



**GOVERNMENT OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

**Ministry of Power and Renewable Energy**

**REQUEST FOR PROPOSALS**

**REQUEST FOR COUNTER PROPOSALS UNDER  
SWISS CHALLENGE PROCEDURE FOR THE  
ESTABLISHMENT OF AN OFFSHORE FLOATING  
STORAGE AND REGASIFICATION UNIT (FSRU)  
AND PIPELINE INFRASTRUCTURE AND SUPPLY OF  
LIQUEFIED NATURAL GAS (LNG) FOR CEYLON  
ELECTRICITY BOARD**

**TENDER NO: PE/TEN/LNG/SP/2017/55**

**International Competitive Bidding (ICB)**

**VOLUME IIA**

**DRAFT GAS SALES AGREEMENT**

# **GAS SALES AGREEMENT**

**DATED [●]**

**[Seller Entity]**

**AND**

**Ceylon Electricity Board**

*Information Copy - Not for Bidding*

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**THIS AGREEMENT** is made on [●]

**BETWEEN:**

- (1) **[Seller Entity]** (the **Seller**); and
- (2) **Ceylon Electricity Board** (the **Buyer**).

**WHEREAS**

- (A) The Seller has or will enter into LNG SPA(s).
- (B) The Seller has entered into the Tolling Arrangements which provide for the LNG purchased under the LNG SPA(s) to be regasified and transported to the Delivery Point(s).
- (C) FSRU Co and Pipeline Co will, between them, own and operate the infrastructure and equipment required to regasify LNG and deliver Gas to the to the Delivery Point(s) in accordance with Article 3 (Related Arrangements).
- (D) The Seller has agreed to sell and the Buyer has agreed to buy Gas on the terms and conditions set out in this Agreement.

**IT IS AGREED** as follows:

**1. INTERPRETATION**

**1.1 Definitions**

In this Agreement:

**Adjusted Annual Contract Quantity** or **AACQ** has the meaning given to such term in Article 7.2(c);

**Adverse Weather Conditions** means weather or sea conditions that are sufficiently severe either to:

- (a) prevent an LNG vessel from proceeding to berth, loading, unloading, departing from the FSRU or otherwise sailing in accordance with the weather standards prescribed in published regulations in effect at the FSRU, or by order of the port master; or
- (b) cause an actual determination by the pilot or master of an LNG vessel that it is unsafe for the LNG vessel to proceed to berth, load, unload or depart from the FSRU;

**Aggregate DQT Cap** has the meaning given to such term in Article 7.2(b)(ii);

**Agreement** shall mean this agreement and the Schedules attached to this Agreement including any supplemental documents which may be mutually agreed upon by the Parties, including the Nomination and Operations Manual and Measurement and Testing Manual, as amended or supplemented from time to time;

**Annual Contract Quantity** or **ACQ** has the meaning given to such term in Article 7.1(a)(i);

**Annual Delivery Programme** or **ADP** has the meaning given to such term in Article 10.3(a);

**Annual DQT Cap** has the meaning given to such term in Article 7.2(b);

**BOI Agreement** has the meaning given to such term in the Implementation Agreement;

**Business Day** means:

- (a) for the purposes of Article 22 (*Suspension and termination*), any day (other than a Saturday, Sunday and public holiday) when banks are open for the transaction of domestic business in Sri Lanka and/or New York and, in the case of the Seller, [●]; and
- (b) in all other instances, any day (other than a Saturday, Sunday and public holiday) when banks are open for the transaction of domestic business in Sri Lanka and, in the case of the Seller, [●];

**Buyer Approvals** means the Governmental Approvals required by the Buyer to fulfil its obligations under this Agreement;

**Buyer's Equipment** has the meaning given to such term in Article 17.2(c);

**Buyer's Facilities** has the meaning given to such term in Article 19.2 (*Buyer's Facilities*);

**Change in Law** means:

- (a) the adoption, enactment or application to a Seller Entity or the subject matter of this Agreement of any Legal Requirement which was not in existence or, if in existence, was not applicable to the Seller Entity or the subject matter of this Agreement as at the date of execution of this Agreement; or
- (b) any change in or repeal of any Legal Requirement or the application, interpretation or implementation thereof by a Competent Authority at any time after the date of this Agreement;

**Competent Authority** has the meaning given to such term in the Implementation Agreement;

**Conditions Precedent** has the meaning given to such term in Article 4.1 (*Conditions Precedent*);

**Contract Period** has the meaning given to such term in Article 5.1(a);

**Contract Year**<sup>1</sup> means:

- (a) for the first (1st) Contract Year, the period beginning at [0000] hours on the Start Date and ending at [0000] hours on the next occurring [1 January];
- (b) for the last Contract Year, the period beginning at [0000] hours on [1 January] and ending on the date of termination or expiry of this Agreement; and
- (c) for all other Contract Years, the twelve (12) month period beginning at [0000] hours on January 1 and ending at [0000] hours on the next occurring [1 January];

**Daily Quantity** or **DQ** for each day in a month is the Monthly Quantity for that month, divided by the number of days in that month;

**Debit Month** has the meaning given to such term in Article 11.2(b);

**Delivery Point(s)** has the meaning given to such term in Article 18.1;

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<sup>1</sup> Contract Year to be aligned with LNG SPA Contract Year

**Downward Quantity Tolerance** or **DQT** has the meaning given to such term in Article 7.2(b);

**Effective Date** has the meaning given to such term in Article 4.1(b);

**End Date** means the date which is [20 years] after the Start Date, as extended by Article 5.1(b) or 5.1(c);

**Excess Gas Price** means the Price multiplied by zero point two (0.2);

**Force Majeure** has the meaning given to such term in Article 21.2 (*Force Majeure definition*);

**FSRU** has the meaning given to such term in the Implementation Agreement;

**FSRU Agreement** means the agreement between the Seller and FSRU Co under which LNG is converted to Gas and delivered into the Pipelines;

**FSRU Co** has the meaning given to such term in Article 3(a)(i);

**Gas** means any hydrocarbons or mixture of hydrocarbons and other gases at the Specification;

**Government Action or Inaction** means any action or failure to act by any Competent Authority (including any action or failure to act by any duly authorized agent of any such Competent Authority);

**Governmental Approval** has the meaning given to such term in the Implementation Agreement;

**Gross Heating Value** means the number of Joules produced by the complete combustion at a constant absolute pressure of 101.325 kiloPascals and under standard gravitational acceleration of 9.807 metres per second of one cubic metre of the Gas at a temperature of 15 degrees Celsius with excess air at the same temperature and pressure as the Gas when the products of combustion are cooled to 15 degrees Celsius and when the water formed by combustion is condensed to the liquid state and the products of combustion contain the same total mass of water as the Gas and air before combustion;

**Implementation Agreement** means the Implementation Agreement for Gas Supply Agreement Incorporating FSRU and Pipeline Infrastructure (The Regasification Project) between the Seller, the Buyer and The Government of the Democratic Socialist Republic of Sri Lanka dated on or about the same date as this Agreement;

**Interruptible** means obligation to supply gas on a basis that permits the supply of that gas to be interrupted, in whole or in part (regardless of whether nominations for such supply have been accepted), at the option of the Seller without incurring any liability (whether monetary or otherwise) or foregoing any right or benefit (other than the right to be paid a price for gas supplied), but does not include an interruption or reduction in supply permitted for the purposes of maintenance, due to Force Majeure or due to an event of default;

**Invoice** means an invoice, debit note or statement issued pursuant to Articles 15.2 (*Monthly Invoice*) or 15.9 (*Buyer statement*);

**Kilopascal Absolute** or **kPa** means one thousand (1000) Newton per square metre (N/m<sup>2</sup>);

**Legal Requirement** means any decree, resolution, law, statute, act, ordinance, rule, direction (to the extent having the force of law), order, treaty, code or regulation, Governmental Approval and other licenses, permits and approvals and any injunction or judgment;



**LIBOR** means the rate per annum equal to the London Interbank Offer Rate as fixed by ICE Benchmark Administration Limited for three (3) month deposits in United States Dollars at or about eleven o'clock (11:00) a.m. London time on any day. If ICE Benchmark Administration Limited ceases to fix LIBOR as aforesaid, then the Parties shall agree on another reasonably comparable interest rate offered on the same day;

**LNG** means liquefied natural gas;

**LNG SPA** means any agreement under which the Seller purchases LNG which the Seller uses to supply Gas to the Buyer under this Agreement;

**Maintenance Day** has the meaning given to such term in Article 7.7(a);

**Maintenance Month** has the meaning given to such term in Article 10.3(e);

**Maintenance Shutdown** means a total or partial shutdown or unavailability of the Seller's Facilities which is planned by the Seller or the owner or operator of any Seller's Facility and is for the purposes of maintenance, reconditioning, repair or replacement of or additions to the Seller's Facilities;

**Maintenance Shutdown Entitlement** has the meaning given to such term in Article 7.7(c);

**Make-up Gas** has the meaning given to such term in Article 11.3(a);

**Manual** means each of the Nomination and Operations Manual and the Measurement and Testing Manual;

**Maximum Daily Quantity** or **MDQ** for each day in a month is the DQ for the day multiplied by one point one (1.1);

**Measurement and Testing Manual** means the manual describing the measurement, testing and analysis and validation procedures related to the supply and receipt of the Gas under this Agreement, as amended from time to time;

**MinDQ** has the meaning given to such term in Article 7.5(a);

**Monthly Deficiency** has the meaning given to such term in Article 11.2(b);

**Monthly Quantity** has the meaning given to such term in Article 10.3(a);

**Net DQT Balance** means, at any time during the Contract Period, the sum of all quantities of DQT exercised by the Buyer in accordance with Article 7.2(b) less the sum of UQT quantities of Gas requested and received pursuant to Article 7.2(a);

**Nomination** means a nomination made in accordance with Article 7.3 (*Nominations*);

**Nomination and Operations Manual** means the manual describing the procedures for forecasts, nomination and other communications for operational purposes related to the supply and receipt of the Gas under this Agreement and describing the Seller Provided Fuel and how such fuel will be provided, stored and delivered, as amended from time to time;

**Off-Specification Gas** means gas made available for delivery at the Delivery Point(s) by the Seller which fails to comply with the Specification;

**Parties** means the Buyer and the Seller;

**Pipeline Agreement** means the agreement between the Seller and Pipeline Co under which Gas is transported through the Pipelines to the Delivery Point(s);

**Pipeline Co** has the meaning given to such term in Article 3(a)(ii);

**Pipelines** means the natural gas pipelines by which Gas is transported to the Delivery Point(s) under this Agreement which, as of execution of this Agreement are [●]<sup>2</sup>;

**Political Force Majeure Event** means a Force Majeure event arising directly or indirectly from:

- (a) Government Action or Inaction;
- (b) Change in Law or sanctions imposed by any government;
- (c) acts of the public enemy, act of war (whether declared or undeclared), blockades, revolution, or threat insurrections or riots;
- (d) arrests and restraints of governments and people, civil commotion disturbances, acts of terrorism or sabotage; or
- (e) strikes or industrial action which extend beyond the Regasification Project, are widespread or nationwide or that are of a political nature.

**Power Station** means the Buyer's power stations listed in Schedule 2;

**Price** means the price of Gas sold to the Buyer as stipulated in Article 14.1 (*Calculation of Price*);

**Proper Nomination** or **Gas Properly Nominated** means a Nomination which is/was done by or on behalf of the Buyer in good faith and in accordance with the relevant procedures, including the Nomination and Operations Manual;

**Reasonable and Prudent Operator** means an operator exercising that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by experienced operators engaged in the same or similar line of business or operation under the same or similar circumstances and conditions and in accordance with good operating practice;

**Regasification Project** has the meaning given to such term in the Implementation Agreement;

**Schedules** means the schedules attached to this Agreement;

**Seller Approvals** means the Governmental Approvals required by the Seller and its affiliates to fulfil its obligations under this Agreement including approvals for import of LNG and the Regasification Project;

**Seller Entity** means any one or more of the following, as the context dictates:

- (a) Seller;
- (b) FSRU Co; and
- (c) the Pipeline Co;

Seller Provided Fuel has the meaning given to such term in Article 8.2(b)(iii)(A);

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<sup>2</sup> Description of pipelines to be inserted

**Seller's Equipment** has the meaning given to such term in Article 17.2(d);

**Seller's Facilities** has the meaning given to such term in Article 19.1 (*Seller's Facilities*);

**Shortfall Gas** has the meaning given to such term in Article 8.2(a);

**Specification** means:

- (a) the specifications set out in Schedule 3; and
- (b) for gas delivered to a certain Delivery Point, the pressure for that Delivery Point set out in Schedule 1;

**Standard Cubic Meter** or **Sm<sup>3</sup>** means the quantity of gas which at a temperature of 288.15 Kelvin (fifteen (15) degrees Celsius) and at an absolute pressure of one hundred and one decimal three two five (101.325) Kilopascal Absolute occupies one (1) cubic metre, as described in the publication International Standard ISO 1000-1981 (E);

**Start Date** has the meaning given to such term in Article 5.2 (*Start Date*);

**Tax** means any income, gross receipts, withholding, licence, payroll, stamp, employment, excise, severance, occupation, premium, windfall profits, transfer, environmental, customs duties, capital stock, franchise, profits, value-added, sales, unemployment, disability, property, use, registration, alternative, add-on minimum, estimated or other tax, fee or charge imposed by or under the authority of any Competent Authority, including any interest, penalty or addition thereto;

**Temporary Non-Availability** has the meaning given to such term in Article 14.2(c);

**Third Party Agreement** means any current or future agreement between the Seller and a buyer (other than the Buyer) for the supply of gas;

**Third Party Buyer** means any person (but excluding the Transporter to whom custody of gas is transferred now or in the future for the purposes of transporting gas, when acting in that capacity) whom at any time is a buyer under a Third Party Agreement;

**Tolling Arrangements** means each of the FSRU Agreement and the Pipeline Agreement;

**TOP Quantity** has the meaning given to such term in Article 11.1 (*Take or pay quantity*);

**Transporter** means the entity that is responsible for transporting gas to the Delivery Point(s), which as of the date of this Agreement and until the Buyer is notified otherwise, is the Pipeline Co and includes its successors and assigns;

**United States Dollar** or **US Dollar** means the lawful currency of the United States of America; and

**UQT** has the meaning given to such term in Article 7.2(a).

## 1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) words importing a gender include any gender;
- (b) words importing the singular shall include the plural and vice versa as the context may require;

- (c) a reference to a party to a document includes that party's successors and permitted assigns;
- (d) the table of contents, recitals and the headings of the Articles of this Agreement are for convenience only and shall not be used in the construction or interpretation of this Agreement;
- (e) a clause, article, item, party, or schedule is a reference to a clause, article and item of, and a party and schedule to, this Agreement (unless the context otherwise requires). The schedules to this Agreement shall be deemed to form an integral part of this Agreement;
- (f) references to a "company" shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (g) references to a "person" shall be construed so as to include any individual, firm, company, body, government, state or agency of a state or any joint venture, association or partnership (whether or not having separate legal personality);
- (h) wherever in this Agreement a Party's consent or agreement is expressed to be "not unreasonably withheld", it is acknowledged that such obligation shall include the obligation of the Party to not unreasonably delay giving the relevant consent or agreement;
- (i) the words "include" and "including" are to be construed to mean "include without limitation" and "including without limitation";
- (j) any part of speech or grammatical form of a word or phrase defined in this Agreement has a corresponding meaning;
- (k) a reference to any statute, statutory provision, rule, regulation, directives, orders or by-laws refers to the same as from time to time amended, extended or re-enacted and shall include all subsidiary instruments made thereunder;
- (l) references to this Agreement or any agreement or contract shall mean this Agreement or any agreement or contract as may be amended, varied, supplemented, modified, suspended, assigned or novated from time to time, except as otherwise provided;
- (m) no rule of construction applies to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it or because this Agreement or any provision hereof is inconsistent with any prior draft of this Agreement or of such provision;
- (n) the words "hereof", "hereto", "herein" and "hereunder", and words of similar import, when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision (unless the context otherwise requires);
- (o) units of measurement defined in the International System of Units (and not otherwise defined herein) shall have the respective meanings set forth therein;
- (p) a period of days from the occurrence of an event or the performance of any act or thing shall be deemed to exclude the day on which the event happens or the act or thing is done or to be done (and shall be reckoned from the day immediately following such event or act or thing);
- (q) references to times of day are to Sri Lanka Standard Time;

- (r) references to "day" shall mean a period of twenty four (24) consecutive hours, beginning at [0000] hours on any day and ending at [0000] hours on the following day;
- (s) references to "week" shall mean a period of seven (7) consecutive days, beginning at [0000] hours on Sunday and ending at [0000] hours on the following Sunday;
- (t) references to "month" shall mean a period beginning at [0000] hours on the first day of any calendar month and ending at [0000] hours on the first day of the next succeeding calendar month; and
- (u) references to "year" shall mean a period of twelve (12) months beginning at [0000] hours on any day of any calendar year, and ending at [0000] hours on the same date in the next succeeding calendar year, and in a leap year, there shall be three hundred and sixty six (366) days in the year.

