in default of any material term of this Agreement and such default continues for sixty (60) days after the non-defaulting party provides notice to the defaulting party, the non-defaulting party may submit a request to the IURC to terminate this Agreement.

10. **General Compliance with Laws.** Utility will comply with all applicable laws in performing the services described herein.

11. **Claims.**

a. In the event that a claim is made against IFA that arises out of Utility's or any of its affiliates' negligence or willful misconduct in the performance of its duties hereunder, Utility will indemnify IFA and all of its officers, employees, representatives, members and agents (collectively the "IFA Indemnified Parties") against, and save the IFA Indemnified Parties harmless from, any loss, damage, injury or liability arising from such claim.

b. No representation or statement not expressly contained herein by reference shall be binding upon Utility as a warranty, indemnification or otherwise.

c. 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 to this Agreement shall have any personal liability or responsibility for, relating to or in connection with the other party's failure to properly perform any term, covenant, condition or provision of this Agreement.

d. To the extent allowable under applicable law, IFA 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 Utility to enforce this Agreement.

12. **Status of the Relationship.** The parties hereby acknowledge and agree that nothing contained in this Agreement shall be construed to place the parties in a relationship of contractors, partners, joint venturers, principal and agent, or employer and employee. No party shall have any right, power or authority to create any obligation, express or implied, or make any representation on behalf of any other party, and no party shall hold itself out as having any right, power or authority to create any obligation, express or implied, or to make any representations on behalf of any other party.

13. **Dispute Resolution.** If a party alleges that a dispute exists with respect to the performance of this Agreement, the parties shall enter negotiations in an attempt to resolve the dispute. 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 thirty (30) days after the date of such written notice (or such other period as shall be agreed upon by the parties). The obligation of the parties under the immediately preceding sentence shall not 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, including the right to provide notice of termination under Section 9. All dollar amounts not in dispute must be remitted on the appropriate date and only disputed amounts are subject to this provision.

14. **Notices.** All notices, requests, demands and other communications that are required or may be given pursuant to the terms of this Agreement shall be in writing, and delivery shall be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation from the sender as being sent if by electronic mail or facsimile transmission; (c) on the third day after mailing if mailed by first-class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section 14; or (d) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Postal Service during its business hours, in each case, for overnight delivery against receipt, and properly addressed as set forth in this Section:

If to IFA:

Indiana Finance Authority
Attn: Public Finance Director of the State of
Indiana
One North Capitol, Suite 900
Indianapolis, IN 46204

If to Utility:

[Utility Name]
Attn: _____

In the event notice is given by more than one of the methods provided above, notice shall be deemed received on the first day notice is received under any of the methods used above. Any party may change its address or other contact information for notice by giving notice to the other party in accordance with the terms of this Section 14.

15. **Successors and Assigns.** The Agreement shall be binding on the successors and assigns of the IFA and Utility. No party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, which will not be unreasonably withheld. Pursuant to Section 7.2 of the PSA, Seller shall be a third party beneficiary of this Agreement.

16. **Severability.** In the event any term or provision of this Agreement is found to be invalid or unenforceable under any applicable federal, state or local law, ordinance, rule or regulation, or declared null and void by any court of competent jurisdiction, then such part shall be reformed, if possible, to conform to the law, and, in any event, the remaining parts of this Agreement shall be fully effective and operative insofar as reasonably possible.

17. **Headings.** The headings in this Agreement are inserted for convenience only and are not to be considered in construction of the provisions hereof.

18. **Governing Law; Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Indiana. Subject to the dispute resolution provisions of Section 13, the exclusive venue of any claims or causes of action arising from or relating to transactions pursuant to this Agreement shall be filed in the state court sitting in Marion County, Indiana, or the United States District Court for the Southern District of Indiana. Subject to the dispute resolution provisions of Section 13, the parties hereby consent to the exclusive jurisdiction of such courts.

19. **Counterparts.** This Agreement may be executed in any number of counterparts, each or which shall be an original, but all of which together shall comprise one and the same instrument.

20. **Recitals.** The recitals set forth following the introductory paragraph of this Agreement are hereby incorporated by reference as part of this Agreement with the same effect as if set forth at length in this section.

[Signatures on the Following Page]

[Signature Page to Billing and Collection Services Agreement]

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Agreement by their duly authorized representatives as set forth below as of the date and year first written above:

INDIANA FINANCE AUTHORITY

[UTILITY]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit JMA-5

**Redline Billing and Collection Services
Agreement (“Utility Management
Agreement”) (Shows Differences from
Version Filed with Verified Joint Petition)**

Cause No. 43796

~~Draft of December 16, 2010~~

**FORM OF
BILLING AND COLLECTION SERVICES AGREEMENT**

by and between

Indiana Finance Authority

as IFA

and

as Utility

dated as of

_____, _____

FORM OF BILLING AND COLLECTION SERVICES AGREEMENT

This BILLING AND COLLECTION SERVICES AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, _____, by and between the Indiana Finance Authority, an independent body politic and corporate instrumentality of the State of Indiana ("IFA"), and _____ ("Utility").

WITNESSETH:

WHEREAS, Utility is a local gas distribution company, providing natural gas services and billing and collecting fees from the Customers on a periodic basis (collectively, "Utility Services") to "retail end use customers" as defined in Indiana Code 4-4-11.6, as amended (the "Enabling Statute") provided that, for the avoidance of doubt, "retail end use customer" means all Indiana customers of the Utility except for customers that as of the beginning of the Term are (i) industrial, (ii) transport customers with and (iii) have an annual volume level of 50,000 dekatherms or greater (collectively, the "Customers" and individually a "Customer");

WHEREAS, pursuant to the Enabling Statute, as amended, IFA has entered into a Substitute Natural Gas Purchase and Sale Agreement (the "PSA") whereby IFA will purchase substitute natural gas ("SNG") from Indiana Gasification, LLC (the "Seller");

WHEREAS, pursuant to Ind. Code 4-4-11.6-30, IFA has entered into a Marketing and Services Agreement (the "Marketing Agreement") with Seller and a qualified third party gas marketer (the "Marketer"), whereby the Marketer will accept delivery of SNG from Seller on behalf of IFA at designated liquid market points and sell such SNG on behalf of IFA into the market;

WHEREAS, Customers ~~may~~will be eligible for Customer Credits or subject to Price Adjustments, both as hereinafter defined, based on the difference in price of SNG sold by Marketer (adjusted to reflect the cost of transportation and other administrative costs) and the price paid by IFA to Seller for the SNG, as adjusted pursuant to the PSA plus any incremental costs incurred by IFA in administering this Agreement, the PSA or the Marketing Agreement (the "Customer Portion") ~~plus~~and will be subject to the Utility's ~~incremental costs~~Incremental Costs (as defined herein) incurred under the Agreement, as more fully described hereafter; and

WHEREAS, pursuant to the Enabling Statute, Utility (in addition to other utilities as defined by Ind. Code 4-4-11.6-8; collectively the "Subject Utilities") shall ~~either bill and collect from Customers the amount of the Price Adjustment or~~and apply a credit credits to Customer bills in the ~~amount~~amounts of the Customer ~~Credit~~Credits, and shall bill and collect from Customers the amounts of the Incremental Costs on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, IFA and Utility agree as follows:

1. **Obligations of Utility.** Subject to the terms of this Agreement and pursuant to the Enabling Statute, Utility agrees to provide billing, collection, and other services to the IFA related to the crediting and charging to Customers of the proceeds and costs relating to the IFA's

sale of SNG pursuant to the Marketing Agreement, in accordance with the Enabling Statute and any conditions imposed by the Indiana Utility Regulatory Commission or any successor entity ("IURC"), including without limitation, lawfully: (a) billing and collecting the Utility's Pro Rata Share (as defined herein) of Customer Portion from Customers when that amount is a negative number and applying that amount as a charge to Customers' bills (a "Price Adjustment"), (b) applying the Customer Portion as a credit to Customers' bills when it is a positive number (a "Customer Credit"), and (c) billing and collecting for all Incremental Costs, as hereinafter defined.

2. **Allocation of Customer Portion.** The allocation of the Customer Portion among all of the Subject Utilities, including the Utility, shall be determined by the IURC based on the proportion of the amount of gas delivered to Customers by Utility to the total amount of gas delivered to Customers by all Subject Utilities in the preceding calendar year (the "Pro Rata Share"). If an industrial transport customer has an annual volume level of 50,000 dekatherms or greater at the beginning of the Term (an "Exempt Customer"), such customer ~~customer~~ Exempt Customer will not be considered a Customer at any future point during the Term regardless of a reduced annual volume level, reorganization or other reclassification, change of control, sale of all or substantially all of its assets or other event that would otherwise enable them to be classified as a Customer. For the avoidance of doubt, an industrial transport customer of the Utility that was not an Indiana customer prior to the beginning of the Term and that has an annual volume level of 50,000 dekatherms or greater or has an anticipated annual volume level of 50,000 dekatherms or greater after the initial five (5) years of consumption by such Indiana customer, shall be an Exempt Customer.

3. **Application of Payments Between IFA and Utility.** Within ten (10) days after the end of each month during the Term, IFA will provide, or cause to be provided, to Utility a summary of the prior month's results from the sale of SNG (the "SNG Monthly Report") which SNG Monthly Report shall include all necessary bill adjustments under Section 1, including without limitation: (i) the amount of the Customer Portion (positive or negative) for all SNG sold in the prior month and (ii) the Pro Rata Share of such Customer Portion to either be added as a Customer Credit or billed as a Price Adjustment. If the Customer Portion results in a Customer Credit, then within twenty (20) days after delivery of the SNG Monthly Report, IFA shall pay to Utility via wire transfer of immediately available funds the Pro Rata Share of the Customer Credit. If the Customer Portion results in a Price Adjustment, then within thirty (30) days after delivery of the SNG Monthly Report, Utility shall pay to IFA via wire transfer of immediately available funds the Pro Rata Share of the Price Adjustment. Such payment by the Utility to the IFA for a Price Adjustment shall be made regardless of whether such amounts are actually collected by Utility from Customers pursuant to Section 4 below, as all risk of collection shall remain with the Utility subject to its statutory bad debt collection procedures and other remedies available under Indiana law. In the event an inaccuracy is discovered in any amount shown on an SNG Monthly Report, the inaccuracy and any payments made based thereon shall be corrected and reconciled as soon as reasonably practicable.

4. **Billing of Customers.** Pursuant to Ind. Code § 4-4-11.6-30(c), the IURC shall determine a just and reasonable method for allocating credits and charges to Customers. Consistent with the IURC's prescribed allocation methodology, Utility shall include its Pro Rata Share of the Price Adjustment or Customer Credit Portion identified on the SNG Monthly Report

in its gas costs attributable to and to be recovered from Customers, including any applicable taxes. Utility shall include its Pro Rata Share of the net Price Adjustment/Customer Credit amounts Portion, together with Incremental Costs, in its quarterly gas cost recovery filings as a variance to be recovered from or refunded to Customers over a subsequent twelve month period. ~~Any applicable~~ The Utility's Pro Rata Share of the Customer Portion will be stated separately on regular bills for ~~Utility Services~~ utility services provided by Utility to Customers; provided, however, if the Enabling Statute is changed in the future to remove the requirement to have a separate line item on the bill, ~~the foregoing, will be void as well~~ thereafter, it shall be the decision of the Utility whether to include such a separate line item on the bill. If the existing gas cost recovery mechanism is terminated during the term of the Agreement, a new mechanism shall be implemented that will allow adjustments to ~~Customer~~ Customers' bills to reflect Price Adjustments, Customer Credits and Incremental Costs to be updated no less often than monthly.

