



UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

In the Matter of

Puget Sound Energy, Inc.

FE Docket No. **11-119-NG**

APPLICATION OF PUGET SOUND  
ENERGY, INC. FOR LONG-TERM  
AUTHORIZATION TO IMPORT AND  
EXPORT NATURAL GAS FROM AND  
TO CANADA

Pursuant to Section 3 of the Natural Gas Act of 1938 (15 U.S.C. §717b), DOE Delegation Order Nos. 0204-111 and 2404-127, and the Regulations of the Department of Energy set forth in 10 C.F.R. Part 590, Puget Sound Energy, Inc. ("PSE") hereby applies to the United States Department of Energy ("DOE") for a Long-Term Authorization to Import and Export Natural Gas to and from Canada.<sup>1</sup> PSE requests authorization to import and export a combined total of up to 10,000 MMBTU units of natural gas per day term beginning on November 1, 2011 and ending on October 31, 2015. Currently, these Canadian gas supplies are reported under PSE's existing Blanket Authorization DOE/FE Order No. 2729.

In support of this request, PSE shows the following:

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<sup>1</sup> PSE's Application for Blanket Authorization to Import Natural Gas from Canada in FE Docket No. 09-123-NG was granted on November 19, 2009.

## **I GENERAL**

The names, titles and mailing addresses of the persons to whom correspondence and communications in regard to this application are to be addressed are:

Puget Sound Energy, Inc.  
Attn: Robert E. Neate  
Assistant General Counsel  
P.O. Box 97034  
Bellevue, WA 98009-9734  
telephone: (425) 456-2444

Puget Sound Energy, Inc.  
Attn: Clay Riding, Director  
Natural Gas Resources  
P.O. Box 97034  
Bellevue, WA 98009-9734  
telephone: (425) 462-3179

## **II BACKGROUND**

The exact legal name of the applicant is Puget Sound Energy, Inc. Puget Sound Energy, Inc., ("PSE") is a corporation organized and existing under the laws of the State of Washington and is a subsidiary of Puget Energy, Inc. PSE is a public service company furnishing electric and natural gas service within a 6,000 square mile territory, principally in the Puget Sound region of western Washington. As of December 31, 2010, PSE provided electric service to 1,080,692 electric customers and 753,636 natural gas customers. PSE transports firm supply natural gas for its distribution operations on Northwest Pipeline Corporation ("Northwest"). PSE also receives significant quantities of firm storage service from Northwest.

## **III AUTHORIZATION REQUESTED**

Utilizing the Blanket Authorization issued in DOE/FE Order No. 2729, issued in FE Docket No. 00-123-NG (and previous Blanket Authorizations), PSE has purchased and imported interruptible short-term supplies of Canadian gas at the U.S.-Canadian border since 1991 and has exported short-term supplies of natural gas since 2002. PSE desires to continue

the authority to export natural gas to Canada because of enhanced storage and market opportunities to meet its business needs. Historically PSE has reported its transactions under this contract as part of its blanket authorizations.

PSE will report purchases and sales under this contract effective the first of the month following the approval thereof by the Department of Energy. The price for each import and export transaction will be established in the contract and/or determined by prevailing competitive market prices. Any imports and exports under the requested authorization will utilize existing pipeline capacity to receive the gas at the point of importation, to deliver the gas to the point of exportation and to deliver gas supplies to PSE's markets; no new construction will be required to receive the gas at or deliver the gas to the border or to deliver the gas to PSE or, for its account, to others.

The Commission's policies and directives in restructuring the natural gas industry create a nationwide natural gas market, composed of many suppliers and purchasers operating in an openly competitive environment. Accordingly, PSE can engage in natural gas marketing activities beyond its existing distribution territories. Therefore, if the opportunity exists, PSE intends to use its Long-Term Authorization to purchase and import and sell and export gas for its own account as well as for the account of its Canadian or U.S. suppliers and its Canadian or U.S. purchasers. The subject application is similar to other blanket import and export arrangements approved by DOE.

#### **IV PUBLIC INTEREST**

The Energy Policy Act provides that the importation and exportation of natural gas from or to a nation with which there is in effect a free trade agreement shall be deemed to be within the public interest, and that applications for such importation and exportation shall be



granted without modification or delay. Because PSE's application is for the importation and exportation of natural gas from and to Canada, a nation with which the United States has a free trade agreement, PSE submits that its Application is within the public interest.

## V ENVIRONMENTAL IMPACT

No new facilities will be constructed in the United States for the proposed importation and exportation of natural gas. Consequently, granting this Application will not be a federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act, 42 U.S.C. § 4321, et seq. Therefore, an environmental impact statement or environmental assessment is not required.

## VI REPORTING REQUIREMENTS

PSE agrees to file quarterly reports of its import and export activities pursuant to the extension of Authorization requested in this Application.

WHEREFORE, in consideration of the foregoing premises, Puget Sound Energy, Inc. respectfully requests:

1. That the Assistant Secretary for Fossil Energy or his delegate find that the issuance of a Long-Term Authorization as requested in this Application to Import and Export Natural Gas from and to Canada pursuant to Section 3 of the Natural Gas Act is not inconsistent with the public interest;
2. That PSE be authorized to import a total quantity of 10,000 MMBTU units per day of natural gas from and to Canada; and

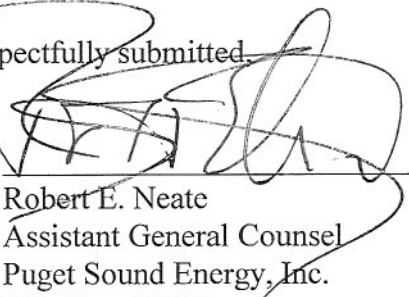


3. That such other and further authority be granted to Puget Sound Energy, Inc. as may be necessary to authorize importation and exportation of natural gas from and to Canada as proposed in this application.

DATED: September 1, 2011.

Respectfully submitted,

By



Robert E. Neate  
Assistant General Counsel  
Puget Sound Energy, Inc.  
P.O. Box 97034  
Bellevue, WA 98009-9734

# Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date January 22, 2010.

The parties to this Base Contract are the following:

