

## Contents

DEFINITIONS AND INTERPRETATIONS.....	4
TERM .....	7
EXTENSION OF TERM OF AGREEMENT .....	8
DELIVERY POINT AND PRESSURE OF GAS.....	8
DAILY CONTRACTED QUANTITY (DCQ) & DAILY NOMINATED QUANTITY (DNQ) .....	9
MINIMUM TAKE OR PAY OBLIGATIONS .....	10
SELLER'S SUPPLY OBLIGATIONS .....	12
QUALITY OF GAS.....	13
SHUT DOWN AND STOPPAGE OF SUPPLY .....	13
MEASUREMENT AND CALIBRATION.....	13
SAMPLING OF GAS .....	15
FORCE MAJEURE, ETC.....	15
PRICE OF GAS .....	17
BILLING AND PAYMENT.....	17
CHANGE IN LAW, RULES AND REGULATIONS .....	19
TRANSFER OF RIGHTS.....	20
DISPUTE RESOLUTION .....	20
TAXES AND DUTIES.....	27
TITLE AND RISK.....	27
LAWS GOVERNING THE AGREEMENT .....	27
RESTRICTIONS ON USE OF GAS .....	27
PREVIOUS CORRESPONDENCE .....	28
AMENDMENTS .....	28
INDEMNITIES.....	28
RIGHT TO STOPPAGE OF GAS/TERMINATION .....	29
CONFIDENTIALITY.....	30
NO AGENCY .....	31
EFFECT OF ILLEGALITY, ETC. ....	31
GOOD FAITH.....	31
WAIVER .....	31
CUMULATIVE REMEDIES .....	32
ENTIRE AGREEMENT .....	32
NO PARTNERSHIP .....	32
PRIVITY .....	32
APPROVALS .....	32
CONSEQUENTIAL LOSS, LIMITATION OF LIABILITY.....	32
REPRESENTATIONS.....	33

NOTICES.....	33
ADDRESSES OF PARTIES .....	33
Schedule A.....	35
Schedule B.....	36
Schedule C.....	38
Schedule D.....	39
Schedule E.....	40
Appendix A.....	42

## Model Gas Supply Agreement

This AGREEMENT made on \_\_\_\_\_ day of \_\_\_\_\_ Two Thousand Twenty One at \_\_\_\_\_ between OIL AND NATURAL GAS CORPORATION LTD., a company incorporated under the Companies Act 1956, having its Corporate Registered Office at Deendayal Urja Bhawan, 5 Nelson Mandela Marg, Vasant Kunj New Delhi 110070, and one of its Asset Offices at Eastern Offshore Asset, Kakinada, Andhra Pradesh hereinafter referred to as "SELLER" or "ONGC" (which expression shall, where the context so requires or admits of, be deemed to include its successors or assignees) of the ONE PART and M/s. \_\_\_\_\_ (Name of consumer) {a Pvt. Ltd. company/a Ltd. company/ proprietary firm/partnership firm, etc. as the case may be}, having its office at \_\_\_\_\_ {address of the consumer}, hereinafter called "BUYER" (which expression where the context so requires or admits of, be deemed to include its successors or assignees) of the OTHER PART.

Whereas the BUYER desires to purchase and receive "NATURAL GAS" from the SELLER as per their Bid against the RFP no. \_\_\_\_\_ and the SELLER agrees to sell and deliver to the BUYER Natural gas as produced in its natural state or after stripping of heavier components for other uses, obtained from KG-DWN-98/2 Field of SELLER delivered at Odalarevu Onshore Terminal, Odalarevu, East Godavari District, Andhra Pradesh for the purpose of - <usage of gas> in the facilities of the BUYER located near \_\_\_\_\_ Field in the state of \_\_\_\_\_ on the terms and conditions stated in the tender document for the KG-DWN-98/2 field and terms and conditions stated here under which have been mutually agreed upon between the SELLER and the BUYER.

**NOW THIS DEED WITNESSES AS FOLLOWS,**

**Article 01**

**DEFINITIONS AND INTERPRETATIONS**

The following words shall have the meaning assigned against each one of them respectively in the AGREEMENT, unless otherwise stated:-

- 01.01. **“Additional claim period”** has the meaning ascribed to it in Article 06.06;
- 01.02. **“Affiliate”** has the meaning ascribed to it in Article 16.02.
- 01.03. **“AGA”** means American Gas Association.
- 01.04. **“Agreement”** means the term and conditions set out in this Agreement, Schedule A, Schedule B, Schedule C, Schedule D and Schedule E; and Appendices.
- 01.05. **“ASTM”** means the American Society of Testing Materials and **“ANSI”** means American National Standard Institute;
- 01.06. **“Ceiling Price”** means the price as notified in USD/ MMBTU on GCV basis by Petroleum Planning & Analysis Cell (PPAC), Ministry of Petroleum & Natural Gas (MoP&NG), Govt. of India from time to time, for gas produced from discoveries in Deep-water, Ultra deep water and High Pressure-High Temperature areas;
- 01.07. **“Contract Gas Price”** means the price to be paid by the BUYER to the SELLER for one MMBTU of Sellers Gas delivered by the SELLER to the BUYER hereunder as set forth in Schedule B;
- 01.08. **“Contract Quarter”** means the period of time commencing at 06:00 hours on the first day of a quarter and ending at 6:00 hours on the first day of the following quarter, except the first contract quarter shall commence on the first day of commencement of gas offtake and the last contract quarter shall end on expiration or termination of the Agreement.
- 01.09. **“Contracted Quantity”** has the meaning ascribed to it in Article 05.01.01
- 01.10. **“Contract Year”** means the period commencing at 06:00 hours from Date of actual commencement of gas offtake or on the date of expiry of offtake window, whichever is earlier and ending at 06:00 hours after one (1) year from such date, unless terminated earlier.
- 01.11. **“Cubic Metre”** or **“Standard Cubic Metre “** or **“SCM”** means the volume of GAS which occupies one (1) cubic metre of space when such GAS is at a temperature of 15°C and at an absolute pressure of 1.0332 Kg/Cm<sup>2</sup> (1.01325 bar);
- 01.12. **“Daily Contracted Quantity”** (DCQ) has the meaning ascribed to it in Article 05.04
- 01.13. **“Daily Nominated Quantity”** (DNQ) has the meaning ascribed to it in Article 05.05
- 01.14. **“Day”** means a period of twenty-four (24) consecutive hours beginning and ending at 0600 hours and reference date for any such day shall be the date on which such day starts at 0600 hours.

- 01.15. **“Delivery Point”** means the point at which the Parties agree deliveries of Seller’s Gas shall be made under this Agreement as set forth in Article 04.01 and 04.06;
- 01.16. **“Delivery Commencement Date”** means the date for the commencement of deliveries of SELLER’s Gas hereunder as set forth in Article 02.02 and Schedule A of this Agreement;
- 01.17. **“Due Date”** has the meaning as ascribed to in Article 14.02 of this Agreement;
- 01.18. **“Expiry Date”** means the date on which the Term of this Agreement expires as set forth in Schedule A;
- 01.19. **“First Fortnight”** means a period commencing at 0600 hours on first day of Month and ending on 0600 hours on sixteenth day of the Month and a **“Second Fortnight”** means a period commencing at 0600 hours on sixteenth day of the Month to 0600 hours on the first day of the succeeding calendar month.
- 01.20. **“Gas”** means any dry gas, wet gas, all gaseous hydrocarbons or mixture of hydrocarbons and other gases like Nitrogen, carbon-di-oxide, and substances contained therein including sulphur, but excluding helium which are produced from oil, gas, gas condensate wells and also including residue gas remaining after fractionation or extraction of liquid hydrocarbons from gas at Standard Conditions;
- 01.21. **“Gross Heating Value”** or **“Gross Calorific Value”**, (**“GCV”**) of Gas per SCM means that quantity of heat in Kilocalories evolved by combustion at constant pressure of 1 SCM of Gas with air and temperature of gas, air and the products of combustion cooled to initial temperature and all water formed by combustion reaction remaining in liquid state;
- 01.22. **“Invoice”** means & includes a document containing calculations sent by SELLER to BUYER pursuant to Article 14.01.
- 01.23. **“Kilocalories”** shall mean the amount of heat required to raise the temperature of one (1) kilogram of water from 14.5 degree Centigrade to 15.5 degree Centigrade at a pressure of 1 atmosphere at sea level.
- 01.24. **“Laws, Regulations and Orders”** means the Central, State and local laws of India and all orders, ordinances, rules, regulations, decrees, policies, judicial decisions, notifications or similar directives issued by any executive, legislative, judicial or administrative entity or authority having jurisdiction on the issue or any person purporting to act in such capacity in accordance with which the Buyer and/or the Seller are accustomed and/or required to comply;
- 01.25. **“MCF”** means one thousand (1,000) SCF of Gas;
- 01.26. **“MCM”** means one thousand (1,000) SCM of Gas;
- 01.27. **“Measurement Point”** shall mean the point where the flanges connect the Seller’s sales measuring equipment to the Buyer’s Pipeline;
- 01.28. **“Million Kilo Calories”** or **“MKCal”** means one million Kilo Calories;
- 01.29. **“MMBTU”** means one million (1,000,000) British thermal units (BTU);
- 01.30. Deleted
- 01.31. **“MMSCF”** means one million (1,000,000) Standard Cubic Feet of Gas;

- 01.32. **“MMSCM”** means million (1,000,000) Standard Cubic Meter of Gas;
- 01.33. **“Month”** means the period beginning at 0600 hrs. on the first day of a calendar month and ending at 0600 hrs. on the first day of the succeeding calendar month.
- 01.34. **“MPMS”** means Manual of Petroleum Measurement Standards published by the American Petroleum Institute;
- 01.35. **“Net Heating Value”** or Net Calorific Value of Gas per SCM means that the quantity of heat in Kilocalories evolved by complete combustion, at a constant pressure, of one (1) standard cubic metre of GAS with air and with the temperature of GAS, air and products of combustion at fifteen (15) degree Celsius and all the water formed by combustion reaction remaining in the vapour state.
- 01.36. **“Outside Expert Committee”** has the meaning ascribed to it in Article 17 of this Agreement;
- 01.37. **“Offtake Window”** means a period of 10 days, from \_\_\_\_\_<the ONGC’s readiness date or date of NOA, whichever is later>, which would be provided to the Buyer to offtake gas. During the offtake window, Seller and Buyer may mutually agree for a start date for gas offtake. During such period, Seller shall have no obligation to supply Gas (or liability for failure to supply Gas) under Article 07 and Buyer shall have no obligation to take Gas (or liability for failure to take Gas) under Article 06.
- 01.38. **“Party”** means BUYER or SELLER and **“Parties”** means both BUYER and SELLER;
- 01.39. **“Producing Areas”** means those petroleum accumulation described in the Schedule A of this Agreement which Seller shall produce and supply and Buyer shall purchase Seller’s Gas hereunder;
- 01.40. **“PSIA”** means a unit of pressure expressed in pounds per square inch absolute;
- 01.41. **“PSIG”** means a unit of pressure expressed in pounds per square inch gauge;
- 01.42. **“Quantity”** has the meaning ascribed to it in Article 05;
- 01.43. **“Quarter”** means the period of time commencing at 06:00 hours on January 1, April 1, July 1 and October 1 and expiring at 06:00 hours on the first day of the next succeeding calendar quarter;
- 01.44. **“Quarterly Contracted Quantity”** means the sum of Daily Contracted Quantity (DCQ) for any Contract Quarter;
- 01.45. **“Quarterly Nominated Quantity”** means the sum of Buyer’s Daily Nominated Quantity (DNQ) for any Contract Quarter;
- 01.46. **“Quarterly Minimum Guaranteed Offtake (QMGO)”** has the meaning ascribed to it Article 06.01;
- 01.47. **“Quarterly Shortlifted Quantity”** or **“Take or Pay Quantity”** means 80% of Adjusted Quarterly Contracted Quantity (AQCQ) less actual offtake during the Contract Quarter [also ascribed at Article 06.01 b.];
- 01.48. **“SCF”** means standard cubic foot of Gas;
- 01.49. **“SCM”** means standard cubic meter of Gas;