5. **Recovery of Incremental Costs.** Utility shall have the right to recover all costs Utility incurs in performing its obligations under this Agreement that are incremental to the costs that, as determined by the IURC, the Utility would not otherwise have incurred in the ordinary course of providing gas service to Customers ("Incremental Costs"). Such Incremental Costs shall include, but not be limited to, information system costs associated with the Agreement, customer service costs responding to inquiries relating to the SNG, regulatory and compliance costs relating to the Agreement, uncollected Price Adjustments, applicable taxes and carrying costs on payments by Utility to IFA in advance of recovery from Customers. In the event the PSA is terminated prior to the recovery by Utility of all Incremental Costs shall be added to the Customer Portion and, any remaining balance of unrecovered Incremental Costs at the time of such termination shall be recoverable from Customers by Utility over a reasonable period of time. Similarly, in the event Utility has incurred Incremental Costs in anticipation of the commencement of the operation of the SNG project and that project is terminated prior to commencing operation, then the Utility may apply to the IURC for recovery of those costs from Customers over a reasonable period of time. Incremental Costs shall be included in Utility's quarterly gas cost recovery filings, as described in Section 4. For Section 4; provided, however, for purposes of Customers' bills, the Incremental Costs shall not be included as part of the Customer Portion stated on Customer's those bills as described in Section 4. These are administrative costs and should be included in those associated costs on Customer's bills. Section 4. In the event of a dispute between the IFA and Utility regarding Incremental Costs, that dispute shall be submitted to the IURC for resolution pursuant to Section 13.

6. **Effect on Provision of Utility Services.** This Agreement shall not affect or in any way impair Utility's rights and obligations with respect to its customers or the provision of Utility Services except as specifically and expressly set forth in the Agreement and as allowed by law.

7. **Customer Inquiries and Complaints.** Utility will use reasonable and diligent efforts to respond to, address and resolve customer inquiries and complaints regarding this Agreement, SNG, Customer Credits or Price Adjustments, or Incremental Costs that would not otherwise be part of the IURC dispute resolution process. Utility agrees to collaborate with IFA regarding any generic or broad based formal communications ("Formal Communications") to Customers relating to the Agreement, SNG, the Customer Portion and/or Incremental Costs. The content of the communications between Utility and its Customers shall be in the reasonable

discretion of the Utility as long as the general message is within the spirit of the agreed upon Formal Communications. ~~Complaints~~ Customer inquiries and complaints that the Utility is unable to resolve shall be referred to the IFA.

8. **Audit Rights.** Upon prior written notice to Utility, IFA, or its authorized representatives, will have the right, at all reasonable times during normal business hours, to audit, examine or review Utility's books, records, documents, data and information which relate to the billing and collection services described in this Agreement. Any dispute between the Utility and IFA arising from the exercise of these audit rights shall be submitted to the IURC for resolution pursuant to Section 13.

Each year the IFA will select an independent third party to conduct an audit to evaluate, measure and verify the mechanism and process that the IFA uses to calculate the Customer Portion. Such an analysis shall take into account all pertinent costs associated with the transactions. The costs of the auditor's services shall be allocated to the Subject Utilities in the same manner as the Customer Portion. The auditor shall prepare a written report that shall be provided annually in written or electronic form to the IURC, the Indiana Office of Utility Consumer Counselor and the Subject Utilities. If as a result of such audits, there are identified any errors, miscalculations, overpayments and/or overcharges upon the ultimate disposition of those matters, any resulting impact to the Customer Portion shall be recognized in the quarterly gas cost adjustment process as provided in Section 4.

9. **Term and Termination.** This Agreement will commence after (i) ~~its~~ the approval by the IURC ~~in all respects~~ of the PSA, and (ii) upon thirty (30) days prior written notice to Utility from IFA (which will approximately coincide with the date IFA will begin purchasing SNG pursuant to the PSA). The IFA will provide to Utility all monthly notices provided by Seller to IFA pursuant to Section 3.3(a)(vi) in the PSA beginning with the notice indicating that the Commercial Production Date (as defined in the PSA) is expected to commence within twelve (12) months. This Agreement will remain in effect for as long as the PSA is effective (the "Term"). Notwithstanding the foregoing, if either party is knowingly in default of any material term of this Agreement and such default continues for sixty (60) days after the non-defaulting party provides notice to the defaulting party, the non-defaulting party may submit a request to the IURC to terminate this Agreement.

10. **General Compliance with Laws.** Utility will comply with all applicable laws in performing the services described herein.

11. **Claims.**

a. In the event that a claim is made against IFA that arises out of Utility's or any of its affiliates' negligence or willful misconduct in the performance of its duties hereunder, Utility will indemnify IFA and all of its officers, employees, representatives, members and agents (collectively the "IFA Indemnified Parties") against, and save the IFA Indemnified Parties harmless from, any loss, damage, injury or liability arising from such claim.

b. No representation or statement not expressly contained herein by reference shall be binding upon Utility as a warranty, indemnification or otherwise.

c. 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 to this Agreement shall have any personal liability or responsibility for, relating to or in connection with the other party's failure to properly perform any term, covenant, condition or provision of this Agreement.

d. To the extent allowable under applicable law, IFA 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 Utility to enforce this Agreement.

12. **Status of the Relationship.** The parties hereby acknowledge and agree that nothing contained in this Agreement shall be construed to place the parties in a relationship of contractors, partners, joint venturers, principal and agent, or employer and employee. No party shall have any right, power or authority to create any obligation, express or implied, or make any representation on behalf of any other party, and no party shall hold itself out as having any right, power or authority to create any obligation, express or implied, or to make any representations on behalf of any other party.

13. **Dispute Resolution.** If a party alleges that a dispute exists with respect to the performance of this Agreement, the parties shall enter negotiations in an attempt to resolve the dispute. 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 thirty (30) days after the date of such written notice (or such other period as shall be agreed upon by the parties). The obligation of the parties under the immediately preceding sentence shall not 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, including the right to provide notice of termination under Section 9. All dollar amounts not in dispute must be remitted on the appropriate date and only disputed amounts are subject to this provision.

14. **Notices.** All notices, requests, demands and other communications that are required or may be given pursuant to the terms of this Agreement shall be in writing, and delivery shall be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation from the sender as being sent if by electronic mail or facsimile transmission; (c) on the third day after mailing if mailed by first-class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section 14; or (d) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Postal Service during its business hours, in each case, for overnight delivery against receipt, and properly addressed as set forth in this Section:

If to IFA:

Indiana Finance Authority
Attn: Public Finance Director of the State of
Indiana
One North Capitol, Suite 900
Indianapolis, IN 46204

If to Utility:

[Utility Name]
Attn: _____

In the event notice is given by more than one of the methods provided above, notice shall be deemed received on the first day notice is received under any of the methods used above. Any party may change its address or other contact information for notice by giving notice to the other party in accordance with the terms of this Section 14.

15. **Successors and Assigns.** The Agreement shall be binding on the successors and assigns of the IFA and Utility. No party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, which will not be unreasonably withheld. Pursuant to Section 7.2 of the PSA, Seller shall be a third party beneficiary of this Agreement.

16. **Severability.** In the event any term or provision of this Agreement is found to be invalid or unenforceable under any applicable federal, state or local law, ordinance, rule or regulation, or declared null and void by any court of competent jurisdiction, then such part shall be reformed, if possible, to conform to the law, and, in any event, the remaining parts of this Agreement shall be fully effective and operative insofar as reasonably possible.

17. **Headings.** The headings in this Agreement are inserted for convenience only and are not to be considered in construction of the provisions hereof.

18. **Governing Law; Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Indiana. Subject to the dispute resolution provisions of Section 13, the exclusive venue of any claims or causes of action arising from or relating to transactions pursuant to this Agreement shall be filed in the state court sitting in Marion County, Indiana, or the United States District Court for the Southern District of Indiana. Subject to the dispute resolution provisions of Section 13, the parties hereby consent to the exclusive jurisdiction of such courts.

19. **Counterparts.** This Agreement may be executed in any number of counterparts, each or which shall be an original, but all of which together shall comprise one and the same instrument.

20. **Recitals.** The recitals set forth following the introductory paragraph of this Agreement are hereby incorporated by reference as part of this Agreement with the same effect as if set forth at length in this section.

[Signatures on the Following Page]

[Signature Page to Billing and Collection Services Agreement]

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Agreement by their duly authorized representatives as set forth below as of the date and year first written above:

INDIANA FINANCE AUTHORITY

[UTILITY]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit JMA-6

**Natural Gas Wellhead Prices –
Projected vs. Actual**

Cause No. 43796

Natural Gas Wellhead Prices, Projected vs. Actual*

(percent difference)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Avg. Low Error (Forecast Lower than Actual)	Avg. High Error (Forecast Higher than Actual)	# of Misses Low	# of Misses High
AEO 1996	-19.8	-19.7	1.6	-3.9	-40.4	-42.8	-19.4	-49.3	-52.6	-62.9	-55.6	-53.4	-61.4	-40.1%	1.6%	12	1
AEO 1997		-21.4	-2.8	-9.2	-43.9	-46.6	-25.0	-52.5	-55.5	-65.3	-58.5	-56.6	-64.3	-41.8%	N/A	12	0
AEO 1998			12.1	3.0	-37.2	-40.5	-17.1	-48.4	-52.5	-63.3	-56.3	-54.1	-62.0	-47.9%	7.6%	9	2
AEO 1999				-1.9	-40.1	-42.1	-17.8	-48.1	-51.8	-62.4	-54.6	-52.6	-61.3	-43.3%	N/A	10	0
AEO 2000					-39.3	-43.3	-21.4	-50.9	-54.0	-63.7	-56.0	-53.4	-61.6	-49.3%	N/A	9	0
AEO 2001						-12.9	0.8	-43.9	-50.5	-61.4	-53.9	-52.0	-60.7	-47.9%	0.8%	7	1
AEO 2002							-30.1	-48.1	-47.9	-59.0	-51.0	-49.3	-57.9	-49.0%	N/A	7	0
AEO 2003								-33.2	-42.8	-57.1	-50.8	-48.1	-56.6	-48.1%	N/A	6	0
AEO 2004									-26.8	-49.3	-41.7	-39.4	-49.5	-41.3%	N/A	5	0
AEO 2005										-24.7	-22.6	-28.3	-47.5	-30.8%	N/A	4	0
AEO 2006											12.1	2.5	-22.3	-22.3%	7.3%	1	2
AEO 2007												10.0	-12.4	-12.4%	10.0%	1	1
AEO 2008													-14.9	-14.9%	N/A	1	0

