
Dated 17 June 2011

PORTFOLIO GAS SUPPLY AGREEMENT

between

TANZANIA PETROLEUM DEVELOPMENT CORPORATION

PANAFRICAN ENERGY TANZANIA LIMITED

and

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED

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THIS PORTFOLIO GAS SUPPLY AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this 17th day of June 2011 in Dar es Salaam, The United Republic of Tanzania.

BETWEEN:

- (1) **TANZANIA PETROLEUM DEVELOPMENT CORPORATION**, a statutory corporation established under the laws of The United Republic of Tanzania, with its principal office located in Dar es Salaam, Tanzania ("TPDC");
- (2) **PANAFRICAN ENERGY TANZANIA LIMITED**, a limited liability company organised under the laws of Jersey, Channel Islands, having its principal office located at Sir Walter Raleigh House, 2nd Floor, PO Box 332, 48-50 Esplanade, St Helier, Jersey JE4 9YA, Channel Islands, being registered in the Commercial Register under No. 78852 and having its branch office at Barclays House, 5th floor, Ohio Street PO Box 80139, Dar es Salaam, Tanzania ("PAT") and together with TPDC (the "Seller"); and
- (3) **TANZANIA ELECTRIC SUPPLY COMPANY LIMITED**, a limited liability company incorporated under the laws of The United Republic of Tanzania with its principal office located in Dar es Salaam, Tanzania (the "Buyer"),

each of the Seller and the Buyer is a "Party" and together the "Parties".

RECITALS:

- (A) TPDC and PAT, together with Songas and GOT are parties to a Gas Agreement pursuant to which TPDC assigned to PAT the right to explore for, develop and jointly market with TPDC natural gas located in and around Songo Songo Island, Tanzania.
- (B) GOT, as a matter of policy, is seeking to expand gas fired electric power in The United Republic of Tanzania and is seeking additional gas supplies.
- (C) The Buyer requires supplies of natural gas for the generation of electricity at the Generation Facilities and wishes to purchase and receive such natural gas from the Seller.
- (D) The Seller has the right pursuant to Section 3.2 of the Gas Agreement to sell Additional Gas to third parties.
- (E) The Seller is willing to sell and deliver natural gas to the Generation Facilities and the Buyer is willing to take and pay for, or pay for if not taken, natural gas on the following terms and conditions.

In consideration of the premises set out above and the provisions set out below, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

The words and expressions below shall, unless the context otherwise requires, have the meanings-respectively assigned to them.

"Act of Insolvency" shall mean, in respect of a Party the occurrence of any of the following:

- (a) the passing of a resolution for the bankruptcy, insolvency, winding up, liquidation of, or similar proceeding against or relating to such Party; and/or
- (b) the appointment of a trustee, liquidator, custodian or similar person in connection with any matter or proceeding referred to at (a) above, where the appointment is not set aside or stayed within sixty (60) Days of such appointment; and/or
- (c) a court which has jurisdiction making an order to wind up or otherwise confirm the bankruptcy or insolvency of such Party, where the order is not set aside or stayed within sixty (60) Days;

"Actual Additional Generation Facility Costs" shall have the meaning specified in Clause 12.1(f);

"Additional Facilities Project" shall mean (i) any expansion or upgrade to the Gas Facilities undertaken by the owners of the Gas Facilities and/or (ii) any new processing and/or transportation system which either individually or in aggregate result in an aggregate gas processing and transportation capacity, at the Gas Facilities and at any new processing and/or transportation system, at a level permanently above one hundred and fifteen thousand (115,000) mmBTU/per day and as notified to the Buyer pursuant to Clause 7.5(a);

"Additional Facilities Project Acceptance Certificate" shall mean a certificate issued by the owner of the Additional Facilities Project certifying that either (i) the acceptance tests for the Additional Facilities Project have been successfully completed or (ii) or that the Additional Facilities Project is otherwise ready for commercial operations.

"Additional Facilities Project Completion Notice" shall have the meaning specified in Clause 7.5(b);

"Additional Gas" means all Natural Gas that is produced from the Songo Songo Gas Field that is in excess of Protected Gas, including Complex Additional Gas;

"Additional Gas Plan" shall have the meaning provided in the Gas Agreement;

"Additional Generation Facility" shall have the meaning specified in Clause 12.1(a);

"Additional Generation Facility Certificate" shall have the meaning specified in Clause 12.1(a)(iv);

"Additional Generation Facility Costs" shall have the meaning specified in Clause 12.1(c)(iii);

"Additional Profits Tax" shall have the meaning specified in the Production Sharing Agreement;

"Adjusted Annual Take or Pay Quantity" or **"Adjusted TOPQ"** shall have the meaning specified in Clause 10.6(c);

"Affiliate" shall mean either

- (a) a company in which a Party holds directly or indirectly shares carrying at least fifty per cent. (50%) of the votes at a general meeting of such company, corporation or other legal entity; or
- (b) a company holding directly or indirectly shares carrying at least fifty per cent (50%) of the votes at a general meeting of such Party; or
- (c) a company of which shares carrying at least fifty per cent. (50%) of the vote at a general meeting of such company are held directly or indirectly by a company which also holds directly or indirectly shares carrying at least fifty per cent (50%) of the votes at a general meeting of such Party.

"Aggregate Extra, Daily Excess & Hourly Overtake Gas Quantity" shall have the meaning specified in Clause 10.4(d);

"Aggregate Total Hourly Nomination" shall have the meaning specified in Clause 9.1(a);

"Amended and Restated Gas Agreement" shall mean the agreement of the same name to be entered into by GOT, Songas, TPDC and PAT as a Condition Subsequent to this Agreement;

"Annual Cap" shall have the meaning specified in Clause 24.1(b);

"Annual Contract Quantity" or **"ACQ"** shall mean for each Contract Year, the sum of the MDQs for each Day in that Contract Year;

"Annual Deficiency Quantity" shall have the meaning specified in Clause 10.6(d);

"Annual Deficiency Quantity Payment" shall have the meaning specified in Clause 10.6(e);

"Annual Reconciliation Statement" shall have the meaning specified in Clause 20.2;

"Bar" shall have the meaning specified in ISO 1000: 1992/Amendment 1: 1998;

"Basic Agreements" shall have the meaning specified in the Gas Agreement;

"BCF" shall mean one billion (1,000,000,000) CF;

"British Thermal Unit" or **"BTU"** shall mean the amount of heat required to raise the temperature of one pound of pure water from fifty nine degrees Fahrenheit (59°F) to sixty degrees Fahrenheit (60°F) at a constant pressure of fourteen decimal six nine six (14.696) pounds per square inch absolute;

"Business Day" shall mean any day except Saturday or Sunday, any public holiday or a day on which the banks are authorised by law or executive order to be closed in Dar es Salaam, The United Republic of Tanzania;

"Buyer's Force Majeure" shall have the meaning specified in Clause 23.1(b);

"Carry Forward Gas" shall have the meaning specified in Clause 10.8(a);

"Centre" shall have the meaning specified in Clause 30.4(a);

"Change in Law" shall mean the occurrence of any of the following after the commencement of the Supply Period:

- (a) the enactment of any new Laws;
- (b) the modification or repeal of any Laws;
- (c) the commencement of any new Laws;
- (d) a change in interpretation, application or enforcement of any Laws;
- (e) the action of any Governmental Authority;
- (f) the imposition of a requirement for a Consent of a Governmental Authority not required on or before the commencement of the Supply Period

in each case where such change, fact, action or circumstance has the effect of a Material Adverse Change on the Seller; provided, however, that no change, fact or circumstance (A) relating to personnel, salaries or benefits that apply to substantially all corporations in the United Republic of Tanzania; (B) relating to environmental obligations in connection with the drilling of additional wells to develop further Natural Gas reserves provided that such change, fact or circumstance does not impose restrictions beyond those imposed by Section 22.1 of the Production Sharing Agreement; (C) relating to income taxes that apply similarly to other corporations in The United Republic of Tanzania or (D) relating to the Distribution Tariff or the Processing and Transportation Tariff; shall constitute a Change in Law.

"Change in Law Cap" shall have the meaning specified in Clause 27.1(c);

"Check-Metering Equipment" shall mean the check metering equipment installed, owned and operated by the Buyer pursuant to Clause 18.1(f);

"Claim" shall mean any claim, demand, investigation, action, suit or other legal proceeding made or instituted by any person;

"Complex" means the electric generating facilities owned by Songas and located at Ubungo, Dar es Salaam, Tanzania;

"Complex Additional Gas" means for any day during the term 19.5% of the volume of Natural Gas delivered to the Complex during such day, until 31 July 2024;

"Conditions Precedent" shall have the meaning specified in Clause 3.1;

"Complex-Protected Gas" means for any day during the term 80.5% of the volume of Natural Gas delivered to the Complex during such day, until 31 July 2024;

"Conditions Subsequent" shall have the meaning specified in Clause 3.5;

"Conditions Subsequent Long Stop Date" shall have the meaning specified in Clause 3.7(a);

"Confidential Information" shall have the meaning specified in Clause 31.1;

"Consent" shall mean with respect to a Party any approval, authorisation, certificate, consent, decision, judgment, licence, order, permit or other endorsement of any kind necessary or proper to be granted, delivered, issued, or promulgated by any person or Governmental Authority relating to this Agreement, the performance of such Party's obligations, the exercise of such Party's rights, or the conduct of such Party's business;

"Consequential Losses" shall mean the loss or deferment of profit or anticipated earnings or savings, loss of goodwill, loss of use, business interruption, increased cost of working and wasted effort or expenditure or any other special, indirect or consequential damage together with all reasonable legal costs and expenses associated with any the exclusion of any of the foregoing losses;

"Contract Price" shall have the meaning specified in Clause 19.1(a);

"Contract Year" shall mean:

- (a) for the first Contract Year, the period commencing on the first Day of the Supply Period and finishing on 30 June 2011;
- (b) for each subsequent Contract Year, the twelve (12) Month period commencing on the 1st Day of July and finishing on the following 30 June; and
- (c) for the last Contract Year, the period commencing on the 1st Day of July and finishing on the expiry of the Supply Period;

"Co-ordinating Committee" shall have the meaning specified in Clause 16.1(a);

"Cubic Foot" ("CF") shall mean the volume of gas that occupies one (1) cubic foot of space as measured at a temperature of sixty degrees Fahrenheit (60°F) and at the absolute pressure of fourteen decimal six nine six (14.696) pounds per square inch;

"Curtailment Event" shall have the meaning specified in the Insufficiency Agreement;

"Daily Excess Gas Quantity" shall have the meaning specified in Clause 10.3(a);

“Daily Excess Gas Quantity Price” shall have the meaning specified in Clause 19.2(b);

“Day” shall mean twenty-four (24) consecutive Hours starting at 00:00 Hours;

“Delivery Point” shall mean the location at each Generation Facility where Natural Gas passes the outlet flange of the Seller’s Facilities and as indicated in Schedule 4 and any new location agreed by the Parties pursuant to Clause 12 at the IPTL Facility and each Additional Generation Facility;

“Delivery Point MDQ” shall mean the maximum daily quantity for each Delivery Point as set out in Schedule 3 to this Agreement as amended to take account of any new Delivery Points or as agreed by the Parties pursuant to Clause 7.7(c);

“Delivery Point MHQ” shall mean one twenty fourth (1/24) of Delivery Point MDQ;

“Delivery Point Schedule” shall have the meaning specified in Clause 9.1(b);

“Delivery Pressure” shall mean the minimum delivery pressure at which the Seller makes available and Buyer takes Natural Gas at each Delivery Point as specified in Schedule 2 as amended to take account of any new Delivery Points;

“Discovery Blocks” shall mean the two blocks of the Songo Songo Gas Field as designated in Annex A to the Gas Agreement;

“Distribution Tariff” shall mean the Seller’s fixed and or variable costs per unit measure of Natural Gas (mmBTU) incurred pursuant to this Agreement and relating to distribution costs in order to supply Natural Gas at a Delivery Point, including but not limited to metering, pipelines, filtration and pressure reduction costs associated with the connection and maintenance of such infrastructure, together with negotiations, marketing and administration costs determined by EWURA from time to time;

“Escrow Account” shall mean the interest bearing escrow account established by the Parties in accordance with Clause 20.7;

“Escrow Agreement” shall mean the agreement between the Parties and the Escrow Bank for the establishment of the Escrow Account;

“Escrow Bank” shall have the meaning specified in Clause 20.7(c);

“EWURA” shall mean the Energy and Water Utilities Regulatory Authority as established by the EWURA Act;

“EWURA Act” shall mean the Energy and Water Utilities Regulatory Authority Act, 2001;

“Expert” shall mean a Person appointed as such pursuant to Clause 30.3;

“Extension Period” shall have the meaning specified in Clause 10.7(h)(i);

“Extra Gas Quantity” shall have the meaning specified in Clause 10.2(a);

"Facilities" shall mean the Seller's Facilities or the Generation Facilities, as the context requires;

"Financial Closing" shall mean 11 October 2001;

"Force Majeure" shall mean either Buyer's Force Majeure or Seller's Force Majeure as the context requires;

"Force Majeure Notice" shall have the meaning specified in Clause 23.2(a);

"Gas Agreement" shall mean the Gas Agreement dated 11 October 2001 and between GOT, Songas, TPDC and PAT;

"Gas Developers Total Sales Commitments" shall have the meaning provided in the Insufficiency Agreement;

"Gas Facilities" shall mean the Gas Production Facilities, the Processing Plant, the Pipeline and the Wazo Hill Lateral, and in the event that Songas installs and commissions the Pipeline Compression Facilities, from and after the date of delivery of the Additional Facilities Project Acceptance Certificate, the Pipeline Compression Facilities;

"Gas Processing and Transportation Agreement" shall mean the Gas Processing and Transportation Agreement dated 11 October 2001 and between Songas and PAT as such agreement may be amended from time to time;

"Gas Production Facilities" shall have the meaning specified in the Gas Agreement;

"Generation Facility" shall mean any of the following generation facilities owned and operated by the Buyer or from which the Buyer purchases electricity:

- (a) Ubungo Gas Plant;
- (b) Tegeta Gas Plant;
- (c) Symbion Gas Plant;
- (d) any New Generation Facility included as an Additional Generation Facility pursuant to the provisions of Clause 12.1; and
- (e) any Additional Generation Facility included pursuant to the provisions of Clause 12.1;

The term **"Generation Facilities"** shall be construed accordingly.

"Government" or **"GOT"** shall mean the Government of The United Republic of Tanzania;

"Governmental Authority" shall mean any central, local or other governmental authority (including regulatory authorities and administrative bodies) with jurisdiction over PAT, TPDC or TANESCO, and any department, authority, ministry,

commission, instrumentality or agency of GOT or any central, local or other governmental authority and any subdivision of any such authority;

"High Heating Value" shall mean the quantity of heat, expressed in BTU per CF produced by the complete combustion of one (1) CF of Natural Gas at the standard temperature and pressure, when all of the products of combustion are cooled to the temperature existing before combustion, the water vapour formed during combustion is condensed, and all the necessary corrections have been made;

"Hour" shall mean a period of sixty (60) consecutive minutes starting on the hour;

"Hourly Overtake Gas Quantity" shall have the meaning specified in Clause 10.4(a);

"Hourly Overtake Gas Quantity Price" shall have the meaning specified in Clause 19.2(a);

"Hourly Overtake Gas Threshold" shall mean the prevailing MDQ for the Day multiplied by one decimal two five (1.25) divided by twenty four (24) per Hour.

"ICC Centre for Expertise" shall have the meaning specified in Clause 30.3(b);

"ICSID Convention" shall have the meaning specified in Clause 30.4(a);

"ICSID Rules" shall have the meaning specified in Clause 30.4(a);

"Implementation Agreement" shall mean the Implementation Agreement dated 11 October 2001 and between GOT, Songas, PAE PanAfrican Energy Corporation, Globeleq Generation Limited and CDC Group PLC as such agreement may be amended from time to time;

"Indemnified Party" shall mean the Party that receives the benefit of an indemnity pursuant to Clause 25.1, together with such Party's officers and employees.

"Indirect Tax" shall mean VAT, any tax replacing VAT, any excise tax and all other taxes of a similar nature imposed on the transactions under the Agreement. The term **"Indirect Tax"** shall not be construed to include any type of direct taxes such as income tax, Additional Profits Tax or corporate tax;

"Initial Period Reference Required Amount" shall have the meaning specified in Clause 28.1(i);

"Initial Term" shall, subject to the provisions of Clause 1.4(a) of this Agreement, have the meaning provided in the Gas Agreement;

"Insufficiency Account" shall have the meaning provided in the Insufficiency Agreement;

"Insufficiency Agreement" shall mean the agreement of the same name to be entered into by GOT, TPDC, PAT, Songas and TANESCO as a Condition Subsequent to this Agreement;

"Insufficiency Funding Trigger Event" shall have the meaning provided in the Insufficiency Agreement;

"Interbank Rate" shall mean the rate designated as such by the Bank of Tanzania, which rate reflects on each Business Day the weighted average rate at which U.S. Dollars and Tanzanian Shillings were converted into one another in the interbank foreign exchange market in Tanzania on the preceding Business Day, or any replacement thereof;

"Interruption" shall have the meaning specified in Clause 13.2(a);

"IPTL Facility" shall mean the IPTL converted gas engine plant at Tegeta (nominally one hundred (100) MW);

"ISO" shall mean the International Organization for Standardization;

"Laws" shall mean the laws of The United Republic of Tanzania, and all orders, rules, regulations and decrees thereunder, published written policies of any Governmental Authority, judgments and notifications made pursuant thereto, as such laws, orders, decrees, policies, judgments and notifications may be modified, vacated or amended from time to time;

"Lenders" shall mean the banks and/or other financial institutions from time to time providing loans, credit facilities and/or other financial accommodations to the Seller (or to any successor in title, permitted transferee or permitted assignee of the Seller).

"LIBOR" shall mean the London Interbank Offered Rate for one month deposits of U.S. Dollars displayed on page "LIBOR01" of the Reuters Money Rates Service (or any other page that replaces page "LIBOR01" for the purposes of displaying the British Bankers Association (BBA) interest settlement rates for such deposits of U.S. Dollars in the London Interbank market) on the date of determination, or in the event the Reuters Money Rates Service, or a successor thereto, no longer provides such information, such other service as may be agreed by the Parties that provides the BBA interest settlement rates for such deposits of U.S. Dollars in the London Interbank market and any other required information previously provided on page "LIBOR01";

"Long Stop Date" shall have the meaning specified in Clause 3.4(a);

"Make-Up Gas" shall have the meaning specified in Clause 10.7(a);

"Make-Up Gas Aggregate" shall have the meaning specified in Clause 10.7(a);

"Make-Up Period" shall have the meaning specified in Clause 10.7(a);

"Material Adverse Change" means the occurrence of any event or circumstance after the date of this Agreement as a result of which the Seller suffers a change which affects or is reasonably expected to affect materially and adversely the overall financial position of the Seller arising from the production, development and supply of Natural Gas pursuant to this Agreement (taking into account all relevant factors);

"Maximum Daily Quantity or MDQ" shall mean for any Day in any Contract Year the maximum daily quantity of Natural Gas available to the Buyer as set forth in Clause 7.7 or as notified by Seller in accordance with Clauses 7.2, 10.9 and 17.1(c);

"Maximum Hourly Quantity" or "MHQ" shall mean for any Hour in any Day in any Contract Year the applicable MDQ for that Day divided by twenty four;

"MCF" shall mean one thousand (1,000) CF;

"MDQ Notice" shall have the meaning specified in Clause 7.6(b);

"MDQ Reduction Notice" shall have the meaning specified in Clause 17.1(b);

"Metering Facilities" shall mean the measuring and testing equipment, housings, devices and materials together with all related equipment and appliances owned and operated by the Seller which are required from time to time to measure and test the quantity, quality and calorific value of Natural Gas delivered at each Delivery Point;

"mmBTU" shall mean one million (1,000,000) BTUs;

"Month" shall mean a period beginning at 00:00 hours on the first day of a calendar month and ending at 24:00 hours on the last day of that calendar month and **"Monthly"** shall be construed accordingly;

"Monthly Statement" shall have the meaning specified in Clause 20.1;

"Monthly Shortfall Quantity" shall have the meaning specified in Clause 10.5(f);

"Natural Gas" shall mean any hydrocarbon or a mixture of hydrocarbons consisting principally of methane, other hydrocarbons and non-combustible gases, all of which are substantially in the gaseous phase at a pressure of one hundred and one decimal three two five (101.325) kilopascals absolute and at a temperature of fifteen (15) degrees Celsius;

"New Generation Facility" shall mean either the IPTL Facility or such other Additional Generation Facility or Additional Generation Facilities nominated by the Buyer in accordance with Clause 12.1;

"New Generation Facility EPC Contractor" shall mean the contractor or contractors engaged by the Buyer (or if applicable the owner of the New Generation Facility) in connection with either the construction or conversion of the New Generation Facility;

"New Generation Facility NTP" shall mean a notice to proceed provided by the Buyer (or if applicable the owner of the New Generation Facility) to the New Generation Facility EPC Contractor;

