

[DRAFT] BONDHOLDERS' REPRESENTATIVE APPOINTMENT AGREEMENT

**in relation to
The Partially Guaranteed Bonds of Siamgas and Petrochemicals Public Company Limited
No. 2/2561 (2018) Due B.E. 2566 (2023)**

_____ November 2018

BETWEEN

**SIAMGAS AND PETROCHEMICALS PUBLIC COMPANY LIMITED
(as Issuer)**

and

**BANK OF AYUDHYA PUBLIC COMPANY LIMITED
(as Bondholders' Representative)**

ALLEN & OVERY

Allen & Overy (Thailand) Co., Ltd.

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THIS BONDHOLDERS' REPRESENTATIVE APPOINTMENT AGREEMENT is made as of ____ November 2018.

BETWEEN

- (1) **SIAMGAS AND PETROCHEMICALS PUBLIC COMPANY LIMITED**, a public company limited registered (company registration number 0107548000650) under the laws of Thailand having its registered office located at 553, Building A, Floor 30th, The Palladium Building, Ratchaprarop Road, Makkasan, Ratchathewi, Bangkok 10400, Thailand (in its capacity as the Issuer) (the **Issuer**); and
- (2) **BANK OF AYUDHYA PUBLIC COMPANY LIMITED** a public company limited registered under the laws of Thailand having its registered office located at 1222 Rama III Road, Bang Phongphang, Yan Nawa, Bangkok 10120, Thailand (in its capacity as the Bondholders' Representative, which expression shall include such person and all other persons for the time being acting as the Bondholders' Representative pursuant to this Agreement and the Conditions) (the **Bondholders' Representative**).

WHEREAS

- (A) The Issuer has received approval from the Securities and Exchange Commission to offer for sale of the Bonds (as defined below) pursuant to the Notification of the Securities and Exchange Commission No. TorChor. 17/2561 Re: Application for and Approval of Offer for Sale of Newly Issued Debt Securities dated 17 January 2018 (as may be amended or supplemented).
- (B) The Bonds will be offered only to Institutional Investors and High Net Worth Investors as defined under the Notification of the Securities and Exchange Commission No. KorChor. 5/2552 Re: Determination of Definitions Used in Notifications relating to Issuance and Offer for Sale of Debt Securities dated 13 March 2009 (as may be amended or supplemented) and the Notification of the Securities and Exchange Commission No. KorChor. 4/2560 Re: Determination of Definitions of Institutional Investors, Ultra High Net Worth Investors and High Net Worth Investors dated 8 February 2018 (as may be amended or supplemented).
- (C) The Bondholders' Representative has all the qualifications required by the Notification of the Capital Market Supervisory Board No. TorChor. 37/2552 Re: Qualifications of Bondholders' Representative and Conducts in accordance with Authorities and Duties of Bondholders' Representative dated 3 August 2009 (as may be amended or supplemented) and other relevant laws and regulations in order to act as the bondholders' representative for the Bonds and has obtained an approval from the Office of the Securities and Exchange Commission in respect thereof.
- (D) The Bondholders' Representative agrees to perform the duties of the Bondholders' Representative for the benefit of all Bondholders (as defined below) in accordance with the terms of the Transaction Documents (as defined below) and all applicable laws.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless otherwise defined in this Agreement, capitalized wording and terms used herein shall have the same meanings as described in the Conditions:

Bondholder(s) has the meaning given to it in the Conditions.

Bonds means the Issuer's Baht bonds namely "The Partially Guaranteed Bonds of Siamgas and Petrochemicals Public Company Limited No. 2/2561 (2018) Due B.E. 2566 (2023)", as specified in the Conditions, with a nominal amount of Baht 1,000 (one thousand Baht) each, which remain outstanding.

Conditions means the Terms and Conditions, in the form attached hereto, setting out the rights and obligations of the Issuer and the Bondholders in respect of the Bonds, as may be supplemented, amended or modified in accordance with the terms specified therein.

CGIF Guarantee means the English law governed guarantee dated on or around _____ 2018 signed by the Guarantor and Bank of Ayudhya Public Company Limited in its capacity as the Bondholders' Representative, in connection with the Bonds.

Guarantor means Credit Guarantee and Investment Facility, a trust fund of the Asian Development Bank, or CGIF.

SEC means the Office of the Securities and Exchange Commission of Thailand.

SEC Act means the Securities and Exchange Act B.E. 2535 including rules and regulations or laws issued by virtue of the SEC Act and all amendments thereto.

Transaction Documents means the Bonds, the Conditions, the CGIF Guarantee and this Agreement.