- 01.50. **“Seller’s Gas”** means Gas produced by the Seller from the Producing Areas for delivery and sale to Buyer hereunder;
- 01.51. **“Sellers Deficiency Quantity”** has the meaning ascribed to it Article 06;
- 01.52. **“Sellers Shortfall Gas”** has the meaning ascribed to it in Article 07;
- 01.53. **“Specifications”** means the specifications for Seller’s Gas set forth in Schedule C;
- 01.54. **“Supplementary Invoice”** means and includes a document containing calculations sent by SELLER to BUYER specifying:
- i. the calculations of charges due from BUYER to SELLER under this Agreement for any previous Billing Period(s), and
  - ii. any other adjustment
- 01.55. **“Term”** has the meaning ascribed to it in Article 02.01;
- 01.56. **“Time”** shall be stated in "Hours" and shall mean `Indian Standard Time'.
- 01.57. **“Year”** means period of 365 (Three hundred and sixty five) consecutive days or 366 (Three hundred sixty six) consecutive days when such period includes a twenty-ninth (29th) day of February.
- 01.58. **“Year”, “Month” and “Day”** wherever used in this Agreement imply that of Gregorian Calendar.
- 01.59. All references herein to persons shall where the context admits be deemed to include bodies corporate, unincorporated associations and partnerships.
- 01.60. Unless the context requires otherwise, in this Agreement:
- a) The headings are for convenience only and shall be ignored in construing this Agreement;
  - b) The singular includes the plural and vice versa;
  - c) References in Articles, Schedules and Annexures are, unless this context otherwise requires, references to Articles of, Schedules of, and Annexures to, this Agreement;
  - d) In carrying out its obligations and duties and exercising its rights under this Agreement each Party shall have an implied obligation to act in good faith; and
  - e) The word “including” means “including without limitation”.

## **Article 02**

### **TERM**

- 02.01. This Agreement shall commence and be effective from \_\_\_\_\_ <Date of actual commencement of gas offtake or on the date of expiry of offtake window, whichever is earlier > and the term of this Agreement shall be for one (1) year from such date, unless terminated earlier.
- 02.02. BUYER shall make arrangement for receiving Gas from ONGC’s installation to their factory/premises within the offtake window of 10 (Ten) days from the date of ONGC readiness or Date of NOA, whichever is later.

### **Article 03**

#### **EXTENSION OF TERM OF AGREEMENT**

03.01. The Agreement will be valid till the Term of the Agreement as stipulated in Article 02.01 and shall not be extended/renewed.

### **Article 04**

#### **DELIVERY POINT AND PRESSURE OF GAS**

04.01. GAS shall be delivered to the BUYER at a Gas Metering Station located at SELLER's premises at <Name of installation to be inserted>. Gas will be transported from the downstream flange of the pipeline at the outlet of the GAS metering station, hereinafter referred to as the "Delivery Point", by means of Pipeline to be provided and maintained by the BUYER.

04.02. The SELLER shall maintain the "Gas Metering Station" constructed by the SELLER.

04.03. The BUYER shall make all proper and adequate arrangement for receiving GAS at the outlet of Gas Metering Station at his own risk and cost. Should any defect in the BUYER's intake arrangement arise, the same shall be rectified by the BUYER. The SELLER shall have an option but no obligations to stop supply of GAS as soon as any defect is noticed in the BUYER's intake arrangements.

Notwithstanding anything contained in the Agreement, the BUYER shall be liable to pay for Quarterly Minimum Guaranteed Offtake of GAS as per provisions of Article 06 hereinafter to the SELLER on account of any defect whatsoever in the BUYER's intake arrangement.

04.04. The Gas pipeline from the Delivery Point shall be owned/arranged and maintained by the BUYER at his own risk and cost, in accordance with the natural gas pipeline safety and statutory regulations in force. The BUYER shall indemnify SELLER against any liabilities, causes, expenses, damages or losses as referred to in Article 24.01 herein. Provided further that the SELLER shall have no liability whatsoever for any claims/damage/loss arising out of any accident due to bursting/leakage/ any other damage to the BUYER's pipeline for whatever reason. The BUYER shall be strictly liable for any such accident and shall indemnify and hold harmless the SELLER against any liability whatsoever arising out of any claim / damages / loss arising out of accident due to bursting / leakage / any other damage to the BUYER's pipeline for whatsoever reason.

04.05. BUYER is required to follow prevalent Standards applicable for laying of his transportation pipeline from ONGC's installation to BUYER's premises and shall submit a compliance report to SELLER before commencement of Gas supply. Prior to commencement of gas supply to Buyer, Buyer is required to submit the required statutory clearances.

04.06. For effecting delivery of GAS, the SELLER shall maintain at its own risk and cost, the piping control and regulation and metering equipment in the aforesaid Gas Metering Station located at Seller's premises at <Name of installation to be inserted>. Prior to commencement of gas supply to Buyer, the GAS metering equipment is to be jointly calibrated by Seller & Buyer.

04.07. Title of "GAS" shall pass from the SELLER to the BUYER at the Delivery Point. The Delivery Point shall be at the downstream flange of the pipeline at the outlet of the Gas Metering station.

The SELLER shall, under the normal circumstances of supply of GAS and normal offtake by the BUYER and other consumers, make endeavour to maintain a gauge pressure as available at the Delivery Point as set forth in Schedule A attached.

## Article 05

### **DAILY CONTRACTED QUANTITY (DCQ) & DAILY NOMINATED QUANTITY (DNQ)**

05.01. Subject always to availability of gas and SELLER's ability to supply gas to the BUYER, the SELLER agrees to sell and deliver the gas at the aforesaid Delivery Point to the BUYER, as provided here under and as set forth in Schedule D of the agreement:

05.01.01. The Contracted Quantity (CQ) of gas is <to be inserted Field specific SCMD>.

05.02. Deleted

05.03. There could be a maximum of 10% variation on either side on an hourly basis from the average hourly rate.

05.04. Seller shall prepare and provide to Buyer a firm monthly quantity of Seller's Gas at Delivery Point based on Seller's Production plan. Prior to the 20th day of each month during the Term, Seller shall provide Buyer with a detailed schedule of Seller's daily nominations and deliveries of Seller's Gas for the following month ("Daily Contracted Quantity") based on applicable Seller's Production Plan and such quantity shall not be less than 90% of CQ. Seller's daily nominations herein shall establish the 'Daily Contracted Quantity', hereinafter called DCQ that Buyer must take or nevertheless pay for Quarterly Minimum Guaranteed Offtake (QMGO) charges under Article 06 herein and such nominations shall be binding on the Buyer.

05.05. Buyer shall prepare and provide to Seller a, Day wise monthly quantity of gas nomination at Delivery Point. Prior to the 25th day of each month during the Term, Buyer shall provide Seller with a detailed schedule of Buyer's daily nominations for the following month ("Daily Nominated Quantity", herein after referred to as DNQ) and such quantity may be equal to or less than DCQ. Buyer's daily nominations herein shall establish the 'Daily Nominated Quantity', hereinafter called DNQ that Seller must supply or nevertheless pay for Supply or Pay charges under Article 07. The total quantity of Buyer's Gas nominated by buyer in the Contract Quarter shall be the 'Quarterly Nominated Quantity' (QNQ). If Buyer fails to provide Seller DNQ before 25<sup>th</sup> day of the month, then Buyer's previous month's DNQ or Seller's DCQ for the ensuing month, whichever is lower, would be considered as Buyer's DNQ for the ensuing month.

05.06. No later than Forty Eight (48) hours before 06:00 Hrs on the day of gas delivery, Buyer may increase the Daily Nominated quantity upto DCQ for that day of Gas delivery. Seller would use reasonable attempt to accommodate the demand and would confirm buyer accordingly. Subsequently, such revised DNQ would be used for the calculation of QNQ for the relevant contract quarter.

05.07. If due to some unanticipated causes, there is decrease in Daily Nominated Quantity for any day of Gas delivery, Buyer shall intimate the Seller no later than Forty Eight (48)

hours before 06:00 Hrs on that day of gas delivery. Subsequently, such revised DNQ would be used for the calculation of QNQ for the relevant contract quarter.

## Article 06

### MINIMUM TAKE OR PAY OBLIGATIONS

06.01. After commencement of actual gas offtake, BUYER shall pay the SELLER for higher of the following:

- a. the actual quantity of gas offtaken by BUYER or
- b. 80% of the Adjusted Quarterly Contracted Quantity (AQCQ) on the basis of the DCQ, (under provisions of Article 05)

In determining the Adjusted Quarterly Contracted Quantity for any Contract Quarter, the following deductions shall be made from the Quarterly Contracted Quantity (QCQ) for such Quarter:

- i) Any quantity of Sellers Deficiency Quantity (If in any Contract Quarter the Seller fails to supply 80% of the Quarterly Contracted Quantity the difference between the quantity of the Gas supplied by the Seller and 80% of the 'Quarterly Contracted Quantity' shall be classified as "Sellers Deficiency Quantity" on quarterly basis;
- ii) Quantity not accepted due to Force Majeure as per the Article 12;
- iii) Quantity not taken due to Scheduled Outage pursuant to Article 09;
- iv) Quantity not taken due to gas not conforming to quality as per Article 08 and Schedule C.

Charges towards Quarterly shortlifted Quantity shall be an amount equal to the product of: the Weighted Average Gas Price applicable during such Contract Quarter; and the Quarterly Shortlifted Quantity for such Contract Quarter, same will be referred as Quarterly Minimum Guaranteed Offtake (QMGO) Charges or Take or Pay charges.

Provided, however, that in case gas available with SELLER is less than QMGO and Buyer offtakes entire gas available, then BUYER shall pay only for the actual supply.

Parties agree that the provision of Minimum Take or Pay Obligation will not be applicable during the offtake window period.

06.02. The BUYER shall make all necessary provisions for creation and maintaining dual fuel capabilities in order to meet BUYER's fuel requirement by an alternative fuel/ substitute to gas, as and when gas supplies are interrupted or discontinued for the reasons mentioned herein.

06.03. In case of delay in commencement of gas offtake by the BUYER beyond the offtake window, then it would be presumed that gas offtake has begun on expiry of offtake window period and such period would be considered for Take or pay obligations. In case gas is not offtaken by the Buyer even after one month (30 days) of expiry of Offtake window period, then ONGC reserves the right to cancel the allocation and terminate this Agreement after recovery of Take or Pay charges (in terms of Article 06.01) accumulated till 30 days from the expiry of offtake window period.

06.04. The 'Security Deposit(s)' submitted by the Buyer should be valid till the date of ONGC readiness plus Ninety (90) days. The Security Deposit shall be liable for invocation on Non submission of Payment Security within Seven (7) days of issuance of NOA.