"Non Power Additional Gas Sale Agreements" shall mean any agreement for the sale and purchase of Additional Gas from the Discovery Blocks by the Seller other than Power Gas Additional Sale Agreements;

"Off-Specification Gas" shall have the meaning specified in Clause 14.2(a);

“Operatorship Agreement” shall mean the Operatorship Agreement dated 11 October 2001 and between Songas and PAT as such agreement may be amended from time to time;

“Other Buyers” shall mean any buyer of Natural Gas sourced from the Discovery Blocks and purchased from the Seller (including, for the avoidance of doubt, any buyer of compressed Natural Gas) other than the Buyer;

“Other Charges” shall mean charges or levies that any Governmental Authority requires the Seller to include on the sale of Natural Gas pursuant to the terms of this Agreement;

“Performance Security” shall mean the letter of credit or bank guarantee provided by the Buyer in accordance with Clause 28;

“Person” means an individual, corporation, partnership, joint venture, trust, unincorporated organization, Government Authority or any other legal entity;

“Per Unit Insufficiency Premium” or **“PUIP”** shall have the meaning specified in the Insufficiency Agreement;

“Pipeline” shall mean the Natural Gas transportation pipeline from the Processing Plant to the Ubungo Complex;

“Pipeline Compression Facilities” shall have the meaning specified in Schedule 2;

“Power Additional Gas Sale Agreements” shall mean any agreement for the sale and purchase of Additional Gas from the Discovery Blocks by the Seller to the power sector including this Agreement, the Amended and Restated Gas Agreement (upon the execution of such agreement) and any future agreement with the Buyer or any independent power producer who sells substantially all of its generated power to the Buyer or the Buyer’s designated successor;

“Processing and Transportation Tariff” shall mean (i) for Natural Gas transported through the Gas Facilities the gas processing and transportation tariff and other amounts determined by EWURA and charged by Songas pursuant to the Gas Processing and Transportation Agreement for the transportation and processing of Natural Gas which for the avoidance of doubt includes without limitation any amounts charged by Songas for the reservation by the Seller of capacity for processing and transporting quantities of Natural Gas to be delivered pursuant to the terms of this Agreement, or (ii) for Natural Gas transported through any new processing and/or transportation system the tariff and other amounts determined by EWURA and charged by the owner of any new processing and/or transportation system pursuant to the terms of any processing and transportation agreement for the transportation and/or processing of Natural Gas which for the avoidance of doubt includes without limitation any amounts charged by the owner of any new processing and/or transportation system for the reservation by the Seller of capacity for processing and/or transporting quantities of Natural Gas to be delivered pursuant to the terms of this Agreement;

"Processing Plant" shall mean the Natural Gas processing plant constructed on Songo Songo Island including any increases to processing capacity and any future expansion or modification to the Processing Plant;

"Production Plan" shall have the meaning provided in the Insufficiency Agreement;

"Production Sharing Agreement" shall mean the agreement of the same name dated 11 October 2001 and between GOT, TPDC and PAT;

"Properly Nominated Quantity" and derivative expressions, including **"Proper Nomination"** shall mean, as regards any quantity of Natural Gas nominated under this Agreement by the Buyer for delivery by the Seller on any Hour, the quantity of Natural Gas nominated by the Buyer in accordance with Clause 9;

"Protected Gas" shall mean as of the date of determination (i) Complex Protected Gas (ii) Natural Gas required to operate the Wazo Hill Cement Plant at maximum capacity in substantially its initial configuration at Financial Closing, for the remaining Initial Term of the Power Purchase Agreement and (iii) Natural Gas required for the Village Programme, for the remaining Initial Term of the Power Purchase Agreement at a rate not to exceed 1.0 MMcf;

"Reasonable and Prudent Operator" shall mean a Party seeking, in good faith, to perform its contractual obligations and in so doing, and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator, complying with all applicable laws and international standards and practices, engaged in the same type of undertaking under the same or similar circumstances and conditions and any reference to the **"standard of a Reasonable and Prudent Operator"** shall be construed accordingly;

"Reduced MDQ" shall have the meaning provided in Clause 17.1(c);

"Remediation" means remediation program implemented by the Seller in order to correct the corrosion and well integrity problems identified in the Corrosion and Well Integrity Review issued by Axis Well Technology on 12 December 2010 in respect of the Songo Songo Gas Field;

"Reserved Gas" shall mean one hundred (100) BCF of Additional Gas from the Discovery Blocks;

"Required Amount" shall mean an amount equal to:

- (a) from the date of execution of the Agreement until the earlier to occur of the Seller serving the Buyer with (i) the Additional Facilities Project Completion Notice in accordance with Clause 7.5(b) or (ii) the MDQ Notice in accordance with Clause 7.6(b), U.S. Dollars three million six hundred thousand (3,600,000) or such other amount as agreed by the Parties in accordance with Clause 28.1(i);
- (b) from the date of the MDQ Notice until the end of the Supply Period, an amount specified in U.S. Dollars equal to sixty one multiplied by the MDQ established in the MDQ Notice multiplied by the prevailing Contract Price;

- (c) from the date of the Additional Facilities Project Completion Notice until 30 June 2017- U.S. Dollars ten million (10,000,000); and
- (d) from 1 July 2017 until 30 June 2023, U.S. Dollars eleven million (11,000,000);

"Scheduled Maintenance" shall mean operations to maintain, repair, modify or replace the Seller Facilities as may be scheduled pursuant to Clause 15.2;

"Seller's Facilities" shall mean:

- (a) all Metering Facilities, wells, installations, pipelines and other equipment and facilities upstream of the Processing Plant; and
- (b) all compression equipment and facilities that become necessary as a result of decreases to the inlet pressure at the Processing Plant from the existing inlet pressure of 110 barg, regardless of whether such compression equipment and facilities are installed upstream or downstream of the Processing Plant,

that in each case are required to enable the Seller to comply with its obligations under this Agreement, provided that, the term "Seller's Facilities" shall not be construed to include the Gas Facilities and for the purposes of Clause 6.1 and Clause 23.1(d) shall additionally not be construed to include any plant, equipment or facilities not owned by PAT;

"Seller's Force Majeure" shall have the meaning specified in Clause 23.1(a);

"Shortfall Gas" shall have the meaning specified in Clause 10.5(a);

"Shortfall Gas Price" shall have the meaning specified in Clause 19.2(c);

"Shortfall Gas Tolerance" shall have the meaning specified in Clause 10.5(b);

"Songas" shall mean Songas Limited, a limited liability company incorporated under the Laws of Tanzania;

"Songo Songo Gas Field" shall mean the Natural Gas reserves in the Discovery Blocks;

"Specification" shall have the meaning specified in Clause 14.1;

"Supply Period" shall mean the period specified in Clause 5.2(a);

"Symbion Gas Plant" shall mean the power plant located at Ubungo and owned by Symbion Power;

"Tanzanian Shillings" shall mean the lawful currency of The United Republic of Tanzania;

"Technical Dispute" shall mean a dispute that relates to a technical, engineering, operational or accounting matter arising from this Agreement that, in any case, is of the type readily subject to resolution by an expert in the relevant field;

“Tegeta Gas Plant” shall mean the gas engine plant at Tegeta (nominally 45 MW) operated by Wärtsilä;

“Term” shall have the meaning specified in Clause 5.1;

“TOPQ” or **“Annual Take or Pay Quantity”** shall have the meaning specified in Clause 10.6(b);

“Ubungo Complex” shall mean the electric generating facilities owned and operated by Songas at Ubungo in Dar es Salaam, The United Republic of Tanzania;

“US CPI” shall mean the Consumer Price Index For All Urban Consumers specified for all items published by the Bureau of Labour Statistics of The United States Department of Labour; or if such index is not then in use, by the index most nearly comparable thereto.

“U.S. Dollars” shall mean the currency from time to time that is the legal tender of The United States of America;

“Ubungo Gas Plant” shall mean the gas engine plant at Ubungo (nominally 100 MW) owned by the Buyer;

“Ubungo and Tegeta Gas Plants Supply Agreement” shall mean the gas supply agreement relating to the Ubungo Gas and Tegeta Gas Plants dated 11 December 2009;

“VAT” shall mean any form of value added tax, levy, import or duty or similar fee or charge, whether direct or indirect, of the Government from time to time imposed on or payable by either Party relating to the sale and purchase of Natural Gas pursuant to this Agreement;

“Village Programme” means the programme of providing Natural Gas and electric service as provided in accordance with the terms of the Gas Agreement, to Songo Songo Island and certain villages;

“Wazo Hill Cement Plant” shall mean Tanzania Portland Cement Company Ltd’s cement plant at Wazo Hill, Dar es Salaam, Tanzania;

“Wazo Hill Lateral” shall mean the Natural Gas transportation pipeline constructed from the Pipeline to the Wazo Hill Cement Plant located at Wazo Hill, Dar es Salaam, The United Republic of Tanzania;

“Week” shall mean a period of seven (7) Days beginning at 00:00 hours on a Sunday and ending at 23:59.59 hours on the following Saturday;

“Wellhead Charge” shall mean the wellhead charge for Natural Gas calculated pursuant to Clause 19.1(b);

“Wilful Misconduct and/or Gross Negligence” shall mean any act or failure to act (whether sole, joint or concurrent) by any person, which was intended to cause, or which was in reckless disregard of or wanton indifference to, harmful consequences

such person knew, or should have known, such act or failure would have on the safety or property of another person.

1.2. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words imparting the singular shall include the plural and vice versa;
- (b) words of any gender include each other gender;
- (c) the headings in this Agreement shall not be deemed part of, or be taken into consideration in the interpretation or construction of, this Agreement and are included for ease of reference only;
- (d) all references to Clauses, sub-clauses and Schedules shall, unless otherwise stated, be references to Clauses, sub-clauses of and Schedules to this Agreement;
- (e) all periods of time shall be based on, and computed according to, the Gregorian calendar;
- (f) reference to a statute, by-law, regulation, rule, delegated legislation or order is to the same as amended, modified or replaced from time to time and to any by-law, regulation, rule, delegated legislation or order made thereunder;
- (g) reference to other agreements, documents and other instruments shall be deemed to be such agreements, documents and other instruments from time to time as amended, replaced, substituted, assigned, novated, supplemented or otherwise transferred from time to time;
- (h) the terms "hereof", "herein", "hereunder" and similar words refer to this entire Agreement and not to any particular clause, Schedule or any other subdivision of the Agreement;
- (i) references to a time and date in connection with the performance of an obligation by a Party shall mean a reference to the time and the date in Dar es Salaam, The United Republic of Tanzania;
- (j) all Contract Price calculations performed pursuant to the terms of this Agreement shall be rounded to four decimal places; and
- (k) reference to a year is a reference to a calendar year unless otherwise defined.

1.3. References to the Insufficiency Agreement

- (a) The Parties agree that defined terms which are defined by reference to the Insufficiency Agreement shall not apply in the interpretation of this Agreement until the execution and effectiveness of the Insufficiency Agreement.

- (b) The Parties also agree Clauses 17, 20.6(a)(iii), 26.4 and 28.3 shall not have any effect or apply in the interpretation of this Agreement until the execution of the Insufficiency Agreement.

1.4. Amended and Restated Gas Agreement

- (a) The Parties acknowledge that the following defined terms (included in (i)-(iv) below) are based upon the definitions provided to those terms in the Amended and Restated Gas Agreement which as of the date of this Agreement has not been executed. The Parties agree that if there are any inconsistencies between the definitions provided to those defined terms in this Agreement and the definitions provided to those defined terms in the Amended and Restated Gas Agreement, the Parties shall amend this Agreement to ensure that the relevant defined terms in this Agreement are the same as the definitions given to those terms in the Amended and Restated Gas Agreement. This provision applies to the following defined terms:
 - (i) Additional Gas (including Complex Additional Gas);
 - (ii) Complex Protected Gas;
 - (iii) Initial Term; and
 - (iv) Protected Gas.

2. UNDERTAKINGS

- (a) Each of the Parties undertakes to the other to act at all times as a Reasonable and Prudent Operator in the performance of all its obligations under this Agreement.
- (b) Each of the Parties undertakes to the other to use reasonable endeavours acting as a Reasonable and Prudent Operator to provide such information as may be reasonably required by the other Party from time to time to assist that other Party to perform its obligations under this Agreement.

3. CONDITIONS PRECEDENT AND CONDITIONS SUBSEQUENT

3.1. Conditions Precedent

The rights and obligation of the Parties under this Agreement are subject to and shall only become effective on the satisfaction or waiver of all of the following conditions precedent (“Conditions Precedent”):

- (a) Performance Security for an amount greater than or equal to the Required Amount shall have been issued in favour of the Seller in accordance with the provisions of Clause 28.
- (b) The establishment by the Parties of an Escrow Account in accordance with Clause 20.7.

- (c) The Parties shall have received any necessary consents and approvals from EWURA for the sale of Natural Gas pursuant to the terms of this Agreement.

3.2. Satisfaction of Conditions Precedent

- (a) The Parties shall from time to time discuss and coordinate their plans for the satisfaction of the Conditions Precedent, and each Party shall keep the other informed on a timely basis as to progress in relation to the satisfaction of the Conditions Precedent.
- (b) Each Party shall use reasonable endeavours to achieve the Conditions Precedent for which they are responsible in Clause 3.1 as soon as is reasonably practicable and shall notify the other Party immediately as each of the Conditions Precedent for the satisfaction of which it is the responsible party have been achieved.

3.3. Status of Agreement

Except for the provisions of Clauses 1, 3, 5, 6, 22, 25, 28, 29, 30, 31, 32 and 33 none of the Parties are obligated by this Agreement until the Conditions Precedent have been satisfied or waived in writing by the Parties.

3.4. Failure to Satisfy Conditions Precedent

- (a) If the Conditions Precedent referred to in Clause 3.1 have not been satisfied or waived by forty-five (45) Days (or such later date as agreed by the Parties) after the execution of this Agreement (the "Long Stop Date"), the Buyer or the Seller may terminate this Agreement forthwith by giving the other Party ten (10) Days' written notice provided that neither Party shall be entitled to terminate the Agreement if the Conditions Precedent which had not been satisfied or waived by the Long Stop Date are satisfied or waived during such ten (10) Day period.
- (b) Satisfaction of (i) the Condition Precedent referred to in Clause 3.1(a) may be waived only by the written waiver of the Seller; and (ii) the Conditions Precedent referred to in Clauses 3.1(b) and (c) may be waived only by the written agreement of both Parties.
- (c) Termination of this Agreement pursuant to this Clause 3 shall be without prejudice to the rights and remedies of either Party accrued before such termination (including a failure to use reasonable endeavours) to satisfy any Conditions Precedent.

3.5. Conditions Subsequent

The continued rights and obligations of the Parties under this Agreement are subject to the satisfaction or waiver of the following conditions subsequent ("Conditions Subsequent"):

- (a) The following agreements shall have been executed by the relevant Parties:
 - (i) the Amended and Restated Gas Agreement; and

- (ii) the Insufficiency Agreement.
- (b) The approval by the relevant parties of a new Additional Gas Plan relating to the sale of Natural Gas sold pursuant to the terms of this Agreement.

3.6. Satisfaction of Conditions Subsequent

- (a) The Parties shall from time to time discuss and coordinate their plans for the satisfaction of the Conditions Subsequent, and each Party shall keep the other informed on a timely basis as to progress in relation to the satisfaction of the Conditions Subsequent.
- (b) The Parties to use reasonable endeavours to procure the assistance of the other relevant parties who are required to execute the agreements listed in Clause 3.5(a).

3.7. Failure to satisfy the Conditions Subsequent

- (a) If the Conditions Subsequent referred to in Clause 3.5 have not been satisfied or waived by 30 June 2012 (or such later date as agreed by the Parties) (the "**Conditions Subsequent Long Stop Date**"), the Seller shall have a right to suspend deliveries of Natural Gas in the circumstances set out in Clause 20.6.
- (b) If the Insufficiency Agreement is not executed by the Conditions Subsequent Long Stop Date, the Parties shall meet in good faith in an attempt to reach agreement on an alternative insufficiency regime which is acceptable to all Parties. If the Parties cannot agree on an alternative insufficiency regime by 31 December 2012 either Party may terminate this Agreement in writing and with immediate effect. The Parties agree that the Condition Subsequent relating to the execution of the Gas Agreement shall be deemed to be waived between the period commencing on the Conditions Subsequent Long Stop Date and expiring on 31 December 2012, but only for so long during such period as the Parties continues to negotiate an alternative insufficiency regime that is acceptable to all Parties in good faith.
- (c) Termination of this Agreement pursuant to this Clause 3 shall be without prejudice to the rights and remedies of either Party accrued before such termination (including such rights and remedies as may have arisen as a result of a failure to use reasonable endeavours to satisfy any Conditions Subsequent or the failure to pay any outstanding amounts).

4. SOURCE OF SUPPLY

4.1. Source of Supply

- (a) The Seller will source the Natural Gas to be delivered to the Buyer in accordance with this Agreement from the Songo Songo Gas Field.
- (b) Notwithstanding Clause 4.1(a), the Seller has the right to source Natural Gas from sources other than the Songo Songo Gas Field at its sole discretion provided that such Natural Gas complies with the Specification.

5. COMMENCEMENT, DURATION AND SUPPLY PERIOD

5.1. Commencement and Duration

This Agreement shall come into force on the date hereof and shall, unless terminated earlier in accordance with the provisions of this Agreement, remain in force until the expiry of the Supply Period (the "Term").

5.2. Supply Period

(a) The supply period shall commence the day after the Seller (acting in good faith) has provided the Buyer with written notification that all of the Conditions Precedent have been satisfied or waived and shall end on the earlier to occur of:

(i) 30 June 2023 (as such date may be extended pursuant to Clause 10.7(i)); or

(ii) the early termination of this Agreement in accordance with its terms (the "Supply Period").

5.3. Obligation to Sell and Take or Pay

During the Supply Period, Seller shall sell and deliver Natural Gas to Buyer at the applicable Delivery Point as nominated and agreed pursuant to the terms of this Agreement and the Buyer shall take delivery of and pay for Natural Gas, or pay for Natural Gas if not taken delivery of, in accordance with the terms of this Agreement.

6. FACILITIES

6.1. Seller Facilities

(a) During the Term, the Seller, at no cost to the Buyer, shall as a Reasonable and Prudent Operator and in accordance with the Laws operate, maintain and repair the existing Seller's Facilities in a manner that will enable the Seller to comply with its obligations under this Agreement.

(b) During the Term, the Seller, at no cost to the Buyer, shall engineer, procure, install, operate, maintain and repair such additional Seller's Facilities as are required to enable the Seller to continue to comply with its obligations under this Agreement, provided that doing so is required by Laws or by the standards of a Reasonable and Prudent Operator.

6.2. Buyer Facilities

(a) During the Term, the Buyer shall act as a Reasonable and Prudent Operator, in accordance with the Laws and in a manner that will enable the Buyer to comply with its obligations under this Agreement.

(b) Other than in relation to the Metering Facilities pursuant to Clause 18, the Seller shall not be responsible for any costs and obligations associated with the

construction, installation, maintenance and operation of the Generation Facilities.

7. QUANTITIES

7.1. Quantities of Natural Gas

All quantities of Natural Gas supplied pursuant to this Agreement shall be expressed in mmBTU, on the basis of the High Heating Value of the Natural Gas.

7.2. Period prior to the Additional Facilities Project Completion Notice or the MDQ Notice

- (a) From the commencement of the Supply Period and until the Seller has served either (i) the Additional Facilities Project Completion Notice pursuant to Clause 7.5(b) or (ii) the MDQ Notice in accordance with Clause 7.6(b), the Seller shall, by notice to the Buyer given no later than 11:00 hours on the preceding Day, provide the Buyer with an indicative good faith best estimate of the available MDQ for the following Day. For the avoidance of doubt the Seller's obligation to supply the Buyer with Natural Gas in the period prior to the Additional Facilities Project Completion Notice or the MDQ Notice shall be on a reasonable endeavours basis and the Seller shall not be liable for any failure to make all or any part of the MDQ estimated by the Seller to be available in accordance with this Clause 7.2.
- (b) If the Seller fails to provide an indicative good faith estimate in accordance with Clause 7.2(a) for any Day, the Seller shall be deemed to have nominated an MDQ corresponding to the previous indicative good faith estimate MDQ provided by the Seller.
- (c) In determining each MDQ prior to the Additional Facilities Project Completion Notice, the Seller shall act as a Reasonable and Prudent Operator taking into account available transportation and processing capacity, the priority regime described in Clause 7.3, and the Seller's obligations pursuant to Clause 7.5(a).
- (d) The Parties agree and acknowledge that the MDQ prior to the Additional Facilities Project Completion Notice shall, subject to Clause 7.2(a) not be greater than thirty six thousand seven hundred and ninety two (36,792) mmBTU/Day.

7.3. Priority Regime

Sales of gas by the Seller to its customers (including to TANESCO under this Agreement) shall be prioritized as follows from the commencement of the Supply Period until the Seller has served the Additional Facilities Project Completion Notice pursuant to Clause 7.5(b):

- (a) Complex Protected Gas, Protected Gas and Complex Additional Gas;
- (b) contracts the Seller has signed with non-power customers as of the date of the Re-Rating Agreement and contracts with non-power customers which were

under negotiation by the Seller as of the date of the Re-Rating Agreement but were or are signed after the date of the Re-Rating Agreement (including, in each case, any amendments, extensions or renewals to such contracts) in quantities not exceeding 15,176.4 mmbTU per day;

- (c) sales to TANESCO pursuant to this agreement up to 36,792 mmbTU per day; and
- (d) any sales to non-TANESCO customers of the Sellers.