 Forecast Higher than Actual

 Forecast Lower than Actual

Total Misses Low or High **84**
 Percent Misses Low or High **92%** **8%**

Sum of Errors	(3,637)	42
Weighted Average Percent Error	-43.30%	6.00%

Exhibit JMA-7

Natural Gas Prices – Historical and Forecast

Cause No. 43796

Henry Hub natural gas prices -- historical and forecast

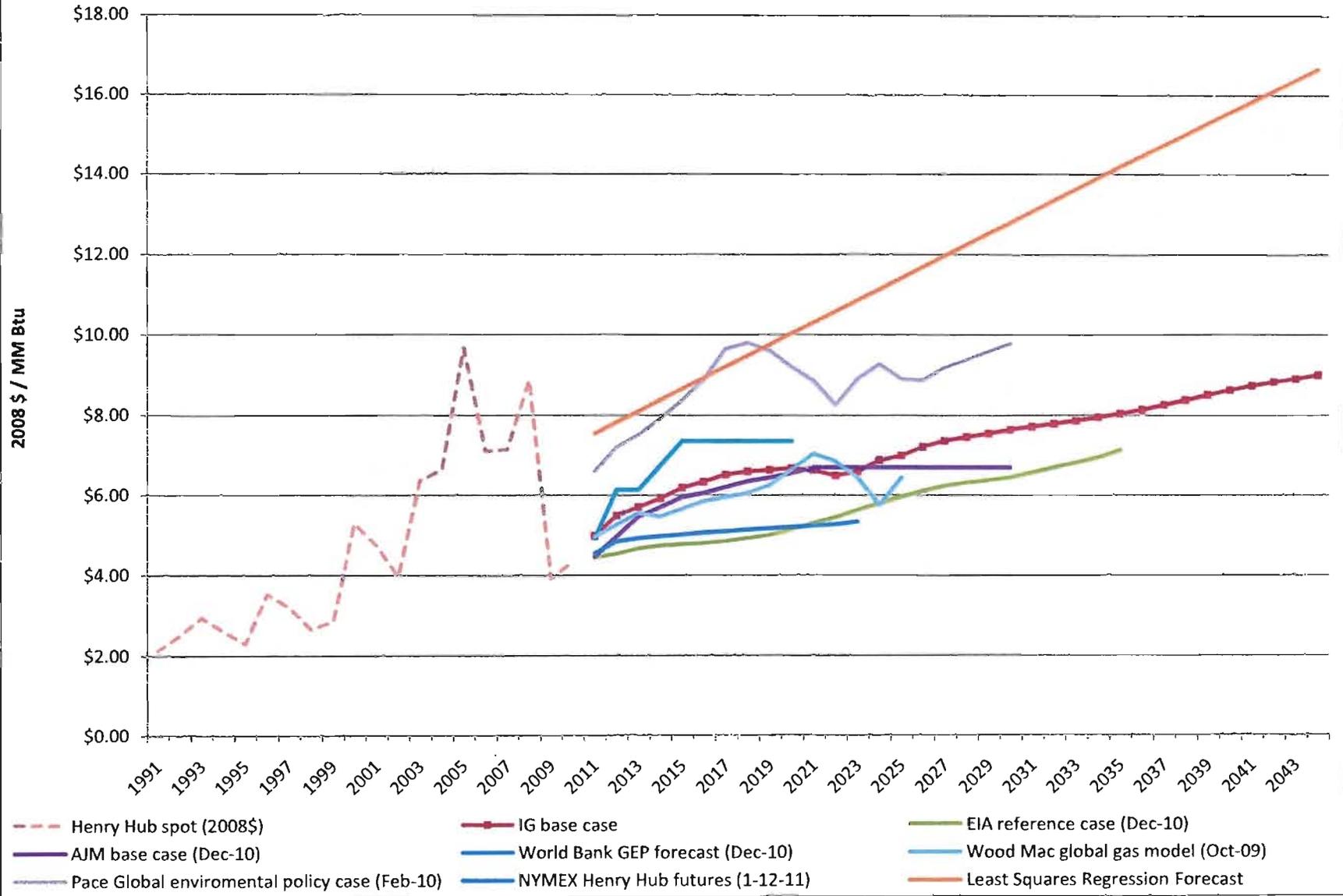


Exhibit JMA-8

**Average Customer –
Natural Gas Bill Comparison**

Cause No. 43796

Average Customer - Natural Gas Bill Comparison

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Average Customer Bill before SNG Deal													
Customer Use -- Natural Gas (MMBtu)	21.40	16.80	13.10	9.30	3.30	2.10	1.90	1.90	2.50	4.90	10.90	18.00	106.10
Natural Gas Commodity Price (\$2008/MMBtu)	\$ 7.57	\$ 7.57	\$ 7.57	\$ 7.57	\$ 7.57	\$ 7.57	\$ 7.57	\$ 7.57	\$ 7.57	\$ 7.57	\$ 7.57	\$ 7.57	
Natural Gas Commodity Cost (\$2008)	\$ 162.00	\$ 127.18	\$ 99.17	\$ 70.40	\$ 24.98	\$ 15.90	\$ 14.38	\$ 14.38	\$ 18.93	\$ 37.09	\$ 82.51	\$ 136.26	\$ 803.18
Facility & Delivery Charge (\$2008)	\$ 63.50	\$ 52.00	\$ 42.75	\$ 33.25	\$ 18.25	\$ 15.25	\$ 14.75	\$ 14.75	\$ 16.25	\$ 22.25	\$ 37.25	\$ 55.00	\$ 385.25
Total Bill	\$ 225.50	\$ 179.18	\$ 141.92	\$ 103.65	\$ 43.23	\$ 31.15	\$ 29.13	\$ 29.13	\$ 35.18	\$ 59.34	\$ 119.76	\$ 191.26	\$ 1,186.43
Average Customer Bill after SNG Deal													
Customer Use -- Natural Gas (MMBtu)	19.90	15.30	11.60	7.80	1.80	0.60	0.40	0.40	1.00	3.40	9.40	16.50	88.06
Customer Use -- SNG (MMBtu)	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	18.04
SNG %	7%	9%	11%	16%	46%	72%	79%	79%	60%	31%	14%	8%	17%
SNG Price (\$2008/MMBtu)	\$ 7.10	\$ 7.10	\$ 7.10	\$ 7.10	\$ 7.10	\$ 7.10	\$ 7.10	\$ 7.10	\$ 7.10	\$ 7.10	\$ 7.10	\$ 7.10	
Natural Gas Commodity Cost (\$2008)	\$ 162.00	\$ 127.18	\$ 99.17	\$ 70.40	\$ 24.98	\$ 15.90	\$ 14.38	\$ 14.38	\$ 18.93	\$ 37.09	\$ 82.51	\$ 136.26	\$ 803.18
SNG Debit / (Credit) (\$2008)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (8.48)
Facility & Delivery Charge (\$2008)	\$ 63.50	\$ 52.00	\$ 42.75	\$ 33.25	\$ 18.25	\$ 15.25	\$ 14.75	\$ 14.75	\$ 16.25	\$ 22.25	\$ 37.25	\$ 55.00	\$ 385.25
Total Bill w/ SNG	\$ 224.79	\$ 178.47	\$ 141.21	\$ 102.94	\$ 42.52	\$ 30.44	\$ 28.43	\$ 28.43	\$ 34.47	\$ 58.64	\$ 119.06	\$ 190.55	\$ 1,179.95
Difference in Bill (after SNG - before SNG)	\$ (0.71)	\$ (8.48)											
% Change in Bill	0%	0%	0%	-1%	-2%	-2%	-2%	-2%	-2%	-1%	-1%	0%	-1%

Current Scenarios

Highest Savings Case

Natural Gas (+2 Std. Dev.) & Coal (-2 Std. Dev.)

Mkt. Gas = \$10.74, Adj. SNG = \$5.31, final SNG = \$8.04, Coal = \$38.62

Total Bill w/ SNG	\$ 289.28	\$ 228.37	\$ 179.39	\$ 129.07	\$ 49.63	\$ 33.75	\$ 31.10	\$ 31.10	\$ 39.04	\$ 70.82	\$ 150.26	\$ 244.26	\$ 1,476.06
Total Bill Difference (SNG Bill - Bill w/o SNG)	\$ (4.06)	\$ (4.06)	\$ (4.06)	\$ (4.06)	\$ (4.06)	\$ (4.06)	\$ (4.06)	\$ (4.06)	\$ (4.06)	\$ (4.06)	\$ (4.06)	\$ (4.06)	\$ (48.70)
% Change in Bill (SNG Bill - Bill w/o SNG)	-1%	-2%	-2%	-3%	-8%	-11%	-12%	-12%	-9%	-5%	-3%	-2%	-3%

Base Case

Mkt. Gas = \$7.57, Adj. SNG = \$6.64, final SNG = \$7.10, Coal = \$51.74

Total Bill w/ SNG	\$ 224.79	\$ 178.47	\$ 141.21	\$ 102.94	\$ 42.52	\$ 30.44	\$ 28.43	\$ 28.43	\$ 34.47	\$ 58.64	\$ 119.06	\$ 190.55	\$ 1,179.95
Total Bill Difference (SNG Bill - Bill w/o SNG)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (0.71)	\$ (8.48)
% Change in Bill (SNG Bill - Bill w/o SNG)	0%	0%	0%	-1%	-2%	-2%	-2%	-2%	-2%	-1%	-1%	0%	-1%

Lowest Savings Case

Natural Gas (-2 Std. Dev.) & Coal (+2 Std. Dev.)

Mkt. Gas = \$4.40, Adj. SNG = \$7.86, final SNG = \$7.73, Coal = \$64.86

Total Bill w/ SNG	\$ 162.67	\$ 130.93	\$ 105.40	\$ 79.18	\$ 37.78	\$ 29.50	\$ 28.12	\$ 28.12	\$ 32.26	\$ 48.82	\$ 90.22	\$ 139.21	\$ 912.15
Total Bill Difference (SNG Bill - Bill w/o SNG)	\$ 5.01	\$ 5.01	\$ 5.01	\$ 5.01	\$ 5.01	\$ 5.01	\$ 5.01	\$ 5.01	\$ 5.01	\$ 5.01	\$ 5.01	\$ 5.01	\$ 60.06
% Change in Bill (SNG Bill - Bill w/o SNG)	3%	4%	5%	7%	15%	20%	22%	22%	18%	11%	6%	4%	7%

Exhibit JMA-9

SNG Commodity Sensitivity Heat-Map

Cause No. 43796

SNG Commodity Sensitivity Heat-Map

Natural Gas Forecast	+2 Std. Dev. (+ \$3.23)	\$1,476 (\$48.70) (3%)			\$1,489 (\$35.89) (2%)	\$1,493 (\$31.56) (2%)
	+1 Std. Dev. (+ \$1.62)		OUTLIERS	\$1,333 (\$24.35) (2%)	\$1,337 (\$20.02) (1%)	\$1,341 (\$15.69) (1%)
	Base Case		\$1,176 (\$12.63) (1%)	\$1,180 (\$8.48) (1%)	\$1,184 (\$4.15) (0%)	
	-1 Std. Dev. (- \$1.62)	\$1,018 (\$1.44) (0%)	\$1,026 \$6.49 1%	\$1,035 \$14.79 1%		
	-2 Std. Dev. (- \$3.23)	\$880 \$27.60 3%	\$888 \$35.71 4%			\$912 \$60.06 7%
		-2 Std. Dev. (- \$13.12)	-1 Std. Dev. (- \$6.56)	Base Case	+1 Std. Dev. (+ \$6.56)	+2 Std. Dev. (+ \$13.12)

Total Annual Consumer Natural Gas Bill w/ SNG
Total Bill Difference (SNG Bill - Bill w/o SNG)
 % Change in Bill (SNG Bill - Bill w/o SNG)

