



AGAS/G&C/OTHR/049/16

September 6, 2016

The Managing Director
Banner Energy Limited
Babafemi Osoba Crescent
Off Admiralty Road
Lekki Phase 1
Lagos

Dear Sir,

RE: GSPA HEADS OF TERMS – BANNER ENERGY LIMITED

We refer to the above subject.

Attached herewith is your copy of the executed Heads of Terms.

A draft Gas Sales and Purchase Agreement (GSPA) will be sent to you in the coming weeks.

Thank you and we look forward to progressing discussions.

Yours sincerely,

Ayokunle Iyanda
Senior Manager, Gas Markets

Accugas Limited
35 Kofo Abayomi Street
Victoria Island
Lagos, Nigeria

Registered Office as above
Directors: Phillip Ihenacho, Nkem Okoro, Stephen Tierney (British), Jeffrey Corey (American)

T +234 (0)1 277 0600
www.sevenenergy.com

Registered Number: RC 881197

XS

August 2016

ACCUGAS LIMITED

and

BANNER ENERGY LIMITED

HEADS OF TERMS

for a

GAS SALES AND PURCHASE AGREEMENT

N.I.

NE

This Heads of Terms ("HoT") is entered into on 29th August, 2016 by and between:

- (1) **ACCUGAS LIMITED**, a company organised and existing under the laws of Nigeria having its registered office at 35 Kofo Abayomi Street, Victoria Island, Lagos, Nigeria (the "**Seller**"); and
- (2) **BANNER ENERGY LIMITED**, a company organised and existing under the laws of Nigeria having its registered office at [Plot 6, Babafemi Osoba Crescent, Off Admiralty Road, Lekki Phase 1, Lagos] (the "**Buyer**"),

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

WHEREAS the Seller wishes to sell, and the Buyer wishes to purchase, gas on the basis of a proposed legally binding agreement containing the key terms set out in this HoT (the "**GSPA**").

1. CONDITIONS PRECEDENT

- 1.1. The legal effectiveness of the GSPA will be subject to the satisfaction of certain conditions precedent as agreed between the Parties and set out in the GSPA, but which will include:
 - 1.1.1. the satisfaction by the Buyer of all requirements in respect of the provision of acceptable Credit Support; and
 - 1.1.2. Completion of construction and testing by the Seller of the pipeline infrastructure required to deliver gas to the Buyer under the GSPA.

2. START DATE AND TERM

- 2.1. The date from which all provisions under the GSPA become effective (the "**Start Date**") shall only occur once all conditions precedent under the GSPA have been satisfied or waived (where applicable), and is anticipated to be a date during the period July 2019 to December 2019, in accordance with the provisions of the GSPA.
- 2.2. The GSPA shall remain in full force and effect for a minimum period of fifteen (15) years from the Start Date (unless terminated earlier in accordance with the provisions of the GSPA), and may be extended for additional periods as may be agreed in writing by both Parties (the "**Term**").

3. DELIVERY POINT AND THIRD PARTY TRANSPORTATION

- 3.1. Title to and risk of loss of the gas shall transfer from the Seller to the Buyer at the Buyer's facility in Ikot Abasi, Akwa Ibom as set out in more detail in the GSPA (the "**Delivery Point**"), where the Buyer shall ensure that all necessary gas control and metering equipment reasonably required by the Seller shall be installed.
- 3.2. The transportation of gas [to/from] the Delivery Point may require the use of natural gas transportation facilities. The Parties agree that they shall comply as required with the transportation arrangements and any matters that may be necessary in the case of a requirement to use third party transportation.

4. SUPPLY OF GAS

- 4.1. Subject to the mutually agreed terms and conditions of the GSPA, on and from the Start Date and during the Term:
 - 4.1.1. the Seller shall make available for delivery to the Buyer at the Delivery Point; and
 - 4.1.2. the Buyer shall take at the Delivery Point, gas in the quantities, composition, at the price and in accordance with the other terms and conditions set out in the GSPA. *NK*

N7

- 4.2. The Buyer shall not be entitled to on-sell gas that is delivered by the Seller pursuant to the GSPA.

5. NOMINATIONS AND QUANTITIES

- 5.1. The Buyer shall specify the quantities of gas required to be delivered by the Seller to the Delivery Point each day in accordance with a monthly, weekly and daily forecasting and nomination procedure.
- 5.2. Subject to the other provisions of the GSPA, the maximum daily contract quantity of gas that the Buyer shall be entitled to nominate and that the Seller shall be obliged to supply under the GSPA shall be 130mmscf/d (the "DCQ").
- 5.3. The Buyer may nominate quantities of gas in excess of the DCQ ("**Overrun Gas**"), and the Seller shall use reasonable endeavours (but will not be obliged) to supply such quantities of Overrun Gas.

