## UNITED STATES OF AMERICA DEPARTMENT OF ENERGY OFFICE OF FOSSIL ENERGY

In the Matter of:	) Docket No. 19-05 -LNG
CONSTELLATION LNG, LLC	)

## APPLICATION FOR LONG-TERM AUTHORIZATION TO IMPORT LIQUEFIED NATURAL GAS BY VESSEL

Pursuant to Section 3 of the Natural Gas Act (NGA), 15 U.S.C. § 717b, and Part 590 of the Department of Energy (DOE) regulations, 10 C.F.R. Part 590, Constellation LNG, LLC (Constellation LNG) submits this Application requesting the DOE Office of Fossil Energy (DOE/FE) to issue an order granting Constellation LNG long-term authorization to import liquefied natural gas (LNG) from the Republic of Trinidad and Tobago (Trinidad) and other international sources by vessel, up to a total volume equivalent to 206 billion cubic feet (Bcf) of natural gas, over a 62 month term from March 1, 2019<sup>1</sup> through May 31, 2024. In support of this Application, Constellation LNG submits the following:

<sup>&</sup>lt;sup>1</sup> As described more fully in Section V below, Constellation LNG and Gas Natural Fenosa LNG Marketing Limited (GNF) are parties to that certain LNG Sale and Purchase Agreement dated 24 July 2018 (LNG SPA).

I.

## **COMMUNICATIONS**

Communications regarding this Application should be directed to:

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Assistant General Counsel
Exelon Business Services Company, LLC
1310 Point Street – 8<sup>th</sup> Floor
Baltimore, MD 21231
<u>susan.bergles@exeloncorp.com</u>
410-470-1553

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Legal Compliance Analyst
Exelon Business Services Company, LLC
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II.

## **APPLICANT**

The exact legal name of the Applicant, is Constellation LNG, LLC. Constellation LNG is a Delaware corporation authorized to do business in the Commonwealth of Massachusetts. It is a wholly owned and controlled by Exelon Corporation. Constellation LNG has a place of business at 1310 Point Street, 8<sup>th</sup> Floor, Baltimore, Maryland 21231.

Constellation LNG has a current blanket authorization to import LNG from various international sources by vessel and to export LNG to Canada by vessel under DOE/FE Order 4183.

## III.

## **BACKGROUND**

On March 29, 2018, ENGIE Gas & LNG, LLC, and its corporate affiliate ENGIE Gas & LNG Holdings LLC, entered into a Membership Interest and Asset Purchase Agreement ("Agreement") with Exelon Generation Company, LLC ("Exelon"). Under the Agreement, which closed on October 1, 2018, Exelon purchased 100 percent of the issued and outstanding

membership interests in Distrigas of Massachusetts LLC (DOMAC), which owns the Everett LNG Facility.<sup>2</sup> The transfer included substantial physical assets, employees, data systems, intellectual property, and other assets. As of October 1, 2018, Constellation LNG is the Exelon entity responsible for purchasing and is the importer of record for LNG purchases that are delivered to the Everett LNG Facility. As stated above, Constellation LNG has a current blanket authorization to import LNG from various international sources by vessel under DOE/FE Order 4183.

IV.

## **REQUESTED AUTHORIZATION**

All of the LNG imported under the requested authorization will be purchased by

Constellation LNG under the terms of the LNG Sale and Purchase Agreement dated 24 July

2018 between Constellation LNG and Gas Natural Fenosa LNG Marketing Limited (LNG SPA),
which is described in Section V below; additionally, a redacted copy of the LNG SPA is
provided in Appendix C to this Application. Constellation LNG will make all vessel
arrangements for the LNG to be imported. Constellation LNG will comply with all reporting
requirements deemed necessary by DOE/FE, including filing monthly reports.

The authorization sought herein will permit Constellation LNG to import LNG from Trinidad and other international sources by vessel up to a total volume equivalent to 206 Bcf of natural gas over a 62-month period from March 1, 2019 through May 31, 2024. Constellation LNG imports liquefied natural gas and sells such LNG in as vaporized natural gas or LNG liquid to customers in New England, which include local gas distribution companies, electric

<sup>&</sup>lt;sup>2</sup> Specifically, the transaction entailed the sale of the equity interests held by ENGIE Gas & LNG Holdings LLC in DOMAC to Exelon, and DOMAC continues to hold the FERC Natural Gas Act section 3 certification.

generating facilities, and natural gas marketers. In this manner, the LNG imported under this authorization assists in the provision of fuel reliability and fuel security in New England.

V.

## **CONTRACT TERMS**

The principal terms of the LNG SPA are as follows:

Delivery Term: Under the terms of the LNG SPA, Constellation LNG, in its sole discretion, may elect a "Start Date" for LNG supply on any day between November 1, 2018 and March 1, 2019. If Constellation LNG elects a Start Date prior to March 1, 2019, Constellation LNG will utilize its short-term blanket authorization issued in Constellation LNG, LCC, DOE/FE Order No. 4183 for any LNG cargos delivered prior to the effective date of the long-term import authorization requested herein. The delivery term thus begins on any day selected by Constellation LNG between November 1, 2018 and March 1, 2019, and ends on May 31, 2022, with options for extensions through May 31, 2024. May 31, 2024 reflects the last possible day of the LNG SPA. The Second Extension Period is June 1, 2023 and ending May 31, 2024, pursuant to LNG SPA Clause 3.1(f).

Delivery Point: Constellation LNG intends to have the LNG delivered to the Everett LNG Facility located in Everett, Massachusetts, currently owned and operated by its affiliate, DOMAC. However, under the terms of the LNG SPA, Constellation LNG has the ability to have LNG delivered to other facilities located in the Atlantic Basin.

Quantity: The Annual Contract Quantity (ACQ), based on natural gas in its gaseous state is 29,500,000 MMBtu, with an option to purchase an additional three (3) LNG cargos per year, for a total annual aggregate quantity of 38,350,000 MMBtu. The request for authorization

to import up to a total volume equivalent of 206 Bcf herein constitutes the maximum, aggregate amount that Constellation LNG could import if Constellation LNG exercised all options for additional cargos under the LNG SPA.

**Price:** Each cargo purchased by Constellation LNG is priced at a delivered price expressed in \$/MMBtu.

VI.

## **PUBLIC INTEREST**

Constellation LNG seeks an order under NGA Section 3(a), which provides that DOE/FE shall authorize natural gas imports unless [it] "finds that the proposed importation... will not be consistent with the public interest." <sup>3</sup> As described above, the proposed import arrangement described herein is consistent with the public interest and provides fuel reliability and fuel security in New England to customers, including, but not limited to, local gas distribution companies, and electric generating facilities. Under NGA § 3(c), because Constellation LNG's imports under the SPA as described herein meet the public interest test, DOE/FE must grant the authorization "without modification or delay." 15 U.S.C. §717b (b) and (c).

VII.

## **APPENDICES**

Appendix A: Verification

<sup>&</sup>lt;sup>3</sup> NGA Section 3(a) provides in pertinent part:

<sup>[</sup>N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary of Energy] authorizing it to do so. The [Secretary] shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest.

<sup>15</sup> U.S.C. § 717b(a). The Secretary of Energy's authority (established by the DOE Organization Act transferring jurisdiction from the Federal Power Commission) is delegated to DOE/FE pursuant to Redelegation Order No. 00-002.04F (July 11, 2013).

Appendix B: Opinion of Counsel

Appendix C: LNG Supply Agreement (redacted)

#### VIII.

## **CONCLUSION**

Constellation LNG respectfully requests that DOE/FE find that Constellation LNG's proposed importation of LNG from Trinidad and other international sources by vessel is consistent with the public interest and grant, without modification or delay, Constellation LNG's request, as more fully described in this Application, for long-term authorization to import LNG by vessel up to a total volume equivalent to 206 Bcf of LNG over a 62-month period from March 1, 2019 through May 31, 2024.

Dated: January 10, 2019 Respectfully submitted,

Susan B. Bergles

Counsel for Constellation LNG, LLC.

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# APPENDIX A VERIFICATION



## UNITED STATES OF AMERICA DEPARTMENT OF ENERGY OFFICE OF FOSSIL ENERGY

In the Matter of:	)		
	)	Docket No. 19-	-LNG
CONSTELLATION LNG, LLC	)	_	

#### VERIFICATION

The undersigned, Susan B. Bergles, being duly sworn, states that she is the authorized representative of Constellation LNG, LLC; that she is familiar with the contents of the Constellation LNG Application for Long-Term Authorization to Import Liquefied Natural Gas from Trinidad and other international sources by vessel; and that all statements matters set forth in the Application are true and correct to the best of her knowledge, information and belief.

Susan B. Bergles

Sworn to and subscribed before me, a Notary Public in the Haffed County, State of Maryland on this 10<sup>th</sup> day of January, 2019.



Melissa A. Kenhner

Notary Public

My Commission Expires: 4/6/22

Susan B Berg)-

# APPENDIX B OPINION OF COUNSEL

## **OPINION OF COUNSEL**

This opinion is submitted pursuant to 10 C.F.R. 590.202(c) of the Department of Energy administrative procedures. The undersigned is counsel to:

Constellation LNG, LLC

I have reviewed the corporate documents and it is my opinion that the proposed import of Liquefied Natural Gas is within the company's corporate powers.

Respectfully submitted,

Susan B. Bergles

**Assistant General Counsel** 

Exelon Business Services Company, LLC

1310 Point Street – 8<sup>th</sup> Floor

Baltimore, MD 21231

susan.bergles@exeloncorp.com

410-470-1553

## APPENDIX C

## LNG SALE AND PURCHASE AGREEMENT

(redacted)

## LNG SALE AND PURCHASE AGREEMENT

## BY AND BETWEEN

## GAS NATURAL FENOSA LNG MARKETING LIMITED

(Seller)

AND

CONSTELLATION LNG, LLC

(Buyer)

Dated as of July 24, 2018

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## **Table of Contents**

ARTICLE 1. DI	EFINITIONS AND INTERPRETATION	1
CLAUSE 1.1 CLAUSE 1.2 CLAUSE 1.3	Definitions Interpretation Replacement of Rates and Indices No Longer Available	11
ARTICLE 2. SA	ALE AND PURCHASE	
	ERM AND SUPPLY PERIOD	
CLAUSE 3.1 CLAUSE 3.2 CLAUSE 3.3	Term  Condition Precedent  Failure to Satisfy Condition Precedent	14
ARTICLE 4. SU	JPPLY	14
CLAUSE 4.1 CLAUSE 4.2	Supply Source LNG Cargo Quantities	15
ARTICLE 5. RE	CEIVING FACILITIES	15
CLAUSE 5.1 CLAUSE 5.2 CLAUSE 5.3 CLAUSE 5.4	Receiving Facilities  Modification to the Receiving Facilities  Seller Inspection Rights in Respect of the Receiving Facilities  Marine Terminal Manual	16
ARTICLE 6. QU	JANTITIES	18
CLAUSE 6.1 CLAUSE 6.2 CLAUSE 6.3 CLAUSE 6.4 CLAUSE 6.5 CLAUSE 6.6 CLAUSE 6.7 CLAUSE 6.8	Annual Contract Quantity  Buyer's additional LNG request during the Winter Period  Buyer's additional LNG request during the Summer Period  Buyer's Diversion Right  Buyer's Cancellation Right  Buyer's Shortfall  Seller's Shortfall  Aggregate Shortfall Tolerance	18 19 22 24
	JALITY	
CLAUSE 7.1 CLAUSE 7.2	LNG Specification Off-Spec LNG	27
ARTICLE 8. CO	NTRACT PRICE	30
CLAUSE 8.1	Contract Price	30
ARTICLE 9. INV	VOICES, PAYMENT AND BUYER'S CREDIT RATING	
CLAUSE 9.1 CLAUSE 9.2 CLAUSE 9.3 CLAUSE 9.4 CLAUSE 9.5 CLAUSE 9.6 CLAUSE 9.7	Cargo Documents and Delivery Invoices Other Invoices Invoice Due Dates Payment Seller's Rights Upon Buyer's Failure to Make Payment Disputed Invoices Credit Support	33 34 35 35
ARTICLE 10. ME	ASUREMENTS AND TESTS	
CLAUSE 10.1 CLAUSE 10.2 CLAUSE 10.3 CLAUSE 10.4	Measurement and Testing Parties to Supply Devices Selection of Devices Tank Gauge Tables of LNG Tanker	37 37
		***************************************

CLAUSE 10.5	Gauging and Measuring LNG Volumes Unloaded	38
CLAUSE 10.6	Samples for Quality Analysis	38
CLAUSE 10.7	Quality Analysis	38
CLAUSE 10.8	Operating Procedures	38
CLAUSE 10.9	MMBtu Quality Delivered	38
CLAUSE 10.10	Verification of Accuracy and Correction for Error	39
CLAUSE 10.11	Costs and Expenses	39
ARTICLE 11. TAXE	S, DUTIES AND CHARGES	
CLAUSE 11.1	Seller's Obligations.	39
CLAUSE 11.2	Buyer's Obligations	
CLAUSE 11.3	Tax Refunds	41
ARTICLE 12. TRAN	SFER OF TITLE AND RISK	
CLAUSE 12.1	Transfer of Title and Risk	41
CLAUSE 12.2	Transportation from the Title Transfer Point to the Delivery Point	
CLAUSE 12.3	Seller's Warranty	
ARTICLE 13. TRAN	SPORTATION, LOADING AND UNLOADING	
CLAUSE 13.1	LNG Tanker Nomination.	42
CLAUSE 13.2	LNG Tanker's Port Charges	
CLAUSE 13.3	LNG Tanker Inspections; LNG Tanker Vetting Procedures; Right to	
V	Reject LNG Tanker	43
CLAUSE 13.4	Marine Terminal Liability Agreement	45
CLAUSE 13.5	Additional Requirements	
CLAUSE 13.6	Notices of LNG Tanker Movements and Characteristics of LNG Cargoes.	
CLAUSE 13.7	Berthing Not Permitted During Scheduled Delivery Window	
CLAUSE 13.8	Reasonable Efforts	
	RAMMING OF DELIVERIES	
CLAUSE 14.1	Programming Information	5.5
CLAUSE 14.1 CLAUSE 14.2	Annual Delivery Program	
CLAUSE 14.2	Changes to the Annual Delivery Program	
CLAUSE 14.4	Ninety Day Schedule and Final Delivery Window.	
	LITIES AND INSURANCE	
CLAUSE 15.1	Liabilities and Indemnification	
ARTICLE 16. FORC	E MAJEURE	
CLAUSE 16.1	Events of Force Majeure	
CLAUSE 16.2	Extension of Control	
CLAUSE 16.3	Force Majeure Notice	66
CLAUSE 16.4	Resumption of Normal Performance. Actions during Force Majeure	
	Events	67
ARTICLE 17. TERM	INATION	68
CLAUSE 17.1	Events of Termination	68
CLAUSE 17.2	Termination	
CLAUSE 17.3	Consequences of Termination	
CLAUSE 17.4	Survival of Rights and Remedies on Termination, Cancellation or Expiry	70

GH

NOTICES	71
APPLICABLE LAW	72
ARBITRATION AND EXPERT	72
0.2 <u>Expert Determination</u>	74
AMENDMENT AND WAIVER	75
CONFIDENTIALITY	76
.1 Confidentiality	76
ASSIGNMENT AND TRANSFER	
.2 Assignment of Rights for Security	77
ENTIRETY OF AGREEMENT	
MISCELLANEOUS	78
.1 Representations and Warranties of Buyer2 Representations and Warranties of Seller3 Compliance with Applicable Law .4 Severability.	78 79 79
Measurements Form of Marine Terminal Liability Agreement [RESERVED] LNG Tanker Specifications Seller's LNG Tankers Form of Corporate Guarantee Form of Letter of Credit Proforma Port Charges	
	ARBITRATION AND EXPERT

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THIS LIQUEFIED NATURAL GAS SALE AND PURCHASE AGREEMENT (this "Agreement"), executed this 24th day of July, 2018 (the "Execution Date"), is made and entered into by and between:

- A. GAS NATURAL FENOSA LNG MARKETING LIMITED a company existing under the laws of the Republic of Ireland having its registered office at The Irish Times Building 6th & 7th Floor, 24-28 Tara Street, Dublin 2, Ireland ("Seller", which expression includes its successors and permitted assignees); and
- B. CONSTELLATION LNG, LLC a company existing under the laws of the State of Delaware and having its registered office at 3411 Silverside Road Tatnall Building #104, Wilmington, Delaware 19810, USA ("Buyer", which expression includes its successors and permitted assignees).

WHEREAS Buyer or its Affiliates own and operate Mystic Generating Station (a 1,998 megawatt (MW) fossil power plant fueled by either natural gas or oil) located in Charlestown, Massachusetts, USA ("Mystic");

WHEREAS at all times during the Supply Period Buyer or a Buyer's Affiliate will have acquired and have access rights to the existing LNG receiving facilities at Everett in the Port of Boston, Massachusetts, USA, that include, without limitation, berthing and unloading facilities, LNG storage tanks, a regasification plant, LNG truck loading facilities, and appurtenant facilities, as modified or expanded from time to time (the "Receiving Facilities");

WHEREAS Seller has access to a global portfolio of LNG and ocean-going LNG tankers suitable for the delivery of LNG at the Receiving Facilities; and

WHEREAS the Parties wish to enter into this Agreement to set out the terms and conditions for the sale and purchase of LNG.

NOW THEREFORE, in consideration of the mutual agreements contained herein, Seller and Buyer agree as follows:

## ARTICLE 1. DEFINITIONS AND INTERPRETATION

#### CLAUSE 1.1 Definitions

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

"48-Hour Delivery Window" has the meaning specified in CLAUSE 14.4(b);

"Affiliate" with respect to a Person means any Person that directly or indirectly (through one or more entities) controls, is controlled by, or is under common control with such Person. For this purpose, "control" means the beneficial ownership, either directly or indirectly, of more than fifty percent (50%) of the voting rights, voting stock or shares carrying a right to vote at a general

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meeting (or its equivalent) or, (whether alone or acting in concert with others, and whether by ownership, possession, contract or otherwise) the right to appoint the majority of the board of directors or equivalent management body of such corporation, partnership or other Person;

"Aggregate Shortfall Tolerance" has the meaning specified in CLAUSE 6.8;

"Agreement" means this LNG Sale and Purchase Agreement executed by Seller and Buyer including the Exhibits, as the same may from time to time be amended, modified, varied or supplemented in accordance with CLAUSE 21.1;

"All Fast" means, with respect to any LNG Tanker, the time when the LNG Tanker is safely moored with all mooring lines tied up to the berth at the Receiving Facilities;

"Allowed Laytime" has the meaning specified in CLAUSE 13.7(c);

"Alternate Receiving Facility" means, separate from the Receiving Facilities, an LNG receiving facility located in the Atlantic Basin that complies with International LNG Terminal Standards and is ship-shore compatible with LNG Tankers;

"Annual Contract Quantity" or "ACQ" has the meaning specified in CLAUSE 6.1;

"Annual Delivery Program" or "ADP" means the schedule of LNG deliveries determined pursuant to CLAUSE 14.2;

"Applicable Anti-Corruption Laws" means the applicable law for each Party or business under this Agreement: (a) the law to which such Party or such Party's ultimate parent company is subject and the laws of the country in which such Party or such Party's ultimate parent company is listed or its shares traded, or (b) the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17 December 1997, which entered into force on 15 February 1999, and the Convention's Commentaries, or (c) the Foreign Corrupt Practices Act 1977 of the United States of America, or (d) any other applicable anti-corruption laws in any other country in which business for this Agreement will be conducted (as the case may be);

"Applicable Laws" means, in relation to matters covered by this Agreement, all applicable laws, statutes, rules, regulations, ordinances, codes, standards and rules of common law, administrative and judicial provision, and judgments, decisions, interpretations, orders, directives, injunctions, writs, decrees, stipulations, or awards of any applicable Governmental Authority or duly authorized official, court or arbitrator thereof, including all Approvals and export authorizations, in each case, now existing or which may be enacted or issued and which are legally binding on a Party (and "lawful" and "unlawful" shall be construed accordingly) after the Start Date;

"Approvals" shall mean any and all permits (including work permits), franchises, authorizations, approvals, grants, licenses, visas, waivers, exemptions, consents, permissions, registrations, decrees, privileges, variances, validations, confirmations or orders granted by or filed with any Governmental Authority;

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"Atlantic Basin" means the Atlantic Ocean or any of its inner seas, including the Mediterranean Sea, Caribbean Sea, the Baltic Sea and the North Sea;

"Base Reference Bank Rate" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied by the principal offices of three (3) leading banks in the London interbank market, as the respective rates at which such banks would borrow funds in the London interbank market in USD for three (3) months, were they to do so by asking for and then accepting interbank rates for deposits in reasonable market size in USD for a three (3) month period;

"Black-Out Date" has the meaning specified in CLAUSE 14.2(a);

"Boil-Off Rate" means, in respect of an LNG Tanker, 0.15% per day pro rata (expressed as a daily percentage (%) of her gross cargo capacity in cubic meters) and converted to MMBtus per day and the applicable Gross Calorific Value (mass basis) and the LNG density of the unloaded LNG, as calculated in accordance with ARTICLE 10;

"Btu" means a British thermal unit, being the amount of heat equal to two hundred fifty-one decimal nine nine six (251.996) Calories for one thousand fifty-five decimal zero five six (1,055.056) Joules;

"Business Day" means any day (other than Saturdays, Sundays and national holidays in the United States of America and Ireland) on which banks are normally open to conduct business in the United States of America or Ireland or the place where banks for the exchange are located, as the case may be;

"Buyer" means Constellation LNG, LLC, as set forth in the preamble to this Agreement;

"Buyer Indemnity Group" means Buyer and its Representatives;

"Buyer's Facilities" means the Receiving Facilities, the Discharge Port, the high pressure Natural Gas pipeline that extends from the tailgate of the regasification terminal to Mystic and the high pressure Natural Gas pipeline that extends from the tailgate of the regasification terminal to the Everett Meter Station of Algonquin Gas Transmission at Everett, Massachusetts, USA;

"Buyer's Shortfall" has the meaning specified in CLAUSE 6.6(a);

"Cancellation Fee" has the meaning specified in CLAUSE 8.1(a)(iii);

"Cancellation Right" has the meaning specified in CLAUSE 6.5(a);

"Cargo Lot" means a cargo of LNG to be delivered under this Agreement;

"Cargo Quantity" means a volume of LNG of two-million and nine hundred and fifty thousand (2,950,000) MMBtu estimated to be delivered in an LNG Tanker for each Cargo Lot;

"Cargo Tolerance" means +/-5% of the Cargo Quantity;

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"Claim" means all claims, demands, legal proceedings, or actions that may exist, arise, or be threatened currently or in the future at any time following the Start Date, whether or not of a type contemplated by any Party, and whether based on federal, state, local, statutory or common law or any other Applicable Law;

"Closing" means a Buyer's written notice to Seller informing that the unconditional acquisition of control over the Receiving Facilities by Buyer or a Buyer's Affiliate has taken place;

"Completion of Unloading" means in respect of a cargo of LNG, the disconnection of the last flange coupling of the discharging manifold of an LNG Tanker from the last flange coupling on the unloading line at the Receiving Facilities following unloading of the LNG Tanker;

"Condition Precedent" has the meaning specified in CLAUSE 3.2(a);

"Confidential Information" has the meaning specified in CLAUSE 22.1(a);

"Contract Price" has the meaning specified in CLAUSE 8.1;