## **2. SCOPE OF THE AGREEMENT**

### **2.1 Sale and purchase of Gas**

Subject to and in accordance with the terms and conditions of this Agreement, on and from the Start Date the Seller agrees to sell and deliver (or cause to be delivered) Gas to the Buyer, and the Buyer agrees to purchase, receive and pay for such Gas or pay for such Gas if not taken, subject to the terms and conditions stipulated in this Agreement.

### **2.2 Manuals**

- (a) The Seller and the Buyer agree that for operational purposes, the Seller and the Buyer shall develop, agree upon and adhere to the procedures in the Nomination and Operations Manual and Measurement and Testing Manual.
- (b) The procedures and Manuals referred to in Article 2.2(a) may be amended and updated from time to time by mutual written agreement of the Parties.

### **2.3 Sources of Supply**

- (a) Subject to Article 2.3(b), Gas will be sourced from the Seller's global LNG portfolio under the LNG SPA(s) with a primary delivery source of [●] and processed under the Tolling Arrangements.
- (b) Without prejudice to the Seller's rights under Article 21 (*Force Majeure*) or the Seller's obligations under Article 13 (*Gas Specification*), the Seller may, but is not obliged to, at any time and from time to time and without consent or notice, supply Gas not sourced from the primary delivery source or using the existing LNG SPA(s) or Tolling Arrangements, for any portion of the Seller's obligation to deliver Gas under this Agreement, provided that such substitute Gas conforms to the Specification.
- (c) Any substitution of Gas under this Article 2.3 will not alter the Price to be paid by the Buyer with respect to Gas delivered under this Agreement.

## **3. RELATED ARRANGEMENTS**

Subject to Article 19.1 (*Seller's Facilities*) (in the case of the Seller) and Article 19.2 (*Buyer's Facilities*) (in the case of the Buyer), the Seller will, and will procure, as necessary, that its affiliates will, discuss in good faith with a view to achieving or agreeing, as applicable, the following:

- (a) incorporation of companies for the following roles:
- (i) owning and operating the FSRU (the **FSRU Co**), with the Buyer holding forty-nine percent (49%) of the shares in FSRU Co but having no rights to receive dividends or distributions as a result thereof and an affiliate of the Seller or a third party or parties holding fifty-one percent (51%) of the shares; and
  - (ii) owning and operating the Pipelines an affiliate of the Seller or a third party or parties holding one-hundred percent 100% of the shares (the **Pipeline Co**),
- in each case on terms to be agreed (such terms including, without limitation, in relation to voting rights);
- (b) entry into the FSRU Agreement by the Seller and FSRU Co, which will include an obligation to design, procure, construct, finance, operate and maintain the FSRU offshore terminal including mooring and unloading facilities, to enable the Seller to perform its obligations under this Agreement;
- (c) entry into the Pipeline Agreement by the Seller and Pipeline Co, which will include an obligation to design, procure, construct, finance, operate and maintain the Pipelines and gas network control and management systems, to enable the Seller to perform its obligations under this Agreement; and
- (d) entry, by the Buyer and the affiliate of the Seller holding shares in FSRU Co, into a binding arrangement under which the affiliate agrees that, on the later of:
- (i) termination of this Agreement (provided that the Termination Payment provided for in Schedule 5, if any, has been paid in accordance with Article 22.7(a)); and
  - (ii) the date on which the Seller has delivered to the Buyer under this agreement  MMBtu, being the Gas resulting from nineteen point five (19.5) million tonnes of LNG (with the amount in MMBtu binding and the amount in million tonnes per annum for convenience only),

to transfer its shares in FSRU Co Buyer (or the Buyer's nominee).

#### 4. CONDITIONS PRECEDENT

##### 4.1 Conditions Precedent

- (a) The effectiveness of Articles 2.1 (*Sale and purchase of Gas*), 7 (*Delivery and Quantities*), 8 (*Seller's Failure to Deliver*), 9 (*Buyer's Failure to Take*), 13 (*Gas Specification*), 14 (*Price*), 15 (*Invoicing and Payment*), 16 (*Credit Support*), 17 (*Measurement*), 18 (*Transfer of Title and Risk*) and 19 (*Facilities*) shall be subject to the satisfaction of the following conditions (**Conditions Precedent**) or their waiver in accordance with Article 4.4 (all other provisions not listed in this Article shall be binding and effective as of the date of execution of this Agreement):
- (i) on or before , execution by all parties of the Implementation Agreement and such agreement becoming unconditional;
  - (ii) on or before , execution by all parties of the FSRU Agreement and such agreement becoming unconditional;

- (iii) on or before [●], execution by all parties of the Pipeline Agreement and such agreement becoming unconditional;
  - (iv) on or before [●], Buyer and Seller agreeing the Manuals in writing;
  - (v) on or before [●], all Seller Approvals are obtained on conditions acceptable to the Seller, acting reasonably; and
  - (vi) on or before [●], execution of the BOI Agreement and such agreement becoming unconditional.
- (b) All of the obligations contained in the Articles listed in Article 4.1(a) are binding on the Parties as of the date when the final Condition Precedent has been satisfied or waived (the **Effective Date**).

#### **4.2 Reasonable Endeavours**

The Buyer and the Seller shall each use reasonable endeavours to achieve the timely satisfaction of the Conditions Precedent.

#### **4.3 Notification**

Each Party shall:

- (a) keep the other Party informed regarding its progress in meeting the Conditions Precedent; and
- (b) notify the other Party when any Condition Precedent has been met or as soon as it anticipates that a Condition Precedent cannot be met.

#### **4.4 Waiver of Conditions Precedent**

The Seller may at any time before the dates provided for the satisfaction of Condition Precedent described at Article 4.1(a), waive the satisfaction of some or all of the Conditions Precedent by giving notice to the Buyer.

#### **4.5 Failure to Satisfy the Conditions Precedent**

If any of the Conditions Precedent are not satisfied or unconditionally waived (in accordance with Article 4.4) by the applicable date for that Condition Precedent, Article 22.2 (*Termination by the Seller*) or Article 22.3 (*Termination by the Buyer*) (as applicable) applies.

### **5. CONTRACT PERIOD AND START DATE**

#### **5.1 Contract Period**

- (a) The **Contract Period** starts on the Start Date and, subject to any specific rights of termination or extension provided herein, shall terminate on the End Date (the **Contract Period**).
- (b) The Parties may, by mutual written agreement, extend the End Date.
- (c) The Parties may, by mutual written agreement, extend the Contract Period due to Force Majeure.

## 5.2 Start Date

- (a) The date for the first tendering for delivery and taking of Gas under this Agreement (**Start Date**) shall be a date that falls within the period beginning on the date which is [twenty seven (27)] months after the date of execution of this Agreement and ending on the date which is [thirty two (32)] months after the date of execution of this Agreement (**First Window Period**) determined as follows.
- (i) Within [● (●)] days after the Effective Date, the Seller shall by notice to the Buyer nominate a second period within which the Start Date will occur, being a period of [● (●)] days falling entirely within the First Window Period (**Second Window Period**).
  - (ii) At least [● (●)] days prior to the commencement of the Second Window Period, the Seller shall, by notice to the Buyer, nominate a third period within which the Start Date will occur, being a period of [● (●)] days falling entirely within the Second Window Period (**Third Window Period**).
  - (iii) At least [● (●)] days prior to the commencement of the Third Window Period, the Seller shall, by notice to the Buyer, nominate a fourth period within which the Start Date will occur, being a period of [● (●)] days falling entirely within the Third Window Period (**Fourth Window Period**).
  - (iv) At least [● (●)] days prior to the commencement of the Fourth Window Period, the Seller shall, by notice to the Buyer, nominate a date falling within the Fourth Window Period as the Start Date.
- (b) If the Seller fails to make any nomination in accordance with Article 5.2(a), then the relevant window period or the Start Date (as applicable) shall be deemed to be that period of the required duration which ends on, or that date which is, the last day that could be nominated.
- (c) Subject to Article 5.2(g), if a Seller Entity is delayed in the design, procurement, construction, financing, operation or maintenance of the Seller's Facilities or the Seller is delayed in tendering Gas to the Buyer due to Force Majeure, then the deadlines in Article 5.2(d) and each Window Period and Start Date referenced, nominated or deemed under this Article 5.2 (*Start Date*) shall be extended by the period of delay due to Force Majeure.
- (d) Subject to Article 5.2(c), if the Seller is not able to tender delivery of Gas under this Agreement by the earlier of [thirty (30) days] after the Start Date or the date which is [thirty two (32)] months after the date of execution of this Agreement, then Article 22.2 (*Termination by the Seller*) or 22.3 (*Termination by the Buyer*) (as applicable) applies.
- (e) If the Seller is ready and willing (in its absolute discretion) to make Gas available to the Buyer at any time after [●] and prior to the Start Date most recently notified by the Seller to the Buyer pursuant to this Article 5.2 (*Start Date*), then the Seller may give no less than thirty (30) days' notice to the Buyer and Buyer must use its reasonable endeavours to commence taking Gas on and from the date identified in such notice. If the Buyer cannot commence taking Gas on and from the date identified in Seller's notice, the Buyer will advise the Seller promptly of the date (if any) before the Start Date upon which the Buyer is able to commence taking Gas. Any date that the Buyer commences taking Gas pursuant to this Article 5.2(e) will become the Start Date.
- (f) The Seller must give the Buyer regular notice on the progress of the design, procurement, construction, completion, testing and commissioning of the FSRU and Pipelines.



- (g) If, due (in whole or in part) to the action or inaction of the Buyer or Political Force Majeure:
- (i) the Conditions Precedent described at Articles 4.1(a)(iv), 4.1(a)(v) or 4.1(a)(vi); or
  - (ii) the design, procurement, construction, completion, testing or commissioning of the Seller's Facilities,

are not complete on or before the earlier of [thirty (30) days] after the Start Date or the date the date which is [32] months after the date of execution of this Agreement, the Seller may notify the Buyer of a date on which the Start Date will be deemed to have occurred (**Deemed Start Date**). On the occurrence of the Deemed Start Date, the Seller's obligation to deliver Gas shall be suspended for Buyer default (without prejudice to the Buyer's obligation to pay for the TOP Quantity pursuant to Article 11.2 (*Take or pay*)) until the later of the satisfaction or waiver of all Conditions Precedent referred to in this Article 5.2(g) or until the commissioning of the Seller's Facilities, as applicable.

### 5.3 Commissioning Gas

- (a) The Buyer may request the Seller to deliver Gas under this Agreement in connection with the construction, start-up, commissioning and testing of any Buyers Facilities or Power Station and the Seller shall discuss in good faith with the Buyer as to whether the Seller agrees to deliver Gas for the said purpose and, if so, the terms for such delivery. The Seller is not obliged to develop or reserve any Gas or capacity in the Seller's Facilities for Commissioning Gas.
- (b) The Seller must supply Gas required for construction, start-up, commissioning and testing of any Sellers Facilities.

## 6. WARRANTIES

### 6.1 Due execution warranties

Each Party covenants, warrants and represents to the other Party that:

- (a) it has and for so long as this Agreement remains in force shall continue to have full legal capacity, right, power and authority to execute and perform its obligations under this Agreement;
- (b) this Agreement has been duly signed and constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms; and
- (c) all necessary action has been taken to authorize the execution, delivery and performance of this Agreement.

### 6.2 Gas and transportation warranties

The Seller covenants, warrants and represents to the Buyer, on and from the Start Date and for the entire Contract Period that:

- (a) it will have title to the Gas and transfer title to the Gas to the Buyer at the Delivery Point and that such Gas will be free from all liens, charges, encumbrances, and adverse claims which might prevent, impede, or prejudice its right to sell and deliver the Gas; and

- (b) it will have in place arrangements with the Transporter which allow it to transport Gas to each Delivery Point.

### 6.3 Buyer Approvals

The Buyer covenants, warrants and represents to the Seller that it will have valid and existing Buyer Approvals on and from the Start Date and will maintain, renew or replace such Buyer Approvals as and when required.

## 7. DELIVERY AND QUANTITIES

### 7.1 Available quantities

- (a) During the Contract Period, the Seller shall have available for delivery at the Delivery Point(s) to the Buyer the following:
  - (i) subject to Article 7.2, for each Contract Year, an **Annual Contract Quantity**, or **ACQ** of [31,200,000] MMBtu, being the Gas resulting from zero point six (0.6) million tonnes of LNG (with the amount in MMBtu binding and the amount in million tonnes per annum for convenience only), provided that the ACQ for the first and last Contract Years shall be deemed to be reduced pro rata to the number of days in such Contract Year as a proportion of three hundred and sixty five (365) days;
  - (ii) for each day in each Contract Year, the aggregate quantities (in MMBtu) of Gas Properly Nominated by the Buyer in accordance with Article 7.3 and accepted in accordance with Article 7.4.
- (b) Subject to the ADP and other provisions of this Agreement, the Seller shall use reasonable endeavours to sell and deliver and the Buyer shall use reasonable endeavours to purchase and take delivery of all Gas to be sold and purchased under this Agreement in each Contract Year at rates and intervals and in quantities reasonably equal and constant throughout the Contract Year, taking into account Adverse Weather, maintenance periods, and to the extent reasonably practicable, the operational plans for the Buyer's Facilities and the Seller's Facilities, in respect of any Contract Year.

### 7.2 AACQ

- (a) If the Buyer requires additional volumes of Gas, the Buyer may by written request to the Seller, request the Seller to provide additional quantities above the ACQ for the next Contract Year (**Upward Quantity Tolerance** or **UQT**) provided that:
  - (i) UQT is requested in accordance with Article 10.1(b) and 10.2(a);
  - (ii) the Seller may accept or reject the request for UQT in its absolute discretion;
  - (iii) the Buyer shall not request UQT for a Contract Year for an amount of Gas exceeding ten percent (10%) of the ACQ; and
  - (iv) the Seller is not obliged to reserve any Gas or capacity in the Seller's Facilities for UQT.
- (b) If the Buyer requires less volumes of Gas, the Buyer may by written request to the Seller, request a reduction in ACQ for the next Contract Year (**Downward Quantity Tolerance** or

**DQT**) by an amount not exceeding ten percent (10%) of the ACQ (the **Annual DQT Cap**), provided that:

- (i) DQT is requested in accordance with Article 10.1(b) and 10.2(a);
- (ii) the Net DQT Balance does not exceed fifty percent (50%) of the ACQ (the **Aggregate DQT Cap**).

Thereafter, the Buyer shall not request, and the Seller will not grant, any further DQT until the Net DQT Balance is reduced below the Aggregate DQT Cap in which case Buyer may again request DQT, subject always to the Annual DQT Cap and the Aggregate DQT Cap.

- (c) During each Contract Year, the Seller shall have available for delivery and the Buyer must take at the Delivery Point(s) the ACQ plus any UQT and minus any DQT included by the Seller in the ADP, such amount being the **Adjusted Annual Contract Quantity** or AACQ.