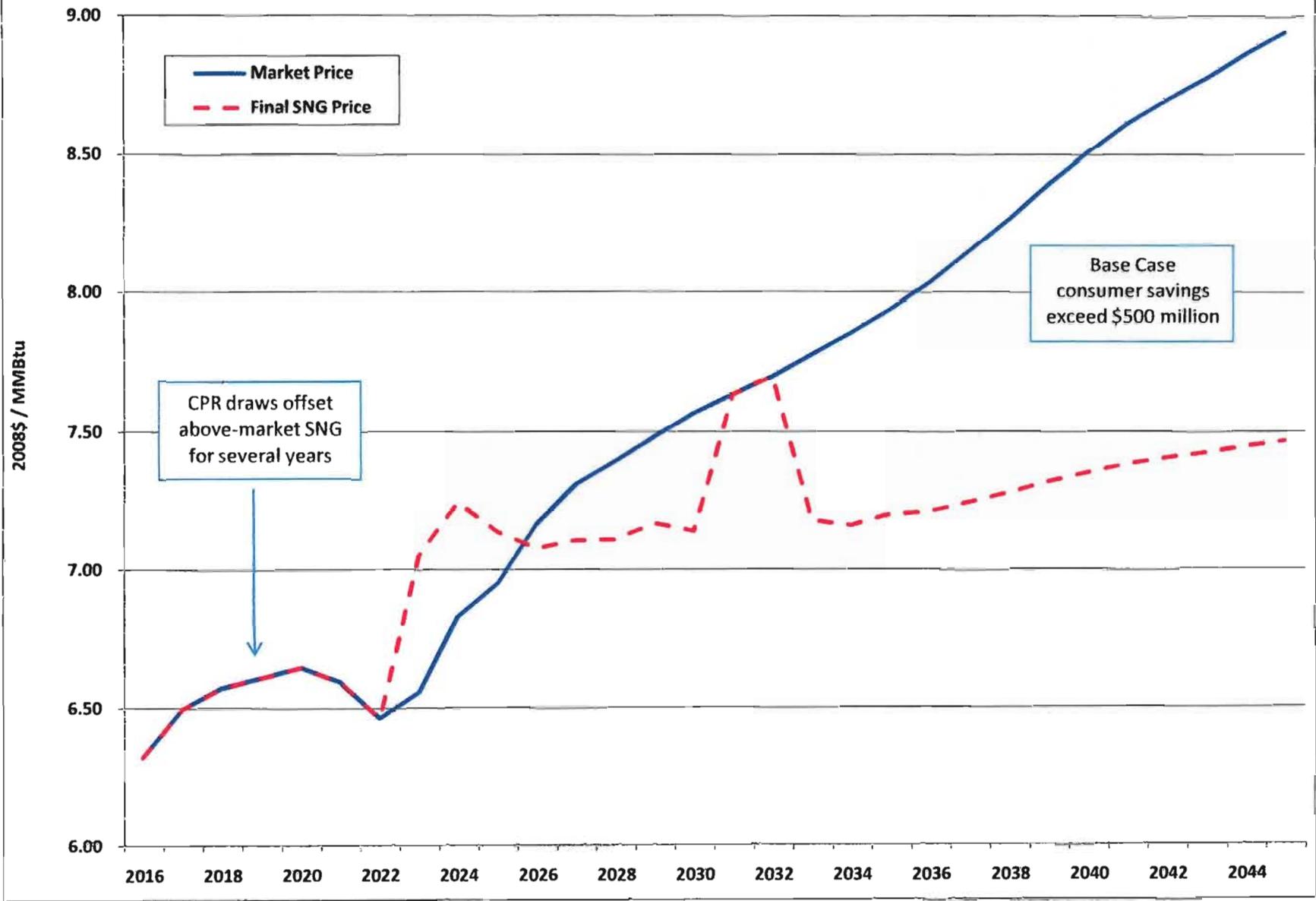
Coal Forecast

Exhibit JMA-10

**SNG Pricing Comparison – Projected Base
Case Consumer Savings**

Cause No. 43796

SNG Pricing Comparison (Real)



**VERIFIED DIRECT TESTIMONY OF REINER KUHR
ON BEHALF OF THE INDIANA FINANCE AUTHORITY**

Cause No. 43976

INTRODUCTION

1 **Q1. Please state your name, occupation, and business address.**

2 A1. My name is Reiner W. Kuhr, PE, and I am Senior Executive Consultant with Shaw
3 Consultants International, Inc. ("Shaw"). My business address is One Main Street,
4 Cambridge, Massachusetts 02142.

5
6 **Q2. What is your educational background?**

7 A2. I received a Bachelors Degree in Engineering (Chemical) with Honors from Stevens
8 Institute of Technology in Hoboken, NJ, in 1972. I was elected by my graduating class to
9 be the Alumni Representative on the Stevens Board of Trustees for 2 years. I completed
10 a number of graduate level courses at Northeastern University in environmental
11 engineering and in engineering economics during the years 1973-1975, as well as
12 numerous training courses at Stone & Webster Engineering Corporation during the
13 period 1972 – 1999 in topics including power plant design and economics, presentations,
14 and project management. I taught an evening course in physics for Northeastern
15 University in 1983.

16
17 **Q3. Please describe your employment history.**

1 A3. 1972-1999 Stone & Webster Engineering Corporation. Completed numerous
2 assignments in the Environmental Division including project siting studies,
3 environmental permitting applications, environmental impact studies, economic analyses
4 and engineering of environmental control systems for power and process plants.
5 Completed numerous assignments in the Advanced Technologies Division including
6 conceptual and preliminary designs and assessments of various advanced energy
7 technologies including solar thermal, wind, biomass, pyrolysis, hot gas cleanup for
8 gasification systems, and convective reforming systems including Project Engineer and
9 Project Manager positions. Managed several assignments in the Power Division
10 providing conceptual designs, cost estimates, implementation schedules, and performance
11 and environmental calculations for over 100 power plant designs, including coal, gas and
12 oil fired plants considered for new projects. Assigned to Power Marketing group as
13 Proposal Manager to prepare proposed designs and EPC bids for US and international
14 power generation projects. Assigned as Assistant Project Manager for an international
15 power generation project. 1999 – Present Stone & Webster Management Consultants
16 (now Shaw Consultants International). Managed numerous assignments to support
17 project development, feasibility studies, project oversight, due diligence and business
18 planning for new technologies. Due diligence assignments include over 25
19 plants/projects for financings and transactions exceeding \$20 B in value. Worked closely
20 with project developers, owners, and lenders for five years to review and oversee a major
21 international petcoke fired fluidized bed power generation project. Managed business
22 planning over a 5 year period for an international client planning to commercialize an
23 advanced power generation technology including market studies, feasibility and

1 application studies, cost estimating, economic analysis, implementation planning and risk
2 analyses. Currently managing independent review of the Kemper County Coal
3 Gasification Combined Cycle Project for the Department of Energy evaluation of a Loan
4 Guarantee Application. Currently managing independent review of the Indiana
5 Gasification Project for the Indiana Finance Authority. Also managing other current
6 assignments including review of advanced power generation technology for the
7 Department of Energy, a feasibility study for a major international petrochemical
8 company evaluate alternate steam supply options for a large gasification complex, and
9 business planning consulting to a major international client seeking to expand in the
10 power plant fuel market. Published dozens of technical papers covering a wide range of
11 power and process industry topics including power generation technology and
12 economics. Speaking at a power industry advanced energy conference in late January on
13 the topic of coal gasification project development and implementation.

14
15 **Q4. Have you previously testified before this or any other state regulatory commission?**

16 A4. No. Presented to NARUC (Northeast Association of Regulated Utility Commissioners)
17 in 2002 on the topic of distributed power generation opportunities.

18
19 **Q5. What is the purpose of your direct testimony in this proceeding?**

20 A5. The Indiana Finance Authority (the "IFA") engaged my firm as its independent
21 professional engineering and technical advisor to assist with the engineering and
22 technical due diligence in connection with the coal gasification project and its
23 relationship with Indiana Gasification, LLC ("IG"). Our due diligence findings are

1 summarized in the Summary of Shaw's Report attached as Exhibit RWK-1 (the
2 "Summary Report").
3

4 **CONCLUSION**

5 **Q6. Does the Summary Report accurately summarize the results of Shaw's engineering**
6 **and technical due diligence investigation?**

7 A6. Yes. The entire Report, which is summarized in my Exhibit RWK-1, contains what the
8 Joint Petitioners, IFA and IG, believe is proprietary, trade secret or other confidential
9 information. Therefore, I understand IFA intends to submit the Report, subject to
10 confidentiality conditions, after a determination is made by the Commission on its
11 confidentiality.
12

13 **Q7. Does this conclude your testimony?**

14 A7. Yes, it does.

1556564.3

Exhibit RWK-1

**Report by Shaw Consultants
International, Inc.**

Cause No. 43976

Summary Report

Review of Indiana Gasification Project

Submitted to:



January 24, 2011

 **Shaw**[®] Shaw Consultants International, Inc.



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1 Introduction

Shaw Consultants International, Inc. (Shaw Consultants) was engaged by the Indiana Finance Authority (IFA) to review the level of development, the adequacy of design, implementation planning, financial projections, and risk exposure to Indiana gas consumers resulting from IFA's participation in the Indiana Gasification Project (Project) through a proposed Substitute Natural Gas (SNG) Purchase and Sale Agreement.

The Project is owned by Indiana Gasification, LLC (IG), a wholly owned indirect subsidiary of Leucadia National Corporation (Leucadia). IG intends to build a gasification facility that will convert Illinois Basin coals and petcoke to SNG at a site located near Rockport, Indiana. The Project has control of a suitable site along the Ohio River, legislation that provides for a revenue stream, a permitting plan and a financing path that will combine owner equity with federally guaranteed debt.

Up to 38 million MMBtu of the Project's SNG will be sold each year under a long-term (30 year) contract with IFA, as authorized by Indiana legislation passed in the spring of 2009 and 2010. This represents a significant fraction (15% to 20%) of the pipeline gas consumed by Indiana commercial and residential gas customers. Approximately 9 million MMBtu/yr of additional SNG is expected to be sold by IG into the natural gas market. In addition, most of the carbon dioxide (CO₂) produced by the Project, as well as sulfuric acid and recovered industrial gases will be sold commercially to improve the economics of the project.

Since this Project is in an early stage of design, this review is based on currently available technical and cost information provided by IG to define the Project, its performance, operations, costs, projected economics and implementation planning. Documents provided for review include primary project documents, such as a modified copy of the United States (US) Department of Energy (DOE) Federal Loan Guarantee Application with proprietary information redacted, the carbon dioxide (CO₂) and SNG Purchase and Sale Agreements, as well as supporting information including project descriptions, operation and maintenance (O&M) planning, fuel purchasing plans, and supporting cost and schedule information. Additional information was obtained at a site visit, meetings and conference calls with individuals involved with the Project, drawings, maps, pictures, and spreadsheets that described the site, fuel, plant equipment and layout, plant performance and maintenance, project capital and operating costs, financial projections and the proposed engineering, procurement, and construction (EPC) joint venture entity structure.