7.4. Modifications to this Agreement Related to the Additional Facilities

The Parties agree to negotiate in good faith any changes that are required to be made to this Agreement in order to facilitate the development, construction and financing of the Additional Facilities or the use of the Additional Facilities to process and transport Natural Gas supplied pursuant to this Agreement; provided, however, that no Party shall be obliged to accept any change to the terms and conditions of this Agreement which materially changes the risks and rewards that accrued to such Party at the execution of this Agreement.

7.5. Additional Facilities Project Completion Notice

- (a) The Seller shall keep the Buyer reasonably informed as to the progression of the Additional Facilities Project and as to the anticipated date that the Seller shall be able to provide the Additional Facilities Project Completion Notice.
- (b) As soon as is reasonably practicable after the granting of the Additional Facilities Project Acceptance Certificate and in any event, within three (3) Business Days thereof, the Seller shall serve the Buyer with a written notice informing the Buyer of the occurrence of the completion of the Additional Facilities Project ("Additional Facilities Project Completion Notice").

7.6. Failure to serve the Additional Facilities Project Completion Notice

In the event that:

- (a)
 - (i) financial closing has not occurred with respect to the additional processing and/or transportation facilities contemplated by clause (ii) of the definition of the Additional Facilities Project by 30 June 2012; or
 - (ii) the Additional Facilities Project Completion Notice has not been delivered by 31 December 2013,

then the Seller shall continue to supply Natural Gas in accordance with Clause 7.2.

- (b) If at any time during the Supply Period and in circumstances where the provisions set out in Clause 7.6(a) apply, the Buyer shall be entitled, upon written request to the Seller, to request the Seller to establish an MDQ that

shall, subject to the terms of the Agreement, apply for the remainder of the Supply Period. Within thirty (30) Days of receiving such request from the Buyer, the Seller shall provide the Buyer with a written notice establishing the MDQ for the remainder of the Supply Period ("MDQ Notice").

- (c) Once the Seller has served the MDQ Notice the MDQ shall be set at the amount stipulated in the MDQ Notice for the remainder of the Supply Period.

7.7. Maximum Quantities Following Completion of the Additional Facilities Project

- (a) With effect on and from the Day following the Day in which the Seller served the Buyer with the Additional Facilities Project Completion Notice and until the end of the Supply Period the Buyer may require the Seller, unless the Seller is excused by another provision of this Agreement, to make Natural Gas available at the Delivery Points and at each Delivery Point up to the following maximum quantities:
 - (i) the Delivery Point MHQ;
 - (ii) the MHQ; and
 - (iii) 36,792 mmBTU/Day.
- (b) The Seller shall deliver on each Day at each Delivery Point, the quantity of Natural Gas nominated in accordance with Clause 9 ("Properly Nominated Quantity") by the Buyer in accordance with this Agreement for delivery on such Day.
- (c) If the MDQ is reduced in accordance with Clause 10.9 or 17.1, the Parties shall meet to agree revisions to the Delivery Point MDQs. If, pursuant to Clause 10.9 (but for the avoidance of doubt not Clause 17.1), the Parties are unable to agree on any revisions to the Delivery Point MDQs within a period of sixty (60) Days, the Delivery Point MDQs shall be reduced on a pro rata basis to the reduction to the MDQ.

7.8. Annual Contract Quantity

In any Contract Year the Seller shall not be obliged to make a quantity of Natural Gas available above the Annual Contract Quantity.

8. FORECASTS

8.1. Semi Annual Forecasts

After either (i) the Additional Facilities Project Completion Notice has been served by the Seller pursuant to Clause 7.5 or (ii) the MDQ Notice has been served by the Seller in accordance with Clause 7.5(b), the Buyer shall make the following forecasts in respect of the quantity of Natural Gas it requires the Seller to deliver to each Delivery Point during each Contract Year:

- (a) In December and June of each Contract Year the Parties shall meet to discuss the:

- (i) estimated Natural Gas consumption by the Buyer for the following twelve (12) Month period;
 - (ii) Buyer's planned programmes and operations that would affect the Buyer's ability to nominate and take Natural Gas in accordance with this Agreement in each Month during the following twelve (12) Month period; and
 - (iii) Seller's planned programmes and operations and to the extent known by the Seller the planned programmes and operations of Songas that would affect the Seller's ability to make available Natural Gas in accordance with this Agreement in each Month during the following twelve (12) Month period.
- (b) Within twenty (20) Days of the date of meeting which has occurred pursuant to Clause 8.1(a), the Buyer shall give written notice to the Seller of its good faith best estimates of its expected Natural Gas consumption during the following twelve (12) Month period.

8.2. Monthly Forecasts

Not less than five (5) Days prior to the beginning of each Month occurring after either (i) the Additional Facilities Project Completion Notice has been served in accordance with Clause 7.5, or (ii) the MDQ Notice has been served by the Seller in accordance with Clause 7.6(b), the Buyer shall give notice to the Seller of its good faith best estimates of the quantities of Natural Gas Buyer will require Seller to make available at each Delivery Point during the following Month on a Day by Day basis.

8.3. Weekly Forecasts

Not less than forty eight (48) Hours prior to the beginning of each Week occurring after either (i) the Additional Facilities Project Completion Notice has been served in accordance with Clause 7.5 or (ii) the MDQ Notice has been served by the Seller in accordance with Clause 7.6(b), the Buyer shall give notice to the Seller of its good faith best estimates of the quantities of Natural Gas Buyer will request Seller to deliver during the following Week on an Hour by Hour basis.

8.4. Forecasts Not Binding

The Seller acknowledges that the good faith best estimates provided by the Buyer pursuant to Clauses 8.1-8.3 shall not constitute binding estimates and that the Buyer shall be entitled to make any re-nominations in accordance with Clause 9 notwithstanding any estimated nominations made provided that the Buyer shall not make any re-nominations after the expiry of the period referred to in Clause 9.3.

9. NOMINATIONS

9.1. Nominations

- (a) On each Day during the Supply Period, by 17:00 hours on the Day immediately prior to the Day on which the Buyer requires Natural Gas to be delivered, the Buyer shall give notice to the Seller in writing or by electronic

communication of the total quantity of Natural Gas the Buyer will require for that following Day on an Hour by Hour basis (the "Aggregate Total Hourly Nomination") which, subject to Clauses 10.2, 10.3 and 10.4, shall not exceed the MHQ.

- (b) By 17:00 hours on the Day immediately prior to the Day on which the Buyer requires Natural Gas and based on the Aggregate Total Hourly Nomination, the Buyer shall provide the Seller with a written communication setting out the amount of the Buyer's nomination for each Delivery Point on an Hour by Hour basis (the "Delivery Point Schedule").
- (c) Except as a request for an Extra Gas Quantity, Daily Excess Gas Quantity or an Hourly Overtake Gas Quantity pursuant to Clauses 10.2, 10.3 and 10.4, the Buyer shall have no right to nominate a quantity of Natural Gas greater than:
 - (i) in respect of each Delivery Point, the Delivery Point MHQ;
 - (ii) the MHQ; or
 - (iii) the MDQ.
- (d) Subject to Clause 9.1(e) for any Day during the Supply Period, the Buyer shall have the right exercisable by notice to Seller to request that Seller shall make available an Extra Gas Quantity, Daily Excess Gas Quantity or an Hourly Overtake Gas Quantity, which Buyer commits to pay on such Day and the Seller shall use reasonable endeavours to make available pursuant to Clauses 10.2, 10.3 and 10.4.
- (e) The Seller shall, acting as a Reasonable and Prudent Operator, have the right on any Day during the Supply Period, to provide the Buyer with written or electronic notice requiring the Buyer not to take any quantity of Natural Gas above the Delivery Point MHQ, the MHQ or the MDQ for a time period designated in such notice.

9.2. Deemed Nominations

If Buyer fails to make a Proper Nomination for any Day pursuant to Clause 9.1, then the Buyer shall be deemed to have nominated for such Day a quantity of Natural Gas that corresponds to the quantity of Natural Gas most recently nominated by the Buyer in a Proper Nomination for the same Day of the Week.

9.3. Revised Nominations

Subject to the quantity limitations of Clause 7.3 and 7.7 the Buyer may, on any Day upon one (1) Hour written or electronic notice to the Seller, vary the Delivery Point nominations notified in the Delivery Point Schedule provided that the Aggregate Total Hourly Nomination is not amended.

- (a) Subject to Clause 9.1(e), the Buyer may amend a Properly Nominated Quantity by written or electronic notice to the Seller, provided that any variation by the Buyer of the Aggregate Total Hourly Nomination in force is subject to the following minimum periods of notice to the Seller:

- (i) for any increase exceeding zero (0%) and up to and including fifty (50%) per cent. of the timely rate then in force, the Buyer shall give not less than two (2) Hours' notice;
 - (ii) for any increase exceeding fifty (50%) per cent. of the timely rate then in force, the Buyer shall give not less than six (6) Hours' notice;
 - (iii) for any decrease of the timely rate then in force for the Day, the Buyer shall give not less than one (1) Hour's notice;
- (b) Any revision to a Properly Nominated Quantity shall not become effective until the expiration of the minimum periods as set out in Clause 9.3(a). If the Seller does not receive the notice of revision within the relevant period set out in Clause 9.3(a), then the Proper Nominated Quantity for such Hour shall remain as the most recent Proper Nomination made under Clause 9.1.
- (c) ~~The Seller shall in the period until the expiry of the minimum period of notice established in Clause 9.3(a), acting as a Reasonable and Prudent Operator, use reasonable endeavours, taking into account access to processing and transportation capacity and the Other Buyers, to respond to such amended Proper Nominations prior to the expiration of the relevant time periods.~~
- (d) The Seller shall make available the revised quantity of Natural Gas requested by the Buyer set out in Clause 9.3(a) by the expiration of the times indicated provided that the Seller shall have no obligation other than reasonable endeavours to make available any Extra Gas Quantity, Daily Excess Gas Quantity or Hourly Overtake Gas Quantity.
- (e) Within six (6) Months of the date of the Additional Facilities Project Completion Date the Parties shall meet to discuss the response times agreed pursuant to Clause 9.3(a). Either Party shall be entitled to make proposals to either increase or decrease the response times included pursuant to Clause 9.3(a). If the Parties are unable to agree on the minimum nomination response times achievable by a Reasonable and Prudent Operator within sixty (60) Days, either Party shall be entitled to refer such dispute to the Expert, who shall recommend appropriate response times, in accordance with Clause 30.

9.4. Periods of Inability

- (a) If during the Supply Period a Party anticipates that for any Day such Party, for any reason, will not be able to make available or take, as the case may be, the Properly Nominated Quantity, then such Party shall as soon as reasonably practicable before the commencement of such Day notify the other Party of the quantity of Natural Gas, if any, which such Party expects to make available or take, as the case may be, during such Day and the reasons for such inability.
- (b) If due to Force Majeure, Interruption or Natural Gas failing to conform to the Specification during the Supply Period, which results in Seller being unable to

make the Properly Nominated Quantity available, or Buyer being unable to take the Properly Nominated Quantity then,

- (i) for the duration of the period covered by the then current Proper Nomination, the Properly Nominated Quantity for each Day in such period shall continue to be the quantity specified in such Proper Nomination; and
- (ii) if such inability continues after the end of the period covered by the then current Proper Nomination, then for the continuation of such inability the Properly Nominated Quantity for each Day shall be limited to the Properly Nominated Quantity for the Day immediately preceding the first Day of such underlying cause for such inability.

10. DELIVERY

10.1. Daily Delivery

- (a) Unless excused by another provision of this Agreement, on each Day during the Supply Period, the Seller shall make available, and Buyer shall take, in accordance with this Agreement, the Properly Nominated Quantity of Natural Gas.
- (b) Without prejudice to any other provision of this Agreement, the Parties recognise that given the construction of the gas transportation system and the Delivery Points, the Buyer has the capability to take quantities of Natural Gas without the consent of the Seller.

10.2. Extra Gas Quantities

- (a) For any Hour of any Day in which the Buyer:
 - (i) has requested a quantity of Natural Gas pursuant to Clause 9.1(d), above the MHQ but below the Hourly Overtake Gas Threshold; or
 - (ii) has taken a quantity of Natural Gas above the MHQ but below the Hourly Overtake Gas Threshold

("Extra Gas Quantity")

the Seller shall, acting as a Reasonable and Prudent Operator, where the Buyer has requested the Extra Gas Quantity, use reasonable endeavours, taking into account access to transportation and processing capacity and the Other Buyers, to make available such Extra Gas Quantity and provided that the Seller shall not be liable for any failure to make all or any part of such Extra Gas Quantity available.

- (b) In the Monthly Statement for the Month for which such Extra Gas Quantity is delivered or taken by the Buyer, and provided that the Extra Gas Quantity does not form part of the Daily Excess Gas Quantity, then the Seller shall invoice the Buyer for such Extra Gas Quantities taken at the Contract Price.

- (c) Extra Gas Quantities delivered by the Seller and or taken by the Buyer in excess of the MHQ shall count towards the TOPQ.

10.3. Daily Excess Gas Quantity

- (a) For any Day which the Buyer:
 - (i) has requested a quantity of Natural Gas in excess of the MDQ; or
 - (ii) has taken a quantity of Natural Gas in excess of the MDQ,

(the "Daily Excess Gas Quantity")

the Seller shall, acting as a Reasonable and Prudent Operator, where the Buyer has requested the Daily Excess Gas Quantity, use reasonable endeavours, taking into account access to transportation and processing capacity and the Other Buyers, to make available such Daily Excess Gas Quantity and provided ~~that the Seller shall not be liable for any failure to make all or any part of such~~ Daily Excess Gas Quantity available.

- (b) In the Monthly Statement for the Month for which such Daily Excess Gas Quantity is requested or taken by the Buyer, the Seller shall invoice the Buyer for the aggregate Daily Excess Gas Quantity taken during such Month at the Daily Excess Gas Quantity Price.
- (c) In preparing a Monthly Statement for a Month in which a Daily Excess Gas Quantity has been requested or taken by the Buyer, the Seller when calculating the Daily Excess Gas Quantity shall not include quantities of Natural Gas which are treated and paid for as Hourly Overtake Gas Quantities in accordance with Clause 19.2(a).
- (d) Daily Excess Gas Quantities delivered by the Seller and or taken by the Buyer shall count towards the TOPQ.

10.4. Hourly Overtake Gas Quantities

- (a) For any Hour of any Day which the Buyer:
 - (i) has requested a quantity of Natural Gas pursuant to Clause 9.1(d), above the Hourly Overtake Gas Threshold; or
 - (ii) has taken a quantity of Natural Gas above the Hourly Overtake Gas Threshold,

("Hourly Overtake Gas Quantity")

the Seller shall, acting as a Reasonable and Prudent Operator, where the Buyer has requested the Hourly Overtake Gas Quantity, use reasonable endeavours, taking into account access to transportation and processing capacity and the Other Buyers, to make available such Hourly Overtake Gas Quantity and provided that the Seller shall not be liable for any failure to make all or any part of such Hourly Overtake Gas Quantity available.

- (b) In the Monthly Statement for the Month for which such Hourly Overtake Gas Quantity is requested or taken by the Buyer, the Seller shall invoice the Buyer for the aggregate Hourly Overtake Gas Quantity taken during such Month at the Hourly Overtake Gas Quantity Price.
- (c) Hourly Overtake Gas Quantities delivered by the Seller and or taken by the Buyer shall count towards the TOPQ.
- (d) Extra Gas Quantities, Daily Excess Gas Quantities and Hourly Overtake Gas Quantities delivered by the Seller or taken by the Buyer in excess of the MHQ or the MDQ during the Supply Period ("**Aggregate Extra, Daily Excess & Hourly Overtake Gas Quantities**") shall serve to reduce the MDQ for the final two (or more as the case may be) Contract Years of the Agreement in accordance with Clause 10.9.

10.5. Shortfall Gas

- (a) If the Seller, on any Day in the Supply Period fails to deliver the Properly Nominated Quantity for delivery on that Day, the amount by which the Seller's deliveries fall short of the Properly Nominated Quantity for such Day shall, subject to Clause 10.5(d), be classified as "**Shortfall Gas**" PROVIDED THAT the definition of Shortfall Gas shall not include any quantity of Natural Gas:
 - (i) which the Seller has tendered for delivery to the Buyer in accordance with the Delivery Point Schedule but which the Buyer, for any reason other than Off-Specification Gas or failure to maintain the Delivery Pressure, has not accepted delivery;
 - (ii) which the Seller is excused from making available by any provision of this Agreement including Force Majeure or Scheduled Maintenance or which the Seller is unable to deliver as a consequence of the action or inaction of the Buyer that is inconsistent with the terms of this Agreement;
 - (iii) which the Seller has not delivered for a period of six (6) Hours after the Buyer has failed to comply with the notice issued by the Seller pursuant to Clause 9.1(e);
 - (iv) which the Seller has not made available at a nominated Delivery Point as a consequence of the Buyer taking a quantity of Natural Gas at any other Delivery Point at a rate in excess of the rate nominated for such Delivery Point; or
 - (v) not supplied due to the exercise by the Seller of its rights pursuant to Clause 13.
- (b) The "**Shortfall Gas Tolerance**" for each Month during the Supply Period shall be any quantity of Natural Gas which is equal to or less than two (2%) of the aggregate of quantities of Natural Gas delivered for that Month.

- (c) If, subsequent to the classification of any amount as Shortfall Gas, it is agreed or adjudged that the Seller was relieved from liability through Force Majeure in respect of that amount (or any part thereof), then such amount (or such part thereof) shall be removed from the said classification, the appropriate adjustment shall be made for the purposes of Clause 20 and the Buyer shall make any necessary repayment to the Seller at the time of making payment of the first Monthly Statement submitted by the Seller after such agreement or adjustment.
- (d) In order for any quantity of Natural Gas to be classified as Shortfall Gas the Seller shall either have failed to maintain the Delivery Pressure for the relevant Delivery Point or the Buyer shall have rejected the Natural Gas in accordance with Clause 14.2.
- (e) In circumstances where the Seller has failed to maintain the Delivery Pressure at a Delivery Point which the Buyer has nominated pursuant to the terms of the Delivery Point Schedule, the Buyer shall use reasonable efforts to use such quantities of Natural Gas at another Delivery Point with the same or lower Delivery Pressure than the Delivery Point nominated pursuant to the terms of the relevant Delivery Point Schedule and to the extent possible such quantities of Natural Gas shall not be classified as Shortfall Gas.
- (f) The total amount of Shortfall Gas classified in any Month, as adjusted to take account of the Shortfall Gas Tolerance, shall be aggregated at the end of such Month (such aggregate amount, together with any additions thereto, being referred to as the "Monthly Shortfall Quantity") and the first Natural Gas delivered in the following Month under this Agreement, up to an amount equal to the Monthly Shortfall Quantity, which would otherwise be paid for by the Buyer at the Contract Price shall be paid for by the Buyer at the Shortfall Gas Price.
- (g) Other than the right to terminate this Agreement pursuant to Clause 26.5(c), the remedies set forth in this Clause 10.5 shall be the exclusive remedies available to the Buyer for the under delivery of Natural Gas by the Seller.

10.6. Take or Pay Quantity

- (a) For the Supply Period, the Buyer shall be obligated to take and pay for, or to pay for if not taken, a quantity of Natural Gas at least equal to the Adjusted TOPQ which shall be the TOPQ for such Contract Year as adjusted pursuant to Clause 10.6(c).
- (b) The Annual Take or Pay Quantity ("TOPQ") in any Contract Year shall be equal to the ACQ for such Contract Year multiplied by 0.875.
- (c) The "Adjusted Annual Take or Pay Quantity" for each such Contract Year means, the TOPQ minus the aggregate of the following:
 - (i) any Shortfall Gas;

- (ii) the aggregate quantity of Natural Gas not made available to the Buyer due to Scheduled Maintenance by the Seller;
 - (iii) the aggregate quantity of Natural Gas not made available or not taken due to Force Majeure;
 - (iv) the quantity of Carry Forward Gas which was generated in the previous Contract Year;
 - (v) the aggregate quantities of Natural Gas not made available by the Seller for reasons of Interruption pursuant to Clause 13; and
 - (vi) the aggregate quantities of Natural Gas rejected by the Buyer in accordance with Clause 14.2(f).
- (d) For each Contract Year, the Buyer shall (in accordance with Clauses 19 and 20) pay the Seller, at the Contract Price, for a quantity of Natural Gas (if any) equal to the quantity by which the Natural Gas taken and paid for by the Buyer in a Contract Year is less than the Adjusted Annual Take or Pay Quantity applicable to such Contract Year (the "Annual Deficiency Quantity").
- (e) The Buyer shall pay for any Annual Deficiency Quantity in the Contract Year following the Contract Year in which the Annual Deficiency Quantity arose ("Annual Deficiency Quantity Payment"). Payment for the Annual Deficiency Quantity shall be in accordance with Clause 20.3.
- (f) The Seller's sole remedy for the Buyer's failure to take quantities of Natural Gas required for the fulfilment of its obligations pursuant to this Clause 10.6 shall be to enforce the Buyer's obligation to pay the Annual Deficiency Quantity Payment, and if applicable, to terminate the Agreement pursuant to Clause 26.6(b).