### 7.3 Nominations

The Buyer shall provide forecasts and nominations of its requirements of Gas, and the Delivery Point(s) at which it should be made available, as set out in the Nomination and Operations Manual to enable the Seller to plan for the delivery of Gas to the Buyer (**Nominations**).

### 7.4 DQ and MDQ

The Seller shall, in accordance with the Nomination and Operations Manual, accept or reject the Buyer's Nomination, provided that:

- (a) where the Buyer's Proper Nomination is equal to or less than the DQ, the Seller shall accept the Proper Nomination;
- (b) where the Buyer's Proper Nomination is greater than DQ, the Seller shall accept the Nomination of DQ and use reasonable endeavours to supply an amount greater than DQ (but not exceeding MDQ), taking into account its commercial and operations interests, including, the ability to source LNG under existing LNG SPAs, the capabilities of the then existing Seller's Facilities, the necessity for capacity planning and repair and of its commitments under this Agreement and elsewhere;
- (c) subject to Article 7.6, the Buyer's maximum permissible nomination of Gas across all Delivery Points on any day is the MDQ;
- (d) notwithstanding Articles 7.4(a) and 7.4(b), nomination of Make-up Gas is subject to Article 11.3(a);
- (e) notwithstanding Articles 7.4(a) and 7.4(b), except in relation to the supply of Make-up Gas Properly Nominated in accordance with Article 11.3 (*Make-up*), the Seller is not obliged to supply an amount of Gas in a month greater than the Monthly Quantity; and
- (f) the Seller is not obliged to reserve any Gas or capacity in the Seller's Facilities for delivery of Gas above DQ for a day, Monthly Quantity for a month and AACQ for a Contract Year.

## 7.5 Minimum Quantity

- (a) The minimum quantity of Gas which the Buyer must nominate to be made available for delivery in accordance with this Agreement at the Delivery Point(s) on any given day is [●] MMBtu (the **MinDQ**).
- (b) If the Buyer's Nomination for any day specifies a quantity of Gas which is less than the MinDQ, the Nomination for that day may, in the Seller's absolute discretion, be deemed to be the zero (0).

## 7.6 Excess Gas

- (a) If on any day during any Contract Year the Buyer requires additional quantities of Gas in excess of the MDQ (**Excess Gas**), the Buyer may notify the Seller of such excess requirements, and the Seller may agree to accept or reject such request in its absolute discretion.
- (b) The Seller is not obliged to reserve any Gas or capacity in the Seller's Facilities for Excess Gas.
- (c) If the request for such Excess Gas is accepted, the amount of the Excess Gas is deemed to be included in the Nomination. However, if Excess Gas is delivered, it shall not form part of the quantity of Gas taken in the Contract Year for the purposes of Articles 11.2 (*Take or pay*), 11.3(a) and 15.1(a).
- (d) If the Buyer takes any Excess Gas on a day, the Buyer shall pay to the Seller, on top of and in addition to the Price of Gas for such day, the Excess Gas Price for that Excess Gas.

## 7.7 Maintenance Shutdown

- (a) At least thirty (30) days prior to the first day of a Maintenance Month (as set out in the current ADP), the Seller shall notify the Buyer of the days during the Maintenance Month during which the Maintenance Shutdown will occur (each a **Maintenance Day**).
- (b) On a Maintenance Day, the delivery or receipt of Gas may be reduced to zero (0), but only to the extent that is necessary for the Maintenance Shutdown.
- (c) In any given Contract Year, the maximum number of Maintenance Days shall not exceed [●] days in that Contract Year (**Maintenance Shutdown Entitlement**). Such quantity shall be pro-rated accordingly for the first and last Contract Years.
- (d) Notwithstanding Article 7.7(c), if it is necessary for the Seller to exceed the Maintenance Shutdown Entitlement, then the Seller shall notify the Buyer of the same in writing and provide, to the reasonable satisfaction of the Buyer, supporting documentation and proof of the necessity to exceed such Maintenance Shutdown Entitlement as well as the excess entitlement that is required, whereupon the Seller shall then by notice to the Buyer revise the Maintenance Shutdown Entitlement in accordance with the Seller's requirement provided that:
  - (i) the excess Maintenance Shutdown Entitlement is required by the Seller solely for the purposes of complying with any applicable Legal Requirement or by the original equipment manufacturer of the Seller's Facilities;

- (ii) the revised Maintenance Shutdown Entitlement for the related Contract Year or Contract Years shall not exceed [●] days, including the [●] days referred to in Article 7.7(c) for each relevant Contract Year.

## **7.8 Supply Deficiency**

Without prejudice to any rights or remedies of the Parties under this Agreement, if the Seller is unable to supply Gas hereunder due to a supply deficiency, the Parties shall consult each other in good faith to determine if any action can be taken to resolve or alleviate any problem to the Parties.

## **7.9 Additional Gas**

- (a) Subject to capacity in the FSRU and Pipelines and the construction of any new Pipelines required, the Buyer may request the Seller to deliver Gas in connection with the construction, start-up and testing of any new power station or substitution of an existing Power Station to that of a new power station and the Seller shall discuss in good faith with the Buyer as to whether the Seller agrees (in its absolute discretion) to deliver Gas for the said purpose.
- (b) The Buyer may, at any time after the commencement of the second (2nd) Contract Year, request the Seller to sell gas to the Buyer above the ACQ, provided that:
  - (i) the Buyer must make such request at least twelve (12) months prior to the date when delivery of the additional gas will commence; and
  - (ii) the Buyer and Seller intend the supply of additional gas to be on terms substantially similar to this Agreement, however the additional quantities of gas will not form part of this Agreement, the Buyer and Seller shall discuss in good faith as to the terms and price for the sale of the additional quantities and no additional quantity of gas will be supplied until such terms and price are agreed in writing by the Seller, in its absolute discretion.
- (c) The Buyer and its affiliates shall not purchase any quantities of Gas from any person other than the Seller and its affiliates until the total long-term, firm, unconditional sales of gas from the Seller and its affiliates to the Buyer and its affiliates in Sri Lanka are greater than [●] MMBtu per year, being the Gas resulting from one (1.0) million tonnes of LNG.
- (d) The Seller is not obliged to reserve any Gas or capacity in the Seller's Facilities for additional gas that may be requested pursuant to this Article 7.9.

## **8. SELLER'S FAILURE TO DELIVER**

### **8.1 Allocation**

- (a) On any day that a quantity of Gas has been made available for delivery by the Seller and taken by the Buyer in accordance with this Agreement then, unless otherwise required by any Legal Requirement, the Seller shall allocate that quantity of gas first to the Buyer in accordance with its Proper Nomination and then, as between any Third Party Buyers, to such Third Party Buyers in proportion to their properly nominated quantities for that day under any Third Party Agreements.
- (b) On any day that the Seller does not have a quantity of Gas available for delivery equal to the Buyer's Proper Nomination and all properly nominated quantities of Third Party Buyers (including due to Force Majeure or Maintenance Shutdown), then the Seller will, acting

reasonably, allocate the available quantity of Gas between the Buyer and any Third Party Buyers as follows:

- (i) first, to satisfy in full any allocation required by law or pursuant to any direction, order, demand or guidance from a regulatory body from time to time with which the Seller believes, acting reasonably, it is obliged to comply or with which it is customary to comply;
  - (ii) second, to the Buyer in accordance with its Proper Nomination under this Agreement for the relevant day;
  - (iii) third, to Third Party Buyers in proportion to their properly nominated quantities (other than properly nominated quantities for Gas to be provided on an Interruptible basis) for the relevant day;
  - (iv) fourth, to the Buyer in accordance with its Proper Nomination for an Interruptible supply of Gas for the relevant day; and
  - (v) finally, to Third Party Buyers in proportion to their properly nominated quantities under Third Party Agreements for that day for the supply of Gas on an Interruptible basis.
- (c) If at any time during the Contract Period, there is a change to, or enactment of, any Legal Requirement which impacts on any allocation methodology with the consequence that the allocation methodology used by the Seller pursuant to this Article 8.1 will change, then the Seller shall give notice of that change to the Buyer as soon as reasonably practicable. This Agreement shall be deemed amended so as to give effect to the allocation methodology as of the date of the Seller's notice pursuant to this Article 8.1.

## 8.2 Compensation for failure to deliver

- (a) If, on any day during the Contract Period, the Seller fails to make available the amount of Gas Properly Nominated to the nominated Delivery Point(s) for the following reasons:
- (i) the quality of Gas delivered failed to conform with the Specification and the Buyer has refused to accept such Gas; or
  - (ii) arising out of events other than:
    - (A) Force Majeure; or
    - (B) a Maintenance Shutdown,

then, subject to Article 11.4(d), the Seller shall compensate the Buyer based on the quantity of Gas deficit (in MMBtu) hereinafter called **Shortfall Gas** in accordance with Article 8.2(b).

- (b) The Buyer's sole and exclusive remedy (other than TOP Quantity adjustments) in respect of Shortfall Gas shall be limited to:
- (i) where Shortfall Gas has occurred due to a failure by the Seller to procure LNG supply, the Seller must use reasonable endeavours to procure delivery of an alternative cargo of LNG or accelerate the scheduled delivery of a cargo of LNG to the FSRU;

- (ii) where Shortfall Gas has occurred due to a failure by the Seller to procure LNG supply, the Seller has not procured the delivery of LNG in accordance with Article 8.2(b)(i) and a period of 14 days has passed since the Shortfall Gas accruing and the Seller has not presented the Buyer with a viable plan to source LNG within a reasonable time, the Buyer may procure a cargo of spot LNG (with the cargo quantity of LNG being reasonable, having regard to the amount of Shortfall Gas) at a reasonable market price and if such cargo meets technical, operational and scheduling requirements of the Seller's Facilities, the Seller must purchase the cargo of LNG (either directly from the LNG supplier or, if the Seller determines that is not practical, from the Buyer at the same price per MMBtu as paid by the Buyer to the LNG Supplier);
- (iii) where Shortfall Gas has occurred due to a failure by the Seller to procure LNG supply, the Buyer may use Seller Provided Fuel provided that:
- (A) for the purposes of this Article 8.2(b)(iii) '**Seller Provided Fuel**' means the alternative fuel which is agreed in the Nomination and Operations Manual and is supplied, stored and delivered in accordance with the Nomination and Operations Manual;
  - (B) the Buyer complies with the provisions of the Nomination and Operations Manual and provides access to infrastructure and facilities required to deliver the Seller Provided Fuel at no cost to the Seller;
  - (C) the Buyer uses an amount of Seller Provided Fuel to produce an equivalent amount of electrical power as if it had received the Shortfall Gas; and
  - (D) where other fuel supplies are procured by the Seller and electrical power produced, the quantity of Shortfall Gas equivalent to the amount of electrical power produced is deemed to have been delivered and not be Shortfall Gas.
- (iv) where Shortfall Gas has occurred due to reason other than the failure by the Seller to procure LNG supply:
- (A) the Seller must assist and cooperate with the Buyer procuring alternative fuel or energy supplies;
  - (B) the Buyer must notify Seller of the need to procure alternative fuel or energy supplies and provide the Seller with details of the process of sourcing alternative fuel or energy and any arrangements entered into; and
  - (C) the Seller must pay the Buyer (subject to Article 8.2(c) and 8.2(d)) an amount equal to:
    - I. the reasonable additional cost (in excess of the amount that would have been payable for the Shortfall Gas at the Price at the time the Shortfall Gas accrues) of Gas or alternative fuel supplies to produce an equivalent amount of electrical power as if it had received that Shortfall Gas; plus
    - II. transportation costs paid by the Buyer which the Buyer would not have incurred had the Seller made that Shortfall Gas available for delivery.

- (c) In the case of Shortfall Gas occurring due to reason other than the failure by the Seller to procure LNG supply, the Seller's liability under Article 8.2(b)(iv) is limited to an amount equal to zero point two (0.2) multiplied by the Price (at the time the Shortfall Gas accrues) multiplied by the Shortfall Gas.
- (d) In order to make a claim under Article 8.2(b)(iv), the Buyer must have:
  - (i) used reasonable endeavours to procure alternative energy supplies or alternative Gas or fuel supplies and related transportation at the lowest cost commercially available; and
  - (ii) used reasonable endeavours to mitigate costs incurred in respect of the Gas or other energy supplies procured.

### **8.3 Delivery Tolerance**

- (a) To the extent that the Shortfall Gas for a day does not, absent the application of this Article 8.3(a), exceed five percent (5%) of the Proper Nomination minus any amount not made available due to the events listed in Article 8.2(a)(ii) for that day, that Gas shall not be classified as Shortfall Gas and the Seller shall be deemed to have met its obligation to make Gas available for delivery on that day and the Shortfall Gas quantity shall be deemed to equal zero (0).
- (b) To the extent that the Shortfall Gas Quantity for a day does, absent the application of this Article 8.3(b), exceed five percent (5%) of the Proper Nomination minus any amount not made available due to the events listed in Article 8.2(a)(ii) for that day, only the excess thereof shall be classified as Shortfall Gas and the Shortfall Gas quantity shall be deemed to equal the quantity by which the relevant quantity delivered is less than ninety five percent (95%) of the Proper Nomination minus any amount not made available due to the events listed in Article 8.2(a)(ii) for that day.

## **9. BUYER'S FAILURE TO TAKE**

- (a) If, as a result of a failure to take the TOP Quantity, the Seller is liable to pay any amount under its LNG SPA(s) or pay any amount to time charter parties related to LNG vessels used to supply LNG to the Seller's Facilities other than a take-or-pay payment, the Buyer shall reimburse Seller for any such sums or damages so paid by Seller.
- (b) The Buyer's liability under Article 9(a) is limited to an amount of equal to zero point two (0.2) multiplied by the Price (at the time the failure to take occurred) multiplied by the TOP Quantity for the month in which the failure to take occurred.
- (c) In order to make a claim under Article 9(a), the Seller must have used reasonable endeavours to mitigate losses incurred in respect of the LNG SPA(s) or incurred to time charter parties related to LNG vessels used to supply LNG to the Seller's Facilities.

## **10. ANNUAL DELIVERY PROGRAMME**

### **10.1 Programme for the first Contract Year**

- (a) The Seller shall, as soon as reasonably practicable after the notice of the Start Date under Article 5.2 (*Start Date*), notify the Buyer of availability of Gas from the Seller's Facilities for each month of the first (1st) Contract Year (taking into account all relevant Maintenance



Shutdowns and the effects of any Force Majeure including the potential impact of Adverse Weather Conditions).

- (b) Within [● (●)] days of the Buyer's receipt of the Seller's notice under Article 10.1(a), the Buyer shall notify Seller the following in respect of the first (1st) Contract Year:
- (i) the amount of any requested UQT or DQT for the first (1st) Contract Year;
  - (ii) the quantities it wishes to take during each month of the first (1st) Contract Year, including any likely Make-Up Gas or Excess Gas;
  - (iii) the Delivery Point(s) to which such quantities are to be delivered; and
  - (iv) details of any planned maintenance requirements for the first (1st) Contract Year.
- (c) The Parties shall meet to consult in good faith to agree on a programme for the first (1st) Contract Year. No later than [● (●)] days prior to the commencement of last Start Date notified in accordance with Article 5.2 (*Start Date*) or such other date as the Parties may agree, the Seller shall prepare and issue at the Seller's sole and absolute discretion, a final delivery programme for the first (1st) Contract Year, taking into account the discussions between the Parties.

## 10.2 Programming Information<sup>3</sup>

Other than for the first (1st) Contract Year, no later than:

- (a) [date] in each Contract Year, the Buyer shall notify the Seller of the following in respect of the next Contract Year:
- (i) the amount of any requested UQT or DQT for the next Contract Year;
  - (ii) the quantities it wishes to take during each month of the next Contract Year, including any likely Make-Up Gas or Excess Gas;
  - (iii) the Delivery Point(s) to which such quantities are to be delivered; and
  - (iv) details of any planned maintenance requirements for the next Contract Year; and
- (b) [date] in each Contract Year, the Seller shall notify the Buyer of the anticipated quantities of Gas to be available for delivery hereunder from Seller's Facilities during each month of the next Contract Year. Thereafter, the Parties shall, as soon as reasonably practicable, exchange information and consult in good faith, on the delivery programme for the next Contract Year. No later than [date] in such Contract Year, the Seller shall issue a preliminary programming schedule for quantities of Gas to be sold hereunder during the next Contract Year.