"Contract Year" means a period of time commencing on and including November 1<sup>st</sup> of a calendar year and ending on and including October 31<sup>st</sup> of the following calendar year provided that (i) the initial Contract Year is the period of time commencing on the Start Date and ending on October 31<sup>st</sup> 2019 and; (ii) final Contract Year is the period of time beginning on the November 1<sup>st</sup> of the previous calendar year in which the Term ends and ending on the final Day of the Term;

"Corporate Guarantee" has the meaning specified in CLAUSE 9.7(b);

"Credit Support" means a Corporate Guarantee or a Letter of Credit in accordance with CLAUSE 9.7(b);

"Credit Support Default" means (i) a Party fails to provide, maintain and/or replenish its Credit Support in accordance with this Agreement; or (ii) the Affiliate granting the Corporate Guarantee disaffirms, disclaims, revokes, repudiates or rejects, in whole or in part, or challenges the validity of the Corporate Guarantee provided by it or otherwise fails to comply with or perform its obligations under the Corporate Guarantee; or; (iii) any Letter of Credit expires or terminates with respect to any outstanding obligations of the respective Party under this Agreement, or is set to expire or terminate within thirty (30) Days and has not been replaced by another Letter of Credit; or (iv) any Credit Support fails or ceases to be in full force and effect for the purpose of the Agreement, (in each case other than in accordance with its terms or the terms of the Agreement) and is not replaced in accordance with this Agreement before the satisfaction of all outstanding obligations of Buyer under the Agreement;

"Cubic Meter" means, in relation to gas, the quantity of dry ideal gas, at a temperature of fifteen (15) degrees Celsius and a pressure of one hundred one decimal three two five (101,325) kilopascals absolute contained in a volume of one (1) cubic meter;

"Day" means a period of twenty-four (24) consecutive hours local time unless the context otherwise requires and "day" means a period of twenty-four (24) consecutive hours;



"Demurrage Rate" shall mean seventy-five thousand (75,000) USD per Day or pro rata for part of a Day;

"Delivery Point" means the point at which the flange coupling of the unloading arms of an LNG Tanker meets the flange coupling of the inlet flange of the LNG receiving lines at the Receiving Facilities:

"Delivery Window" means, in respect of each delivery, a period of five (5) consecutive days commencing at 07:00 local time at the Receiving Facilities;

"Discharge Port" means the port of Boston, Massachusetts, USA where the Receiving Facilities are located or, where applicable under this Agreement, the port where the Alternate Receiving Facilities are located;

"Dispute" has the meaning specified in CLAUSE 20.1(a);

"Diversion Net Proceeds" has the meaning specified in CLAUSE 6.4(b);

"Estimated Time of Arrival" or its abbreviation "ETA" has the meaning specified in CLAUSE 13.6(a);

"ETA Notice" has the meaning specified in CLAUSE 13.6(a);

"Excess Amount" means any amount Buyer shall be reimbursed and credited by Seller pursuant to CLAUSE 6.5(g);

"Execution Date" means the date of this Agreement, as set forth in the preamble to this Agreement;

"Expert" means any Person agreed upon or appointed in accordance with CLAUSE 20.2(a);

"Extension Period" has the meaning specified in CLAUSE 3.1(e);

"Final Delivery Window" means, in respect of each delivery, a period of twenty-four (24) consecutive hours, commencing two (2) hours after the first low water time in the inner harbor of the Discharge Port; within which the NOR is to be tendered by the relevant LNG Tanker;

"Force Majeure" has the meaning specified in CLAUSE 16.1(a);

"Force Majeure Notice" has the meaning specified in CLAUSE 16.3(a);

"GIIGNL" has the meaning specified in Section 4.1 of Exhibit A;

"Governmental Authority" means any agency, authority, department, independent system operator, port authority, harbor master, inspectorate, minister, ministry or other public or statutory Person (whether autonomous or not) of, or of the government of the country of the Loading Port or the Discharge Port (or any other relevant country) or any political sub-division in or of that county, state or country;

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"Grace Period" means a period of twenty-four (24) consecutive hours after expiry of the applicable Final Delivery Window;

"Gross Heating Value" means the amount of heat produced by the complete combustion of a unit quantity of fuel as calculated in accordance with CLAUSE 7.1(a);

"Heel" means with respect to a given Cargo Lot, the volume or quantity of LNG to be retained by the LNG Tanker after discharge;

"ICC" shall have the meaning specified in CLAUSE 20.2(a);

"ICC Court" shall have the meaning specified in CLAUSE 20.1(c);

"ICC Rules" shall have the meaning specified in CLAUSE 20.1(b);

"IMO" means the International Maritime Organization;

"Incremental Cost" means the incremental cost incurred by Seller (including vis-à-vis its supplier) for transportation and delivery of a diverted Cargo Lot pursuant to CLAUSE 6.4 or a Buyer's Shortfall pursuant to CLAUSE 6.6 to such Third Party, over the cost of transportation and delivery of the Cargo Lot to the Receiving Facilities;

"Indemnified Party" shall have the meaning in CLAUSE 15.1(d)(i);

"Indemnifying Party" shall have the meaning in CLAUSE 15.1(d)(i);

"Indemnity Group" in the case of Seller, the Seller Indemnity Group, and in the case of Buyer, the Buyer Indemnity Group;

"Insolvency Event" means, with respect to a Party:

- (a) the issuance of a decree, order, resolution or judgment declaring that Party insolvent or bankrupt; filing a claim, application or petition for bankruptcy, reorganization, arrangement (judicial or extrajudicial), cessation of payment, appointment of a receiver or referee or liquidation to encumber that Party or a substantial portion of its assets, or to order its dissolution or the liquidation of its assets or an assignment for the benefit of its creditors, or to impose precautionary measure or attachment over such assets, or another analogous event, and that situation remains in effect for a consecutive period of sixty (60) days; or
- (b) the initiation by such Party of a voluntary petition for bankruptcy, dissolution, liquidation, judicial or extrajudicial arrangement, or any other similar proceeding;

"International LNG Terminal Standards" means, to the extent not inconsistent with the express requirements of this Agreement, the international standards and practices applicable and updated from time to time to the design, construction, equipment, operation or maintenance of LNG receiving and regasification terminals established by the following (such standards to apply in the following order of priority): (i) a Governmental Authority having jurisdiction over the Receiving

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Facilities, Buyer, or Buyer's operator; (ii) the Society of International Gas Tanker and Terminal Operators (to the extent applicable); and (iii) any other internationally recognized non-governmental agency or organization with whose standards and practices it is customary for Reasonable and Prudent Operators of LNG receiving and regasification terminals, to comply (such as GIIGNL), provided, however, that in the event of a conflict between any of the priorities noted above, the priority with the lowest roman numeral noted above shall prevail;

"International LNG Vessel Standards" means, to the extent not inconsistent with the express requirements of this Agreement, the international standards and practices applicable and updated from time to time to the ownership, design, equipment, operation or maintenance of LNG vessels established by: (i) the International Maritime Organization; (ii) the Oil Companies International Marine Forum (OCIMF); (iii) the Society of International Gas Tanker and Terminal Operators (SIGTTO) (or any successor body of the same); (iv) the International Navigation Association (PIANC); (v) the International Association of Classification Societies; and (vi) any other internationally recognized agency or non-governmental organization with whose standards and practices it is customary for Reasonable and Prudent Operators of LNG vessels to comply (such as GIIGNL), provided, however, that in the event of a conflict between any of the priorities noted above, the priority with the lowest roman numeral noted above shall prevail;

"International Everett Standards" means (i) with respect to Seller, the International LNG Vessel Standards; (ii) with respect to Buyer, the Applicable Law as well as the terms of Exhibit H that are applicable to the Receiving Facilities;

"ISO" means the International Organization for Standardizations;

"Legal Requirements" shall mean all (a) Approvals; and (b) Applicable Laws that are applicable, as the case may be, to the Receiving Facilities, Seller, Buyer, LNG Tankers, and LNG tankers on behalf of other users;

"Letter of Credit" has the meaning specified in CLAUSE 9.7(c)(i);

"LIBOR" means the British Bankers' Association London Inter Bank Offering Rate for three (3) month deposits of USD calculated on the basis of a three hundred and sixty (360) day year, or if no such rate is available, the Base Reference Bank Rate for such deposits;

"Liquefied Natural Gas" or its abbreviation "LNG" means Natural Gas in a liquid state, at or below its boiling point and at a pressure of approximately one (1) atmosphere;

"LNG Tanker" shall mean an ocean-going vessel, suitable for transporting LNG, used or intended to be used for delivering a Cargo Lot by Seller to Buyer that observes the conditions specified in CLAUSE 13.1(a) and that has been approved in accordance with CLAUSE 13.3 and the LNG Tanker Vetting Procedures for the transportation of LNG on behalf of Buyer;

"LNG Tanker Vetting Procedures" means Buyer's procedure regarding the vetting of LNG tankers to become LNG Tankers as set forth in the Marine Terminal Manual;

"Loading Port" means the port where each relevant Seller's Facilities are located;

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"Losses" regardless of the applicable governing law giving rise thereto, means any and all losses, liabilities, judgments, settlements and expenses (whether or not resulting from Claims by Third Parties), including interest and penalties with respect thereto and reasonable attorneys' and accountants' fees and expenses;

"Marine Terminal Liability Agreement" means an agreement for use of the port and marine facilities located at the Discharge Port, to be entered into as described in CLAUSE 13.4(a) in the form attached in Exhibit B hereto as may be amended pursuant to CLAUSE 13.4(b);

"Marine Terminal Manual" shall have the meaning provided in CLAUSE 5.4;

"Measurement Dispute" has the meaning specified in CLAUSE 20.2(a);

"Minimum Required Rating" means a long-term unsecured debt credit rating of at least BBBby Standard & Poor's or BBB- by Fitch or Baa3 by Moody's;

"MMBtu" means one million (1,000,000) Btus;

"Month" means a calendar month, starting at 00:00 local time in Boston, Massachusetts on the first Day of such calendar month and ending at 24:00 local time in Boston, Massachusetts on the last Day of such calendar month;

"Mystic" has the meaning specified in the Whereas;

"Natural Gas" or "Gas" means any hydrocarbon or mixture of hydrocarbons consisting essentially of methane, other hydrocarbons and non-combustible gases in a gaseous state, which is extracted from the subsurface of the earth in its natural state, separately or together with liquid hydrocarbons;

"Net Proceeds" shall have the meaning provided in CLAUSE 6.6(c);

"Ninety Day Schedule" or "NDS" shall mean a forward plan of deliveries for the three (3)-month period commencing on the first (1st) Day of the month following issuance of such forward plan that shall follow the applicable ADP and set forth by Cargo Lot the forecasted pattern of deliveries;

"Notice of Readiness" or "NOR" has the meaning specified in CLAUSE 13.6(b);

"OCIMF" means the Oil Companies International Marine Forum;

"Off-Spec LNG" has the meaning specified in CLAUSE 7.2(a);

"Off-Spec Losses" has the meaning specified in CLAUSE 7.2(b);

"P&I Club" means a Protection and Indemnity Club that is a member of the International Group of P&I Clubs;

"P&I Insurance" has the meaning specified in CLAUSE 15.1(g);

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"Party" means either Buyer or Seller, as the context requires and "Parties" means both Buyer and Seller;

"PBS" means the customary pilot boarding station at the Discharge Port where the pilot boards the LNG Tanker, as determined by the applicable Governmental Authority or other entity with authority to regulate transit and berthing of vessels at the Discharge Port;

"Person" means any individual, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity;

"Pilot" means any Person engaged by Transporter to come on board an LNG Tanker to assist the master in pilotage, mooring and unmooring of such LNG Tanker;

"Port Charges" means all charges of whatsoever nature (including rates, tolls, dues, fees, and imposts of every description) in respect of an LNG Tanker entering or leaving the Discharge Port or unloading LNG, including wharfage fees, in-and-out fees, line handling charges, and charges imposed by fire boats, tugs and escort vessels, the U.S. Coast Guard, a Pilot, and any other authorized Person assisting an LNG Tanker to enter or leave the Discharge Port, and further including port use fees and similar fees payable by users of the Discharge Port (or by Seller or its operator on behalf of such users) to applicable Government Authorities;

"Port Services" means any port services, berthing, mooring, docking and tug escort services, including pilot services and those related to tug vessels, service vessels, firefighting and any other services required during an LNG Tanker's present in port for the purposes of delivering a Cargo Lot;

"Quantity Delivered" means the number of MMBtus delivered in a Cargo Lot by Seller to Buyer at the Delivery Point pursuant to this Agreement and calculated in accordance with Exhibit A;

"Reasonable and Prudent Operator" means a Person seeking in good faith to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a reasonable, skilled and experienced Person carrying out the same type of activity under the same or equivalent circumstances and conditions, and complying with all Applicable Laws and LNG industry international standards, and any reference to the standard of a Reasonable and Prudent Operator shall be construed accordingly;

"Reasonable Efforts" shall mean the undertaking of such good faith efforts by the applicable Party as are commercially, logistically and technically prudent for the applicable Party under the circumstances;

"Receiving Facilities" has the meaning specified in the Whereas;

"Receiving Party" has the meaning specified in CLAUSE 22.1(a);

"Representatives" with respect to any Person, such Person's Affiliates and its and their respective stockholders, directors, officers, managers, employees and agents;



"Sanctioned Country" has the meaning specified in CLAUSE 25.3(c)(ii)(A);

"Sanctioned Party" has the meaning specified in CLAUSE 25.3(c)(ii)(A);

"Sanctions Authority" has the meaning specified in CLAUSE 25.3(c)(i);

"Second Extension Period" has the meaning specified in CLAUSE 3.1(f);

"Seller" means Gas Natural Fenosa LNG Marketing Limited, as set forth in the preamble to this Agreement;

"Seller Indemnity Group" means Seller and its Representatives;

"Seller's Facilities" means the LNG loading facilities (including the Loading Port) located at the Supply Source;

"Seller's Shortfall" has the meaning specified in CLAUSE 6.7(a)(i);

"Seller's Transporter" or "Transporter" means each of the owner, operator and/or charterer of an LNG Tanker;

"SIGTTO" means the Society of International Gas Tanker and Terminal Operators;

"SIRE Accredited Inspector" means an inspector qualified by the Oil Companies International Marine Forum (OCIMF) to inspect an LNG Tanker for the purpose of generating an inspection report for inclusion in OCIMF's Ship Inspection Report Programme;

"Specifications" has the meaning specified in CLAUSE 7.1(a);

"Start Date" shall have the meaning provided in CLAUSE 3.1(c);

"Summer Period" will be any Day between April 1st and October 31st (inclusive) of each Contract Year;

"Supply Period" means the period determined pursuant to CLAUSE 3.1(b);

"Supply Source" has the meaning specified in CLAUSE 4.1;

"Taxes" means a compulsory payment to a Governmental Authority, empowered with taxing powers under Applicable Laws, and assessed on persons and other legal entities, or on *inter alia* their assets, income, dividends and profits (without regard to the method of collection or assessment, and whether by withholding or otherwise). Without limitation, Taxes, either direct or indirect, may be levied in the form of income tax (statutory, supra-governmental, state, principal, local governmental or municipal), estate tax, excise tax, duties, contributions and levies, imposts, tariffs, sales tax, value added tax, capital gains tax, property tax, or fees and rates (including employment taxes and national insurance contributions). Taxes also include deductions or withholdings of any sort and all penalties, charges, costs and interest payable in connection with any failure or delay in paying Taxes;

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"Term" has the meaning specified in CLAUSE 3.1(a);

"Terminating Party" has the meaning specified in CLAUSE 17.2(a);

"Termination Date" has the meaning specified in CLAUSE 3.1(d);

"Termination Event" has the meaning specified in CLAUSE 17.1;

"Third Party" means any Person other than a Party or an Affiliate of that Party;

"Third Party Claim" has the meaning specified in CLAUSE 15.1(d);

"Transporter" means any Person who owns, operates and/or contracts with Seller for the purposes of providing or operating the relevant LNG Tanker;

"USD" or "\$" means the lawful currency of the United States of America;

"Used Laytime" has the meaning specified in CLAUSE 13.7(d);

"Willful Misconduct" means any act or omission which is done or omitted to be done willfully, or is done or omitted from being done with reckless disregard for or wanton indifference to, harmful consequences that such Party knew, or should have known, such act or failure would have on the safety or property of another person or entity, but shall not include any error of judgement or mistake made by such Party in the exercise of good faith of any function, authority or discretion conferred on such Party under this Agreement;

"Winter Period" will be any Day between November 1st and March 31st (inclusive) of each Contract Year.

## CLAUSE 1.2 Interpretation

For purposes of this Agreement:

- (a) The titles, headings, and numbering in this Agreement are included for convenience only and will have no effect on the construction or interpretation of this Agreement.
- (b) References in this Agreement to CLAUSES and Exhibits are to those of this Agreement unless otherwise indicated. References to this Agreement and to agreements and contractual instruments will be deemed to include all exhibits, schedules, appendices, annexes, and other attachments thereto and all subsequent amendments and other modifications to such instruments, to the extent such amendments and other modifications are not prohibited by the terms of this Agreement.
- (c) The word "include" or "including" will be deemed to be followed by "without limitation." The term "will" has the same meaning as "shall," and thus imposes an obligation.

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- (d) Whenever the context so requires, the singular includes the plural and the plural includes the singular, and the gender of any pronoun includes the other gender.
- (e) Unless otherwise indicated, references to any statute, regulation or other law will be deemed to refer to such statute, regulation or other law as amended or any successor law.
- (f) All references to a Person shall include such Person's successors and permitted assigns.
- (g) Unless otherwise indicated, any reference to a time of Day shall be to Eastern Time in the United States of America.

#### CLAUSE 1.3 Replacement of Rates and Indices No Longer Available

- (a) If (i) a publication that contains a rate or index used in this Agreement ceases to be published for any reason or (ii) such a rate or index ceases to exist, is materially modified, or no longer is used as a liquid trading point for Gas (as applicable), so as systematically to change its economic result, or is disaggregated, displaced or abandoned, for any reason, the Parties shall promptly discuss, with the aim of jointly selecting a rate or index or rates or indices to be used in place of such rates and indices that maintains the intent and economic effect of those original rates or indices.
- If the Parties fail to agree on a replacement rate or index, either Party may submit (b) such issue to an Expert pursuant to CLAUSE 20.2. Any Expert selected shall be instructed to select the published rate or index, or a combination of published rates or indices, with adjustments as necessary or appropriate, which most nearly preserves the intent and economic result of the original rates or indices.
- (c) If any rate used in this Agreement is not published for a particular date, but the publication containing such rate continues to be published and the rate itself continues to exist, the Parties shall use the published rate in effect for the date such rate was most recently published prior to the particular date, unless otherwise provided in this Agreement.
- (d) If any index used in this Agreement is not published for a particular date, but the publication containing such index continues to be published and the index itself continues to exist, the Parties shall use the index from the geographic location closest in proximity to the unpublished index from the same publication in effect for the particular date adjusted by the difference between the same indices from the most recent publication published prior to the particular date, unless otherwise provided in this Agreement.





(e) If an incorrect value is published for any rate or index used in this Agreement and such error is corrected and published within ninety (90) Days of the date of the publication of such incorrect rate or index, such corrected rate or index will be substituted for the incorrect rate or index and any calculations involving such rate or index will be recalculated and the Parties will take any necessary actions based upon these revised calculations, including adjustments of amounts previously invoiced and/or paid.

## ARTICLE 2. SALE AND PURCHASE

Seller shall sell and make available for delivery to Buyer at the Delivery Point and Buyer shall take and pay for, or pay for if made available but not taken, LNG in the quantities and at the prices determined herein and subject to the other terms and conditions of this Agreement and Exhibits.

#### ARTICLE 3. TERM AND SUPPLY PERIOD

#### CLAUSE 3.1 Term

- (a) The term of this Agreement (the "Term") shall commence on the Execution Date and, subject to CLAUSE 3.2, shall continue in force and effect until the Termination Date.
- (b) The sale and purchase of LNG under this Agreement shall commence on the Start Date and, subject to CLAUSE 17.1, shall continue until the Termination Date ("Supply Period").
- (c) The "Start Date" of this Agreement shall be the Day determined by Buyer at its sole discretion on which the delivery of LNG will commence; provided that Buyer may only elect as the Start Date any Day placed between November 1<sup>st</sup>, 2018 and March 1<sup>st</sup>, 2019. Buyer's notice shall determine the Start Date at a day that in no event shall be sooner than sixty (60) days after the day Buyer serves such notice. If Buyer fails to serve to Seller the notice by December 31, 2018, the Start Date will be deemed to be March 1, 2019.
- (d) The "Termination Date" of this Agreement shall be May 31<sup>st</sup>, 2022 or at the end of Extension Period as provided for in CLAUSE 3.1(e) or at the end of the Second Extension Period as provided for in CLAUSE 3.1(f) unless this Agreement is otherwise earlier terminated in accordance with CLAUSE 17.1.
- (e) The Term of this Agreement shall be extended automatically by one (1) Contract Year commencing on June 1<sup>st</sup>, 2022 and ending May 31<sup>st</sup>, 2023 (the "Extension Period") by means of a Buyer's notice to be delivered to Seller no later than March



- 1<sup>st</sup>, 2019. Any notification received by Seller after such date shall not result in the extension of the Term. For the Extension Period, the Contract Price will remain the same.
- (f) Subject to Buyer having previously notified Seller of the application of the Extension Period pursuant to CLAUSE 3.1(e), the Term of this Agreement shall be extended automatically by one (1) Contract Year commencing on June 1<sup>st</sup>, 2023 and ending May 31<sup>st</sup>, 2024 (the "Second Extension Period") by means of a Buyer's notice to be delivered to Seller no later than March 1<sup>st</sup>, 2020. Any notification received by Seller after such date shall not result in the second extension of the Term. For the Second Extension Period, the Contract Price as determined in CLAUSE 8.1will be increased by \$0.30/MMBtu.

## CLAUSE 3.2 Condition Precedent

- (a) The rights and obligations of Seller and Buyer as set forth in this Agreement, except those set forth in CLAUSE 1.1, CLAUSE 3.1, ARTICLE 11 and ARTICLE 15 through ARTICLE 25 (inclusive), are conditional upon the occurrence of the Closing no later than November 30, 2018 (the "Condition Precedent").
- (b) Buyer shall use Reasonable Efforts to promptly fulfil the Condition Precedent and notify Seller of its satisfaction within three (3) days of the Closing.

#### CLAUSE 3.3 Failure to Satisfy Condition Precedent

If the Condition Precedent set forth in CLAUSE 3.2 is not satisfied or waived by both Parties by January 1, 2019, then either Party may give the other Party a thirty (30) days' written notice of its intention to terminate this Agreement and if the Condition Precedent has not been satisfied (or waived by both Parties) by the expiry of that thirty (30) day notice period, the notifying Party may by further written notice terminate this Agreement with immediate effect and without further liability for either Party. Without prejudice to the foregoing, the Parties shall nevertheless meet and seek reasonable alternative remedies to termination that may include a rescheduling of Parties' obligation to a date when the Condition Precedent will reasonably be satisfied.

#### ARTICLE 4. SUPPLY

#### CLAUSE 4.1 Supply Source

Except during the Second Extension Period, the LNG to be made available by Seller for delivery pursuant to this Agreement shall be primarily sourced from the Atlantic LNG Terminal in Trinidad and Tobago, *provided that* Seller may during the entire Term supply LNG to Buyer from any other source, subject to such LNG satisfying the Specifications



and provided further that Seller shall not nominate LNG from sources under Force Majeure ("Supply Source").