<b>PARTY A</b> IGI Resources, Inc.	<b>PARTY NAME</b>	<b>PARTY B</b> Puget Sound Energy, Inc.
PO Box 6488 Boise, ID 83707-6488	ADDRESS	10885 NE 4 <sup>th</sup> St., Bellevue, WA 98004-5591
<a href="http://www.igires.com">www.igires.com</a>	BUSINESS WEBSITE	<a href="http://www.pse.com">www.pse.com</a>
2700836	CONTRACT NUMBER	
19-429-0953	D-U-N-S® NUMBER	00794-2113
<input checked="" type="checkbox"/> US FEDERAL: 82-0401137 <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: 91-037-4630 <input type="checkbox"/> OTHER:
Idaho	JURISDICTION OF ORGANIZATION	Washington
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
	GUARANTOR (IF APPLICABLE)	
<b>CONTACT INFORMATION</b>		
PO Box 6488 Boise, ID 83707-6488 ATTN: <u>Ralph Epling</u> TEL#: 425-576-1266 FAX#: 425-576-9125 EMAIL: <a href="mailto:ralph.epling@bp.com">ralph.epling@bp.com</a>	• COMMERCIAL	10885 NE 4 <sup>th</sup> St., PSE-04S; Bellevue, WA 98004-5591 ATTN: <u>Clay Riding</u> TEL#: 425-462-3179 FAX#: 425-456-2481 EMAIL: <a href="mailto:clay.riding@pse.com">clay.riding@pse.com</a>
415 W 6 <sup>th</sup> St Ste 501, Vancouver, WA 98660 ATTN: <u>Customer Service Department</u> TEL#: 360-693-8220 FAX#: 360-693-8230 EMAIL: _____	• SCHEDULING	10885 NE 4 <sup>th</sup> St., PSE-11N; Bellevue, WA 98004-5591 ATTN: <u>Mark Hammer</u> TEL#: 425-462-3509 FAX#: 425-462-3836 EMAIL: <a href="mailto:mark.hammer@pse.com">mark.hammer@pse.com</a>
PO Box 6488 Boise, ID 83707-6488 ATTN: <u>Natural Gas Marketing – Contract Administration</u> TEL#: 208-395-0500 FAX#: 208-395-0530 EMAIL: <a href="mailto:valerie.charles@bp.com">valerie.charles@bp.com</a>	• CONTRACT AND LEGAL NOTICES	10885 NE 4 <sup>th</sup> St., 04S; Bellevue, WA 98004-5591 ATTN: <u>Natural Gas Resources – Contract Administration</u> TEL#: 425-462-3137 FAX#: 425-456-2481 EMAIL: <a href="mailto:michele.kvam@pse.com">michele.kvam@pse.com</a>
PO Box 6488 Boise, ID 83707-6488 ATTN: <u>Natural Gas Marketing - Credit</u> TEL#: 208-395-0500 FAX#: 208-395-0530 EMAIL: <a href="mailto:karl.wagner@bp.com">karl.wagner@bp.com</a>	• CREDIT	10885 NE 4 <sup>th</sup> St., PSE-11S; Bellevue, WA 98004-5591 ATTN: <u>Energy Risk Control and Credit</u> TEL#: 425-462-3396 FAX#: 425-462-3280 EMAIL: <a href="mailto:christopher.janak@pse.com">christopher.janak@pse.com</a>
PO Box 6488 Boise, ID 83707-6488 ATTN: <u>Natural Gas Marketing - Confirmations</u> TEL#: 208-395-0500 FAX#: 208-395-0536 EMAIL: _____	• TRANSACTION CONFIRMATIONS	10885 NE 4 <sup>th</sup> St., PSE-11N; Bellevue, WA 98004-5591 ATTN: <u>Natural Gas Confirmations</u> TEL#: 425-462-3220 FAX#: 425-462-3280 EMAIL: <a href="mailto:melanie.fricke@pse.com">melanie.fricke@pse.com</a>
<b>ACCOUNTING INFORMATION</b>		
PO Box 6488 Boise, ID 83707-6488 ATTN: <u>Natural Gas Marketing - Accounting</u> TEL#: 208-395-0500 FAX#: 208-395-0536 EMAIL: _____	• INVOICES • PAYMENTS • SETTLEMENTS	PO Box 97034, PSE-11S; Bellevue, WA 98009-9734 ATTN: <u>Accounts Payable-Gene Barrett or Tannie Hwang</u> TEL#: 425-462-3320 or 425-462-3215 FAX#: 425-462-3175 EMAIL: <a href="mailto:gene.barrett@pse.com">gene.barrett@pse.com</a>
BANK: <u>Citibank Canada ON</u> ABA: 026000082 ACCT: 2013931007 OTHER DETAILS: <u>For the Account of IGI Resources, Inc.</u>	WIRE TRANSFER NUMBERS CDN	BANK: <u>KeyBank National Association</u> ABA: 125000574 ACCT: 479681024630 OTHER DETAILS: <u>OB1:Please notify PSE's Treasury Department (425-462-3257) of the transfer date</u>
BANK: <u>JP Morgan Chase Bank, New York, NY</u> ABA: 021000021 ACCT: 323363075 OTHER DETAILS: <u>For the Account of IGI Resources, Inc.</u>	ACH NUMBERS US	BANK: <u>KeyBank National Association</u> ABA: 125000574 ACCT: 479681024630 OTHER DETAILS: <u>OB1:Please notify PSE's Treasury Department (425-462-3257) of the transfer date</u>
ATTN: <u>Bank of America-c/o Remittance Services Lockbox 12124</u> ADDRESS: <u>12124 Collections Center Drive Chicago, IL 60693</u>	CHECKS (IF APPLICABLE)	ATTN: <u>Accounts Receivable</u> ADDRESS: <u>PO Box 97034, Bellevue, WA 98009-9734</u>



# Base Contract for Sale and Purchase of Natural Gas

(Continued)

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select the appropriate box(es) from each section:

<b>Section 1.2</b> Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default <input checked="" type="checkbox"/> No Additional Events of Default (default) <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____
<b>Section 2.7</b> Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> 5 Business Days after receipt	<b>Section 10.3.1</b> Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Section 2.8</b> Confirming Party <input type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> <u>IGI Resources, Inc.</u>	
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.2</b> Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input type="checkbox"/> Bilateral (default) <input checked="" type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>	
<b>Section 2.31</b> Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____	<b>Section 15.5</b> Choice Of Law <u>New York</u>
<b>Section 6</b> Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	
<b>Section 7.2</b> Payment Date <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) OR <input type="checkbox"/> 20 <sup>th</sup> Day of Month following Month of delivery	<b>Section 15.10</b> Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.2</b> Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) CDN <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) US <input type="checkbox"/> Check	
<b>Section 7.7</b> Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply	
<input checked="" type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: (9) <b>Addendum(s):</b> _____	

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

<b>IGI RESOURCES, INC.</b>	<b>PARTY NAME</b>	<b>PUGET SOUND ENERGY, INC.</b>
By:	<b>SIGNATURE</b>	By:
Stephen S. McCandlish	<b>PRINTED NAME</b>	<b>CLAY RIDING</b>
Vice President	<b>TITLE</b>	<b>DIRECTOR</b>



# General Terms and Conditions

## Base Contract for Sale and Purchase of Natural Gas

### SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

**The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.**

#### **Oral Transaction Procedure:**

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

#### **Written Transaction Procedure:**

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

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

### SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "Additional Event of Default" shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.

2.2. "Affiliate" shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.



- 2.3. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.
- 2.4. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.
- 2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.13. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.18. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.23. "Indebtedness Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.



- 2.24. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.27. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.28. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.
- 2.31. "Spot Price" as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.
- 2.32. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.
- 2.33. "Transactional Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.
- 2.34. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.
- 2.35. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

### SECTION 3. PERFORMANCE OBLIGATION

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

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

#### **Cover Standard:**

- 3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.



#### **Spot Price Standard:**

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

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

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

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

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

### **SECTION 5. QUALITY AND MEASUREMENT**

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

### **SECTION 6. TAXES**

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

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

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

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

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

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

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



7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed without undue delay. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 8. TITLE, WARRANTY, AND INDEMNITY

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

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

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

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

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

## SECTION 9. NOTICES

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

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

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is



not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

9.4. The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

## SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or guaranty. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor shall: (i) make an assignment or any general 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 or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; or ix) be the affected party with respect to any Additional Event of Default; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

**The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.**

### **Early Termination Damages Apply:**

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and



Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

**Early Termination Damages Do Not Apply:**

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

**The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.**

**Other Agreement Setoffs Apply:**

**Bilateral Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

**Triangular Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option, and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff (i) any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; (ii) any Net Settlement Amount against any amount(s) (including any excess cash margin or excess cash collateral) owed by or to a party under any other agreement or arrangement between the parties; (iii) any Net Settlement Amount owed to the Non-Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Non-Defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement; (iv) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party to the Non-Defaulting Party or its Affiliates under any other agreement or arrangement; and/or (v) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party or its Affiliates to the Non-Defaulting Party under any other agreement or arrangement.