**06.05. Make Up Gas:**

- 06.05.01. During the Contract Period, the quantity of Gas equal to any Quarterly Shortlifted Quantity for which Buyer has paid QMGO charges shall constitute "Make Up Gas" accrued. If Buyer has accrued a right to Make Up Gas in any Contract Quarter, then in any subsequent Contract Quarter, once the Buyer has first taken the Take or Pay Quantity for such subsequent Contract Quarter, Buyer shall have the right to receive a credit for all Make Up Gas quantities taken above the Take or Pay Quantity (as per Article 06). Offtake of Make Up Gas would be limited to lower of outstanding balance of Make Up Gas at the beginning of such Contract Quarter or Quarterly Contracted Quantity less Take or pay quantity. The right of any Make-up gas of any Contract Quarter shall remain valid till the end of the Term of the contract and as mentioned in Article 06.06 of this Agreement.
- 06.05.02. Buyer has to intimate Seller about their offtake plans for Make-up gas within five working days after receiving the monthly nominations from Seller in accordance with the Article 05. Subsequently, Seller will confirm the scheduled offtake plan with Buyer.
- 06.05.03. In any Contract Quarter, Buyer shall pay for all quantities of Gas taken as Make Up Gas at the applicable Gas Price (including taxes & duties) when the Make Up Gas is taken, and shall pay all other amounts payable under this Contract in respect of Gas deliveries, provided that, at the end of such Contract Quarter, Buyer shall receive a credit for an amount equal to the Make Up Gas taken during the month multiplied by the lower of:
- a. the Weighted Average Gas Price for such Contract Quarter during which Make Up Gas is delivered; ; and
  - b. the weighted average gas price for the Contract Quarter, in respect of the Quarterly Shortlifted Quantity (as per Article 06.05 above) that gave rise to Make Up Gas right.
- 06.05.04. The credit received by Buyer under this Article shall be applied against amounts due from Buyer under the first invoice of the subsequent Contract Quarter or, if in excess thereof, against subsequent invoices. For such Make Up Gas delivered, Buyer shall have no rights to any amount previously paid in respect of such Quarterly Shortlifted Quantity.
- 06.05.05. The credit for such Make Up Gas shall be issued in the same order in which the Make Up Gas right was accrued.

**06.06. Additional Claim Period of 30 days for taking remaining Make Up Gas:**

- 06.06.01. If at the end of the term of the contract, there is any Make Up Gas right remaining that has not been taken by Buyer during the Term, this contract shall provide the Buyer the right to claim such Make up Gas quantity. Such period shall be a maximum of 30 days after the expiry of Term (hereinafter the Additional Claim Period) and Supply of Make Up Gas shall commence immediately on the expiry of the term and during the Additional Claim Period the quantity of Make Up Gas supplied on any day would be limited to the average of Daily Nomination Quantity (DNQ) during the last 3 months of the contract Term.
- 06.06.02. After taking such remaining Make Up gas during this Additional Claim Period, Buyer shall have no further rights to take Gas. Once the remaining Make Up Gas has been delivered by the Seller, the Additional Claim Period shall be deemed to have expired.
- 06.06.03. All Gas supplied during the Additional Claim Period of 30 days shall be Make Up Gas only. There shall be no contract quantity or supply quantity during this period and Seller shall neither be liable for any obligations under Article 07 nor Buyer shall be liable for any obligations under Article 06 with respect to the supply of Gas during such period. If Buyer fails to take delivery of any scheduled Make Up Gas due to any

reasons attributable to the Buyer, then the Seller shall have no further obligations whatsoever towards such Make Up Gas and there-after, Buyer shall forfeit any and all rights in respect of any remaining Make Up Gas.

06.06.04. At least 7 days prior to expiry of the Term of the contract, Buyer has to intimate Seller about their offtake plan for Make-up Gas during the Additional Claim Period.

06.06.05. During this Additional Claim Period, the process mentioned under Article 06.05.03 to 06.05.05 shall be followed. However, necessary adjustments shall be made on fortnightly basis.

06.07. No Make Up Gas right will be given to Buyer in case the contract is terminated in accordance with the Article 12 or Article 25 or Article 06.03.

## **Article 07**

### **SELLER'S SUPPLY OBLIGATIONS**

07.01. If in any Contract Quarter the Seller fails to supply minimum 70% of the Adjusted Quarterly Nominated Quantity, the difference between quantity of the Gas supplied by the Seller and 70% of the Adjusted Quarterly Nominated Quantity shall be classified as "Sellers Shortfall Gas".

07.02. In determining the Adjusted Quarterly Nominated Quantity for any Contract Quarter, the following deductions shall be made from, the Quarterly Nominated Quantity for such Contract Quarter:

- i) Quantity not delivered due to Force Majeure or in accordance with Article 12 ;
- ii) Quantity not delivered due to Scheduled Outage of the Seller in accordance with Article 09; and
- iii) Any Quarterly Shortlifted Quantity in accordance with Article 06.

07.03. In the Contract Year, during which gas supplies are made, the maximum aggregate liability of Seller to Buyer towards Sellers Shortfall Gas will be limited to the product of: i) Fifteen (15) days ii) Contracted Quantity; and iii) The gas price applicable on the first day of contract year provided that the aforesaid limit towards Sellers Shortfall Gas shall be further reduced proportionally for any Contract Year in case it contains fewer than 365 days.

07.04. The amount due to the Buyer on account of any Sellers Shortfall Gas for any Contract Quarter would be reflected in the Credit Note issued to Buyer based on the applicable price, applicable for the last Billing period of the Contract Quarter, which may be adjusted with the Seller's invoice for the Subsequent billing period/s. If at the end of the contract year, if there is any amount due to the buyer on account of Sellers Shortfall Gas after adjustments, such amount shall be paid to Buyer by the Seller.

07.05. Parties agree that the provision of Seller's Supply Obligation will not be applicable during the offtake window period.

07.06. No Seller's supply obligation towards Sellers Shortfall Gas will arise in case the contract is terminated in accordance with the Article 12 or Article 25.

## **Article 08**

### **QUALITY OF GAS**

- 08.01. The quality of the Seller's Gas delivered hereunder shall be the quality of such Seller's Gas as usually made available by Seller at the Delivery Point. Seller will have to ensure the quality Specifications for the Seller's Gas at the Delivery Point as set forth in Schedule C (the "Specifications").
- 08.02. All Seller's Gas delivered and accepted by the Buyer under this Agreement, constitutes the whole of the Seller's obligations with respect to the description, quality and fitness for purpose of the Seller's Gas to be delivered and (save to the extent that exclusion thereof is not permitted or is ineffective by operation of Laws, Regulations and Orders) all statutory or other conditions warranties, express or implied, with respect to the description or satisfactory quality of the Seller's Gas or its fitness for any particular purpose or otherwise are hereby excluded.
- 08.03. The quality of Seller's Gas at the Delivery Point shall be verified jointly as set forth in Schedule A.

## **Article 09**

### **SHUT DOWN AND STOPPAGE OF SUPPLY**

- 09.01. After commencement of actual gas offtake, BUYER and SELLER may shutdown its facilities for maintenance for maximum 3 times (scheduled outages) in a Contract Year. The total shutdown period will not be more than 20 days in aggregate per Contract Year for both Buyer and Seller with written information to the other Party.
- 09.02. BUYER and SELLER agree to make best endeavor to synchronize the Scheduled Outages in overall interest of both the parties.
- 09.03. The party availing Scheduled Outages shall give at least 7 (seven) days' advance notice in writing to the other party of the beginning date and the duration of the Scheduled Outage.
- 09.04. The BUYER shall inform the SELLER immediately about any accident and/or defects in pipeline, installation of the BUYER, calling for the complete or partial stoppage of supply of GAS. Provided that in all such cases, the BUYER shall undertake immediate steps to rectify the defects for commencing normal intake of GAS. Provided that in all such cases, the provisions relating to payment of Quarterly Minimum Guaranteed Offtake by the BUYER contained in Article 06.01 shall apply.
- 09.05. The SELLER shall, likewise, inform the BUYER immediately about any accident and/or defects in installations and/or gas pipelines of the SELLER calling for the complete or partial stoppage of supply of gas. Provided that in all such cases, the SELLER shall undertake immediate steps to rectify the defects for commencing normal supply of GAS.

## **Article 10**

### **MEASUREMENT AND CALIBRATION**

- 10.01. The measurement of the quantity of the Seller's Gas and the testing of the quality shall be carried out at the Delivery Point in accordance with prevailing standard practice followed at the Delivery Point and the corresponding standards listed in Appendix A at

the time of delivery. Seller may install new systems as required under AGA for improvement in measurements and testing practices at the Delivery Point. Both Parties shall be present for all measurements and all ticketing of deliveries shall be completed on a joint basis.

10.02. Gross and Net Calorific Value (GCV and NCV) shall be measured as per industry practice and frequency shall be at least once for each billing period or as agreed otherwise.

10.03. The certificates of quantity and quality (or such other equivalent documents as may be issued at the Delivery Point) of the Seller's Gas shall, except in cases of manifest error or fraud, be conclusive and binding on both Parties for Seller invoicing purposes and Buyer shall be obliged to pay the invoiced amount.

10.04. The Parties agree to joint calibration of the measurement and testing devices at Delivery point in the frequency set forth on Schedule A.

10.05. Deleted

10.06. If upon conducting a test of any measurement:

a) any measuring equipment is found to have a margin of error (as per recommendations of AGA), then the prior recorded measurements/results of such equipment shall be deemed correct for computing the Seller's Gas deliveries, but the equipment shall be promptly adjusted to operate and record and/or test correctly.

b) any measuring system in the aggregate is found to have a margin of error which exceeds the value as per recommendations of AGA, then, for the period for which such device has been known or is mutually agreed to have been so inaccurately functioning, the recorded measurements/results of such equipment shall be corrected to zero (0) margin of error for such period. If, however, the period of such inaccurate functioning of the device is not known or is not mutually agreed upon, then, at least for the period equivalent to half the time elapsed since such device was last found to have a margin of error of less than the value as per AGA recommendations, the devices recorded measurements/results shall be adjusted to a zero (0) margin of error.

10.07. Any claim as to shortage in quantity and/or defect in quality of the Seller's Gas shall be made by written notice to Seller immediately after such apparent shortage and/or defect is/are discovered at the Delivery Point, provided that such shortage and/or defect are greater than the value as per AGA recommendations, Such initial written notice shall be followed by a formal written claim within 15 days to Seller with all details necessary to evaluate the claim.

10.08. Either Party may challenge the calibration of a measurement device by advancing to the owner of such measurement device double the cost of retaining an Expert to test the calibration. If the recalibration test results confirm the measurement equipment is outside of acceptable parameters, the advance shall be returned by the owner and the owner shall pay the costs of the recalibration. If the recalibration test results confirm the measurement equipment is properly functioning, the owner shall be entitled to pay the costs of the recalibration from the advance and retain the balance of the advance.

10.09. In case any dispute between Seller and Buyer in relation to the quality or quantity of the Seller's Gas delivered hereunder cannot be resolved amicably through mutual

consultation it shall be referred to an Sole Expert as per the provisions of Article 17 (Dispute Resolution).

10.10. The Parties agree to validation of the measurement and testing devices at Delivery Point every 2/3 Years by an accredited inspector in accordance with normal practices.

10.11. If any measurement device is out of service or is registering inaccurately, the quantity of the Seller's Gas purchased and sold under this Agreement shall be estimated by mutual agreement:

- a) by correcting the error, if the proportion of the error is ascertainable by calibration or test, or analytically in accordance with acceptable international gas industry practice; or in the absence thereof;
- b) by using the readings of a check meter in the case of measurement, if installed and accurately registering; or in the absence thereof;
- c) by estimating the quantity of the Seller's Gas delivered by comparison with past deliveries during a period of similar conditions when the device was registering accurately;
- d) by using an alternate acceptable form of measurement and/or testing.