Seller represents and warrants that it has, and the Seller shall ensure that it continues to have during the Supply Period, a firm entitlement to sufficient LNG in order to meet its delivery obligations under this Agreement.

#### CLAUSE 4.2 LNG Cargo Quantities

Unless otherwise agreed and without prejudice to the Cargo Tolerance or Seller's right to substitute the LNG Tanker in accordance with CLAUSE 13.1(c), the LNG to be delivered under this Agreement shall be made available in Cargo Quantities.

#### ARTICLE 5. RECEIVING FACILITIES

## CLAUSE 5.1 Receiving Facilities

- (a) Throughout the Supply Period, Buyer shall (at no cost or expense to Seller, save for Port Services):
  - (i) Provide or cause to be provided, a safe berth and unloading facilities at the Discharge Port in accordance with this CLAUSE 5.1;
  - (ii) Provide, or cause to be provided, a copy of the Marine Terminal Manual;
  - (iii) Operate or cause the relevant operator of the Receiving Facilities to operate the Receiving Facilities so as to permit unloading of an LNG Tanker as quickly and efficiently as reasonably possible;
  - (iv) Cooperate in the prompt berthing, servicing and departure of an LNG Tanker pursuant to this Agreement;
  - (v) Ensure that the Receiving Facilities are of appropriate design and sufficient capacity to enable Buyer to perform its obligations to take delivery of the quantities of LNG that Buyer is obligated to purchase in accordance with this Agreement; and
  - (vi) Provide that tugs, pilots, escorts, mooring handlers, and any other support vessels or vessel support services required to safely berth the LNG Tanker at the Receiving Facilities are available at the Discharge Port at rates no less favorable to Seller than the rates applying to non-Seller LNG vessels delivering LNG to the Receiving Facilities. Excluding line handling charges, Buyer will pay all charges for land-based services that are payable for an LNG Tanker to berth, unload, and depart the Receiving Facilities.

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- (b) Buyer warrants and will ensure that the Receiving Facilities and operations shall be safe and in compliance with the International Everett Standards regarding the reception, mooring and discharge of LNG Tankers and the unloading, storage and processing of applicable Cargo Lots. In this respect, Receiving Facilities shall include, without limitation, the following:
  - (i) Berthing facilities that comply with International Everett Standards and are capable of receiving each LNG Tanker, at which such LNG Tanker can lie safely berthed and discharge safely afloat at all times and from which such LNG Tanker can safely depart;
  - (ii) Unloading facilities capable of receiving LNG at a maximum rate of six thousand eight hundred (6,800) Cubic Meters per hour from an LNG Tanker;
  - (iii) A vapor return system of sufficient capacity to transfer to each LNG Tanker quantities of Natural Gas necessary for the safe unloading of LNG
  - (iv) LNG storage tank with a nominal capacity of 160,000 Cubic Meters;
  - (v) Qualified and competent personnel, fluent in spoken and written English, to communicate with the LNG Tanker;
  - (vi) Appropriate systems for necessary e-mail, facsimile, telephone and radio communications with each LNG Tanker; and
  - (vii) Emergency shutdown systems.
- (c) The Receiving Facilities shall not include (i) facilities and loading lines for liquid or gaseous nitrogen to service LNG Tankers except for draining and purging operations; (ii) facilities for providing bunkers to LNG Tankers; (iii) facilities for the handling and delivery to the LNG Tanker of ship's stores, provisions and spare parts; (iv) facilities for providing fresh water to LNG Tankers; or (v) facilities for providing removal of waste or gray water from an LNG Tanker.

## CLAUSE 5.2 Modification to the Receiving Facilities

The Parties agree that, after the Start Date, Buyer shall be entitled to modify the Receiving Facilities in any manner whatsoever; *provided*, that such modifications do not render the Receiving Facilities incompatible with an LNG Tanker that is compatible in accordance with this Agreement, *provided also* that such modifications do not render the Receiving Facilities inconsistent with Exhibit H or the general specifications set forth in the Marine Terminal Manual, nor do they, once finalized, reduce the ability of Seller to unload LNG in accordance with the terms of this Agreement or otherwise conflict with Buyer's obligations hereunder. Notwithstanding the foregoing, Buyer (after consultation with Seller and Seller's Transporter as provided herein) may modify the Receiving Facilities in



a manner that would render it incompatible with an LNG Tanker; provided, that such modification is required by and is made pursuant to a change in Applicable Laws or International Everett Standards and to the extent not inconsistent with Applicable Law or International Everett Standards, such good and prudent practices as are generally followed in the LNG industry by Reasonable and Prudent Operators of LNG terminals. Prior to making any material modification to the Receiving Facilities, Buyer shall notify Seller of the upcoming modification at least sixty (60) Days in advance of commencing said modifications. At the request of Seller, Buyer and Seller shall meet to discuss any observations or concerns that Seller may have regarding such modifications. Any corresponding modification costs of LNG Tankers to comply with the modified Receiving Facilities that are more stringent than those required by Applicable Laws or International Everett Standards are paid by Buyer.

## CLAUSE 5.3 Seller Inspection Rights in Respect of the Receiving Facilities

- Upon obtaining Buyer's prior written consent, which consent shall not be (a) unreasonably withheld or delayed, a reasonable number of Seller's designated representatives (including representatives of the Seller's Transporters) may from time to time inspect the operation of the Receiving Facilities so long as such inspection occurs from 08:00 to 17:00 local time at the Receiving Facilities on a Business Day. Any such inspection shall be at Seller's sole risk and expense. In conjunction with any such inspection, Buyer shall provide Seller access at reasonable times and places (taking into consideration cost and schedule impacts) to (i) relevant qualified employees and contractors of Buyer in order to discuss the operation and maintenance of the Receiving Facilities, (ii) if possible, working meetings between Buyer and United States Coast Guard, pilots, port authorities and marine service providers and (iii) relevant documentation, if any, available to Buyer in support of such discussions. Seller (and its designees) shall carry out any such inspection without any interference with or hindrance to the safe and efficient operation of the Receiving Facilities. Seller's right to inspect and examine the Receiving Facilities shall be limited to verifying Buyer's compliance with Buyer's obligations under this Agreement and Receiving Facilities' compatibility with LNG Tankers. No inspection (or lack thereof) of the Receiving Facilities by Seller hereunder, or any requests or observations made to Buyer or its representatives by or on behalf of Seller in connection with any such inspection, shall (x) modify or amend Buyer's obligations, representations, warranties or covenants hereunder; or (xi) constitute an acceptance or waiver by Seller of Buyer's obligations hereunder.
- (b) Seller shall indemnify and hold Buyer and its Affiliates harmless from any Claims and Losses resulting from Seller's inspection of the Receiving Facilities pursuant to CLAUSE 5.3(a), regardless of whether such Loss results from or arises out of the negligence of any Indemnified Party.

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#### CLAUSE 5.4 Marine Terminal Manual

Buyer shall deliver to Seller a copy of the current marine operations manual developed for the Receiving Facilities, including the current version of the Port Vision 2000, LNG Carrier Operational Risk Management Procedure, the Terminal Ship to Shore Compatibility, and related documents within five (5) Business Days after the Closing (as amended, the "Marine Terminal Manual") which governs activities at the Receiving Facilities, and which applies to each LNG Tanker berthing at the Receiving Facilities. In the event of a conflict between this Agreement and the Marine Terminal Manual, the provisions of this Agreement shall control. Buyer shall promptly notify Seller upon any amendment to the Marine Terminal Manual and shall promptly provide a copy of the amended Marine Terminal Manual to Seller.

#### ARTICLE 6. QUANTITIES

## CLAUSE 6.1 Annual Contract Quantity

Subject to CLAUSE 6.4, the Cargo Tolerance and the Aggregate Shortfall Tolerance, the annual contract quantity of LNG to be scheduled, sold, made available, taken and paid for in accordance with the terms of this Agreement (including ARTICLE 14) in each Contract Year during the Supply Period shall be the Cargo Quantities corresponding to ten (10) Cargo Lots (for the aggregate annual amount of 29,500,000 MMBtu) ("Annual Contract Quantity" or "ACQ"). The ACQ shall be delivered as follows:

(a) Seven (7) Cargo Lots (approximately 20,650,000 MMBtu) to be delivered during the **Winter Period** that shall be any Day between November 1<sup>st</sup> and March 31<sup>st</sup> of any Contract Year and that shall be distributed as follows:

Date Ranges	Cargo Lots
Nov 1 <sup>st</sup> - Dec 15 <sup>th</sup>	1
Dec 16th - Feb 15th	4
Feb 16th - Mar 31st	2

(b) Three (3) Cargo Lots (approximately 8,850,000 MMBtu) to be delivered during the **Summer Period** that shall be any Day between April 1<sup>st</sup> and October 31<sup>st</sup> of any Contract Year.

## CLAUSE 6.2 Buyer's additional LNG request during the Winter Period

In addition to the LNG covering the Annual Contract Quantity, Buyer may request for the delivery of one (1) Cargo Lot during the Winter Period and Seller will make Reasonable Efforts (including for the accommodation of other Cargo Lots) to offer as soon as practicable a Cargo Lot to be delivered at the time requested by the Buyer. Such Seller's offer shall include the price at which such Cargo Lot may be made available. If Buyer



accepts Seller's conditions for the sale and delivery of the additional Cargo Lot, then Seller shall be obligated to make available for delivery such Cargo Lot, which shall be added to the ACQ for such Contract Year, and Buyer shall be obligated to take and pay, or pay if not taken such Cargo Lot in accordance with this Agreement. The price and the Final Delivery Window shall be as quoted in Seller's notice pursuant to this CLAUSE 6.2. Seller shall promptly after such acceptance issue an updated ADP and, to the extent applicable, an updated NDS reflecting the additional Cargo Lot and the changes to the delivery of other affected Cargo Lots.

## CLAUSE 6.3 Buyer's additional LNG request during the Summer Period

In addition to the LNG covering the Annual Contract Quantity, Buyer may during any Contract Year request Seller to sell and deliver to Buyer up to two (2) additional Cargo Lots during the Summer Period of that Contract Year and such request shall be subject to the following:

- (a) If Buyer's request is received by Seller on or before sixty (60) days before the first day of the calendar month during the Summer Period on which Buyer requires the available Delivery Window of the additional Cargo Lot to commence, Seller will be obligated to make available for sale and delivery such Cargo Lot, which shall be added to the ACQ, and Buyer shall be obligated to take and pay, or pay if not taken such Cargo Lot in accordance with this Agreement and at a price that shall be the Contract Price for the Summer Period pursuant to CLAUSE 8.1(a)(i).
- (b) If Buyer's request is received by Seller between fifty nine (59) days and twenty (20) days before the first day of the calendar month during the Summer Period on which Buyer requires the available Delivery Window for delivery of the additional Cargo Lot to commence, Seller will be obligated to make available for sale and delivery such Cargo Lot, which shall be added to the ACQ, and Buyer shall be obligated to take and pay, or pay if not taken such Cargo Lot in accordance with this Agreement and at a price that shall be the Contract Price for an additional cargo during the Summer Period pursuant to CLAUSE 8.1(a)(i).

Promptly after delivering such additional Cargo Lot, Seller shall issue an updated NDS pursuant to CLAUSE 14.3(d).

## CLAUSE 6.4 Buyer's Diversion Right

(a) Notwithstanding the scheduling in accordance with the applicable ADP of a Cargo Lot for delivery at the Receiving Facilities, Buyer may request upon written notice to Seller after the ADP has been issued but no later than thirty (30) Days before the commencement of loading of the relevant Cargo Lot that any Cargo Lot scheduled to be tendered for delivery by the Seller at the Receiving Facilities will instead be tendered for delivery and sale by Seller to a Third Party and at a price identified by



Buyer at an Alternate Receiving Facility and the delivery and sale to such Third Party shall be subject to:

- (i) Seller being satisfied (acting as a Reasonable and Prudent Operator) in respect of all technical, safety and operational matters and all matters of shipping and fleet management and scheduling of deliveries including commitments to other buyers that cannot be covered by the Incremental Cost to be taken into account in the Diversion Net Proceeds;
- (ii) Seller being satisfied (acting as a Reasonable and Prudent Operator) in respect of its ability to comply with the destination restrictions for the relevant Cargo Lot imposed by a Seller's Third Party supply agreement that may affect the Alternate Receiving Facility; provided, that Seller shall provide notice to Buyer of any Third Party restrictions on delivering to any destination within ten (10) Business Days of Seller becoming subject to such restrictions; provided further, that Buyer shall, upon receipt of such notice, have the right to verify such restriction.
- (iii) Seller being satisfied (acting as a Reasonable and Prudent Operator) in respect of vessel compatibility, the existence and availability of capacity and all matters of safe operation at the relevant Alternate Receiving Facilities for the affected LNG Tanker;
- (iv) Seller being satisfied (acting as a Reasonable and Prudent Operator) that the Specification will comply with the corresponding requirements of the Alternate Receiving Facilities.
- (v) The Third Party accepts to execute with Seller a standard form international LNG sales and purchase agreement, unless a master sales and purchase agreement is already in place between the Seller (or Seller's Affiliate) and such Third Party, in which case the terms of such existing agreement, other than the price, will apply; provided that, in all cases, the LNG sales and purchase agreement between the Seller (or Seller's Affiliate) and such Third Party shall (A) identify Buyer as an intended third party beneficiary with respect to any credit provision or security provided to ensure payment and (B) grant to Seller the right, exercisable by written notice from Buyer to Seller, to have any and all rights and remedies related to the payment of any amounts due under such LNG sales and purchase agreement for LNG delivered to be assigned to Buyer after delivery of the Cargo Lot to permit Buyer to pursue any claim if Seller notifies Buyer that Third Party has failed to make a payment.
- (vi) After the delivery of the Cargo Lot at an Alternate Receiving Facility, Seller shall issue a provisional invoice to Buyer equal to the product of the Quantity



Delivered at the Alternate Receiving Facility multiplied by the applicable Contract Price (the "Provisional Diversion Invoice"). In the event: (A) Seller has been paid by the Third Party for the Quantity Delivered at the Alternate Receiving Facility, Seller shall issue a final invoice to Buyer equal to (I) the product of the Quantity Delivered at the Alternate Receiving Facility multiplied by the amount by which the applicable Contract Price exceeds the price paid to Seller by the Third Party at the Alternate Receiving Facility plus (II) the Incremental Cost not covered by the price paid to Seller by the Third Party at the Alternate Receiving Facility for such diverted Cargo Lot (the "Final Diversion Invoice"), which shall be payable by Buyer in accordance with CLAUSE 9.4; or (B) Seller notifies Buyer that the Third Party failed to pay Seller for the Quantity Delivered at the Alternate Receiving Facility within thirty (30) Days after delivery of the LNG, or such longer payment period as may be set forth in the LNG sales and purchase agreement between the Seller (or Seller's Affiliate) and such Third Party, then the Provisional Diversion Invoice initially issued pursuant to this CLAUSE 6.4(a)(vi) may be reissued by Seller to Buyer as the Final Diversion Invoice in this case equal to (I) the product of the Quantity Delivered at the Alternate Receiving Facility multiplied by the applicable Contract Price plus (II) the Incremental Cost, which shall be payable by Buyer in accordance with CLAUSE 9.4. For the avoidance of doubt, in the event: (X) the price paid to Seller by the Third Party at the Alternate Receiving Facility exceeds the Contract Price, such excess shall be applied to cover the Incremental Cost and Buyer shall only be responsible for the portion of the Incremental Cost not covered by the price paid to Seller by the Third Party; and (Y) if Seller notifies Buyer that the Third Party has not paid for the Quantity Delivered and Buyer pays Seller the applicable Final Diversion Invoice described in CLAUSE 6.4(a)(vi)(B), any payment Seller may subsequently receive from the Third Party for such Quantity Delivered will be credited to Buyer, subject to CLAUSE 6.4(b).

- (vii) After the sale by Seller to the Third Party at the Alternate Receiving Facilities, Seller will apply the Diversion Net Proceeds received from the Third Party in the form of a credit towards the Final Diversion Invoice payable by Buyer pursuant to CLAUSE 6.4(a)(vi) for the diverted Cargo Lot.
- (b) The "Diversion Net Proceeds" will be the amount that is equal to the applicable price paid by the Third Party to Seller, with respect to a diverted Cargo Lot, for the Quantity Delivered to a Third Party at the Alternate Receiving Facility selected by the Buyer; provided that, if the Diversion Net Proceeds exceed (i) the Contract Price multiplied by the affected Quantity Delivered plus (ii) the associated Incremental Cost, such excess shall not be applied towards the Contract Price that Buyer is obligated to pay for the applicable diverted Cargo Lot.



- (c) The laboratory analysis and calculation of the Quantity Delivered at the Alternate Receiving Facility for the purpose of this Agreement shall follow the procedure in place at the Alternate Receiving Facilities. Any amount of the Cargo Quantity that the Seller acting as Reasonable and Prudent Operator requires in the voyage to the Alternate Receiving Facility in excess of the amount required in the voyage to the Receiving Terminal shall not be considered as Seller's Shortfall.
- (d) Seller (within ten (10) days of Buyer's notice pursuant to CLAUSE 6.4(a)) may upon written notice to Buyer repurchase the Cargo Lot that Buyer has requested to be delivered to a specified Third Party at an Alternate Receiving Facility at the applicable Contract Price.
- (e) Buyer may request and Seller shall use Reasonable Efforts to accommodate the remaining deliveries scheduled in the ADP after the diversion to an Alternate Receiving Facility of a Cargo Lot has been arranged.
- (f) Buyer's right to audit pursuant to CLAUSE 6.6(e) shall be applicable to the Seller's sale to any Third Party at an Alternate Receiving Facility.
- (g) For the avoidance of doubt, if Seller fails to deliver a Cargo Lot to a Third Party pursuant to a LNG sales and purchase agreement executed with the Third Party pursuant to CLAUSE 6.4(a)(v), then Buyer shall not have any obligation or right or remedy to seek any payment or compensation from the Seller under this Agreement or under the LNG sales and purchase agreement executed by the Seller with the Third Party.

#### CLAUSE 6.5 Buyer's Cancellation Right

- Buyer shall have the right to cancel the delivery of up to a maximum of two (2) (a) Cargo Lots per Contract Year (which Buyer has not already requested to be diverted pursuant to CLAUSE 6.4) by giving notice to the Seller, subject to the following ("Cancellation Right"):
  - (i) If Buyer provides notice to Seller on or before sixty (60) days before the start of the Delivery Window of the relevant Cargo Lot in that Contract Year, the Cargo Lot will be cancelled and Buyer will pay a Cancellation Fee for the cancelled Cargo Lot in accordance with CLAUSE 8.1(a)(iii).
  - (ii) If Buyer provides notice to Seller between fifty-nine (59) days and thirty (30) days before the start of the 48-Hour Delivery Window (or, Delivery Window, if the 48-Hour Delivery Window has not yet been established) of the relevant Cargo Lot in that Contract Year, the Cargo Lot will be cancelled and Buyer will pay a Cancellation Fee for the cancelled Cargo Lot in accordance with CLAUSE 8.1(a)(iii).





- (b) For the exercise of any Cancellation Right, the quantity of the applicable cancelled Cargo Lot shall be deemed to be the applicable Cargo Quantity and the Cancellation Fee shall be applied against that quantity.
- (c) Upon its exercise of the Cancellation Right, the Buyer will pay the Seller the Cancellation Fee.
- (d) Once Buyer has provided notice to Seller pursuant to CLAUSE 6.5(a), Buyer has been deemed to have forfeited its right to receive the cancelled quantity and Seller has no obligation to make available to Buyer, and Buyer has no obligation to take or pay for (other than the Cancellation Fee), the quantity of LNG delivery cancelled. The Seller shall then use Reasonable Efforts to update the relevant ADP and NDS as appropriate that, for the avoidance of doubt, shall not affect the delivery dates of the other Cargo Lots already scheduled in the ADP and/or NDS.
- (e) Once Buyer has provided notice to Seller pursuant to CLAUSE 6.5(a), Seller will make Reasonable Efforts to sell the cancelled Cargo lot to a Third Party at the best available market price from a Third Party that is commercially reasonable under the circumstances. Buyer may request from Seller an overview of its commercial approach to obtain the best available market price under the circumstances, and Seller will use Reasonable Efforts to follow such commercial approach provided to Buyer to obtain the best available market price.
- (f) The laboratory analysis and calculation of the Quantity Delivered at the Alternate Receiving Facility for the purpose of this Agreement shall follow the procedure in place at the Alternate Receiving Facilities.
- (g) Once Seller has sold the cancelled Cargo Lot to a Third Party, then Seller shall reimburse (by means of a credit towards the payment of the Contract Price for successive Cargo Lot(s)) to Buyer as follows:
  - (i) If (CP + EC) TP ≥ Cancellation Fee
    Then Seller will not credit Buyer any amount.
  - (ii) If Cancellation Fee > (CP + EC) TP ≥ 0
     Then Seller will credit to Buyer an amount equal to:
     1 (CP + EC TP) x Quantity Delivered
  - (iii) If (CP + EC) TP < 0

Then Seller will only credit Buyer the Cancellation Fee multiplied by the applicable Cargo Quantity.

And where TP, CP and EC are defined as:

- (x) TP: Third Party sale price
- (xi) CP: Contract Price
- (xii) EC: the Incremental Cost



# CLAUSE 6.6 Buyer's Shortfall

- (a) Buyer shall purchase, take delivery of and pay for, or pay for if not taken, the Cargo Quantity for each Cargo Lot scheduled under this Agreement. If Buyer, at the end of the period determined in accordance with CLAUSE 13.7(i), fails to take delivery of any LNG made available by the Seller for any reason other than Force Majeure or failure of Seller or Transporter, then the amount by which the scheduled Cargo Quantity, less the Cargo Tolerance, made available for delivery by the Seller exceeds the LNG actually taken by the Buyer (if any) will be the "Buyer's Shortfall". Buyer shall pay one hundred percent (100%) of the applicable Contract Price for such Cargo Lot multiplied by the Buyer's Shortfall. For the purpose of this CLAUSE 6.6, Seller's obligation to make available LNG for delivery under this Agreement will be deemed to be fulfilled in the event of any Buyer's notice to Seller meaning that Buyer intends not to take delivery of any Cargo Lot (whether or not previously scheduled).
- (b) If Buyer notifies that it anticipates that it will fail to schedule or take (in whole or in part) any Cargo Lot in the scheduled Delivery Window (or 48-Hour Delivery Window or Final Delivery Window as applicable), the Parties shall use Reasonable Efforts to promptly reschedule such Cargo Lot. In order to reschedule the Cargo Lot, the Parties must agree on scheduling and reimbursement of any costs, expenses and liabilities to be reasonably incurred by Seller as a result of such rescheduling. If the Parties fail to reschedule such Cargo Lot, then it will be deemed to be fulfilling Seller's obligation to make available LNG under this Agreement and CLAUSE 6.5(a) will apply.
- (c) Unless the Buyer's Shortfall is due to Buyer's Willful Misconduct, Seller shall use Reasonable Efforts to sell the Buyer's Shortfall, or cause the Buyer's Shortfall to be resold, to a Third Party at a price that is commercially reasonable under the circumstances in accordance with CLAUSE 6.6(d). Seller shall pay to Buyer the "Net Proceeds", being an amount equal to (i) the price at which the Buyer's Shortfall is sold to a Third Party, minus (ii) the Incremental Cost; provided that, if the Net Proceeds exceed the Contract Price multiplied by Buyer's Shortfall plus Incremental Costs, Seller shall be entitled to keep the excess.
- (d) Seller's Reasonable Efforts obligation to sell shall only extend to selling or attempting to sell such Buyer's Shortfall where it is commercially reasonable for the Seller to do so and shall not extend to force the Seller to make a particular sale of the affected LNG when, as a direct result of the Buyer's Shortfall, the delivery of such LNG to the other purchaser would likely, in the Seller's reasonable opinion, prevent or delay the LNG Tanker from reaching its next scheduled loading or destination on schedule, to prejudice the Seller's ability to comply with its



- obligations to third parties, or otherwise require the Seller to materially sacrifice its own or its Affiliates commercial interest.
- (e) Buyer shall have the right, at Buyer's cost, to cause a Third Party auditor acceptable to Seller (such acceptance not to be unreasonably withheld, conditioned or delayed) to audit Seller's accounts to verify any amounts regarding the calculation of Net Proceeds, subject to: (i) only one (1) audit being permitted in respect of each Contract Year; (ii) such audit commencing no later than one hundred and eighty (180) Days after completion of the Contract Year in which the Net Proceeds are realized; and (iii) such Third Party auditor executing a confidentiality agreement acceptable to Seller acting reasonably. The Parties agree that the audit shall be disclosed to Seller. Should the audit reveal a material error in a calculation and as a result either Seller or Buyer is obliged to pay any amounts, then the Party to whom such payments are to be made shall issue to the other Party an invoice together with relevant supporting documents showing the basis for the calculation of such amounts.
- (f) Unless the Buyer's Shortfall is due to Buyer's Willful Misconduct, the remedies described in this CLAUSE 6.6 shall be Seller's sole and exclusive remedy for Buyer's failure to take any quantity of LNG made available under this Agreement.
- (g) If the application of this CLAUSE 6.6 affects a Cargo Lot scheduled in accordance with CLAUSE 6.2 or CLAUSE 6.3 then the calculations performed under this CLAUSE 6.6 will use the applicable price determined in accordance with CLAUSE 6.2 and CLAUSE 6.3 in lieu of another Contract Price.