**Other Agreement Setoffs Do Not Apply:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.



10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

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

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

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

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

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

## SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

## SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, 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, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.



## SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

## SECTION 15. MISCELLANEOUS

15.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

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

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

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

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

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

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

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

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

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency's reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure,



and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties

15.12. Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings 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 the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

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



TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

EXHIBIT A

Letterhead/Logo	Date: _____ Transaction Confirmation #: _____			
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.				
<b>SELLER:</b> _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	<b>BUYER:</b> _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____			
Contract Price: \$ ____/MMBtu or _____				
Delivery Period: Begin: _____, _____ End: _____, _____				
<b>Performance Obligation and Contract Quantity: (Select One)</b>  <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;"> <b>Firm (Fixed Quantity):</b>            _____ MMBtus/day            • EFP         </td> <td style="width: 33%; vertical-align: top;"> <b>Firm (Variable Quantity):</b>            _____ MMBtus/day Minimum            _____ MMBtus/day Maximum            subject to Section 4.2. at election of            • Buyer or • Seller         </td> <td style="width: 33%; vertical-align: top;"> <b>Interruptible:</b>            Up to _____ MMBtus/day         </td> </tr> </table>		<b>Firm (Fixed Quantity):</b> _____ MMBtus/day • EFP	<b>Firm (Variable Quantity):</b> _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of • Buyer or • Seller	<b>Interruptible:</b> Up to _____ MMBtus/day
<b>Firm (Fixed Quantity):</b> _____ MMBtus/day • EFP	<b>Firm (Variable Quantity):</b> _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of • Buyer or • Seller	<b>Interruptible:</b> Up to _____ MMBtus/day		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			



# PUGET SOUND ENERGY GAS TRADING DEAL SHEET

Deal No. **RCR0040**

**P-IGI-0128**

- ☒ Core Gas  
☐ Core Power  
☐ Med Term Power  
☐ Other \_\_\_\_\_
- ☐ Cash Flow Hedge  
☐ NP/NS  
☒ Mark to Market Accounting  
☐ Other \_\_\_\_\_

PSE Trader **RCR** Date **9/29/2010**

Counterparty Trader **EPLING**

Counterparty Co. **EGE RESOURCES**

Purchase ☒ Sale ☐

Other \_\_\_\_\_

Volume **10,000 MWh/d** Price **CGPR AECO 7A INDEX - \$0.05/MWh**

Location **Station #2** Term **NOV 2011 - OCT 2015**

Up / Downstream \_\_\_\_\_ Transport \_\_\_\_\_

Counterparty Info (if new)	
Acct Contact	
name	phone
Contracts	
name	phone
FAX Number	

Comments: **Tracker #55**

**An annual product was purchased but the gas book will sell various months to the power book at market quoted prices.**

**A Long term Supply Strategy, approved by ENE (02-12-2009) vLe**





IGI Resources, Inc.

Revision 1

10/06/2010

## Buyer:

Attn: Confirmation Dept  
Puget Sound Energy, Inc.  
Fax #: (425) 462-3280

## Seller:

Rep: Ralph Epling  
IGI Resources, Inc.  
701 Morrison-Knudsen Dr., #300  
P.O. Box 6488  
Boise, ID, 83707-6488

Trade Date: 09/28/2010

Transaction Confirmation #: 6772492

BP Internal Contract ID #: 2700836

BP (Nucleus) ID: 5420584

## Physical Gas Transaction Confirmation For Immediate Delivery

Trade date: 09/28/2010		Start date: 11/01/2011		End date: 10/31/2015	
Invoice Currency: US\$		Invoice UoM: MMBTU		Deal type: Firm Fixed Quantity	
Broker:					
Delivery Point	Pipeline	Start	End	Qty Totals by Delivery Point MMBTU/Day	Price: US\$/MMBTU
Station 2	Westcoast Energy Inc.	11/01/2011	10/31/2015	10,000	CGPR - AECO-C Monthly Index US\$ - 0.05

This Transaction Confirmation confirms the terms of the transaction between the parties and is subject to the terms and conditions of the Base Contract dated 01/22/2010. If the Terms contained in this TRANSACTION CONFIRMATION are contrary to your understanding of the agreement, please notify IGI in writing by the close of the second (2nd) Business Day following receipt. Failure to notify IGI of any such contract discrepancy by such time constitutes your acceptance of the transaction as described above.

IGI Resources, Inc.

Puget Sound Energy, Inc.

By: Ralph EplingDate: 10/06/2010By: Date: 10/7/10



SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF THE  
BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS

Dated January 22, 2010

by and between

IGI Resources, Inc. ("IGI")

And

Puget Sound Energy, Inc. ("Counterparty")

Collectively IGI and the Counterparty shall be referred to as the "Parties", and individually may be referred to as a "Party".

**Section 1. Purpose & Procedures**

Add the phrase "or other electronic means of communication" after "conversation" and before "with" in the second line of Section 1.2.

Delete Section 1.3, and replace with the following:

"1.3 If a sending Party's Transaction Confirmation is materially different from the receiving Party's understanding of the agreement referred to in Section 1.2, such receiving Party shall notify the sending Party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving Party has previously sent a Transaction Confirmation to the sending Party. The failure of the receiving Party to so notify the sending Party in writing by the Confirm Deadline constitutes the receiving Party's agreement to the terms of the transaction described in the sending Party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, or if the receiving Party has timely objected to the terms of the sending Party's Transaction Confirmation, the Parties shall rely on a Recorded Agreement (as hereafter defined) to ascertain the commercial terms agreed upon. A "Recorded Agreement" means an electronic record or a recording of the telephone conversation that provides a clear and specific and, in the case of a telephone conversation, audible, record of the Parties' agreement as to commercial terms. If either Party, acting in good faith, is able to produce a Recorded Agreement, or if both Parties, acting in good faith, are able to produce Recorded Agreements with consistent commercial terms, the transaction remains valid and the Parties remain legally bound thereby. If the Parties, acting in good faith, are unable to produce a Recorded Agreement or otherwise resolve their differences, such transaction shall not be valid or binding. In the event the transaction remains valid and binding pursuant to this Section 1.3, the Parties shall in good faith attempt to resolve any other material differences that may exist. Once such material differences are resolved (whether as to commercial terms or otherwise), the Confirming Party shall transmit a written Transaction Confirmation to the other Party, and such Transaction Confirmation shall be accepted (or disputed) pursuant to the provisions of this Section 1.3. The provisions of this Section 1.3 may be repeated as many times as necessary to produce a written Transaction Confirmation that is accepted or deemed accepted by the receiving Party. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the Parties (which may be evidenced by a recording of such transaction), where the Parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the items shall govern in the priority listed in this sentence."

**Section 2. Definitions**

The following terms shall be added within Section 2 with all sections thereunder being renumbered accordingly:

"CGPR" shall mean that certain publication known as the Canadian Gas Price Reporter, which is published by Canadian Enerdata Ltd, or its successor-in-interest.

"Cash" or "cash" shall mean lawful currency of Canada or the United States of America, as the case may be.

"GJ" shall mean 1 gigajoule; 1 gigajoule = 1,000,000,000 Joules. The standard conversion factor between dekatherms and GJ's is 1.055056 GJ's per dekatherm.

"Joule" shall mean the joule specified in the SI system of units.

"Termination Currency" shall mean the United States Dollar.

"Termination Currency Equivalent" shall mean, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency that would be required to be paid, on the Early Termination Date, to purchase such amount of Other Currency for spot delivery, as determined by the Non-Defaulting Party in a commercially reasonable manner."