10.7. Make-Up Gas

- (a) If there is an Annual Deficiency Quantity in any Contract Year then such Annual Deficiency Quantity shall be treated as make-up gas ("Make-Up Gas") and in aggregate shall be referred to as the "Make-Up Gas Aggregate" and which shall be available to the Buyer in any of the following five (5) Contract Years ("Make-Up Period").
- (b) The Seller shall supply Make-Up Gas to the Buyer provided that:
- (i) in any subsequent Contract Year the Buyer has taken and paid for a quantity of Natural Gas equal to the TOPQ in that Contract Year; and
 - (ii) the Make-Up Gas Aggregate has not been exceeded.
- (c) The Buyer shall take delivery of such Make-Up Gas in the reduction of any outstanding Make-Up Gas Aggregate in the order in which the Make-Up Gas which constitutes the outstanding Make-Up Gas Aggregate was originally incurred.

- (d) Buyer must take any Make-Up Gas within the Make-Up Gas Period or the Buyer will lose its rights to such Make-Up Gas, except where:
- (i) Buyer has been unable to accept deliveries of Make-Up Gas for reasons of Force Majeure affecting either Party;
 - (ii) Seller has been unable to deliver quantities of Make-Up Gas for reasons of Interruption;
 - (iii) Make-Up Gas which would have been delivered in respect of any Annual Deficiency Quantity is or would be Off-Specification Gas;
 - (iv) Seller has failed to make available quantities of Make-Up Gas Properly Nominated by the Buyer;

in which event such Make-Up Gas shall be carried forward and added to the quantity of Make-Up Gas Aggregate which Buyer shall be entitled to take ~~delivery of in the next Contract Year or the Extension Period.~~

- (e) The Buyer shall be obliged to make any nominations of Make-Up Gas in accordance with the provisions of this Agreement. The Buyer shall not be entitled to nominate quantities of Make-Up Gas in excess of the Delivery Point MHQ, the MHQ or the MDQ.
- (f) If eight (8) Months prior to the end of the Supply Period, the Buyer has failed, despite using its reasonable commercial endeavours taking into account factors such as economic dispatch, to exercise its right to take a quantity of Make-Up Gas equivalent to the Make-Up Gas Aggregate, the Seller shall have the right to either pay the Buyer a cash value for the Make-Up Gas Aggregate pursuant to Clause 10.7(g) or grant the Buyer an extension to the Supply Period pursuant to Clause 10.7(h) provided that the Seller shall provide the Buyer with written notice of such election six (6) Months prior to the expiry of the Supply Period.
- (g) If the Seller elects pursuant to Clause 10.7(f) to pay the Buyer a cash value for the Make-Up Gas Aggregate this shall be calculated by multiplying the Make-Up Gas Aggregate at the end of the Supply Period by the Contract Price paid by the Buyer for such Natural Gas which constitutes the Make-Up Gas Aggregate minus the applicable Processing and Transportation Tariff and upon such payment by the Seller to the Buyer, the Buyer shall have no further liability to the Buyer for the Make-Up Gas Aggregate.
- (h) If the Seller elects to supply the Buyer with the Make-Up Gas Aggregate by way of an extension to the Supply Period, such supply of the Make-Up Gas Aggregate shall be subject to the following conditions:
- (i) the Buyer exercises its right to take any outstanding Make-Up Gas Aggregate within the extension period (the "Extension Period") pursuant to Clause 10.7(i);

- (ii) the Seller is able to secure sufficient transportation and capacity arrangements to supply such outstanding Make-Up Gas Aggregate after the end of the Supply Period;
 - (iii) the Buyer shall not be entitled to request a quantity of Natural Gas in excess of the MDQ that was applicable for the preceding Contract Year;
 - (iv) the Buyer shall be responsible for any additional costs incurred in connection with the supply of the outstanding Make-Up Gas Aggregate including without limitation any transportation and delivery costs incurred by the Seller; and
 - (v) the Seller's gas supply obligations to the Other Buyers.
- (i) The Extension Period shall be deemed to commence at 00:00 Hours on the Day on which the Supply Period ends, and shall continue until the first to occur of the expiry of a period of one hundred and eighty (180) Days (such period to end at 00:00 Hours on the last Day of the one hundred and eighty (180) Day period) and the recovery by the Buyer of the outstanding Make-Up Gas Aggregate.
 - (j) If at the end of the Extension Period the Buyer has failed to exercise its right to take up a quantity equivalent to the Make-Up Aggregate, the Seller pay the Buyer a cash value for the outstanding Make-Up Gas Aggregate which shall be calculated by multiplying the outstanding Make-Up Gas Aggregate at the end of the Extension Period by sixty (60%) per cent of the Contract Price applicable for the last Contract Year of the Supply Period minus the applicable Processing and Transportation Tariff and upon such payment by the Seller to the Buyer, the Buyer shall have no further liability to the Buyer for the Make-Up Gas Aggregate.
 - (k) Each recovery of Make-Up Gas by the Buyer will be detailed and implemented in the relevant Annual Reconciliation Statement issued by the Seller.
 - (l) Make-Up Gas recovered pursuant to this Clause 10.7 shall not be used for the purposes of Carry Forward Gas pursuant to Clause 10.8.

10.8. Carry Forward Gas

- (a) If, during any Contract Year, the Buyer takes delivery of and pays for a quantity of Natural Gas in excess of the TOPQ, such excess quantities up to a maximum amount of the difference between the ACQ and the TOPQ for such Contract Year will be categorised as carry forward gas ("Carry Forward Gas").
- (b) Carry Forward Gas (if any) shall be applied to reduce the TOPQ for the next Contract Year.

- (c) In any Contract Year the Buyer has taken delivery of and has paid for a quantity of Natural Gas equal to the TOPQ for that Contract Year and Buyer thereafter takes delivery of any further quantity of Natural Gas:
 - (i) where there is an outstanding Make-Up Gas Aggregate then such further quantity of Natural Gas shall be Make-Up Gas to the extent thereof; and
 - (ii) where there is no outstanding Make-Up Gas Aggregate then such further quantity of Natural Gas shall be Carry Forward Gas.

10.9. Reduced MDQ

- (a) Where the Buyer has requested or the Buyer has taken Aggregate Extra, Daily Excess & Hourly Overtake Gas Quantities, the MDQ shall be revised in accordance with Clause 10.9(b) and (c) to take account of the Aggregate Extra, Excess & Hourly Overtake Gas Quantities made available by the Seller pursuant to Clauses 10.2, 10.3 and 10.4.
- (b) Providing that the Aggregate Extra, Daily Excess & Hourly Overtake Gas Quantities are less than the sum in mmbTU of the relevant MDQ multiplied by three hundred and sixty five (365), then the MDQ for the final two Contract Years shall be reduced by the Aggregate Extra, Daily Excess & Hourly Overtake Gas Quantity divided by seven hundred and thirty (730) Days, subject to Clause 10.9(d) below.
- (c) If at any time during the Supply Period, the Aggregate Extra, Excess & Hourly Overtake Gas Quantity exceeds the sum in mmbTU of the relevant MDQ multiplied by three hundred and sixty five (365), then the MDQ for the remaining Contract Years shall be reduced by the Aggregate Extra, Excess & Hourly Overtake Gas Quantity divided by the remaining number of Days in the Supply Period.
- (d) To the extent that the Aggregate Extra, Excess & Hourly Overtake Gas Quantity reduces the MDQ pursuant to this Clause 10.9 to an amount that is less than six thousand seven hundred and fifty eight (6,758) mmbTU, the Seller agrees to provide an MDQ equal to six thousand seven hundred and fifty eight (6,758) mmbTU until the end of the Supply Period.

11. DELIVERY POINT, PROPERTY AND RISK

11.1. Delivery Point

Natural Gas to be delivered pursuant to this Agreement shall be delivered by the Seller to the Buyer at the relevant Delivery Point for each Generation Facility, as nominated by the Buyer in the Delivery Point Schedule.

11.2. Title and Risk of Loss

- (a) Title to, custody of and risk of loss or damage to the Natural Gas delivered in accordance with this Agreement shall pass to the Buyer at the Delivery Point for the related Generation Facility.

- (b) Any liability in respect of such Natural Gas delivered to a particular Generation Facility shall also pass to the Buyer at the Delivery Point for that Generation Facility.
- (c) If and to the extent that the Buyer takes Natural Gas at another Delivery Point which is not accordance with the Delivery Schedule then title to, custody of, risk of loss and liability in respect of such Natural Gas shall be deemed to have passed to the Buyer at such Delivery Point.

12. **NEW DELIVERY POINTS**

12.1. **Additional Generation Facilities**

- (a) Subject to the provisions of this Clause 12, during the Supply Period, the Buyer shall be entitled to request additional generation facilities (each an "Additional Generation Facility") be included as a Generation Facility provided that the Buyer shall not be entitled to request that the Ubungo Complex be included as a Generation Facility.
- (b) The Buyer shall provide the Seller with a written notice identifying the Additional Generation Facility, the proposed date for delivery of first Natural Gas and all other additional information as the Seller may reasonably require relating to the Additional Generation Facility.
- (c) Within thirty (30) Days of receipt by the Seller of the notice pursuant to Clause 12.1(b), the Parties shall meet to discuss in good faith the inclusion of the Additional Generation Facility as a Generation Facility and the following issues:
 - (i) the proposed date on which the Seller could make Natural Gas available to the Additional Generation Facility;
 - (ii) the Delivery Point, the proposed Delivery Pressure and the proposed Delivery Point MDQ for the Additional Generation Facility;
 - (iii) to the extent not recovered through the Connection Charge, any reasonable costs that may be incurred by the Seller in making Natural Gas available at the Additional Generation Facility ("**Additional Generation Facility Costs**");
 - (iv) the proposed payment schedule for the Additional Generation Facility Costs including any requirement for Buyer pre-payment; and
 - (v) any amendments that may be required to the Agreement as a consequence of the inclusion of the Additional Generation Facility.
- (d) If the Parties are unable to agree on any of the issues included in Clause 12.1(c)(i)-(v) within one hundred and eighty (180) Days of the meeting (or any later date the Parties may agree) the Buyer's request for the inclusion of the Additional Generation Facility shall be deemed to be rejected by the Seller.

- (e) If the Parties are able to agree on the issues included in Clause 12.1(c)(i)-(v), the Parties shall set out such agreement relating to the proposed Additional Generation Facility in a written statement signed by both Parties and which shall include the following information:
- (i) the Delivery Pressure and the location of the Delivery Point at the Additional Generation Facility and the proposed Delivery Point MDQ;
 - (ii) the proposed date on which the Seller could make Natural Gas available to the Additional Generation Facility;
 - (iii) the estimated Additional Generation Facility Costs;
 - (iv) the proposed payment schedule; and
 - (v) any amendments that are required to this Agreement as a consequence of including the Additional Generation Facility as a Generation Facility.
- (f) The Seller shall keep the Buyer reasonably informed of the Additional Facility Generation Costs. Upon completion of any infrastructure required to make Natural Gas available to the Buyer at the Additional Generation Facility, the Seller shall provide the Buyer with an invoice containing the amount of the actual Additional Generation Facility Costs incurred by the Seller, acting as a Reasonable and Prudent Operator and reasonable supporting documentary evidence ("Actual Additional Generation Facility Costs").
- (g) The Seller shall not be obliged to deliver any quantity of Natural Gas to the Additional Generation Facility until:
- (i) to the extent not covered through the Connection Charge, the Buyer has paid the Seller in full the Actual Additional Generation Facility Costs;
 - (ii) the Seller has completed all infrastructure required to enable the delivery of Natural Gas to the Additional Generation Facility;
 - (iii) the Buyer has satisfied the provisions of Clause 12.1(k); and
 - (iv) the Seller has provided written notice to the Buyer that the conditions in Clause 12.1(g)(i),(ii) and (iii) have been satisfied ("Additional Generation Facility Certificate").
- (h) If the Buyer considers at any time that the conditions set out in Clause 12.1(g)(i)-(iii) have been satisfied the Buyer shall provide the Seller with written notification stating that the Buyer, acting in good faith, considers that the conditions in Clause 12.1(g)(i)-(iii) have been satisfied and a request that the Seller should issue the Additional Generation Facility Certificate.
- (i) The Seller shall be obliged within ten (10) Days of the notice provided by the Buyer pursuant to Clause 12.1(h) to either:

- (i) issue the Additional Generation Facility Certificate; or
 - (ii) provide the Buyer with a written explanation as to why the Seller is unable to issue the Additional Generation Facility Certificate.
- (j) The Buyer shall be entitled to refer any disputes relating to the issuing of the Additional Generation Facility Certificate to an Expert pursuant to Clause 30.3. The Parties agree that the Expert determination shall be through an expedited process.
- (k) The Buyer shall grant the Seller, or shall procure the grant of to the Seller:
- (i) all necessary rights of way, easements and other real property rights in order for the Seller to install any new infrastructure required to facilitate the delivery of Natural Gas to the Additional Generation Facility; and
 - (ii) all necessary rights of way, easements and other real property rights required in order for the Seller to operate and maintain such Metering Facilities at the Additional Generation Facility.
- (l) If the Buyer wishes to nominate the IPTL Facility as a New Generation Facility or as an Additional Generation Facility, the Buyer shall ensure that the IPTL Facility shall be capable of accepting Natural Gas at a Delivery Pressure within a range of ten (10) Bar to eighty seven (87) Bar. The Seller shall have no obligation to make Natural Gas available at the IPTL Facility at a Delivery Pressure of greater than ten (10) Bar provided that Seller may in its discretion make Natural Gas available up to a maximum of eighty seven Bar.

13. INTERRUPTION & SONGAS CURTAILMENT

13.1. Notice of Interruption

- (a) In addition to the Seller's rights pursuant to Clause 17 the Seller may at its sole discretion acting reasonably, interrupt or reduce the delivery of Natural Gas to the Buyer for reasons set out in Clause 13.2.
- (b) In the event that the Seller wishes to interrupt the supply of Natural Gas to the Buyer pursuant to:
 - (i) Clause 13.2(a)(i) and (ii) the Seller must give notice to the Buyer as soon as reasonably practical after Songas has provided notice of the same to the Seller; and
 - (ii) Clause 13.2(a)(iii)-(ix) the Seller must give notice to the Buyer as soon as reasonably practical.
- (c) With each notice provided pursuant to Clause 13.1(b), the Seller shall also provide, where possible, the reason for such interruption as well as an estimate of the anticipated period of interruption.

13.2. Interruption by Seller

- (a) The Seller may, at any time during the Supply Period, wholly or partially interrupt the supply of Natural Gas to the Buyer for the following reasons ("**Interruption**"):
- (i) in order to facilitate the construction of the additional Natural Gas processing and/or transportation capacity, including any Additional Facilities Project;
 - (ii) during any period in which the availability or capacity of the Gas Facilities, or the Sellers' access to the Gas Facilities (or any other facilities that are used in the production, processing, transportation or distribution of the Natural Gas supplied under this Agreement and are not owned by the Seller), is unavailable and/or curtailed (in whole or, subject to the priority regime described in Section 7.3, in part) for any reason, ~~provided that such lack of availability, capacity, or access is~~ not caused by a failure of the Seller to act as a Reasonable and Prudent Operator, whether under the Operatorship Agreement or otherwise;
 - (iii) during any period where the Pipeline or the Wazo Hill Lateral are unable to transport quantities of Natural Gas;
 - (iv) during any period where the Processing Plant is unable (wholly or partially) to process quantities of Natural Gas and which has arisen due to (w) any reason associated with the construction or development of the Processing Plant, (x) any reason associated with any Additional Facilities Project, (y) a failure by Songas to agree to any Seller proposal (acting in accordance with the standards of a Reasonable and Prudent Operator) with regard to the operation or maintenance of the Processing Plant and (z) any event of Force Majeure pursuant to the terms of the Operatorship Agreement;
 - (v) where the Pipeline or, in the event that Songas installs and commissions the Pipeline Compression Facilities, from and after the date of the delivery of the Additional Facilities Project Acceptance Certificate, the Pipeline Compression Facilities, is the cause of the Natural Gas being Off-Specification Gas;
 - (vi) in order to facilitate new development tie-ins;
 - (vii) at any time if the delivery of Natural Gas might be hazardous to the safety of persons or cause a material hazard to property;
 - (viii) the Buyer has failed to respond to the Seller's notice pursuant to Clause 9.1(e);
 - (ix) at any time if Songas fails to make available sufficient capacity for the processing and transportation of quantities of Natural Gas (i) in accordance with the terms of the Gas Processing and Transportation

Agreement or (ii) pursuant to any future allocation or reservation agreement relating to processing and transportation capacity;

- (x) where the Seller is unable to reserve capacity pursuant to any future allocation or reservation agreement relating to processing and transportation capacity;
 - (xi) where the Pipeline is the cause of the Natural Gas being contaminated with contaminants including but not limited to black powder or particulates and where the Seller determines in the accordance with the standard of a Reasonable and Prudent Operator that such quantities of contaminants may cause damage to the Seller's or Buyer's equipment; or
 - (xii) at any time before the earlier of (i) the successful completion of the Remediation, and (ii) 31 December 2012, if the delivery of Natural Gas is interrupted or curtailed as a consequence of the Seller implementing the Remediation.
- (b) The Seller shall not be liable for Shortfall Gas resulting from such Interruptions caused by the events set out in sub paragraphs (i) to (xii) above.
 - (c) If there is an Interruption to the supply of Natural Gas pursuant to the terms of Clause 13.2 and the Seller has not provided the Buyer with a reason for such Interruption pursuant to Clause 13.1(c), the Seller shall provide the Buyer with a written explanation within ten (10) Business Days of the Interruption detailing the cause of the Interruption to the supply of Natural Gas.
 - (d) If at any time during the Supply Period Songas agrees to accept liability for the quality of Natural Gas transported through the Pipeline, the Parties shall meet and discuss potential amendments to Clause 13.2(a)(v).

13.3. Songas Curtailment

The Buyer acknowledges that in order to ensure that the Ubungo Complex has a sufficient supply of Natural Gas, Songas has the right to curtail sales of Natural Gas to the Seller's customers. The Buyer hereby irrevocably waives (for the benefit of Songas and the Seller) any and all legal or equitable rights or remedies against Songas or any of its affiliates or the Seller for any loss, damage, costs, expenses or other claims arising directly or indirectly from such curtailment.

14. SPECIFICATION

14.1. Specification Gas

Natural Gas to be delivered under this Agreement shall, at each Delivery Point, comply with the standards of purity and other standards with respect to the properties, condition, composition and Delivery Pressure as set out in Schedules 1 and 2 (the "Specification").

14.2. Off-Specification Gas

- (a) If Natural Gas offered for delivery hereunder fails to conform, or is deemed as aforesaid to have failed to conform, to the Specification ("**Off-Specification Gas**"), the Seller shall inform the Buyer as soon as reasonably practicable after it becomes aware thereof and the Buyer shall use reasonable endeavours to accept delivery of all or any part of such Off-Specification Gas, provided that doing so shall not:
- (i) jeopardize the safe operation of the Generation Facilities;
 - (ii) violate applicable Laws, regulations or environmental standards;
 - (iii) void or otherwise materially impair the warranties of the Buyer's major equipment; or
 - (iv) have a significant negative impact upon the performance of or ~~materially increase the operation and maintenance costs of the Buyer's~~ major equipment.
- (b) If the Buyer is unwilling to take Off-Specification Gas for any of the reasons set out in Clause 14.2(a)(i)-(iv), then despite the Seller's efforts to remedy the non conformance, the Buyer in its sole discretion shall have the right to reject the Off-Specification Gas by ceasing to take Off-Specification Gas and concurrently giving the Seller a notice to cease making Off-Specification Gas available and setting out the reason for the Buyer's rejection of the Off-Specification Gas.
- (c) The Seller shall have no liability to the Buyer, the owners or operators of the Generation Facilities or to the Buyer's customers, for any Off-Specification Gas knowingly or unknowingly taken delivery of by the Buyer, provided that:
- (i) if the Buyer unknowingly takes delivery of Off-Specification Gas and Buyer was unable to ordinarily utilise it, such Off-Specification Gas shall be Shortfall Gas; and
 - (ii) if the Buyer knowingly takes delivery of Off-Specification Gas, then such Off-Specification Gas shall not be Shortfall Gas.
- (d) Each Party shall give reasonable notice to the other Party after becoming aware of any failure or anticipated failure in the quality of the Natural Gas delivered or to be delivered hereunder, giving details of the cause of the failure and an estimate of the probable duration of the failure and such Party shall forthwith carry out such remedial works (or procure that such remedial works are carried out) as are required to bring the Natural Gas delivered or to be delivered hereunder within the Specification.
- (e) Any difference between the Parties which may arise in respect of the quality of the Natural Gas shall at the request of either Party be referred to the Expert in accordance with Clause 30.3.