#### CLAUSE 6.7 Seller's Shortfall

- (a) If, for any reason other than an event of Force Majeure or failure of Buyer or the Receiving Facilities' operator, Seller, following the Grace Period, fails to deliver all or part of a scheduled Cargo Quantity less the Cargo Tolerance or anticipates it shall fail to deliver all or part of a scheduled Cargo Lot within the time allowed under this Agreement, then Buyer shall use Reasonable Efforts to reschedule such Cargo Lot. In order to reschedule the Cargo Lot, the Parties must agree on scheduling and reimbursement of any incremental costs, expenses and liabilities to be reasonably incurred by Buyer as a result of such rescheduling. If such Cargo Lot is not rescheduled, then:
  - (i) the amount of the scheduled Cargo Quantity less any LNG (if any) made available to Buyer is the "Seller's Shortfall"; and
  - (ii) Buyer shall use Reasonable Efforts to procure substitute LNG or Natural Gas equivalent to the Seller's Shortfall. The Seller shall be liable to the Buyer for any commercially reasonable costs incurred under the circumstances to



procure substitute LNG or Natural Gas as well as the incremental costs, expenses and damages incurred by the Buyer due to Seller's failure to deliver the Seller's Shortfall, up to an aggregate maximum cap of seventy-five percent (75%) of Seller's Shortfall multiplied by the Contract Price. Where the Seller's Shortfall is due to Seller's Willful Misconduct this cap shall not apply. If Buyer is unable to acquire substitute LNG or Natural Gas, the Seller shall be responsible for the payment of liquidated damages in an amount equal to the product of (x) seventy-five percent (75%) of Seller's Shortfall multiplied by (y) the Contract Price.

- (b) Seller shall have the right, at Seller's cost, to cause a Third Party auditor acceptable to Buyer (such acceptance not to be unreasonably withheld, conditioned or delayed) to audit Buyer's accounts to verify any amounts regarding the calculation costs, expenses and damages incurred by Buyer as a result of Seller's Shortfall, subject to (i) only one (1) audit being permitted in respect of each Contract Year; (ii) such audit commencing no later than one hundred and eighty (180) days after completion of the Contract Year in which the Seller's Shortfall occurred; and (iii) such Third Party auditor executing a confidentiality agreement acceptable to Buyer acting reasonably. The Parties agree that the audit shall be disclosed to Buyer. Should the audit reveal a material error in a calculation and as a result either Seller or Buyer is obliged to pay any amounts, then the Party to whom such payments are to be made shall issue to the other Party an invoice together with relevant supporting documents showing the basis for the calculation of such amounts.
- (c) Unless the Seller's Shortfall is due to Seller's Willful Misconduct, the remedies described in this CLAUSE 6.7, shall be Buyer's sole and exclusive remedy for Seller's failure to make available to Buyer any quantity of LNG otherwise required to be made available under this Agreement.
- (d) If the application of this CLAUSE 6.7 affects a Cargo Lot scheduled in accordance with CLAUSE 6.2 and CLAUSE 6.3 then the calculations performed under this CLAUSE 6.7 will use the applicable price determined in accordance with CLAUSE 6.2 and CLAUSE 6.3 in lieu of another Contract Price.

#### CLAUSE 6.8 Aggregate Shortfall Tolerance

Notwithstanding the Cargo Tolerance otherwise provided in this Agreement for each Contract Year, Buyer and Seller shall each be limited to an aggregate Cargo Tolerance of +/- 2% for such Contract Year (the "Aggregate Shortfall Tolerance"). If Buyer fails to take or Seller fails to deliver more than the Aggregate Shortfall Tolerance for a given Contract Year, the defaulting Party shall pay the other Party an amount equal to the product of (a) the weighted average price per MMBtu actually paid in such Contract Year multiplied by (b) the Aggregate Shortfall Tolerance. Either Party shall have a right within



thirty (30) days of the determination of the Quantity Delivered for the last Cargo Lot of such Contract Year to invoice the amount in accordance with CLAUSE 9.2(f).

#### ARTICLE 7. QUALITY

# CLAUSE 7.1 LNG Specification

- (a) On delivery at the Receiving Facilities, the LNG will conform to the following quality specifications ("Specifications"):
  - (i) it will have in a gaseous state a Gross Heating Value of not less than 1010 Btu/SCF and not more than 1085 Btu/SCF;
  - (ii) it will not contain in a gaseous state more than the following levels for the components and substances listed below:
    - (A) Nitrogen (N2), 1.0 mol%
    - (B) Ethane (C2), 8.0 mol%
    - (C) Propane (C3), 2.75 mol%
    - (D) Isobutane (iC4), 0.47 mol%
    - (E) Normal butane (C4), 0.64 mol%
    - (F) Pentanes (C5) and heavier, 0.10 mol%
    - (G) Hydrogen sulfide (H2S), 0.0004 mol%
    - (H) Mercaptan sulfur, 2.0 mg/Nm3
    - (I) Total sulfur content, 35 mg/Nm3
    - (J) Carbon dioxide (CO2), 0.01 mol%
  - (iii) it will have in a gaseous state a Wobbe Index between 1290 and 1395Btu/SCF. The Wobbe Index will be calculated by dividing the Gross Real Heating Value of the vaporized LNG as tested at the Discharge Port by the square root of the real relative density of the vaporized LNG (as tested at the Discharge Port), with both the Gross Real Heating Value and the real relative density determined in accordance with GPA 2172, at base conditions of 14.73 psia and 60 degrees Fahrenheit.



- (b) On unloading of the LNG, an independent surveyor will make a determination of the quantities delivered and a further determination of the LNG's quality, and will notify Buyer and Seller of the results, and Buyer will provide any supporting documentation reasonably requested by Seller. Buyer and Seller will share equally the cost of the independent surveyor. To make these determinations, the independent surveyor will follow the procedures for measurements, tests and analysis of LNG in accordance with Exhibit A.
- (c) In case the Discharge Port is not able to sample and test the LNG, the quality shall be estimated by the independent surveyor through an ageing model.
- (d) Seller shall notify Buyer of the quality of LNG loaded at the Loading Port as soon as reasonably practicable after Seller has completed loading of the LNG Tanker.

#### CLAUSE 7.2 Off-Spec LNG

- (a) If either Buyer or Seller, acting as a Reasonable and Prudent Operator, determines, prior to unloading, that the LNG is expected to not comply with the Specifications ("Off-Spec LNG") upon delivery, then such Party shall notify the other Party of the extent of the expected variance as soon as practicable (but in no case later than the commencement of unloading of such Cargo Lot), and the Buyer and Seller shall discuss such variance and possible mitigating actions, subject to the following:
  - (i) Buyer shall use Reasonable Efforts, including coordinating with the Buyer's operator, to accept Off-Spec LNG; and
  - (ii) as soon as practicable (and, in any event, within forty (48) hours) after becoming aware that LNG is expected to be Off-Spec LNG, Buyer shall notify Seller that Buyer: (A) despite using Reasonable Efforts to accept the LNG Cargo in accordance with CLAUSE 7.2(a)(i), rejects the LNG Cargo containing such Off-Spec LNG; or (B) subject to CLAUSE 7.2(b), is willing to accept all or any of the Off-Spec LNG. If the quality of the Off-Spec LNG delivered by Seller is inconsistent with the expected variance notification sent by Buyer or Seller pursuant to this CLAUSE 7.2(a), upon which expected variance Buyer's decision pursuant to CLAUSE 7.2(a)(ii)(B) is based, then notwithstanding Buyer's initial acceptance of such Off-Spec LNG, Buyer is entitled to accept or reject all or part of such Off-Spec LNG pursuant to this CLAUSE 7.2.
- (b) If Buyer determines and notifies that it could accept Off-Spec LNG pursuant to CLAUSE 7.2(a)(ii) or CLAUSE 7.2(d), then Buyer shall include with its notice of acceptance, issued pursuant to CLAUSE 7.2(a)(ii) or CLAUSE 7.2(d), Buyer's good faith estimate of the reasonable and direct costs (if any) (the "Off-Spec Losses") that Buyer and its Affiliates will incur as a result of the receipt and



treatment of such Off-Spec LNG. If Seller promptly, but in no case later than twenty-four (24) hours after receiving Buyer's notice, consents to reimburse Buyer and its Affiliates for such Off-Spec Losses associated with the delivery of such Off-Spec LNG, then Buyer shall accept such Off-Spec LNG, and Seller shall reimburse Buyer and its Affiliates for the actual and documented Off-Spec Losses incurred as a result of the receipt and treatment of such Off-Spec LNG up to: (i) in the case of notification pursuant to CLAUSE 7.2(a)(ii), an aggregate maximum amount of fifty (50%) per cent of the Contract Price multiplied by the Cargo Quantity for the relevant Cargo Lot; (ii) subject to the ability of Buyer to reject such Off-Spec LNG pursuant to CLAUSE 7.2(d), in the case of CLAUSE 7.2(d), an aggregate maximum amount of fifty (50%) per cent of the Contract Price multiplied by the Cargo Quantity for the relevant Cargo Lot.

- (c) Upon commencement of unloading, Buyer shall act as a Reasonable and Prudent Operator to ensure the LNG Cargo Lot is promptly measured and tested, in accordance with CLAUSE 10.1 and Exhibit A. If either Buyer or Seller reasonably believes that Off-Spec LNG exists or becomes aware that an LNG Cargo Lot contains Off-Spec LNG only after the commencement of unloading the Cargo Lot, then such Party shall promptly, but in no event later than four (4) hours after becoming aware of such Off-Spec LNG, notify the other Party of such Off-Spec LNG and provide reasonable documentary evidence as soon as reasonably practicable. Either Buyer or Seller (or both) may at any time after receiving such notification, subject to CLAUSE 7.2(a)(i), suspend unloading of such Off-Spec LNG. Without prejudice to Buyer's rights pursuant to CLAUSE 7.2(a) and CLAUSE 7.2(d) for any Off-Spec LNG that has not been unloaded, Buyer shall be deemed to have accepted all of the LNG unloaded prior to any suspension pursuant to this CLAUSE 7.2(c) or Buyer's later suspension pursuant to CLAUSE 7.2(d), and Seller shall reimburse Buyer for all actual, reasonable, documented and direct costs (if any) incurred by Buyer as a result of Buyer's receipt of such Off-Spec LNG, including: (i) the loss in value of any other LNG supplies at Buyer's Receiving Facilities (other than the Off-Spec LNG unloaded by Buyer), where such loss in value results from blending the Off-Spec LNG with other LNG supplies at Buyer's Receiving Facilities; and (ii) all actual, reasonable, documented and direct Losses relating to damage caused by such Off-Spec LNG to the Receiving Facilities.
- (d) After becoming aware of the existence of Off-Spec LNG pursuant to CLAUSE 7.2(c), Buyer may elect to accept (by way of notification to Seller) any Off-Spec LNG that has not been unloaded prior to suspension, in which case, CLAUSE 7.2(b) will apply to such Off-Spec LNG. If the quality of the Off-Spec LNG delivered by Seller is inconsistent with the expected variance notified by Buyer or Seller pursuant to CLAUSE 7.2(c), upon which expected variance Buyer's decision pursuant to this CLAUSE 7.2(d) is based, then notwithstanding Buyer's initial acceptance of such

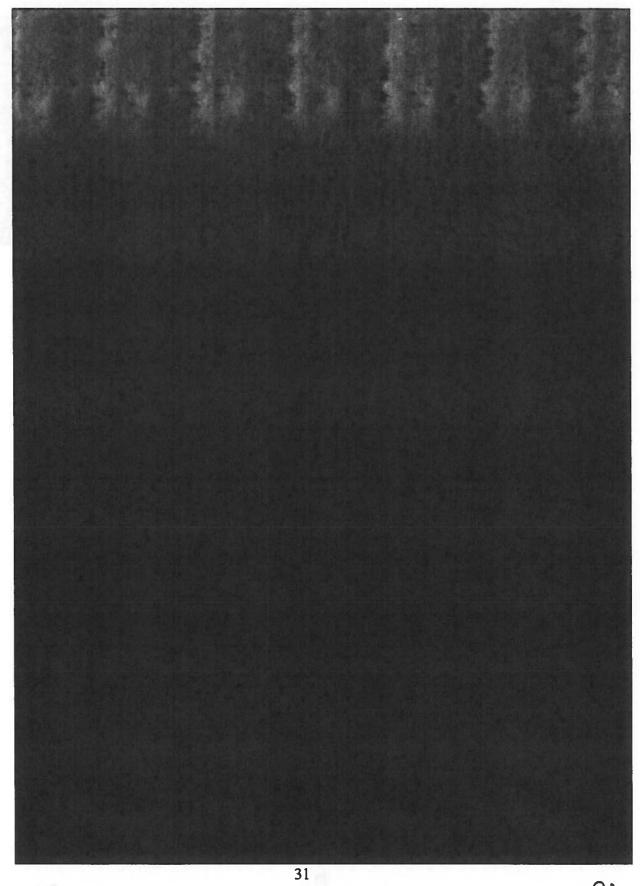


Off-Spec LNG, Buyer shall be entitled to again suspend unloading such Off-Spec LNG and use Reasonable Efforts, including coordinating with Buyer's operator, to determine if Buyer can accept such Off-Spec LNG. If Buyer determines and notifies Seller that it can continue accepting such Off-Spec LNG, then Buyer shall include with its notice of acceptance Buyer's good faith estimate of the current and additional Off-Spec Losses that Buyer and its Affiliates have incurred from the Off-Spec LNG already unloaded and will incur as a result of the receipt of the additional Off-Spec LNG. If Seller promptly, but in no case later than four (4) hours after receiving Buyer's notice, consents to reimburse Buyer and its Affiliates for such Off-Spec Losses, then Buyer shall accept continued delivery of such Off-Spec LNG. For the avoidance of doubt, if Buyer is unable to accept all or part of such Off-Spec LNG that has not been unloaded pursuant to this CLAUSE 7.2, then it shall be deemed rejected and Seller shall reimbursed Buyer for all losses incurred, pursuant to the greater of CLAUSE 7.2(c) and CLAUSE 7.2(e). Buyer shall have no obligation to Seller for any delays associated with unloading such Off-Spec LNG, provided that Buyer acts as a Reasonable and Prudent Operator and in accordance with this ARTICLE 7.

- (e) If Buyer rejects delivery of any Off-Spec LNG pursuant to this CLAUSE 7.2, then Seller shall be deemed to have failed to make available the quantity of Off-Spec LNG rejected by Buyer, and Seller shall be liable to Buyer for failure to deliver such Off-Spec LNG and CLAUSE 6.7 shall apply. Without prejudice to Seller's obligations to Buyer pursuant to other provisions of this Agreement, Seller shall be entitled to deliver and sell the rejected Off-Spec LNG to any party other than Buyer without restriction.
- (f) If Buyer fails to notify Seller whether it accepts or rejects Off-Spec LNG pursuant to CLAUSE 7.2(a)(ii) or CLAUSE 7.2(d), then Buyer shall be deemed to have accepted and Seller shall be deemed to have delivered the LNG Cargo within the Specifications.
- (g) The remedies in this CLAUSE 7.2 shall be the Buyer's sole and exclusive remedies for the Seller's failure to provide LNG complying with the Specifications set out in CLAUSE 7.1.

### ARTICLE 8. CONTRACT PRICE









# ARTICLE 9. INVOICES, PAYMENT AND BUYER'S CREDIT RATING

# CLAUSE 9.1 Cargo Documents and Delivery Invoices

- (a) As soon as practicable after the completion of loading for a Cargo Lot scheduled hereunder for delivery at the Discharge Port, Seller shall provide Buyer with any cargo documentation reasonably requested in order to facilitate unloading operations and for the purpose of customs clearance in the Discharge Port, such as the load report, certificate of quality, the certificate of quantity, cargo manifest, the certificate of origin or letter of confirmation of unloading, and the bill of lading.
- (b) Buyer shall, as soon as possible but in no event later than forty-eight (48) hours after Completion of Unloading, complete a laboratory analysis to determine the quality and Btu content of the LNG unloaded in accordance with CLAUSE 10.6 and CLAUSE 10.7, and shall promptly furnish to Seller or its representative proper written evidence with respect thereto. In the event of an unloading at an Alternate Receiving Facility, Seller shall provide as soon as reasonably practicable the laboratory analysis for the quality and Btu content of the LNG unloaded in accordance with CLAUSE 6.4(c).
- (c) If by forty-eight (48) hours after Completion of Unloading Buyer (or Seller in the event of unloading at an Alternate Receiving Facility) has not completed the quality analysis pursuant to CLAUSE 9.1(b) and/or the Contract Price is not yet finally determined, then Seller shall send Buyer a provisional invoice which will be calculated by Seller using:
  - (i) in the case Buyer or Seller has not completed the quality analysis, Seller's estimate for the quantity delivered, based on the Btu content and available molar composition analysis of the last cargo of LNG delivered hereunder from the same supply source; and



- (ii) in the case the Contract Price is not yet finally determined, Seller's best estimate of the Contract Price based on the latest information available at the time.
- (d) In the event that a provisional invoice has been issued in accordance with CLAUSE 9.1(c), then once (i) the quality analysis for the relevant cargo has been supplied by Buyer or Seller pursuant to CLAUSE 9.1(b), and/or (ii) the Contract Price is finally determined, Seller shall send Buyer by e-mail or by facsimile a final invoice, stated in US Dollars, based on the applicable Contract Price, multiplied by the Quantity Delivered. The final invoice shall attach the relevant supporting documents to support the calculation of the amount specified therein. If at the time of the Completion of Unloading a credit for a Diversion Net Proceeds or Excess Amount remains outstanding from previous Cargo Lots, Seller shall apply such credit to the payment and the invoice shall reflect such credit.
- (e) If the invoiced amount of any final invoice issued by Seller pursuant to CLAUSE 9.1(d) is less than the invoiced amount of the related provisional invoice issued by Seller pursuant to CLAUSE 9.1(c), then if Buyer has paid the provisional invoice in accordance with CLAUSE 9.4, then Seller shall credit Buyer for the difference in the immediately following invoice to be raised by Seller, or if there is no such invoice to follow, then Seller shall pay Buyer such difference in accordance with CLAUSE 9.4. Otherwise, Buyer shall only pay the amount of such final invoice.
- (f) If the invoice amount of any final invoice issued by Seller pursuant to CLAUSE 9.1(d) is more than the invoice amount of the related provisional invoice issued by Seller pursuant to CLAUSE 9.1(c), then if Buyer has paid the provisional invoice in accordance with CLAUSE 9.4, then Buyer shall pay Seller the difference between such provisional and such final invoice, otherwise Buyer shall only pay the amount of the final invoice.

#### CLAUSE 9.2 Other Invoices

- (a) Invoices for Seller's Shortfall. In the event that sums of money are due from the Seller to Buyer as a result of a Seller's Shortfall, Buyer shall furnish to the Seller an invoice for the relevant amount, together with calculations and relevant supporting documents showing the basis for the calculation.
- (b) Invoices for Buyer's Shortfall. In the event that sums of money are due from the Buyer to Seller as a result of a Buyer's Shortfall (including in case of LNG deemed to be made available pursuant to this Agreement) Seller shall furnish to the Buyer an invoice for the relevant amount, together with calculations and relevant supporting documents showing the basis for the calculations.



- (c) Invoices for Net Proceeds. If there is a Buyer's Shortfall, Seller shall provide to Buyer all information required by Buyer to determine and invoice Seller for the Net Proceeds payable by Seller in accordance with CLAUSE 6.6. Seller shall provide such information within seven (7) days of such request.
- (d) Credit for Diversion Net Proceeds or Excess Amount. As soon as practicable after Seller is in possession of all relevant documents that evidence the Diversion Net Proceeds or the Excess Amount, it shall furnish Buyer with the calculations of the credit to be applied towards the Contract Price. Seller shall apply such credit to the following invoice for LNG deliveries and, if there are not further deliveries of LNG, Buyer shall invoice Seller for the remaining Diversion Net Proceeds or Excess Amount.
- (e) Invoice for Cancellation Fee. As soon as practicable after Buyer has notified Seller of its exercise of the Cancellation Right, Seller shall furnish Buyer an invoice for the Cancellation Fee.
- (f) Invoices for ship boil-off, demurrage or other payments. In the event that any sums of money are due from one Party to the other Party hereunder, then the Party to whom such sums of money are owed shall furnish the other Party an invoice therefor, together with calculations and relevant supporting documents showing the basis for the calculation thereof.

### CLAUSE 9.3 <u>Invoice Due Dates</u>

- (a) Each invoice issued by the Seller in accordance with CLAUSE 9.1 and any Final Diversion Invoice issued by Seller in accordance with CLAUSE 6.4(a)(vi) shall become due and shall be payable (with funds deposited into the account of the Seller) no later than eight (8) days after the date of receipt.
- (b) Any invoice validly issued by either Party under this Agreement, other than invoices issued in accordance with CLAUSE 9.1 and Final Diversion Invoices issued by Seller in accordance with CLAUSE 6.4(a)(vi), shall become due and shall be payable by the other Party (with funds deposited into the account of the Party issuing the invoice) thirty (30) days after the date on which the paying Party received the invoice.
- (c) If the due date for payment is not a Business Day then the invoice shall be due the next Business Day.
- (d) In the event the full amount of any invoice is not paid when due and in accordance with CLAUSE 9.4, any unpaid amount thereof shall bear interest from and including the day following the payment due date up to and including the day on which payment is actually made, at a rate, compounded daily, equal to two percent (2%)



above LIBOR (as in effect on the day following the payment due date and as in effect on the first day of every Month thereafter).