6. TAKE OR PAY

- 6.1. Each month the Buyer will take and pay for (or pay for if not taken) eighty per cent (80%) of the DCQ multiplied by the number of days in the relevant month, less quantities not taken due to force majeure; scheduled maintenance; and the Seller's failure to deliver gas in accordance with the terms of the GSPA (i.e. Off-Spec Gas, Shortfall Gas), (the "**Take or Pay Quantity**").
- 6.2. To the extent the aggregate quantity of gas taken by the Buyer in any month is less than the Take or Pay Quantity (the "**Deficiency Quantity**") then the Buyer shall, following the end of that month, pay to the Seller the value of the Deficiency Quantity for that month at the prevailing Contract Price (a "**Take or Pay Payment**").

7. MAKE-UP GAS

- 7.1. Where the Buyer has made a Take or Pay Payment, the Deficiency Quantity to which that Take or Pay Payment relates shall become "**Make-Up Gas**".
- 7.2. Where the Buyer has already taken the Take or Pay Quantity in any month and has accrued Make-Up Gas during the preceding twelve (12) month period which has not subsequently been taken in accordance with the provisions of this paragraph 7.2, the Buyer may, subject to the provisions of paragraph 5 above, nominate and take a quantity of such accrued Make-Up Gas, thereby reducing the Buyer's balance of Make-Up Gas available to be taken in future months. For the avoidance of doubt the Buyer will not be entitled to nominate and take Make-Up Gas that has been accrued for more than twelve (12) months.

8. SHORTFALL

- 8.1. If in any month the Seller has failed to deliver a quantity of gas equal or greater than the properly nominated quantity then the difference between the gas actually delivered and the nominated quantity is deemed to be "**Shortfall Gas**".
- 8.2. Shortfall Gas does not include any quantity of gas:
- 8.2.1. made available for delivery to the Buyer but which the Buyer has not taken;
 - 8.2.2. not made available for delivery as a result of force majeure or actions by the Buyer which prevents delivery;
 - 8.2.3. which:
 - 8.2.3.1. the Seller is excused from delivering due to scheduled maintenance; or
 - 8.2.3.2. is within 10% of the monthly quantity of gas nominated by the Buyer (the "**Shortfall Gas Tolerance**"); and
 - 8.2.4. where the quantity of gas not made available for delivery would be Make-Up Gas.

N-7.

- 8.3. If the Seller has failed to deliver a quantity of gas at least equal to that nominated and the resultant quantity of undelivered gas is within the Shortfall Gas Tolerance then the entire quantity of gas which the Seller has so failed to deliver will not be Shortfall Gas.
- 8.4. If the Seller has failed to deliver a quantity of gas at least equal to that nominated and the resultant quantity of undelivered gas is greater than the Shortfall Gas Tolerance then the entire quantity of gas in excess of the Shortfall Gas Tolerance which the Seller has so failed to deliver shall be Shortfall Gas.
- 8.5. If in respect of any month any quantity of Shortfall Gas arises then the Buyer will be entitled to nominate and take such quantities of Shortfall Gas in future months (after the Buyer has nominated and taken the relevant Take or Pay Quantity for that month) and the Seller will discount the prevailing Contract Price by 10% in respect of such quantities of delivered Shortfall Gas.

9. MEASUREMENT AND QUALITY

- 9.1. The Seller shall deliver gas to the Delivery Point which meets certain specifications as to pressure, temperature and composition that will be set out in detail in the GSPA. Any gas delivered by the Seller to the Delivery Point that does not meet those prescribed specifications shall be referred to as "Off-Spec Gas".
- 9.2. The Buyer shall measure and meter gas delivered at the Delivery Point on a continuous basis, and shall be responsible for ensuring the correct calibration of all metering equipment installed for this purpose. The Seller shall be entitled to attend and review the results of all meter testing and calibration exercises.
- 9.3. The Parties shall notify each other as soon as reasonably practicable (and in any event within a fixed timeframe to be determined in the GSPA) upon becoming aware of Off-Spec Gas being delivered to the Delivery Point.
- 9.4. Where the Seller delivers Off-Spec Gas to the Delivery Point, the Buyer shall be entitled to accept or reject such Off-Spec Gas, provided that:
 - 9.4.1. where the Buyer accepts Off-Spec Gas such gas shall not constitute Shortfall Gas but shall be charged at 90% of the prevailing Contract Price, and the Seller shall have no further liability to the Buyer in respect of such delivered Off-Spec Gas; and
 - 9.4.2. where the Buyer rejects Off-Spec Gas the Buyer shall not be liable to pay for any quantities of such gas that are delivered; and
 - 9.4.3. where the Buyer fails to accept or reject Off-Spec Gas within an agreed period, the Buyer shall be deemed to have accepted such Off-Spec Gas and the provisions of paragraph 9.4.1 will apply accordingly.
- 9.5. Where the Buyer unknowingly takes delivery of Off-Spec Gas or the Buyer is unable, after having used all reasonable endeavours, to stop the delivery of such Off-Spec Gas, and such gas results in damage to the Buyer's facilities, the Seller shall reimburse the Buyer for:
 - 9.5.1. all reasonable direct costs incurred by the Buyer for the temporary modification of the Buyer's facilities or temporary changes in operating regime for processing or treatment of such Off-Spec Gas to bring it into compliance with the prescribed specifications;
 - 9.5.2. all reasonable direct costs incurred through cleaning, repairs or replacement of the Buyer's facilities due to supply of such Off-Spec Gas; and/or
 - 9.5.3. all reasonable amounts as per warrants, penalties, litigation expenses, duties and other costs the Buyer will have to pay due to supply of such Off-Spec Gas,provided that:
 - 9.5.4. all claimed costs shall be auditable and justifiable;
 - 9.5.5. the Buyer shall use all reasonable efforts to minimise such costs of rectification of its facilities; *NE*