Section 2.3 shall be deleted in its entirety and replaced with the following:

""Alternative Damages" shall mean such damages, expressed in United States dollars or United States dollars per MMBtu, or Canadian Dollars or Canadian Dollars per GJ, as the Parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer."

Section 2.10 shall be deleted in its entirety and replaced with the following:

""Contract Price" shall mean, either (i) the amount expressed in U.S. Dollars per MMBtu, or (ii) the amount expressed in Canadian Dollars per GJ, as specified for the transaction, to be paid by Buyer to Seller for the purchase of Gas."

Section 2.13 shall be deleted in its entirety and replaced with the following:

""Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a Party to this Contract in the form of an irrevocable standby letter of credit, a guaranty, cash collateral, and/or a prepayment."

Definition of "Spot Price" in Section 2.31 shall be amended by deleting the last sentence and replacing it with the following: "If no price or range of prices is published for such Day, then the Spot Price shall be determined in accordance with the methodology set forth in Section 14."



### Section 3. Performance Obligation

Add the following at the end of Section 3.1:

"Seller is under no obligation to source the Gas being sold to Buyer from storage, unless the Delivery Point is a storage interconnect."

Add the following at the end of Section 3.2, "Cover Standard":

"For purposes of ascertaining the Spot Price for purposes of this section, if the transaction provides for a Contract Price based on the United States Dollar, the *Gas Daily* Midpoint for the applicable Delivery Point shall be used, and if the transaction provides for a Contract Price based on the Canadian Dollar, the CGPR shall be used for the applicable Delivery Point."

Add the following as Section 3.5:

"3.5 In the event that the Contract Price for a transaction is a Fixed Price (as defined below), and such transaction (a) has a Firm performance obligation, and (b) a Delivery Period of at least one Month, then, notwithstanding anything to the contrary in this Contract, including, without limitation, anything in Sections 3.2 or 11 of this Contract:

- (i) if, upon the occurrence of an event of Force Majeure, and as a result of the event of Force Majeure (a) Seller is unable to sell and deliver or (b) Buyer is unable to purchase and receive, the Contract Quantity of Fixed Price Gas, either in whole or in part, for such transaction,
- (ii) then, for the duration of the event of Force Majeure, for each Day that Seller is unable to sell and deliver, or Buyer is unable to purchase and receive, such Fixed Price Gas, as set out in Section 3.5(i) above, the following settlement obligations between the Parties shall apply:
  - a. if the FOM Price (as defined below) exceeds the Fixed Price, Seller shall pay Buyer the difference between the FOM Price and the Fixed Price for each MMBtu of such Gas not delivered and/or received on that Day, or
  - b. if the Fixed Price exceeds the FOM Price, Buyer shall pay Seller the difference between the Fixed Price and the FOM Price for each MMBtu of such Gas not delivered and/or received on that Day.

For the purpose of this Section 3.5:

"Fixed Price" means, a Contract Price for a transaction that is expressed as a flat dollar amount for the Month of delivery, excluding any transactions that have been entered into after the last trading day (as defined by the NYMEX) for the applicable Month. Subject to the foregoing exclusion, "Fixed Price" also includes any transaction containing a Contract Price that has been converted from a floating price mechanism (i.e., a NYMEX/first of the month index basis component and a fixed price component, or a NYMEX/first of the month index priced component with a fixed basis component) to a flat dollar amount for the Month of delivery, either upon the mutual agreement of the Parties or as a result of a Party exercising a pricing "trigger" option in the Contract. "FOM Price" means the price per MMBtu, stated in the same currency as the transaction subject to such event of Force Majeure, for the first of the Month delivery, either as the NYMEX settlement price or as an index price published in the first issue of a publication commonly accepted by the natural gas industry (selected by the Seller in a commercially reasonable manner after consulting with Buyer) for the Month of such event of Force Majeure for the geographic location closest in proximity to the Delivery Point(s) for the relevant Day, adjusted for the basis differential between the Delivery Point(s) and the NYMEX or such published geographic location as determined by the Seller in a commercially reasonable manner after consulting with Buyer."

Add the following as Section 3.6:

"3.6 For the purposes of this Section, "Regulatory Event" means a government action requiring compliance, a court order, ruling, law, statute, ordinance, regulation or policy having the effect of law promulgated after the Effective Date of any transaction under this Contract, whether on a local, state or federal level, including but not limited to market rate caps (whether temporary or permanent), regulatory market requirements or the imposition of New Taxes. Regulatory Event shall not include a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract. In the event a Regulatory Event occurs which renders a Party unable to continue to perform, either in whole or in part, under any transaction, or a Regulatory Event has a material adverse economic impact under this Contract on a Party (determined in a commercially reasonable manner) (the "Affected Party") and the Affected Party is unable, after using commercially reasonable efforts, to avoid the inability to perform or the material adverse economic impact, the Affected Party shall promptly provide written notice of the Regulatory Event to the other Party (the "Non-Affected Party"), and the Affected Party or Non-Affected Party shall be entitled to terminate and liquidate the transactions affected by such Regulatory Event (the "Affected Transactions") in accordance with Section 10, subject to the following conditions:

3.6.1 The Affected Party must give the Non-Affected Party at least twenty (20) Business Days prior written notice of its intent to terminate and liquidate the Affected Transaction(s). To the extent the Affected Party does not issue a Regulatory Event Notice to Terminate, the Non-Affected Party shall be entitled to provide at least twenty (20) Business Days notice to the Affected Party of its desire to terminate and liquidate the Affected Transactions under which performance by the Affected Party has been suspended, with such Notice being provided within five (5) Business Days from the date performance was suspended by the Affected Party. The Notice provided by the Affected Party, or the Non-Affected Party, as the case may be, shall be the "Regulatory Event Notice to Terminate". During the twenty (20) Business Day period following the Regulatory Event Notice to Terminate, the Parties shall attempt to reach mutual agreement, using the negotiation process set forth in Section 15.17, to resolve the material adverse economic impact on the Affected Party or the inability of the Affected Party to continue to perform.

3.6.2 If a mutual agreement using the negotiation process is not reached within the referenced twenty (20) Business Day notice period, the Affected Party or the Non-Affected Party, as the case may be, shall by written notice to the other Party specify an Early Termination Date (which must be a Business Day and which date shall be no more than ten (10) Days after the date of such notice) and on such Early Termination Date shall determine damages in accordance with Section 10 of the Contract; provided however, that for purposes of determining the amounts owed with respect to the liquidation and termination of each Affected Transaction under Section 10, any and all



costs otherwise allowed under the third paragraph of Section 10.3.1 shall be excluded from the calculation, and provided further that for purposes of determining the resulting amount(s) owed for the termination and liquidation of each Affected Transaction, the Market Value for each Terminated Transaction shall be determined by using the mid-point, as it may be estimated, between the bid price and the ask price for each Terminated Transaction to reflect that neither Party is a Defaulting Party and accordingly the intent of the Parties is not to ascertain liquidated damages from a Non-defaulting Party's perspective. The respective Parties shall have the same rights and remedies related to the calculation and dispute of the resulting Net Settlement Amount(s) owed with respect to the termination and liquidation of the Affected Transactions as those set forth in Section 10.

3.6.3 The Party owing the Net Settlement Amount shall pay the Net Settlement Amount to the other Party as provided under Section 10, provided that a Party shall not be entitled to receive a Net Settlement Amount if it initiated or supported the Regulatory Event.