- (f) In circumstances where Natural Gas is contaminated with contaminants including but not limited to black powder or particulates and where the Buyer, acting as a Reasonable Prudent Operator, determines that the presence of contaminants including black powder or particulates may result in any of the consequences set out in Clause 14.2(a)(i)-(iv), the Buyer shall have the right to reject such quantities of Natural Gas. If the Buyer rejects such quantities of Natural Gas in accordance with this Clause 14.2(f) the Buyer shall be entitled to a reduction to the Adjusted Annual Take or Pay Quantity.
- (g) If the Buyer rejects Natural Gas in accordance with Clause 14.2(f), the Buyer shall provide the Seller with a written notice as to why the Buyer could not accept such quantities of Natural Gas.

15. MAINTENANCE OF FACILITIES

15.1. Control Centre

- (a) Each of the Parties shall establish a control centre, prior to the commencement of the Supply Period, at and from which its operations for the purposes of this Agreement will be managed. Contacts on operational matters between the Parties shall take place between the Parties' control centres. During operations duly qualified personnel of the Parties shall be on duty at the respective control centres at all times on a twenty four (24) hours a day basis. The control centres shall be connected by a fail safe communications system including telephone, facsimile, electronic and any other means of communication agreed between Buyer and Seller.
- (b) Without prejudice to the rights and obligations of the Parties under any other provision of this Agreement, either Party may take such action as it deems necessary or proper to prevent, avoid, control or bring to an end any situation of emergency or danger without having first to obtain the prior agreement of the other Party. If either Party takes such action, it shall inform the other Party as soon as practicable of the situation which gave rise to such action and of the action taken and shall give an estimate of the anticipated duration of such situation.

15.2. Scheduled Maintenance Period

- (a) If during the Supply Period, the Seller anticipates that the Seller's Facilities will require Scheduled Maintenance which would reduce the amount of Natural Gas that the Seller is able to make available at any or all of the Delivery Points on any Days during the Contract Year, then the Seller shall notify the Buyer at least thirty (30) Days prior to the commencement of the Scheduled Maintenance of the Days or partial Days on which it proposes to conduct such Scheduled Maintenance and the Delivery Points (if any) which the Seller can make Natural Gas available and provided that the Seller shall be entitled to reduce the applicable ACQ for reasons of Scheduled Maintenance by no more than three per cent (3%) of the applicable ACQ for such Contract Year.

- (b) During any Day or Days where the Seller is undertaking Scheduled Maintenance on the Seller's Facilities, the Seller shall notify the Buyer of the quantity of Natural Gas (if any) that the Seller is able to make available to the Buyer on such Day or Days and the Buyer shall not be entitled to nominate a quantity of Natural Gas for such Days or Days in excess of the amount of Natural Gas notified by the Seller to the Buyer pursuant to this Clause 15.2(b).
 - (c) The Parties will liaise and co-operate together and the Seller will use reasonable endeavours to give reasonable notice to the Buyer of any interruptions for Scheduled Maintenance.
 - (d) The Seller shall use reasonable endeavours to ensure any period of Scheduled Maintenance occurs during the period from 1 April to 31 May in any Contract Year and to the extent reasonably practicable co-ordinate any periods of Scheduled Maintenance with Songas' periods of scheduled maintenance at the Gas Facilities.
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- (e) The Seller shall provide the Buyer with reasonable notice in circumstances where Songas intends to carry out scheduled maintenance of the Gas Facilities.

16. OPERATIONS

16.1. Co-ordinating Committee

- (a) Within thirty (30) Days following the commencement of the Supply Period, the Parties shall establish a coordinating committee for the purposes of coordinating the operations and activities of the Parties pursuant to the terms of this Agreement ("**Co-ordinating Committee**").
- (b) TANESCO, TPDC and PAT shall designate two (2) members to represent it on the Coordinating Committee and either Party may remove or replace any Coordinating Committee member appointed by it at any time upon notice to the other Party.
- (c) Each Party shall bear the costs of its participation in the Coordinating Committee.
- (d) The Coordinating Committee shall develop procedures for the holding of meetings, the keeping of minutes and the appointment and operation of sub-committees.
- (e) The Co-ordinating Committee shall meet at least every Month or more often if requested by the chairman. The chairmanship of the Co-ordinating Committee shall rotate each Contract Year among the Parties and the Parties agree that the first chairman shall be appointed by PAT.

16.2. Role of Co-ordinating Committee

- (a) The Co-ordinating Committee shall be responsible for managing the operational matters between the Parties including in connection with the nomination process pursuant to Clause 9.

- (b) The Parties shall instruct their representatives on the Co-ordinating Committee to act in good faith in dealing with matters considered by the Co-ordinating Committee.

17. GAS INSUFFICIENCY

17.1. Reduction to the MDQ

- (a) If following the occurrence of an Insufficiency Funding Trigger Event pursuant to the terms of the Insufficiency Agreement, the Seller determines that it will curtail its deliveries to Additional Gas customers as part of its Production Plan, the Seller shall reduce existing Additional Gas supply obligations between Power Additional Gas Sales Agreements and Non Power Gas Sale Agreements on the basis of a pro rata reduction to the maximum aggregate daily quantity supplied pursuant to the Power Additional Gas Sale Agreements and the maximum aggregate daily quantity supplied pursuant to the Non Power Additional Gas Sale Agreements provided that if the Seller has wilfully breached Section 2.1(a) of the Insufficiency Agreement and the Insufficiency Agreement is not terminated for breach of Section 2.1(a) thereunder, the reduction to the maximum aggregate daily quantity supplied pursuant to the Power Additional Gas Sale Agreements and the maximum aggregate daily quantity supplied pursuant to the Non Power Additional Gas Sale Agreements shall not be on a pro rata basis but on a basis to take account of the additional Natural Gas sales pursuant to the Non Power Additional Gas Sale Agreements.
- (b) The Seller shall notify the Buyer in writing and the Parties shall meet within twenty (20) Days of such notice (“MDQ Reduction Notice”).
- (c) If the Parties are unable to agree a reduction to the MDQ within forty (40) Days of the date of the MDQ Reduction Notice, the MDQ shall be reduced to an amount established by the Seller acting as a Reasonable and Prudent Operator taking into account available transportation and processing capacity and the Seller’s commitments to Other Buyers (“Reduced MDQ”).
- (d) In determining the Reduced MDQ the Seller shall provide the Buyer with evidence reasonably satisfactory to the Buyer establishing the reason for the Reduced MDQ.
- (e) If the Buyer disagrees with the level of the Reduced MDQ, the Buyer shall be entitled to refer the matter to determination pursuant to Clause 30.3.

18. MEASUREMENT, TESTING AND PROVISION OF INFORMATION

18.1. Natural Gas Measurement and Testing

- (a) Natural Gas delivered under this Agreement at each Delivery Point shall be measured in mmbTU applying the procedures set out in this Clause 18.
- (b) The Seller shall ensure that the quality of all Natural Gas delivered by the Seller to the Buyer under this Agreement is, prior to the Delivery Point, subject to such quality control as would be implemented and exercised by a

Reasonable and Prudent Operator in the circumstances (and with regard to good quality control practice prevailing from time to time during the Supply Period and, if applicable, any Extension Period).

- (c) All measuring and testing equipment, housings, devices and materials together with all related equipment, appliances and buildings which are required at or upstream of each Delivery Point to measure and test either or both of the quantity and quality of Natural Gas at each Delivery Point, shall be furnished and installed and (in accordance with the standard of a Reasonable and Prudent Operator) maintained and operated by the Seller at the Seller's expense, risk and liability.
- (d) The Seller shall own, operate and maintain the Metering Facilities in accordance with the standard of a Reasonable and Prudent Operator. The Buyer shall grant the Seller, or shall procure the grant to the Seller, all necessary rights of way, easements and other real property rights in order for ~~the Seller to operate and maintain such Metering Facilities.~~
- (e) The Natural Gas delivered by the Seller and accepted by the Buyer at each Delivery Point shall be measured by the Metering Facilities by reference to volume and calorific value. The Seller shall provide the Buyer with copies of all calorific value and volume measurement results as provided in this Clause 18.
- (f) The Buyer may install back-up metering ("**Check-Metering Equipment**") at the Generation Facilities. The Seller shall have the right at reasonable times upon reasonable notice given in writing to the Buyer to inspect the Check-Metering Equipment.
- (g) The Seller shall not during the Supply Period make any material modification to the Metering Facilities or in the measurement standards, tests and calibration provisions set out in this Clause 18 without the prior written consent of the Buyer which consent shall not be unreasonably withheld or delayed provided the Seller demonstrates, to the Buyer's reasonable satisfaction, that the proposed modification will not adversely affect the Buyer's interests pursuant to this Agreement.

18.2. Accuracy of Measurement Equipment

- (a) The Seller shall be responsible for initially calibrating the Metering Facilities and shall have the obligation to demonstrate that the total uncertainty of the Measurement Facilities does not exceed zero decimal five *per cent.* (0.5%).
- (b) If the tolerance of any instrument comprising the Metering Facilities is not covered by a standard, the Parties shall mutually agree upon such tolerance, or if the Parties are unable to so agree, then the tolerance shall be the limits prescribed by the manufacturer.

18.3. Verification of Metering Facilities

- (a) The Seller shall be responsible for verifying all Metering Facilities in accordance with the manufacturers' guidelines. Depending on the actual performance of the Metering Facilities, the Parties may agree to adjust such interval.
- (b) If any verification test shows that any instrument comprising any of the Metering Facilities is out of service or inaccurate in excess of the agreed tolerance or the limits prescribed by the manufacturer, the Seller shall recalibrate the relevant instrument to measure and record within such agreed tolerance or limits as soon as is reasonably practicable.
- (c) The Buyer may require the Seller to carry out additional verification of the accuracy of the Metering Facilities at any time. If after such additional verification, the Metering Facilities are found to be measuring within the agreed tolerance or limits prescribed by the manufacturer and with a variance of less than or equal to zero decimal five *per cent.* (0.5%) of the last preceding verification, then the costs of such additional verification shall be borne by the Buyer. If, however, the Metering Facilities are found to be measuring outside the agreed tolerance or limits prescribed by the manufacturer or with a variance of more than zero decimal five *per cent.* (0.5%) of the last preceding verification, then the costs of such additional verification shall be borne by the Seller.

18.4. Adjustments

For billing purposes, an error of plus or minus one zero decimal five *per cent.* (0.5%) in the metered quantity of Natural Gas shall be considered acceptable and shall not require an adjustment in billing. If the error exceeds zero decimal five *per cent.* (0.5%), then adjustments shall be made as follows:

- (a) The Seller shall notify the Buyer in writing within one (1) week after such error is identified and shall make available to the Buyer such records as are relevant to determining the magnitude and duration of the error. The Seller shall determine or estimate the correct amount of Natural Gas actually delivered during the duration of the error which may be by reference to the records generated by the Check Metering Equipment, if the Buyer has installed such Check Metering Equipment. The Seller shall provide the Buyer with its recommendation for billing adjustments to rectify the error.
- (b) If the Buyer agrees with the recommendation of the Buyer pursuant to 18.4(a), the appropriate billing adjustments shall be made to the next Monthly Statement.
- (c) If the Buyer disagrees with the recommendation of the Seller pursuant to Clause 18.4(a), the Parties shall meet in good faith to resolve such disagreement in accordance with Clause 18.6.
- (d) In the event that the Seller notifies the Buyer pursuant to Clause 18.4(a) and the Buyer does not express disagreement with the Seller's recommendation for

rectifying the error within two (2) Weeks of such notification, the Seller's recommendation shall become effective and appropriate billing adjustments shall be made in the next Monthly Statement.

18.5. Administration

- (a) The Seller shall be responsible for the administration and reporting related to calibration, verification and recalibration of the Metering Facilities, including giving and receiving routine notices, scheduling and conducting tests, furnishing calibration and verification reports and making any corrections.
- (b) The Seller shall notify the Buyer in a timely manner of all planned calibrations, verifications and recalibrations of the Metering Facilities so that the Buyer may arrange to have a representative present. The Buyer may observe any measurement, test or adjustment to confirm that the Metering Facilities are accurate within agreed tolerances and that the determination of ~~the quantity and quality of Natural Gas is carried out according to the~~ standards, methods and procedures set out in this Agreement.
- (c) The Seller shall maintain all original test data, charts and other similar records generated by the Metering Facilities for five (5) Contract Years. The Seller shall provide Buyer with access during normal business hours to all such original test data, charts and other similar records.

18.6. Disputes

The Parties shall promptly meet to discuss and endeavour to settle any dispute (or failure to agree) which may arise with regard to the application of the provisions of this Clause 18 or the measurement or testing of the quantity or quality of Natural Gas delivered and if, within thirty (30) Days after the first of such meetings, they shall have been unable to settle such dispute (or so to agree) then such dispute (or failure to agree) may be referred (at the request of either Party) to the Expert in accordance with Clause 30.3.

18.7. Provision of Information

- (a) The Seller shall use reasonable endeavours to provide the Buyer with the ability to access Delivery Pressure data and the delivery rate data for each Delivery Point.
- (b) The Seller makes no representation or warranty as to the accuracy of the information made available by the Seller pursuant to Clause 18.7(a). Notwithstanding anything to the contrary herein, the Seller shall not be liable to the Buyer in contract, tort, warranty, strict liability or other legal theory for either failing to provide the Buyer with real time information pursuant to Clause 18.7(a) or for the accuracy of such information.
- (c) The Buyer shall use reasonable endeavours to provide the Seller with simultaneous copies of all dispatch instructions provided to the operators of the Generation Facilities and Songas.

- (d) The Buyer makes no representation or warranty as to the accuracy of the information provided to the Seller pursuant to Clause 18.7(c). Notwithstanding anything to the contrary herein, the Buyer shall not be liable to the Seller in contract, tort, warranty, strict liability or other legal theory for either failing to provide the Seller with dispatch instructions pursuant to Clause 18.7(c) or for the accuracy of such information.

19. PRICES

19.1. Contract Price

- (a) The contract price for the Natural Gas payable by the Buyer ("Contract Price" or "CP") in each Contract Year shall be determined on the basis of High Heating Value and shall be calculated as follows:

$$CP = A + B + C + D$$

where:

- A = Wellhead Charge as calculated in accordance with Clause 19.1(b);
- B = Processing and Transportation Tariff as calculated in accordance with Clause 19.1(d);
- C = Distribution Tariff;
- D = Other Charges

At the date of execution of this Agreement the indicative Contract Price shall equal:

$$CP = 1.9845 + 0.5769 + 0 + 0 = \text{US\$}2.5614$$

- (b) On 1 July of each Contract Year the Wellhead Charge component of the Contract Price shall be recalculated and shall be the lower of the following two formulae:
- (i) Wellhead Charge component of the Contract Price = $P_0 * (\text{Average US CPI for 12 Months ending 30 June of the previous Contract Year} / \text{Average US CPI for 12 Months ending June 2007, which is agreed to be 204.138; and$
- (ii) Wellhead Charge component of the Contract Price = $P_0 * 1.02$ to the power of (Z-1), where Z is the Contract Year number, with the Contract Year beginning 1 July 2010 being Year 4;

provided that if the lower of the two formulae set out in (i) and (ii) above results in a reduction to the Contract Price in any Contract Year, the Contract Price shall not be reduced by more than two per cent (2%) of the Contract Price in the previous Contract Year.

- (c) For the Contract Years to 30 June 2012, the Contract Price shall be calculated in accordance with Clause 19.1(b) using a Wellhead Charge component where Po shall equal 1.87 U.S. Dollars/mmBTU. For the Contract Years from 1 July 2012 onwards, the Contract Price shall be calculated in accordance with Clause 19.1(b) using a Wellhead Charge component where Po shall be 2.50 U.S. Dollars/mmBTU.
- (d) The Processing and Transportation Tariff component of the Contract Price is U.S. Dollars 0.5900/MCF. Each Month, the Processing and Transportation Tariff shall be converted into U.S. Dollars/mmBTU based on that Month's average High Heating Value for Natural Gas. For the purposes of the indicative Processing and Transportation Tariff component of the Contract Price used in the Contract Price calculation in Clause 19.1(a), the Processing and Transportation Tariff component of the Contract Price was converted from U.S. Dollars 0.5900/MCF to U.S. Dollars 0.5759/mmBTU based on the average High Heating Value for Natural Gas in January 2011 of 1022.72 BTU/CF.
- (e) To the extent that the Contract Price components Processing and Transportation Tariff, Distribution Tariff or Other Charges increase or decrease at any time during the Term of the Agreement, the Buyer shall either be liable for the increased Processing and Transportation Tariff, Distribution Tariff, Other Charges component of the Contract Price or the Buyer shall receive a reduction to the Processing and Transportation Tariff, Distribution Tariff or Other Charges component of the Contract Price.
- (f) The Parties acknowledge and agree that the Wellhead Charge component of the Contract Price has been the subject of commercial negotiation by the Parties taking into account various factors such as the how the risk of insufficiency of Protected Gas in the Discovery Blocks should be allocated between the relevant parties.

19.2. Other Prices

The following other prices shall apply in respect of Natural Gas delivered, or to be paid for, under this Agreement:

- (a) the Hourly Overtake Gas Quantity price shall be calculated in accordance with Clause 19.1(b) using a Wellhead Charge component where Po shall equal 7.50 U.S. Dollars/mmBTU (the "Hourly Overtake Gas Quantity Price"); and
- (b) the Daily Excess Gas Quantity price shall be calculated in accordance with Clause 19.1(b) using one hundred and fifty (150%) of the Wellhead Charge component of the Contract Price (the "Daily Excess Gas Quantity Price"); and
- (c) the Shortfall Gas price for quantities of Shortfall Gas referred to in Clause 10.5 shall be calculated in accordance with Clause 19.1(b) using eighty per cent. (80%) of the Wellhead Charge component of the Contract Price (the "Shortfall Gas Price").

19.3. Temporary Unavailability Of Index Or Error In Index

- (a) If, at the date when a value for an index is required to be used in the calculation of the Contract Price as described in Clause 19.1, such value, in the opinion of both the Parties:
 - (i) is temporarily not available from the relevant publication or source, but is likely to be available at a later date, then the Parties will jointly try to obtain and agree upon the relevant value from some other source; or
 - (ii) has been computed or published in an erroneous form, then the Parties will jointly try to agree upon a corrected value.
- (b) To the extent that the Parties have been able to agree upon or, as the case may be, correct such value, the value shall be used in the said calculation, and the Contract Price determined from said calculation shall not subsequently be amended.
- (c) If, in either of the circumstances set out in Clause 19.3(a)(i) or (ii), the Parties have been unable to obtain or agree upon any value, then the last available value not needing correction, or such other value as the Parties are jointly able to agree, shall be used in the said calculation to obtain a provisional Contract Price.
- (d) When the correct value becomes available from the specified publication or source, the Contract Price shall be recalculated using the correct value, and the amount of any resulting adjustment, together with interest at the rate of LIBOR, shall be included in the next Monthly Statement.

19.4. Permanent Unavailability Of Index

- (a) If, at the date when a value for an index is required to be used in the calculation of the Contract Price as described in Clause 19.1, either Party is of the opinion that any required value for such index is permanently not available (or the Parties are unable to agree whether it is just temporarily unavailable) then the Party holding such opinion shall give notice to the other of such circumstances. The Parties will promptly meet and try to agree whether such opinion is valid and, if so, upon an appropriate amendment to or replacement of such index.
- (b) To the extent that the Parties have been able to agree upon or, as the case may be, correct such value or basis of calculation, it shall be used in the said calculation; and the Contract Price determined from said calculation shall not subsequently be amended.
- (c) If, within three (3) Months from the date of the said notice given in Clause 19.4(a), no such agreement has been reached, then, at the request of either Party, the matter shall be referred to an Expert for determination.
- (d) The Expert shall determine a replacement index which will thereafter serve as the index. In selecting a replacement index, the Expert shall select a

replacement index that will reflect as closely as possible the price behaviour of the index which it replaces.

20. BILLING AND PAYMENT

20.1. Invoicing

No later than the fifth (5th) day in the Month immediately following the Month in which the Supply Period commences and each Month thereafter, the Seller shall render to the Buyer a statement, invoice and related supporting documentation, which shall show for the preceding Month the information specified below:

- (a) the total quantity of Natural Gas delivered hereunder to each Delivery Point on each Day in that Month;
- (b) for each Day in that Month, the amount of Natural Gas Properly Nominated by the Buyer for delivery hereunder to each Delivery Point;

- (c) the MDQ for that Month;
- (d) the Monthly Shortfall Quantity, if any;
- (e) the quantity of Off-Specification Gas, if any;
- (f) the quantity of Natural Gas not delivered for reasons of Force Majeure;
- (g) the quantity of Natural Gas not delivered for reasons of Interruption;
- (h) the Shortfall Gas Tolerance;
- (i) the Extra Gas Quantity, if any;
- (j) the Daily Excess Gas Quantity, if any;
- (k) the Hourly Overtake Gas Quantity, if any;
- (l) the Contract Price;
- (m) the Shortfall Gas Price;
- (n) the Daily Excess Gas Quantity Price;
- (o) the Hourly Overtake Gas Quantity Price;
- (p) Indirect Taxes;
- (q) any adjustments for metering corrections in accordance with Clause 18.4;
- (r) the sum expressed in U.S. Dollars due and owing to the Seller (calculated in accordance with all relevant provisions of this Agreement) in respect of Natural Gas delivered during that Month, showing the respective apportionment (if applicable) of such sum at the respective prices applicable pursuant to this Agreement;

- (s) any other sum or sums due and owing expressed in U.S. Dollars at the end of that Month from one Party to the other under this Agreement; and
- (t) the net sum payable by one Party to the other, after taking account of all the foregoing matters set out in this Clause 20.1,

(the "Monthly Statement").