## 10.3 Annual Delivery Programme

- (a) Not later than [date]<sup>4</sup> prior to the start of the next Contract Year (or, in respect of the first (1st) Contract Year, by the date required under Article 10.1(c) or such other date as the Parties may agree), the Seller shall issue a programme (the **Annual Delivery Programme** or **ADP**) which provides for how the AACQ is to be divided among each month of the next

<sup>3</sup> Dates in this Article to be included once timing with LNG SPA confirmed or to be agreed in Nomination and Operations Manual.

<sup>4</sup> Date to be included once timing with LNG SPA confirmed or to be agreed in Nomination and Operations Manual.

Contract Year. The quantity of Gas indicated for each month in the ADP shall be the **Monthly Quantity**.

- (b) In determining the ADP, the Seller shall, to the extent reasonably practicable and relevant:
  - (i) use reasonable endeavours to co-ordinate the planned maintenance requirements notified by Buyer under Article 10.2(a) with the Maintenance Shutdown periods for the Seller's Facilities;
  - (ii) take into account the effects of any Force Majeure including the potential impact of Adverse Weather Conditions;
  - (iii) take into consideration the Parties' reasonable intentions and requests under Article 10.2; and
  - (iv) take into consideration the Parties' commitments to third parties to the extent made known to each other.
- (c) The ADP shall reflect the agreement on the delivery programme to the extent reached between the Parties and, in the absence of complete agreement on the delivery programme, the Parties will cooperate to agree on the delivery programme, but failing such agreement, the Seller will be entitled to prepare and issue a final ADP, taking into account the discussions between the Parties.
- (d) Each ADP shall detail the ACQ, AACQ, Monthly Quantity, DQ, any DQT and any UQT.
- (e) Each ADP shall set out the months of the year in which the Seller's Maintenance Shutdowns will occur (a **Maintenance Month**) and the number of days in that month where the Seller will curtail deliveries for a Maintenance Shutdown or Maintenance Shutdowns.

#### **10.4 Changes to Annual Delivery Programme**

- (a) Either Party may request a change in an ADP for any of the following reasons:
  - (i) in the case of the first (1st) Contract Year only, any change to the Start Date after the ADP has been determined;
  - (ii) changes to maintenance schedules; or
  - (iii) Force Majeure including the potential impact of Adverse Weather Conditions,and that Party shall give notice to the other Party of what change(s) it proposes and its reason(s).
- (b) As soon as possible after such notice has been received, the Parties shall consult with one another to examine whether such ADP can be revised to accommodate such proposed change(s). The Parties shall cooperate to agree on changes to the ADP but failing such agreement, the Seller will be entitled to prepare and issue changes to the ADP (if any), taking into account the discussions between the Parties.
- (c) Other than altering the Monthly Quantity, any change to the ADP shall not, unless expressly stated as agreed otherwise by the Parties in the ADP, affect the obligations pursuant to Article 7 (*Delivery and Quantities*) of the Party requesting such change.

## 11. TAKE OR PAY AND MAKE-UP GAS

### 11.1 Take or pay quantity

The **TOP Quantity** for a month is determined as follows:

**TOP Quantity for month 'n' = MQ - R**

where:

**MQ** is the Monthly Quantity for month 'n'; and

**R** is the aggregate of:

- (a) any quantity of Gas Properly Nominated on any day during month 'n' which the Seller has, for reasons of Force Majeure other than a Political Force Majeure Event, not delivered or been prevented from delivering;
- (b) any quantity of Gas Properly Nominated on any day during month 'n' which the Buyer has for reasons of Force Majeure other than a Political Force Majeure Event been prevented from accepting;
- (c) any quantity of Gas Properly Nominated on any day during month 'n' which the Seller has failed to deliver for any other reason other than Force Majeure, Maintenance Shutdown or suspension of deliveries for Buyer default or failure to accept by the Buyer; and
- (d) any quantities of Gas Properly Nominated on any day during month 'n' which the Buyer did not accept due to non-conformity with the Specification.

### 11.2 Take or pay

- (a) During each month of a Contract Year the Buyer shall purchase and take delivery of the TOP Quantity or nevertheless pay if the TOP Quantity is not taken. This and Article 9 (*BUYER'S Failure to Take*) are the Seller's sole and exclusive remedy in respect of a failure by the Buyer to take delivery of Gas.
- (b) Subject to Article 11.4(d), if, in any month of a Contract Year, the Buyer has not taken a quantity of Gas at least equal to the TOP Quantity (hereinafter called a **Debit Month**) the Buyer shall (following delivery of the monthly Invoice under Article 15.2 (*Monthly Invoice*)) pay for the Monthly Deficiency. The **Monthly Deficiency** is the difference between the TOP Quantity and the total Gas (excluding Make-up Gas and Excess Gas) taken by the Buyer in that Debit Month. The price to be paid by the Buyer in a Debit Month for any Monthly Deficiency shall be the Price for that month shown in the Invoice issued pursuant to Article 15.2 (*Monthly Invoice*) as determined in accordance with Article 14 (*Price*) applicable during the Debit Month.

### 11.3 Make-up

- (a) If under Article 11.2(b) the Buyer has paid for a quantity of Gas not taken in any Debit Month, the Buyer may nominate delivery of a quantity of Gas (hereinafter referred to as **Make-up Gas**) up to a quantity equivalent to the aggregate Monthly Deficiency. The Buyer's right to nominate and take the Make-up Gas is subject to:

- (i) the Buyer having taken one hundred percent (100%) of the AACQ in the current Contract Year and one hundred percent (100%) of the Monthly Quantity in the current month; and
  - (ii) the ability to source LNG under existing LNG SPA(s), the capabilities of the then existing Seller's Facilities, the necessity for capacity planning and repair and of its commitments under this Agreement and elsewhere.
- (b) The Seller is not obliged to reserve any Gas or capacity in the Seller's Facilities for Make-up Gas.
  - (c) Make-up Gas in respect of any one Debit Month shall not be taken before the remaining balances in all previous Debit Months have been taken. The price for the Make-up Gas shall be the applicable price as determined under Article 14 (*Price*) on the date of delivery less the amount paid pursuant to Article 11.2(b) and, accordingly, the Seller shall reimburse the Buyer to the extent such price is less than the price paid for the Gas not taken, and the Buyer shall make additional payments to the Seller to the extent the price on the date of delivery has increased, as the case may be. For the purposes of this Article 11.3(c) Make-up Gas is recovered on a first in first out basis.
  - (d) If at the end of the Contract Period, the Buyer has not taken the whole of the balance of the Make-up Gas, then any balance of Make-up Gas not taken shall be forfeited absolutely and the Buyer shall have no right to claim for the refund of monies paid for the said balance of the Make-up Gas.

#### 11.4 Agreed Diversion

- (a) The Buyer may, from time to time, request that the Seller divert a cargo of LNG intended to supply Gas under this Agreement (**Diverted Cargo**).
- (b) If a request is made by the Buyer pursuant to Article 11.4(a), the Seller may (If the Seller agrees to proceed with the diversion pursuant to Article 11.4(c)) inform the Buyer of how much the availability of Gas will be reduced (as against the amount of gas available had the cargo been delivered to supply Gas under this Agreement) due to the diversion of the Diverted Cargo in a month (the **Reduction Quantity**) and which months that reduction in availability will occur (each being a **Reduction Month**).
- (c) The Parties will discuss any request made by the Buyer pursuant to Article 11.4(a) and the Seller may, in its absolute discretion, agree to proceed with the diversion.
- (d) If the Seller agrees to proceed with the diversion pursuant to Article 11.4(c):
  - (i) the amount to be paid by the Buyer pursuant to Article 11.2 for a Reduction Month shall be reduced by an amount agreed between the Buyer and Seller for that Reduction Month; and
  - (ii) the Seller will not be liable to pay any amount under Article 8.2 in a Reduction Month until the aggregate of the Shortfall Gas for the Reduction Month exceeds the aggregate Reduction Quantity for that Reduction Month.

## **12. LIABILITY**

### **12.1 Exclusions**

Except as otherwise expressly stated in this Agreement, no Party shall be liable to another Party under this Agreement for or in respect of:

- (b) any actual or anticipated:
  - (i) loss of income or profits;
  - (ii) loss of revenue;
  - (iii) loss of use;
  - (iv) loss of production;
  - (v) loss of contract;
  - (vi) loss of goodwill;
  - (vii) increased cost of working; or
  - (viii) loss of business opportunity;
- (c) any claim, demand or action made or brought against that other Party by a third party;
- (d) any indirect, remote, unforeseeable or consequential loss or damages; or
- (e) exemplary or punitive damages,

incurred by a Party or any other person, all or any part of which arises out of or relates to the performance or breach of this Agreement, or to any act or omission related to this Agreement, whether in contract, tort (including negligence or breach of duty), strict liability or any other doctrine in contract, law or equity.

### **12.2 Limitations**

Except as expressly provided for elsewhere in this Agreement, a Party's sole remedy against the other Party for non-performance or breach of this Agreement or any other claim of whatsoever nature arising out of or in relation to this Agreement shall be in contract.

### **12.3 Mitigation**

In the event of any default, breach or negligence by either Party in relation to the performance or non-performance of their respective obligations under this Agreement, the other Party shall use reasonable efforts to promptly mitigate the losses, damages, costs and expenses resulting from the default, breach or negligence.

### **12.4 Loss of Profit**

No element of any payment by the Buyer or the Seller in accordance with this Agreement (including any payment pursuant to Articles 8 (*Seller's Failure to Deliver*), 9 (*BUYER'S Failure to Take*), 11 (*Take or Pay and Make-Up Gas*) and 22 (*Suspension and termination*)) otherwise due and payable shall be deemed or considered a loss of profit or be otherwise excluded by Article 12.1.

## **12.5 Liquidated Damages**

The Parties agree that the liquidated damages payable under Article 8 (*Seller's Failure to Deliver*), Article 9 (*Buyer's Failure to Take*), Article 11.2 (*Take or pay*) and Article 22.7 (*Consequences of Termination*) are genuine pre-estimates of the anticipated loss arising from the failure to deliver or take and are not a penalty. Each Party waives any right to claim or assert, in any arbitration or expert determination or in any other action pursuant to this Agreement, that such liquidated damages do not represent a genuine pre-estimate as to the loss likely to be suffered in those circumstances.

## **13. GAS SPECIFICATION**

### **13.1 Gas Specification**

Gas made available for delivery by the Seller at the Delivery Point(s) shall comply with the Specification.

### **13.2 Notification of Off-Specification Gas**

The Seller shall notify the Buyer and the Transporter, and the Buyer shall notify the Seller and the Transporter as soon as either becomes aware that Off-Specification Gas may be or has been made available for delivery by the Seller. Such notice shall identify, as far as possible, the degree to which the Off-Specification Gas differs from the Specification, the quantity of that Off-Specification Gas and the expected duration of that supply.

### **13.3 Seller to Remedy Off-Specification Gas**

As soon as the Seller becomes aware that Off-Specification Gas has been or will be delivered, the Seller must use reasonable endeavours to bring that Off-Specification Gas back into compliance with the Specification, regardless of whether the Buyer agrees to accept delivery of that Off-Specification Gas or not.

### **13.4 Buyer to Confirm Acceptance**

- (a) The Buyer will use reasonable endeavours to accept any Off-Specification Gas.
- (b) Upon receiving or giving notification pursuant to Article 13.2, the Buyer must advise the Seller by notice within one (1) hour of the notification whether it will accept such Off-Specification Gas.
- (c) If the Buyer fails to advise the Seller within one (1) hour of the notification pursuant to Article 13.2, then the Buyer will be deemed to have accepted that Off-Specification Gas.

### **13.5 Buyer Accepts Off-Specification Gas**

If the Buyer accepts or is deemed to have accepted delivery of all or any part of the Off-Specification Gas then:

- (a) the Buyer shall have no claim against the Seller under this Agreement or otherwise in respect of Off-Specification Gas;
- (b) the Seller shall be deemed to have made available Gas which meets the Specification in that quantity of Gas and the Buyer shall pay the Price for that Gas; and
- (c) title and risk in connection with that Gas shall pass to the Buyer at the Delivery Point(s) in accordance with Article 18 (*Transfer of Title and Risk*).

### 13.6 Buyer Rejects Off-Specification Gas

- (a) Subject to Article 13.6(b) if the Buyer rejects delivery of Off-Specification Gas from the Seller pursuant to Article 13.4, then the quantity of Off-Specification Gas so rejected will be deemed not to have been made available by the Seller for the purposes of Article 8 (*Seller's Failure to Deliver*).
- (b) If:
- (i) the Buyer has rejected delivery of Off-Specification Gas from the Seller; and
  - (ii) notwithstanding the rejection, such Off-Specification Gas has been made available by the Seller and taken by the Buyer (including prior to the Buyer advising the Seller that it rejects the Off-Specification Gas pursuant to Article 13.4(b)),
- then:
- (iii) the Seller shall be deemed to have made available that quantity of gas taken by the Buyer and the Buyer shall pay the Price for that gas;
  - (iv) that quantity of gas taken by the Buyer will not be deemed to be Shortfall Gas;
  - (v) title to that Off-Specification Gas taken by the Buyer will pass to the Buyer in accordance with Article 18 (*Transfer of Title and Risk*);
  - (vi) subject to Articles 12 (*Liability*), 13.6(b)(vi), 13.7 and 13.8 the Seller shall reimburse the Buyer for any direct losses, damages, costs and expenses that have been directly suffered, incurred or sustained by the Buyer as a consequence of Off-Specification Gas having been taken by the Buyer; and
  - (vii) the Seller's liability under Article 13.6(b)(vi) is limited to an amount equal to the product of zero point seven (0.7) multiplied by the quantity of rejected Off-Specification Gas that was delivered to the Buyer multiplied by the Price applicable in the month such Off-Specification Gas is delivered.

### 13.7 Mitigation of Loss

The Buyer shall take or cause to be taken all reasonable measures to minimise any losses incurred by the Buyer as a result of taking Off-Specification Gas pursuant to this Article 13, including taking or causing to be taken all reasonable operational steps necessary to stop taking the Off-Specification Gas.

### 13.8 No additional claims

Other than as expressly provided in this Article 13, the Buyer will have no additional rights or remedies, and must not make any claims, against the Seller under this Agreement or otherwise in respect of Off-Specification Gas delivered or made available for delivery to it, including claims for any costs, losses, expenses or damages incurred by the Buyer as a result of claims by the Buyer's customers or any other person.

## 14. PRICE

### 14.1 Calculation of Price

- (a) The Price of Gas, subject to the terms of this Agreement, shall be determined in accordance with the formula set out in Schedule 4.
- (b) All intermediate calculations to ascertain the Price under Article 14.1(a) shall be made to five decimal places without rounding and the final product shall be rounded to the third decimal place and a figure of five or more in the fourth decimal place shall cause a rounding up of the third decimal place.