3.6.4 For the purposes of this Section 3.6, "New Tax" or "New Taxes" means any or all governmental charges, licenses, fees, permits and assessments, or increases therein, that are imposed on a Party that (i) were not in effect on the date the Affected Transaction was entered into by the Parties, or (ii) were not imposed on a the Affected Transaction on the date the Affected Transaction was entered into by the Parties."

Add the following as Section 3.7:

Any Gas sold and/or delivered by IGI to the Counterparty at the Delivery Point(s), and purchases made and/or received from IGI by the Counterparty at the Delivery Point(s), shall be deemed delivered in the following order: (i) any Fixed Price Gas or Gas that is based on a pricing formula that contains any fixed component (e.g., a fixed base component or a fixed basis component); (ii) any Basis Price Gas; (iii) monthly or baseload Gas; and (iv) daily or swing Gas]."

#### **Section 5. Quality and Measurement**

In Section 5, delete the second sentence and replace with the following: "The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry, unless the Transaction provides for delivery in Canada, in which case the unit of quantity measurement shall be one GJ or as otherwise agreed to by the Parties in a transaction."

#### **Section 6. Taxes**

Add "6.1" before "Seller" of "Buyer Pays At and After the Delivery Point:" in Section 6, and add the following after the last sentence in Section 6 for "Buyer Pays At and After Delivery Point":

"For transactions pertaining to Gas sales by Seller to Buyer with Delivery Point(s) in Canada, the following additional terms and conditions shall apply: (i) the Contract Price shall not include any amounts owed by Buyer for the goods and services tax ("GST"), and in addition to any other amounts owed to Seller under this Contract, Buyer will pay to Seller the amount of the GST payable for the purchase of such Gas; (ii) Seller will hold the GST paid by Buyer to Seller and will remit such GST as required by applicable law; (iii) Buyer and Seller will provide each other with the information required to make any such GST remittance or to claim any corresponding input tax credits, including GST registration numbers; (iv) where Buyer is not registered for GST and Buyer indicates to Seller that Gas will be exported from Canada, Buyer may request Seller treat such Gas as "zero-rated" Gas for export purposes; (v) in the case of (iv), if Seller in its reasonable discretion agrees to so treat such Gas as "zero rated" Gas, then Buyer hereby declares, represents and warrants to Seller that Buyer will: (a) export such Gas as soon as is reasonably possible after Seller delivers such Gas to Buyer; (b) has not purchased such Gas for consumption or use in Canada; (c) ensure that, after such Gas is delivered to Buyer by Seller, and before export, such Gas is not further processed, transformed or altered in Canada; (d) maintain on file, and provide to Seller, if required, or to the Canada Customs and Revenue Agency, evidence satisfactory to the Minister of National Revenue of the export of such Gas by Buyer; and/or (e) comply with all other requirements prescribed for a "zero-rated" export of such Gas; and (vi) where Buyer is registered for GST and Buyer indicates to Seller that Gas will be exported from Canada, Buyer may request that Seller treat such Gas as "zero-rated" Gas for export, and if Seller in its reasonable discretion agrees to so treat such Gas as "zero rated", Buyer hereby declares, represents and warrants to Seller that Buyer intends to export such Gas by means of pipeline or other conduit in circumstances described in Section 6(v)(a) - (c) herein. In the event that any amount becomes payable pursuant to this Contract as a result of a breach, modification or termination of this Contract, the amount payable shall be increased by any applicable Taxes or GST remittable by the recipient in respect of that amount."

Add the following as new Sections 6.2 and 6.3 to "Buyer Pays At and After the Delivery Point:" of Section 6:

"6.2 Gross Receipts and Consumption, and Compensating Taxes. The Contract Price does not include any applicable state or local, gross receipts, compensating, utility, transaction privilege, sales or use tax which may be assessed as a result of sales of or use of Gas hereunder, whether measured by quantity or revenues ("Gross Receipts" or "Compensating Tax"). If there is such a Gross Receipts and/or Compensating Tax, either of which being applicable to that quantity of Gas sold to or used by Buyer hereunder, Seller will invoice Buyer and Buyer will pay Seller the amount of the Gross Receipts or Compensating Tax, and Seller will remit same as required by applicable law.

6.3 Protest and Payment. If a Party discovers that it is required to remit or pay Taxes that are the other Party's responsibility hereunder and the other Party has not previously remitted or paid for the Taxes, the Party shall promptly notify the responsible Party. The Party responsible for such Taxes shall promptly reimburse the other Party for such Taxes, except to the extent either Party has filed, or provides prior notice to the other Party that it will timely file, a good faith protest, contest, dispute or complaint with the taxing authority or applicable court with jurisdiction, which tolls the requirement to pay such Taxes. Any Party is entitled to make such good faith protests, contests, disputes or complaints with the applicable taxing authority or applicable court with jurisdiction or to file for a request for refund for such Taxes already paid in a timely manner as to any Taxes that it is responsible to pay or remit or for which it is responsible to pay or reimburse the other Party. In the event either Party makes such filings, the other Party shall cooperate with such filing Party by providing any relevant information within that Party's possession, which will support the filing Party's filing upon request by and as specified by the filing Party. Upon the issuance by the taxing authority or court of a final, non-appealable order, which lifts the tolling of an obligation to pay and requires payment of the applicable Taxes, and absent a stay of such order, the responsible Party shall either pay directly to the applicable taxing authority, or reimburse the other Party for, such Taxes and any other amounts (including interest)



required by such order. Any Party entitled to an exemption from any such Taxes or charges shall furnish the other Party any necessary documentation thereof."

## **7. Billing, Payment and Audit**

The first sentence of Section 7.1 is amended by deleting "applicable" and inserting "payable by Buyer pursuant to the Contract" after "charges".

"Delete Section 7.5 and replace it with the following:

"7.5 Should the invoiced Party fail to pay any invoice when due, the unpaid balance shall bear interest from the date due until paid at (a) if the amount payable is in U.S. currency, the prime rate in effect from time to time as published by the *Wall Street Journal*, plus two percent (2%), compounded quarterly, or (b) if the amount payable is in Canadian currency, the per annum rate of interest identified from time to time as the prime lending rate charged by The Toronto Dominion Bank, Main Branch, Calgary, Alberta, Canada, plus two percent per annum, compound monthly; provided, however, that to the extent any of the foregoing is greater than the amount allowed under applicable law, the interest rate shall be reduced to the maximum amount chargeable under existing law."

Delete Section 7.7 and replace it with the following:

"7.7 Unless the Parties have elected on the Base Contract not to make this section applicable to this Contract, the Parties shall net all undisputed amounts due and owing, and/or past due arising under the Contract, such that the Party owing the greater amount shall make a single payment of the net amount to the other Party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Sections 3.2 or 3.3 shall be subject to netting under this Section. Provided further, however, that the Party due payment under Sections 3.2 or 3.3 may net all sums due thereunder against any amounts payable by it when making payments under Section 7. If the Parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith."

Add the following as Section 7.8:

"7.8 All payments due under the Contract shall be converted into U.S. Dollars at the applicable prevailing exchange rate on the date such payment is made, or on the date such payment was due if the payment is not made timely."

## **Section 8. Title, Warranty, and Indemnity**

Section 8.3 is amended by: (a) inserting ", its officers, directors, employees, agents, and legal representatives," after "Buyer" in the first line and after "Seller" in the fourth line; and (b) deleting "it" in the first and fourth lines and inserting "each of them" in lieu thereof.

Delete Section 8.4 in its entirety.

## **Section 9. Notices**

Section 9.3 is amended by: (a) deleting "given" in the first line and replacing it with "deemed to be delivered with proof of delivery confirmation"; (b) deleting the third occurrence of "is" in the fourth sentence and replacing it with "if such facsimile is received"; (c) adding "at nine a.m." after "been received" in the fourth line and after "delivered" in the last sentence; and (d) adding "at two p.m." after "been received" in the fifth line.