## **Article 11**

### **SAMPLING OF GAS**

11.01. Sampling of GAS will be done according to MPMS (Manual of Petroleum Measurements Standards) 14 of API (August'93) titled "Collecting and handling of Natural Gas Sample for custody transfer" as contained in Manual of Petroleum Measurements Standards and such modifications thereof as may be made in future reports published or any other procedure as may be mutually acceptable to the SELLER and the BUYER for collection of the representative sample.

11.02. The representative sample of GAS shall be collected from the pipeline near the gas Delivery Point at least once for each billing period. SELLER will be intimated for sampling. The sample will be analyzed in SELLER's laboratory.

11.03. The certificate of quality (or such other equivalent documents) of the SELLER's Gas shall, except in cases of manifest error or fraud, be conclusive and binding on both the Parties for SELLER invoicing purposes and BUYER shall be obliged to pay the invoiced amount.

11.04. The quality of the Seller's Gas delivered shall be as indicated in Schedule C.

## **Article 12**

### **FORCE MAJEURE, ETC.**

12.01. Neither Seller nor Buyer shall be responsible for any failure or delay in fulfilling the relevant obligations under this Agreement, as a result of Force Majeure, except in relation to obligations of BUYER to make payments under the Agreement. The term "Force Majeure" shall mean unavoidable causes reasonably beyond the control and without the fault or negligence of either party such as acts of God or sabotage, fires, floods, cyclones, typhoons, earthquakes, wars (declared or undeclared), hostilities, invasion, blockades, riots, epidemics, quarantine restrictions, nationwide strikes,

freight embargos, civil commotion or any order of Government, local authority having jurisdiction or anybody or person purporting to be or to act for such authority directly affecting the performance of this Agreement. In case of Force Majeure, the Parties agree to notify Force Majeure within forty-eight [48] hours of the occurrence.

12.02.If, by reason of any cause reasonably beyond the control of the SELLER, there is a curtailment of or interference with the availability of SELLER's Gas from the Producing Areas which:

- a) delays or hinders the SELLER in, or prevents the SELLER from, supplying the contracted quantity of the SELLER's Gas deliverable hereunder; or
- b) results in insufficient SELLER's Gas being available to the SELLER on a regular and reliable basis to enable it to supply itself with its requirements;

then, for so long as that situation continues, the SELLER shall be entitled to withhold, reduce or suspend delivery hereunder to such extent as the SELLER may deem appropriate keeping the situation in mind and the SELLER shall not be bound to acquire by purchase or otherwise additional quantities of Gas from any source.

12.03.For the purposes of this Article, and without limitation to the generality of Article 12.02, a cause shall be treated as being reasonably beyond the control of the SELLER if it arises or results from:

- a) any requirement by any Government or Government agency for SELLER's Gas deliverable hereunder to be delivered by way of royalty in kind or otherwise; or
- b) any reduction in availability of SELLER's Gas deliverable hereunder, including adverse reservoir behavior in the Producing Areas, which in the SELLER's opinion as a prudent operator was not reasonably foreseeable.

12.04.In the event of Force Majeure, the Party asserting the claim of Force Majeure shall provide notice promptly and in no case later than forty-eight [48] hours after the occurrence of event of Force Majeure, notifying the other Party with respect to the ongoing Force Majeure event, giving full particulars of the Force Majeure, the estimated duration thereof, the obligations affected, the reasons of its suspension, reasonable steps taken to mitigate the effect of such Force Majeure event and its ability to recommence performance of its obligations under the Agreement as soon as possible.

12.05.The Party asserting the claim of Force Majeure shall have the burden of proving the circumstances constitute valid grounds of Force Majeure under this Article and that such Party has taken all precautions/measures and exercised reasonable diligence and efforts to remedy the cause of any alleged Force Majeure.

12.06.For avoidance of doubts, it is clarified and expressly understood between the Parties that relation between Seller and Buyer is limited to the present Agreement and Seller is not a party between Buyer and its customers and a cause shall not be treated as being reasonably beyond the control of Buyer if it arises or results from non-availability of further customers of Buyer or non-drawl of gas by customers of Buyer for any reason whatsoever.

12.07.In the event of Force Majeure, the Parties agree to use best efforts to remedy the event of and mitigate the effect of Force Majeure.

12.08.Notwithstanding anything contained in Article 02 (Term), in the event Force Majeure condition continues and remains unremedied for period of [90] days from the date of beginning, the SELLER shall have sole discretion to terminate the AGREEMENT without

any liability on his part, on this account, upon giving [30] days' notice to Buyer.

12.09. BUYER will continue to make payment to the SELLER for actual quantity of GAS supplied prior to commencement of FORCE MAJEURE and during the period of FORCE MAJEURE.

### **Article 13**

#### **PRICE OF GAS**

13.01. The price of gas shall be as set forth in Schedule B of the Agreement.

13.02. BUYER being in doubt, whether a particular tax or duty or any change is effective or imposed, as the case may be, the BUYER shall take up the matter directly with the Central or State Govt. or local authority or any such other body or bodies concerned without withholding the payments thereto invoiced under this Agreement to SELLER and shall inform the SELLER regarding the decision of such authorities.

### **Article 14**

#### **BILLING AND PAYMENT**

14.01. SELLER shall raise an invoice on BUYER in Indian Rupees, on fortnightly basis for the Gas delivered in SCM or MMBTU during the period, specifying the following:

- I. The gas quantity for the applicable Billing Period;
- II. The details of the Gross Calorific Value (GCV) to derive SELLER's Gas sold during a Billing Period;
- III. The details of the Net Calorific Value (NCV) of gas, if applicable;
- IV. Price of the Gas and Marketing margin as set forth in Schedule B of the Agreement,
- V. Details of Shortlifted quantity and amount towards shortlifted quantity, if any; and
- VI. Applicable taxes, and levies on above.

The billing period means a period of consecutive days beginning at 06.00 hrs. from a day and ending at 06.00 hrs. on the first day of the immediately following Billing period as under:-

- i) "First Billing Period" means the 1st to 15th day of the Month; and
- ii) "Second Billing Period" means the 16th to last day of the month;

The Invoice or Supplementary Invoice shall be sent by facsimile or e-mail to the designated officer as set forth in Schedule A of this Agreement or to such other number or e-mail address as Buyer may from time to time designate by notice to Seller.

14.02. BUYER shall pay the amount due in the invoice to SELLER for all SELLER's Gas delivered and any applicable charges during any Billing Period (the amount invoiced as due for that Billing Period) and any amount due and reflected on the Supplementary Invoice for that Billing Period, by the following Due Dates:

<b>Billing Period of Deliveries and Supplementary Invoice</b>	<b>Due Date</b>
First Billing Period	22 <sup>nd</sup> of the current Month
Second Billing Period	07 <sup>th</sup> of the succeeding Month

Quarterly Minimum Guaranteed Offtake Charges (QMGO) shall be billed on Quarterly basis and it will be a part of the invoice for the last Billing Period for Contract Quarter.

Invoice of Quarterly Shortlifted Quantity, if any, shall be raised at the end of Contract Quarter.

In addition to the payment dates above, the BUYER shall pay QMGO to the SELLER on a Quarterly basis in case the offtake during the Contract Quarter qualifies for such payment as per Article 06.01 before 7th of the succeeding month.

- 14.03. The Seller shall calculate the Price of gas delivered at the Delivery Point in accordance with Article 13.01 based on the calorific value of Seller's Gas delivered during the Billing Period where appropriate real time measurement facilities are in place and functioning. In case of non-functioning of measurement facilities, the Seller shall calculate the Price based on the average calorific value of Seller's Gas in pervious Billing Period where the calorific value has been verified. Price shall be subsequently adjusted to reflect actual calorific value of Seller's Gas once actual calorific value is determined.
- 14.04. Interest on overdue payments shall accrue as of and including the Due Date for payment and ending on but excluding the date of payment. Delay in payment will attract interest @ State Bank of India (SBI) Base Rate plus 6% per annum compounded quarterly for each day payments are overdue until paid.
- 14.05. BUYER shall arrange remittance of the Amount Due and other amounts due on the Supplementary Invoices on or before the Due Date specified herein in immediately available funds via electronic transfer or telegraphic transfer to the bank(s) and account(s) designated from time to time by SELLER by notice to BUYER. BUYER shall provide (by facsimile transmission or by e-mail to a designated officer of SELLER) at the time of any such payment, details of BUYER's payment at the time of any such payment. The cost, if any, of such electronic transfers or telegraphic transfer shall be borne by the BUYER.
- 14.06. If either or both of Buyer's banks and/or Seller's banks are closed on the Due Date the payment will be made on the day previous to the aforesaid Due Date.
- 14.07. If Buyer's banks and Seller's banks are closed for two consecutive days or more, any payment due on the first day shall be made on the day prior to the Due Date of payment and any payment due on the second day or following day shall be made on the first working day following such closure.
- 14.08. In case of unscheduled closure of either or both Buyer and/ or Seller's banks on the Due Date, the payment will be made on the following working day.
- 14.09. Notwithstanding anything contained in Article 14.03 to 14.06, in case payment Due Date falls on Saturday, payment shall be made on immediately preceding Friday whereas when payment Due Date falls on Sunday, payment shall be made on immediately following Monday.
- 14.10. In case of non-receipt of payment within Due Date as per Sub-Article 14.02, Seller shall recover the same from the Payment Security provided to Seller.
- 14.11. In the event of dispute regarding billing and payment, BUYER agrees that all payments due hereunder shall be paid in full, without any set off or deduction, and shall be subsequently adjusted if so agreed by the Parties or, failing agreement within [60] days, matter shall be resolved in accordance with Article 17.

14.12. **Security of payment against gas supply:** BUYER shall submit irrevocable and without recourse Letter of Credit (hereinafter referred to as L/C) within 7 days of issuance of NOA for \_\_\_\_\_ from any Nationalized/Scheduled Commercial Bank at \_\_\_\_\_ (name of Place) in favour of the SELLER as per Format provided in Schedule E. This L/C value shall be equivalent of 45 days of gas supply calculated on CQ (as specified in Article 05.01) and multiplied by price of the gas as specified in Schedule B of the Agreement considering the gross calorific value (GCV) of gas to be supplied by the Seller (marketing margin and all applicable taxes and duties etc. shall be added to the applicable price of gas). The L/C should be valid for one year period. Gas supply to the consumer shall not commence unless L/C towards payment security is furnished. If the L/C is en-cashed for three or more times in a Contract Year due to any reason attributable to the Buyer, then the Buyer shall maintain a L/C of 125% value of the original L/C amount to provide higher payment security.

14.13. Deleted

14.14. The BUYER shall ensure the validity of the L/C by getting extension duly issued by his Banker at least one month before the expiry of the existing L/C. Further, Buyer shall ensure validity of the L/C submitted is at least till four months beyond the Term of Contract. In case of failure to extend the validity of L/C by the BUYER, SELLER shall have right to invoke the L/C for encashment and keep the amount as deposit till the L/C is renewed. Further, SELLER shall have the right to stop the supplies for not keeping the L/C valid without any prejudice to the rights of SELLER to recover for Quarterly Minimum Guaranteed Offtake (QMGO) charges as per Article 06.01 of the Agreement.

14.15. **Bank Transfer:** Though the preferred mode of Payment Security for ONGC is providing L/C as above, as an alternate option, Bidder may choose to provide Payment Security by way of Bank Transfer of the same amount as determined at Article 14.12 above. However, such deposit will not be considered as advance payment and will not carry any interest.

Payment Security shall be provided either in form of L/C or Bank Transfer (through electronic transfer). However, combination of both would not be allowed.