### 14.2 Index

- (a) If at any time Intercontinental Exchange ceases to publish any one of the indexes used in Schedule 4 or any one of the indexes is so changed or becomes so out-of-date that it ceases to fulfil the object for which it was intended by the Parties (as evidenced by the context in which it was used in this Agreement) then either Party may notify the other Party that in its good faith view such indexes have been discontinued or have changed or become out-of-date as aforesaid.
- (b) Upon receipt of such notification, the Parties shall in good faith endeavour to agree on such alternative index or other changes as the Parties consider necessary in order to fulfil such objective.
- (c) If for any reason Intercontinental Exchange does not publish any of the indexes used in Schedule 4 on at least one occasion and the provisions of Article 14.2(a) do not apply, then the provisions of Article 14.2(d) shall apply taken in that order to the temporary non-availability of such prices (herein called the **Temporary Non-Availability**).
- (d) Where there is a Temporary Non-Availability:
  - (i) the Parties shall first endeavour to obtain such index or indexes from an alternative reliable source acceptable to both of them; or
  - (ii) if Article 14.2(d)(i) is not applicable, then the Price calculated under Article 14.1(a) for the week prior to the Temporary Non-Availability shall apply to all Gas delivered under this Agreement during the period of Temporary Non-Availability, and following the publication of those prices that were temporarily not available a final adjustment to the prices calculated under Article 14.1(a) so affected shall be made with retroactive effect and any sum due or owing from one Party to another shall be included in the next Invoice and paid by the Buyer or to the Buyer (whichever is appropriate); or
  - (iii) if the Temporary Non-Availability continues for more than twenty eight (28) days, then the provisions of Article 14.2(a) shall apply and following the agreement of the Parties a final adjustment shall be made to the prices calculated under Article 14.2(a) so affected with retroactive effect in the manner described in Article 14.2(d)(ii).
- (e) If Intercontinental Exchange publishes any correction of error, such correction shall only be applicable to the billing if published within one (1) month from date of receipt of invoice by the Buyer.



### 14.3 Disputes

All disputes under Articles 14.1 and 14.2 which cannot be resolved amicably by discussions between the Parties shall be resolved by an expert in accordance with Article 23.3 (*Settlement by Expert*).

### 14.4 Price Review

- (a) In this Article 14.4, a **Pricing Period** is a period of five (5) Contract Years from the Start Date and each following the fifth (5th) anniversary during the Contract Period.
- (b) Not less than [twelve (12) months] before the end of any Pricing Period, the Parties must consult and negotiate in good faith and with all reasonable accommodation to reach agreement on a reasonable adjustment to be made to the slope ('A') component of the Price formula set out in Schedule 4, such adjustment to apply for the next Pricing Period (a **Price Review**).
- (c) [●]
- (d) With the object of ensuring that the Price remains fair and reasonable during the full term of this Agreement, if any substantial change in circumstances at any time during the term of this Agreement means that the basis of calculation of the Price seriously prejudices or is reasonably foreseen seriously to prejudice any Party (or prejudices a Seller Entity in the context of the Regasification Project), then the Parties shall, at the written request by the Party affected, immediately consult together in a spirit of mutual understanding and cooperation and shall decide whether and what (if any) revision to the slope ('A') component of the Price formula set out in Schedule 4 is reasonably necessary in view of that change of circumstance, provided that no such change shall be made unless mutually agreed.

## 15. INVOICING AND PAYMENT

### 15.1 Attribution

- (a) All quantities of Gas made available for delivery in a Contract Year shall be allocated in the following order:
  - (i) first, to Adjusted Annual Contract Quantity; and
  - (ii) second, to Make-Up Gas up to the remaining untaken balance of the accrued Make-Up, if any.
  - (iii) third, any additional quantity will be treated in the same manner as Adjusted Annual Contract Quantity.
- (b) The relevant allocation shall be made by the Seller at the time of preparing the monthly Invoice.
- (c) To avoid doubt, all quantities of Gas made available as Excess Gas are not considered in Article 15.1(a).

### 15.2 Monthly Invoice

In respect of the Gas delivered in any month of a Contract Year, as soon as reasonably practicable and, in any event, within five (5) Business Days of the end of the month, the Seller shall send to the Buyer an invoice showing:

- (a) quantities nominated and delivered in MMBTU and Standard Cubic Meters (Sm<sup>3</sup>);
- (b) the applicable Gross Heating Values (in BTU per Standard Cubic Feet (BTU/scf));
- (c) the TOP Quantity for the month;
- (d) unit Price per MMBTU of quantities delivered;
- (e) quantities of Make-Up Gas taken and the balance which remains to be taken by the Buyer under Article 11.3 (*Make-up*);
- (f) any quantities of Gas identified as the Monthly Deficiency and the quantities in Article 11.1 (*Take or pay quantity*);
- (g) any Reduction Quantity applicable for the month;
- (h) any Shortfall Gas for each day (for information purposes only);
- (i) any Excess Gas for each day;
- (j) any amounts to be reimbursed for the month pursuant to Article 9 (*BUYER'S Failure to Take*);
- (k) any other sum payable by the Buyer to the Seller under this Agreement; and
- (l) the aggregate sum payable by the Buyer to the Seller.

### **15.3 Annual Statement**

At, or shortly after the end of each Contract Year, the Seller shall send to the Buyer, a statement showing:

- (a) the total quantity of Gas delivered hereunder in the preceding Contract Year (expressed in MMBTU and Sm<sup>3</sup>);
- (b) the TOP Quantity for each month in that Contract Year, with calculations thereof;
- (c) the total quantity of Gas, expressed in MMBTU, which is to be attributed to any Make-up Gas entitlement and balance (if any) to be taken;
- (d) any other sums due and owing from one Party to the other in respect of that Contract Year under this Agreement; and
- (e) the sum (if any) payable by one Party to the other.

This statement is for information purposes and the relevant Invoice applies for the purposes of payment.

### **15.4 Supporting documentation**

The Seller shall provide the information reasonably requested by the Buyer regarding the Invoice under Article 15.2 or the statement under Article 15.3.

## 15.5 Payment of Invoices

The Buyer shall settle the full value of each invoice or debit note for the credit of the Seller's account in an offshore bank account with a bank designated by the Seller on or before the date which is [●] Business Days] following the date of receipt by the Buyer of the Invoice.

## 15.6 Currency

Any payments to be made under this Agreement shall be in United States Dollars.

## 15.7 Mistakes, disputes and adjustments

- (a) Notwithstanding anything in this Article 15.7 to the contrary, if there is a clerical mistake or other obvious error in any invoice, debit note, credit note or statement delivered, the Party delivering such any invoice, debit note, credit note or statement shall promptly deliver a corrected any invoice, debit note, credit note or statement and the full value of any amount of such corrected any invoice, debit note, credit note or statement shall be settled on or before on or before the date which is [● (●)] days following receipt of such corrected any invoice, debit note, credit note or statement.
- (b) If the Buyer legitimately disputes the accuracy of any invoice, debit note, credit note or statement in full or in part, disputed amounts in an invoice shall be paid in full and any unresolved dispute will be settled in accordance with Article 15.11.
- (c) Any adjustment to any invoice shall be done through issuance of debit or credit note as the case may require. A separate debit or credit note shall be raised for each invoice. After settlement of the dispute any amount agreed or otherwise determined to be due to either the Seller or the Buyer shall be paid within seven (7) days of such agreement or determination together with interest thereon in accordance with Article 15.8.
- (d) No Invoice may be disputed or adjusted:
  - (i) later than [twelve (12)] months following the date the invoice is delivered; or
  - (ii) more than twice by a Party.

## 15.8 Interest

- (a) If the Buyer fails to make timely payment of any sum due hereunder, the Buyer shall pay interest thereon to the Seller, based on the number of actual days lapsed from the day following the date when payment was due up to and including the date when payment is made.
- (b) Interest shall be calculated at a rate of three percent (3%) plus LIBOR. Interest shall be calculated using simple interest calculations on the basis of a three hundred and sixty five (365) day year and shall be billed to the Buyer separately through normal debit note.

## 15.9 Buyer statement

- (a) In respect of any amount due to the Buyer in any month in accordance with Article 8.2 (*Compensation for failure to deliver*), the Buyer shall submit a statement to the Seller showing for the month:
  - (i) the aggregate Shortfall Gas for the month;

- (ii) any Reduction Quantity applicable for the month;
- (iii) the sum of the amount that would have been payable for the Shortfall Gas at the Price at the time;
- (iv) the cost of any replacement Gas, other energy supplies and transportation;
- (v) any other sum payable by the Seller to the Buyer under this Agreement; and
- (vi) the aggregate sum payable to the Buyer,

and the Buyer shall provide the information reasonably requested by the Seller regarding the above statement.

- (b) The Seller shall settle the full value of each statement for the credit of the Buyer's account with a bank designated by the Buyer on or before fifteen [●] Business Days following the date of receipt by the Seller of the Invoice.
- (c) The provision of Article 15.7 shall be applicable *mutatis mutandis* to any mistakes, disputes or adjustments in relation to Buyer Invoices.
- (d) If the Seller fails to make timely payment of any sum due hereunder then the provision of Article 15.8 shall be applicable *mutatis mutandis*.

#### 15.10 Delivery

Invoices, debit note, credit note or statement issued by the Seller or the Buyer pursuant to this Article 15, shall be sent through email during normal business hours, and shall be deemed to have been received in accordance with Article 37 (*Notices*).

#### 15.11 Disputes

- (a) If either Party legitimately disputes the accuracy of any invoice, credit or debit note or statement in full or in part, the Parties shall promptly meet to resolve in good faith any such dispute.
- (b) All disputes under this Article 15 which cannot be resolved amicably by discussions between the Parties shall be resolved by an expert in accordance with Article 23.3 (*Settlement by Expert*).

### 16. CREDIT SUPPORT

- (a) The Seller may at any time, in its absolute discretion, give notice the Buyer requiring a letter of credit to be obtained and, if such notice is given:
  - (i) the Buyer must (at the Buyer's expense), within [5] Business Days of the notice, provide an irrevocable standby letter of credit in favour of the Seller which:
    - (A) is in a form provided by the Seller;
    - (B) secures all or any of the obligations of the Buyer under this Agreement;
    - (C) is provided by a first class bank with an a credit rating of at least [A] by Standard & Poor's or an equivalent rating by Moody's, or any equivalent rating by a successor of such a ratings agency;

- (D) has a validity period of not less than twelve (12) months from the date of issue;
- (E) is in an amount equal to or exceeding the amount (**LCA**) calculated in accordance with the following formula:

$$\text{LCA} = [\text{DQ} \times 60] \times \text{GP}$$

where:

**DQ** is the DQ applicable at the time the notice is give under this Article 16;  
and

**GP** is the Price applicable at the time the notice is give under this Article 16.

- (ii) the Buyer must (at the Buyer's expense) ensure the irrevocable standby letter of credit is replaced on a rolling basis for the remaining balance of the Supply Period with a replacement irrevocable standby letter of credit on the terms set out in Article 16(a)(i), with each replacement being furnished on a Business Day no later than thirty (30) days prior to the expiry of the validity period of the irrevocable standby letter of credit being replaced
- (b) If:
- (i) any of the Buyer's letters of credit are due to expire within thirty (30) days;
  - (ii) the GP is recalculated such that the Seller's estimate of the LCA would be higher than the current LCA;
  - (iii) the current DQ is higher than the DQ applicable at the time the notice is give under this Article 16 and, as a result of such change, the LCA (determined by reference to such recalculated DQ) would be higher than the then current LCA; or
  - (iv) in accordance with the Buyer's letters of credit, the Seller properly draws on a letter of credit.
- then the Buyer must:
- (v) procure an increase, replacement or additional letters of credit (as the case may be) in favour of the Seller (or for appropriate amendments to be made to the LCA and term of the then current letters of credit); and
  - (vi) provide the Seller with increased, replacement or additional letters of credit (as the case may be) within ten (10) days of an event described in this Article 16(a)(ii) occurring.

## 17. MEASUREMENT

### 17.1 Measurement and testing

Gas delivered under this Agreement shall be measured and testing in accordance with the Measurement and Testing Manual.

## 17.2 Metering equipment

- (a) The Seller shall carry out or have carried out at its own expense the measurement, testing and analysis of the Gas. The Buyer shall have the right at its own expense to witness the Seller's measuring activities. Gas delivered under this Agreement shall be measured at the Delivery Point(s) by the Seller with Seller's Equipment in volume and sold by energy value.
- (b) All measuring and testing equipment, housings, devices and materials shall together with such related equipment appliances and buildings be furnished, installed, operated, maintained and renewed by the Seller or on the Seller's behalf at the Seller's expense.
- (c) The Buyer may install, operate, maintain and renew at its own expense, such measuring and testing equipment (**Buyer's Equipment**) provided that such equipment shall be so installed and operated at all times without any material interference with the use and operation of the Seller's Equipment.
- (d) The Seller shall provide in respect of all measuring and testing equipment furnished or installed by the Seller in accordance with this Article 17.1 (**Seller's Equipment**, which as of the date of execution of this Agreement shall be as shown in Schedule 1) and such alternative facilities of same rating and accuracy as shall ensure that withdrawal for maintenance or adjustment of any individual component part does not affect the delivery, or the necessary measurement of Gas under this Agreement.

## 17.3 Inspection

- (a) The Seller and the Buyer shall have the right from time to time, upon giving reasonable notice to the other, to inspect the other Party's measuring and testing equipment, and the charts and other measurements, and test data of the other. However, the reading calibration and adjustment of the Seller's Equipment and the changing of any charts shall be carried out only by the Seller, who shall preserve all original test data charts and other similar records for a period of seven years. The records from such equipment shall remain the property of their respective owners but upon request the other Party shall submit to the other its records and charts together with calculations therefrom for inspection and verification, subject to return within thirty (30) days after receipt thereof.
- (b) Upon reasonable notice and at a reasonable time, either the Seller or the Buyer and their respective employees, agents or representatives may enter upon and have access to the Seller's Equipment or the Buyer's Equipment (as the case may be) for the purpose of this Article 17 at the sole risk of the Seller or the Buyer (as the case maybe) as in compliance with the applicable Party's operating procedure.

## 17.4 Accuracy and validation

- (a) Each component of the Seller's Equipment shall be adjusted to operate accurately within such limits as are prescribed and agreed in the Measurement and Testing Manual.
- (b) The accuracy of the Seller's Equipment shall be validated by the Seller in accordance with the procedures and frequencies agreed in the Measurement and Testing Manual, or at such other frequency as may be agreed by the Parties. The Seller shall give to the Buyer sufficient prior notice of the date, time and nature of every validation to enable a representative of the Buyer to be present.
- (c) Subject to Article 15.7 (*Mistakes, disputes and adjustments*), in the event the Buyer legitimately disputes the accuracy of any Invoice, in full or in part, the Buyer shall promptly

notify the Seller of such dispute together with sufficient details thereof and the Seller shall, if the dispute is in relation to any measurements taken by the Seller's Equipment, carry out a validation of the Seller's Equipment in the presence of the Buyer's representative (subject to the provisions herein) within fourteen (14) days or such other longer periods as the Parties may mutually agree (and the Parties shall not unreasonably disagree with any proposal from either Party for such longer periods) from the date of receipt by the Seller of the Buyer's notification of the dispute, save that where the date of any Invoice falls within seven (7) days of the next validation by the Seller pursuant to Article 17.4(b) then the result of that validation shall be used for the purposes of issuing a rectified Invoice, if necessary. The Seller shall give to the Buyer sufficient notice of the date and time of the validation to enable a representative of the Buyer to be present thereat. If the Buyer so requires, the validation of the Seller's Equipment shall be carried out in the presence of both Parties by an independent third party to be appointed by mutual written agreement who shall act as an expert and not as an arbitrator. The independent third party shall complete the said validation within fourteen (14) days from date of appointment of the independent third party or such other longer periods as the Parties may mutually agree (and the Parties shall not unreasonably disagree with any proposal from either Party for such longer periods).