1.2 Interpretation

- (a) Words and expressions defined and rules of construction and interpretation set out in the Conditions (as such definitions and rules are amended in relation to this Agreement) shall, unless the context otherwise requires, have the same meanings herein.
- (b) The parties hereto acknowledge that in exercising its rights, and performing its obligations under the Transaction Documents, the Bondholders' Representative may act according to its own discretion or at the written instructions of the Bondholders or in accordance with the terms of a resolution, as specified in the Conditions. For the avoidance of doubt, the Bondholders' Representative is not obliged to act according to its own discretion if it has elected to act at the written instructions of the Bondholders or in accordance with the terms of a resolution, as specified in the Conditions or is in the process of seeking or receiving such instructions and it shall, in the absence of its unreasonable delay, gross negligence or wilful misconduct, not be liable for any damages incurred as a result of making such election.

2. APPOINTMENT

- 2.1 The Issuer hereby appoints Bank of Ayudhya Public Company Limited as the Bondholders' Representative and Bank of Ayudhya Public Company Limited accepts such appointment and agrees to act as such for and on behalf of the Bondholders in accordance with the Transaction Documents and all applicable laws.

2.2 The Bondholders' Representative agrees:

- (a) to perform and to comply with all duties and obligations of the Bondholders' Representative as set out in the Transaction Documents and all applicable laws according to generally recognised professional standards;
- (b) to have and to exercise all rights and powers of the Bondholders' Representative set out in the Transaction Documents (including without limitation, all powers, duties and responsibilities set out in Condition 15 of the Conditions) and all applicable laws; and
- (c) if applicable, to accept the money or security for and on behalf of the Bondholders.

2.3 If the Bondholders' Representative accepts deposits from, lends money to or engages in any banking or other business with the Issuer, any amount of money or assets received from the Issuer pursuant to such relationship shall be excluded and held separately from the assets held on behalf of the Bondholders in its capacity as the Bondholders' Representative hereunder.

3. POWERS AND DUTIES

3.1 Appointment of Advisers

- (a) The Bondholders' Representative may, when it deems necessary, at the reasonable cost and expense of the Issuer, engage any lawyers or other experts reasonably believed by it to be of good reputation and shall use its reasonable endeavour to, as soon as reasonably practicable, advise the Issuer of such engagement and any cost and expense which may be incurred, and obtain any advice from them, and rely on any advice so obtained and shall be protected and shall incur no liability in respect of any action taken or omitted to be taken in accordance with such advice in good faith, except where it acts or omits to act with gross negligence or wilful misconduct in the selection of such lawyers or other experts, provided that such engagement of lawyers or other experts is in respect of:
 - (i) the compliance and/or enforcement of any provisions of the Transaction Documents;
 - (ii) any actual or proposed amendment, waiver or consent requested by the Issuer relating to the Transaction Documents;
 - (iii) any Event of Default or breach of or default under, the Bonds and the Conditions or any issue or dispute that may arise in connection with the Transaction Documents; or
 - (iv) the performance by the Bondholders' Representative of any obligations of the Issuer under the Transaction Documents which the Issuer has failed or refused to perform.
- (b) The Issuer shall bear any actual and reasonable fees, costs or expenses incurred by the Bondholders' Representative in engaging any such lawyers or other experts pursuant to Clause 3.1(a) above, provided that: (i) such fees and expenses have not been incurred by the Bondholders Representative by reason of its gross negligence, fraud, wilful misconduct or breach of the Transaction Documents or applicable law; and (ii) for any such fees, cost and expenses (other than those incurred or to be incurred for the purpose of or in connection with making any claim against the Issuer and/or the Guarantor) which exceeds Baht 300,000 per annum, the Bondholders' Representative has obtained a prior written approval thereof from the Issuer. In connection with (ii) above, the Bondholders' Representative may proceed to incur the said fees, costs and expenses without the Issuer's prior written approval if such approval is unreasonably withheld or not given in a timely manner by the Issuer.

3.2 Performance

Without limitation to Clause 2.2, the Bondholders' Representative shall:

- (a) promptly notify each Bondholder of the occurrence of any Event of Default or any breach of, or default under, the Conditions of which it has actual knowledge, together with the details of any actions taken by the Bondholders' Representative due to such occurrence;
- (b) send a Demand (as defined in the CGIF Guarantee) to the Guarantor as soon as possible but in any case within the period of time specified in the CGIF Guarantee and take the Acceleration Step (as defined in the CGIF Guarantee), in accordance with the terms and conditions set out in the CGIF Guarantee and the Conditions;
- (c) co-ordinate all communications between the Issuer, the Registrar, the Guarantor and the Bondholders that are contemplated by, or necessary pursuant to the terms of, the Transaction Documents;
- (d) subject to the terms of the CGIF Guarantee, distribute to the Bondholders *pro rata* according to the number of Bonds held by each of them, the proceeds received from or recovered as a result of claims made against the Issuer, the Guarantor and/or relevant parties, as the case may be, in respect of the enforcement of the rights of the Bondholders under the Transaction Documents;
- (e) keep adequate records of all steps taken by it to enforce any of the Transaction Documents and recover proceeds or obtain other relief for the Bondholders;
- (f) comply with all laws and regulations applicable to the Bonds or the Bondholders' Representative as may be amended and supplemented from time to time;
- (g) exercise the degree of honesty and care necessary to protect the interests of the Bondholders as is usual and requisite of an entity acting as a professional bondholders' representative and to act at all times in good faith;
- (h) promptly notify the Registrar of the date, time and place of any meeting of Bondholders (in relation to meetings called by the Issuer, if it receives any notice from the Issuer that the Issuer is going to convene a meeting of Bondholders, containing the date, time and place of such meeting) in accordance with Condition 15 of the Conditions; and
- (i) comply with its duties and obligations under the Transaction Documents.