N.1.

- 9.5.6. the Seller shall not be liable for any indirect, consequential losses arising from the delivery of Off Spec Gas; and
- 9.5.7. the Seller's maximum liability in respect of such costs incurred by Buyer above, shall be limited to a fixed cap set out and mutually agreed by the Parties in the GSPA.

10. PRICE

- 10.1. The price for the sale and supply of gas as at the date of this HoT shall be US\$3.30 (delivery to Ikot Abasi)/mscf, subject to annual indexation in line with the US Consumer Price Index (the "Contract Price").
- 10.2. Any quantities of Overrun Gas taken by the Buyer will be charged at 110% of the Contract Price.

11. INVOICING AND PAYMENT

- 11.1. The Seller shall invoice the Buyer on a monthly basis. Invoices shall be denominated in US\$ and will include details of the following for the relevant month:
 - 11.1.1. all quantities of gas made available for delivery by the Seller in accordance with the Buyer's nominations;
 - 11.1.2. any Deficiency Quantity;
 - 11.1.3. any Overrun Gas taken by the Buyer;
 - 11.1.4. any balance of Make-Up Gas;
 - 11.1.5. any Shortfall Gas not made available by the Seller;
 - 11.1.6. the Contract Price;
 - 11.1.7. [other].
- 11.2. Invoices shall be payable by the Buyer within [forty Five (45)] days of issue by the Seller.
- 11.3. All payments made under the GSPA will be payable in US\$ or the Nigerian Naira equivalent (at the Buyer's or the Seller's election) without any set-off, deduction or withholding by electronic funds transfer directly into a bank account notified to the Buyer by the Seller from time to time, *provided that* where payment is made in Nigerian Naira the amount payable will be calculated using the published interbankUS\$/Nigerian Naira exchange rate on the date such payment is remitted by the Buyer to the Seller.

12. CREDIT SUPPORT

- 12.1. The Buyer will provide and maintain a letter of credit issued by a recognised international bank acceptable to the Seller and in a form acceptable to the Seller in an amount equal to six (6) months' supply of gas at the DCQ at the prevailing Contract Price, which may be drawn on by the Seller in the event the Buyer fails to perform its payment obligations under the GSPA. For the avoidance of doubt, in the event that the Buyer's letter of credit is drawn on for any reason at any time during the Term, the Buyer will procure that such letter of credit is replenished to the required level within fifteen(15) business days.
- 12.2. The Seller will procure the provision of a parent company guarantee from its ultimate group parent company, Seven Energy International Limited, in respect of its obligations under the GSPA.

13. FORCE MAJEURE

- 13.1. The Parties will be relieved from performing their obligations (other than payment obligations) under the GSPA to the extent such performance is prevented as a result of a force majeure event.

14. SCHEDULED MAINTENANCE

NK

20-1

- 14.1. Each Party will be entitled to nominate up to [twenty (20)] days in aggregate each contract year during which the respective Party's obligation to deliver or take gas under the GSPA shall be suspended.

15. LIMITATION OF LIABILITY

- 15.1. Each Party's liability under the GSPA will be limited to exclude:
- 15.1.1. liability for consequential losses;
 - 15.1.2. liability arising from a failure to perform its obligations under the GSPA (other than payment obligations) as a result of force majeure;
 - 15.1.3. aggregate liability in excess of a specified maximum amount.