Other terms of the L/C as provided at 14.12 to 14.14 above will also be applicable to Payment Security provided in the form of Bank Transfer. Such Payment Security shall be released by ONGC three months after the expiry of the contract after making adjustments towards outstanding amounts, if any.

14.16. The bank charges, commissions, etc. required to maintain the Payment Security as per above provisions shall be borne by the Buyer.

## Article 15

### CHANGE IN LAW, RULES AND REGULATIONS

15.01. Parties agree that if during the currency of this Agreement, there is any change, either by way of introduction of any new, or amendment in the existing, Laws, Rules, Regulations, Orders, directives, policies of the Government of India, the same shall be binding on both the parties and such change shall not be a ground for amending or avoiding the Agreement.

## Article 16

### TRANSFER OF RIGHTS

- 16.01. Neither Party shall assign any of its rights or transfer or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. In the event of an assignment in accordance with the terms of this Article, the assignor shall nevertheless remain responsible for the proper performance of the Agreement. Any assignment not made in accordance with the terms of this Article shall be void.
- 16.02. Subject to Article 16.03 and Article 16.04, a Party may assign its rights and transfer its obligations under this Agreement to its Affiliate with the prior consent of the other Party, which shall not be unreasonably withheld. Provided that:
- 16.02.01. an entity shall qualify as an "Affiliate" of the Party if it, directly or indirectly, controls, is controlled by or is under common control of such Party; the term "control" meaning ownership of more than fifty percent (50%) of the equity share capital or voting rights of such Party;
- 16.02.02. such affiliate has the ability to perform all obligations of the Party under the Agreement; and
- 16.02.03. such affiliate expressly assumes such obligations.
- 16.03. Provided that such request of BUYER will only be considered if the proposed Assignee fulfills the techno-commercial criteria, prescribed in the RFP at the time of submission of such request.
- 16.04. If the BUYER intends to transfer or assign its rights and obligations under this Agreement, except the BUYER's obligation to pay the amounts due to ONGC under this Agreement, to an Affiliate, BUYER shall obtain prior permission of the SELLER for such transfer or assignment.
- 16.05. Acceptance of request for transfer/assignment shall be subject to approval of Government Rules/Regulations and guidelines.

## Article 17

### DISPUTE RESOLUTION

Except as otherwise provided elsewhere in the contract, if any dispute, difference, question or disagreement arise between the parties hereto or their respective representatives or assignees, at any time in connection with construction, meaning, operation, effect, interpretation of the contract or breach thereof which parties are unable to settle mutually, the same shall be referred to "Resolution of disputes":

#### 17.01. For Public Sector Undertaking:

- 17.01.01. Parties hereby agree that any controversy, difference, disagreement or claim for damages, compensation or claims arising out of or in connection with any of the terms and conditions of this Agreement or concerning the interpretation or performance thereof or otherwise (hereinafter in this Article referred to as a "dispute") arising between the Parties, which cannot be settled amicably within [90] days after the dispute arises, may be submitted to conciliation or an arbitral tribunal for decision as hereinafter provided
- 17.01.02. Notwithstanding anything contained, before any matter is referred for arbitration such matter shall be referred by either Party:

1. to the Chairman/appointed representatives of the Chairman of the Parties for resolution. Such senior representatives shall undertake to resolve such dispute in good faith within [30] days from the date of such reference.

17.01.03. In the event of dispute between the parties, except for the matters, if any, referred to a Conciliator, whose recommendations are accepted, shall be settled in accordance with guidelines issued on the subject by Government from time to time and as set forth below.

In the event of any disputes or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central public sector Enterprises (CPSEs)/Port Trusts inter se and also between CPSEs and Government Departments and Organizations (excluding disputes concerning Railways, Income Tax , Customs and Excise Departments), such disputes or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No. 4(1)/2013-DPE (GM)/FTS-1835 dated 22-05-2018.

#### **17.1A SOLE EXPERT**

Matters which, by the terms of this Agreement, the Parties have agreed to refer to an expert and any other matters which the Parties may agree to so refer, may be referred to a sole expert ("Expert") who shall be an independent and impartial person of international standing with relevant qualifications and experience, appointed by agreement between the Parties and who shall not, by virtue of nationality, personal connection or commercial interest, have a conflict between his/her own interest and his/her duty as a sole expert. In the event that the Parties fail or are unable, to agree on an Expert within 30 days or such longer period as may be mutually agreed by Parties, the matter shall be referred to [Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) / Conciliation or Arbitration] pursuant to this Article 17. Any Expert appointed shall be acting as an expert and not as an arbitrator and the decision of the Expert on matters referred to him/her shall be final and binding on the Parties and shall not be subject to [AMRCD / Conciliation and Arbitration]. The Parties intend that the Expert will primarily deal with "technical matters" (meaning matters involving issues including metering or measurement of crude oil/gas and payment disputes which are capable of determination by reference to engineering or scientific or commercial knowledge and practice). The fees and expenses of an Expert appointed by the Parties shall be borne equally by the Parties.

**17.02. For others: As stipulated under:**

**17.02.01. Resolution of disputes through conciliation by Outside Expert Committee (OEC) :**

(Not applicable in cases valuing less than Rs 10 lakhs):

Parties hereby agree as under:

If any difference or dispute (hereinafter referred as "Dispute") under the Contract arises, the party shall give a 60 days written notice ("Dispute Notice") to the identified officer of the other party mentioned in the Contract giving details of the Dispute. The Parties shall use all reasonable endeavors to resolve the Dispute mutually and amicably. All efforts by either party within these 60 days Dispute Notice Period shall be kept confidential by both the parties under Section 75 of the Arbitration and Conciliation Act, 1996. Parties shall not rely upon any views expressed or suggestions made by the other party, admissions made by the other party or the fact that the other party had indicated his willingness to enter into a settlement as evidence in any Forum / arbitration / court proceeding.

If Parties are unable to resolve the Dispute amicably within 60 days of receipt of the Dispute Notice, then after expiry of the 60 days' Dispute notice period, the aggrieved Party can refer the Dispute to conciliation and / or arbitration subject to terms and conditions contained herein below:

1. Parties further agree that following matters shall not be referred to conciliation or arbitration:
  - i) Any claim, difference or dispute relating to, connected with or arising out of ONGC's decision to initiate any proceedings for suspension or banning, or decision to suspend or to ban business dealings with the Bidder / Contractor/Buyer and/or with any other person involved or connected or dealing with bid / contract / bidder / Contractor/Buyer.
  - ii) Any claim, difference or dispute relating to, connected with or arising out of ONGC's decision under the provisions of Integrity Pact executed between ONGC and the Bidder / Contractor/Buyer.

2. Conciliation: (Not applicable in cases valuing less than Rs 10 lakhs)

If any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, in connection with construction, meaning, operation, effect, interpretation of the contract or breach thereof which parties are unable to settle mutually, the same may first be referred to conciliation through Outside Expert Committee ("OEC") to be constituted by CMD, ONGC as provided hereunder:

17.02.01.01. Proposal for OEC

17.02.01.01.01. Conciliation through OEC will be resorted in cases involving disputed amount up to Rs. 250 crores only. The disputed amount will be calculated by considering the amount of claim and counter-claim of the parties.

17.02.01.01.02. Claimant shall give notice for conciliation. In cases where the Contractor/Buyer is claimant then the notice shall be given to the concerned ONGC office as per the contract, clearly bringing out the points of dispute and the amount claimed with documents in support of the claim and the party concerned shall not raise any new issue thereafter.

17.02.01.02. Constitution of OEC

17.02.01.02.01. CMD, ONGC will have the sole discretion to constitute OEC. OEC will be formed from the panel of experts maintained by ONGC and will normally comprise of three members, one member from each category i.e. Technical; Finance/Commercial; and Legal. However, there will be a single member OEC for disputes involving a claim and counter claim (if any) upto Rs 1 crore, CMD will have authority to reconstitute an OEC to fill any vacancy or if any OEC member is not available to attend the OEC Meetings.

17.02.01.02.02. Upon constitution of the OEC, Chief Legal Services, ONGC will issue the appointment letters to OEC members and the parties concerned.

17.02.01.02.03. The OEC members shall give a declaration of independence and impartiality (in proper format) to both the parties before the commencement of the OEC proceedings.

17.02.01.03. Proceedings before OEC

17.02.01.03.01. The claimant shall submit its statement of claims to OEC members, and to the parties prescribed in the appointment letter within 30 days of the issue of the appointment letter (in proper format).

- 17.02.01.03.02. The respondent shall file its reply and counter claim (if any) within 30 days of the receipt of the statement of claims.
- 17.02.01.03.03. Parties may file their rejoinder/additional documents if any in support of their claim/counter claim within next 15 days. No documents shall be allowed thereafter, except with the permission of OEC.
- 17.02.01.03.04. OEC will commence its meetings only after completion of the pleadings.
- 17.02.01.03.05. In case of 3 members OEC, 2 members will constitute a valid quorum and the meeting can take place to proceed in the matter after seeking consent from the member who is not available. If necessary video conferencing may be arranged. However, OEC Recommendations will be signed by all Members. Further, efforts must be made for unanimous recommendations.
- 17.02.01.03.06. The parties shall be represented by their in-house employees/ executives. No party shall bring any advocate or outside consultant/advisor/agent. Ex-officers of ONGC who have handled the matter in any capacity are not allowed to attend and present the case before OEC on behalf of Contractor/Buyer. However, ex-employees of parties may represent their respective organizations.
- 17.02.01.03.07. Solicitation or any attempt to bring influence of any kind on either OEC Members or ONGC is completely prohibited in conciliation proceedings and ONGC reserves the absolute right to close the conciliation proceedings at its sole discretion if it apprehends any kind of such attempt made by the Contractor/Buyer or its representatives.
- 17.02.01.03.08. Parties agree to rely only upon documentary evidence in support of their claims and not to bring any oral evidence in the OEC proceedings.
- 17.02.01.03.09. OEC will give full opportunity of hearing to the parties before giving its recommendations.
- 17.02.01.03.10. OEC will conclude its proceedings in maximum 10 meetings, and give its recommendations within 90 days of its first meeting. OEC will give its recommendations to both the parties recommending possible terms of settlement CMD, ONGC may extend the time/ number of meetings, in exceptional cases, if OEC requests for the same with sufficient reasons.
- 17.02.01.03.11. OEC members will be paid fees and provided facilities (as detailed under Article 17.02.01.05) hereinafter, subject to revision by ONGC from time to time and subject to Government guidelines on austerity measures, if any.
- 17.02.01.03.12. Depending upon the location of the OEC members and the parties, the venue of the OEC meeting shall be either Delhi or Mumbai whichever is most economical from the point of view of travel and stay etc.
- 17.02.01.03.13. Parties shall not claim any interest on claims/counterclaims from the date of notice invoking conciliation till execution of settlement agreement, if so arrived at. In case, parties are unable to reach a settlement, no interest shall be claimed by either party for the period from the date of notice invoking conciliation till the date of OEC recommendations and 30 days thereafter in any further proceeding.
- 17.02.01.03.14. Legally, parties are under no obligation to refer a dispute to conciliation or continue with conciliation proceedings. Parties are free to terminate the conciliation proceedings at any stage as provided under the Arbitration and Conciliation Act, 1996.
- 17.02.01.04. Actions after OEC Recommendations
- 17.02.01.04.01. The recommendations of OEC are non-binding and the parties may decide to accept or not to accept the same. Parties are at liberty to accept the OEC recommendation with any modification they may deem fit.