20.2. Annual Reconciliation Statement

No later than fifteen (15) Business Days following the last Day of each Contract Year, the Seller shall render to the Buyer a statement (the "Annual Reconciliation Statement") and related supporting documentation which shall show for the preceding Contract Year the information specified below:

- (a) the total quantity of Natural Gas delivered during that Contract Year;
- (b) the aggregate quantity of Shortfall Gas, if any;
- (c) the aggregate quantity of Off-Specification Gas and Natural Gas rejected pursuant to Clause 14.2(f), if any;
- (d) the aggregate quantity of Natural Gas not delivered for reasons of Force Majeure;
- (e) the aggregate quantity of Natural Gas not delivered for reasons of Interruption;
- (f) the aggregate quantity of Daily Excess Gas Quantities, if any;
- (g) the aggregate quantity of Extra Gas Quantities, if any;
- (h) the aggregate quantity of Hourly Overtake Gas Quantities, if any;
- (i) the Aggregate Extra, Daily Excess & Hourly Overtake Gas Quantity, if any;
- (j) the Adjusted TOPQ for such Contract Year, if applicable;
- (k) the Annual Take or Pay Quantity for such Contract Year, if applicable;
- (l) the Annual Deficiency Quantity Payment for such Contract Year, if any;
- (m) Indirect Taxes;
- (n) any adjustments for metering corrections in accordance with Clause 18.4;
- (o) the Aggregate Make-Up Gas and/or Carry Forward Gas from previous Contract Years and showing in detail all reductions therefrom made in respect of the preceding Contract Year, together with a statement of the respective balances of Make-Up Gas and/or Carry Forward Gas (if any) to be carried forward;

- (p) the net sum (if any) payable by the Buyer to the Seller at the end of that Contract Year after taking account of all the foregoing matters set out in this Clause 20.2;
- (q) the aggregate amount of Natural Gas taken or accepted by the Buyer at the Delivery Points over that Contract Year and in aggregate over the Supply Period; and
- (r) the TOPQ for the next Contract Year.

20.3. Payment Terms

- (a) No later than the last Business Day of every Month during which the Buyer has received the Monthly Statement, the Buyer shall pay to the Seller the sum set out in such Monthly Statement.
- (b) Within thirty (30) Days following the receipt of the Annual Reconciliation Statement, ~~the Buyer or the Seller (as the case may be) shall pay to the other~~ the sum (if any) set out in such Annual Reconciliation Statement.
- (c) Any invoiced amount due and payable under this Agreement will be converted from U.S. Dollars to Tanzanian Shillings, using the Interbank Rate prevailing three (3) Days prior to the date of payment. Payments under this Agreement shall be made in Tanzanian Shillings by direct bank transfer, or equivalent instantaneous transfer of funds, to the Party due to receive the same in such account as that Party may from time to time request.
- (d) If Buyer fails to pay an amount due and payable under any Monthly Statement or Annual Reconciliation Statement within five (5) Days of the due date the Seller shall be entitled to draw down an amount equal to the amount due and payable under the Monthly Statement or Annual Reconciliation Statement (as the case may be) from the Performance Security.
- (e) Should the due date for a payment not be a Business Day, then the due date for such payment shall be the next following Business Day.
- (f) Should either Party fail to make payment to the other of any sum due hereunder, interest thereon shall accrue at a rate per annum equal to 4% above LIBOR (as in effect on the Day when such sum was originally due) on the amount due and payable denominated in U.S. Dollars on and from the Day when payment was due until the date of payment or the date on which the Seller makes a draw down on the Payment Security.

20.4. Disputed Amounts

- (a) If a dispute arises as to any amount reflected on the Monthly Statement or the Annual Reconciliation Statement (as the case may be), the Buyer shall provide the Seller with written notice of the disputed sum together with the basis for the dispute within twenty (20) Days of the Buyer's receipt of such Monthly Statement or Annual Reconciliation Statement (as the case may be).

- (b) If any portion or all of any statement is disputed, the Party that is obligated to pay such amount shall pay the undisputed amount set out in such Monthly Statement or Annual Reconciliation Statement (as the case may be) on or before the due date. The disputed amount shall be deposited in the Escrow Account on or before the due date for such amount and until such date the dispute is resolved pursuant to Clause 20.4(c) or (d).
- (c) The Parties shall try and resolve any disputed amount as quickly as possible and any adjustments necessary to reconcile the resolution of the dispute with the amount actually paid shall be within ten (10) Business Days following the resolution of the disputed amount.
- (d) In the event any dispute arising as to any amount reflected in the Monthly Statement or Annual Reconciliation Statement cannot be resolved amicably, the matter shall be referred to an Expert in accordance with Clause 30.3. All such adjustments whether over payment or under payment, shall bear interest pursuant to Clause 20.3(f) from the date of over payment or under payment, as the case may be, until the date of payment.

20.5. Designated Bank

Each Party shall designate a bank account for payments under this Agreement. A Party shall designate its bank by written notice to the other Party, initially not later than thirty (30) Business Days prior to the commencement of the Supply Period and thereafter not less than thirty (30) Business Days before any redesignation is to be effective.

20.6. Seller's Right of Suspension

- (a) The Seller shall be entitled to suspend all or any portion of the quantity of Natural Gas deliveries to the Buyer where:
 - (i) the Buyer:
 - (A) fails to maintain or replenish the Performance Security in accordance with Clause 28.1 or 28.2;
 - (B) fails to increase the Required Amount of the Performance Security in accordance with the terms of this Agreement;
 - (C) has failed to pay in full any outstanding amounts due and payable by the due date and the Seller is unable to withdraw such outstanding amount from the Performance Security;
 - (D) has breached its obligations pursuant to Sections 2.3 or 2.4(d) of the Insufficiency Agreement; or
 - (E) has failed to pay a disputed amount into the Escrow Account pursuant to Clause 20.4(b);
 - (ii) where there has been a Change in Law or the Change in Law Cap has been exceeded and in either case the Parties have been unable to reach

agreement one hundred and five (105) Days (or such longer period as the Parties agree) after the Seller has notified the Buyer of such Change in Law pursuant to Clauses 27.1(a) or 27.1(d) (as the case maybe); or

- (iii) the Insufficiency Agreement (or any similar agreement) has not been executed by the Conditions Subsequent Long Stop Date in accordance with Clause 3.7 and Songas requires the posting of security by the Seller pursuant to Section 3.2(b) of the Gas Agreement for sales of Additional Gas pursuant to this Agreement.
- (b) The Seller shall be entitled to suspend all or any portion of the quantity of Natural Gas deliveries to the Buyer until the earlier (or if there are multiple rights of Seller suspension the later) to occur of:
- (i) the Insufficiency Agreement (or any similar agreement) is executed;
 - (ii) the Parties have agreed on an alternative insufficiency regime;
 - (iii) the Buyer has paid in full any outstanding amount and replenished the Performance Security to the Required Amount;
 - (iv) the Buyer has deposited in full any disputed amount into the Escrow Account;
 - (v) the Buyer is no longer in breach of its obligations pursuant to Sections 2.3 or 2.4 of the Insufficiency Agreement;
 - (vi) the Parties have agreed a new Change in Law Cap; or
 - (vii) the Seller exercises its right to terminate this Agreement pursuant to Clause 26.
- (c) The Buyer's obligation to take or pay for any quantities of Natural Gas under this Agreement shall not be suspended during any period of suspension for non-payment.

20.7. Establishment of Escrow Account

- (a) As a condition precedent to the effectiveness of this Agreement the Parties shall establish the Escrow Account.
- (b) The Escrow Account shall be established and maintained for the duration of the Supply Period in accordance with the terms of the Escrow Agreement.
- (c) The Escrow Account shall be established at a commercial bank with a branch located in Dar es Salaam ("**Escrow Bank**").
- (d) Any amount in a Monthly Statement or Annual Reconciliation Statement (as the case may be) which is disputed shall be paid by the disputing Party into the Escrow Account on or before the due date for such disputed payment.

- (e) The Parties shall then resolve any disputed amount pursuant to the provisions of Clause 20.4. Upon resolution of such dispute the Parties shall instruct the Escrow Bank to pay such disputed amount plus any accrued interest to the relevant Party.
- (f) The fees charged by the Escrow Bank shall be shared equally by the Seller and the Buyer.

21. TAXES

21.1. Taxes

- (a) The Seller shall pay, or cause to be paid, all royalties, taxes and other sums arising in respect of the production, gathering, procuring, transporting, processing and handling of Natural Gas on or before delivery by the Seller at each Delivery Point.
- (b) The Buyer shall pay, or cause to be paid all royalties, taxes and other sums arising after delivery of Natural Gas by the Seller at each Delivery Point in respect of the transportation, processing and handling of Natural Gas.
- (c) The Buyer will be responsible for all Indirect Taxes imposed on the transactions under this Agreement.
- (d) Each Party will be responsible for its own corporate and income taxes.

22. WARRANTIES & COVENANTS

22.1. PAT's Warranties

- (a) PAT warrants and undertakes to the Buyer that:
 - (i) it shall have in place at the commencement of the Supply Period and shall maintain throughout the Supply Period and any Extension Period all Consents and as are necessary so as to enable it to observe and perform its obligations under this Agreement and shall use reasonable endeavours to preserve in full force and effect through the Supply Period and any Extension Period all such Consents as are necessary so as to enable it to perform its obligations under this Agreement;
 - (ii) the Seller will have good title to all Natural Gas delivered to the Buyer at each Delivery Point under this Agreement and that all such Natural Gas shall be free from all liens, charges and encumbrances and adverse interests of any and every kind;
 - (iii) the Seller shall pay, or cause to be paid, all royalties, taxes and other sums (other than Indirect Taxes) arising in respect of the production, gathering, procuring, transporting, processing and handling of Natural Gas on or before delivery by the Seller at each Delivery Point;
 - (iv) it is duly organised and existing and in good standing under the laws of Jersey and has the right, power and authority to enter into this

Agreement as is necessary to enable it to perform its obligations hereunder;

- (v) the execution, delivery and performance of this Agreement by it have been duly authorised by all necessary corporate action of PAT and this Agreement constitutes the valid binding and enforceable obligation of PAT; and
- (vi) until the Additional Facilities Project Completion Notice, that it is compliance with its obligations contained in Clause 7.2(a).

22.2. TPDC's Warranties

- (a) TPDC warrants and undertakes to the Buyer that:
 - (i) it shall have in place at the commencement of the Supply Period and shall maintain throughout the Supply Period and any Extension Period ~~all Consents and as are necessary so as to enable it to observe and~~ perform its obligations under this Agreement and shall use reasonable endeavours to preserve in full force and effect through the Supply Period and any Extension Period all such Consents as are necessary so as to enable it to perform its obligations under this Agreement;
 - (ii) the Seller will have good title to all Natural Gas delivered to the Buyer at each Delivery Point under this Agreement and that all such Natural Gas shall be free from all liens, charges and encumbrances and adverse interests of any and every kind;
 - (iii) the Seller shall pay, or cause to be paid, all royalties, taxes and other sums (other than Indirect Taxes) arising in respect of the production, gathering, procuring, transporting, processing and handling of Natural Gas on or before delivery by the Seller at the Delivery Point;
 - (iv) it is duly organised and existing and in good standing under the Laws and has the right, power and authority to enter into this Agreement as is necessary to enable it to perform its obligations hereunder;
 - (v) the execution, delivery and performance of this Agreement by it have been duly authorised by all necessary corporate action of the Seller and this Agreement constitutes the valid binding and enforceable obligation of the Seller; and
 - (vi) until the Additional Facilities Project Completion Notice, that it is compliance with its obligations contained in Clause 7.2(a).

22.3. Buyer's Warranties

- (a) The Buyer warrants and undertakes to the Seller that:
 - (i) it shall have in place at the commencement of the Supply Period and shall maintain throughout the Supply Period and any Extension Period all Consents and as are necessary so as to enable it to observe and

perform its obligations under this Agreement and shall use reasonable endeavours to preserve in full force and effect through the Supply Period and any Extension Period all such Consents as are necessary so as to enable it to perform its obligations under this Agreement;

- (ii) it shall pay, or cause to be paid all Indirect Taxes, royalties, taxes and other sums arising after delivery of Natural Gas by the Seller at each Delivery Point in respect of the transportation, processing and handling of Natural Gas;
- (iii) it is duly organised and existing and in good standing under the Laws and has the right, power and authority to enter into this Agreement as is necessary to enable it to perform its obligations hereunder;
- (iv) the execution, delivery and performance of this Agreement by it have been duly authorised by all necessary corporate action of the Buyer and this Agreement constitutes the valid binding and enforceable obligation of the Buyer; and
- (v) it shall not sell or otherwise supply Natural Gas purchased pursuant to the terms of this Agreement to any third party.

22.4. Duration of Representations and Warranties

Each representation and warranty shall be true and accurate in all material respects when made and shall remain actionable for the period of the applicable statute of limitations under applicable Laws.

22.5. Disclaimer of Other Representations and Warranties

To the full extent permitted by applicable Law, except as expressly stated in this Agreement, the Parties negate any other representation or warranty, written or oral, express or implied, including any representation or warranty for merchantability, conformity to samples, or fitness for any particular purpose.

22.6. Mutual Covenants

Each Party covenants to the other that such Party:

- (a) shall comply with all applicable Laws and Consents governing or relating to its performance under this Agreement;
- (b) shall maintain its existence and good standing and its qualifications to do business in all jurisdictions where performance under this Agreement is required;
- (c) shall maintain its corporate authority to perform its obligations under this Agreement;
- (d) shall not make, offer or authorise for the matters which are the subject of this Agreement, any payment, gift, promise or other advantage, whether directly or through any other person, to or for the use or benefit of any public official

(e.g. any individual holding a legislative, administrative or judicial office, including any individual employed by or acting on behalf of a public agency, public enterprise or public international organisation) or any political party or political party official or candidate for office, where such payment, gift, promise or advantage would violate:

- (i) the applicable Laws; or
 - (ii) the laws of the country of formation of such Party or such Party's ultimate parent company or of the principal place of business of such ultimate parent company;
- (e) shall maintain adequate internal controls, properly record and report all transactions, and comply with the Laws applicable to such Party. Each Party must rely on the other Party's system of internal controls, and on the adequacy of full disclosure of the facts, and of financial and other data regarding the ~~deliveries of Natural Gas under this Agreement. No Party is in any way~~ authorised to take any action on behalf of another Party that would result in an inadequate or inaccurate recording and reporting of assets, liabilities or any transaction, or which would put such Party in violation of its obligations under the Laws applicable to the operations under this Agreement; and
- (f) shall on request of the other Party provide reasonable evidence of its compliance with such covenants within a reasonable period of time.

23. FORCE MAJEURE

23.1. Force Majeure

- (a) The Seller shall not be in breach of any of its obligations under this Agreement, to the extent that its performance is prevented, impeded or delayed by an act, event or circumstance, whether of the kind described herein or otherwise, which is not reasonably within the control of the Seller, acting as a Reasonable and Prudent Operator ("Seller's Force Majeure"). Acts, events or circumstances which, subject as aforesaid, may constitute Seller's Force Majeure include but shall not be limited to:
- (i) fire, flood, drought, explosion, atmospheric disturbance, lightning, storm, tempest, hurricane, tsunami, cyclone, typhoon, tornado, earthquake, landslide, perils of the sea, soil erosion, subsidence, washout, epidemic or other acts of God;
 - (ii) war (whether declared or undeclared), riot, civil war, blockade, insurrection, acts of public enemies, invasion, embargo, trade sanctions, revolution;
 - (iii) strikes, lock-out, or other industrial disturbances;
 - (iv) acts of sabotage or terrorism or the specific threat of such acts or events;
 - (v) chemical or radioactive contamination or ionising radiation;

- (vi) loss of, serious accidental damage to, or inoperability of the Seller's Facilities;
 - (vii) loss of, serious accidental damage to, or inoperability of the Gas Facilities;
 - (viii) any Change in Law which cannot be remedied through payment pursuant to Clause 27.1(c); and
 - (ix) any event of *Force Majeure* in the Gas Processing and Transportation Agreement, Gas Agreement or the Operatorship Agreement.
- (b) Subject to Clause 23.1(c), the Buyer shall not be in breach of any of its obligations under this Agreement, to the extent that its performance is prevented, impeded or delayed by an act, event or circumstance whether of the kind described herein or otherwise, which is not reasonably within the control of the Buyer, acting as a Reasonable and Prudent Operator ("**Buyer's Force Majeure**"), Acts, events or circumstances which, subject as aforesaid, may constitute Buyer's Force Majeure include but shall not be limited to:
- (i) fire, flood, drought, explosion, atmospheric disturbance, lightning, storm, tempest, hurricane, tsunami, cyclone, typhoon, tornado, earthquake, landslide, perils of the sea, soil erosion, subsidence, washout, epidemic or other acts of God;
 - (ii) war (whether declared or undeclared), riot, civil war, blockade, insurrection, acts of public enemies, invasion, embargo, trade sanctions, revolution;
 - (iii) strikes, lock-out, or other industrial disturbances;
 - (iv) acts of sabotage or terrorism or the specific threat of such acts or events;
 - (v) chemical or radioactive contamination or ionising radiation;
 - (vi) loss of, serious accidental damage to, or inoperability of the Generation Facilities.
- (c) Notwithstanding Clause 23.1(b), the Buyer may only claim Buyer's Force Majeure where the Buyer's ability on any Day to take Natural Gas at the Generation Facilities is below a level equal to eighty seven point five (87.5%) per cent. of the MDQ for such Day.
- (d) For the avoidance of doubt, the following events shall not constitute Force Majeure:
- (i) breakdown or failure of equipment at the Generation Facilities or the Seller's Facilities caused by normal wear and tear, failure to properly maintain equipment or stock of spares;
 - (ii) unavailability of funds to pay amounts when due; and

- (iii) economic hardship, to include, without limitation, Seller's ability to sell Natural Gas at a higher or more advantageous price than the Contract Price or Buyer's ability to purchase Natural Gas at a lower or more advantageous price than the Contract Price.
- (e) Nothing in this Clause 23 shall relieve a Party of its obligations to make payments when due and payable under this Agreement.

23.2. Notification

- (a) If either Party claims to be relieved from its obligations under this Agreement on grounds that an event or circumstance is Force Majeure, it shall promptly notify, and in any event no later than two (2) Business Days immediately following the date of such event or circumstance of Force Majeure, the other Party of such event or circumstance ("Force Majeure Notice").
- (b) Such Force Majeure Notice shall include (a) the estimated period during which performance may be suspended or reduced including, to the extent known or ascertainable, the estimated extent of such reduction in performance and (b) the particulars of the program to be implemented, including the measures being taken by such Party in accordance with Clause 23.3, to resume normal performance hereunder.
- (c) Such Party shall promptly from time to time furnish to the other Party such relevant information as is available to it relating to the event or circumstance, and shall update the information referred to in (a) and (b) above.

23.3. Obligations Following Force Majeure

- (a) To the extent either Party is entitled to relief from its obligations under this Agreement on grounds that an event or circumstance constitutes Force Majeure, such Party shall as soon as reasonably possible take the measures which a Reasonable and Prudent Operator would take to bring the Force Majeure to an end and to overcome and minimise the effects and consequences thereof which prevent, impede or delay such Party's ability to resume performance hereunder except that a strike, lock out or other kind of labour dispute may be settled by the Party concerned at its absolute discretion.
- (b) A Party shall not be entitled to relief hereunder or, having become entitled, shall cease to be so entitled, and an event or circumstance originally constituting Force Majeure shall cease to be treated as Force Majeure, to the extent that the Party claiming Force Majeure relief fails to comply with this Clause 23.3, unless such failure is itself caused by an event of Force Majeure.
- (c) Upon request of the other Party, the Party affected by the Force Majeure event shall provide access (or in the event a third party's facilities are affected, use all reasonable endeavours to procure access) for a reasonable number of the other Party's representatives to the site affected by the Force Majeure event.

- (d) Prior to resumption of normal performance, the Parties shall continue to perform their obligations under this Agreement to the extent not prevented by such event of Force Majeure.

23.4. Disputes

If the Parties are, on the basis of the Force Majeure Notice, unable to agree as to the existence or as to the effect of a Force Majeure event by the later of thirty (30) Business Days after the receipt by the unaffected Party of the Force Majeure Notice, either Party shall be entitled to refer the matter to Expert in accordance with Clause 30.3.

24. LIABILITY

24.1. Limitation of Liability

- (a) A Party shall not be liable to the other Party for Consequential Losses arising from any act or omission relating to this Agreement.
- (b) The liability of each Party to the other Party (including under Clause 25) shall be capped at an aggregate amount for all costs, Claims, demands, liabilities and/or expenses suffered or incurred by either Party at U.S. Dollars three (3) million for each Contract Year (the "Annual Cap").