Notwithstanding any provision specified to the contrary, if the Bondholders' Representative is required under the CGIF Guarantee to, at any time, return or transfer all or any part of, or share with the Guarantor, any such proceeds received from the Issuer (whether directly or through the Registrar) or any other person, it shall do so in accordance with the terms of the CGIF Guarantee.

3.3 Ratification

Any action taken by the Bondholders' Representative in accordance with its duties and responsibilities under this Agreement, either done prior to the date of this Agreement or the Issue Date or thereafter, is deemed to be ratified by the Bondholders as correct and legally binding upon and done in the name of the Bondholders. Such action includes, but not limited to, entering into the CGIF Guarantee (whether the execution of the CGIF Guarantee takes place before or after the date of this Agreement).

3.4 Reliance

In the absence of its actual knowledge or express notice to the contrary, the Bondholders' Representative, acting in good faith and in accordance with its professional judgment, shall be entitled to:

- (a) assume without investigation that the Issuer is duly performing and observing all the covenants and provisions contained in or arising from each of the Transaction Documents and that, on the date hereof and on the Issue Date, no Event of Default, and no event which, with the lapse of time and/or upon the giving of notice, would constitute an Event of Default, has occurred;
- (b) rely upon the contents of any written communication or document reasonably believed by it to be genuine; and
- (c) rely upon any facts and materials provided to it in writing by any authorised directors of, or other authorised persons representing, the Issuer.

3.5 Liabilities

- (a) The Bondholders' Representative shall not be liable to any person for any damage incurred as a result of its reliance on any resolution in accordance with the Conditions though it is subsequently found that there was some defect in the calling of, or quorum for, such meeting or the passing of such resolution or that, for any reason, such resolution is not valid or binding upon the Bondholders, except where such defect was due to its gross negligence or wilful misconduct;
- (b) In connection with the performance of its obligations under this Agreement and the Transaction Documents, the Bondholders Representative:
 - (i) shall not have any responsibility or liability in respect of any failure or delay by the Issuer or any other person in performing its obligations under the Transaction Documents, or other agreements relating to the Transaction Documents, except where such failure or delay occurs due to the Bondholders' Representative's gross negligence, fraud or wilful misconduct or its failure to perform its duties in accordance with the Transaction Documents or any applicable laws;
 - (ii) shall not have any liability in respect of the execution, effectiveness, enforceability, sufficiency, legality, validity, genuineness or suitability of the Transaction Documents or the agreements and documents referred to in such Transaction Documents, or of any certificate, report, document of title or other document delivered under the Transaction Documents, any statement of the Issuer or any other person in the Transaction Documents, or the accuracy or completeness of any information which was or is circulated to the Bondholders' Representative, or any obligation or right created or purported to be created thereby or pursuant thereto or the priority thereof constituted or purported to be constituted thereby or pursuant thereto, nor shall it be responsible or liable to any person because of any invalidity of any provision of such documents or the unenforceability thereof, whether arising from statute, law or decisions of any court, provided that the Bondholders' Representative has acted in good faith and does not have any knowledge as to any inaccuracy, incompleteness, invalidity or unenforceability thereof without its gross negligence or wilful misconduct and, where there is any doubt as to such inaccuracy, incompleteness, invalidity or unenforceability, the Bondholders' Representative has carried out reasonable enquiries and investigation which the Bondholders'

Representative would normally make and act in accordance with its professional judgment;

- (iii) shall not be liable to the Issuer or any Bondholders by reason of, in good faith without its gross negligence or wilful misconduct, having accepted as valid or not having rejected any Bond Certificate purporting to be such and subsequently found to be forged, stolen or not authentic;
- (iv) does not assume, nor shall the Bondholders' Representative be obliged to perform, any obligations of the Issuer or any other person; and
- (v) shall not be under any obligations other than those set out in the Transaction Documents and those set out under applicable laws. For the avoidance of doubt, the Bondholders' Representative shall be under the obligations under Clause 3.2(g) of this Agreement.