#### CLAUSE 9.4 Payment

- (a) A Party shall pay or cause to be paid in US Dollars, on or before the due date, all amounts that become due and payable by it pursuant to an invoice issued hereunder. Such payments shall be made in immediately available funds in US Dollars to such account or accounts with such bank and in such location as shall have been designated by the other Party in accordance with CLAUSE 9.4(c).
- (b) Each payment of any amount owing hereunder shall be for the full amount due, without reduction or offset, set-off or counterclaim for any reason including any exchange charges, bank transfer charges, any other fees, or taxes (including any taxes, interest or penalties thereon), except as expressly provided for in this Agreement.
- (c) The Parties shall each designate a bank, which bank must be acceptable to the other Party acting reasonably, for payments under this Agreement. Each Party shall designate its bank by notice (signed by a duly authorized representative) to the other Party no later than fourteen (14) days after the Execution Date. Either Party may change its bank (provided such bank must be acceptable to the other Party, acting reasonably) and/or its account details for payments under this Agreement by sending notice to the other Party (signed by a duly authorized representative) not less than five (5) days before any re-designation is to be effective.

#### CLAUSE 9.5 Seller's Rights Upon Buyer's Failure to Make Payment

If Buyer fails to pay any one or more invoices due and payable to Seller in the aggregate exceeding ten million (10,000,000) USD within five (5) days after the due date thereof, then Seller shall be entitled without prejudice to any of its rights under this Agreement, at law or otherwise, to give Buyer notice that, if the invoices to Buyer are not paid by Buyer within five (5) days from receipt of the notice, subsequent deliveries of LNG to Buyer will be suspended until Buyer has cured any such failure or breach to Seller's satisfaction. Any such suspended quantities shall be deemed to have been made available by Seller, and Buyer shall be deemed to have failed to take such suspended quantities and shall be obligated to pay therefor in accordance with CLAUSE 6.6. In addition, until Buyer has cured any such failure or breach to Seller's satisfaction, Buyer shall have no right to any sums that may otherwise have been due and payable by Seller to Buyer, and Seller may instead apply such sums against amounts due and owing from Buyer, and reduce any applicable invoice accordingly.

#### CLAUSE 9.6 <u>Disputed Invoices</u>

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In the event a Party disagrees with any invoice or part thereof, it shall nevertheless make provisional payment of the full amount invoiced and shall immediately notify the other Party of the reasons for such disagreement, except that in the case of a manifest error in computation the Party receiving the invoice shall only be obliged to pay the correct amount of such invoice. An invoice may be contested by the Party that received it, or modified by the Party that issued it, by notice served on the other Party within a period of ninety (90) days after such receipt or sending, as the case may be. Upon receipt of a notice in respect of an invoice, the Parties shall promptly discuss the disputed portion of such invoice in good faith with a view to resolving such dispute. If the Parties do not resolve a disputed invoice within forty-five (45) days of receipt of the applicable notice, then either Party may submit the dispute for resolution pursuant to ARTICLE 20. Promptly after resolution of any dispute as to an invoice, the amount that is resolved as payable shall be paid by Seller to Buyer or by Buyer to Seller (as the case may be), together with interest thereon at the rate provided in CLAUSE 9.3(d) payable (i) in the case of underpayment, from the date payment was originally due to the date of actual payment and (ii) in case of overpayment, from the date on which such sum was originally paid until the date of its repayment.

# CLAUSE 9.7 Credit Support

- (a) As of the Execution Date and during the Term of this Agreement, each of the Parties must have either the Minimum Required Rating or the Credit Support in place pursuant to (b).
- (b) Each Party that does not meet the Minimum Required Rating shall provide a corporate guarantee to be substantially in the form set out in Exhibit F-1 ("Corporate Guarantee") issued by an Affiliate of the Party that holds the Minimum Required Rating and is accepted by the other Party acting reasonably.
- (c) If at any time during the term of this Agreement there is a Corporate Guarantee in place:
  - (i) where the long-term unsecured debt rating of the Affiliate giving the Corporate Guarantee is or falls below the Minimum Required Rating, the Party giving such credit support shall within fifteen (15) days of such Affiliate first ceasing to have the Minimum Required Rating, either provide a replacement Corporate Guarantee which meets the requirements of CLAUSE 9.7(b), or put in place an irrevocable standby Letter of Credit issued by a first class international bank with a Standard & Poor's rating of A-, a Fitch rating of A- or a Moody's rating of A3 or higher substantially similar to the form set out in Exhibit F-2 ("Letter of Credit") and shall provide a duly executed originals of such alternative Letter of Credit or an electronic copy having the same validity enforceability as an original document.



- (ii) In the event the long-term unsecured debt rating of the bank that has issued the Letter of Credit is or falls below the Standard & Poor's rating of A-, a Fitch rating of A- or a Moody's rating of A3, the affected Party shall within five (5) Business Days of such bank first ceasing to have such required credit rating, put an alternative Letter of Credit in place and shall provide a duly executed originals of such alternative Letter of Credit or an electronic copy having the same validity and enforceability as an original document.
- (d) Notwithstanding CLAUSE 9.7(c) each Party may at any time choose to substitute for a period of time of its election the Corporate Guarantee by a Letter of Credit that otherwise complies with the terms of this Agreement.

#### ARTICLE 10. MEASUREMENTS AND TESTS

#### CLAUSE 10.1 Measurement and Testing

LNG delivered to Buyer pursuant to this Agreement shall be measured and tested in accordance with Exhibit A.

### CLAUSE 10.2 Parties to Supply Devices

- (a) Seller shall supply, operate, and maintain, or cause to be supplied, operated and maintained, suitable gauging devices for the LNG tanks of the LNG Tanker, as well as pressure and temperature measuring devices, in accordance with CLAUSE 10.3 and Exhibit A, and any other measurement gauging or testing devices which are incorporated in the structure of such LNG Tanker or customarily maintained on shipboard.
- (b) Buyer shall supply, operate and maintain, or cause to be supplied, operated and maintained, devices required for vaporizing, testing and collecting samples and for determining quality and composition of the delivered LNG, in accordance with CLAUSE 10.3 and Exhibit A, and any other measurement, gauging or testing devices which are necessary to perform the measurement and testing required hereunder at the Discharge Port.

# CLAUSE 10.3 Selection of Devices

Each device provided for in this ARTICLE 10 shall be selected and verified in accordance with Exhibit A. Any devices that are provided for in this ARTICLE 10, but not previously used in an existing LNG trade, shall be chosen by written agreement of the Parties and shall be such as are, at the time of election, accurate and reliable in their practical application. The required degree of accuracy of such devices shall be agreed in writing

all or

by Buyer and Seller in advance of their use, and such degree of accuracy shall be verified by an independent surveyor who is agreed upon by Buyer and Seller.

#### CLAUSE 10.4 Tank Gauge Tables of LNG Tanker

Seller shall furnish to Buyer, or cause Buyer to be furnished, a certified copy of tank gauge tables as described in Exhibit A for each LNG tank of the LNG Tanker and of any tank gauge table revised as a result of any recalibration of an LNG tank of an LNG Tanker.

#### CLAUSE 10.5 Gauging and Measuring LNG Volumes Unloaded

Volumes of LNG delivered under this Agreement will be determined by gauging the LNG in the tanks of the LNG Tanker immediately before and after unloading in accordance with the terms of Exhibit A.

### CLAUSE 10.6 Samples for Quality Analysis

Representative samples of the delivered LNG shall be obtained by Buyer as provided in Exhibit A.

#### CLAUSE 10.7 Quality Analysis

The samples referred to in CLAUSE 10.6 shall be analyzed, or caused to be analyzed, by Buyer in accordance with the terms of Exhibit A, in order to determine the molar fractions of the hydrocarbons and components in the sample.

# CLAUSE 10.8 Operating Procedures

- (a) Prior to carrying out measurements, gauging and analysis hereunder, the Party responsible for such operations shall notify the designated representative(s) of the other Party, allowing such representative(s) a reasonable opportunity to be present for all operations and computations; provided, however, that the absence of such representative(s) after notification and reasonable opportunity to attend shall not affect the validity of any operations or computation thereupon performed.
- (b) At the request of either Party, any measurements, gauging and/or analysis provided for in CLAUSE 10.5, CLAUSE 10.6, CLAUSE 10.7 and CLAUSE 10.10(a) shall be witnessed and verified by an independent surveyor agreed upon in writing by Buyer and Seller. The results of verifications and records of measurement shall be maintained in accordance with the terms of Exhibit A.

#### CLAUSE 10.9 MMBtu Quality Delivered

The number of MMBtus sold and delivered shall be calculated at the Delivery Point by Buyer and witnessed and verified by a mutually appointed independent surveyor agreed upon in writing by the Parties following the procedures set forth in Exhibit A.



#### CLAUSE 10.10 Verification of Accuracy and Correction for Error

- (a) Each Party shall test and verify the accuracy of its devices at intervals to be agreed between the Parties. In the case of gauging devices of the LNG Tanker, such tests and verifications shall take place during each scheduled dry docking, provided that the interval between such dry docking shall not exceed five (5) years. Indications from any redundant determining devices should be reported to the Parties for verification purposes. Each Party shall have the right to inspect and if a Party reasonably questions the accuracy of any device, to require the testing or verification of the accuracy of such device in accordance with the terms of Exhibit A.
- (b) Possible tolerances of the measurement, gauging and testing devices shall be as described in Exhibit A.

#### CLAUSE 10.11 Costs and Expenses

- (a) Except as provided in CLAUSE 10.11(b), all costs and expensed for testing and verifying measurement, gauging or testing devices shall be borne by the Party whose devices are being tested and verified; *provided*, *however*, that representatives of the Parties attending such tests and verifications shall do so at the costs and risk of the Party they represent.
- (b) In the event that a Party inspects or requests the testing verification of any of the other Party's devices on an exceptional basis, other than as provided in CLAUSE 10.10(a), the Party requesting the testing/verification shall bear all costs thereof.
- (c) The costs of the independent surveyor:
  - (i) requested by a Party in accordance with CLAUSE 10.8(b) shall be born equally by Buyer and Seller, provided that, if the accuracy of any device requested to be tested pursuant to CLAUSE 10.10(a) is verified by an independent surveyor as being compliant with Exhibit A, the costs for that independent surveyor shall be borne by the requesting Party; and
  - (ii) referred to in CLAUSE 10.9 shall be borne equally by Buyer and Seller.

#### ARTICLE 11. TAXES, DUTIES AND CHARGES

#### CLAUSE 11.1 Seller's Obligations

(a) Seller shall pay and shall indemnify and hold harmless Buyer against and from, or shall reimburse Buyer for payments made by Buyer with respect to any Tax imposed or charged by a Governmental Authority having jurisdiction in any country



other than the United States of America, or any political subdivision thereof, arising in respect of the sale, purchase, loading, transportation, export, import or delivery of LNG sold or to be sold under this Agreement, or in respect of the LNG itself or its ownership or income resulting therefrom including income resulting from payments made by Seller under this CLAUSE 11.1(a).

- (b) CLAUSE 11.1(a) does not apply to Taxes to the extent imposed solely because of the existence or establishment by Buyer of residency or a permanent establishment in the taxing jurisdiction or otherwise based upon the income of Buyer.
- (c) All payments by Seller under or in connection with this Agreement will be made without set-off or counterclaim, free and clear of and without deduction for or on account of Taxes levied or imposed by a Governmental Authority having jurisdiction in the country in which the Loading Port is located or any transit country. If Seller is compelled to make payment subject to any Taxes levied or imposed by a Governmental Authority of the country in which the Loading Port is located or any transit country, Seller shall pay such additional amount as is necessary to ensure receipt by Buyer of the full amount due.

### CLAUSE 11.2 Buyer's Obligations

- (a) Buyer shall pay and shall indemnify and hold harmless Seller against and from, or shall reimburse Seller for payments made by Seller with respect to any Tax, other than any Tax described in CLAUSE 11.1(a), imposed or charged, levied or imposed by any Governmental Authority in the United States of America arising in respect of the sale, purchase, payments, loading, transportation, export, import (and shall be the importer of record) or delivery of LNG sold or to be sold under this Agreement or in respect of the LNG itself or its ownership or income resulting therefrom. Notwithstanding the foregoing, Buyer shall not indemnify, be responsible for, or liable for any ad valorem taxes or property taxes imposed by any jurisdiction with respect to LNG unless Buyer holds title to the LNG at the time any such taxes are imposed.
- (b) CLAUSE 11.2(a) does not apply to Taxes to the extent imposed solely because of the existence or establishment by the Seller of residency or a permanent establishment in the taxing jurisdiction or otherwise based upon the income of Seller.
- (c) All payments by Buyer under or in connection with this Agreement will be made without set-off or counterclaim, free and clear of and without deduction for or on account of Taxes. If Buyer is compelled to make payment subject to any such Taxes, Buyer will pay such additional amount as is necessary to ensure receipt by Seller of the full amount due.

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#### CLAUSE 11.3 Tax Refunds

Where any payment has been made under CLAUSE 11.1 or CLAUSE 11.2 and the recipient of such payment receives or is entitled to a refund in respect of the Taxes which gave rise to the right to that payment (whether by way of actual receipt, credit, set-off or otherwise), the recipient shall repay, or cause to be repaid, to the other Party a part of that payment equal to the amount of the refund effectively received or enjoyed, less any reasonable costs incurred in obtaining the refund, and less any Taxes levied or leviable in respect of that refund; and, if such funds are held by the recipient, such repayment shall bear interest at the rate provided in CLAUSE 9.3(d) from the date which is two (2) days after the refund was received until the date the other Party is repaid.

#### ARTICLE 12. TRANSFER OF TITLE AND RISK

#### CLAUSE 12.1 Transfer of Title and Risk

- (a) Title to each scheduled delivery quantity of LNG shall pass from Seller to Buyer as at the point which is the last point where the LNG ship is outside the territorial waters of the Country in which the Receiving Facilities are located (the "Title Transfer Point"). If a lesser amount is actually delivered to Buyer at the Receiving Facilities, title to such LNG and natural gas remaining on the LNG Tanker after discharge of the Cargo Lot (including any Heel and any natural gas vapor) will immediately revert from Buyer to Seller at the first point following the exit of such LNG Tanker from the territorial waters of the Country in which the Receiving Facilities are located.
- (b) Risk of loss for all LNG and natural gas being transported by the LNG Tanker pursuant to this Agreement, shall pass from Seller to Buyer at the Delivery Point. Risk of loss for any LNG remaining on the LNG Tanker after discharge of the Cargo Lot (including any Heel and any natural gas vapor) shall remain with Seller.

#### CLAUSE 12.2 Transportation from the Title Transfer Point to the Delivery Point

If a Cargo Lot scheduled to be delivered to Buyer at the Delivery Point is cancelled (for any reason), following transfer of title from Seller to Buyer under this Clause, then title to and risk of loss to that Cargo Lot shall revert from the Buyer to Seller at either: (i) the first point where the LNG Tanker exits the territorial waters of the Country in which Receiving Facilities are located following the effectiveness of the cancellation, or (ii) if the LNG Tanker does not exit the territorial waters of the Country in which Receiving Facilities are located prior to discharging its Cargo Lot, then immediately upon notice from Seller to Buyer but in no event later than actual discharge of the Cargo Lot. Such re-transfer of the



title and risk of loss in any LNG Cargo to Seller under this paragraph shall not require payment or other consideration by the Seller to the Buyer for such LNG and natural gas.

### CLAUSE 12.3 Seller's Warranty

Seller warrants that, at the time of delivery of each Cargo Lot, it shall have good and valid title to all such LNG to be delivered to Buyer, the right to sell the same, and that such LNG is free from all liens, charges, claims and encumbrances at the Delivery Point and shall indemnify the Buyer against any loss or claim resulting from any failure to transfer such good title or not being free from any encumbrance, lien or Third Party claim. EXCEPT FOR SUCH WARRANTIES STATED IN THIS CLAUSE 12.3, AND SUBJECT TO THE PROVISIONS OF THIS AGREEMENT CONCERNING THE QUALITY OF LNG TO BE DELIVERED UNDER THIS AGREEMENT, SELLER EXPRESSLY NEGATES ANY WARRANTY WITH RESPECT TO LNG DELIVERED UNDER THIS AGREEMENT, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE INCLUDING BUT NOT LIMITED TO THE GENERATION OF ELECTRICITY.

### ARTICLE 13. TRANSPORTATION, LOADING AND UNLOADING

#### CLAUSE 13.1 LNG Tanker Nomination

- (a) Seller shall be responsible for the transportation of all quantities of LNG to be sold and delivered at the Delivery Point under this Agreement and such transportation shall be executed by LNG tankers which conform to the descriptions set forth under CLAUSE 13.1(b) and Exhibit D (each an "LNG Tanker"). Subject to amendment by Seller after the Execution Date, the LNG Tankers Seller currently expects to use to deliver LNG to the Delivery Point are set forth on Exhibit E.
- (b) Each LNG Tanker shall comply with the requirements as set forth in CLAUSE 13.3(b), Exhibit D and the relevant Marine Terminal Manual (subject to the provisions of CLAUSE 5.4) and be compatible with the Discharge Port and the berthing and unloading facilities at the Receiving Facilities.
- (c) Subject to this Agreement, Seller may substitute an LNG Tanker specified in an ADP or NDS with a substitute LNG Tanker also listed on Exhibit E or with any other substitute LNG tanker approved in accordance with CLAUSE 13.3. Following any such substitution Seller shall accordingly revise the ADP and/or NDS (as applicable).
- (d) An LNG Tanker scheduled hereunder shall not be modified in any manner which would render such LNG Tanker incompatible with the Receiving Facilities, unless



- such modification is mandated pursuant to Applicable Law or a change in International Everett Standards, and provided in any case that Seller shall pay for any such modification, except as provided in CLAUSE 5.2.
- (e) Seller represents and warrants that each LNG Tanker scheduled hereunder will meet all applicable International Everett Standards and relevant Governmental Authority requirements and will obtain all necessary approvals for entering and exiting the United States of America.

#### CLAUSE 13.2 LNG Tanker's Port Charges

Seller shall pay all Port Charges, reasonable estimates of which are set forth in the Proforma on Exhibit G, directly to the appropriate Person.

# CLAUSE 13.3 <u>LNG Tanker Inspections; LNG Tanker Vetting Procedures; Right to Reject LNG</u> Tanker

- The LNG Tanker Vetting Procedures set forth the procedures for vetting LNG (a) Tankers. Buyer shall have the right, at its sole cost and expense, to inspect an LNG Tanker to confirm compatibility of such LNG Tanker with the requirements of the Receiving Facilities. Such inspection may include (i) Buyer sending its Representatives (including an independent internationally recognized maritime consultant) to inspect any LNG Tanker as Buyer may consider necessary to ascertain whether the LNG Tanker complies with the provisions of this Agreement; (ii) examination of the LNG Tanker's hull, cargo and ballast tanks, machinery, boilers, auxiliaries and equipment; (iii) examination of the LNG Tanker's deck and engine scrap/rough and fair copy/official log books, manuals and codes (ISM, etc.) and similar documents; (iv) review of records of surveys by the LNG Tanker's classification society and relevant Governmental Authorities; (v) review of the LNG Tanker's operating procedures and performance of surveys, both in port and at sea; and (vi) review of any other procedure, document or information that is reasonably requested by Buyer. Buyer (and its designees) shall carry out any such inspection without any unreasonable interference with or hindrance to the safe and efficient operation of the LNG Tanker and shall only make requests regarding the LNG Tanker through Seller.
- (b) As soon as reasonably practicable (but otherwise no later than thirty (30) Days) before an LNG Tanker's first call at the Receiving Facilities, Seller shall propose that Buyer approve such LNG Tanker and shall provide all information reasonably required by Buyer in connection with the approval process under this CLAUSE 13.3 and the LNG Tanker Vetting Procedures. After Seller has provided all information reasonably required by Buyer in connection with the approval process under this CLAUSE 13.3 and the LNG Tanker Vetting Procedures, Buyer shall, with cooperation by Seller, within thirty (30) Days of receipt of such information from



- Seller, vet such nominated LNG Tanker. If Seller requests a vetting period of less than thirty (30) Days for a proposed substitute LNG Tanker, Buyer shall use Reasonable Efforts to vet such nominated LNG Tanker within the reduced time period requested by Seller.
- (c) Buyer shall indemnify and hold Seller and its Affiliates harmless from any Claims and Losses resulting from Buyer's inspection of any LNG Tanker pursuant to CLAUSE 13.3(a) and CLAUSE 13.3(b).
- (d) Each proposed LNG Tanker shall have been inspected and reported upon by a SIRE Accredited Inspector within six (6) Months of the time of its initial use at the Receiving Facilities. Each LNG Tanker shall be reported upon by a SIRE Accredited Inspector once every twelve (12) Months for the first ten (10) years of such LNG Tanker's useful life and once every six (6) Months thereafter, and each inspection report of such SIRE Accredited Inspector shall be delivered to Buyer and shall show, to the reasonable satisfaction of Buyer, no material deficiencies in the safety or operability of such LNG Tanker. The foregoing inspections shall be at Seller's sole cost and expense.
- To the extent any inspection pursuant to CLAUSE 13.3(a) and CLAUSE 13.3(b) reveals that an LNG Tanker ceases to be compatible with the Receiving Facilities or fails to comply with the provisions of this Agreement or the requirements of the Marine Terminal Manual (but subject to the provisions of CLAUSE 5.4), such LNG Tanker shall cease to be an LNG Tanker until Seller remedies (or procures the remedy of) such non-compliance. Seller shall provide applicable certificates from the Transporter or charterer of such LNG Tanker as Buyer may reasonably require to verify that such non-compliance has been remedied prior to the restoration of such LNG Tanker's status as an LNG Tanker; provided, that Buyer may, in its sole discretion and in a non-discriminatory manner, waive compliance with the specifications set forth in this ARTICLE 13 and allow an LNG Tanker to berth or unload; provided, however, that no waiver by Seller of compliance with such specifications shall be construed as an approval of any LNG Tanker as an LNG Tanker. All reasonable costs incurred in connection with a subsequent inspection to demonstrate compatibility with the Receiving Facilities and ensure compliance with the requirements of the Marine Terminal Manual shall be at Seller's sole cost and expense. Buyer shall have the right to reject any LNG vessel that Seller intends to use to deliver LNG to the Receiving Facilities if such LNG vessel is not an LNG Tanker, provided that:
  - (i) neither the exercise nor the non-exercise of such right shall reduce the responsibility of Seller to Buyer in respect of such LNG vessel and her operation, nor increase Buyer's responsibilities to Seller or Third Parties for the same; and



(ii) Seller's obligations under this Agreement shall not be excused or suspended by reason of Seller's inability (pursuant to the foregoing) to use a vessel as an LNG Tanker.

#### CLAUSE 13.4 Marine Terminal Liability Agreement

- (a) Seller shall cause Transporter or the master of each LNG Tanker (acting on behalf of the ship-owner and charterer) making use of the port or marine facilities at the Receiving Facilities, to execute the Marine Terminal Liability Agreement prior to such LNG Tanker's arrival at the Receiving Facilities. As long as the LNG Tanker has not executed or otherwise agreed to be bound by a Marine Terminal Liability Agreement, Seller shall indemnify and hold Buyer and its Affiliates harmless from any claims brought against, or Losses incurred by Buyer or any of its Affiliates arising from a Marine Incident involving an LNG Tanker (whether or not the same constitutes a Covered Claim, as defined in the Marine Terminal Liability Agreement).
- (b) The form of Marine Terminal Liability Agreement may be amended from time to time without consent of Seller only if after any such amendment the revised terms of such Marine Terminal Liability Agreement: (a) do not negatively impact Seller's ability to perform its obligations or exercise its rights under this Agreement, (b) treat Transporter in a non-discriminatory manner in comparison to all other owners and charterers of LNG vessels that use or transit the Discharge Port, and (c) do not prevent any Transporter from obtaining, on commercially reasonable terms, full protection and indemnity coverage from a P&I Club, and such P&I indemnity will cover all Claims and Losses pursuant to such Marine Terminal Liability Agreement in relation to use of the Discharge Port by an LNG Tanker. To the extent that the terms of the Marine Terminal Liability Agreement are revised for any reason other than in accordance with changes in Applicable Law and any such revisions are the sole and exclusive cause for an increase in the premium payable for coverage from a P&I Club, then such premium increase shall be for Buyer's account. Buyer shall promptly notify Seller upon any amendment to the Marine Terminal Liability Agreement and shall provide a copy of the amended Marine Terminal Liability Agreement to Seller at the same time.