- 17.02.01.04.02. The Contractor/Buyer shall give its response to ONGC within 7 days receiving OEC Recommendation.
- 17.02.01.04.03. If the Recommendations are acceptable to the Contractor/Buyer partly or fully, ONGC will consider and take a decision on OEC recommendations. Key Executive shall communicate the decision of ONGC to the Contractor/Buyer, if decision of ONGC is acceptable to the Contractor/Buyer, a settlement agreement under Section 73 of Arbitration and Conciliation Act, 1996 will be signed within 15 days of Contractor/Buyer's acceptance and same shall be authenticated by all OEC Members.
- 17.02.01.04.04. The timelines mentioned in the above guidelines are with an objective to achieve expeditious conclusion of OEC proceedings. However, it does not mean that any action beyond the timelines will be invalid. However, the party concerned will make all efforts to complete the actions within the stipulated time.
- 17.02.01.04.05. The parties shall keep confidential all matters relating to the conciliation proceedings including minutes of OEC meetings and Recommendations of OEC. Parties shall not rely upon them as evidence in any Forum / arbitration / Court proceeding, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,
- a. views expressed or suggestions made by the other party in respect of a possible settlement of the dispute
  - b. admissions made by the other party in the course of arbitration proceeding;
  - c. proposals made by the OEC;
  - d. the fact that the other party had indicated his willingness to accept a proposal for settlement made by the OEC.
- 17.02.01.04.06. Confidentiality extends also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement. This stipulation will not apply to disclosure made by ONGC to Govt. of India or its authorities, if required.
- 17.02.01.04.07. Subject to terms and conditions contained in the above paras, the provisions of the Part III of Arbitration and Conciliation Act, 1996 shall be applicable to the conciliation proceedings and the parties and the OEC members shall be bound by the same.

17.02.01.05. Fees and facility to the OEC Members:

OEC members shall be entitled to the following fees and facilities (All the expenditure incurred in the OEC proceedings shall be shared by the parties in equal proportion. The parties shall maintain account of expenditure and present to the other for the purpose of sharing on conclusion of the OEC proceedings):

Sl. No.	Fees/Facility	Entitlement	To be paid by
i.	Fees	Rs. 20,000 per meeting subject to maximum of Rs. 2,00,000 for the whole case. In addition, one OEC member chosen by OEC shall be paid an additional amount of Rs. 10,000 towards secretarial expenses in writing minutes/ OEC Recommendations.	Contractor/Buyer
ii.	Fee for attending	Rs. 10,000	Contractor/Buyer

	meeting to authenticate the settlement agreement		
iii.	Transportation in the city of meeting	Car as per entitlement of Rs. 2,000 per day.	Contractor/Buyer
iv.	Venue for meeting	ONGC conference rooms/Hotels	ONGC
Facilities to be provided to the out-stationed member			
v.	Travel from city of residence to the city of meeting	Business class air tickets/ first class train tickets/ Luxury car/ reimbursement of actual fare. However, entitlement of air travel by Business class shall be subject to austerity measures, if any, ordered by Govt. of India.	Contractor/Buyer
vi.	Transport to and fro airport/railway station in the city of residence	Car as per entitlement of Rs. 3,000 per day.	Contractor/Buyer
vii.	Stay for out-stationed members	5 Star hotels	ONGC
viii.	Transport in the city of meeting	Car as per entitlement of Rs. 2,000 per day.	Contractor/Buyer

17.02.02. Resolution of disputes through ARBITRATION:

**(Applicable in cases of Supply Orders/Contracts with firms, other than Public Sector Enterprises) (Not applicable in cases valuing less than Rs. 5 lakhs)**

- 17.02.02.01. There shall be no arbitration for disputes involving claims upto Rupees 25 lakhs and more than Rupees 100 crore. Disputes involving claims above Rs. 100 crores shall be adjudicated under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.
- 17.02.02.02. Arbitration can be invoked by giving Invocation Notice only after expiry of 60 days' period as per Dispute Notice stipulated in para above.
- 17.02.02.03. The party wishing to refer a Dispute to Arbitration shall give notice to the other party specifying all the points of Disputes with details of the amount or claim to be referred to arbitration ("Invocation Notice"). If the claim is in foreign currency, the claimant shall indicate its value in Indian Rupee also. The closing market rate in an exchange declared by SBI on the date prior to the date of notice should be adopted for conversion of foreign currency in Indian Rupees.
- 17.02.02.04. For a dispute involving claims above Rs. 25 lacs and upto Rs. 5 crores, in case other party is Claimant, ONGC will forward a list containing names of five jurist to the other party for selecting one from the list who will be appointed as sole arbitrator by ONGC. In case ONGC itself is the claimant, it shall appoint the Sole Arbitrator by invoking the Arbitration clause and inform the Contractor/Buyer. Such dispute shall be resolved by fast track procedure specified in Section 29B of the Arbitration and Conciliation Act, 1996.

- 17.02.02.05. For a dispute involving claims above Rs. 5 crores and upto Rs. 100 crores, the claimant shall appoint an Arbitrator and communicate to the other party in the Invocation Notice itself along with copy of disclosure made by nominated Arbitrator in the form specified in the Sixth Schedule of the Arbitration and Conciliation Act, 1996. For the purpose of Section 21, the Arbitration proceedings shall commence only upon date of receipt of Invocation Notice complete in all respects mentioned above.
- The other party shall then appoint the second Arbitrator within fifteen days from the receipt of written notice. The two Arbitrators appointed by the parties shall appoint the third Arbitrator, within 30 days, who shall be the Presiding Arbitrator.
- The parties agree that they shall appoint only those persons as arbitrators who accept the conditions of this arbitration clause. No person shall be appointed as arbitrator or presiding arbitrator who does not accept the conditions of this arbitration clause.
- 17.02.02.06. For the purpose of appointment of Arbitrator(s), claims amount shall be computed excluding claim for interest, if any.
- 17.02.02.07. Parties agree that neither party shall be entitled for any pre-reference or pendent-lite interest, i.e., date of cause of action till date of Award by Arbitral Tribunal. Parties agree that claim for any such interest shall not be considered and shall be void. The Arbitrator or Tribunal shall have no right to award pre-reference or pendent-lite interest in the matter.
- 17.02.02.08. The fees payable to each Arbitrator shall be as per rules framed by the High Court in whose territorial jurisdiction as per contract and seat of arbitration is situated. In case no rules have been framed, the fees prescribed may be as per Fourth Schedule of Arbitration and Conciliation Act, 1996. However, Arbitrator may fix their fees keeping the aforesaid schedule as guiding factor.
- 17.02.02.09. If after commencement of the Arbitration proceedings, the parties agree to settle the dispute mutually or refer the dispute to conciliation, the arbitrators shall put the proceedings in abeyance until such period as requested by the parties. Where the proceedings are put in abeyance or terminated on account of mutual settlement of dispute by the parties, the fees payable to the arbitrators shall be determined as under:
- a. 20% of the fees if the claimant has not submitted statement of claim.
  - b. 40% of the fees if the pleadings are complete.
  - c. 60% of the fees if the hearing has commenced.
  - d. 80% of the fees if the hearing is concluded but the award is yet to be passed.
- 17.02.02.10. Each party shall be responsible to make arrangements for the travel and stay etc of the arbitrators appointed by it. Claimant shall also be responsible for making travel/stay arrangements for the Presiding Arbitrator and the expenses incurred shall be shared equally by the parties.
- In case of Sole Arbitrator, ONGC shall make all necessary arrangements for his travel/stay and the expenses incurred shall be shared equally by the parties.
- 17.02.02.11. The seat of Arbitration shall be the place from where LOA/NOA has been issued. For the sake of convenience, Parties may agree to hold the proceedings at any other venue. The arbitration shall be conducted in the English language. Insofar as practicable, the parties shall continue to implement the terms of the Contract notwithstanding the initiation of Arbitration proceedings.
- 17.02.02.12. Parties agree that neither party may amend or supplement its claim during the course of arbitral proceedings.

- 17.02.02.13. The parties may, after invocation of dispute, agree for sharing the cost of Arbitration equally on 50:50 basis.
- 17.02.02.14. Subject to the above, the provisions of the Arbitration and Conciliation Act, 1996 as amended and applicable from time to time shall apply to the arbitration proceedings under this Contract.

## **Article 18**

### **TAXES AND DUTIES**

- 18.01. All applicable taxes and duties including VAT, Sales Tax, octroi, entry taxes, Cess, TCS, GST, service tax and excise payable in respect of any Seller's Gas delivered/ Minimum Guaranteed Offtake hereunder will be to the Buyer's account and the Buyer agrees to pay the Seller for such taxes and duties along with price of the gas. In case of interstate sale Buyer shall be obligated to provide Form C promptly to enable timely submission by the Seller to the relevant tax authorities, failing which differential tax along with interest and penalty, if any, shall be on account of Buyer.
- 18.02. The amount of any taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental, local or port authority on the Seller's Gas supplied hereunder, or on its export, delivery, transportation, ownership, sale or use, in respect of any stage after title and risk in such Seller's Gas has transferred to the Buyer shall be to the Buyer's account.
- 18.03. Wherever for the purpose of administrative convenience/ tax requirement or otherwise, Seller pays any tax, Buyer would reimburse the same to the Seller except any penalties, interest, etc. paid due to default of Seller. Buyer would extend full cooperation to the Seller in the matter of all the tax assessments.

## **Article 19**

### **TITLE AND RISK**

- 19.01. Title and risk in the Seller's Gas shall pass from Seller to Buyer at the Delivery Point i.e. at the downstream flange of the pipeline at the outlet of the Gas Metering Station. Upon delivery at the Delivery Point, Buyer shall be deemed to be in exclusive control and possession of Seller's Gas and shall be fully responsible for and shall indemnify Seller against any damages or injury resulting from the transportation, handling or use of the Seller's Gas.

## **Article 20**

### **LAWS GOVERNING THE AGREEMENT**

- 20.01. The Agreement shall be governed by Indian Laws, rules and regulations, notifications etc. issued under such Laws both procedural as well as substantive, as may be amended from time to time. Courts at \_\_\_\_\_ (Andhra Pradesh) / Jurisdictional Courts of Andhra Pradesh. shall have exclusive jurisdiction on the matters arising under the Agreement.

## **Article 21**

### **RESTRICTIONS ON USE OF GAS**

- 21.01. Buyer is entitled to use the gas for any purpose other than those contemplated in the Bidding document/GSA. Prior to changing the usage of gas, intimation by the BUYER through Email/Fax/Letter shall be given to SELLER.

21.02. BUYER shall not misuse the gas or use it for any anti national activity/anti-social activity. If the Buyer does so, ONGC will not be liable for such misuse or such activity and shall be entitled to stop the gas forthwith as soon as it comes to the notice of ONGC.

## **Article 22**

### **PREVIOUS CORRESPONDENCE**

22.01. All discussions and meetings held and correspondences exchanged between the BUYER and the SELLER in respect of the AGREEMENT and any decisions arrived at therein in the past and before coming into force of this AGREEMENT are hereby superseded by this AGREEMENT and no reference of such discussions or meetings or past correspondence will be entertained by either the SELLER or the BUYER for interpreting the AGREEMENT or otherwise.

## **Article 23**

### **AMENDMENTS**

23.01. Subject to Article 15, any amendment to any of the clauses of the Agreement will be proposed and sent in writing to the other party proposing such amendment and if both the SELLER and the BUYER agree to such amendment then the same shall be incorporated in the Agreement and shall become binding on the parties as such from the date the agreement is reached, unless otherwise agreed to.