3.6 Enforcement

- (a) Subject to and in accordance with the applicable laws, the Conditions and the CGIF Guarantee, at any time after the Bonds have become due and repayable, the Bondholders' Representative may, at any time at its discretion and without further notice, take such proceedings and/or action as it may think fit to enforce repayment of the Bonds together with accrued interest.
- (b) Upon acceleration of the Bonds in accordance with the Conditions and the CGIF Guarantee, all principal, interest and any other amounts received by the Bondholders' Representative with respect to the Bonds shall be applied in the order of priority specified in Condition 9.5 of the Conditions, subject to the terms of the CGIF Guarantee.

3.7 Registrar

- (a) If the Bondholders' Representative has received any payment from the Guarantor pursuant to a Demand, it shall promptly inform the Issuer and the Registrar in writing of its receipt of such payment.
- (b) In the case where the Bondholders' Representative has obtained any payment or proceeds from any enforcement in connection with the Bonds against the Issuer or the Guarantor, the Bondholders' Representative may notify the Registrar and require the Registrar to act as an agent of the Bondholders' Representative in relation to making such payments or proceeds to the Bondholders and other relevant parties in accordance with the Conditions and subject to the terms of the CGIF Guarantee. In such circumstances, the parties shall, if required, make any amendments to the Transaction Documents as the Bondholders' Representative reasonably considers necessary in order to enable the Registrar to act as an agent of the Bondholders' Representative in relation to making payments under the Transaction Documents, on similar terms on which the Registrar makes payments for and on behalf of the Issuer in the Transaction Documents.

4. REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties by the Bondholders' Representative

The Bondholders' Representative represents and warrants to the Issuer and the Bondholders that as at the date hereof and as of the Issue Date:

- (a) it has been established and is in existence in accordance with the laws of Thailand, and has the full power and authority to execute and perform its duties and obligations hereunder;
- (b) all actions, conditions and things required by the laws of Thailand to be taken, fulfilled and done (including the obtaining of any necessary shareholder, corporate, governmental, ministerial or other consents, approvals and licences) in order to enable it to lawfully enter into, exercise its rights and perform and comply with its obligations under this Agreement or other Transaction Documents to which it is a party have been taken, fulfilled and done;
- (c) its entry into, exercise of its rights and/or performance of or compliance with its obligations under the Transaction Documents to which it is a party do not and will not violate in any material way (i) any law to which it is subject or (ii) its articles of incorporation, by-laws or other constitutive documents and any laws by which it is bound;
- (d) its obligations under the Transaction Documents to which it is a party are legal, valid, binding and enforceable upon it in accordance with their respective terms; and
- (e) it is not in liquidation or bankruptcy and has not taken any corporate action, nor have any other steps been taken or legal proceedings commenced against it, for its winding-up, bankruptcy, dissolution, reorganisation, composition or for the appointment of a receiver, liquidator, trustee, examiner or similar officer of it or of all or any of its assets or revenues.

4.2 Representations and Warranties by the Issuer

The Issuer represents and warrants to the Bondholders' Representative as at the date hereof and as of the Issue Date:

- (a) the Issuer is a public company duly incorporated with limited liability in Thailand and validly existing under the laws of Thailand with full power and authority to own its property and conduct its business;
- (b) the issue, the offering and the execution of the Bonds and the issue, entry into or delivery by the Issuer of each of the Transaction Documents and the performance of the obligations expressed to be assumed by it thereunder have been duly authorised by all necessary corporate or other actions of the Issuer required by the laws of Thailand and are still in full force and effect;
- (c) the Bonds and each of the Transaction Documents, when executed and delivered as herein contemplated, will constitute legal, valid, binding and enforceable obligations of the Issuer, except to the extent that the enforcement thereof may be limited by provisions of applicable laws;
- (d) no event has occurred or circumstance arisen which, had the Bonds already been issued, would constitute an Event of Default under the Conditions;
- (e) all consents, approvals, authorizations or other orders of all regulatory authorities required for or in connection with the execution by the Issuer of the Transaction Documents have been duly obtained and are in full force and effect;
- (f) except as disclosed in the prospectus for the Bonds, the Issuer is not involved in any litigation, arbitration or other proceedings nor so far as the Issuer is aware of any such litigation, arbitration or other proceeding pending or threatened which, if determined adversely to the Issuer, would individually or in aggregate have a material adverse effect on the condition (financial or other), prospects, results of operations general affairs of the Issuer

or on the ability of the Issuer to perform its obligations under the Bonds or the Transaction Documents, or which are otherwise material in the context of the offering of the Bonds; and

- (g) it is not under liquidation or bankruptcy proceeding and has not taken any corporate action, nor, to the best of the Issuer's knowledge, has any other action been taken or legal proceedings, commenced or threatened against it, for its winding-up, bankruptcy, dissolution, reorganization, composition or for the appointment of a receiver, liquidator, trustee, examiner or similar officer of it or of all or any of its material assets or revenues.