# CLAUSE 13.5 Additional Requirements

(a) <u>Standards.</u> Seller shall use Reasonable Efforts to ensure that each LNG Tanker is (i) safely manned, operated and maintained in good working order and condition by a competent and reputable LNG tanker operator; and (ii) constructed, operated and maintained in class without recommendations in accordance with International LNG Vessel Standards.



- (b) <u>Classification Society</u>. Each LNG Tanker shall at all times be maintained in class with any of the American Bureau of Shipping, Lloyds Register of Shipping, Bureau Veritas, Det Norske Veritas or any other member of the International Association of Classification Societies that is agreed in writing by the Parties.
- (c) <u>Insurance.</u> Seller shall cause all LNG Tankers to at all times comply with the insurance requirements set forth in CLAUSE 15.1(g). Buyer may refuse to berth any LNG Tanker that fails to comply with such insurance requirements and the provisions of CLAUSE 6.7 shall apply if such failure results in any Seller's Shortfall.
- (d) Governmental Authorizations. Seller shall obtain or cause to be obtained all Approvals required from all Governmental Authorities for LNG Tankers to enter and operate in the territorial waters of the United States, to enter and operate in the Discharge Port, to proceed to berth and transfer its cargoes and to depart from the Receiving Facilities and leave the territorial waters of the United States and shall ensure copies of documentation evidencing such Approvals are maintained onboard each of the LNG Tankers.
- (e) <u>Safety.</u> Each LNG Tanker shall comply fully with the International Safety Management Code for the Safe Operation of Ships and Pollution Prevention effective July 1, 1998, as amended from time to time, and at all times be in possession of valid documents of compliance and safety management certificates, and be able to demonstrate that the LNG Tanker has an effective management system in operation that addresses all identified risks, and provides proper controls for dealing with these risks.
- (f) Environmental Remediation. In the event of any clean-up, remediation, mitigation or other action required in connection with any pollution, contamination, hazardous materials or other adverse threat of impact, the Parties shall inform each other as soon as possible. If Seller, in the reasonable judgment of Buyer, fails to respond adequately or in a timely manner to any clean-up, remediation, mitigation and all other actions required of Seller by any Governmental Authority in connection with any pollution, contamination, hazardous materials or other adverse environmental threats or impacts, other than a Marine Incident, associated with the transfer of LNG or other operations at the Receiving Facilities that is caused by Seller or any of its Representatives, then Buyer may elect to respond thereto, in whole or in part, without prejudice to CLAUSE 15.1(b), if applicable; provided that Buyer shall provide Seller with prior notice of any such election to the extent practicable or as soon as practicable thereafter. If Seller, in its judgement as a Reasonable and Prudent Operator, does not believe Buyer's actions proposed pursuant to this CLAUSE 13.5(f) are reasonable, Seller may immediately, or in no case more than twenty-four (24) hours after receiving notice from Buyer, object to Buyer's



proposed actions and provide Buyer with reasonable alternative approaches to similarly or more effectively address the situation without prejudice to CLAUSE 15.1(b), if applicable. The provisions of this CLAUSE 13.5(f) shall in no way affect the obligations of the Parties under ARTICLE 15.

- (g) <u>Legal Requirements.</u> Seller shall instruct each LNG Tanker to comply with, and shall use Reasonable Efforts to cause all LNG Tanker operations at the Discharge Port and the Receiving Facilities (including all unloading and transit) to be conducted in accordance with, all Legal Requirements, Applicable Law (for deliveries to the Receiving Facilities) or International LNG Terminal Standards (for deliveries to an Alternate Receiving Facility), International LNG Vessel Standards and the Marine Terminal Manual (for deliveries to the Receiving Facilities). Promptly after receipt by Seller of any notice of any violation, citation or other notice of non-compliance or potential non-compliance or claim alleging non-compliance with any Legal Requirement, Seller shall notify Buyer of the same and shall promptly remedy the same or cause the same to be remedied.
- (h) Crew. Seller shall use Reasonable Efforts to ensure that the officers and crew of each LNG Tanker shall have the ability, experience, licenses and training commensurate with the performance of their duties in accordance with International LNG Vessel Standards as adopted on first-class LNG tankers and as required by Governmental Authorities and any labour organization having jurisdiction over an LNG Tanker, her master, officers or crew. Seller shall use Reasonable Efforts to ensure that the officers and crew of each LNG Tanker shall comply with the requirements of the Marine Terminal Manual, and that such officers are proficient in communicating both orally and in writing in the English language.
- (i) <u>ISPS Code.</u> Each LNG Tanker shall hold a valid International Ship Security Certificate and shall be in compliance with the guidelines contained in its Ship Security Plan as defined in the ISPS Code to ensure that the appropriate security level is maintained at all times onboard the LNG Tanker.

#### CLAUSE 13.6 Notices of LNG Tanker Movements and Characteristics of LNG Cargoes

(a) Seller will cause the master of the LNG Tanker to notify Buyer and the operator of the Receiving Facilities of the estimated time of arrival ("ETA") of the LNG Tanker at the PBS. Notification of the ETA (an "ETA Notice") will be in writing and will be given (i) promptly following completion of loading and departure from the Loading Port, then (ii) 96 hours, 72 hours, 48 hours, 24 hours, 12 hours, and 5 hours prior to the earlier notified ETA (with each ETA Notice confirming or amending an earlier specified ETA), and finally (iii) on arrival of the LNG Tanker at the PBS (a "Notice of Arrival"); provided that a new ETA Notice will be given at any time an ETA differs by more than one (1) hour from the ETA specified in an immediately preceding ETA Notice. The first ETA Notice will include a non-binding estimate



of the quantity of LNG loaded and of the quantity to be delivered, and each ETA notice and the Notice of Arrival will also advise of any operational condition or deficiency of the LNG Tanker that may affect her performance at the Discharge Port or the Receiving Facilities. The 12-hour and 5-hour Notices will also include the fuel quantities on board the LNG Tanker at the time of such Notices.

(b) Upon arrival at PBS, Seller will cause the master to issue a notice of readiness ("Notice of Readiness" or "NOR") to Buyer and the operator of the Receiving Facilities immediately after the LNG Tanker has undergone and completed all security, safety, and other inspections, and all necessary clearances required for the LNG Tanker to enter and navigate in the territorial waters of the United States and entering into Discharge Port have been obtained; provided, however, that such NOR shall only be effective if given within an incoming tide window that will allow the LNG Tanker to proceed to berth. If the security, safety and other inspections have been completed but the necessary clearances to begin passage have not been obtained because the tanks at the Receiving Facilities are not ready (for reasons other than Force Majeure) to receive Seller's cargo, the Notice of Readiness may be issued after completion of the tanks inspections at the Receiving Facilities. Once such clearances are obtained, Seller will then berth or cause the LNG Tanker to be berthed at the Receiving Facilities safely and as expeditiously as possible in cooperation with Buyer and the operator of the Receiving Facilities.

As soon as the vessel is All Fast at the berth and she is ready in all respects to unload her cargo, Seller will commence and complete, or cause to be commenced and completed, unloading of the vessel, and thereafter cause the vessel to depart the berth, at all times safely and as expeditiously as possible and in cooperation with Buyer and the operator of the Receiving Facilities.

- (c) Buyer and Seller will use Reasonable Efforts to avoid any conflict with other LNG vessels in berthing Seller's LNG Tanker.
  - (i) Notice of Berthing Assignment. On or before receipt of the twenty-four (24) hour notice from Seller to Buyer prior to the most recently notified ETA under CLAUSE 13.6(a), Buyer shall preliminarily assign such LNG Tanker a place in the berthing sequence at the Receiving Facilities and shall notify the master of such LNG Tanker of such berthing sequence. The final berthing sequence for such LNG Tanker shall be determined using and subject to the priority rules set forth in CLAUSE 13.6(c)(ii), and Buyer shall notify as soon as reasonably practicable Seller and the master of such LNG Tanker of any revisions to such berthing sequence. Seller shall cause the LNG Tanker to be berthed safely and expeditiously at the berth, and Buyer shall cooperate in such berthing.



- (ii) Berthing Priority. Subject to the applicable Legal Requirements, those rules set forth in the Marine Terminal Manual, and decisions taken by Pilots or other Governmental Authorities with respect to the berthing of LNG Tankers for Seller, in determining the berthing sequence, Buyer shall assign berthing priority as follows:
  - (A) On-Time Arrival. First, to LNG Tankers achieving on-time arrival, and as between such LNG tankers achieving on-time arrival, to the LNG tanker whose Delivery Window is the first to occur; provided, that an LNG tanker achieving on-time arrival as provided in this CLAUSE 13.6(c)(ii)(A) will have higher berthing priority than any LNG tanker described in CLAUSE 13.6(c)(ii)(B) or CLAUSE 13.6(c)(ii)(C), even if such LNG tanker described in CLAUSE 13.6(c)(ii)(B) or CLAUSE 13.6(c)(ii)(C) arrived at the PBS before an LNG tanker achieving on-time arrival under this CLAUSE 13.6(c)(ii)(A);
  - (B) <u>Late Arrival.</u> Second, to LNG Tankers achieving late arrival, and as between such LNG tankers achieving late arrival, on a "first come, first served" basis determined by reference to the time of the tender of a valid NOR for each such LNG tanker pursuant to CLAUSE 13.6(b); provided, that Buyer shall not be obligated to berth or permit the transfer of LNG by any such LNG tanker achieving late arrival to the extent provided in CLAUSE 13.7; and
  - (C) Early Arrival. Third, to LNG Tankers achieving early arrival, and as between such LNG tankers achieving early arrival, on a "first come, first served" basis determined by reference to the time of the tender of a valid NOR for each such LNG tanker pursuant to CLAUSE 13.6(b); provided, that absent the consent from Seller, if affected, and all other sellers affected, Buyer shall refuse to allow such LNG tanker to berth before its scheduled Delivery Window if, in Buyer's reasonable opinion, the unloading of such LNG tanker and other scheduled activities permitted at the berth would disrupt the overall unloading schedule of an LNG Tanker or any LNG tanker for other sellers or operations of the Receiving Facilities.

If an LNG Tanker is delayed in commencing to transit from the PBS to the berth, for purposes of determining whether such LNG Tanker or LNG tanker achieved on-time arrival, late arrival or early arrival, such LNG Tanker or LNG tanker shall be deemed to have commenced transit from the PBS to the berth at the time that such LNG Tanker would have otherwise been able to commence transit absent such event.



### CLAUSE 13.7 Berthing Not Permitted During Scheduled Delivery Window

- (a) Late Arrival. If an LNG Tanker achieves late arrival Buyer shall use Reasonable Efforts to assign an alternative and available Delivery Window to Seller to allow the LNG Tanker to proceed to berth and unload. Notwithstanding the foregoing, Buyer shall have no obligation to use such efforts to berth an LNG Tanker that tenders NOR more than seventy-two (72) hours after the end of its Delivery Window and Seller shall be deemed to have failed to make delivery of the scheduled Cargo Quantity of the relevant cargo and the provisions of CLAUSE 6.7 shall apply. During the initial seventy-two (72) hour period, Buyer may refuse to allow the LNG Tanker that achieved late arrival to berth, unless in Buyer's reasonable opinion, the unloading of the LNG Tanker and other activities permitted at the berth will be completed without disrupting the overall unloading schedule at the Receiving Facilities. If Buyer would otherwise be entitled to refuse to allow the LNG Tanker to berth in accordance with this CLAUSE 13.7(a), Buyer may nevertheless allow the LNG Tanker to berth if Seller agrees in such a case to reimburse Buyer for its actual and direct documented costs, expenses and fees incurred as a result of the delay to any subsequent LNG tanker resulting therefrom. In connection with any such arrangement, Buyer shall provide to Seller a good faith estimate of such costs, expenses and fees prior to the LNG Tanker proceeding to the berth, though such estimate shall not be binding on Buyer.
- (b) Notwithstanding the foregoing provisions of this CLAUSE 13.7, Buyer may refuse to allow the LNG Tanker to berth if Buyer reasonably determines that the berthing of the LNG Tanker would affect the safe operations of all or any portion of the Receiving Facilities.
- (c) Allowed laytime under this Agreement shall mean the allotted time available to unload an LNG Tanker rounded up to the next whole hour, as the same may be extended pursuant to this Agreement ("Allowed Laytime"):

Allowed Laytime, in hours = 28

- (d) The Allowed Laytime available shall be extended for a period of time as reasonably required to overcome delays caused by any of the following:
  - (i) A reason attributable to Seller, the LNG Tanker, the owner or operator, master or crew of the LNG Tanker.
  - (ii) Pilot or a Governmental Authority (including any United States Coast Guard activities related to, or mandated repairs to, an LNG Tanker required to be completed before such LNG Tanker's departure from the berth),
  - (iii) Force Majeure,



- (iv) Half of the time attributable to adverse weather not otherwise qualifying as a Force Majeure which, in accordance with the Discharge Port Authority, prevents or delays the LNG Tanker from berthing, unloading or departing the berth,
- (v) A reason attributable to Buyer's exercise of its rights under this Agreement, including rejection of a cargo under CLAUSE 7.2,
- (vi) Time during which normal operation of the Discharge Port is restricted or prohibited by law, regulation or decree, and
- (vii) Compliance of the LNG Tanker with Discharge Port regulations or a directive or order of the United States Coast Guard or any other federal, state or local Governmental Authority,

unless, in the case of (vi) or (vii), the circumstance described is the result of acts or omissions of Buyer or the operator of the Receiving Facilities.

"Used Laytime" shall mean the time used to unload an LNG Tanker and shall mean the period of time, stated in hours, which commences and ends as hereinafter specified:

- if the LNG Tanker gives Notice of Readiness within the Final Delivery Window, Used Laytime shall commence on the earlier of:
  - (A) the time at which the LNG Tanker is All Fast on the berth and ready to unload, or
  - (B) six (6) hours after the time at which the LNG Tanker gave to the Buyer Notice of Readiness;
- if the LNG Tanker gives Notice of Readiness before the Final Delivery Window, Used Laytime shall commence on the earlier of:
  - (C) the time at which the LNG Tanker is All Fast on the berth and ready to unload, or
  - (D) at 6:00 hours (local time at the Discharge Port) of the first Day of the Delivery Window; *provided*, that such LNG Tanker would still satisfy the requirements set forth herein regarding the issuance of an effective NOR at the commencement of such Delivery Window; or
- if the LNG Tanker gives Notice of Readiness after the Final Delivery Window, Used Laytime shall commence the time at which the LNG Vessel is All Fast on the berth and ready to unload.



Used Laytime shall end in any case when Seller has disconnected the arms
of the LNG Tanker and such LNG Tanker departs the berth.

### (e) Allowed Delays and Consequences of Delays

- (i) <u>Buyer Delays.</u> The remedies provided in this CLAUSE 13.7(e) shall be Seller's sole and exclusive remedies in respect of any delay by Buyer in berthing and unloading.
  - (A) If the Used Laytime for an LNG Tanker exceeds the Allowed Laytime for reasons attributable to Buyer, the Receiving Facilities or Discharge Port operator then for the period of time that the Used Laytime exceeds the Allowed Laytime, Buyer shall pay to Seller, as liquidated damages, the Demurrage in an amount equal to the Demurrage Rate.
  - (B) If unloading is delayed for more than twenty-four (24) hours after the Notice of Readiness is effective pursuant to CLAUSE 13.6(b) for reasons that would not result in an extension of Allowed Laytime, then, for each hour by which unloading is delayed beyond such twenty-four (24) hour period, Buyer shall pay to Seller, as liquidated damages, an amount on account of excess boil-off, equal to the applicable Contract Price for the relevant LNG Cargo multiplied by the MMBtus of excess boil-off. The MMBtus of excess boil-off shall be calculated at the Boil-Off Rate.
  - (C) If, as of the forty-eighth (48th) hour following the expiration of Allowed Laytime, completion of LNG transfer has not been achieved, Buyer shall use its Reasonable Efforts to accept any portion of such cargo that can be unloaded.
  - (D) If a Force Majeure affecting Buyer occurs and completion of LNG transfer has not been achieved, then the master of the LNG Tanker may elect to discontinue unloading and may depart the berth.
- (ii) Seller and LNG Tanker Delays. The remedies provided in this CLAUSE 13.7(e)(ii) shall be Buyer's sole and exclusive remedies for an LNG Tanker exceeding the Allowed Laytime or the removal of an LNG Tanker from the berth, as set forth below. Buyer shall invoice Seller for ship boil-off and demurrage due under this CLAUSE 13.7(e)(ii) in accordance with CLAUSE 9.2.
  - (A) If Used Laytime for an LNG Tanker exceeds the Allowed Laytime for reasons attributable to Seller, Seller's representatives, an LNG Tanker or its master, crew, owner or operator and, as a result, another LNG



vessel is delayed in berthing then for the period of time that Used Laytime exceeds Allowed Laytime, Seller will reimburse Buyer for the documented costs reasonably incurred by Buyer for (i) any demurrage incurred by Buyer in respect of the other vessel, up to but not exceeding the amount payable if the demurrage were calculated in accordance with the Demurrage Rate; and (ii) any boil-off from the other vessel paid for by Buyer or its Affiliate but not exceeding the amount payable if the excess boil-off were calculated in accordance with the applicable Contract Price for the relevant Cargo Lot multiplied by the MMBtus utilizing the Boil-Off Rate. Buyer will exercise its Reasonable Efforts to minimize the costs payable by Seller under this CLAUSE 13.7(e)(ii)(A).

- (B) If, as of the forty-eighth (48th) hour following the expiration of Allowed Laytime, completion of LNG transfer has not been achieved, the master of the LNG Tanker may elect to discontinue unloading and may depart the berth, and Seller shall be deemed to have failed to make available any portion of such cargo that has not been unloaded and the provisions of CLAUSE 6.7 shall apply in respect thereof. If Seller requests the LNG Tanker to remain beyond such forty-eight (48) hour period and Buyer agrees, based upon the operational limitations of the Receiving Facilities, Seller shall be liable for demurrage until such time as Seller and Buyer agree that Seller is deemed to have failed to make available the scheduled Cargo Quantities pursuant to CLAUSE 6.7.
- (C) If an LNG Tanker has not departed the berth pursuant to CLAUSE 13.7(f), Buyer may, subject to a safety determination made by the master of such LNG Tanker, take all reasonable means to remove such LNG Tanker from the berth, and Seller shall reimburse Buyer for all costs, expenses and fees incurred by Buyer in connection with the removal of such LNG Tanker.
- (f) Operations after Effective Notice of Readiness. Upon the effectiveness of the Notice of Readiness pursuant to CLAUSE 13.6(b), an LNG Tanker shall:
  - (i) transit inbound from the PBS to the berth;
  - (ii) berth at the Receiving Facilities and become All Fast;
  - (iii) initiate unloading;
  - (iv) complete transfer of LNG (and complete necessary pre-departure activities, including the exchange of the standard cargo documents); and



- (v) use Reasonable Efforts in accordance with prudent industry practices to depart the berth promptly following disconnection of the LNG transfer arms, emptying of cargo/deck piping, and completion of other appropriate LNG Tanker operations.
- (g) LNG Tanker Requirement to Leave Berth. Under the limited circumstances described in CLAUSE 13.7(g)(i), Buyer may direct an LNG Tanker to depart the berth and proceed to sea after becoming All Fast, but prior to completion of LNG transfer (and completion of any pre-departure activities). Buyer shall not require an LNG Tanker to depart the berth so long as it is unsafe for the LNG Tanker to depart the berth, as determined by the master.
  - (i) Prior to directing an LNG Tanker to depart the berth and proceed to sea after becoming All Fast, and prior to completion of LNG transfer (and completion of any pre-departure activities) in accordance with CLAUSE 13.7(f)(iv), Buyer shall use Reasonable Efforts to allow the LNG Tanker to remain at the berth. However, notwithstanding the forgoing, Buyer may direct the LNG Tanker to depart the berth and proceed to sea after becoming All Fast, prior to completion of LNG transfer (and completion of any pre-departure activities), under any of the following circumstances:
    - (A) the LNG Tanker has not initiated unloading within ten (10) hours of becoming All Fast;
    - (B) unloading is interrupted for more than twelve (12) hours for reasons not attributable to any Governmental Authority;
    - (C) the LNG Tanker (I) fails to comply in any material respect with the Marine Terminal Manual, (II) fails to comply with the Marine Terminal Liability Agreement, or (III) ceases to be an LNG Tanker; or
    - (D) the LNG Tanker has not achieved completion of LNG transfer and departed the berth, nor can reasonably be expected to achieve completion of LNG transfer and to depart the berth within seventy-two (72) hours of the LNG Tanker becoming All Fast, unless such LNG Tanker is subject to extended Allowed Laytime pursuant to CLAUSE 13.7(d).
- (h) LNG Tanker Return to Berth. Buyer shall use Reasonable Efforts to allow an LNG Tanker to berth when the LNG Tanker which has not been allowed to berth (or which has departed the berth and proceeded to sea under CLAUSE 13.7(g)) is ready for unloading. If Seller desires the LNG Tanker to return to the berth, Seller shall notify Buyer by serving Notice of Readiness (which supersedes any previous Notice).

54



- of Readiness), in which case the provisions of CLAUSE 13.6(c) shall apply and an alternative Delivery Window shall be agreed upon by the Parties.
- (i) If, for reasons not attributable to Seller, Transporter, the LNG Tanker her master or crew, unloading has not been completed at the end of the fifth (5<sup>th</sup>) day after the Notice of Readiness has been issued then the Seller may at its sole discretion and without prejudice to its other rights and remedies, require the unloading to be discontinued at the Discharge Port and cause the LNG Tanker to leave the berth. The Seller will cease to be obliged to deliver the remaining LNG quantity within the LNG Tanker and the Seller will be deemed to have made available the scheduled Cargo Quantity and CLAUSE 6.6(a) shall apply. The Seller may dispose of such remaining quantity in such a manner as it may determine at its sole discretion.

#### CLAUSE 13.8 Reasonable Efforts

Without prejudice to any Party's right to receive payment in respect of demurrage and excess boil-off in accordance with CLAUSE 13.7(e) above, if either Party encounters or expects to encounter technical or operational difficulties that may result in a delay in berthing, unloading, or departure of an LNG Tanker or in a delay in making available (in the case of Seller) or taking (in the case of Buyer) a Cargo Lot scheduled for delivery herein, the affected Party shall promptly notify the other Party and the Parties shall use Reasonable Efforts to agree a solution, reschedule the relevant cargo of LNG and/or identify measures which can be adopted to minimize or to avoid the occurrence of any similar difficulties or delay in the future.