24.2. Limitation of Remedy

The Annual Cap shall not apply to:

- (a) the obligation of the Buyer to make a payment to the Seller when due (including for Natural Gas delivered by Seller to Buyer at any Delivery Point in accordance with this Agreement);
- (b) any Annual Deficiency Quantity Payment due from Buyer to Seller;
- (c) the liability of Seller to Buyer in respect of Shortfall Gas; and
- (d) the Parties rights and remedies upon termination of this Agreement for the events stipulated in Clause 26.5 or 26.6.

24.3. No Seller liability for Contaminants

The Seller shall not be liable to the Buyer in contract, tort, warranty, strict liability or other legal theory for any damage to the Buyer's equipment due to the presence of contaminants including black powder or particulates in the Natural Gas delivered by the Seller pursuant to the terms of this Agreement.

24.4. Mitigation of Loss

Each Party shall use reasonable efforts to mitigate or avoid any loss or damage caused by the failure of the other Party to meet its obligations under this Agreement, whether or not such failure is the result of Force Majeure.

24.5. Wilful Misconduct and Gross Negligence

To the extent that a Party's breach of its obligations under this Agreement results solely from such Party's Wilful Misconduct and/or Gross Negligence, Clauses 24.1 and 24.2 shall not apply to limit the liability of such Party or the remedies available to the other Party.

25. INDEMNITIES

25.1. General Indemnity

- (a) Each of Seller and Buyer respectively, as an Indemnifying Party, shall indemnify, defend, and hold harmless the other Party, as an Indemnified Party, from and against all Claims, losses or damages relating thereto:
- (i) the breach by the Indemnifying Party of any of its representations, warranties, covenants or obligations of the Indemnifying Party under this Agreement (except in respect of such matters, circumstances, covenants and obligations in respect of which a remedy is expressly provided for elsewhere in this Agreement); and
 - (ii) the Wilful Misconduct and/or Gross Negligence of the Indemnifying Party.
- (b) The Buyer shall indemnify the Seller for any Claim which arises as a consequence of the Buyer taking quantities of Natural Gas above the Delivery Point MHQ, the MHQ, the MDQ or where the Buyer takes Natural Gas at a rate which does not comply with the minimum periods of notice pursuant to Clause 9.3(a) including for the avoidance of doubt any amounts payable by the Seller to Songas for shortfall deliveries of Complex Additional Gas or for failure to provide Protected Gas pursuant to the terms of the Gas Agreement.
- (c) The Buyer shall indemnify the Seller for any Claim that arises as a consequence of the supply of Natural Gas to the Generation Facilities from the owners and or operators of such Generation Facilities.

25.2. Indemnification Procedures

- (a) The Indemnified Party shall promptly notify the Indemnifying Party of the assertion or commencement of any claim, demand, investigation, action, suit or other legal proceeding for which indemnity or defence is or may be sought under this Agreement, provided however that this notice requirement shall not apply to any Claim in which the Parties are adversaries. The failure by the Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Clause 25.2, except to the extent, if any, that it has been prejudiced by the lack of timely and adequate notice.
- (b) The Indemnifying Party shall at the Indemnified Party's request assume the defence or settlement of any Claim with legal counsel reasonably satisfactory to the Indemnified Party, provided however that the Indemnifying Party shall

not settle or compromise any Claim without the Indemnified Party's prior written consent to such settlement or compromise.

- (c) Notwithstanding the foregoing:
 - (i) the Indemnified Party shall have the right, at its option and expense, to participate fully in the defence or settlement of any Claim; and
 - (ii) if the Indemnifying Party does not diligently defend or settle any Claim within a reasonable period of time (in the light of the circumstances) after it is notified of the assertion or commencement thereof, then:
 - (A) the Indemnified Party shall have the right, but not the obligation, to undertake the defence or settlement of such Claim for the account and at the risk of the Indemnifying Party; and
 - (B) the Indemnifying Party shall be bound by any defence or settlement that the Indemnified Party may make as to such Claim.
- (d) The Indemnified Party shall be entitled to join the Indemnifying Party in any Claim to enforce any right of indemnity under this Agreement. The Indemnified Party shall cooperate with the Indemnifying Party in the defence or settlement of any Claim and, at the expense of the Indemnifying Party, and subject to obligations of confidentiality to other Persons, the Indemnified Party shall furnish any and all materials in its possession and try to make any and all witnesses under its control available to the Indemnifying Party for any lawful purpose relevant to the defence or settlement of the Claim.

26. DEFAULT AND TERMINATION

26.1. Termination for Buyer Event of Default and Seller Event of Default

- (a) Either Party may terminate the Agreement upon thirty (30) Days notice in writing to the other Party following a Buyer Event of Default (in the case of the Seller) pursuant to Section 26.6 or a Seller Event of Default (in the case of the Buyer) pursuant to Section 26.5 provided that the provisions of this Clause 26.1 shall not apply to Clause 26.6(c) where the Seller shall be entitled to terminate immediately upon the expiration of the time period specified in Clause 26.6(c).
- (b) The Buyer and Seller shall consult in good faith regarding steps that may be taken to cure the default and the Agreement shall not be terminated where the Buyer Event of Default or Seller Event of Default (as the case may be) is remedied within the timeframe specified in Clause 26.1(a).

26.2. Termination for Extended Force Majeure

- (a) At any time prior to (i) the Additional Facilities Project Completion Notice having been served by the Seller pursuant to Clause 7.5 or (ii) the MDQ

Notice having been served by the Seller in accordance with Clause 7.6(b), either Party may terminate the Agreement upon thirty (30) Days written notice in writing to the other for an event of Force Majeure where such event of Force Majeure continues for a consecutive period of twelve (12) Months and as a result of such event of Force Majeure either the Seller is unable to deliver or the Buyer is unable to accept delivery of at least fifty (50%) of the ACQ applicable for such twelve (12) Month period. The Parties agree that in calculating the ACQ for the purpose of this Clause 26.2 the ACQ shall be calculated by multiplying the MDQ as specified in either Clause 7.2(d) by the number of Days in such twelve (12) Month period.

- (b) At any time after (i) the Additional Facilities Project Completion Notice has been served by the Seller pursuant to Clause 7.5 or (ii) the MDQ Notice has been served by the Seller in accordance with Clause 7.6(b), either Party may terminate the Agreement upon thirty (30) Days written notice in writing to the other for an event of Force Majeure where such event of Force Majeure ~~continues for a consecutive period of twelve (12) Months and as a result of~~ such event of Force Majeure either the Seller is unable to deliver or the Buyer is unable to accept delivery of at least fifty (50%) of the ACQ applicable for such twelve (12) Month period.
- (c) Either Party may terminate the Agreement upon thirty (30) Days written notice to the other for an Interruption or series of Interruptions occurring after the Additional Facilities Project Completion Notice has been served by the Seller pursuant to Clause 7.5 or the MDQ Notice has been served by the Seller in accordance with Clause 7.6(b) if, as a result of such Interruption or series of Interruptions, the Seller is unable to deliver at least fifty percent (50%) of the Properly Nominated Quantities applicable during any twelve (12) Month period.

26.3. Termination for Change in Law

The Seller may terminate the Agreement upon sixty (60) Days written notice where there has been a Change in Law and the Change in Law Cap has been exceeded and the Parties have been unable to reach agreement sixty (60) Days after the Seller has suspended the supply of Natural Gas pursuant to Clause 20.6.

26.4. Termination for Insufficiency

The Seller may terminate the Agreement upon ten (10) Days written notice upon the occurrence of a Curtailment Event pursuant to the terms of the Insufficiency Agreement.

26.5. Seller Events of Default

There shall be a Seller Event of Default where:

- (a) Seller is in material or persistent breach of the Agreement that is not remedied within thirty (30) Days after notice from the Buyer to the Seller which notice states that a material or persistent breach of this Agreement has occurred and is continuing that could result in the termination of such Agreement, identifies

the material or persistent breach in question in reasonable detail and demands remedy thereof.

- (b) any failure by the Seller to make any payments required to be made hereunder where such failure to pay has continued for more than twenty five (25) Days from the due date in respect of any such payment.
- (c) The aggregate quantity of Shortfall Gas over a period of twelve (12) consecutive Months is greater than fifty (50%) of the aggregated Properly Nominated Quantities for such Months.
- (d) Seller breaches its obligations pursuant to Sections 2.3 or 2.4(d) of the Insufficiency Agreement.
- (e) Seller is subject to an Act of Insolvency.

26.6. Buyer Events of Default

There shall be a Buyer Event of Default where:

- (a) Buyer is in material or persistent breach of the Agreement that is not remedied within thirty (30) Days after notice from the Seller to the Buyer which notice states that a material or persistent breach of this Agreement has occurred and is continuing that could result in the termination of such Agreement, identifies the material or persistent breach in question in reasonable detail and demands remedy thereof.
- (b) Buyer has failed to make any payment required to be made hereunder including without limitation where the Buyer has failed to pay a disputed amount into the Escrow Account and where such failure to pay has continued for a period of twenty five (25) Days from the Day upon which the Seller suspended deliveries of Natural Gas pursuant to Clause 20.6.
- (c) Buyer has failed to maintain or replenish the Performance Security to the Required Amount within twenty five (25) Days of the Seller suspending deliveries of Natural Gas pursuant to Clause 20.6.
- (d) Buyer is subject to an Act of Insolvency.
- (e) The Buyer fails to provide the Seller with access to the Metering Facilities for a period of more than thirty (30) consecutive Days.
- (f) The Buyer has breached its obligations pursuant to Sections 2.3 or 2.4 of the Insufficiency Agreement and where such breach has continued for a period of twenty (25) Days from the Day upon which the Seller suspended deliveries of Natural Gas pursuant to Clause 20.6.

26.7. Termination of Gas Processing and Transportation Agreement

The Seller may terminate the Agreement upon twenty (20) Days written notice upon the occurrence of the termination of the Gas Processing and Transportation Agreement.

26.8. Termination for failure to satisfy the Conditions Subsequent

Either Party shall have a right to terminate the Agreement if the Conditions Subsequent have not been satisfied by 31 December 2012.

26.9. General

- (a) The termination of this Agreement shall be without prejudice to any other antecedent right, relief or remedy of either Party under or in connection with this Agreement.
- (b) In the event of the termination of this Agreement, the provisions of this Agreement as they relate to the payment of any sum due by one Party to the other shall survive termination and continue to have effect.

27. CHANGE IN LAW

27.1. Change in Law

- (a) If at any time during the Term the Seller becomes aware of the occurrence of a Change in Law, the Seller shall, as soon as practicable after becoming aware of the occurrence of the Change in Law affecting the Seller, notify the Buyer describing the full details of the Change in Law and giving an indication of how the Seller proposes to deal with the same and how the Seller proposes, in accordance with the standard of a Reasonable and Prudent Operator, to minimize the costs associated with any Change in Law.
- (b) Following receipt by the Buyer of a notice pursuant to Clause 27.1(a), the Parties shall meet to assess any Change in Law and to endeavour to reach agreement on how to take account of such Change in Law with the intent that the Seller should be in no worse a financial position during the Term than it would have been in if the Change of Law had not occurred.
- (c) To the extent that there are Changes in Law during the Term and the Parties reach agreement pursuant to Clause 27.1(b), the Seller shall be entitled to an increase to the Wellhead Charge component of the Contract Price up to an equivalent of ten (10%) per cent. of the Contract Price each Contract Year ("**Change in Law Cap**"). Subject to Clause 27.1(d), if the Parties cannot agree within sixty (60) Days following receipt by the Buyer of a notice pursuant to Clause 27.1(a) on the adjustment to the Wellhead Component of the Contract Price to compensate the Seller such that it is in no worse a financial position during the Term than it would have been in if the Changes in Law had not occurred, the matter shall be deemed to be a Technical Dispute and shall be referred to the chief executive officers of the Parties for further consideration. In the event that such individuals are unable to reach agreement on the matter within forty-five (45) Days, or such longer period as they agree, then the Seller shall have the right to suspend the supply of Natural gas to the Buyer pursuant to Clause 20.6.
- (d) In the event that the Seller, having given a notice pursuant to Clause 27.1(a), reasonably believes that Changes in Law throughout the Term will result or

has resulted in increases to the Wellhead Charge component of the Contract Price which in the aggregate would exceed the Change in Law Cap and notwithstanding the provisions of Clause 27.1(b), the Parties shall meet at the Seller's request to endeavour to agree an increase to the Change in Law Cap. Should the Parties fail to reach agreement on any increase to the Change of Law Cap within sixty (60) Days of the Seller's request to meet or within any other timeframe as the Parties may agree, the matter shall be referred to the chief executive officers of the Parties for further consideration. In the event that such individuals are unable to reach agreement on the matter within forty-five (45) Days, or such longer period as they agree, the Seller shall have the right to suspend the supply of Natural Gas to the Buyer pursuant to Clause 20.6.

28. PERFORMANCE SECURITY

28.1. Form of Performance Security

- (a) As a Condition Precedent to the effectiveness of this Agreement the Buyer shall establish the Performance Security for an amount at least equal to the Required Amount.
- (b) The Performance Security shall remain in full force and effect for an amount equal to the Required Amount until:
 - (i) all the obligations of the Buyer hereunder are paid in full; and
 - (ii) the Buyer's obligation to pay the Per Unit Insufficiency Premium has ceased pursuant to the terms of the Insufficiency Agreement.
- (c) Each time the Performance Security is issued, the Performance Security must be issued by a bank or other financial institution reasonably acceptable to the Seller.
- (d) The Buyer shall provide the Seller with written notice identifying the bank or other financial institution which the Buyer proposes to issue the Performance Security.
- (e) Within ten (10) Days receipt of the Buyer's notice pursuant to Clause 28.1(d), the Seller shall, acting reasonably, confirm in writing its acceptance or non acceptance of the bank or financial institution proposed by the Buyer.
- (f) If the Seller has confirmed its acceptance of the bank or other financial institution pursuant to Clause 28.1(e), the Buyer shall procure the issuance of the Performance Security.
- (g) If pursuant to Clause 28.1(e), the Seller has provided the Buyer with written notice of its non acceptance of the bank or other financial institution proposed by the Buyer, the Buyer shall propose a new bank or other financial institution.
- (h) The Condition Precedent contained in Clause 3.1(a) shall not be satisfied until the Performance Security is issued (x) by a bank or other financial institution

reasonably acceptable to the Seller, (y) for an amount greater than or equal to the Required Amount and (z) has been issued in favour of the Seller and the Seller (acting in good faith) has provided the Buyer with written notification pursuant to Clause 3.2(b) that the Condition Precedent has been satisfied.

- (i) If at any time during the period referred to in paragraph (a) of the definition of "Required Amount", the average of the daily quantities of Natural Gas supplied by Seller and taken by the Buyer during the previous three (3) Months multiplied by the prevailing Contract Price multiplied by 61 (such amount being referred to as the "Initial Period Reference Required Amount") differs from the then prevailing Required Amount by five percent (5%) or more, then either Party may serve the other Party with a written notice adjusting the Required Amount to the Initial Period Reference Required Amount provided that the Required Amount during the period referred to in paragraph (a) of the definition of "Required Amount" shall never be less than U.S. Dollars one million nine hundred thousand (1,900,000). Such adjustment ~~shall take effect within ten (10) Business Days of the date of such notice~~ unless the receiving Party objects to the other Party's calculation of the Initial Period Reference Required Amount, in which event the Parties shall promptly meet to agree on the correct Initial Period Reference Required Amount. In the event that an adjustment of the Required Amount pursuant to this Clause 28.1(i) results in an increase to the then prevailing Required Amount, the Buyer shall have thirty (30) days from the date of the adjustment to increase the amount of the Performance Security to the adjusted Required Amount.

28.2. Replenishment of Performance Security

- (a) If at any time during the Supply Period, the Seller draws down on the Performance Security, the Buyer shall be obliged to promptly, but within fifteen (15) Days to restore the Performance Security to the Required Amount.
- (b) If the Buyer fails to replenish the Performance Security within the timeframe stipulated in Clause 28.2(a), the Seller shall be entitled to suspend deliveries of Natural Gas pursuant to Clause 20.6.

28.3. TANESCO Failure to Pay PUIP

- (a) If at any time during the Supply Period, the Buyer fails, in accordance with Section 2.4(d) of the Insufficiency Agreement to pay the Per Unit Insufficiency Premium relating to Natural Gas sold pursuant to the terms of this Agreement or Complex Additional Gas pursuant to the terms of the Gas Agreement, within five (5) Days of the due date the Seller shall be entitled to draw down an amount equal to the outstanding Per Unit Insufficiency Premium from the Performance Security and deposit such amount into the Insufficiency Account on behalf of the Buyer pursuant to the terms of the Insufficiency Agreement.

29. ASSIGNMENT

29.1. Permitted Assignments

Subject to Clause 29.2, a Party shall not transfer, cede, assign or otherwise divest any of its rights, interests, covenants or obligations (in whole or in part), except with the prior written consent of the other Parties such consent shall not be unreasonably withheld or delayed.

29.2. Assignment by way of Security

Nothing contained in this Clause 29 shall prohibit the Seller from mortgaging, pledging, or otherwise encumbering its rights and benefits under this Agreement in order to provide security relating to any financing obtained or planned to be obtained by the Seller.

30. RESOLUTION OF DISPUTES

30.1. Notice of Dispute

Except as provided under Clause 27 in relation to Changes in Law, in the event that there arises between or among the Parties any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof, the Party wishing to declare a dispute shall deliver to the other Party a written notice identifying the issue in dispute.

30.2. Resolution by the Parties

- (a) Within thirty (30) Days of delivery of notice of a dispute pursuant to Clause 30.1, the Parties shall in good faith discuss and attempt to mutually resolve the dispute.
- (b) In the event that the dispute is not resolved in accordance with Clause 30.2(a), either Party may refer the dispute to the chief executive officers of the Parties for further consideration. In the event that such individuals are unable to reach resolution within fifteen (15) Days, or such longer period as they may agree, then either Party may refer the matter to an Expert in accordance with Clause 30.3, provided that the Parties agree that such dispute is a Technical Dispute, or commence arbitration of the dispute in accordance with Clause 30.4.

30.3. The Expert

- (a) In the event that the Parties are unable to resolve a dispute in accordance with Clause 30.2(b), any Party, in accordance with this Clause 30.3(a), may refer the Technical Dispute to an Expert for consideration of the Technical Dispute and to obtain a recommendation from the Expert as to the resolution of the Technical Dispute. The Expert shall be qualified by education, experience and training in the area to which such Technical Dispute relates and shall not be an agent, employee, or contractor or a former agent, employee or contractor of any Party involved in the Technical Dispute. In the event that the Parties cannot agree within ten (10) Days as to whether a dispute falls within the

definition of a Technical Dispute, the Parties shall proceed directly to arbitration under Clause 30.4.

- (b) The Party initiating submission of the Technical Dispute to an Expert shall provide the other Party with a notice to that effect, and the Parties shall meet and seek to agree upon a single expert to whom the Technical Dispute shall be referred for determination. If within fifteen (15) Days from the service of the said notice, the Parties fail to agree upon the Expert, each of the Parties shall nominate a person, whereupon the nominated persons shall meet and agree upon a person to be the Expert. If the nominated persons fail to agree upon an Expert within ten (10) Days, the matter may forthwith be referred by either Party to the International Chamber of Commerce Centre for Expertise ("ICC Centre for Expertise") who shall be requested to make the appointment of the Expert within thirty (30) Days.
- (c) Upon the Expert being agreed or selected under the foregoing provisions of ~~this Clause 30.3 the Parties or either of them shall forthwith notify the Expert~~ of the Expert's selection and shall request the Expert to confirm to both Parties within fourteen (14) Days whether or not the Expert is willing and able to accept the appointment and whether or not there is any conflict as mentioned in Clause 30.3(g).
- (d) If the Expert shall be either unwilling or unable to accept such appointment or shall not have confirmed its 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) the matter shall be referred (by either Party) in the manner aforesaid to the ICC Centre for Expertise who shall be requested to make an appointment or (as the case may be) a further appointment and the process shall be repeated until an Expert is found who accepts the appointment.
- (e) The Parties shall co-operate with each other to ensure that the terms of the contract of appointment of the Expert are agreed with the Expert as soon as possible and agree that, if there shall be any dispute between the Parties as to the amount of remuneration to be offered to the Expert or any other terms of the Expert's appointment, then such amount or terms shall be determined by the ICC Centre for Expertise whose decision shall be final and binding on the Parties.
- (f) If the Expert should die, withdraw or otherwise become unwilling or incapable of serving, a replacement Expert shall be appointed by the Parties in accordance with this Clause 30.3.
- (g) Any person appointed as the Expert shall be entitled to act as the Expert notwithstanding that, at the time of the appointment or at any time before such Person gives the Expert's determination under such appointment, he has or may have some interest or duty which materially conflicts or may materially conflict with the Expert's function under such appointment **PROVIDED THAT** such Person shall (whether before or after accepting such appointment) immediately disclose any interest or duty of which such person is or becomes aware which conflicts or may conflict with such person's function under such

appointment and the Parties shall after such disclosure have confirmed such person's appointment or continuing appointment.