5. ISSUER'S COVENANTS

The Issuer shall cooperate with and give all reasonable support to the Bondholders' Representative in providing any relevant document or information as reasonably requested by the Bondholders' Representative so as to enable the Bondholders' Representative to perform its duties under the Transaction Documents and all applicable laws.

6. RESIGNATION

- 6.1 The Bondholders' Representative may resign or terminate its appointment hereunder at any time after providing a written notice to the Issuer not less than 60 (sixty) days prior to the proposed date of such resignation or termination; provided, however, that such resignation shall not be effective until:

- (a) a successor bondholders' representative (the **Successor Bondholders' Representative**) being a qualified bondholders representative under the applicable laws and approved by the SEC is appointed by the Issuer or the Bondholders in accordance with the Conditions and applicable laws; and
- (b) the Successor Bondholders' Representative accepts its appointment.

- 6.2 The Bondholders' Representative is entitled to terminate this Agreement if the Issuer is in default of any of its obligations under this Agreement, Transaction Documents and such breach has not been remedied within 30 (thirty) days from the date the Bondholders' Representative sends a written notice to the Issuer demanding such remedy, provided that the termination under this Clause 6.2 shall not take effect until all the conditions specified in Clauses 6.1(a) and 6.1(b) are met.

7. TERMINATION OF APPOINTMENT

- 7.1 Subject to Clause 7.3 below, the Issuer may terminate the appointment of the Bondholders' Representative on written notice following the occurrence of one or more of the following events:
 - (a) except as otherwise provided in the Conditions, the Bondholders' Representative is in default of any of its obligations under the Transaction Documents and such breach has not been remedied within 30 (thirty) days from the date the Issuer or any one or more of the Bondholders holding together at least 25 (twenty-five) per cent of the total outstanding principal amount of the Bonds sends a written notice to the Bondholders' Representative demanding such remedy;
 - (b) the approval granted to the Bondholders' Representative by the SEC to act and operate as bondholders' representative has been terminated or suspended;
 - (c) the Bondholders' Representative becomes disqualified to act as a representative of Bondholders and fails to rectify the disqualification event as prescribed under the applicable laws within 30 (thirty) days from the date of such disqualification;

- (d) any proceeding or other action is commenced by or against the Bondholders' Representative, seeking reorganisation, receivership, liquidation, dissolution, winding-up, composition, and other similar events, or there is any order or judgment for dissolution or suspension of business by the court;
- (e) any of the representations and warranties provided by the Bondholders' Representative in Clause 4.1 is false in any material respect; or
- (f) the appointment of the Bondholders' Representative is terminated in accordance with the Conditions.

7.2 The appointment of the Bondholders' Representative under this Agreement shall be terminated (subject to Clause 7.3) if a change of Bondholders' Representative is required under Condition 16.2 of the Conditions.

7.3 In a case where the Bondholders' Representative receives a termination notice under Clause 7.1 or a change of the Bondholders' Representative is required under Condition 16.2 of the Conditions, such termination shall not become effective until a Successor Bondholders' Representative approved by the SEC has been appointed by the Issuer or the Bondholders in accordance with the Conditions and applicable laws and such Successor Bondholders' Representative accepts its appointment. The identity of any Successor Bondholders' Representative shall be notified promptly by the Issuer to the Registrar.

7.4 In the event of the resignation under Clause 6 or termination of the appointment of the Bondholders' Representative under this Clause 7, the Bondholders' Representative shall deliver all documents, assets and other materials held by it in relation to the performance of its obligations under this Agreement and the other Transaction Documents, to the Successor Bondholders' Representative or to the Issuer and shall fully cooperate to the best of its abilities so that such Successor Bondholders' Representative may carry on the obligations of the Bondholders' Representative hereunder.

7.5 On termination of the appointment of the Bondholders' Representative under the provisions of this Clause 7 or resignation under Clause 6, the Bondholders' Representative shall be entitled to receive, on the date such amounts would have fallen to be paid but for such termination or resignation, all fees and other monies (which, for the avoidance of doubt, will continue to accrue up until the date such termination or resignation becomes effective under Clauses 6 or 7 (as applicable)) accrued up to the effective date of such termination or resignation in accordance with the provisions of the Transaction Documents.

7.6 Clauses 7.4 shall survive the termination of this Agreement or the resignation or removal of the Bondholders' Representative.

8. INDEMNITY AND LIABILITY

8.1 The Bondholders' Representative shall indemnify the Issuer and its agents, managers, officers or employees against any liability, loss, cost, damages, charge, expense, action, proceedings, claim or demand which are incurred to any of them as a result of any wilful misconduct, fraud or gross negligence or any breach of the terms and conditions of the Transaction Documents and applicable law by the Bondholders' Representative or by any of its officers, directors, employees and agents.

8.2 Notwithstanding any provision of this Agreement or any other Transaction Document to the contrary, the Bondholders' Representative shall not be liable to any person for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to loss of profits), whether or not foreseeable.