#### ARTICLE 14. PROGRAMMING OF DELIVERIES

#### CLAUSE 14.1 Programming Information

- (a) The Parties shall consult in good faith in determining the Annual Delivery Program for each Contract Year after the exchange of information in accordance with this ARTICLE 14.
- (b) In determining the Annual Delivery Program, the Parties shall take into consideration and make Reasonable Efforts to make each ADP consistent to the extent practicable with the procedure and unloading windows available to Buyer (or Buyer's Affiliate) at the Receiving Facilities and the objective of scheduling deliveries to Buyer described in CLAUSE 6.1, so that (i) within the Winter Period one (1) Cargo Lot is ratably delivered to Buyer within the first winter delivery window (from November 1 to December 15), the next four (4) Cargo Lots are ratably delivered to Buyer within the second winter delivery window (from December 16 to February 15), and the two (2) Cargo Lots for delivery in the third



winter deliver window (from February 16 to March 31) are delivered to Buyer ratably from the date the last Cargo Lot is delivered within the second winter delivery window, and (ii) within the Summer Period, the three (3) Cargo Lots are ratably delivered to Buyer between April 1 and October 31.

(c) Buyer acknowledges and agrees that Seller shall be responsible for issuing the final Annual Delivery Program, and for inclusion the entire Annual Contract Quantity in the Annual Delivery Program in accordance with this Agreement.

# CLAUSE 14.2 Annual Delivery Program

- (a) Subject to CLAUSE 14.3, not less than one hundred forty (140) Days before the start of each Contract Year, Buyer will notify Seller of the scheduled black-out dates during such Contract Year on which the Discharge Port will not be available to accept deliveries of LNG (each a "Black-Out Date"), the number of Delivery Windows available to Seller in the Annual Delivery Program for such Contract Year and the desired pattern of deliveries that complies with CLAUSE 6.1.
- (b) No later than eighty-five (85) Days before the start of each Contract Year, Seller shall notify Buyer a proposed Annual Delivery Program that shall meet as much as practicable Buyer's proposed unloading pattern pursuant to CLAUSE 14.2(a), the proposed LNG Tankers (if known) for each cargo, the Supply Source (with the information required under CLAUSE 6.4(a)) and the estimated Gross Heating Value for each Cargo Lot set forth in Seller's proposed Annual Delivery Program. Seller shall also inform Buyer of any anticipated periods for maintenance to be conducted with respect to the LNG Tankers identified above.
- (c) Not later than ten (10) Days after receipt of Sellers' proposed schedule provided under CLAUSE 14.2(b), Buyer shall notify Seller if Buyer desires to consult with Seller regarding the proposed schedule, and Seller shall, no later than forty-five (45) Days after receipt of Buyer's notice, meet and consult with Buyer.
- (d) If, prior to the date that is thirty (30) Days before the start of the coming Contract Year, the Parties have agreed on a schedule of deliveries for such coming Contract Year, then Seller shall issue the delivery schedule agreed by the Parties. If the Parties are unable to agree on a schedule of deliveries for the coming Contract Year, then no later than thirty (30) Days before the start of such Contract Year, Seller shall issue the delivery schedule for such Contract Year containing the information set forth in CLAUSE 14.2(b), modified to reflect any changes (if any) agreed by the Parties pursuant to CLAUSE 14.3. The schedule promulgated by Seller shall reflect the exercise of Reasonable Efforts by Seller to assign to Buyer Delivery Windows that are as close as reasonably practicable to the Delivery Windows proposed by Buyer and in no event shall any assigned Delivery Window fall within any Black-Out Dates.



- (e) The schedule for deliveries of LNG during the Contract Year established pursuant to this CLAUSE 14.2, as amended from time to time in accordance with CLAUSE 14.3, is the "Annual Delivery Program" or "ADP." If Seller fails to issue the schedule provided for in CLAUSE 14.2(b) or CLAUSE 14.2(d) or fails to issue either such schedule in accordance with the provisions of CLAUSE 14.2(b) or CLAUSE 14.2(d) (as applicable), then the schedule proposed by Buyer under CLAUSE 14.2(a) shall be the ADP for the relevant Contract Year.
- (f) For the initial ADP, the ADP shall be adjusted to reflect the actual Start Date based upon the provisions set forth in CLAUSE 14.1.

#### CLAUSE 14.3 Changes to the Annual Delivery Program

- (a) After the Annual Delivery Program is issued pursuant to CLAUSE 14.2, any changes of the information contained in such ADP (except for changes permitted in accordance with this Agreement regarding Buyer's additional supplies, Buyer's Cancellation, Supply Source, scheduled load date, Cargo Quantity and the LNG Tankers), shall be subject to the mutual agreement of the Parties. Each Party shall use Reasonable Efforts to accommodate changes to the then current ADP and any NDS requested by the other Party as a result of (i) modifications to loading windows at the Loading Port or unloading windows at the Receiving Facilities; or (ii) operational or other technical reasons affecting the Loading Port, the LNG Tankers or the Receiving Facilities, including as a result of changes to the LNG Tanker requirements.
- (b) Buyer may at any time request a change to the Delivery Window for any cargo scheduled in the ADP or NDS by sending notice of such request to Seller. Any such request shall be subject to the approval of Seller, which Seller shall use Reasonable Efforts to accommodate and approve.
  - (c) Seller shall be entitled to change the LNG Tanker, scheduled load date, and Supply Source for each Cargo Lot subject always to compliance with the Specifications, the LNG Tanker ship-shore compatibility and satisfaction of all documentary requirements at the Receiving Facilities. Seller shall provide Buyer prompt notice of any such change.
  - (d) The ADP and NDS shall automatically be changed to accommodate any Cargo Lot added in accordance with CLAUSE 6.2 and CLAUSE 6.3, and Seller shall use Reasonable Efforts to adjust the ADP and NDS to maintain ratable distributions of the upcoming scheduled Delivery Windows.
  - (e) Any change to the ADP or NDS shall not, unless expressly agreed otherwise by both Parties in such amended ADP or NDS, affect the obligations pursuant to ARTICLE 6 of the Party requesting such change.



(f) Upon receipt of (i) Seller's notice pursuant to CLAUSE 14.3(c) or (ii) Seller's approval of a change proposed by Buyer pursuant to CLAUSE 14.3(b), the ADP or NDS (as applicable) shall be amended accordingly and an updated ADP and/or NDS (as applicable) shall promptly be provided in writing by Seller to Buyer.

## CLAUSE 14.4 Ninety Day Schedule and Final Delivery Window

- (a) Not later than the 22nd Day for each month in each Contract Year, Seller shall prepare a rolling ninety-Day schedule (such schedule, as from time to time revised, the "NDS") of unloading, setting out for the next three months the details in relation to each Cargo Lot on the basis of the ADP. The NDS shall follow the applicable ADP and set forth by cargo the forecast pattern of deliveries (including for each cargo all relevant information identified in the ADP). Buyer shall use Reasonable Efforts to respond to and/or amend the NDS, pursuant to CLAUSE 14.3, if any of the relevant information listed in the NDS should be adjusted.
- (b) The Delivery Window for each Cargo Lot included in an ADP will be narrowed down to a period of forty-eight (48) consecutive hours within the corresponding Delivery Window (the "48-Hour Delivery Window") by a Seller's notice to be delivered at least thirty (30) Days in advance of the first Day of the corresponding Delivery Window included in the ADP or previous relevant NDS. Such 48-Hour Delivery Window within the corresponding 48-Hour Delivery Window by a Seller's notice to be delivered at least fifteen (15) Days in advance of the first Day of the corresponding 48-Hour Delivery Window included in the relevant NDS.
- (c) Buyer and Seller shall notify each other promptly after any event or circumstance that was unforeseeable at the time the ADP or NDS was established and that may require rescheduling of a Delivery Window, 48-Hour Delivery Window or Final Delivery Window. In such case, pursuant to CLAUSE 14.3, Buyer and Seller shall meet and discuss in good faith and endeavor to agree to such changes.
- (d) Each Ninety Day Schedule shall set out for each cargo scheduled therein:
  - (i) the Cargo Quantity;
  - (ii) the LNG Tanker;
  - (iii) the Supply Source
  - (iv) Discharge Port;
  - (v) the scheduled unload date;



- (vi) the scheduled Delivery Window, 48-Hour Delivery Window or Final Delivery Window as applicable; and
- (vii) such additional information as the Parties may agree.

In the event of any conflict between the provisions of a NDS and the ADP, the NDS shall prevail with respect to the applicable period.

(e) If Seller does not issue a NDS in any month, the schedule set forth in the most recent NDS shall apply for the months covered by such Ninety Day Schedule and the ADP shall apply for all other months; as such ADP or NDS shall be deemed modified by the relevant 48-Hour Delivery Window or Final Delivery Window notified by Seller.

#### ARTICLE 15. LIABILITIES AND INSURANCE

## CLAUSE 15.1 <u>Liabilities and Indemnification</u>

#### (a) General

Subject to CLAUSE 15.1(c), and without prejudice to any indemnity provided under this Agreement, Seller shall be liable to Buyer, and Buyer shall be liable to Seller, for any Loss which has been suffered as a result of the breach by the Party liable for any one or more of its obligations under this Agreement, to the extent that the Party liable for breach of this Agreement should reasonably have foreseen the Loss.

#### (b) <u>Indemnification</u>

- (i) Each Party shall indemnify, defend and protect the other Party's Indemnity Group and hold the other Party's Indemnity Group harmless from and against any and all actions, suits or proceedings instituted by a Governmental Authority arising out of any failure of such Party's actions or performance of its obligations under this Agreement to conform to Legal Requirements, except to the extent such action, suit or proceeding is the result of any of the Indemnity Group's acts or omissions.
- (ii) Save for the exceptions expressly provided for in this Agreement, and without prejudice to any liability that may arise pursuant to a Marine Terminal Liability Agreement, Seller agrees to indemnify and protect the Buyer Indemnity Group and hold the Buyer Indemnity Group harmless from all Losses where such Losses are for injury to, illness, or death of any employee or agent of Seller, or for damage to or loss of any LNG Tanker, which injury, illness, death, damage or loss exclusively arises out of, is



incident to, or results from a Marine Incident occurring as a result of the performance or failure to perform this Agreement by Seller, Transporter, or any of their respective Affiliates, shareholders, officers, directors, employees, designees, representatives, and agents. Save for the exceptions expressly provided for in this Agreement, and without prejudice to any liability that may arise pursuant to a Marine Terminal Liability Agreement, Buyer agrees to indemnify and protect the Seller Indemnity Group and hold the Seller Indemnity Group harmless from all Losses where such Losses are for injury to, illness or death of any employee or agent of Buyer, or for damage to or loss of the Receiving Facilities, which injury, illness, death, damage or loss exclusively arises out of, is incident to, or results from a Marine Incident occurring as a result of the performance or failure to perform this Agreement by Buyer, Receiving Facilities' operator, or any of their respective Affiliates, shareholders, officers, directors, employees, designees, representatives, and agents.

## (c) Limitations on Liability

- (i) <u>Incidental and Consequential Losses</u>. Except as expressly provided in this Agreement, neither Party shall be liable to the other Party under this Agreement as a result of any Loss in respect of:
  - (A) any indirect, incidental, consequential or exemplary loss or damages, including any liability or damages payable (i) by Buyer to other sellers of LNG to Buyer or any of their customers, transporters, or any other parties with whom Buyer has entered into any agreement in relation to the Receiving Facilities, or (ii) by Seller to Transporters, any of Seller's other customers or LNG suppliers, or to any other parties with whom Seller has entered into any agreement in relation to the LNG Tankers or its Supply Source;
  - (B) any indirect or consequential loss of income, earning, revenue, profits or production;
  - (C) except as expressly provided in this Agreement, any failure of performance or delay in performance that is relieved by the application of Force Majeure pursuant to ARTICLE 16; or
  - (D) except as expressly provided in this Agreement, any Claim, demand or action made or brought against the other Party by a Third Party;

in any case in connection with a Party's performance or failure to perform any obligations under this Agreement or the breach of any representation, warranty or other obligation hereunder, whether expressed or implied and



whether such damages are claimed under breach of warranty, breach of contract, tort, or other theory or cause of action at law or in equity regardless of whether such Loss is the result of the negligence of such Party, except so far as it relates to personal injury or death caused by such Party's negligence or fraud.

- (ii) Exclusive Remedies. A Party's sole liability, and the other Party's exclusive remedy, arising under or in connection with CLAUSE 6.4, CLAUSE 6.5, CLAUSE 6.6, CLAUSE 6.7, CLAUSE 6.8, CLAUSE 7.2, CLAUSE 13.7(e)(i)(A), CLAUSE 13.7(e)(i)(B), CLAUSE 13.7(e)(ii)(B) and this CLAUSE 15.1 shall be as set forth in each such provision, respectively.
- (iii) Liquidated Damages. The Parties agree that it would be impracticable to determine accurately the extent of the loss, damage and expenditure that either Party would have in the circumstances described in CLAUSE 6.4, CLAUSE 6.5, CLAUSE 6.6, CLAUSE 6.7, CLAUSE 6.8, CLAUSE 7.2, CLAUSE 13.7(e)(i)(A), CLAUSE 13.7(e)(i)(B), CLAUSE 13.7(e)(ii)(A) and CLAUSE 13.7(e)(ii)(B). Accordingly, the Parties have estimated and agreed in advance that the sole liability, and exclusive remedy for such circumstances shall be as provided in those CLAUSES, and neither Party shall have additional liability as a result of any such circumstances. Each amount described in or determined by the provisions of those CLAUSES is intended to represent a genuine pre-estimate by the Parties as to the loss or damage likely to be suffered by the Party receiving the payment or benefit in each such circumstance.
- (iv) Express Remedies. The Parties agree that CLAUSE 15.1(c)(i) shall not impair a Party's obligation to pay the amounts specified in, or the validity of or limitations imposed by, CLAUSE 6.4, CLAUSE 6.5, CLAUSE 6.6, CLAUSE 6.7, CLAUSE 6.8, CLAUSE 7.2, CLAUSE 13.7(e)(i)(A), CLAUSE 13.7(e)(i)(B), CLAUSE 13.7(e)(ii)(A) and CLAUSE 13.7(e)(ii)(B). To the fullest extent permitted by law, no Party shall have a right to make a claim for actual damages (whether direct or indirect) or other non-specified damages under any circumstances for which an express remedy or measure of damages is provided in this Agreement.
- (v) EXCEPT FOR WARRANTIES OF TITLE AND NO LIENS OR ENCUMBRANCES, AND SUBJECT TO THE PROVISIONS OF THIS AGREEMENT CONCERNING THE QUALITY OF LNG TO BE DELIVERED UNDER THIS AGREEMENT, SELLER EXPRESSLY NEGATES ANY WARRANTY WITH RESPECT TO LNG DELIVERED UNDER THIS AGREEMENT, WRITTEN OR ORAL, EXPRESS OR



IMPLIED, INCLUDING ANY WARRANTY WITH RESPECT TO CONFORMITY TO SAMPLES, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

## (d) Third Party Liability

With respect to Third Party liabilities:

- (i) If any Third Party shall notify either Party (the "Indemnified Party") with respect to any matter (a "Third Party Claim") that may give rise to a claim for indemnification against the other Party (the "Indemnifying Party") under this ARTICLE 15 or elsewhere in this Agreement, then the Indemnified Party shall promptly notify the Indemnifying Party thereof in writing; provided, however, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from any obligation hereunder (to the extent one exists) unless (and then solely to the extent) the Indemnifying Party thereby is materially prejudiced.
- (ii) The Indemnifying Party will have the right to defend against the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party so long as (i) the Indemnifying Party notifies the Indemnified Party in writing within fifteen (15) Days after the Indemnified Party has given notice of the Third Party Claim that the Indemnifying Party will indemnify the Indemnified Party from and against any Loss (subject to CLAUSE 15.1(c)) the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim; (ii) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party will have the financial resources to defend against the Third Party Claim and fulfill its indemnification obligations hereunder; (iii) the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief: (iv) settlement of, or an adverse judgment with respect to, the Third Party Claim is not in the good faith judgment of the Indemnified Party, likely to establish a precedential custom or practice materially adverse to the continuing business interests of the Indemnified Party; and (v) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently.
- (iii) So long as the Indemnifying Party is conducting the defense of the Third Party Claim in accordance with CLAUSE 15.1(d)(ii): (i) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim; (ii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the

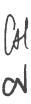


Indemnifying Party (which consent shall not be unreasonably withheld); and (iii) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld).

- (iv) In the event any of the conditions in CLAUSE 15.1(d)(ii) is or becomes unsatisfied, or a conflict arises, with regard to the Third Party Claim, between the Indemnified Party and the Indemnifying Party in respect of such Third Party Claim the Indemnified Party may defend against the Third Party Claim in any manner it reasonably may deem appropriate.
- (v) If either Party gives notice to the other Party of a Third Party Claim pursuant to the provisions of CLAUSE 15.1(d)(i) and the notified Party does not give notice that it will indemnify the notifying Party in the manner set out in CLAUSE 15.1(d)(ii), the notifying Party shall nevertheless send copies of all pleadings and other documents filed in any such Third Party lawsuit to the notified Party and such notified Party may have the right to participate in the defense of the Third Party Claim in any manner permitted by Applicable Law.

#### (e) Direct Claims

Any Claim by an Indemnified Party on account of a Loss which does not (i) result from a Third Party Claim (a "Direct Claim") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) Days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party is prejudiced by, or forfeits rights or defenses by reason of, such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount of the Loss that has been or may be sustained by the Indemnified Party, assuming mitigation of such Losses and recovery of insurance therefor. The Indemnifying Party shall have thirty (30) Days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim, and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance as the Indemnifying Party or any of its professional advisors



may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) Day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

(ii) Upon a reasonable request by the Indemnifying Party, each Indemnified Party seeking indemnification hereunder in respect of any Direct Claim hereby agrees to consult with the Indemnifying Party and to take actions reasonably requested by the Indemnifying Party in order to attempt to reduce the amount of Losses in respect of such Direct Claim. Any costs or expenses associated with taking such actions shall be included as Losses hereunder.

## (f) Buyer's Insurance

- (i) Buyer shall obtain and maintain or shall ensure to be obtained and maintained:
  - (A) insurance for the Receiving Facilities to the extent required by Applicable Law, and
  - (B) additional insurance, as is reasonably necessary and available on reasonable commercial terms, against such other risks and at such levels as a Reasonable and Prudent Operator of a shared use LNG receiving and regasification terminal would obtain.
- (ii) Buyer shall obtain or cause to be obtained the insurance required by CLAUSE 15.1(f)(i) from a reputable insurer (or insurers) reasonably believed to have adequate financial reserves. Buyer shall exercise its best efforts, or shall cause the applicable insured Person to use its best efforts, to collect any amount due under such insurance policies.
- (iii) The insurance requirements can be met by a combination of insurance and self-insurance.

#### (g) Seller's Insurance

Seller shall ensure that insurances are procured and maintained for each LNG Tanker in accordance with the following provisions. In all cases, such insurance shall establish insurance coverages consistent with insurances to the standards which a ship owner operating reputable LNG tankers as a Reasonable and Prudent Operator should observe in insuring LNG vessels of similar type, size, age and trade as such LNG Tanker. In this regard:



- (i) Hull and Machinery Insurance shall be placed and maintained with reputable marine underwriters; and
- (ii) Protection & Indemnity Insurance ("P&I Insurance") shall be placed and maintained as an entry and such LNG Tanker shall be entered for insurance with a P&I Club, including pollution liability standard for LNG tanker and Certificate of Financial Responsibility.

#### ARTICLE 16. FORCE MAJEURE

#### CLAUSE 16.1 Events of Force Majeure

- (a) Neither Party shall be liable to the other for any delay or breach of its obligations under this Agreement if and to the extent that such delay or breach is the result of Force Majeure. For the purposes of this CLAUSE 16.1, "Force Majeure" means any event, act or circumstance which is beyond the reasonable control of the affected Party, the effect of which could not have been prevented or overcome by that Party acting to the standard of a Reasonable and Prudent Operator. Provided the foregoing requirements are first met, Force Majeure may include:
  - (i) The compliance by the affected Party with an act, order or demand of a Governmental Authority with which that Party is obliged to, or with which it is customary to, comply;
  - (ii) Fire, explosion and acts of God including drought, flood, lightning, storm, typhoon, hurricane, tornado, earthquake, tsunami, landslide, soil erosion, subsidence, washout or epidemic;
  - (iii) War (whether declared or undeclared), civil war, invasion, armed conflict, embargo, revolution, sabotage, act of terrorism, riot, civil disturbance, piracy, blockade, insurrection, military uprising, or act of public enemies;
  - (iv) Ionizing radiation or contamination, radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear waste or from the combustion of nuclear, radioactive, toxic, explosive or other hazardous properties of any explosive assembly or nuclear component;
  - (v) A strike, lock-out or any other kind of labor dispute;
  - (vi) Acts or omissions of a Governmental Authority, including the modification, withdrawal, denial, termination or revocation of any Authorization;



- (vii) in the case of the Seller, such event acts or circumstance affecting the LNG Tanker dedicated to the supply of the scheduled cargo of LNG in accordance with the prevailing ADP and NDS;
- (viii) In the case of the Seller but subject to CLAUSE 16.1(b)(iii), such event, acts or circumstance affecting the Seller's Facilities of the affected cargo in accordance with the prevailing ADP and NDS; or
- (ix) In the case of the Buyer but subject to CLAUSE 16.1(b)(iii), such event, acts or circumstances affecting the Receiving Facilities.
- (x) In the case of the Seller but subject to CLAUSE 16.1(b)(iii), such event, acts or circumstances affecting the Alternate Receiving Facility.
- (b) The following events and circumstances do not constitute Force Majeure:
  - (i) lack of funds or failure to pay;
  - (ii) financial hardship;
  - (iii) failures or delays in performance resulting from changes in any market conditions which affect the price of energy or the demand therefore, including a reduction in downstream demand for electricity or Natural Gas;
  - (iv) loss of customers or loss of market share.

#### CLAUSE 16.2 Extension of Control

For the purposes of CLAUSE 16.1, acts, events or circumstances or a combination of acts, events or circumstances shall not be considered to be beyond the reasonable control of a Party unless it is outside the reasonable control of such Party and:

- (a) Affiliate of such Party
- (b) any contractor, sub-contractor, servant or agent of such Party;
- (c) in the case of Buyer, any owner, manager, charterer or relevant Buyer's Facilities operator and any contractor, sub-contractor, servant or agent of such party; and
- (d) in the case of Seller, Seller's Facilities operator and any contractor, sub-contractor, servant, agent, master or crew.

#### CLAUSE 16.3 Force Majeure Notice

(a) As soon as reasonably practicable upon the occurrence of an event that a Party considers may subsequently lead it to claim Force Majeure relief under this Agreement on account thereof, the Party affected shall give notice to such effect to



the other Party, describing such event and the obligations, performance of which could reasonably be expected to be delayed or prevented thereby. In the event any Party claims Force Majeure relief under this Agreement, it shall promptly notify the other Party thereof and shall state in such notice the particulars of the event giving rise to the Force Majeure claim, in as much detail as is then reasonably available including the place and time such event occurred ("Force Majeure Notice").

(b) Such notices shall thereafter be supplemented and updated monthly for events of Force Majeure expected to last for three (3) months or longer (or otherwise supplemented and updated weekly), during the period of such claimed Force Majeure, specifying the actions being taken to remedy the circumstances causing such Force Majeure and the date on which such Force Majeure and its effects end. The giving of the Force Majeure Notice is not a condition to relief under CLAUSE 16.1 and such relief takes effect at the moment a Force Majeure event occurs, not upon sending the Force Majeure Notice.