- (h) If either Party objects:
- (i) to an appointment of an Expert (which has already been made) within seven (7) Days of becoming aware of a conflicting interest or duty which has not hitherto been disclosed; and/or
 - (ii) to a proposed appointment of an Expert on grounds of a disclosed conflicting interest or duty within seven (7) Days of that disclosure;

because in either case it considers that there is a material risk of such interest or duty prejudicing the decision of the Expert or proposed Expert, then either Party may apply to the ICC Centre for Expertise who shall decide whether if such Person were to continue as Expert or were to be appointed as Expert (as the case may be) such a material risk would exist and in so deciding the ICC Centre for Expertise shall consider any submissions either Party may wish to make and if the ICC Centre for Expertise shall so decide then it shall (if necessary) appoint a replacement in accordance with the provisions of this Clause 30.3.

- (i) All information, data or documentation disclosed or delivered by a Party to the Expert in consequence or in connection with such Person's appointment as Expert hereunder shall be treated as confidential and the Expert shall not disclose to any person or company any such information, data or documentation and all such information, data and documentation shall remain the property of the Party disclosing or delivering the same and all copies thereof shall be returned on completion of the Expert's work **PROVIDED THAT** the Expert may disclose any such information, data or documentation to employees of the Expert or Affiliates of the Expert if such employees or Affiliates have, prior to such disclosure, entered into specific obligations with the Expert to maintain the confidentiality of such information, data and documentation. The terms of appointment of the Expert shall contain an obligation on the Expert to use reasonable endeavours to comply with such obligations as aforesaid.
- (j) The Party seeking consideration of the dispute by the Expert shall, within ten (10) Days of the acceptance of the appointment by the Expert, submit to both the Expert and the other Party a description of the dispute, a statement of its position and data and information supporting its position. Within ten (10) Days of such submission, the responding Party may submit to the Expert and the other Party a description of the dispute, a statement of its position and data and information supporting its position. In addition to the foregoing material, the Expert shall consider, in the Expert's sole discretion, any additional data and information submitted by either Party at a later date. Any and all communications between, and submissions made by, either of the Parties to the Expert shall be made in writing and a copy thereof provided simultaneously to the other Party.

- (k) Each Party shall nominate one Person who shall be available to the Expert to clarify matters or provide additional data and information requested by the Expert. Without prejudice to this Clause 30.3(k), a Party shall not be required to provide oral statements or presentations to the Expert.
- (l) The Expert shall make the determination required hereunder as soon as reasonably practicable after receipt of data and information supplied and made by the Parties and no later than ten (10) Days after the ten (10) Day response period provided in Clause 30.3(j). The Expert shall ignore data and information supplied and made after such ten (10) Day period unless the same are furnished in response to a specific request from the Expert. The Expert shall give full written reasons for the Expert's determination and shall furnish the Parties with a draft of the proposed determination.
- (m) In the event that a Party does not agree with the Expert's determination with respect to the Technical Dispute, it may initiate arbitration proceedings in accordance with Clause 30.4. Similarly, if the Expert fails to submit such determination within the period provided in Clause 30.3(l), either Party may initiate arbitration proceedings in accordance with Clause 30.4.
- (n) The Expert shall be deemed not to be an arbitrator but shall render the required decision as an expert and the provisions of the law relating to arbitration shall not apply to the Expert or the Expert's determination or the procedure by which the Expert reaches his determination.
- (o) Each Party shall bear the costs of providing all data, information and submissions given by it and the costs and expenses of all witnesses and Persons retained by it but the costs and expenses of the Expert and any independent advisers to the Expert and any costs of the Expert's appointment if the Expert is appointed by the ICC Centre for Expertise shall be borne as to one half by the Buyer and as to one half by the Seller.

30.4. Arbitration

- (a) Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof that is not resolved pursuant to Clause 30.2 or not within the purview of Clause 30.3 or not expressly subject to the procedures set out in Clause 27 shall be finally settled by arbitration in accordance with the Rules of Procedure for Arbitration Proceedings ("ICSID Rules") of the International Centre for Settlement of Investment Disputes ("Centre") established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States ("ICSID Convention"), and the Parties hereby consent to the jurisdiction of the Centre and to arbitration thereunder. It is hereby stipulated that TPDC and TANESCO are an agency of the GOT. TPDC and TANESCO shall be designated to the Centre by the GOT in accordance with Article 25(1) of the ICSID Convention. In accordance with Article 25(3) of the ICSID Convention, the GOT has given its approval to TPDC's and TANESCO's consent in this Agreement to arbitration under the ICSID Convention. Each Party to the Agreement stipulates that the transaction to which this Agreement relates is an investment within the meaning of the ICSID Convention.

- (b) If the jurisdictional requirements of Article 25 of the ICSID Convention are not met, or if for any other reason the dispute cannot be settled in accordance with the ICSID Rules, such dispute shall be finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (the "ICC Rules").
- (c) Unless otherwise agreed by the Parties, the number of arbitrators shall be one, with such arbitrator to be appointed by agreement of the Parties or failing such agreement, in the case of an arbitration under the ICSID Convention, within thirty (30) Days after notice of registration of the request has been dispatched in accordance with the ICSID Convention, or in the case of an arbitration under the ICC Rules, within thirty (30) Days from the date when the claimant's request for arbitration has been communicated to the other party, such arbitrator to be appointed in accordance with Article 38 of the ICSID Convention or in accordance with the ICC Rules, as applicable. Notwithstanding the provision of Clause 33.12, the arbitration agreement contained in this Clause 30.4 shall be governed by and construed in accordance with English law. Any affected Party may require the arbitration to be conducted outside Tanzania, in which event the arbitration shall be conducted in London, England and the Party requiring arbitration outside Tanzania shall pay the travel and related costs of all Parties. In the event the arbitration is conducted in London, England pursuant to this subsection, the Parties agree that such arbitration shall be deemed to have been initiated and the arbitration award made in London, England.
- (d) No arbitrator appointed pursuant to this Clause 30.4 shall be:
- (i) a national of the jurisdiction of any Party to this Agreement; or
 - (ii) an employee, agent or contractor or former employee, agent or contractor of any Party listed in (i).
- (e) The decision of the arbitrator shall be final and binding upon the Parties, and shall not be subject to appeal. Any Party may petition any court having jurisdiction to enter judgment upon the arbitration award. At the request of any of the Parties, the arbitrator shall cause such arbitration award to be filed with the Commercial Division of the High Court of Tanzania. Any monetary award shall include interest from the date of any breach or other violation of this Agreement to the date on which the award is paid, at a rate determined by the arbitrator.
- (f) The language at any arbitration under this Agreement shall be English.
- (g) The Parties hereby irrevocably waive and agree to exclude any rights of application or appeal to the courts or rights to state a special case for the opinion of the court to the fullest extent permitted by law in connection with any question of law arising in the course of the arbitration or with respect to any award made. Without limiting the foregoing, the Parties expressly agree that, in the event the arbitration is conducted in London, England, application to the courts for leave to appeal under Section 45 or Section 69 of the English Arbitration Act 1996 may not be sought with respect to any question of law

arising in the course of the arbitration or with respect to any award made. The Parties hereby, to the fullest extent permitted by law, irrevocably waive any right to challenge or contest the validity or enforceability of this arbitration agreement or any arbitration proceeding or award brought in conformity with this Clause 30 including any objection based on venue or inconvenient forum.

31. CONFIDENTIALITY

31.1. Duty of Confidentiality

The terms of this Agreement and any information disclosed by either Party to the other (whether orally or in writing or in some other permanent form) in connection with this Agreement which is not:

- (a) already known to the recipient; or
- (b) already in the public domain (other than as a result of a breach of the terms of this Clause 31).

shall, unless otherwise agreed in writing, be kept confidential ("Confidential Information") and shall not be used by the receiving Party other than for a purpose connected with this Agreement or, save as provided below, disclosed to third parties by the receiving Party.

31.2. Permitted Disclosures

- (a) The Confidential Information, which a Party receives from the other Party, may be disclosed by such Party:
 - (i) to any person who is legal counsel, other professional consultant or adviser, insurer, accountant, underwriter or provider of finance or financial support (including any export credit agency, funding agency, insurance agency or similar institution in relation to that finance) or their legal counsel and advisers to that Party in relation to matters contemplated under this Agreement; provided that such disclosure is solely to assist the purpose for which such Person was so engaged;
 - (ii) if required and to the extent required by any law, rule or regulation, or by a Governmental Authority or by the rules of any recognised stock exchange or agency established in connection therewith upon which the shares of that Party or a company falling within Clause 31.2(a)(iii) below are quoted;
 - (iii) to its Lenders and any employee of that Party or of a company to which disclosure is permitted pursuant to this Clause 31.2(a)(iii);
 - (iv) any *bona fide* prospective transferee of a Party's rights and obligations under this Agreement (including a prospective transferee with whom a Party and/or its Affiliates are conducting *bona fide* negotiations directed toward a merger, consolidation or the sale of a majority of its or an Affiliate's shares), and any consultant retained by such

prospective transferee, in order to enable such prospective transferee to assess such Party's rights and obligations;

- (v) to any Expert or Arbitrator appointed in accordance with Clause 30.3 or 30.4;
- (vi) any person reasonably requiring to see such Confidential Information in connection with any bona fide financing or offering or sale of securities by the Seller or Buyer or any Affiliate or any of the shareholders of the Seller or the Buyer to comply with the disclosure or other requirements of applicable law or of financial institutions or other participants (including rating agencies) in such financing, offering or sale;
- (vii) any consultant, agent or legal counsel retained by such Party or its Affiliate in order to enable such Party to perform its obligations.

- (b) However, the Party making the disclosure shall ensure that any Person listed in Clause 31.2(a)(i), (a)(iii), (a)(iv), (a)(v) or (a)(vi) to which it makes the disclosure undertakes to hold such Confidential Information subject to confidentiality obligations equivalent to those set out in Clause 31.1. In the case of a disclosure to an employee made in accordance with Clause 31.2(a)(iii), the undertaking shall be given by the company on its own behalf and in respect of all its employees. Each Party shall forthwith notify the other of the name of any Person referred to in Clause 31.2(a) to which it makes a disclosure.

31.3. Press Releases

No press release concerning the execution of this Agreement shall be issued unless agreed by the Parties.

31.4. Duration of Confidentiality

The foregoing obligations with regard to the Confidential Information shall remain in effect for three (3) years after this Agreement is terminated or expires.

32. NOTICES

32.1. Form of Notices

- (a) Except as otherwise specifically agreed in writing, all notices, requests, demands or other communications authorised or required between the Parties by any of the provisions of this Agreement shall be in writing in English and shall be deemed to have been properly given when addressed to the Party as set out below, and:
 - (i) delivered in person or by recognised international courier maintaining records of delivery; or
 - (ii) transmitted by facsimile provided that the sender can and does provide evidence of successful and complete transmission.

- (b) Oral communication does not constitute notice for any purpose of this Agreement, and telephone numbers for the Parties are listed below as a matter of convenience only. With respect to facsimile and/or e-mail communication automatic delivery receipts issued without direct human authorisation shall not be evidence of effective notices for purposes of this Agreement.
- (c) The contact details of the Parties for service of notices are as follows:

TANESCO:

Ubungu Umeme Park, Morogoro Road
PO Box 9024, Dar es Salaam, Tanzania

Attention: Managing Director
Telephone: +255 22 245 1159
Facsimile: +255 22 245 1158

TPDC:

Tanzania Petroleum Development Corporation
PO Box 2774
Ali Hassani Mwinyi Road
Dar es Salaam
Tanzania

Attention: The Managing Director
Telephone: +255-22-2129663
Facsimile: +255-22-2136086 or 211853

PAT:

PanAfrican Energy Tanzania Limited
Barclays House, 5th Floor, Ohio Street, PO Box 80139
Dar es Salaam, Tanzania

Attention: General Manager
Telephone: +255 22 2138 737
Facsimile: +255 22 2138 938

32.2. Delivery of Notices

A notice given pursuant to this Agreement shall be deemed delivered only when received by the Party to whom such notice is directed, and the time for such Party to deliver any notice in response to such originating notice shall run from the date the originating notice is received, which for purposes of giving notice under this Agreement shall mean actual delivery of the notice pursuant to Clause 32.1, provided that any notice sent by facsimile or e-mail after 5:00 p.m. on a Business Day or on a weekend or holiday of the receiving Party shall be deemed given on the following Business Day of the receiving Party.

32.3. Change of Address

Each Party may change its address at any time and/or designate that copies of all such notices be directed to another individual at another address, by giving notice of such change to all Parties.

33. GENERAL

33.1. Amendments

This Agreement may not be supplemented, amended or modified except by an instrument in writing signed by the Seller and the Buyer and expressed to be a supplement, amendment, modification or change to this Agreement.

33.2. Waiver

No waiver or failure by a Party to insist on the strict performance of this Agreement or to act in respect of the default or defaults of the other Party and no acceptance of payment or performance during the continuance of any such default or defaults shall preclude any right, relief or remedy under or in connection with this Agreement available to the non-defaulting Party and may not be relied on by the defaulting Party as a consent to that default or those defaults or its or their repetition.

33.3. Successors and Assignees

This Agreement shall bind and enure to the benefit of the Parties and their respective successors in title and permitted assigns.

33.4. Severability

If, for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable, or is declared by any court of competent jurisdiction or any

other competent authority to be invalid, illegal or unenforceable or if such competent authority:

- (a) refuses or formally indicates an intention to refuse authorisation of, or exemption to, any of the provisions of or arrangements contained in this Agreement (in the case of a refusal either by way of outright refusal or by way of a requirement that this Agreement be amended or any of its provisions be deleted or that a Party give an undertaking or accept a condition as to future conduct); or
- (b) formally indicates that to continue to operate any provision of this Agreement may expose the Parties to sanctions under any law, order, enactment or regulation, or requests any Party to give undertakings or to accept conditions as to future conduct in order that such Party may not be subject to such sanctions;

the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid, unenforceable or illegal provision; which substitute provisions are satisfactory to all relevant competent authorities and produce, as nearly as is practicable in all the circumstances, the appropriate balance of the commercial interests of the Parties as evidenced in this Agreement.

33.5. Disclaimer of Agency

This Agreement does not constitute any Party as the agent, partner or legal representative of the other for any purposes whatsoever, and neither Party shall have any express or implied right or authority to assume or to create any obligation or responsibility on behalf of or in the name of the other Party.

33.6. Entire Agreement

This Agreement, together with the Schedules hereto, constitutes the entire agreement between the Parties and includes all promises and representations, express or implied, and supersedes all other prior agreements and representations, written or oral, between the Parties relating to the subject matter hereof. Anything, which is not contained or expressly incorporated by reference in this instrument, is not part of this Agreement.

33.7. Continuing Performance

Where any obligation of a Party is expressed to require performance within a specified time limit that obligation shall continue to be binding and enforceable after that time limit if the Party fails to perform that obligation within that time limit (but without prejudice to all rights and remedies available against that Party by reason of that Party's failure to perform within the time limit).

33.8. Waiver of Sovereign Immunity

Each of TPDC and the Buyer unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Agreement constitutes a private and commercial act. In addition to the foregoing, each of TPDC and the Buyer unconditionally and irrevocably agrees that: (i) should any proceeding (including any

UAP

arbitration proceeding) be brought against it or its assets in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of itself or with respect to its assets; (ii) it waives any right of immunity that it or any of its assets now has or may acquire in the future in any jurisdiction in connection with any such proceedings; and (iii) it consents generally in respect of the enforcement of any judgment against it in any such proceedings (including any arbitration proceedings) in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including the making, enforcement or execution against or in respect of any assets whatsoever irrespective of their use or intended use).

33.9. Counterparts

This Agreement may be executed in any number of counterparts, each of which, when executed, shall be an original, but all the counterparts together shall constitute one document.

33.10. Costs

Each Party shall bear its own costs in relation to the negotiation and preparation of this Agreement,

33.11. Contract Language

This Agreement, together with the Schedules hereto, shall be made and originals executed in the English language.

33.12. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Tanzania.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered in duplicate by their respective duly authorised officers or representatives.

For and on behalf of **TANZANIA PETROLEUM DEVELOPMENT CORPORATION**:

By: _____

Name: YONA S. M. KILLAGANG

Title: MANAGING DIRECTOR

the AND
Witness

By: _____

Name: SECRETARIA N. L. M. LAWI

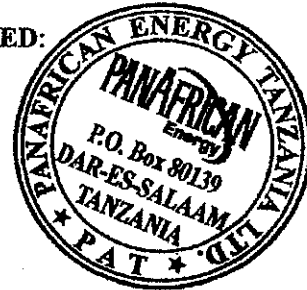
Title: CORPORATION SECRETARY

For and on behalf of PANAFRICAN ENERGY TANZANIA LIMITED:

By: [REDACTED]

Name: Amerson Brown

Title: G.M.



For and on behalf of TANZANIA ELECTRIC SUPPLY COMPANY LIMITED:

By: [REDACTED]

Name: William G. Mhando

Title: MANAGING DIRECTOR

TANZANIA ELECTRIC SUPPLY COMPANY LTD.
P.O. Box 9024
DAR-ES-SALAAM

Witness: [REDACTED]

By. COMPANY SECRETARY
Godson E. Makia

14/06/2011

SCHEDULE 1
Specification

Gas supplied under this Agreement shall conform to the following specifications at the Delivery Point:

- | | |
|-----------------------------|----------------------------------------------------------------------------------------------|
| 1. High Heat Value | Between a minimum of 917.5 BTU/CF and a maximum of 1,121.45 BTU/CF |
| 2. Hydrogen Sulphide | No greater than 10 ppm (parts per million) |
| 3. Temperature | No lower than 0° Celsius |
| 4. Odour | Odorized for easy detection at odorant concentration between 2 and 5 ppm (parts per million) |

SCHEDULE 2
Delivery Pressure

Natural Gas supplied under this Agreement shall be supplied at each Delivery Point at the delivery pressures set forth below.

Tegeta Gas Plant	between 25 Bar and 89 Bar
Ubungo Gas Plant	between 52 Bar and 89 Bar
Symbion Gas Plant	between 50 Bar and 89 Bar

The Parties acknowledge and agree that:

- (a) ~~Songas owns and operates the Pipeline and the Wazo Hill Lateral, and will own and operate the pipeline compression facilities that Songas currently contemplates installing in connection with a contemplated expansion and upgrade to the Gas Facilities (the "Pipeline Compression Facilities");~~
- (b) that the connections to the Generation Facilities are engineered and configured in such a manner that it is possible for the Buyer to consume quantities of Natural Gas that are in excess of the Properly Nominated Quantity; and
- (c) that the terms of this Agreement provide that in the event that Seller is unable to supply Natural Gas to a Delivery Point at the Delivery Pressure for that Delivery Point:
- (i) during any period in which the availability or capacity of the Gas Facilities (or any other facilities that are used in the production, processing, transportation or distribution of the Natural Gas supplied under this Agreement and are not owned by the Seller), is unavailable and/or curtailed (in whole or, subject to the priority regime described in Section 7.3, in part) for any reason, provided that such lack of availability, capacity, or access is not caused by a failure of the Seller to act as a Reasonable and Prudent Operator, whether under the Operatorship Agreement or otherwise;
 - (ii) where the Pipeline or, in the event that Songas installs and commissions the Pipeline Compression Facilities, from and after the date of the delivery of the Additional Facilities Project Acceptance Certificate, the Pipeline Compression Facilities, is the cause of the Natural Gas being Off-Specification Gas;
 - (iii) as a consequence of the Buyer taking a quantity of Natural Gas at any other Delivery Point at a rate in excess of the rate nominated for such Delivery Point
- then,
- (x) the quantity of Natural Gas not delivered by the Seller as a result of the circumstances described in (i) through (iii) above shall not be classified as Shortfall Gas; and

- (y) the quantity of Natural Gas not delivered by the Seller as a result of the circumstances described in (i) and (ii) above shall be subtracted from the TOPQ pursuant to Section 10.6 in order to calculate the Adjusted Take or Pay Quantity.

SCHEDULE 3
Delivery Point MDQs

The maximum daily quantity for each Delivery Point shall be as set out below (as may be amended from time to time to take into account any new Delivery Points or as agreed by the Parties pursuant to the provisions of this Agreement).

1. **Tegeta Gas Plant (nominally 10.5 MMSCFD
45 MW)**
2. **Ubungo Gas Plant 22 MMSCFD
(nominally 102 MW)**
3. **Symbion Gas Plant 25.6 MMSCFD
(nominally 112 MW)**

For the purposes of the foregoing, "MMSCFD" means million standard cubic feet per day

SCHEDULE 4
Delivery Points

The existing Delivery Points are described below.

1. *Ubungo Gas Plant.* The Delivery Point for the Ubungo Gas Plant is at the downstream flange on the metering system at the Ubungo Gas Plant.
2. *Tegeta Gas Plant.* The Delivery Point for the Tegeta Gas Plant is at the downstream flange on the metering system at the Tegeta Gas Plant.
3. *Symbion Gas Plant.* The Delivery Point for the Symbion Gas Plant is at the downstream flange on the metering system at the Symbion Gas Plant.