- 8.3 The Issuer shall indemnify the Bondholders' Representative and its agents, managers, officers or employees against any liability, loss, cost, damages, charge, expense, action, proceedings, claim or demand (including, without limitation, any legal fees, all costs and expenses actually and reasonably incurred in disputing or investigating or determining any of the aforementioned on a full indemnity basis), taxes, levies or imposts which are actually and reasonably incurred by the Bondholders' Representative and its agents, managers, officers or employees as a result of or in connection with the performance of the Bondholders' Representative's duties in accordance with any of the Transaction Documents, except where the same arises from the wilful misconduct, fraud, or gross negligence of the Bondholders' Representative, its agents, managers, officers or employees or any breach of this Agreement by the Bondholders' Representative, its agents, managers, officers or employees.
- 8.4 The Bondholders' Representative shall indemnify the Bondholders against any loss, cost, damages, charge, expense, claim or demand (including, without limitation, any legal fees, all costs and expenses incurred in disputing or investigating or determining any of the aforementioned on a full indemnity basis), suffered or incurred by the Bondholders, as a result of or in connection with the gross negligence, willful misconduct, or breach of the terms and conditions of any of the Transaction Documents or any applicable laws and regulations, by the Bondholders' Representative or by any of its officers, directors, employees, managers or agents.
- 8.5 Notwithstanding anything to the contrary in this Agreement, in no event shall the Bondholders' Representative be liable for any failure or delay in the performance of its obligations hereunder if it is prevented from so performing its obligations by any future law or regulation (including, for the avoidance of doubt, any change in, or change in interpretation in relation to any law or regulation in existence at the date hereof which occurs subsequent to the date hereof which restricts or prohibits the providing of the services contemplated by this Agreement), any existing or future act of governmental authority, or because of circumstances beyond the Bondholders' Representative's control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, labour dispute, any change in laws, ordinance, regulations or the like after the Issue Date which restrict or prohibit the providing of the services contemplated by this document, or interruption of public communications facilities or disruptions of any banking system. For avoidance of doubt, the incidents which will excuse the Bondholders' Representative from being liable under this Clause shall only be those which are beyond the Bondholders' Representative's reasonable control when having used all relevant preventive measures and applied professional solutions as may be expected from a professional bondholders' representative.
- 8.6 Unless otherwise provided by applicable laws, the SEC's notifications or the Conditions, nothing contained in any Transaction Document shall require the Bondholders' Representative acting in good faith in accordance with its professional judgment and without gross negligence, fraud, wilful misconduct or breach of the Transaction Documents or applicable law:
- (a) to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or the exercise of any right, power, authority and discretion hereunder if it shall have reasonable grounds for believing that the repayment of such funds or satisfactory indemnity against or security for such risk or liability is not assured to it; and
 - (b) to do anything which would or might in its opinion be contrary to any applicable law of any jurisdiction or any directive or regulation of any agency or any state which would or might render it liable to any person.
- 8.7 The provisions of this Clause 8 shall survive the termination of this Agreement or the resignation or removal of the Bondholders' Representative.

9. FEES AND EXPENSES

9.1 The fees of the Bondholders' Representative shall be payable annually by the Issuer to the Bondholders' Representative until all the Bonds are fully redeemed, at the rate of 0.007 (zero point zero zero seven) per cent per annum of the total aggregate principal amount of all the outstanding Bonds, with a minimum annual fee of Baht 80,000 (eighty thousand Baht) (exclusive of value added tax). Such annual fee shall be paid to the Bondholders' Representative within 30 (thirty) days from the Issuer's receipt of a relevant invoice from the Bondholders' Representative after the Issue Date for the first payment and thereafter annually within 30 (thirty) days from the Issuer's receipt of a relevant invoice from the Bondholders' Representative after each anniversary of the Issue Date throughout the terms of the Bonds.

9.2 All payments by the Issuer to the Bondholders' Representative under this Agreement shall be made in full without any deduction or withholding in respect of tax or otherwise unless the deduction or withholding is required by applicable law.

If the Issuer requests the Bondholders' Representative to perform or do any acts beyond the scope of the ordinary powers, duties and responsibilities of the Bondholders' Representative as set out in the Transaction Documents and applicable laws, the Bondholders' Representative shall not be obliged to perform or do such acts. Nonetheless if the Bondholders' Representative agrees to perform or do any such acts at the request of the Issuer then the Issuer agrees to pay the fees additional to the fees in the amount that is agreed in writing between the Bondholders' Representative and the Issuer, and such agreement shall form an integral part of this Agreement.

9.3 The Issuer shall in addition pay any VAT chargeable in respect of the fees and expenses set out in this Agreement.

9.4 All actual and reasonable cost and expenses incurred to the extent necessary for the performance of its duties and payments made by the Bondholders' Representative in the lawful performance of its functions, in accordance with the Transaction Documents (including but not limited to actual and reasonable legal and travelling expenses, out-of-pocket costs, charges and expenses), will be payable or reimbursable by the Issuer without any interest thereon within 30 (thirty) days from the Issuer's receipt of the notice thereof together with all relevant invoices and evidence thereof from the Bondholders' Representative.