- (d) The results of any validation (absent fraud or manifest error) shall be binding on both Parties. If the Buyer fails to have a representative present, the results of the validation shall nevertheless be considered accurate until the next validation.
- (e) Validations shall be made at the expense of the Seller except that the Buyer shall bear the cost of the attendance of its representatives at any validation and shall bear the whole expense of any validation (except for costs of attendance of the Seller's representative) made at the Buyer's request if the accuracy of the equipment concerned is found to be within the limits referred to in Article 17.4(a).
- (f) If the accuracy of the Seller's Equipment is found to be outside the limits referred to in Article 17.4(a) the Seller shall bear the whole expense of any validation made except for costs of attendance of the Buyer's representative.
- (g) If at any time during the continuance of this Agreement, any component of the Seller's Equipment is found after testing to be out of service, or registering outside the limits of accuracy agreed under Article 17.4(a) the Seller shall as soon as practicable, in accordance with the provisions of the Measurement and Testing Manual adjust it to read accurately within the limits referred to in Article 17.4(a) or if that is not possible replace any such component with a serviceable component and (unless the Seller and the Buyer shall otherwise agree to) the following provisions shall apply with regard to earlier readings by the defective component:
  - (i) no correction shall be made in respect of readings made during the period before the immediately preceding validation of the defective component;
  - (ii) if the time at which the component became defective can be established, or if the Parties can agree upon the length of time within which the equipment was registering inaccurately, then readings affected thereby shall be corrected with effect from that time, in the manner provided by Article 17.4(g)(iii); and
  - (iii) if the time at which the component became defective cannot be established or if the Parties cannot agree upon the length of time within which the equipment was registering inaccurately, then the readings which have elapsed since the immediately preceding validation shall be established as follows:

- (A) by correcting the error (if the percentage of error is ascertainable to the satisfaction of both Parties) by calibration test or mathematical calculation; or
- (B) by using the registration of any check measuring equipment agreed by both the Seller and the Buyer, such as charts, records of differential pressure, flowing pressure, flowing temperature, base pressure index (BPI), volume, pressure and temperature recorder (VPT), or by using a suitable off-line gas chromatograph, densitometer, calorimeter, other equipment belonging to the Seller or the Buyer; or
- (C) by using the readings or registration of the Buyer's check meter if installed, provided that such meters are of the same accuracies and maintained and validated in the same manner as the Buyer's Equipment; or
- (D) if the percentage of error is not so ascertainable by estimating the quantity or quality of Gas delivered by reference to deliveries under similar conditions when the defective equipment was registering accurately.

## 17.5 Disputes

- (a) Without prejudice to Article 15.7 (*Mistakes, disputes and adjustments*) the Buyer shall have the right to dispute any invoice from the Seller due to inaccurate measurement of Gas delivered or failure of the Seller's Equipment.
- (b) If the Parties are unable to resolve any disputes which may arise with regard to the application of this Article 17, or the measurement of the quantity of Gas delivered, then the matter shall be referred to an expert to be appointed under Article 23.3 (*Settlement by Expert*).

## 18. TRANSFER OF TITLE AND RISK

**18.1** The Gas shall be delivered and title and risk in the Gas shall pass to the Buyer at the specified delivery point(s) shown in Schedule 1 or otherwise agreed between the Parties (hereinafter called the **Delivery Point(s)**).

**18.2** Subject to the express provisions of this Agreement, as between the Parties:

- (a) the Seller shall have control, risk and possession of the Gas until the Delivery Point(s) and until that time responsible for any injuries, claims, liabilities or damage caused thereby whether or not caused by any act or omission, negligence or otherwise of the Buyer; and
- (b) the Buyer shall have control, risk and possession of the Gas from the Delivery Point(s) and from that time responsible for injuries, claims, liabilities or damage caused thereby whether or not caused by any act or omission, negligence or otherwise of the Seller.

## 19. FACILITIES

### 19.1 Seller's Facilities

The Seller shall provide and install (or cause to be provided and installed) with due diligence all such pipelines, storage and regasification facilities, measurement facilities, the Seller's Equipment, venting equipment, gas processing plant, machinery and other facilities or equipment in the production, processing and delivery network whether owned by the Seller or third party, including



the FSRU and Pipelines (hereinafter called **Seller's Facilities**) as may from time to time be necessary to enable the Seller to perform its obligations under this Agreement. The Seller shall throughout the Contract Period maintain or cause to be maintained the Seller's Facilities in good working order and condition and operate or cause to be operated the same in a prudent manner.

## **19.2 Buyer's Facilities**

The Buyer shall provide and install or cause to be provided and installed with due diligence the Power Stations, pipelines and other equipment from the Delivery Point(s) until the Power Stations (hereinafter called **Buyer's Facilities**) as may from time to time be necessary to receive from the Seller the quantities of Gas to be delivered under this Agreement. The Buyer shall throughout the Contract Period maintain or cause to be maintained the Buyer's Facilities in good working order and condition and operate or cause to be operated the same in a prudent manner.

## **19.3 Inspection**

Without prejudice to the rights in Article 17 (*Measurement*), throughout the whole of the Contract Period the Seller and the Buyer shall, upon reasonable prior notice and at reasonable times, afford to each other all reasonable rights of access to inspect the installation, maintenance, operation and repair of the Seller's Equipment and the Buyer's Equipment but any such inspection shall be made in all respects at the expense and at the risk of the Party on whose behalf it is being made and the representative of the Party making the inspection shall be accompanied by an authorised representative of the other Party.

## **20. EXCHANGE OF INFORMATION AND CONFIDENTIALITY**

### **20.1 Exchange of information**

- (a) The Seller and the Buyer shall, at all times throughout the Contract Period, give to each other all such reasonable information on a need to know basis to enable each Party to carry out its obligations under this Agreement and (without prejudice to the generality of the foregoing) will meet from time to time on a mutually agreed date to exchange and discuss relevant information and issues.
- (b) Without prejudice to the generality of Article 20.1(a):
  - (i) The Seller and the Buyer shall coordinate the design, construction, installation, commissioning, operation and maintenance of facilities at each side of the Delivery Point(s) so as to ensure that these facilities will be compatible;
  - (ii) in order to provide such coordination as specified in 20.1(b)(i), the Seller and the Buyer shall each appoint representatives, the number of which shall be agreed upon by both Parties from time to time;
  - (iii) in order to provide such coordination as specified in 20.1(b)(i), information relating to each Party's design, construction, installation, commissioning, operation and maintenance of facilities shall be disclosed to the other Party including to each Party's technical representatives and specialist advisers;
  - (iv) the representatives and specialist advisors shall confer from time to time at the specific request of either Party to form operation committee(s); and
  - (v) each Party shall bear the costs of the representatives and specialist advisors appointed by it.

## 20.2 Confidentiality

- (a) Each Party shall maintain in strict confidence and protect the confidentiality of all the provisions and contents of this Agreement and of all information, reports, data, software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof and any reports, digests or summaries created or derived from any of the foregoing that is provided by one Party to another Party (**Confidential Information**), and shall not disclose any such Confidential Information to any third party without the prior written consent of the other Party, except as provided in Articles 20.2(b) and 20.2(c).
- (b) The obligations of confidentiality expressed in this Article 20 shall not apply to confidential information which:
  - (i) at the time of disclosure are in the public domain, or which, after disclosure, enter the public domain except as a result of breach of this Agreement;
  - (ii) is acquired by a receiving Party from a third party without breach of any confidentiality obligation;
  - (iii) is independently developed for a receiving Party by employees or others who do not have access to the information, data or documents provided under this Agreement;
  - (iv) is already known to a receiving Party at the time of disclosure and in respect of which the receiving Party are not bound by confidentiality obligation; or
  - (v) is disclosed in order to comply with the requirements of any Legal Requirement.
- (c) Notwithstanding Article 20.1(a), each Party may disclose Confidential Information, but only on a need to know basis, without the other Party's consent to:
  - (i) the Party's affiliates, directors and employees to the extent necessary to enable such Party to perform its obligations under this Agreement;
  - (ii) a Party's current or prospective lenders, insurers, finance and security providers and their agents or representatives (including, without limitation, export credit agencies, guarantors, trustees, hedge counterparties or account banks) provided that the identities of such persons are disclosed to the other Party;
  - (iii) advisors and consultants, including counsel, accountants and other agents of the Party, provided that the identities of such persons are disclosed to the other Party;
  - (iv) insurance providers, advisors and consultants, provided that the identities of such persons are disclosed to the other Party;
  - (v) credit rating agencies, provided that the identities of such persons are disclosed to the other Party;
  - (vi) by the Seller to third parties on an aggregated basis to the extent such information is delivered to such third party for the sole purpose of calculating a published index;
  - (vii) arbitrators, experts and any court in connection with the resolution of a Dispute;
  - (viii) any bona fide intended purchaser of a material interest in a Party;

- (ix) any recognized stock exchange, if reasonably required by the regulations thereof, on which shares of a Party or its affiliate are listed;
  - (x) any bona fide intended assignees of a Party's interests under this Agreement, or the Tolling Arrangements, provided that:
    - (A) such intended assignee has entered into a confidentiality agreement with the intended assignor incorporating terms to restrict disclosure of the Confidential Information on an 'as needed' basis and solely for the purpose of the proposed assignment;
    - (B) a copy of that confidentiality agreement has been provided to the non-assigning Party; and
    - (C) such confidentiality agreement expressly states that the non-assigning Party is an intended third party beneficiary of such agreement with respect to disclosure of Confidential Information, capable of independently enforcing the provisions therein protecting disclosure of such Confidential Information; and
  - (xi) shareholders and joint venture partners of the Seller or its affiliates in upstream projects, the Transporter, any owner or operator of the Seller's Facilities, any operator of an LNG terminal, any LNG supplier or any persons operating a liquefaction plant that is a source of LNG to be delivered under the LNG SPA(s), limited in all cases to only (a) operational information and (b) to the extent necessary to implement this Agreement.
- (d) The Party disclosing Confidential Information shall ensure that any person listed in Articles 20.2(c)(i) to 20.2(c)(viii) and Article 20.2(c)(xi) above to which it makes the disclosure enters into a confidentiality agreement on terms equivalent to those set forth in Article 20.2(c)(x) above (excluding legal counsel). In the case of disclosure to an employee made in accordance with Article 20.2(c)(i) above, the undertaking is to be given by the Party on its own behalf and in respect of all its employees.
- (e) In the event that disclosure is required by any Competent Authority or Legal Requirement, the Party subject to such requirement may disclose the Confidential Information of the other Party to the extent so required, but shall as soon as reasonably practicable notify the other Party prior to disclosure (if not prohibited) 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.
- (f) 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.
- (g) The provisions of this Article 20 shall remain in force for a period of **[three (3)]** years after the date of termination of this Agreement in respect of such Parties.
- (h) Any public announcement (including any press release) by any Party directly relating to this Agreement shall only be made with the prior written consent of the other Party. Subject to the above and to giving prior notice and, where reasonably practicable, undertaking reasonable consultation with the other Party, this Article 20.2(h) will not prohibit or restrict a Party from making such reference, comment, disclosure, statements or other announcements as may be required by any relevant stock exchange or by applicable law.

The other provisions of this Article 20.2 apply to any public announcements or communications made under this Article 20.2(h).

## 21. FORCE MAJEURE

### 21.1 Force Majeure Relief

Notwithstanding any other provision of this Agreement, neither Party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in performance or the non-performance of any of its obligations under this Agreement (other than for payment of money due) if and to the extent that the delay, or non-performance is due to any Force Majeure.

### 21.2 Force Majeure definition

In this Agreement, **Force Majeure** means any Adverse Weather Conditions affecting the FSRU or any event or circumstance or combination of events or circumstances that materially and adversely affects any Party in the performance of its obligations in accordance with the terms and conditions of this Agreement; but only if and to the extent that such events and circumstances are not within reasonable control, directly or indirectly, and did not arise from, or are not due to the fault or negligence of the affected Party. The Parties hereto acknowledge and agree that Force Majeure shall, subject to the foregoing, include the following events or circumstances:

- (a) any Act of God, strikes, lockouts, industrial disturbances, acts of the public enemy, act of war (whether declared or undeclared), blockades, revolution, or threat insurrections, riots, epidemics, famine or plague;
- (b) any effect of the natural elements including landslides, subsidence washouts, floods, lightning, drought, earthquakes, fire, storm, hurricanes, natural catastrophes or inclement weather which necessitates extraordinary measures and expense to construct facilities and/or maintain operations;
- (c) inability to delivery or delays in delivery of LNG to the FSRU caused by Adverse Weather Conditions;
- (d) arrests and restraints of governments and people, civil commotion disturbances, acts of terrorism or sabotage;
- (e) failure of the Seller's contractors (individually or collectively) to supply transport and/or deliver LNG, natural gas or Gas (as the case may be) in accordance with their obligations if such failure is occasioned by an event or occurrence described in this Article 21.2 as constituting Force Majeure;
- (f) any failure of a well, well blowout, cratering, platform loss, hydrate obstruction of a pipeline, explosion, loss or destruction of gas reservoirs, wreckage or accident to machinery or pipeline, measuring facilities, venting equipment, gas processing plants or other facilities or equipment comprising the Seller's Facilities as a result of a Force Majeure event or circumstances;
- (g) any explosion, breakage, outage, loss or destruction or failure of, any of the Seller's Facilities or the Seller's Equipment or any component, equipment or part thereof, as a result of a Force Majeure event or circumstances;
- (h) any change in any Legal Requirements subsequent to the date of the execution of this Agreement preventing performance, necessity for compliance with any court order, law,

status, ordinance or regulations promulgated by any Competent Authority having jurisdiction;

- (i) any other causes whether of the kind herein enumerated or not which affects delivery or receipt of the Gas at the Delivery Point(s) as a result of Force Majeure events or circumstances; and
- (j) any events similar to those above which prevent or delay design, procurement, construction, financing, operation or maintenance of the Seller's Facilities,

provided that the following acts, events or circumstances shall not constitute Force Majeure:

- (k) the ability of the Buyer to obtain better economic terms for natural gas or another fuel from an alternative supplier, as applicable;
- (l) in the case of the Buyer, any Political Force Majeure Event;
- (m) any event which delays or prevents the construction or dispatch of a power station;
- (n) any change in the market or demand for or supply of natural gas, LNG or electricity;
- (o) unavailability of funds to pay amounts when due; or
- (p) loss of customers or market share.

### **21.3 Notification and rectification**

- (a) A Party claiming relief by reason of Force Majeure, shall:
  - (i) as soon as practicable give notice to the other Party of the event or circumstance alleged to constitute Force Majeure, such notice to include full information about the event or circumstance and provide a statement of the steps and time estimated to be necessary to remedy the failure;
  - (ii) take all reasonably practicable steps which may be taken to rectify the event or circumstance causing the failure and to minimise the damage (including, in the case of the Buyer, using reasonable endeavours to take the quantity that the Power Station was expected to take or supply for use at an alternative Power Station); and
  - (iii) provide written notice of the resumption of performance hereunder.
- (b) A Party claiming relief from its obligations by reason of Force Majeure shall be relieved of its obligations wholly or in part under this Agreement only to the extent that the event or circumstance constituting Force Majeure continues except for the payment of monies then due or to give any notice which may be required under this Agreement.
- (c) Settlement of strikes and lockouts shall be entirely within the discretion of the Party affected, and the requirements in this Article 21.3 shall not require the settlement of strikes and lockouts on terms which are unacceptable or inadvisable in the discretion of the affected Party.

### **21.4 Force Majeure affecting certain facilities**

If a Force Majeure event prevents the supply of Gas only to one or more Power Stations, the obligations of the affected Party under Article 7 (*Delivery and Quantities*) with respect to the AACQ

or the DQ shall be reduced according to the proportion of such quantity that the Power Station was expected to take.

## **21.5 Allocation**

If due to a Force Majeure event affecting the Buyer, the Buyer is able to take only part of the Gas it would otherwise be required to take under this Agreement, the Buyer shall:

- (a) first, curtail all Interruptible purchases for use at the Power Stations before curtailing any firm purchases of gas;
- (b) second, curtail firm purchases of gas, if any, to Third Party Buyers under Third Party Agreements during such period of Force Majeure; and
- (c) third, curtail firm purchases of Gas to the Buyer for use at the Power Stations during such period of Force Majeure.

## **22. SUSPENSION AND TERMINATION**

### **22.1 Suspension**

- (a) The Seller may suspend deliveries of Gas to the Buyer:
  - (i) if the Buyer fails to pay any amount due and payable after five (5) days from the due date of payment;
  - (ii) if the Buyer is in default of any other fundamental terms or conditions of this Agreement which is not capable of remedy or, if remediable, such default remains unremedied for [● (●)] days after written notice of the default from the Seller; or
  - (iii) on account of Force Majeure (including Political Force Majeure),

provided that any such suspension shall immediately cease once there are no outstanding payments due to the Seller under this Agreement, the Buyer is not in breach of this Agreement and any Force Majeure has ceased.