## **Article 24**

### **INDEMNITIES**

- 24.01. Any loss, damage, liability, cost and/or expense related to:
- a) any injury to, ill health, disease or death of an employee or a contractor or subcontractor of a Party (or any employee of such contractor or subcontractor); and/or
  - b) actual physical loss of or to Party's facilities;
- which is caused by either Party's operations at or near the Delivery Point, shall be borne by the Party causing such loss, damage and cost of the Party which has engaged the relevant employee or contractor or sub-contractor, causing such loss or, damage and the Party causing such loss, damage, liability, cost and/or expense shall defend, indemnify, hold harmless and release the other Party in respect of such loss, damage, liability, cost and/or expense.
- 24.02. Whenever a Party (the "Indemnitee") becomes aware of a claim in respect of which it will or may be entitled to require the other Party (the "Indemnitor") to defend, indemnify, hold harmless and release it pursuant to Article 24.01 above, the Indemnitee shall promptly notify the Indemnitor and the Indemnitee shall take such action as the Indemnitor may reasonably request to avoid, dispute, resist, appeal, compromise or defend the relevant claim and any judgment in respect thereof, subject to the Indemnitee being indemnified and secured to its reasonable satisfaction by the Indemnitor against all losses, costs, damages and expenses relating to such claim including, without limitation, those thereby incurred or to be incurred. If the Indemnitor does not request the Indemnitee to take any appropriate action as aforesaid, or shall fail to indemnify and secure the Indemnitee to its reasonable satisfaction within twenty-eight (28) Days of the notice to the Indemnitor, the Indemnitee shall be free to pay or settle the relevant claim on such terms as it may in its absolute discretion think fit and thereafter recover from the Indemnitor pursuant to the Indemnitee's rights under this Article.

## Article 25

### RIGHT TO STOPPAGE OF GAS/TERMINATION

25.01. Seller may at its sole discretion, and in addition to any other legal remedies it may have, forthwith upon giving [30] days' notice to Buyer, suspend deliveries of the Seller's Gas or terminate the Agreement if:

- i) Buyer for any reason whatsoever fails to make any payment due to Seller under the Agreement by the due date, failure remains un-remedied at the expiry of the aforesaid notice period; or
- ii) Buyer is in substantial breach of its material obligations under the Agreement and such breach or failure remains un-remedied at the expiry of the aforesaid notice period; or
- iii) Buyer fails to take delivery of Seller's Gas it is obligated to under this Agreement and such failures are not excused by any other provision in the Agreement; or
- iv) A Buyer event of Force Majeure continues for [90] days or more; or
- v) A petition is filed with the court having jurisdiction or an order is made or an effective resolution is passed for the dissolution, liquidation, or winding up of Buyer; or
- vi) Buyer becomes insolvent or is adjudged bankrupt or makes an assignment for the benefit of its creditors or does not pay or is in Seller's reasonable opinion expected to be unable or unwilling to pay its debts as the same become due; or
- vii) A receiver is appointed for the whole or significant part of the assets or undertaking of Buyer; or
- viii) Buyer ceases or threatens to cease to carry on its business or a major part thereof or a distress, execution or other process is levied or enforced or sued upon or against any significant part of the property of Buyer and is not discharged until [90] days; or
- ix) If Buyer is adjudged bankrupt or enters into an agreement with its creditors or takes advantage of any law for the benefit of debtors; or
- x) Buyer has passed a resolution to apply to a competent court for liquidation;
- xi) Any reduction in availability of SELLER's gas deliverable hereunder, including adverse reservoir behaviour in the Producing Areas, which in the SELLER's opinion as a prudent operator was not reasonably foreseeable;

25.02. Buyer may at its sole discretion, and in addition to any other legal remedies it may have, forthwith upon giving [30] days' notice to Seller, terminate the Agreement if:

- i) A Seller event of Force Majeure continues for [90] days or more; or
- ii) A petition is filed with the court having jurisdiction or an order is made or an effective resolution is passed for the dissolution, liquidation, or winding up of Seller; or
- iii) Seller becomes insolvent or is adjudged bankrupt or makes an assignment for the benefit of its creditors or does not pay or is in Buyer's reasonable opinion expected to be unable or unwilling to pay its debts as the same become due; or
- iv) A receiver is appointed for the whole or significant part of the assets or undertaking of Seller; or
- v) Seller ceases or threatens to cease to carry on its business or a major part thereof or a distress, execution or other process is levied or enforced or sued upon or against any significant part of the property of Seller and is not discharged until [90] days; or

- vi) If Seller is adjudged bankrupt or enters into an agreement with its creditors or takes advantage of any law for the benefit of debtors; or
- vii) Seller has passed a resolution to apply to a competent court for liquidation;

25.03. Subject to any other specific rights of termination contained in this Agreement, this Agreement shall continue in force for the duration stipulated in Article 02.01.

25.04. In the event of Seller suspending deliveries of Seller's Gas in any of these circumstances referred to in Article 25.01, Seller may, so long as the event continues, and in addition to any other legal remedies it may have, forthwith upon giving the appropriate notice to Buyer, terminate the Agreement.

25.05. If pursuant to the provisions of Article 25.03, Seller withholds, reduces or suspends delivery of the Seller's Gas, then Seller shall be under no obligation to make up any quantity of the Seller's Gas which would have been delivered to Buyer but for such withholding, reduction, or suspension.

25.06. Deleted

25.07. Any termination of the Agreement shall be without prejudice to the rights and obligations of Parties accrued up to the date of termination.

**25.08. Suspension:**

Notwithstanding anything to the contrary express or implied elsewhere herein: Seller (without prejudice to its other rights) may at its sole discretion either terminate the Agreement forthwith or forthwith suspend delivery under the Agreement until further notice, on notifying the other party either orally (confirming such notification in writing) or by notice in writing, if Buyer:

- i) Uses gas for activities which are anti-national or anti-social activity or against public interest.
- ii) Any reduction in availability of SELLER's Gas deliverable hereunder, including adverse reservoir behavior in the Producing Areas, which in the SELLER's opinion as a prudent operator was not reasonably foreseeable;

## **Article 26**

### **CONFIDENTIALITY**

26.01. Subject to the further provisions of this Article 26, each Party shall maintain confidentiality in accordance with the standards of care and diligence that it utilizes in maintaining its own confidential information with regards to the terms of this Agreement and any information supplied or obtained by a Party pursuant to the terms hereof ("Confidential Information").

26.02. Notwithstanding Article 26.01, either Party may disclose information that would otherwise be Confidential Information if and to the extent:

- i) Required by law; or
- ii) Required by any securities exchange or regulatory or governmental body or government department to which such Party is subject or submits, wherever situated, whether or not such requirement for information has the force of law; or
- iii) Disclosed to the professional advisers, auditors, bankers of a Party provided that such Party procures that such persons protect such Confidential

- Information on the same terms as and agrees to be bound by as if it were a Party to this Article; or
- iv) The Confidential Information is already in the public domain through no fault of that Party; or
  - v) The other Party has given prior written approval to the disclosure; or
  - vi) It is disclosed to any potential assignees or transferees of such Party provided that such Party procures an undertaking in writing that the potential assignee or transferees protects such Confidential Information on the same terms and agrees to be bound by as if it were a party to this Agreement. Both the BUYER and the SELLER shall maintain confidentiality unless required under law to disclose.

## **Article 27**

### **NO AGENCY**

27.01. Neither Party shall, and each shall procure that its directors, officers and employees in that capacity, shall not, represent itself or otherwise hold itself out as an agent or other representative of the other Party or otherwise hold itself out as having any authority to bind the other of them unless such person is validly authorized to do so.

## **Article 28**

### **EFFECT OF ILLEGALITY, ETC.**

28.01. The invalidity, illegality or unenforceability of any of the terms of this Agreement in any respect for whatever reason under the law of any jurisdiction, shall not affect or impair the validity, legality or enforceability in that jurisdiction of any other provision of this Agreement, or under the law of any other jurisdiction of that or any other provision of this Agreement. The Parties shall make all reasonable endeavours to agree as far as possible that invalid terms shall be amended or replaced by valid terms with a similar effect in order to maintain the purpose and continuity of this Agreement and till the amendments are carried out, such invalid terms will be inoperative in relation to the rights and obligations of the Parties under this Agreement.

## **Article 29**

### **GOOD FAITH**

29.01. Each of the Parties shall, and shall use all reasonable endeavours to procure that any necessary third party shall, at its own cost, so execute or perform all such further deeds, documents, assurances, acts and things as may reasonably be required to perfect the transaction referred to herein, and to give effect to the terms of this Agreement.

## **Article 30**

### **WAIVER**

30.01. No delay or omission on the part of either Party in exercising any right, power or remedy provided by law or under this Agreement, nor any indulgence granted by any Party to any other Party, shall impair such right, power or remedy, or be constructed as a waiver thereof, nor shall the single or partial exercise of any right, power or remedy provided by law or under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

30.02. Any waiver shall relate only to the matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

### **Article 31**

#### **CUMULATIVE REMEDIES**

31.01. Except as expressly provided herein, the rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

### **Article 32**

#### **ENTIRE AGREEMENT**

32.01. Each of the Parties hereby acknowledges that, in entering into this Agreement it has not relied on any representation or warranty save as set out expressly herein or in any document referred to herein.

### **Article 33**

#### **NO PARTNERSHIP**

33.01. Nothing in this Agreement shall constitute or be deemed to constitute the relationship of principal and agent or of a partnership between the Parties and neither of them shall have any opportunity to bind the other in that capacity.

### **Article 34**

#### **PRIVITY**

34.01. This Agreement is intended solely for the benefit of the Parties and is not intended to confer any benefits on, or create any rights in favour of any other person.

### **Article 35**

#### **APPROVALS**

35.01. Each Party shall be responsible for obtaining all consents, authorizations, approvals and assurances of whatsoever nature necessary to enable it to comply with its obligations under the Agreement.

### **Article 36**

#### **CONSEQUENTIAL LOSS, LIMITATION OF LIABILITY**

36.01. Except as expressly provided for in this Agreement, neither BUYER nor SELLER shall be liable for consequential, indirect or special losses/damages or for loss of control, profit or product of any kind arising out of or in any way connected with the conclusion, the performance or non-performance of this Agreement, and whether arising in contract, tort including negligence or breach of duty, statutory, or otherwise.

## Article 37

### REPRESENTATIONS

37.01. Without prejudice to any liability for any fraudulent misrepresentation, each of the Parties hereby acknowledge to the other Party that it has not entered into this Agreement in reliance upon any representations made by such other Party (other than any made fraudulently) and accordingly, neither Party shall have any remedy against the other Party in relation to misrepresentation.

## Article 38

### NOTICES

38.01. Any notice or other communication required to be given pursuant to this Agreement shall be given by delivering the same by hand at, or by sending the same by registered/speed post/ courier (air mail if to an address outside the country of posting) to the address of the relevant Party set out in this Agreement or by fax, e-mail using the relevant number set out below or such other address as either Party may notify to the other from time to time. Any notice or other communication given as aforesaid shall be deemed to have been given at the time of delivery (if delivered by hand) or on transmission of the recipient's automatic answerback (if sent by fax) or when received (if sent by post/ e-mail):

For Seller: As set forth in the Schedule A as Seller's Address; and

For Buyer: As set forth in the Schedule A as Buyer's Address.

## Article 39

### ADDRESSES OF PARTIES

39.01. The address of the parties hereto unless changed by written notification to be given at least 15 days in advance by Registered letter prior to proposed date of change, will be as follows for the operation of the Agreement:

<u>THE SELLER</u>	<u>THE BUYER</u>
Asset Manager, OIL AND NATURAL GAS CORPORATION LIMITED, Eastern Offshore Asset, Kakinada, Dist. - East Godavari Andhra Pradesh. Pin: - 533003. Phone No.: 0884-2302200 Fax. Number: 0884-2374104 e-mail: mktg_eoa@ongc.co.in	_____ _____ _____ _____ Pin:- (India). Phone Number: (STD Code)- (-----) Fax. Number: (STD Code) - (-----) e-mail:

IN WITNESS WHEREOF the parties hereto acting through their properly constituted representatives have set their hands to cause this Agreement signed and executed for and on their behalf.