9.5 Unless provided for in this Agreement or any other Transaction Document, the Bondholders' Representative shall not have any right of set-off, lien or counterclaim in respect of any fees, expenses, other kinds of debts or other amounts (if any) due or payable to it under any of the Transaction Documents or any other transactions against amounts (if any) held by it on behalf of the Bondholders, and all payments made or to be made by the Bondholders' Representative to the Bondholders shall be made free and clear of and without any deduction for or on account of any set-off or counterclaim.

9.6 Any and all amounts payable under this Clause 9 shall be made in Baht.

9.7 The fees and expenses incurred under Clauses 3.1 and 9, prior to the effectiveness of the termination of this Agreement, shall be paid to the Bondholders' Representative regardless of the termination of this Agreement or the resignation or removal of the Bondholders' Representative.

10. TERM AND TERMINATION

10.1 Unless otherwise specified in this Agreement, the term of this Agreement shall expire and terminate when payment of all amounts owed by the Issuer to the Bondholders and the Bondholders' Representative under the Transaction Documents has been made and the Bondholders'

Representative has already performed all of its duties and obligations under the Transaction Documents.

- 10.2 Subject to further agreement between the Issuer and the Bondholders' Representative, this Agreement shall be terminated if the Bonds are not issued on the Issue Date. In such case, the Issuer shall not be required to pay any fee or expenses to the Bondholders' Representative.

11. ASSIGNMENT

- 11.1 Other than as permitted by the Transaction Documents, none of the parties may assign, transfer or charge any of its rights and benefits in or under this Agreement.
- 11.2 This Agreement and all terms and conditions thereof are binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- 11.3 The parties agree that they will cooperate fully to do all further acts and things and execute any further documents as may be necessary or desirable to give full effect to the arrangements contemplated by this Agreement. Without prejudice to the generality of the foregoing, the Issuer shall give to the Bondholders' Representative without delay such further written authorisations, mandates and instruments as it may reasonably require to enable it to perform the services to be performed by it hereunder.
- 11.4 Any corporation into which the Bondholders' Representative may be merged or converted, or any corporation with which the Bondholders' Representative may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Bondholders' Representative shall be a party, or any corporation to which the Bondholders' Representative shall sell or otherwise transfer all or substantially all of its assets shall, on the date when such merger, consolidation or transfer becomes effective and to the extent permitted by the applicable laws, become the Successor Bondholders' Representative under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such corporation shall have secured an approval by the SEC to operate as bondholders' representative pursuant to the Transaction Agreements and the Conditions, unless otherwise required by the Issuer or a Bondholders' meeting, and after the said effective date all references in this Agreement to the Bondholders' Representative shall be deemed to be references to such corporation. Written notice of any such merger, conversion, consolidation or transfer shall forthwith be given to the Issuer by the Bondholders' Representative.

12. EFFECTIVE DATE

This Agreement shall be effective on the signing date hereof.

13. GOVERNING LAW

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

14. WAIVER

No single or partial exercise of, or failure or delay in exercising, any right under this Agreement shall constitute a waiver or preclude any other or further exercise of that or any other right.

15. CONFIDENTIALITY

Each party agrees not to disclose to any person whatsoever any information relating to the business, finances or other matters of a confidential nature of the other party which it may have obtained as a

result of the execution of this Agreement or the other Transaction Documents or of which it may otherwise become possessed. The provisions of this Clause 15 shall survive for 2 (two) years after any termination of this Agreement. All parties shall use all reasonable endeavours to prevent any such disclosure provided however that the provisions of this Clause 15 shall not apply:

- (a) to the disclosure of any information to any person who is a party to any of the Transaction Documents;
- (b) to the disclosure of any information already known to the recipient otherwise than as a result of entering into any of the Transaction Documents;
- (c) to the disclosure of any information subsequently received by the recipient which it would otherwise be free to disclose;
- (d) to the disclosure of any information which is or becomes public knowledge otherwise than as a result of the conduct of the recipient;
- (e) to any extent that the recipient is required to disclose the same pursuant to any law or order of any court or pursuant to any direction, request or requirement (whether or not having the force of law) of any central bank or any governmental entity, TSD, the SEC and the ThaiBMA (including, without limitation, any official bank examiners or regulators);
- (f) to the extent that the recipient needs to disclose the same for the exercise, protection or enforcement of any of its rights under any of the Transaction Documents or, for the purpose of discharging in such manner as it reasonably thinks fit, its duties or obligations under or in connection with the Transaction Documents in each case to such persons to whom is as required to be informed of such information for such purposes;
- (g) to the disclosure of any information to any affiliates, professional advisers or auditors who receive the same under a duty of confidentiality similar to this Clause 15;
- (h) to the disclosure of any information with the consent of all the parties to whom such confidential information relates;
- (i) to the disclosure of any information disclosed to a Successor Bondholders' Representative or their respective professional advisers (provided it is disclosed on the basis that the recipient will hold it under a duty of confidentiality similar to this Clause 15); and
- (j) to the disclosure of any relevant information which each Bondholder may require to be disclosed to it or its professional advisers (provided it is disclosed on the basis that the recipient will hold it confidential on the basis of this Clause 15).