Detailed review of these documents is included in Shaw's Principle Report and supporting appendices, which contain confidential and business sensitive information and are subject to limited distribution. Supporting appendices to this report include:

- Appendix 1 - IFA Gas Purchases
- Appendix 2 - Project Definition and Adequacy of Design
- Appendix 3 - Implementation Planning

- Appendix 4 - Operations and Maintenance
- Appendix 5 - Financial Review
- Appendix 6 - List of Documents Reviewed

A list of terms and acronyms is included below:

- ACQ - Annual Contract Quantity
- Adjusted Base Contract Price - Base Contract Price adjusted for net incremental production revenue
- Annual Contract Quantity (ACQ) - 38 million MMBtu of Conforming SNG for a full year
- Base Contract Price - SNG price determined by adding the capital, O&M, fuel, and pipeline transportation components defined in the SNG Purchase and Sale Agreement
- BEA - United States Bureau of Economic Analysis
- Commercial Production Date (CPD) - First Gas Day of the first calendar month after the Independent Engineer certifies that the Plant is ready to commence commercial production of SNG
- Conforming SNG - SNG meeting the minimum requirements for delivery into and transportation of natural gas on the applicable pipeline system
- Consumer Protection Reserve Account (CPRA) - The escrow account established to cover any negative Market Differential
- Contract Savings Guaranty Amount - The aggregate savings guaranteed by IG to IFA, which is \$100 million in real 2008 dollars
- Contract SNG - SNG used to meet the terms of the Base Contract
- CPD - Commercial Production Date
- CPRA Commitment Amount - \$150 million plus interest accrued that IG is obligated to fund in order to protect the Indiana consumers from paying higher gas prices
- CRCSTA - Cumulative Real Contract Savings Tracking Account
- Cumulative Real Contract Savings Tracking Account (CRCSTA) - The non-cash tracking account maintained by IFA to track the cumulative sum of positive or negative monthly Adjusted Market Differential indexed to 2008 real dollars
- Delivery Meter - The meter located at the interface with commercial gas pipeline(s) at which point deliveries of SNG are delivered to the Receiving Pipeline and are measured
- DOE - United States Department of Energy
- EIA - United States Energy Information Administration
- FEED - Front End Engineering Design
- Financial Closing Date - The date on which all conditions precedent to the financial closing of the DOE Guaranteed Financing have been satisfied and IG is entitled to draw funds
- GAAP - Generally Accepted Accounting Principles
- GDP Deflator - The most recent "final" Gross Domestic Product Implicit Price Deflator as published by the BEA approximately three months after the end of the calendar year

- Incremental Production - Saleable output of the Project other than Contract SNG, which includes production of Incremental SNG, CO₂, and byproducts
- Incremental Revenue - Revenues derived from the sale of Incremental Production
- IGCC - Integrated Gasification Combined Cycle
- IURC - Indiana Utility Regulatory Commission
- Loan Guarantee - United States DOE 48B Federal Loan Guarantee
- Market Differential - For each month, the positive or negative difference between the Market Price Amount (the product of the Monthly Delivered Quantity times the Monthly Weighted Average Natural Gas Market Price) and the Adjusted Base Contract Price Amount (the product of the Monthly Delivered Quantity times the Adjusted Base Contract Price)
- MCQ - Monthly Contract Quantity
- MDQ - Monthly Delivered Quantity
- Net CO₂ Revenues - The aggregate (positive or negative) revenues realized from the sale of CO₂ and CO₂ tax credits net of the related costs
- Net Incremental Revenues – The aggregate (positive or negative) revenues realized from the sale of incremental SNG, argon, sulfuric acid, rare gases, and other byproducts net of the related costs
- O&M - Operations and Maintenance
- O&M Indices - The basket of indices used to annually compute the Adjusted O&M Component
- Pipeline Transportation Charge - Portion of the Base Contract Price associated with Contract SNG pipeline transportation costs
- PSA - Purchase and Sales Agreement for SNG
- Project - Indiana Gasification Project
- SNG - Substitute Natural Gas

2 Summary of Project

IFA's objective is to benefit residential and commercial Indiana gas consumers by reducing the volatility and long term increases of the price of natural gas. IG guarantees savings of \$100 million in real 2008 dollars relative to future gas market prices and initially provides \$150 million as a reserve which is used to lower SNG price if needed to match market prices. The terms of the Substitute Natural Gas Purchase and Sale Agreement establish benefits and limit risks for the Indiana regulated commercial and residential gas consumers who will pay for a portion of their gas purchases based on pricing for SNG produced by the Project.

Key benefits to Indiana residential and commercial gas consumers include:

1. Long term savings in the cost of delivered natural gas with reduced volatility and variability
2. Long term security of supply of natural gas through diversification of sources
3. Investment in local and regional economic growth
4. Avoidance of environmental impacts associated with large scale use of coal
5. Substantial investment and risk sharing by IG

Indiana gas consumers obtain these benefits by agreeing to purchase the output from this Project for 30 years, essentially guaranteeing the cash flow needed to support financing. The ability of Indiana gas consumers to achieve the projected savings will depend primarily on the commercial price of natural gas during the 30 year life of the Project, as well as the cost of fuels delivered to the Project, value of byproducts sold, and the impact of new legislation which could increase the cost of operating the Project and/or of producing CO₂. The Project is designed to capture and utilize CO₂ for enhanced oil recovery (EOR) which reduces the potential impact of future carbon regulations.

2.1 Technology

The Project will utilize coal gasification technology to convert coal and petcoke into synthetic gas (syngas) composed primarily of carbon monoxide and hydrogen. Then, a combination of chemical processes will produce SNG (primarily composed of methane) and will also produce byproduct sulfuric acid, argon, rare gases (xenon and krypton), and CO₂. The Project is planned to produce an average of 142 MMBtu per day of SNG by gasifying an average of over 11,000 tons per day of Illinois basin coal. Lower cost petroleum coke can be substituted for up to 49% of the coal. Key technology for the Project includes General Electric (GE) quench gasification technology, Haldor Topsoe TREMP methanation technology, the Lurgi Rectisol[®] acid gas removal process, and the Haldor Topsoe wet sulfuric acid (WSA) process. The Project will produce approximately 47 million MMBtu per year (or 48 billion standard cubic feet per year) of SNG, which will be distributed through existing natural gas pipelines.

2.2 CO₂ Capture and Sales

IG has included commercially proven technology in the Project to capture and compress CO₂ for pipeline transport. CO₂ capture is not required for this Project but improves the projected economics and anticipates tighter controls on carbon emissions. In the event that CO₂ sales become impractical, the Project can vent the captured CO₂ in accordance with any applicable permit requirements and not impact the reliability of its operations. The carbon balance prepared for IG's Part I Federal Loan Guarantee application to DOE indicates the Project will capture 93.5% of the CO₂ it produces during normal operation, excluding ancillary sources of CO₂. Including ancillary sources and assuming some outage time for the compressors, the average daily capture percentage is approximately 90%. Pursuant to a preliminary CO₂ off-take agreement executed by IG and Denbury Onshore, LLC (a wholly owned subsidiary of Denbury Resources, Inc., "Denbury"), on March 20, 2009 CO₂ captured from the Project will be sold under a long-term contract for use in Denbury's existing EOR business in the Gulf Coast. Denbury will finance and build a pipeline connecting the Project and other proposed CO₂ recovery facilities to its CO₂ EOR operations where it will sequester the CO₂. The Denbury agreement is contingent on other projects being completed to provide sufficient CO₂ volumes for the pipeline. IG has developed alternative CO₂ pipeline concepts intended to support projected CO₂ sales pricing in the event that other CO₂ producing projects are not completed. Government policy and rules addressing CO₂ capture, transport and sequestration are still under development and, if they are implemented, could impact the economics of the Project by imposing additional cost on CO₂ releases and increasing the value of CO₂ capture and sequestration.

2.3 Incremental Production of SNG, CO₂, Byproducts and Excess Power

In addition to receiving payments from IFA for the annual contract amount up to 38 million MMBtu/yr of SNG, the Project intends to obtain additional revenue from the sale of the incremental SNG output of about 9 million MMBtu/yr, as well as from the recovery and sale of CO₂, sulfuric acid, argon, rare gases and excess power. In addition, ash in the form of a glassy slag will be made available for use by the State of Indiana or for sale if markets are found. If fully realized, gross revenue from the sale of Incremental Production from the Project could approach 20-30% of the value of SNG sales to IFA.

2.4 Site and Interconnections

IG has secured rights for about 1,300 acres in Spencer County near the town of Rockport for the Project site. This site provides access for coal and petcoke delivery, for a natural gas pipeline interconnection, power transmission interconnection, and water supply. The Project site will allow coal to be delivered from an existing Norfolk Southern rail line, by barge from the Ohio River, or by way of truck from a state highway that connects with nearby US 231, a main north-south highway in the region. The site is within five miles of the ANR Pipeline Company (ANR) and Midwestern Gas Transmission Company (MGT) interstate natural gas pipelines, is located less than a mile from a high voltage transmission line and substations, and has access to water supplied directly from the Ohio River. Figure 2-1 provides an aerial photo of the site showing major portions of the Project.

3 Substitute Natural Gas Purchase and Sales Agreement

The draft Substitute Natural Gas Purchase and Sale Agreement between IG and IFA is a critical element of the Project by providing a long term commitment to purchase SNG at prices necessary to support financing.

3.1 Contract SNG Price

This agreement defines a Base Contract Price formula, which is comprised of four price components with associated formulas, responsibilities and rules for changes as summarized below:

Capital component – IG receives plant capital payments fixed at \$3.50/MMBtu for the base contract SNG sales with no adjustments. This payment is not indexed and declines in real value over time.

Operation & Maintenance component – A plant operation and maintenance (O&M) payment is fixed at \$1.88/MMBtu (2008\$) and adjusted continuously by a defined group of indices. This fixed payment can be reviewed and adjusted under certain conditions after the first seven years and each five year period thereafter.

Fuel component – For the Base Contract Amount, IG receives payment for fuel purchases calculated based on SNG production and a fuel to SNG conversion efficiency based on actual plant performance minus a fixed portion of fuel allocated for power generation. All fuel purchases are based on an approved Annual Fuel Plan with options to use petcoke.

Pipeline Transportation Charge – IG receives payments based on applicable pipeline tariff rates for transportation service to the Title Transfer Point.

Adjustments – Other adjustments to the Base Contract Price include

1. New taxes
2. Change in government requirements (IG allowed to recover capital and operating costs based on a fixed adjustment allowing a reasonable return on investment) limited to 13.5% (except for CO₂ taxes) of Based Contract Price capital, O&M and fuel components.
3. IFA credit from revenues from Incremental Production (as described below)

3.2 Incremental Production

IG can produce additional SNG, CO₂ delivered from the Project by pipeline, net electricity for export, and several byproducts to obtain additional revenue, some of which is shared with IFA. CO₂ captured by the Project is compressed and delivered by pipeline. Although IG guarantees an annual contract amount of 38 million MMBtu of SNG, IG expects the plant to produce over 47 million MMBtu SNG per year. SNG produced beyond the Contract Amount is sold to generate revenue which is considered part of Incremental Production. Incremental Production also includes sale of net excess power beyond 28 MW, and sale of sulfuric acid, argon and rare gases.

Gross revenue from these sales is adjusted for cost to determine Net CO₂ Revenues and Net Incremental Revenues. Cost items include:

- SNG marketing fees for incremental SNG Production
- Actual O&M costs associated with Incremental SNG production and recovery/sale of CO₂, sulfuric acid, argon and rare gases
- Actual fuel costs (coke and petcoke) for SNG production based on actual conversion efficiency
- Fixed capital recovery allowances as \$/MMBtu SNG for CO₂ and argon production
- Future adjustments to recover additional costs associated with changes in law

Net Incremental Revenue is established based on these incomes and distributions. Half of the Net Incremental Revenue is assigned to IG and the rest becomes available to reduce the Base Contract Price for SNG as described below.