FOR & ON BEHALF OF THE SELLER	FOR & ON BEHALF OF THE BUYER
_____ Asset Manager, Eastern Offshore Asset	_____

<p><u>Witnesses</u></p> <p>1. _____</p> <p>2. _____</p>	<p><u>Witnesses</u></p> <p>1. _____</p> <p>2. _____</p>
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## Schedule A

Attached as Schedule A of the Gas Supply Agreement dated ----- between Oil and Natural Gas Corporation and \_\_\_\_\_

### Eastern Offshore Asset

**Production Field (s)/Area (s):** KG-DWN-98/2 Field

**Delivery Commencement Date:** XX.XX.XXXX[Actual commencement date or expiry of offtake window period, whichever is later]

**Expiry Date:** [.....] 1 year from Actual commencement date or expiry of offtake window period which-ever is earlier.

Location	Delivery Point (Abbreviated name of Meter)	Metering Measurement System	Frequency of Measurement	Tolerance in Quantity Measurement	Frequency of Calibration	Frequency of Quality Testing	Typical Delivery Pressure, Kg/Cm <sup>2</sup> g
ex-Odalarevu	<Work center to insert>	<Work center to insert>	Daily	As per AGA 3 & 8 standards	Monthly	<Work center to insert>	--

**Delivery Pressure:** - As indicated in the RFP

**Gas quality:** - To be analyzed at Seller's Laboratory, which buyer can have access.

**Seller's Address:** Asset Manager,

**OIL AND NATURAL GAS CORPORATION LIMITED,**

Eastern Offshore Asset,

2<sup>nd</sup> Floor, Subhadra Arcade, Bhanugudi Junction, Kakinada,

East Godavari Dist., Andhra Pradesh (India). Pin:- 533 003

Phone No.: 0884-2302200, Fax. Number: 0884-2374104

e-mail: [mktg\\_eoa@ongc.co.in](mailto:mktg_eoa@ongc.co.in)

**Buyer's Address:** [.....]

**Contact:** [.....]

**Phone number:** [.....]

**Fax number:** [.....]

**e-mail:**

## Schedule B

Attached as Schedule B of the Gas Supply Agreement dated \_\_\_\_\_ between Oil and Natural Gas Corporation Ltd. and \_\_\_\_\_

### Price:

- (a) Contract Gas price (in USD/MMBTU), rounded off to 2 decimals) under this Contract shall be the lower of:
- i. Reserve Price Plus {Quoted Premium}; and
  - ii. Ceiling Price

“Reserve Price” shall be the summation of 14%\*Dated Brent Price and \$1/MMBTU (mark-up)

“Dated Brent Price” for any month shall be the arithmetic average of the mean values of the high and low assessments of the benchmark crude oil “Dated Brent” (Platts Symbol: PCAAS00) as published in “Platts Crude oil Marketwire” in USD per barrel for each Day during the immediately preceding 3 (three) calendar months (rounded off to 3 decimals), from the relevant month in which gas supplies are made.

“Ceiling Price” for any month shall be the prevailing Ceiling Price on GCV basis, notified by PPAC from time to time for gas produced from discoveries in Deep-water, Ultra deep water and High Pressure-High Temperature areas

- (b) Provided further that the marketing margin of USD 0.20/MMBTU on Gross Calorific Value (GCV) basis would be charged in addition to the gas price indicated above, except in cases where MoP&NG/Govt. of India order/directives/guidelines exists regarding applicability of specific Marketing margin then the same shall be applicable.
- (c) The above gas price is ex-ONGC installation and is exclusive of Taxes, Duties, Cess, Service Tax, GST, TCS, Education Cess, Sales Tax/VAT, Octroi, and all other statutory levies as applicable at present or to be levied in future by the Central or State Government or Municipality or any other local body or bodies payable on sale/supply of GAS by Seller to the BUYER and these shall be borne by the BUYER over and above the aforesaid GAS price.
- (d) A factor of 1 MSCM = 39.68254 MMBTU will be used for invoicing purpose linked with Gross Calorific Value (GCV) of 10,000 Kcal/SCM. The Seller shall further determine the quantity (in MMBTU) of gas delivered at the Delivery Point based on the actual gross calorific value of Seller’s Gas delivered during the Billing Period by multiplying with a factor of actual GCV and dividing by 10000.
- (e) The above price in USD/MMBTU would be converted to price in INR/MMBTU on monthly basis at the RBI reference exchange rate of the month, previous to the month during which supply of gas is made. Price in INR/ MMBTU shall be rounded off to the nearest two decimal places. The RBI reference exchange rate of the month would be calculated by taking the average of the RBI reference exchange rates for all the days in the relevant period/ month for which the rate is available on the website of RBI or of the Financial Benchmarks India Pvt Ltd (FBIL). The monthly average RBI exchange rate so calculated shall be rounded off to two decimal places. The rates can be downloaded from FBIL website: <http://www.fbil.org.in>.

- (f) In case PPAC/ MoPNG, Govt. of India discontinues notifying the Ceiling Price during the pendency of the Contract, then from such effective date, the applicable Contract Gas Price shall be “Reserve Price Plus {*Quoted Premium*}” as brought out above under para a ;

## Schedule C

Attached as Schedule C to the Gas Supply Agreement dated \_\_\_\_\_ between Oil and Natural Gas Corporation Limited and \_\_\_\_\_.

### Specifications - Gas quality:

Typical Gas Composition	Volume (%)
1. Combustible Hydrocarbon gases:	[90%] minimum
2. Non-combustible gases other than HC:	[5%] maximum
3. Gross Calorific Value (GCV):	-Kcal/SCM
4. Net Calorific Value (NCV):	-Kcal/SCM

The above gas shall meet the quality as per PNGRB (Access Code for Common Carrier or Contract Carrier Natural gas Pipelines) Regulations, 2008, which is as follows:

Parameter	Limit
Hydrocarbon Dew Point* (° Celsius), max	0
Water Dew Point* (° Celsius), max	0
H <sub>2</sub> S (PPM by wt. max.)	5
Total Sulphur (PPM by wt. max.)	10
Carbon Dioxide (Mole % max.)	6
Total Inerts (Mole%)	8
Temperature(° Celsius), max	55
Oxygen (% Mole vol. max.)	0.2

\*At Buyer's pipeline operating pressure.

## Schedule D

Attached as Schedule D to the Gas Supply Agreement dated \_\_\_\_\_ between Oil  
and Natural Gas Corporation Limited and \_\_\_\_\_

Profile of gas availability for Sale  
<To be inserted based on field by work centre>

Period	Gas Quantity, SCMD

## Schedule E

To: [SELLER/ BENEFICIARY]  
[ADDRESS]

IRREVOCABLE STANDBY LETTER OF CREDIT. NO.: \_\_\_\_\_

Name of Beneficiary: ONGC, <Details of ONGC Asset to be mentioned >

Name of Applicant: <Buyer Details to be mentioned>

Amount of Letter of Credit: ₹\_\_\_\_\_. Expiry Date: \_\_\_\_\_.

At the request of the \_\_\_\_\_ <Name and Address> (“Applicant”), we, \_\_\_\_\_, <Name and Address> (“Issuing Bank”) hereby establish unconditional irrevocable standby Letter of Credit no. \_\_\_\_\_ Dt. \_\_\_\_\_ in favour of Oil and Natural Gas Corporation Ltd., <Details of ONGC Asset> (the “Beneficiary”) for Rs. \_\_\_\_\_ (the “Face Value”) as per following terms and conditions:-

1. This is an unconditional STANDBY IRREVOCABLE and without recourse Letter of Credit, valid up to \_\_\_\_\_ for submission of documents for negotiation and payment to the bank.
2. The face value of this Letter of Credit shall be equal to Rs \_\_\_\_\_ (Rupees \_\_\_\_\_) (Equivalent to 45 days of gas supply).
3. This Letter of Credit is issued under \_\_\_\_\_ [Details of Tender/NOA/Contract/Agreement to be mentioned] dated \_\_\_\_\_ to cover payment for supply of gas by ONGC (Beneficiary) to the Buyer as per AGREEMENT executed between Buyer and Beneficiary and also interest on delayed payment including payment for Quarterly Minimum Guaranteed offtake (QMGO) quantity. This Letter of Credit will be valid for any of the documents such as Invoices/Provisional invoices/Debit notes/Statement of claim/ Demand letter etc. raised under the aforesaid contracts/agreement, as well as supplementary agreements, Side Letters, Term Sheet, amendments etc. and other addenda thereof.
4. Notwithstanding the above provision, it is further provided that if gas Buyer continues to draw gas supplies from ONGC beyond validity period of the existing Agreement (without written extension prior to expiry of the Agreement validity for any reason whatsoever) payments due for such gas supplies and such period (including QMGO charges) shall be fully covered by this letter of credit within the validity of the letter of credit.

5. All bank charges including opening, negotiation, handling, amendment, renewal, interest charges, and any other charges related to this Letter of Credit will be borne by the Applicant. However, charges of the advising bank shall be borne by the Beneficiary.
6. Payment against the Letter of Credit shall be released immediately without demur on presentation of a copy of any of the documents such as duly signed Invoices/Provisional invoices/ Debit notes/ Statement of claim / Demand Letter etc. by ONGC.
7. Draft / Hundi (format enclosed) drawn under the Letter of Credit (L/C) would mark the L/C Number \_\_\_\_\_ dated \_\_\_\_\_.
8. If the payment to ONGC/ONGC banker is not made at sight of documents, interest @ \_\_\_\_\_ (rate as applicable on delayed payment under the relevant GSA) per annum compounded quarterly for each day payments are overdue until paid, shall be charged.
9. This Letter of Credit (L/C) shall also cover requests against partial payment and/or multiple drawings.
10. This unconditional Standby Irrevocable Letter of Credit is available for negotiation directly with the issuing Bank/Branch or through ONGC's bankers without recourse to the Applicant.
11. The validity of Letter of Credit will be up to \_\_\_\_\_. The Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, if at least one month (30 days) prior to the expiry of this Letter of Credit, Applicant fails to renew/ extend such Letter of Credit or replace it with another Letter of Credit as acceptable to the Beneficiary then, the issuing banker shall make full payment of the Letter of Credit face value upon receipt of Beneficiary letter/certificate that Applicant has failed to replace or renew the Letter of Credit. Such Amount received by the Beneficiary, would be treated as a deposit qua payments/receivables from the Applicant towards future Gas Supplies.
12. The Issuing Bank undertakes not to amend any of the terms and conditions of this letter of credit (L/C) without prior consent of Beneficiary during the validity of this Letter of Credit.
13. The issuing Bank certifies that the officer(s) signing this Letter of Credit is (are) authorized for this purpose and shall remain binding upon the issuing bank.
14. The Issuing Bank shall forward and submit this Letter of Credit to the Advising Bank for advising of this Letter of Credit to Beneficiary.

Yours faithfully

(Sign of authorized Officer of Bank)

**Appendix A**  
**Testing and Measurement Standards**

Sampling	MPMS-14 of API
Composition	ISO 6974 and ISO 6975
H <sub>2</sub> S	ASTM D 4084-94 and ASTM-D 4810
Specific Gravity and Calorific Value:	ISO 6976

**Measurement System**

Orifice Meter	AGA-3 along with AGA8/MPMS of API
Turbine Meter	AGA-7 along with AGA 8
Ultrasonic Meter	AGA-9