16. SUSPENSION AND TERMINATION

- 16.1. In the event of the Buyer's non-payment or failure to obtain and maintain the required credit support the Seller may suspend the supply of gas until such payments are made or such credit support is provided.
- 16.2. The GSPA shall set out typical termination events for a gas sales agreement, including for failure to satisfy the conditions precedent before a specified longstop date, non-payment, failure to obtain and maintain the required credit support, extended force majeure, continuing material breach and failure to take a specified minimum quantity of gas over a specified timeframe.

17. CHANGE IN LAW

- 17.1. The GSPA shall set out details of the actions to be taken in the event of a change in law, actions of a competent authority, change of control and proposals for assignment.

18. CONFIDENTIALITY

- 18.1. The Parties shall keep confidential the existence and terms of this HoT and the GSPA, and all information disclosed to them by the other Party in relation to this HoT and the GSPA (together the "Confidential Information") and, subject to paragraph 18.2 below, will not disclose any Confidential Information to any third party without the prior written consent of the other Party.
- 18.2. The Parties may disclose Confidential Information:
- 18.2.1. to any of its affiliates, and its or its affiliates' officers, employees, agents, banks, financing parties, professional advisers, auditors, insurers, subcontractors and contractors that need to know the relevant Confidential Information solely for the purpose described in paragraph 18.4 below, provided that the relevant Party procures that each such person to whom the Confidential Information is disclosed to complies with the obligations set out in this HoT and the GSPA as if they were parties hereto and thereto; and
 - 18.2.2. to the minimum extent required by:
 - 18.2.2.1. any order of any court of competent jurisdiction or any competent judicial, governmental or regulatory body;
 - 18.2.2.2. the rules of any listing authority or stock exchange on which the relevant Party's shares are listed or traded; or
 - 18.2.2.3. the laws or regulations of any country with jurisdiction over the relevant Party.
- 18.3. The obligation in paragraph 18.1 will not apply in respect of information that:
- 18.3.1. is or becomes generally available to the public other than as a direct or indirect result of being disclosed in breach of the HoT or the GSPA; *NF*

NF.

- 18.3.2. was already lawfully known to the Party in receipt of such Confidential Information before it was disclosed to them; or
 - 18.3.3. has been received from a third party source that is not connected with a Party and that such source was not under any obligation of confidence in respect of that information.
- 18.4. The Parties will only be entitled to use Confidential Information for the purposes of the HoT and the GSPA, and will not use Confidential Information to the commercial, financial or competitive disadvantage of the other Party.

19. CONDUCT

- 19.1. Each Party shall represent, warrant and covenant to each other Party that it has not made, and shall not make at any time in the future, in relation to either or both of this HoT and the GSPA any payment, a loan or gift or promise to make any payment, loan or gift of money or anything of value, directly or indirectly that violates:
- 19.1.1. the United Kingdom Bribery Act 2010;
 - 19.1.2. the United States Foreign Corrupt Practice Act of 1977; or
 - 19.1.3. the laws of Nigeria.

20. GOVERNING LAW AND JURISDICTION

- 20.1. This HoT and the GSPA shall be governed by and interpreted in accordance with the laws of Nigeria.
- 20.2. This HoT shall be subject to the exclusive jurisdiction of the Nigerian courts.
- 20.3. The GSPA will contain arrangements that enable the Parties to resolve disputes either through the use of expert determination or, where appropriate, arbitration in Lagos – Nigeria under the Rules of the International Chamber of Commerce.

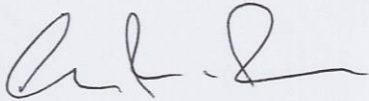
21. NON-BINDING STATUS OF HoT

- 21.1. For the avoidance of doubt, other than the provisions set out in paragraphs 18 (*Confidentiality*), 19 (*Conduct*), 20 (*Governing Law and Jurisdiction*) and 21 (*Non-Binding Status of HoT*) which are intended to be legally binding, this HoT is not intended to be legally binding and shall not impose any liability, legal or fiduciary obligation on either Party. Notwithstanding anything to the contrary contained herein, no liability or obligation on the part of both Parties to proceed with or participate in the GSPA shall be created or exist unless and until the Parties have executed and delivered a final, written GSPA and then only in accordance with the terms, conditions and other provisions thereof. *NK*

NK

ACKNOWLEDGED AND AGREED on the date first written above for and on behalf of:

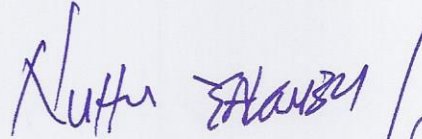
ACCUGAS LIMITED



[name] IAN BROWN-PETERSIDE
Authorised Signatory

Date 29/08/16

BANNER ENERGY LIMITED



[name]
Authorised Signatory

Date 24TH August 2016