3.3 Adjusted Base Contract Price and Market Differential

An Adjusted Base Contract Price for the SNG sold on behalf of IFA is determined by including the adjustments described above. The Adjusted Base Contract Price is multiplied by the amount of Contract SNG produced to establish the cost of production, which is subtracted from the selling price of IG SNG in the market for that period to determine the Market Differential. This represents the gain or loss for the production of the Contract Amount of SNG versus purchasing from the current commercial natural gas market.

If the cost of SNG production exceeds the market value of equivalent natural gas, then available funds are drawn from the Consumer Protection Reserve Account (\$150 million initially funded by IG) to eliminate a negative Market Differential if possible. This adjustment occurs only until the Consumer Protection Reserve Account is depleted. If a negative Market Differential survives, then IFA ends up paying more for the contract SNG than current commercial prices for an equivalent amount of natural gas. Such excess payments for SNG are tracked as cumulative contract savings for future recovery when natural gas prices rise.

The Market Differential is positive when cost of Contract SNG production based on the Adjusted Contract Price is less than the market price of equivalent natural gas. In this case, the benefits of the Market Differential are first used to fund any shortfall in the Project's ability to make debt service payments to DOE. This is likely to happen only when the Project cash flow is stressed by an extended period of substantially reduced SNG production where the Project does not receive anticipated payments for Contract SNG.

Any surviving Market Differential is distributed according to one of the following situations:

- 100% to IFA if cumulative consumer savings is negative and IG has been repaid its \$150 million reserve fund

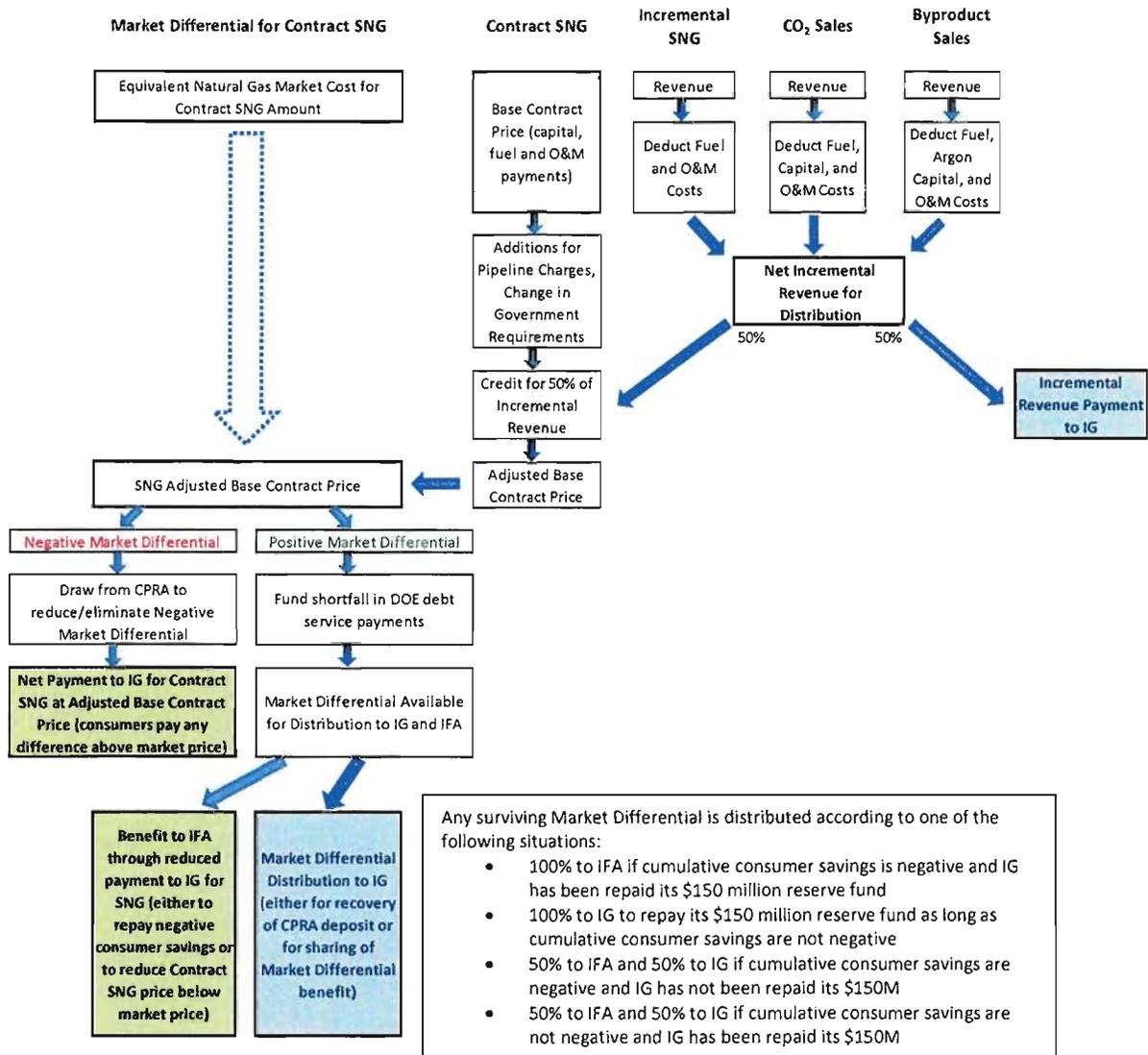
- 100% to IG to repay its \$150 million reserve fund as long as cumulative consumer savings are not negative
- 50% to IFA and 50% to IG if cumulative consumer savings are negative and IG has not been repaid its \$150M
- 50% to IFA and 50% to IG if cumulative consumer savings are not negative and IG has been repaid its \$150M

3.4 Benefit Sharing

The SNG Purchase and Sale Agreement establishes how the benefits of producing SNG at lower costs than the cost of commercial natural gas are shared between IFA and IG as illustrated in Figure 3-1. In the early years, if production costs are higher than market gas prices, money is drawn from the \$150 million reserve to lower the SNG price to match market gas prices. As market gas prices rise above production costs, IG is allowed to recover this reserve deposit from the distribution the Market Differential. After IG has recovered its \$150 million reserve, IFA receives an increased share of these benefits to further reduce the cost of gas to Indiana consumers.

Sharing benefits of the Market Differential provides IG the opportunity for profit as a reward for efficient and effective management and operation of the Project.

Figure 3-1: Distribution of Benefits



3.5 Risk Sharing

The SNG Purchase and Sales Agreement intends to share risks based on the principles described in this section.

IG assumes the following responsibilities and risks:

1. IG guarantees a fixed capital payment of \$3.50/MMBtu SNG (fixed with no increase over time) for the Contract Amount. In addition IG receives fixed capital allowances for CO₂ and argon production. Given only these capital payments, IG assumes the risk of any growth of capital requirements as the Project is implemented, including Project cost overruns and the cost of delay.

Also, since IG only recovers capital when the plant produces SNG, it takes the risk of losing capital recovery if the plant production is substantially reduced. Also, IG assumes the risk of achieving an acceptable return on its capital investment in the Project and relies on revenue from Contract SNG, CO₂ production, and Incremental Production for profitability.

2. IG receives a fixed price O&M payment for Contract SNG. The scope of this fixed price O&M payment will be clearly defined and monitored through reporting. Therefore, IG will take most of the risk of unexpected increases in the cost of operating and maintaining the Project. Proper accounting and reporting will be needed to ensure that overruns to main plant O&M will not be improperly recovered through reimbursable O&M for Incremental Production. IG should be highly motivated to maintain the plant well to maximize output and profitability. There are limited opportunities to modify the basis for this payment over the term of the Project; IFA should not experience increases in O&M cost beyond inflation effects unless gas customers have experienced savings and IG can demonstrate legitimate increases in costs, except for changes in government requirements.
3. IG provides a deposit of \$150 million (2008\$) at financial close as a reserve to adjust SNG sales prices to match lower gas market prices until gas prices rise above production costs. This reserve is not replenished; and IG ultimately recovers this amount from distribution of positive Market Differentials.
4. IG assumes the risk of project completion since payments from the Indiana gas consumers occur after start of operations based on actual SNG production.
5. IG assumes much of the risk of plant performance through a floor in the conversion efficiency used to calculate fuel costs. Allowing the plant to operate inefficiently below the floor (50%) set in the fuel pricing formula could result in IG recovering less than its actual fuel expenditures.

IFA and IG share key risks as follows:

1. IG provides a Consumer Protection Reserve Account (CPRA) deposit to reduce cost of Contract SNG to IFA when there is a negative Market Differential. If market gas prices fail to rise sufficiently to exceed SNG production costs, IG's \$150 million reserve could be depleted, which would result in a period where IFA is committed to purchase SNG at higher than market prices. Payments by IFA for SNG production costs above gas market prices can be recovered during future periods when distributions are available from positive Market Differential. Low gas prices reduce access to revenue from positive Market Differential and could delay IG's reimbursement for its \$150 million reserve. Reimbursement of IG's \$150 million CPRA deposit will initially reduce IFA's access to positive Market Differential for lowering consumer gas prices. Once IG's CPRA is reimbursed and market gas prices stay above SNG production costs, IFA should have access to half of the positive Market Differential to reduce consumer gas prices.
2. If SNG production costs increase substantially, the potential for positive Market Differential is correspondingly reduced. Significant increases in production cost can result from changes in law, increases in coal/petcoke prices, or a major reduction in plant conversion efficiency resulting in increased fuel consumption. IG provides caps on changes in certain parameters impacting costs,

and O&M costs are only subject to revision under certain conditions. IG has substantial incentive to manage the Project for efficient operations since its opportunity for profit is tied to distributions from Market Differential.

3. Fuel (petcoke and coal) prices incurred by IG are billed to IFA for the SNG Contract amount according to the fuel pricing formula which has a floor on Project conversion efficiency. IG is motivated to minimize fuel costs through purchasing lowest cost fuels and operating the Project efficiently to encourage positive Market Differential.
4. If IG defaults on its loan or otherwise abandons the Project, IFA has the right to attempt to continue operations with a new owner. If the plant is abandoned during or shortly after construction, the reserve provided by IG is large enough to cover demolition and site restoration. If the Project is abandoned or decommissioned later in its life, demolition and site restoration costs are intended to be covered by insurance.
5. In the event of a future change in government requirements causing addition of equipment resulting in new capital and O&M costs, IG can recover such costs as future adjustments to Contract Price with a cap of 13.5% above the Contract Price for capital, O&M, and fuel payments. Therefore, the risk of a future change in government requirements that could impact the cost of producing SNG is shared between IFA and IG.
6. If the cost to capture and sell CO₂ exceeds revenue associated with CO₂ sales other than a change in government requirements, IG can recover up to \$0.51/MMBtu (\$2008 dollars) as an adjustment to the Contract Price. Therefore, the risk of unexpected losses in selling CO₂ is shared as a reduction in Market Differential, but assumed totally by IG above this cap.
7. If CO₂ sales and/or byproduct sales fail to occur as projected, IFA and IG will obtain less income from the distribution of Incremental Production and subsequent positive Market Differentials.
8. Should a combination of unlikely factors (major reduction in SNG production, higher costs, and reduced revenue) heavily constrain IGs cash flow for an extended period, IG may have difficulty making loan payments and this could divert available positive Market Differential and result in operating decisions to defer maintenance investment, reduce staffing or otherwise improve short term cash flow. If such a situation occurs, this could undermine longer term plant performance and should be monitored closely so that significant deterioration in the condition of the Project is avoided.

4 Review of Project Cost and Performance

Table 4-1 provides a comparison of the Project design cost and performance to other gasification based projects for which information is available.