16. RIGHTS CUMULATIVE

The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

17. NOTICES

17.1 Addressee for notices

Any notices or notification in any form to be given to any party to this Agreement shall be made in writing and in English and shall be (a) made by fax, or (b) personally delivered, or (c) transmitted by postage prepaid registered mail, or (d) transmitted by international courier (e.g. DHL) to the

following addresses, or in the case of change of address, at the new address notified in writing to the other party:

THE ISSUER

SIAMGAS AND PETROCHEMICALS PUBLIC COMPANY LIMITED

Address: 553, Building A, Floor 30th
The Palladium Building
Ratchaprarop Road, Makkasan
Ratchathewi, Bangkok 10400

Telephone: +662 120 9999 ext. 9955
Fax: +662 250 6008
Attention: Mrs. Jintana Kingkaew

THE BONDHOLDERS' REPRESENTATIVE

BANK OF AYUDHYA PUBLIC COMPANY LIMITED

Address: 1222 Rama III Road
Bang Phongphang, Yan Nawa
Bangkok 10120, Thailand

Telephone: +662 296 3582
Fax: +662 683 1298
Attention: Mrs. Srisunan Dutiyabodhi

18. EFFECTIVENESS

Any communication to any party shall be deemed to have been received by such party, (i) in the case of fax, at the time of despatch; (ii) in the case of delivery, at the time of delivery and a written acknowledgement of receipt of the document is provided to the sender; (iii) in the case of postage prepaid registered mail, on the seventh (7th) day after it was registered; and (iv) in the case of international courier, on the seventh (7th) day after the courier has obtained a receipt for delivery, the evidence of which can be produced by the sender.

19. AMENDMENTS AND TERMINATION

- 19.1 This Agreement may not be modified, amended, supplemented or terminated except pursuant to a written instrument executed by the parties hereto and that a prior written consent of the Guarantor has been obtained. In addition, if an amendment requires the approval of the Bondholders, the Bondholders' Representative shall not agree to the amendment unless and until it has been authorised by the Bondholders, in accordance with the Transaction Documents. However, subject to the Guarantor's prior written consent, the Conditions and applicable laws and regulations, the Bondholders' Representative and the Issuer may amend the terms and conditions of this Agreement without the approval of the Bondholders' meeting to the extent that such amendment does not materially prejudice the Bondholders' rights.
- 19.2 The parties agree that if the CGIF Guarantee or the Conditions are amended or if there is any change in the SEC Act or any other relevant laws, notifications or orders of the SEC or any other competent authority that has a material effect on any provisions of this Agreement, the parties shall amend this Agreement to comply with the amended CGIF Guarantee, Conditions or change in laws.

- 19.3 Any amendment of this Agreement shall be delivered to the SEC by the Bondholders' Representative within fifteen (15) days from the date of such amendment.

20. PARTIAL INVALIDITY

Without prejudice to any other provision hereof, if one or more provisions hereof is or becomes invalid, illegal or unenforceable in any respect under any law of any jurisdiction or with respect to any party such invalidity, illegality or unenforceability in such jurisdiction or with respect to such party or parties shall not, to the fullest extent permitted by applicable law, render invalid, illegal or unenforceable the remaining provision or provisions under the law of any other jurisdiction or with respect to any other party or parties hereto.

21. CONFLICT

If any of the provisions of this Agreement are in conflict with the Conditions or the CGIF Guarantee, the Conditions and the CGIF Guarantee (as the case may be) shall prevail.

22. COUNTERPARTS

This Agreement may be executed in 2 (two) identical counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed and delivered by their duly authorised representatives as of the day and year first before written.

SIGNATORIES

The Issuer

SIAMGAS AND PETROCHEMICALS PUBLIC COMPANY LIMITED

By: _____
Name: Mr. Supachai Weeraborwornpong
Title: Managing Director

By: _____
Name: Mr. Somchai Ko-prasobsuk
Title: Director

Witness

By: _____
Name: Mrs. Jintana Kingkaew

The Bondholders' Representative

BANK OF AYUDHYA PUBLIC COMPANY LIMITED

By: _____
Name: Mrs. Katchariya Chongpaisansakul

By: _____
Name: Mr. Wirote Chuenratanakul

Witness

By: _____
Name: Mrs. Srisunan Dutiyabodhi

SCHEDULE 1
THE CONDITIONS