In the first sentence of Section 9.4 delete the words "commercially acceptable".

## **Section 10. Financial Responsibility**

Section 10.1 shall be deleted in its entirety and replaced with the following:

"If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the amount and for the term reasonably acceptable to X, in one or more of the following forms reasonably acceptable to X: a) standby irrevocable letter of credit, or b) guaranty, or c) cash collateral, or d) a prepayment. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1.

Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically without any further action by either party."

Section 10.2 shall be amended by: (i) adding "of all or substantially all of its assets" after "assignment" in the second line; (ii) replacing "48" with "72"; (iii) deleting the word "or" before "(ix)" in such Section; (iv) adding the following after the words "with respect to any Additional Event of Default;" in line 10 of Section 10.2: "(x) fail to perform or breach any other material obligation or representation under this Contract (except to the extent such failure constitutes a separate Event of Default under this Contract, and except for such Party's obligations to deliver or receive Gas (the exclusive remedy for which is provided in Section 3)) if such failure is not remedied within three (3) Business Days after receipt of written notice (or such additional time as may be reasonably necessary, provided that the Party failing to perform commences and diligently pursues the cure within the three (3) Business Days); and (iv) adding the following at the end before the "." in the last sentence: "provided that no suspension of performance shall continue for more than thirty (30) Days unless an Early Termination Date has been declared and the Defaulting Party given Notice thereof in accordance with Section 10.3."

In Section 10.3.1:

- (i) Replace the words "whether or not then due" with the words "whether or not yet invoiced or due" in the second line;
- (ii) Insert the following: "(either firm or indicative)" after "physical gas trading markets" in the sixth line of the second paragraph of Section 10.3.1, and insert "any other information available to the Non-Defaulting Party supplied to it by one or more third



parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data for the relevant markets”, before “all adjusted for the length of term...” in the sixth line of the second paragraph of Section 10.3.1;

- (iii) Add the following provision at the end of the second paragraph:

“In determining the Early Termination Damages, damages shall be attributable only to Terminated Transactions for Firm Gas transactions. The Parties understand and appreciate that utilizing good faith and commercially reasonable efforts, the Non-defaulting Party should obtain quotes or other reliable third party information authorized under the terms of this Contract for the purposes of calculating the Net Settlement Amount(s).”;

- (iv) Add the following as the third paragraph of Section 10.3.1 “Early Termination Damages Apply”:

“The Non-Defaulting Party shall also aggregate the external costs that the Non-Defaulting Party incurs in liquidating and accelerating each Terminated Transaction, or otherwise settling obligations arising from the cancellation and termination of each Terminated Transaction, including brokerage fees, commissions, and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party with third parties including costs associated with hedging its obligations, transaction costs associated with obtaining replacement suppliers or markets (e.g. brokerage fees, or other such payments), additional transportation costs incurred as the result of each Terminated Transaction, and like costs incurred in moving the replacement Gas to or from the Delivery Point incurred as the result of each Terminated Transaction, and reasonable attorneys’ fees and other reasonable litigation costs incurred in connection with enforcing its rights under this Contract (collectively “External Costs”) and such External Costs shall be due to the Non-Defaulting Party.”; and

- (v) Adding the following provision as the fourth paragraph:

“The purpose of calculating the Market Value with respect to a Terminated Transaction shall be the determination of the amount that would be incurred or realized by the Non-Defaulting Party to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of the Terminated Transaction.”.

Delete the words “and without prior Notice to the Defaulting Party” in the second sentence of Section 10.3.2 “Other Agreements Setoffs Apply”.

Add the following at the end of Section 10.3.2 “Other Agreements Setoffs Apply”:

“To the extent that amounts otherwise owed by the Non-Defaulting Party Affiliate to the Defaulting Party, have been Setoff by the Non-Defaulting Party pursuant to this section, the Non-Defaulting Party Affiliate shall not be liable to, and shall be released by, the Defaulting Party with respect to such amounts. The Defaulting Party shall be forever estopped from asserting that the Non-defaulting Party Affiliate owes the Setoff amounts to the Defaulting Party. The obligations of the Non-Defaulting Party, the Non-Defaulting Party’s Affiliates, the Defaulting Party and the Defaulting Party’s Affiliates under this Contract or otherwise in respect of such amounts shall be deemed satisfied and discharged to the extent of any such Setoff. Nothing in this paragraph shall be deemed to create a charge or other security interest. The rights provided by this section to the Non-Defaulting Party Affiliate are in addition to and not in limitation of any other right or remedy (including any right to Setoff, counterclaim, or otherwise withhold payment) to which the Non-Defaulting Party may be entitled (whether by operation of law, contract or otherwise). “Setoff” as used herein means setoff, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the Non-Defaulting Party is entitled or subject to under this Contract that is exercised by, or imposed on, the Non-Defaulting Party.”

Add the following as Section 10.3.4:

“The Non-Defaulting Party shall use the Termination Currency Equivalent in performing any netting, aggregation or Setoff required or permitted by Section 10.3.1 or 10.3.2.”

Section 10.4 is hereby amended by:

- (i) Deleting the second sentence and replacing it with the following:

“The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, and the reduction of such amount(s) by (a) the application of any margin or other collateral held by a Party in connection with any Credit Support Obligation relating to the Contract, or (b) any Setoffs allowed under the terms of this Contract (such adjusted amount after the exercise of rights under (a) or (b) being defined as the “Final Settlement Amount”)”;

- (ii) Adding the following sentence after the insert in (i) above:

“The Non-Defaulting Party’s failure to give such Notice of the Net Settlement Amount/Final Settlement Amount calculations shall not affect the validity or enforceability of the liquidation and termination of the Terminated Transaction, or give rise to any claim by the Defaulting Party against the Non-Defaulting Party with respect to the Non-Defaulting Party becoming the Defaulting Party due to its failure to timely fulfill such obligation; however, such failure shall delay the start of the time period during which the Defaulting Party may dispute the calculations as provided for in this Section 10.4 until such detailed Notice is appropriately given by the Non-defaulting Party.”;

- (iii) Replacing “second” in the sixth line with “fifth”;



- (iv) Adding the following as Section 10.4.1:

“10.4.1 Notwithstanding anything herein to the contrary, if the Non-Defaulting Party owes the Net Settlement Amount/Final Settlement Amount to the Defaulting Party, the Non-Defaulting Party shall not be required to pay to the Defaulting Party the Net Settlement Amount/Final Settlement Amount, nor shall interest be owed on such amount, until (i) the Non-Defaulting Party receives confirmation satisfactory to it, in its reasonable discretion, that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Contract and transactions hereunder, or under any other agreements between the Parties, which are due and payable as of the Early Termination Date, have been paid (or netted, setoff, recouped, or the like) in full; and (ii) the Defaulting Party executes a release in a form reasonably satisfactory to the Non-Defaulting Party that acts as the final resolution of the amounts due and owing as the Net Settlement Amount/Final Settlement Amount under the terms of this Contract and transactions hereunder. To the extent that either Party reasonably believes that bankruptcy court approval of the release is required, the Non-Defaulting Party may withhold payment of the Net Settlement Amount/Final Settlement Amount until such time as appropriate court approval has been obtained and is final and non-appealable.”; and

- (v) Adding the following as Section 10.4.2:

“10.4.2 Notwithstanding anything set forth in the Contract, nothing shall in any manner preclude the Defaulting Party from disputing the Non-Defaulting Party’s calculation of the Net Settlement Amount or the Final Settlement Amount. In the event the Defaulting Party disputes the calculation of the Net Settlement Amount/Final Settlement Amount, such Party shall notify the other Non-Defaulting Party of such dispute within five (5) Business Days of the date the Non-Defaulting Party provides the Notice required under this Section 10.4 to the Defaulting Party; provided, further that as soon as commercially reasonable thereafter, the Defaulting Party shall provide a statement showing its calculation of the Net Settlement Amount/Final Settlement Amount. In the event of a dispute as to the Net Settlement Amount/Final Settlement Amount, the Defaulting Party shall, if applicable, within the time prescribed in Section 10.4, pay the undisputed amount of the Net Settlement Amount/Final Settlement Amount in the Termination Currency to the Non-Defaulting Party. Interest on any unpaid portion of the Net Settlement Amount shall accrue from the date due until the date of payment as set forth in Section 7.5.”