Dakota Gasification is currently the only operating coal gasification to SNG plant. It is an old plant and its design is significantly different than IG. Cost and performance information is not available for this plant and, if available, might not be directly relevant to IG because of the major differences in technology and design.

Consequently, IG costs were compared to other gasification based projects including integrated gasification combined cycle (IGCC) power plant projects for which cost information is available. Leucadia's Chicago Clean Energy (CCE) Project and Tenaska's Taylorville (Illinois) Energy Center (TEC) are the only coal gasification to SNG projects where information is available for comparison. Table 4-1 shows that, in terms of the quantity of coal/petcoke gasified, IG is the largest project, slightly larger than CCE and almost twice the size of the Duke Edwardsport IGCC Project in terms of fuel consumption rate.

Table 4-1: Comparison of IG to Other Coal Gasification Projects

Project	Indiana Gasification (Leucadia)	Chicago Clean Energy (Leucadia)	Edwardsport IGCC (Duke Power)	Kemper IGCC (Mississippi Power)	Taylorville Energy Center (Tenaska)
Scope	Coal/petcoke handling; ASU; gasification; CO ₂ recovery and compression; sulfuric acid recovery; argon and rare gases recovery; methanation; SNG compression; power from byproduct steam	Coal/petcoke handling; ASU; gasification; CO ₂ recovery and compression; sulfur recovery; argon and rare gases recovery; methanation; SNG compression; power from byproduct steam	Coal/petcoke handling; ASU; gasification, CO ₂ recovery and compression; sulfuric acid recovery; argon and rare gases recovery; methanation, SNG compression; combined cycle power plant	Mine-mouth plant; gasification; CO ₂ recovery and compression; ammonia recovery; inter-connecting pipelines and transmission; combined cycle power plant burns low Btu fuel gas (air-blown gasifier does not need ASU)	Coal handling; gasification; CO ₂ recovery and compression; sulfur recovery; methanation; SNG compression; large combined cycle plant burns SNG and natural gas (no ASU included, oxygen for gasifier is purchased)
Project Status	Pre-FEED	Pre-FEED	Engineering 100% Complete; Construction 60% Complete	Post FEED; procurement underway; site prep underway	Post FEED
Coal/PetCoke rate, MMBtu/hr	10,969 (85% Coal/15% PetCoke)	8,961 (50% Coal/50% Petcoke)	5,600	6,135	4,433
SNG Production MMBtu/hr	5,932	5,146	NA	NA	2,351
Project Capital Excl Financing	\$2.63 billion	\$2.63 billion	\$2.716 billion	\$2.6 billion	Approx. \$2 billion (note 1)
Gasifier Type	GE Quench	GE Quench	GE Radiant SGC	TRIG	Siemens
CO₂ Capture	YES	YES	NO	YES	YES

Project	Indiana Gasification (Leucadia)	Chicago Clean Energy (Leucadia)	Edwardsport IGCC (Duke Power)	Kemper IGCC (Mississippi Power)	Taylorville Energy Center (Tenaska)
Fuel to SNG Conversion	54.24% (note 3)	57.4% (note 3)	NA	NA	58.33%
Annual O&M excl Fuel, Taxes & Insurance	\$71.132 million or \$1.51/MMBtu of SNG	\$68.5 million or \$2/MMBtu of SNG	Not Available	\$43 million	Approximately \$48 million or \$2.56/MMBtu of SNG (note 2)
Facility Staff	212 (excluding coal/petcoke and slag handling)	203 (excluding coal/petcoke and slag handling)	110-120	Approx. 159 (excluding coal handling)	155

(Note 1) after coarse adjustments to eliminate the combined cycle power plant cost and to add the cost of an air separation unit (ASU) to make the Taylor Energy Center (TEC) Facility design comparable to the IG Project design; the actual TEC estimated cost (reference: TEC "Facility Cost Report" dated February 26, 2010) is roughly \$3.2 billion.

(Note 2) adjusted to eliminate the combined cycle power plant O&M; the TEC Project I/E Reviewer considered the actual \$67.3 million O&M estimate to be low and estimated it should be \$105 million, an increase of 56% (reference: "Review of the Taylorville Energy Center's Facility Cost Report" dated June 8, 2010).

(Note 3) IG fuel to SNG conversion efficiency used in financial projections takes into consideration operational impacts such as ambient temperature variations, partial load operation/load swings, catalyst aging, etc. Therefore, the conversion efficiency is lower than for Chicago Clean Energy (CCE) which is an instantaneous full load, new and clean efficiency of 58%. Also, CCE efficiency is based on 50% coal/50% petcoke feed, whereas IG is based on 85% coal/15% petcoke; more petcoke improves conversion efficiency.

4.1 Capital Cost

As noted in Table 4-1 the Project cannot be directly compared to other projects since the size and/or design are different. Also, current Project cost estimates are supported primarily by conceptual engineering which normally results in estimate accuracies on the order of +30-40%, pending completion of preliminary engineering. As more engineering and procurement work is completed through the Front End Engineering Design (FEED) preparation, other similar projects have reported increases in their capital budget. However, the IG Project is utilizing preliminary engineering from other Leucadia projects on portions of the Project that are similar and this could reduce the likelihood that capital costs will increase substantially. It is not the intent of this review to determine whether the current estimate for the Project is accurate or complete, but to establish at a high level that it is consistent with other projects and that it is not overstated to support an unfair basis for reimbursement of capital in agreements with IFA. Based on this high level review, the Project capital cost information provided for review appears to be slightly lower than other similar projects when making rough adjustments for scope and size. This comparison suggests that the magnitude of the Project capital cost estimate is not excessive for this size and design based on other projects.

The SNG contract price capital component of \$3.50/MMBtu is based not only on the Project capital cost estimate, but also on plant availability assumptions and capital recovery assumptions. A simple analysis of capital recovery using the \$3.50/MMBtu payment indicates that even with high plant availability and output, IG is not likely to obtain a high return on its equity portion of the capital investment unless it obtains substantial benefit from the distribution of Market Differential. Removing the CO₂ compression

and argon capital, which are covered by different capital payments, yields a capital cost of about \$2.7 billion. Assuming the contract production of 38,000 MMBtu/year SNG is achieved (since the plant is projected to produce over 47,000 MMBtu/year SNG), the \$3.50/MMBtu capital component provides a capital recovery of about \$133 million/year resulting in a capital recovery rate of under 5% per year. Given the debt financing assumptions in the model, this capital recovery rate indicates a very low return on equity.

Therefore, this review indicates that the \$3.50/MMBtu capital cost payment for Contract SNG is not excessive and that IG will have to design and operate the project effectively in order to secure an attractive return from distribution of Market Differential. IG is responsible for any increase in capital cost and therefore will be highly motivated to manage implementation to achieve cost targets and to complete a quality Project.

4.2 O&M Cost

Although it is difficult to compare O&M budgets between projects with different designs and coal gasification capacities, a rough comparison indicates that the O&M cost estimate is generally consistent with other projects. The total non-fuel O&M excluding financing costs and overhead is about \$1.70/MMBtu of SNG for an annual production capacity of 47.2 BCF of SNG. The \$1.88/MMBtu (in 2008\$ escalated over the term of the Project) O&M charge for the IFA 38 BCF/yr of SNG includes fixed costs for the full output and variable costs for the contract production amount. The O&M budget is derived by IG based on experience with similar operating gasifiers. The high maintenance nature of the Project, driven by the use of solid feed gasification and extensive solids material handling, will require highly competent O&M planning and management and adequate budgets to support reliable plant operation. If the plant is not maintained to support high availability, as projected, IG assumes most of that risk through its reliance on revenue from distribution of positive Market Differential to achieve profit.

4.3 Fuel to SNG Conversion Efficiency

Fuel will be billed to IFA based on actual expenditures for fuel, times a fixed fraction to separate fuel use for power production, and divided by actual coal conversion efficiency. Therefore, the efficiency has a first order effect on the cost of SNG. For example, if fuel is purchased for \$1.50/MMBtu fuel, the cost of fuel billed for SNG production approaches \$3/MMBtu. It is not critical to accurately predict an average conversion efficiency since actual conversion efficiencies will be used for billing IFA for fuel cost for the Contract SNG. However, comparison with other projects and review of performance calculations provided by IG suggest that the Project is likely to achieve a conversion efficiency better than 50%, which is set as the contract minimum. IG bears the risks associated with operating at efficiencies below 50%, which could result in IG not recovering the full cost of fuel for the Project.

5 Outlook for Long Term Savings

The commercial basis for the Project is to provide a long term, stable price of gas which will serve as a hedge against volatile, unpredictable gas prices. Although the US Energy Information Administration (EIA) projections suggest a modest increase in the price of gas in the US, there are many indications that future gas prices will rise based on several factors, such as the progressive development of more expensive sources and moves in the energy market toward the use of gas as the fuel of choice versus tightening environmental regulations including future limits on CO₂ emissions. Implementation of the Project, and others like it, are intended to limit the growth of gas prices regionally by providing a competing source and by easing long distance transportation constraints. Although this review is not intended to address gas price predictions, it is important to consider some of the fundamental market forces which are expected to provide major benefits to Indiana consumers in the long term.

As an illustration of how the gas price is projected to evolve over the life of the plant, the components of the gas price that consumers will pay is broken down and shown as snapshots for the early, middle, and end periods of the Purchase and Sale Agreement (for the reference case in the financial model). Figure 5-1 shows the breakdown for 2017 (the first full production year), for 2030, and for 2044 (the final year of the contract).