### **22.2 Termination by the Seller**

- (a) The Seller may terminate this Agreement immediately:
  - (i) if, due to the Buyer's conduct or Political Force Majeure:
    - (A) the Conditions Precedent are not fulfilled or not waived in accordance with Article 4; or
    - (B) the Seller is not able to tender delivery of Gas under this Agreement by the earlier of [thirty (30) days] after the Start Date (as extended by Article 5.2(c)) or the date which is [thirty two (32)] months after the date of execution of this Agreement;
  - (ii) if, due to the Seller's conduct:
    - (A) the Conditions Precedent are not fulfilled or not waived in accordance with Article 4; or

- (B) the Seller is not able to tender delivery of Gas under this Agreement by the earlier of [thirty (30) days] after the Start Date (as extended by Article 5.2(c)) or the date which is [thirty two (32)] months after the date of execution of this Agreement;
- (iii) if:
- (A) Article 43(e) applies to the Buyer;
  - (B) the Buyer is in breach of Article 16;
  - (C) if the Buyer suffers an Insolvency Event;
  - (D) for two (2) consecutive Contract Years, the Buyer does not take an amount of Gas equal to or greater than fifty percent (50%) of AACQ in a Contract Year reduced by 'R' as defined in Article 11.1 (*Take or pay quantity*) (but with references to 'month n' to be read as 'the Contract Year'); or
  - (E) if the Buyer fails to pay an amount due under an invoice issued pursuant to this Agreement within [● (●)] Business Days of the due date for payment of that invoice and the total amount owing from the Seller to the Buyer is greater than ten (10) million US Dollars;
  - (F) the Buyer is in default of its other obligations or warranties under this Agreement and such default remains unremedied or uncompensated for [● (●)] days after written notice of the default from the Seller;
- (iv) if:
- (A) the Implementation Agreement terminates for any reason; or
  - (B) the Government is in default of its obligations or warranties under any agreement with the Seller or its Affiliates and such default remains unremedied or uncompensated for [● (●)] days after written notice of the default from the Seller;
- (v) for prolonged Force Majeure in accordance with Article 22.4 below.

### 22.3 Termination by the Buyer

- (a) The Buyer may terminate this Agreement immediately:
- (i) if, due to the Seller's conduct:
    - (A) Conditions Precedent are not fulfilled or not waived in accordance with Article 4; or
    - (B) the Seller is not able to tender delivery of Gas under this Agreement by the earlier of [thirty (30) days] after the Start Date (as extended by Article 5.2(c)) or the date which is [thirty two (32)] months after the date of execution of this Agreement;
  - (ii) if:
    - (A) Article 43(e) applies to the Seller;

- (B) if the Seller suffers an Insolvency Event;
  - (C) for two (2) consecutive Contract Years, the aggregate Shortfall Gas in a Contract Year minus the aggregate of all Reduction Quantity for that Contract Year is equal to or greater than fifty percent (50%) of the AACQ for that Contract Year; or
  - (D) if the Seller fails to pay an amount due under this Agreement within [●(●)] Business Days of the due date for payment and the total amount owing from the Seller to the Buyer is greater than ten (10) million US Dollars;
  - (E) or the Seller is in default of its other obligations or warranties under this Agreement (other than a Seller default of Article 8.2(b)(iii)) and such default remains unremedied or uncompensated for [●(●)] days after written the Seller's receipt of a notice of the default from the Buyer;
- (iii) for prolonged Force Majeure (excluding Political Force Majeure Events), in accordance with Article 22.4 below.

#### **22.4 Termination for prolonged Force Majeure**

- (a) Where an event of Force Majeure is on-going, the Parties shall meet at least once every three (3) months to review the situation.
- (b) Where an event of Force Majeure has continued for a period of more than twelve (12) months, then, at any time either Party may terminate this Agreement by giving the other notice in writing to that effect, provided that the Buyer cannot terminate for a prolonged Political Force Majeure Event.

#### **22.5 Sole Termination Rights**

The only rights of the Parties to terminate this Agreement are as set out in Articles 4.5 (*Failure to Satisfy the Conditions Precedent*), 5.2(d), 43(e) and this Article 22.

#### **22.6 Accrued rights and obligations**

The termination of this Agreement shall be without prejudice to the accrued rights and obligations of the Parties arising prior to the date of termination, whether under this Agreement or at law.

#### **22.7 Consequences of Termination**

##### **(a) Termination Payments**

The Buyer shall, not later than [●] days after the date on which this Agreement is terminated, pay the Termination Payments provided for in Schedule 5 to the Seller in US\$ to Seller's account in an offshore bank account with a bank designated by the Seller.

##### **(b) LNG SPA**

Where the Seller terminates pursuant to Article 22.2(a)(i), 22.2(a)(iii), Article 43(e), 22.2(a)(iv), or 22.2(a)(v) (where the relevant Force Majeure is a Political Force Majeure Event), the Buyer must, not later than [●] days after the date of the Seller's Invoice, reimburse the Seller for any losses or claims arising under the Seller's LNG SPA(s) arising from the inability to supply Gas from under the GSA, including any demurrage or damages



paid as a result of delay or cancelation of an LNG cargo and including any take or pay amount under any LNG SPA(s) provided that:

- (i) the Seller provides evidence of such amounts being incurred; and
- (ii) the Seller takes reasonable steps to mitigate the losses or claims arising under the Seller's LNG SPA(s).

(c) **Transfer of FSRU**

The Seller will procure that its relevant affiliate acts in accordance with the arrangement referenced in Article 3(d).

## **23. GOVERNING LAW AND DISPUTE RESOLUTION**

### **23.1 Governing Law**

- (a) This Agreement and any non-contractual obligations arising out of or in connection with them shall be governed by English law.
- (b) The Parties agree that the UN Convention on Contracts for the International Sale of Goods and the Convention on the Limitation Period in the International Sale of Goods shall not apply to this Agreement or the respective rights and obligations arising from this Agreement.

### **23.2 Dispute Resolution**

[Subject to Article 23.3 below,] in the event of any dispute or difference of whatever nature between the parties arising under or in connection with this Agreement (including any dispute or difference in connection with the existence or validity of this Agreement or any provision hereof) which is not first amicably resolved between the Parties to this Agreement by good faith mutual discussions within thirty Days, or, in the case of a dispute involving insurance or any disputed invoice, fourteen Days, after the date that the disputing Party gives notice of the dispute to the other Party identifying the dispute in reasonable detail and requesting consultations between the parties to resolve the dispute, or, after such periods by discussions between a senior official of the Government and the chief operating officer of each Beneficiary within a further period of fifteen Days (or such longer period as the parties may agree) then the Disputes Resolution Procedure set out in Schedule 2 (**Disputes Resolution Procedure**), shall apply.

### **23.3 Settlement by Expert**

- (a) The provisions of this Article 23.3 shall apply under the following situations:
  - (i) where any matter or point of difference relating to technical matters cannot be resolved amicably by discussions between the Parties;
  - (ii) where it is specifically provided in this Agreement that any person is to be appointed an expert or any matter is to be referred to an expert; or
  - (iii) where the Parties agree that a point of difference between them shall be resolved by an expert.
- (b) The procedure for appointment of an expert shall be as follows:
  - (i) either Party may notify the other in writing that it wishes a matter (of the type permitted under Article 23.3(a)) to be referred to expert determination and shall in

the same notice give reasonable details of the matter which it is proposed shall be resolved by an expert;

- (ii) the Parties shall endeavour to agree upon an expert to whom the matter shall be referred for determination within fourteen (14) days from the service of the said notice;
  - (iii) if, within fourteen (14) days from the service of the said notice, the Parties have been unable to agree upon an expert, then either Party shall be entitled to request that an expert be appointed by the International Centre for Expertise in accordance with the provisions for the appointment of experts under the Rules for Expertise of the International Chamber of Commerce. All costs of and associated with the request for the appointment of an expert by the International Centre for Expertise shall be borne equally between the Parties;
  - (iv) an expert agreed or selected:
    - (A) may be an individual, association, partnership or body corporate and shall generally be recognised as an expert in the field or fields of expertise relevant to the matter referred to expert determination; and
    - (B) shall be independent and shall not be an employee, consultant, officer, representative or agent of any Party (or an affiliate thereof) and shall not have any interest (financial or otherwise) or duty which conflicts or may conflict with his function or impartiality in respect of any of the Parties;
  - (v) upon an expert being agreed or selected, the Parties or either of them shall notify the expert of his selection and request him to confirm to both Parties within fourteen (14) days of such request whether or not there is any conflict or potential conflict of interest or duty as mentioned in Article 23.3(b)(iv)(B) above and, provided that he has no such conflict or potential conflict of interest or duty, whether he is willing and able to (and does in fact) accept the appointment as an expert;
  - (vi) if the expert shall be either unwilling or unable to accept such appointment or has not confirmed his willingness and ability to accept such appointment within the said period of fourteen (14) days, then (unless the Parties are able to agree upon the appointment of another expert) either Party shall be entitled to request that an expert be appointed by the International Centre for Expertise in accordance with the provisions for the appointment of experts under the Rules for Expertise of the International Chamber of Commerce. All costs of and associated with the request for the appointment of an expert by the International Centre for Expertise shall be borne equally between the Parties. A further appointment and the process shall be repeated until an expert is found who accepts such appointment; and
  - (vii) the expert shall be deemed to have been appointed when he accepts that appointment pursuant to Article 23.3(b)(v) above.
- (c) All communications between either of the Parties and the expert shall be made or confirmed in writing and a copy thereof provided simultaneously to the other Party. No meeting between expert and the Parties shall take place unless both Parties have been given a reasonable opportunity to attend.
- (d) Subject to Article 23.3(f), the Parties shall agree with the expert the procedure for the determination (including number of submissions (written and/or oral), the timetable for

those submissions and any hearings) which shall be set out in the expert's terms of reference. If agreement cannot be reached, then the procedure shall be determined by the expert and such determination shall be conclusive and binding upon the Parties.

- (e) The expert shall, not later than fourteen (14) days after his appointment, call the Parties to a meeting at which he shall raise any matters requiring clarification (whether arising out of expert's terms of reference or otherwise) and if agreement has not been reached on the procedure for the determination the expert shall determine the procedural rules to be applied, which rules shall comply with the terms of this Article 23.3.
- (f) The expert's terms of reference shall include the following provisions:
  - (i) the Parties shall be entitled to supply data, information and documentation and to make submissions to the expert and the expert shall be entitled to request additional data, information or submissions from the Parties;
  - (ii) the expert shall be entitled to seek such assistance (including that of technical and legal advisers) as he may deem necessary to reach his determination;
  - (iii) any submissions or documents provided by any of the Parties to the expert (subject to Article 23.3(f)(v)) shall be provided simultaneously to the other Party;
  - (iv) all data, information or documentation disclosed or delivered to an expert in connection with his appointment as the expert shall be treated as confidential and the expert shall not disclose to any person or company any such data, information or documentation save as is necessary for the purposes of the determination;
  - (v) any information that the providing Party deems highly commercially sensitive or otherwise requiring confidential treatment shall be marked accordingly and provided only to the expert who shall be required not to disclose the information to the other Party (but a copy in which the highly commercially sensitive or confidential information has been redacted shall be provided to the other Party);
  - (vi) the Parties shall agree on the procedure (and any amendments to the procedure) for the expert determination with the expert. If the parties are unable to agree on the procedure or an amendment to the procedure, the expert shall determine the procedure, and such determination shall be conclusive and binding upon the Parties;
  - (vii) no meeting or hearing between an expert and the Parties shall take place unless both Parties are given reasonable opportunity to attend any such meeting or hearing;
  - (viii) the expert shall give full written reasons for his determination;
  - (ix) the language of the expert determination shall be English;
  - (x) the determination by the expert shall be conclusive, final and binding upon the Parties save in the event of fraud or manifest error. Any challenge to such determination on the permitted grounds should be brought by way of arbitration under Article 23.2. The determination will remain binding on the Parties until it is overturned by any competent arbitral tribunal; and
  - (xi) each Party shall bear the costs of providing all data, information, documentation and submissions supplied or made by it and the costs and expenses of all lawyers, advisers, witnesses, employees and other persons retained by it but the costs and

expenses of the expert and any independent advisers (including legal advisers) to the expert retained in connection with a determination hereunder shall be borne equally by the Parties.

- (g) If within a reasonable period, which shall not without the prior written consent of both Parties exceed six (6) months after his appointment, an expert has not rendered his determination, then at the request of either Party, a replacement of the expert shall be appointed hereunder and on that appointment being made the prior expert shall be discharged unless prior to the date of appointment of the replacement expert, the expert has rendered his determination in which case that determination shall be binding on the Parties as provided in Article 23.3(f)(x) and the proposed appointment of the replacement expert shall be withdrawn.
- (h) The expert shall not be an arbitrator but shall render his decision as an expert. The law relating to arbitration shall not apply to the expert or his determination or to the procedure by which he reaches his determination.

#### **23.4 Waiver of Sovereign Immunity**

- (a) Each Party recognises and acknowledges that this Agreement facilitates commercial transactions, and that its rights and obligations under this Agreement are of a commercial and not a governmental nature.
- (b) To the fullest extent not prohibited by law, each Party hereby irrevocably waives on behalf of itself and its assets, any and all sovereign immunities which it may have for jurisdiction, enforcement and any other purpose whatsoever.
- (c) Without limiting Article 23.4(b), this includes a waiver of immunity from:
  - (i) any expert determination, mediation, or arbitration proceeding commenced pursuant to this Agreement;
  - (ii) any judicial, administrative, or other proceedings arising out of or in connection with this Agreement (including to aid an expert determination, mediation, or arbitration commenced pursuant to this Agreement); and
  - (iii) any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order, or attachment (including pre-award or pre-judgment attachment) that results from an expert determination, mediation, arbitration, or any judicial or administrative proceedings commenced pursuant to this Agreement or arising out of or in connection with this Agreement.
- (d) Without limiting Article 23.4(b), each Party consents generally to the giving of any relief or the issuing of any process, including the making, enforcement or execution against any property of any order or judgment, in respect of:
  - (i) any suit, legal action or proceedings arising out of or in connection with this Agreement or for the purpose of enforcing any order or any award made in any arbitration; or
  - (ii) any decision of any expert commenced pursuant to this Agreement.
- (e) Without limiting Article 23.4(b), to the extent that:

- (i) a Party may be entitled in any jurisdiction to claim for itself or its assets sovereign immunity in respect of its obligations under this Agreement; or
- (ii) in any jurisdiction there may be attributed to itself or its assets such sovereign immunity,

each Party agrees not to claim and hereby irrevocably waives such sovereign immunity to the fullest extent permitted by the Laws of such jurisdiction.

#### **24. PERMISSIONS FROM COMPETENT AUTHORITIES**

- (a) Each Party shall execute all such further documents and do such further acts and things as may properly be required to fulfil the purpose of this Agreement.
- (b) The Seller and the Buyer agree to proceed with due diligence and in good faith to obtain or acquire from all relevant Competent Authority whatever Governmental Approvals as may be required in order to the Seller to import LNG, implement the Regasification Project, supply and deliver Gas to the Buyer and the Buyer to purchase and consume Gas and to enable of the Seller and the Buyer to perform its other obligations under this Agreement including any extension thereof.
- (c) The Seller and the Buyer agree to keep the other fully informed in respect of the documents and matters referred to in this Article 24.

#### **25. TAXES**

- (a) The Seller shall bear and pay its own taxes, imposts, royalties, charges, sales tax, service tax and duties as may be levied from time to time by the government of Sri Lanka or Competent Authority, as the case may be, relating to this Agreement.
- (b) The Buyer shall bear and pay its own taxes, imposts, royalties, charges, sales tax, service tax and duties as may be levied from time to time by the government of Sri Lanka or Competent Authority, as the case may be, relating to this Agreement.