Delete Section 10.5 in its entirety and replace with the following:

“10.5 The Parties agree that (i) this Contract and all such transactions pursuant hereto are “forward contracts” as such term is defined in the United States Bankruptcy Code and that each Party is a “forward contract merchant” as such term is defined in the United States Bankruptcy Code; (ii) the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and accordingly each Party agrees to waive and not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding involving such Party; and (iii) this Contract and all such transactions constitute an “eligible financial contract” within the meaning of the Bankruptcy and Insolvency Act (Canada) and the Companies Creditors Arrangements Act (Canada), and similar Canadian legislation.”

Section 10.6 is hereby amended by:

- (i) Inserting “Subject to Section 13,” at the beginning of the second sentence.

## **Section 11. Force Majeure**

In Section 11.2:

- (i) Delete the “and” in front of “(v)”;
- (ii) Insert the following before the period at the end of the first sentence: “and (vi) the occurrence of a Regulatory Event that renders a Party unable to continue to perform, either in whole or in part, under any transaction, or the occurrence of a Regulatory Event that has a material adverse economic impact on a Party. If a Party declares an event of Force Majeure based upon the event described in (vi), the event of Force Majeure shall terminate upon the earlier to occur of (a) the time a Party liquidates and terminates the affected transactions on the Early Termination Date in accordance with Section 3.6, or (b) the expiration of six (6) Business Days after the Notice of the event of Force Majeure is provided by the claiming Party unless a Regulatory Event Notice to Terminate has been declared by either Party in accordance with Section 3.6.”; and
- (iii) Insert the following at the end of Section 11.2 “To the extent an event of Force Majeure occurs,:
- (a) prior to curtailing or interrupting any transaction for a Firm obligation, Seller/Buyer shall first curtail or interrupt its interruptible delivery or purchase obligations, as applicable, and
- (b) Seller or Buyer will treat all similarly situated Firm customers in a fair and reasonable manner by allocating the supply or purchase of Firm Gas, as applicable, on a pro rata basis.”

Section 11.3 is amended by inserting after “(iii)” in the fourth line the following: “except to the extent permitted by Section 11.2(vi)”.

Delete Section 11.4 and replace with the following:



"Notwithstanding anything to the contrary in this Section 11, the Parties agree that (i) the settlement of strikes, lockouts, or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance, and (ii) upon the occurrence and continuance of any event of Force Majeure, the Seller shall not be obligated to purchase alternative supplies of Gas for sale to the Counterparty if such purchase would result in a material economic impact to such Party under this Contract."

Add the following as Section 11.7:

"11.7 Without restricting the generality of the foregoing, if an event of Force Majeure occurs, the Party affected may, in its sole discretion and without notice to the other Party, determine not to make a claim of Force Majeure and to waive its rights hereunder as they would apply to such event. Such determination or waiver shall not preclude the affected Party from claiming Force Majeure in respect of any subsequent event, including any event that is substantially similar to the event in respect of which such determination or waiver is made."

Add the following as Section 11.8:

"11.8 If an event of Force Majeure impairs or prevents Seller from delivering or Buyer from purchasing Gas under this Contract and such event of Force Majeure continues (i) for a continuous period of time greater than ninety (90) Days or (ii) for more than one hundred and eighty (180) cumulative Days during any calendar year, the Party not claiming the event of Force Majeure may terminate and liquidate the transactions affected by such event of Force Majeure utilizing the same methodology (including rights and remedies) set forth under Section 3.6 for terminating and liquidating Affected Transactions with respect to Regulatory Events. Notwithstanding the foregoing, if the Party claiming an event of Force Majeure proceeded with reasonable efforts to resolve the event or occurrence once it occurred in order to resume performance but performance under the Contract cannot resume until after the time periods set forth in (i), the Party not claiming the event of Force Majeure may not terminate and liquidate the transactions affected by such event of Force Majeure unless performance is not resumed within one hundred and eighty (180) Days from the event of Force Majeure."

## **Section 12. Term**

Delete the second sentence and replace it with the following:

"The rights of either Party pursuant to: (i) Section 7, (ii) Section 10, (iii) Section 13, (iv) Section 14, (v) Section 15, (vi) Waiver of Jury Trial provisions (if applicable), (vii) Arbitration provisions (if applicable), (viii) the obligations to make payment hereunder, and (ix) the obligation of either Party to indemnify the other pursuant hereto, shall survive the termination of the Base Contract or any transaction."

## **Section 13. Limitations**

The fifth sentence of Section 13 is amended by deleting "UNLESS EXPRESSLY HEREIN PROVIDED" and replacing them with "EXCEPT FOR ANY LIABILITY ARISING UNDER SECTION 8.3 AND, IF APPLICABLE, SECTION 15.10" and deleting ", UNDER ANY INDEMNITY PROVISION".

## **Section 14. Market Disruption**

Delete Section 14 and replace it with the following:

"If a Market Disruption Event has occurred then the Parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the Parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each Party attempting to obtain, in good faith and from non-affiliated market participants in the relevant market, at least four quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. Once the Parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each Party obtains four or more quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one Party obtains four or more quotes and the other Party obtains less than four, the highest and lowest values of all obtained quotes shall be excluded and the arithmetic mean of the remaining quotations shall be utilized; or (iii) if both Parties obtain less than three quotes, the Parties shall resort to the negotiation process set out in Section 15.17 to resolve the dispute with the quotes being only indicative of an illiquid market which shall allow both Parties to utilize other industry information, including internal valuations to resolve the dispute. For purposes of the foregoing sentence, if more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged."

## **Section 15. Miscellaneous**

Section 15.1 is amended by replacing "approval" with "consent" in the seventh line, and by adding the following sentence at the end of the Section: "IGI hereby acknowledges and agrees that, pursuant to an Indenture of First Mortgage of Washington Natural Gas Company (predecessor in interest to Counterparty) dated as of April 1, 1957, as supplemented and modified (the "Indenture"), wherein The Bank of New York Mellon Trust Company, N.A. is the trustee, all of Counterparty's rights under the Contract will be subjected to the lien of the Indenture."

Delete Section 15.3 in its entirety and replace with the following:

"15.3 No waiver of any breach of this Contract, or delay, failure or refusal to exercise or enforce any rights under this Contract, shall be held to be a waiver of any other or subsequent breach, or be construed as a waiver of any such right then existing (except with respect to express waivers in writing) or arising in the future."

Section 15.7 is amended by inserting "other than each of the parties indemnified under Section 8.3" before the ".". The second sentence shall state: "If any of the parties indemnified under Section 8.3 desires to enforce their rights thereunder, they may only do so by and through a Party to this Contract."