Figure 5-1: Consumer Gas Price Breakdown

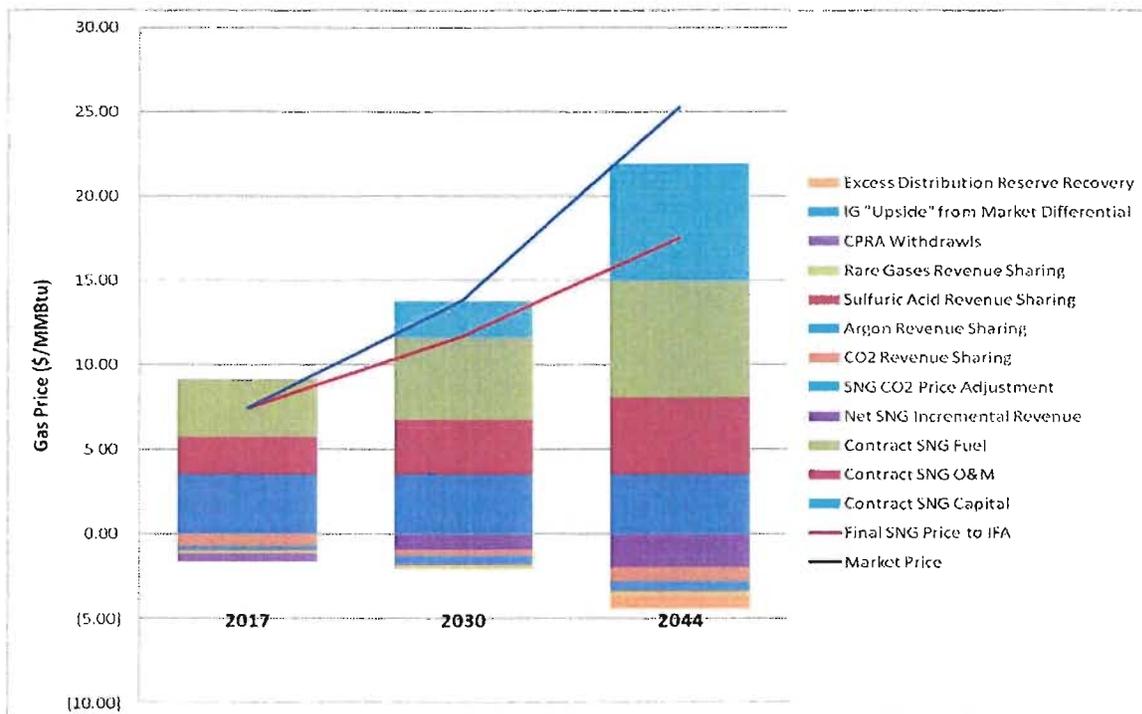


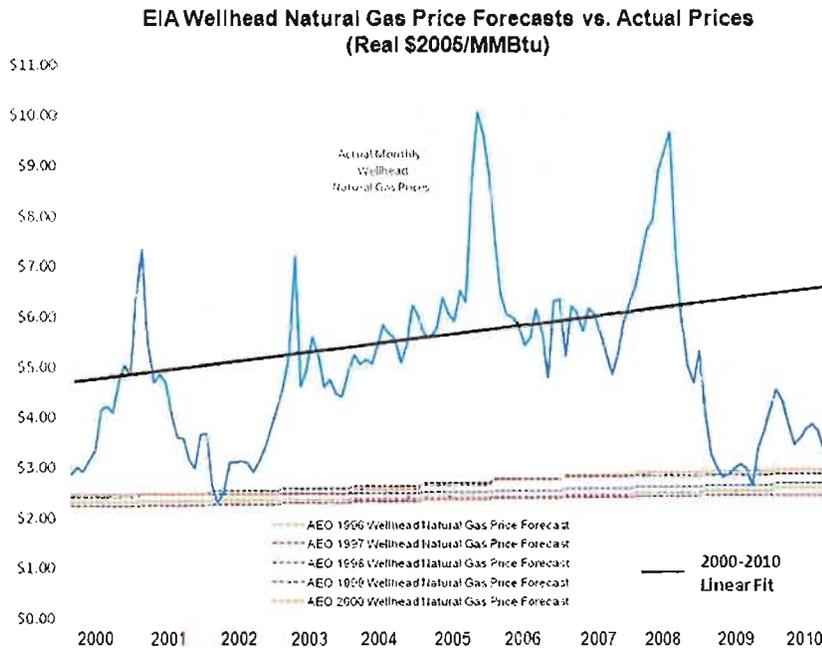
Figure 5-1, representing base case assumptions in the IG financial projections, shows that the capital component makes up a progressively smaller portion of the SNG price over the life of the Project, remaining constant while the other cost components increase. Indiana gas consumer savings are the difference between the adjusted production price and market price lines. The CO₂ revenue sharing is projected to significantly reduce the SNG price in the early years of the contract. The base case model projects that the natural gas prices will increase significantly in the longer term and thus the savings and the associated IG distributions from positive Market Differential are projected to become more significant in the later years. Gas price projections are based on the 2010 Annual Energy Outlook published by EIA. Annual Energy Outlook 2011 early release fuel price projections issued by EIA suggest lower future gas prices than represented in this version of the financial projections.

IFA prepared a sensitivity analysis which evaluates the historic volatility of natural gas and coal prices in the US to determine the sensitivity ranges on future natural gas and coal price projections. EIA price projections are used in the Project financial projections as a basis for future natural gas and coal pricing. IFA then estimates the likelihood of higher and lower future gas prices by applying the calculated statistical deviation to the projected EIA pricing.

Using EIA price projections as the base case assumes that the accuracy of the EIA price projections will fall within the envelope of historical volatility (~95% confidence level for a sensitivity range of two standard deviations). The impact of future natural gas and coal price projections is impacted more by the average trend than the volatility, because over the life of the Project the volatility around the average trend on the high side will theoretically offset the volatility around the average trend on the low side.

EIA price projections for natural gas have historically been lower than actual prices as seen in Figure 5-2. A ten year trend line is included for reference. One possible reason for EIA price projections to be lower than gas market prices is that EIA uses the natural gas futures pricing as inputs into their analysis. Natural gas futures pricing is likely to be impacted by risks perceived by investors that some planned production and pipeline projects may not proceed; therefore, the futures market reflects pricing that is lower than expectations regarding long term future market prices that do not consider near term project risks.

Figure 5-2: Actual Market Gas Prices versus EIA Projections



This chart includes the 1996-2000 EIA projections for the 2000-2010 period, the actual prices during 2000-2010 period, and the linear fit of historical prices during the 2000-2010 period. The 1996-2000 EIA projections were \$2.50-\$3.50/MMBtu (in 2005\$) less than the actual average price trend during the 2000-2010 period.

In conclusion, historical performance of the EIA natural gas price projections indicates a higher likelihood that future natural gas prices will be above the EIA projections than below the EIA projections. Therefore, IFA’s determination of high and low sensitivities for gas pricing based on historical volatility applied to EIA projections should be conservatively low. Projecting natural gas pricing can be done in a number of ways using a wide variety of assumptions. IFA’s statistical analysis of volatility provides a lower expectation of gas pricing than an extrapolation of the trend shown in Figure 5-2.

6 Conclusions and Recommendations

The following conclusions and recommendations are based on the review of information provided by IFA and IG.

6.1 Project Design and Implementation

1. Although no coal gasification to SNG plants have been built to date using the design proposed by IG, the Project uses commercial technologies licensed by GE, Lurgi, and Haldor Topsoe, which have considerable successful experience.
2. Although the Project is at an early stage of design, IG has assembled a competent, qualified implementation team. IG assumes the risk of project completion since payments from the Indiana gas consumers occur after start of operations. IG intends to set up a construction joint venture company supported by Leucadia to provide an EPC agreement that will assume substantial cost, schedule and completion risks.
3. A FEED package will be required to document in detail how the Project equipment and systems are sized to achieve the projected Incremental Production. IG intends to establish design margins that will achieve expected SNG production of 47.2 million MMBtu/year. IG must formalize such margins in its development of a FEED package that will allow the plant to produce 47.2 million MMBtu/year of SNG considering the expected plant operating availability and degradation from new and clean performance.
4. The preliminary Project completion schedule, targeting commercial operations by 2015, should be achievable with an effective implementation plan and team. Given the expectation that gas market prices may be low during early years of the Project, delays in completion and commercial operations should not introduce a significant negative impact on Indiana gas consumers.

6.2 Costs

1. Based on a high level comparison of capital cost estimates to other gasification based projects, the plant capital cost estimate does not appear excessive. Detailed review by others of the Project by DOE for its Loan Guarantee arrangements is expected to provide extensive due diligence and oversight promoting effective measures to implement the Project effectively and to minimize the risk that the Project is not completed due to cost overruns.
2. Capital recovery by IG and profitability of the Project will rely on effective management of operations and maintenance, high plant availability and revenue from distribution of positive Market Differential.
3. The O&M cost estimate is reasonable based on a high level comparison with other projects. The total non-fuel O&M excluding financing costs and overhead is about \$1.70/MMBtu of SNG for an annual production capacity of 47.2 BCF of SNG. The \$1.88/MMBtu O&M charge for the IFA 38 BCF/yr of SNG is reasonable considering fixed O&M for the entire Project is assigned to Contract SNG production and considering the O&M risk taken by IG. The O&M budget is based on experience with similar operating gasifiers. The high maintenance nature of the Project will

require highly competent O&M planning and management and adequate budgets in order to support reliable plant operation. If the plant is not maintained to support high availability, as projected, IG assumes most of that risk through its reliance on distribution of positive Market Differential to achieve profit.

4. Effective supply of coal and petcoke to the Project represents a major influence on potential savings for Indiana gas consumers and for IG profitability. Although IG has demonstrated access to extensive coal and petcoke resources, no pricing commitments have been obtained from suppliers or transportation providers raising concerns that fuel cost projections may be optimistic. IG passes the cost of coal for Contract SNG through to IFA, but is motivated to achieve cost effective fuel supply arrangements to achieve consumer gas savings, allow recovery of its \$150 million reserve, and to achieve distributions of positive Market Differential.
5. Indiana gas consumers currently face a significant risk that future gas prices will rise substantially as demand for gas increases as the fuel of choice to achieve environmental goals. Since the Project seeks to mitigate this risk, uncertainty in future market gas prices will impact whether projected savings to the Indiana gas consumers are achieved and whether the investment in the Project by IG becomes profitable. IG partially mitigates the risk to Indiana consumers by providing a \$150 million reserve to reduce initial SNG costs to natural gas market levels. Once this fund is exhausted, Indiana consumers are vulnerable to the possibility of a period of extended low natural gas pricing which could reduce the potential for consumer gas savings through the contract period. Without rising gas prices, IG will not receive distributions of positive Market Differential in order to achieve profitability.
6. IG will receive reimbursement for fuel costs based on actual conversion efficiencies, with a floor of 50%. IG will be highly motivated to maximize production capacity and to minimize production costs in order to secure revenue from distribution of positive Market Differential, and recovery of its \$150 million security payment. The determination of actual efficiency in setting fuel payments should be monitored to ensure that this process is clear and accurate.
7. Project performance is dependent on effective plant staffing and O&M planning. The design for the Project is maintenance intensive and requires considerable expertise. Project O&M planning, key staff assignments and budgeting will be very important in achieving performance targets.

6.3 SNG Purchase and Sales Agreement

1. The SNG Purchase and Sales Agreement provides a very detailed commercial structure for distributing risks between participants and for sharing upsides when market gas prices rise. The terms of this agreement will create risks and opportunities based on agreed formulas and relationships that will rely on effective accounting and reporting. Embedded complexities could result in unforeseen accounting problems and disputes if not fully vetted in advance of plant operations.
2. Partitioning Project O&M budgets into various fixed price and reimbursable components, with limited opportunities for adjustment, will require clear scope definition and accounting oversight in order to avoid unintended assignment and recovery of related costs. Formalization of annual

O&M plans and budgets is recommended to provide clarity and to support the opportunity to understand and adjust budgets as provided in the agreement.

3. IG is highly motivated toward cost effective fuel procurement based on the need to obtain revenue from the distribution of positive Market Differential. The process of fuel procurement by IG needs to be tracked to ensure that fuel purchasing decisions are consistent with the interests of the Indiana gas consumer, given relationships between fuel quality, performance and operating costs that are not fully characterized in the agreement.

6.4 Potential for Long Term Savings

1. Financial modeling using reasonable assumptions and projections indicates that the Indiana gas consumer should experience long term savings in gas prices. Fundamentals of US energy markets and tightening environmental regulation support expectations that demand for gas and pressure on gas prices will continue to grow over time.
2. The time frame in which SNG production costs are exceeded by market gas prices is uncertain, and may limit the opportunity of IG to achieve profitability given limited payments to support capital recovery for contract SNG and its reliance on Incremental Production revenues which may be limited in the early years of the Project. The consumer reserve fund of \$150 million will initially cover differences between the gas market price and SNG production costs but needs to be paid back from subsequent revenue from Incremental Production.
3. The economics of producing Incremental SNG may be constrained for very low gas prices, and dispatch of the plant during early years of low gas price may consider whether Incremental SNG output will cover costs.
4. Projected consumer gas savings are also sensitive to fuel cost, ability to achieve byproduct revenue and the risk of CO₂ sales revenue are replaced by net costs.
5. The final execution of the CO₂ sales agreement requires a regional CO₂ pipeline configuration which is economically feasible.