#### **26. CHANGES IN TAX AND LEGAL REQUIREMENT**

- (a) If, at any time after the execution of this Agreement:
  - (i) any Tax or Legal Requirement is validly imposed which was not in force as at the execution of this Agreement;
  - (ii) the rate at which any Tax is levied is validly varied from the rate prevailing as at the execution of this Agreement; or
  - (iii) the basis on which any Tax is levied or calculated is varied from the basis on which it is levied or calculated as at the execution of this Agreement,

then to the extent that the new Legal Requirement, Tax or varied Tax increases the amounts required to be paid directly or indirectly by the Seller in respect of the exploration, storage, use, recovery, production, transportation, processing, supply or sale of Gas sold pursuant to this Agreement (or the LNG from which it is derived) and that amount is not to be reimbursed to the Seller under any other provisions of this Agreement, the Seller shall include in statements to the Buyer, and the Buyer shall reimburse to the Seller, the full amount of the new or varied Tax or Legal Requirement.

If the new or varied Tax, is not deductible for income tax purposes and the reimbursement of the new Tax or varied Tax is assessable for income tax, the Buyer must reimburse the Seller such additional amount so as to ensure that the net after tax costs of the new or varied Tax to the Seller is zero (0).

**27. ASSIGNMENT**

- (a) Neither Party shall be entitled without the consent in writing of the other (which consent shall not be unreasonably withheld) to assign any of the rights or obligations arising under this Agreement.
- (b) The Party wishing to assign pursuant to Article 27(a) shall give written notice to that effect to the other and shall with such notice have given sufficient information to show the status and ability of the proposed assignee to carry out all the terms of this Agreement then and in such event, unless the Party to whom the notice has been given shall within 30 days give written notice that it is unwilling to consent to such assignment, such consent shall be deemed to have been given.
- (c) Nothing contained in this Article 27 shall in any way prevent either Party from pledging, mortgaging or charging its rights hereunder for security of any indebtedness incurred for the purpose of the furtherance of this Agreement.

**28. NON-WAIVER**

- (a) Any waiver of any breach of this Agreement or failure to require performance of any obligation arising under this Agreement must be given in accordance with the notice provisions set out in Article 37 (*Notices*).
- (b) Any waiver operates only in relation to failures or defaults expressly identified in the notice of the waiver.
- (c) Failure or delay to exercise any right or remedy under this Agreement shall not be construed as a waiver of the right or remedy.
- (d) A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

**29. SEVERABILITY**

If any provision of these this Agreement is or becomes invalid, unenforceable or illegal or is declared to be invalid, unenforceable or illegal by any court of competent jurisdiction, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of these this Agreement which shall continue in full force and effect.

**30. ENTIRE AGREEMENT AND AMENDMENT**

- (a) This Agreement together with the Nomination and Operations Manual and Measurement and Testing Manual records the entire agreement between the Parties as to its subject matter. It supersedes all prior contracts, obligations, representations, conduct and understandings (whether oral or in writing).
- (b) Each Party:

- (i) acknowledges that in agreeing to be bound by this Agreement they have not relied on any express or implied representation, warranty, collateral contract or other assurance made by or on behalf of any other party before agreeing to be bound by this Agreement; and
  - (ii) waives all rights and remedies which, but for this Article 30, might otherwise be available to them in respect of any such express or implied representation, warranty, collateral contract or other assurance.
- (c) Nothing in this Article 30 limits or excludes any liability for fraud.
- (d) If any inconsistency appears between the provisions of this Agreement, its Schedules or Manuals, the Schedule shall prevail over the Manuals, and the Agreement shall prevail over the Schedules and Manuals, unless otherwise expressly stated.
- (e) This Agreement may not be supplemented, amended, modified or changed except by an instrument in writing signed by an authorised representative of both the Seller and the Buyer

### **31. FURTHER ASSURANCES**

Each Party must do all things reasonably required to facilitate the performance of this Agreement.

### **32. SUCCESSORS AND ASSIGNS**

This Agreement shall bind inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

### **33. REMEDIES CUMULATIVE**

Unless otherwise specified in this Agreement, in addition to any rights or remedies that the Parties may have under this Agreement, the Parties may exercise any other right or remedy that may be available at law or in equity.

### **34. LANGUAGE**

The language which governs the interpretation of this Agreement is the English language. All notices to be given by any Party and all other communications and documentation which are in any way relevant to this Agreement or the performance or termination of this Agreement shall be in the English language.

### **35. RELATIONSHIP OF THE PARTIES**

- (a) This Agreement does not constitute a joint venture, nor does it constitute an advisory relationship between the Parties. Parties are independent entities that act for their own account.
- (b) Except as specifically provided in this Agreement no Party may act as agent of the other Party or in any way bind another party to any obligation.

### **36. THIRD PARTIES**

This Agreement is for the sole and exclusive benefit of the Parties and shall not create a contractual relationship, cause of action or any right in favour of third parties, unless or otherwise to the extent expressly provided in this Agreement. In this regard, and without limitation to the foregoing, the Parties agree that the *Contracts (Rights of Third Parties) Act 1999* (UK) shall not apply in respect of

this Agreement or any matter arising under it and no person that is not a party to this Agreement shall have any right to rely upon, make any claim or otherwise seek to enforce, whether directly or indirectly, any term of this Agreement under such Act or any similar laws, rules or procedures of any other applicable jurisdiction.

**37. NOTICES**

- (a) All notices or other communications required or permitted to be given hereunder shall be in writing and unless otherwise stated herein, shall be (as elected by the Party giving such notice):
  - (i) personally delivered with written confirmation of receipt to the relevant Party;
  - (ii) sent by facsimile with written confirmation of receipt by the sender's facsimile machine;
  - (iii) sent by reputable international courier service delivery with written confirmation of receipt to the relevant Party; or
  - (iv) sent by email;

and addressed to:

**the Seller:**

[address]

Attn: [●]

Facsimile: [●]

Email: [●]

**the Buyer:**

[address]

Attn: [●]

Facsimile: [●]

Email: [●]

provided always that any of the Parties may by giving notice from time to time specify different addresses for this purpose.

- (b) Notices delivered as provided in:
  - (i) Article 37(a)(i) or 37(a)(iii) shall be deemed received at the time and on the date notice is handed to a representative or employee of the Party to whom the notice is addressed;
  - (ii) Article 37(a)(ii) shall be deemed received by the close of business on the date on which it was transmitted unless transmitted after close of business on a Business Day, in which case it will be deemed received at 9am on the next Business Day;



- (iii) Article 37(a)(iv) shall be deemed received on receipt by the sender of either an automatic delivery receipt or other confirmation of delivery; and

**38. COSTS OF PREPARATION**

Each Party will bear its own costs in relation to the preparation and review of this Agreement and negotiation, preparation and execution any further document required.

**39. COUNTERPARTS**

This Agreement may be signed in counterparts and each counterpart will constitute an original but all counterparts will together be taken to constitute one instrument.

**40. TIME OF THE ESSENCE**

Time shall be of the essence as regards to the provisions of this Agreement, both as regards the times and periods mentioned herein and as regards any times or period which may, by agreement between the Parties, be substituted for them.

**41. SAFETY OPERATIONS**

- (a) The Buyer agrees to operate and maintain (or cause to be operated and maintained) the Buyer's Facilities and the Buyer's Equipment and carry out all activities and perform all obligations under this Agreement with the same duty and care as a Reasonable and Prudent Operator.
- (b) The Seller agrees to operate and maintain (or cause to be operated and maintained) the Seller's Facilities and the Seller's Equipment and carry out all activities and perform all obligations under this Agreement with the same duty and care as Readable and Prudent Operator.
- (c) Each of the Seller and the Buyer shall procure and at all times maintain in effect usual and customary insurance policies from reputable insurers with adequate financial reserves and such policies shall contain coverage limits that would be carried by a Reasonable and Prudent Operator.

**42. COMPLIANCE WITH LAW**

The Seller and the Buyer each hereby agree to comply with all applicable laws in connection with the performance of its obligations under this Agreement.

**43. ANTI-BRIBERY**

- (a) The Seller and the Buyer each agree that they will not, and their employees, agents and representatives will not, directly or indirectly, pay, offer, give or promise to pay or authorize the payment to any person or solicit, accept or agree to accept from any person, any monies or other things of value or otherwise engage in any other acts or transactions in violation of or inconsistent with the anti-bribery or anti-money laundering legislation of any government which are applicable to the performance of this Agreement.
- (b) In particular, each Party represents and warrants to the other that it has not, and its employees, agents and representatives have not, made any payments or given anything of value to officials, officers or employees of any government, or any agency, department or instrumentality of such government, in connection with any aspect of this Agreement which

would contravene any of the above-referenced legislation or in order to secure any improper advantage or benefit or to obtain or retain business for or with, or direct any business to, anyone or any entity.

- (c) The Parties represent and warrant that they and their employees and representatives have and will not accept any money or anything else of value to improperly influence or reward any act or decision of the Party or an employee or representative of the Party.
- (d) Each Party shall, subject to any applicable legal restriction, privilege, or data privacy obligation, promptly disclose in writing to the other Party details of any breach of the above representations, warranties or agreements and, on request, use best endeavours to co-operate with the other Party to ensure and monitor compliance with the above representations, warranties and agreements.
- (e) Either Party may terminate this Agreement immediately upon written notice to the other at any time if, in its reasonable judgement, and supported by reasonable evidence which is provided to the other Party prior to or at the time of the notice of termination, the other is in breach of any of the above representations, warranties or agreements under Article 43(a), Article 43(b) or Article 43(c).
- (f) Notwithstanding anything to the contrary herein, nothing in this Agreement is intended, and nothing herein should be interpreted or construed, to induce or require either Party to act in any manner (including failing to take any actions in connection with this Agreement) which is inconsistent with, penalised or prohibited under any laws, regulations, decrees or other official government rules or requirements applicable to such Party which relate to anti-money laundering, foreign trade controls, export controls, embargoes or international boycotts of any type.

#### **44. SURVIVAL**

Cancellation, expiration or termination of this Agreement shall not relieve the Parties of any obligations that, by their nature, must survive said cancellation, expiration or termination, including Articles 1 (*Interpretation*), 12 (*Liability*), 20.2 (*Confidentiality*), 22.5 (*Sole Termination Rights*), 23 (*Governing Law and Dispute Resolution*) and 28 (*Non-Waiver*) to 40 (*Time of the essence*) (other than Article 31(*Further assurances*)) and this Article 44.

**EXECUTION PAGE**

**IN WITNESS WHEREOF** the appointed representatives of the Parties have executed this Agreement to be effective as of the date first written above.

Executed by )  
)  
For and on behalf of )  
[●] )  
in the presence of )

.....  
Name :  
Designation :

.....  
Name :  
Designation :

Executed by )  
)  
For and on behalf of )  
[●] in the presence of )

.....  
Name :  
Designation :

.....  
Name :  
Designation :

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**SCHEDULE 1**

**DELIVERY POINTS AND DELIVERY POINT PRESSURE**

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**SCHEDULE 2**  
**POWER STATIONS**

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**SCHEDULE 3**  
**SPECIFICATION**

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## SCHEDULE 4

### PRICE FORMULA

Gas Price for a month (US\$/MMBtu) = (A x B) + C

where:

A is [●]%

B is the arithmetic average expressed in US Dollars per barrel, and rounded to four (4) decimal places, of BRENT for Month n-1, Month n-2, and Month n-3 where:

Brent for a specified Month (Month 'n') means the arithmetic average, expressed in US Dollars per barrel rounded to four (4) decimal places, of all settlement prices of the front month ICE Brent Crude Futures contract as published by the Intercontinental Exchange for each quoted day of Month 'n', except that for the quoted day which coincides with the expiration date of such futures contract the settlement price of the futures contract with the immediately following maturity shall be used.

C is [●]

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**SCHEDULE 5**

**TERMINATION PAYMENTS**

**Termination by Seller**

<b>Termination Event</b>	<b>CY</b>	<b>Termination Payment</b>
Termination by Seller under Articles 22.2(a)(i), 22.2(a)(iii), 43(e), 22.2(a)(iv) or 22.2(a)(v) (where the relevant Force Majeure is a Political Force Majeure Event)	1 2 ...	[Payment to be equal to the accrued and outstanding principal debt, financing costs (including accrued and outstanding hedging and break costs) and equity spent plus equity return of the Seller Entities other than the Seller.]
Termination by Seller under Article 22.2(a)(v) (where the relevant Force Majeure is not a Political Force Majeure Event)	1 2 ...	[Payment to be equal to the accrued and outstanding principal debt, financing costs (including accrued and outstanding hedging and break costs) and equity spent of the Seller Entities other than the Seller.]
Termination by Seller under Article 22.2(a)(ii)		No Termination Payment.

**Termination by Buyer**

<b>Termination Event</b>	<b>CY</b>	<b>Termination Payment</b>
Termination by Buyer under Article 22.3(a)(i), 22.3(a)(ii) or 43(e)	1 2 ...	[Payment to be equal to the accrued and outstanding principal debt and financing costs (including accrued and outstanding hedging and break costs) of the Seller Entities other than the Seller.]
Termination by Buyer under Article 22.3(a)(iii)	1 2 ...	[Payment to be equal to the accrued and outstanding principal debt, financing costs (including accrued and outstanding hedging and break costs) and equity spent of the Seller Entities other than the Seller.]



## SCHEDULE 6

### DISPUTE RESOLUTION PROCEDURE

#### 1.1 References to Arbitration

- 1.1.1 Any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it (for the purpose of this Schedule 6, a **Dispute**), shall be referred to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce (the **ICC Rules**) as amended from time to time.
- 1.1.2 The ICC Rules are incorporated by reference into this Schedule 2 and capitalised terms used in this Schedule which are not otherwise defined in this Agreement have the meaning given to them in the ICC Rules.

#### 1.2 Place and Language of Arbitration

The seat or legal place of the arbitration shall be Singapore. The language of the arbitration shall be English and any award shall be rendered in English.

#### 1.3 Arbitral Tribunal

The number of arbitrators shall be three. The arbitrators nominated by the parties shall jointly nominate the third arbitrator who, subject to confirmation by the court, will act as president of the arbitral tribunal. The third arbitrator shall not be a citizen or resident of Sri Lanka.

#### 1.4 Consolidation of Disputes under this Agreement

- 1.4.1 Each Party agrees that for the purposes of the ICC Rules, the arbitration agreement set out in [this Schedule 6 and the arbitration agreement contained in the Implementation Agreement] shall together be deemed to be an arbitration agreement that binds each Party [and each party to the Implementation Agreement].
- 1.4.2 The Parties and/or any party to the Implementation Agreement may, in accordance with the ICC Rules, be joined to any arbitration commenced under this Agreement or the Implementation Agreement. Each Party hereby consents, for the purposes of the ICC Rules, to such joinder.
- 1.4.3 Pursuant to Articles 9 and 10 of the ICC Rules:
- (i) Disputes may be resolved in a single arbitration together with Disputes arising out of the Implementation Agreement; and
  - (ii) the Parties agree to the consolidation of any two or more arbitrations commenced pursuant to this Schedule 6 and/or the arbitration agreement contained in the Implementation Agreement into a single arbitration, as provided for in the Rules.

1.4.4 Each Party waives any objection, on the basis that a Dispute has been resolved in a manner contemplated at Article 23, to the validity and/or enforcement of any arbitral award made by an arbitral tribunal following the Dispute being resolved in that manner.

## **1.5 Awards**

All and any awards or other decisions of the arbitral tribunal shall be made in US Dollars (unless the arbitral tribunal determines that the obligation or liability in respect of which an award is made should be compensated in Rupees) free of any tax, deduction or set off and the Tribunal shall be authorised in its discretion to grant pre-award and post-award interest at commercial rates.

## **1.6 Costs of Enforcement**

Any costs, fees, or taxes incident to enforcing any award shall to such extent as is permitted by law, be charged against the Party resisting such enforcement.

## **1.7 Parties Obligations During Arbitral Proceedings**

Except as expressly provided in this Agreement, pending the award in any arbitration proceeding hereunder (i) this Agreement and the rights and obligations of the Parties shall remain in full force and effect and (ii) each of the Parties shall continue to perform their respective obligations under this Agreement. The termination of this Agreement shall not result in the termination of any arbitration proceeding pending at the time of such termination nor otherwise affect the rights and obligations of the Parties under or with respect to such pending arbitration.

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