Delete Section 15.8 in its entirety and replace with the following:

"15.8 Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract and that each person who executes this Contract on its behalf has the full and complete authority to do so."

In Section 15.10:

- (i) After the ";" in the seventh line of the first paragraph insert the following: "(v) to the extent deemed necessary or desirable by Counterparty for purposes of providing information regarding its gas supplies and economics to the Washington Utilities and Transportation Commission and such information will be submitted confidentially pursuant to any and all rules and regulations of the Washington Utilities and Transportation Commission and any and all laws of the State of Washington;" and
- (ii) change "(v)" in the seventh line of the first paragraph to "(vi)".

Add the following as the third paragraph of Section 15.10:

"15.10 Subject to the exclusions provided by this Section 15.10, Buyer and Seller agree to keep the terms and conditions of any transaction and any financial information provided by a Party under the terms of a Contract confidential. Subject to the exclusions provided by this Section 15.10, any limited disclosure required by Buyer to obtain necessary approvals of the Contract will only be permitted if expressly agreed to by Seller in advance and Seller is satisfied in its reasonable discretion that appropriate obligations of confidentiality have been imposed on the third parties receiving such information. Buyer acknowledges that earlier disclosure of the commercially sensitive information on Exhibit A may cause Seller significant damage and loss for which Buyer will be held accountable if such disclosure was made by Buyer in violation of the Contract and caused such damage. Notwithstanding anything to the contrary contained in this Section 15.10, IGI acknowledges and agrees that, pursuant to the terms of the Indenture, Counterparty is required to disclose the Contract to the trustee under the Indenture."

Add the following as Section 15.13:

"15.13 To the extent, if any, that a transaction does not qualify as a "first sale" as defined by the Natural Gas Act and §§ 2 and 601 of the Natural Gas Policy Act, each Party irrevocably waives its rights, including its rights under §§ 4-5 of the Natural Gas Act, unilaterally to seek or support a change to any terms and conditions of the Contract, including but not limited to the rate(s), charges, or classifications set forth therein. By this provision, each Party expressly waives its right to seek or support, either directly or indirectly, and by whatever means: (i) an order from the U.S. Federal Energy Regulatory Commission ("FERC") seeking to change any of the terms and conditions of the Contract agreed to by the Parties; or (ii) any refund from the other Party with respect to the Contract. Each Party further agrees that this waiver and covenant shall be binding upon it notwithstanding any regulatory or market changes that may occur after the date of the Base Contract or any transaction entered into between the Parties. Absent the agreement of both Parties to the proposed change, the standard of review for changes to any terms and conditions of the Contract proposed by (a) a Party, to the extent that the waiver set forth in this Section 15.13 is unenforceable or ineffective as to such Party due to a final determination being made under applicable law that precludes the Party from waiving its rights to seek or support changes from the FERC to the terms and conditions of this Contract, (b) a non-party, or (c) the FERC acting sua sponte, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) ("Mobile-Sierra"), as Mobile-Sierra has been clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. \_\_\_ (2008)."

Add the following as Section 15.14:

"15.14 This Contract shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the manner in which this Contract was negotiated, prepared, drafted or executed."

Add the following as Section 15.15:

"15.15 Each Party will be deemed to represent to the other Party each time a transaction is entered into that: (i) it is acting for its own account, and it has made its own independent decisions to enter that transaction and as to whether that transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary; (ii) it is not relying on any communication (written or oral) of the other Party as investment advice or as a recommendation to enter into that transaction; it being understood that information and explanations related to the terms and conditions of a transaction shall not be considered investment advice or a recommendation to enter into that transaction; (iii) no communication (written or oral) received from the other Party (other than covenants, terms, and conditions in the Contract including any and all amendments and special provisions herein) shall be deemed to be an assurance or guarantee as to the expected results of that transaction; (iv) it is capable of assessing the merits and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that transaction; (v) it is capable of assuming, and assumes, the risks of that transaction; and (vi) the other Party is not acting as a fiduciary for, or an advisor to, it in respect of that transaction."

Add the following as Section 15.16:

"15.16 Buyer acknowledges that Seller is engaged, and will continue to be engaged, in the business of buying and selling Gas for its own account and for the account of others, in contracting with pipelines and others for transportation of Gas for its own account and for the account of others, and in contracting with pipelines and others for services the same or similar to one or more of the services furnished to Buyer hereunder. Nothing in this Contract shall be construed to restrict Seller's ability to engage in the foregoing business activities even to the extent such activities directly or



indirectly compete with Buyer. Nothing in this section shall be construed as detracting from the warranties, covenants and obligations of Seller in this Contract."

Add the following as Section 15.17:

"15.17 Where the negotiation process is specifically prescribed to resolve a dispute under this Contract, the Parties shall seek to resolve the dispute by negotiations between senior executives or management who have authority to settle the controversy. Either Party may initiate this negotiation process by written Notice to the other Party outlining that Party's position regarding the dispute ("Negotiation Notice"). The individuals with authority to negotiate shall meet at a mutually acceptable time and place within fifteen (15) Business Days after the date of the Negotiation Notice to exchange relevant information concerning the dispute and to attempt to resolve the dispute. If an individual with authority to negotiate intends to be accompanied at a meeting by an attorney, the other Party's individual with authority to negotiate shall be given at least three Business Days' Notice of such intention and may also be accompanied by an attorney. All negotiations are confidential and shall be treated as compromise and settlement negotiations under the Federal Rules of Evidence or any similar applicable rules of evidence."

Add the following as Section 15.18:

"15.18 Venue for any disputes arising pursuant to or related to this Contract shall be exclusively brought and maintained in the federal district courts of the State of New York."

Add the following as Section 15.19:

"15.19 To the extent that IGI is the Seller of the Gas, the Contract Price for the Gas may be changed to Fixed Price Gas or Basis Price Gas for any Month(s) during the Delivery Period upon the mutual agreement of the Parties, with the election to purchase such Gas being documented in a Confirmation Letter being entered into under the Contract in the same manner as a Transaction Confirmation."

Add the following as Section 15.20:

"15.20 The Parties agree that, as of the effective date of this Base Contract, this Base Contract shall supersede and replace the Base Contract for Sale and Purchase of Natural Gas entered into by and between the Parties dated October 1, 2005 (the "2005 Agreement"), and accordingly any transaction(s) for the purchase or sale of Gas previously governed by the 2005 Agreement that have Delivery Periods after the effective date of this Base Contract shall be governed by this Base Contract as and after the effective date of this Base Contract."

Add the following as Section 15.21:

"15.21 (i) The Special Provisions are subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental and regulatory authorities having jurisdiction over the Contract, IGI or Counterparty. All laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental and regulatory authorities that are required to be incorporated in agreements of this character are by this reference incorporated in the Special Provisions. (ii) Except as expressly provided in the Special Provisions, all of the terms and conditions of the Base Contract and the General Terms and Conditions shall remain unchanged and in full force and effect. (iii) The Parties agree that the disclaimer statement appearing at the bottom of the General Terms and Conditions is entirely for the benefit of the North American Energy Standards Board, Inc. and that as between the Parties such disclaimer shall not affect the meaning, interpretation or construction of the Contract. (iv) The section headings contained in the Special Provisions are for convenience of reference only and shall not be used in any way to affect, interpret or construe any of the provisions of these Special Provisions. (v) The Special Provisions shall be effective upon execution and delivery by each of IGI and Counterparty."

IGI RESOURCES, INC.

By: 

Name: Stephen S. McCandlish

Title: Vice President

PUGET SOUND ENERGY, INC.

By: 

Name: CLAY RIDING

Title: DIRECTOR