## CLAUSE 16.4 Resumption of Normal Performance. Actions during Force Majeure Events

- (a) The Parties shall take all measures that a Reasonable and Prudent Operator will undertake under the circumstances to resume normal performance of this Agreement after the occurrence of an event of Force Majeure. Prior to resumption of normal performance, the Parties shall continue to perform their obligations under this Agreement to the extent not prevented by such event of Force Majeure.
- (b) If a delay due to Force Majeure may be prevented by altering the affected Delivery Windows, the Parties shall use Reasonable Efforts to accommodate changes in the ADP or NDS.
- (c) If the event a Force Majeure affects the Seller's Facilities, then the Seller shall apportion the remaining available production allocated to Seller in the affected Seller's Facilities among its supply commitments (including to its Affiliates) on a fair and non-discriminatory basis.
- (d) If the event a Force Majeure affects the Buyer's Facilities then the Buyer shall allocate the capacity available to Buyer at the affected location amongst Buyer's suppliers (including Affiliates of Buyer) on a fair and non-discriminatory basis.
- (e) The Parties will not be obligated to take any other measure to alleviate the effects of a Force Majeure event other than as defined in this CLAUSE 16.4 and specifically: (i) Seller shall have no obligation to reserve any LNG, any shipping capacity or any delivery windows for the purpose of permitting Buyer to take LNG not taken by Buyer or not delivered by Seller due to Force Majeure affecting either Party; and (ii) Buyer shall have no obligation to take delivery of LNG or to reserve



- regasification capacity for the purpose of taking delivery of LNG not delivered by Seller or not taken by Buyer due to Force Majeure affecting either Party.
- (f) After the occurrence of any Force Majeure event, neither Party shall be entitled or obliged to deliver or take (as the case may be) any quantities affected by such Force Majeure event, nor shall the Delivery Period be extended by any period of time during which such Force Majeure event subsisted.
- (g) Extended Force Majeure. If Force Majeure relieves a Party from performing all or substantially all of its obligations under this Agreement for a continuous period of twelve (12) months or more, then either Party shall be entitled to terminate this Agreement by giving notice to the other Party in accordance with CLAUSE 17.2. For the purpose of this clause, an event of Force Majeure will be deemed "substantial" if it affects the obligation under this Agreement to deliver or to take at least fifty percent (50%) of the AACQ over such rolling twelve (12)-month period.

#### ARTICLE 17. TERMINATION

## CLAUSE 17.1 Events of Termination

Each of the events and circumstances set out below shall be a "Termination Event" and give the right, subject to CLAUSE 17.2, for either or both of Seller and Buyer (as the case may be) to terminate this Agreement:

- (a) In respect of either Party, a material breach by the other Party of its obligations in CLAUSE 25.3(b);
- (b) In respect of either Party, the other Party (or guarantor or payer under Credit Support provided by other Party), fails to pay any amount due from it exceeding in the aggregate twenty million (20,000,000) USD at the time and in accordance with CLAUSE 9.3;
- (c) in respect of Buyer, if Seller fails to make available to Buyer during any consecutive twelve (12) month period scheduled Cargo Quantities totaling fifty percent (50%) or more of the then-applicable AACQ and that Seller was otherwise obligated pursuant to this Agreement to make available for delivery to Buyer;
- (d) in respect of Seller, if Buyer fails to take from Seller or pay for during any consecutive twelve (12) month period scheduled Cargo Quantities totaling fifty percent (50%) or more of the then-applicable AACQ and that Buyer was otherwise obligated pursuant to this Agreement to take from Seller;



- (e) In respect of either Party, where the other Party suffers an Insolvency Event;
- (f) In respect of either Party, where a Credit Support Default occurs;
- (g) In respect of either Party in the event of Extended Force Majeure, in accordance with CLAUSE 16.4(g).

The only rights to terminate this Agreement shall be those set out in this CLAUSE 17.1.

#### CLAUSE 17.2 Termination

- (a) Upon the occurrence of any Termination Event, the Party which may have the right under CLAUSE 17.1 to terminate this Agreement ("Terminating Party") may give notice thereof to the other Party, specifying in reasonable detail the nature of such Termination Event; provided, for the avoidance of doubt, that a Terminating Party shall not be entitled to deliver a Termination notice due to the occurrence of a Termination Event under CLAUSE 17.1(b) until the other Party and the guarantor or payer under the other Party's Credit Support (if any) has failed in its obligation to pay an amount due and such failure to make payment has not been remedied within sixty (60) days following the due date for payment provided for in CLAUSE 9.3 and the period (if any) for payment under the Letter of Credit.
- (b) Except as provided in CLAUSE 17.2(a), and without prejudice to Seller's rights pursuant to CLAUSE 9.5, at any time after the expiry of a period of thirty (30) days after the Terminating Party gave notice of a Termination Event pursuant to CLAUSE 17.2(a), unless the circumstances constituting the Termination Event have been fully remedied or have ceased to apply, the Terminating Party shall have the right (but not the obligation) to terminate this Agreement with immediate effect by giving notice of such termination to the other Party.
- (c) Upon the occurrence of a Termination Event described in CLAUSE 17.1(a) or CLAUSE 17.1(g), the Terminating Party's notice pursuant to CLAUSE 17.2(a) shall terminate this Agreement immediately.
- (d) Termination of this Agreement shall be without prejudice to the rights and liabilities of the Parties accrued prior to or as a result of such termination or claims for breaches of ARTICLE 22 that occur during the five (5) year period after termination of this Agreement.

## CLAUSE 17.3 Consequences of Termination

(a) If this Agreement terminates as a result of a notice being served by the Terminating Party with respect to a Termination Event pursuant to any of CLAUSE 17.1(a), CLAUSE 17.1(b) or CLAUSE 17.1(f) then without prejudice to any rights, obligations or liabilities that have accrued up to the date of termination, the other



Party shall pay to the Terminating Party damages as described in accordance with CLAUSE 17.3(e)below;

- (b) If this Agreement terminates as a result of notice being served with respect to Termination Events described in CLAUSE 17.1(e) and CLAUSE 17.1(g), then without prejudice to any rights, obligations or liabilities that have accrued up to the date of termination, neither Party shall be liable to the other Party for any damages, payment obligations, or any other charge accruing after that date pursuant to this Agreement and, except as provided in CLAUSE 17.4, neither Party shall have any continuing rights, liabilities or obligations to the other Party in relation to this Agreement.
- (c) If this Agreement terminates as a result of notice being served with respect to Termination Events described in CLAUSE 17.1(c) and CLAUSE 17.1(d), then without prejudice to any rights, obligations or liabilities that have accrued up to the date of termination, and notwithstanding any provisions herein to the contrary, the other Party shall pay to the Terminating Party damages as described in CLAUSE 17.3(e).
- (d) Without prejudice to any rights and remedies arising prior to termination, the remedies set forth in this CLAUSE 17.3 for a Termination Event shall be the sole and exclusive remedies for the Terminating Party with respect thereto.
- (e) In relation thereto, and, in the event of termination of this Agreement described in CLAUSE 17.3(a) or CLAUSE 17.3(c), the Terminating Party may bring a damages claim for breach of contract as it may be entitled subject to the exclusion and limitation of liability in CLAUSE 15.1 which shall apply to this CLAUSE 17.3; provided that any claim for the following amounts made pursuant to this CLAUSE 17.3 shall not be treated as a claim for loss of income or profits for the purposes of CLAUSE 15.1:
  - (i) in the case of a claim by Buyer, the amount by which the price paid by Buyer for LNG purchased from an alternate supplier exceeds the price that would have been due to Seller under this Agreement; and
  - (ii) in the case of a claim by Seller, the amount by which the price received by Seller for LNG sold to an alternative buyer is lower than the price that would have been paid by Buyer under this Agreement.

## CLAUSE 17.4 Survival of Rights and Remedies on Termination, Cancellation or Expiry

ARTICLE 22 shall survive termination, cancellation or expiry of this Agreement, howsoever caused, for a period of five (5) years from the date of such termination, cancellation or expiry. Termination, cancellation or expiry of this Agreement shall be



without prejudice to any rights or remedies accrued prior thereto and the relevant provisions of this Agreement shall survive for the period necessary for the exercise of any such rights or remedies.

#### ARTICLE 18. NOTICES

All notices and other communications given in connection with, or to be given under this, Agreement shall be in writing, in the English language, by a duly authorized representative of the Party giving such notice, and shall be deemed to have been properly given if: (a) handed personally to an authorized representative of the Party to whom it is given, upon actual receipt; (b) sent by registered mail, return receipt requested (registered airmail if international), upon actual receipt; (c) transmitted by facsimile to the address of such Party set forth below, when received in legible form; or (d) delivered by e-mail, upon the sending Party sending such e-mail (unless it receives an underdelivery report or similar notice).

(i) To Seller:

Gas Natural Fenosa LNG Marketing Limited The Irish Times Building – 6th & 7th Floor 24-28 Tara Street Dublin 2, Ireland Attention: Nuria Rodríguez

Phone: +353 86 416 4085 Fax: +353 (0) 1 677 827

Email: nrodriguezmar@gasnaturalfenosa.com

(ii) To Buyer:

Constellation LNG, LLC 1310 Point Street, 8th Floor Baltimore, MD 21231

Attention: Contract Administration

Phone: (410) 470-3142 Fax: (410) 470-2600

The Parties may designate additional addresses and addressees for particular communications and may change any address, by notice given thirty (30) days in advance of such addition or change.

Promptly upon receiving a communication a Party shall acknowledge receipt. All notices given hereunder shall become effective upon receipt and proof of receipt may be evidenced by any reasonable means and shall not depend upon the sending Party having received a written acknowledgement of receipt from the other Party.



#### ARTICLE 19. APPLICABLE LAW

The laws of the State of New York, U.S.A. shall govern this Agreement and any non-contractual rights, obligations or liabilities arising out of or in connection with this Agreement, excluding any conflict-of-law rules that require the application of another jurisdiction's laws. Neither the United Nations Convention on Contracts for the International Sale of Goods (1980), nor the United Nations Convention on the Limitation Period in the International Sale of Goods, shall govern, or apply to this Agreement or govern, or apply to the performance hereof or any aspect of any dispute arising therefrom.

#### ARTICLE 20. ARBITRATION AND EXPERT

## CLAUSE 20.1 <u>Dispute Resolution</u>

- (a) If any dispute, controversy or claim arises between Seller and Buyer in relation to or in connection with this Agreement, or in connection with the interpretation, performance or non-performance thereof, including any question regarding its existence, validity or termination, or regarding a breach thereof (a "Dispute") either Seller or Buyer may notify the other of the Dispute and Seller and Buyer shall promptly discuss such Dispute in an attempt to resolve such Dispute amicably through negotiations of senior representatives of the Parties. The joint decision of those senior representatives shall be binding upon the Parties.
- (b) Failing such senior representatives to either meet or resolve the Dispute in a thirty (30) day period following notification of the Dispute by either Party, the dispute shall be settled, to the exclusion of the ordinary courts, by arbitration in accordance with the International Court of Arbitration Rules ("ICC Rules") in force on the date that the notice of arbitration is submitted.
- (c) The number of arbitrators shall be three. Each party shall nominate in the Request and the Answer, respectively, one arbitrator for confirmation. If a party fails to nominate an arbitrator, the appointment shall be made by the ICC International Court of Arbitration (the "ICC Court"). The third arbitrator, who will act as president of the arbitral tribunal, shall be nominated by the two party-appointed arbitrators. If within thirty (30) days from the confirmation of the co-arbitrators or any other time limit agreed by the parties or fixed by the ICC Court, the two co-arbitrators have been unable to nominate a third arbitrator, the third arbitrator shall be appointed by the ICC Court.
- (d) The seat of arbitration shall be New York, New York (USA) and the arbitral proceedings shall be conducted in English.



- (e) The award of the arbitral tribunal shall be final and binding upon the Parties as from the date such award is notified to the Parties, and shall be the sole and exclusive remedy between the Parties regarding any Disputes, issues, or accounting presented to the arbitral tribunal. Judgment upon any award may be entered and enforced in any court having jurisdiction over a Party or any of its assets.
- (f) Any party to the Dispute may apply to any applicable court for interim measures (a) prior to the constitution of the arbitral tribunal (and thereafter as necessary to enforce the arbitral tribunal's rulings); or (b) in the absence of the jurisdiction of the arbitral tribunal to rule on interim measures in a given jurisdiction. The Parties agree that seeking and obtaining such interim measures shall not waive the right to arbitration. The arbitrators (or in an emergency the presiding arbitrator acting alone in the event one or more of the other arbitrators is unable to be involved in a timely fashion) may grant interim measures including injunctions, attachments and conservation orders in appropriate circumstances, which measures may be immediately enforced by court order. Hearings on requests for interim measures may be held in person, by telephone, by video conference or by any other means that permit the parties to the Dispute to present evidence and arguments.
- (g) Interest. The award shall include pre-award and post-award interest, as determined by the arbitral award, from the date of any default or other breach of this Agreement until the arbitral award is paid in full. Interest shall accrue at a rate, compounded daily, equal to two percent (2%) above LIBOR (as in effect on the Day such award was issued) on and from the Day when such award was issued and as in effect on the first day of every Month thereafter until the date of its repayment.
- (h) <u>Currency of Award</u>. The arbitral award shall be made and payable in USD, free of any tax or other deduction.
- (i) Waiver of Challenge to Decision or Award. To the extent permitted by law, the Parties hereby waive any right to appeal from or challenge any arbitral decision or award, or to oppose enforcement of any such decision or award before a court or any governmental authority, except with respect to the limited grounds for modification or non-enforcement provided by any applicable arbitration statute or treaty.
- (j) Confidentiality. Any arbitration or expert determination relating to a Dispute (including a settlement resulting from an arbitral award, documents exchanged or produced during an arbitration proceeding, and memorials, briefs or other documents prepared for the arbitration) shall be confidential and may not be disclosed by the Parties, their employees, officers, directors, counsel, consultants, and expert witnesses, except (in accordance with ARTICLE 22) to the extent necessary to enforce this CLAUSE 20.1(j) or any arbitration award, to enforce other rights of a party to the Dispute, or as required by law; provided, however, that



breach of this confidentiality provision shall not void any settlement, expert determination or award.

## CLAUSE 20.2 Expert Determination

- General. In the event of any disagreement between the Parties regarding a (a) measurement under Exhibit A hereto or any other Dispute which the Parties agree to submit to an Expert (in either case, a "Measurement Dispute"), the Parties hereby agree that such Measurement Dispute shall be resolved by an "Expert" selected as provided in this CLAUSE 20.2(a). The Expert is not an arbitrator of the Measurement Dispute and shall not be deemed to be acting in an arbitral capacity. The Party desiring an expert determination shall give the other Party to the Measurement Dispute notice of the request for such determination. If the Parties to the Measurement Dispute are unable to agree upon an Expert within ten (10) Days after receipt of the notice of request for an expert determination, then, upon the request of any of the Parties to the Measurement Dispute, the International Centre for Expertise of the International Chamber of Commerce ("ICC") shall appoint such Expert and shall administer such expert determination through the ICC's Rules for Expertise. The Expert shall be and remain at all times wholly impartial, and, once appointed, the Expert shall have no ex parte communications with any of the Parties to the Measurement Dispute concerning the expert determination or the underlying Measurement Dispute. The Parties to the Measurement Dispute shall cooperate fully in the expeditious conduct of such expert determination and provide the Expert with access to all facilities, books, records, documents, information and personnel necessary to make a fully informed decision in an expeditious manner. Before issuing a final decision, the Expert shall issue a draft report and allow the Parties to the Measurement Dispute to comment on it. The Expert shall endeavor to resolve the Measurement Dispute within thirty (30) Days (but no later than sixty (60) Days) after his appointment, taking into account the circumstances requiring an expeditious resolution of the matter in dispute.
- (b) Final and Binding. The Expert's decision shall be final and binding on the Parties to the Measurement Dispute unless challenged in an arbitration pursuant to CLAUSE 20.1 within thirty (30) Days of the date of the Expert's decision. If challenged, (a) the decision shall remain binding and be implemented unless and until finally replaced by an award of the arbitrators; (b) the decision shall be entitled to a rebuttable presumption of correctness; and (c) the Expert shall not be appointed in the arbitration as an arbitrator or as advisor to either Party without the written consent of both Parties.
- (c) <u>Arbitration of Expert Determination</u>. In the event that a Party requests expert determination for a Measurement Dispute which raises issues that require determination of other matters in addition to correct measurement under Exhibit A



hereto, then either Party may elect to refer the entire Measurement Dispute for arbitration under CLAUSE 20.1. In such case, the arbitrators shall be competent to make any measurement determination that is part of a Dispute. An expert determination not referred to arbitration shall proceed and shall not be stayed during the pendency of an arbitration.

#### CLAUSE 20.3 Waiver of Immunity

Each Party irrevocably and unconditionally: (a) agrees that should a Party bring legal proceedings (which shall be deemed to include suit, arbitration proceedings, expert determination, attachment prior to judgment, other attachment, levy, interim relief, the obtaining of judgment, execution or other enforcement) against the other Party or its assets in connection with this Agreement, no immunity (sovereign or otherwise) from such legal proceedings or the result of such legal proceedings, shall be claimed under the laws of any state or jurisdiction, by or on behalf of such other Party or with respect to any of its assets; (b) waives any such right of immunity that each Party or any of its assets now has or may hereafter acquire under the laws of any state or jurisdiction; and (c) consents generally to the giving of any relief or the issue of any process in connection with such proceedings, including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order, award, determination or judgment that may be made or given in such proceedings under the laws of any state or jurisdiction.

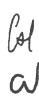
#### ARTICLE 21. AMENDMENT AND WAIVER

#### CLAUSE 21.1 Amendment

This Agreement shall not be amended, modified, varied or supplemented except by an instrument in writing executed by Seller and Buyer.

#### CLAUSE 21.2 Waiver

The failure of a Party at any time to require performance of any provision of this Agreement or to exercise or enforce (in whole or in part) any right or remedy provided by this Agreement or by Applicable Law or the giving of indulgence by any Party shall not affect its right to require subsequent performance of such provision and shall not operate as a release or waiver, or in any way limit that Party's ability to further exercise or enforce that, or any other, right or remedy. Waiver by a Party of any breach of any provision hereof shall not constitute the waiver of any subsequent breach of such provision. Performance of any condition or obligation to be performed under this Agreement shall not be deemed to have been waived or postponed except by an instrument in writing signed by the Party who is claimed to have granted such waiver or postponement.



#### ARTICLE 22. CONFIDENTIALITY

## CLAUSE 22.1 Confidentiality

- (a) Neither Party shall communicate to any Third Party the contents of this Agreement or any confidential information or documents that may come into the possession of such Party (the "Receiving Party") from the other Party, directly or indirectly, in connection with the performance of this Agreement (collectively "Confidential Information") unless it has obtained the prior written consent (not to be unreasonably withheld or delayed) of the Party providing the same. However, this restriction shall not apply to the contents of this Agreement or information or documents which have entered into the public domain otherwise than through the act or failure to act of the Receiving Party, or as permitted below.
- (b) Either Party may communicate Confidential Information to:
  - (i) its Affiliates and their officers, directors and employees;
  - (ii) persons participating in the implementation of the arrangements contemplated by this Agreement, to whom such communication is reasonably necessary on a need to know basis for the purposes of this Agreement, including legal counsel, accountants, other professional, business or technical consultants and advisers, underwriters or lenders, or Seller's Transporter;
  - (iii) any competent court of law, arbitral tribunal, expert, Governmental Authority or other authority (or any political subdivision of any of the foregoing) having jurisdiction over Buyer or Seller or any Affiliate of Buyer or Seller provided that such agency has authority to require such disclosure and that such disclosure is made in accordance with that authority; provided that before the Receiving Party or its Representatives disclose any Confidential Information pursuant to this CLAUSE 22.1, the Receiving Party or its Representatives shall give the disclosing Party timely written notice (at least five (5) Business Days) of the requirement or request for disclosure and use reasonable efforts to secure a protective order to limit disclosure of such Confidential Information only to parties agreeing to be bound by the terms of an appropriate confidentiality agreement and shall furnish only such Confidential Information as is legally required in the opinion of its counsel; or
  - (iv) any Person reasonably needing to see the same in connection with any bona fide financing or offering or sale of securities by Seller, Buyer, or any Affiliate of Seller or Buyer, to comply with the disclosure or other requirements of applicable law or of financial institutions or other participants (including rating agencies) in the financing, offering or sale, in

each case provided that the Receiving Party obtains an undertaking in writing from such Person to maintain the confidentiality of such Confidential Information.

- (c) Neither Party shall make any public announcement regarding the execution of or any rights or obligations under this Agreement without the prior written consent and agreement of the other Party in relation to the content and timing of such announcement.
- (d) Any Person to whom Confidential Information is disclosed shall be notified at the time that such information is confidential, and such Person shall be required to treat it as confidential and not to disclose it further without the disclosing Party's approval.

#### ARTICLE 23. ASSIGNMENT AND TRANSFER

## CLAUSE 23.1 Assignment and transfer

Except as otherwise provided in this ARTICLE 23, a Party wishing to assign or transfer its rights (in whole or in part) or transfer its obligations (in whole or in part) under this Agreement to any Person other than an Affiliate shall do so only with the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed, provided that it shall not be unreasonable for a Party to withhold consent on the basis that the assignment or transfer is to a party with insufficient technical or financial standing). Any purported assignment or transfer without such consent shall be void.

## CLAUSE 23.2 Assignment of Rights for Security

Without the prior written consent of Buyer, Seller may assign its payment rights under this Agreement to a trust, trustee, bank, paying agent, or its lenders for the purposes of any bona fide financing or to facilitate payments with such assignment to take the form of an assignment of rights as a form of security. The Seller shall continue to assume all of the obligations of seller under this Agreement

## CLAUSE 23.3 Assignment to an Affiliate

Any Party may assign to an Affiliate this Agreement in its entirety, for the remainder of the Term, without the other Party's prior consent, provided that following the effective date of an assignment to Buyer's Affiliate Credit Support is in full force and effect in respect of the Affiliate assignee's obligations hereunder; and provided further that such Affiliate assignee assumes all of the obligations of assignor under this Agreement commencing as of the date of the execution of a binding assignment and assumption agreement which is enforceable by the other Party.



Upon an assignment by Seller in accordance with this CLAUSE 23.3, the assignor shall be released to the extent of such assignment from all further obligation, duty or liability under this Agreement other than any obligation, duty or liability arising prior to the date of effectiveness of such assignment.

#### ARTICLE 24. ENTIRETY OF AGREEMENT

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and replaces any representations, agreements or undertakings on or relating to the same subject between the Parties, whether written or oral, prior to or on the Execution Date.

#### ARTICLE 25. MISCELLANEOUS

## CLAUSE 25.1 Representations and Warranties of Buyer

As of the Execution Date and until the expiration or termination of this Agreement, Buyer represents, undertakes and warrants to Seller that:

- (a) Buyer is and shall remain duly formed and in good standing under the laws of the State of Delaware (USA) and duly qualified to do business in the United States of America;
- (b) Buyer has the requisite power, authority and legal right to execute and deliver, and to perform its obligations under, this Agreement; and
- (c) Neither the execution, delivery, nor performance of this Agreement violates or will violate, results or will result in a breach of or constitutes or will constitute a default under any provision of Buyer's organizational documents, any Applicable Law, judgment, order, decree, rule, or regulation of any court, administrative agency, or other instrumentality of any Governmental Authority or of any other material agreement or instrument to which Buyer is a party.

## CLAUSE 25.2 Representations and Warranties of Seller

As of the Execution Date and until the expiration or termination of this Agreement, Seller represents, undertakes and warrants to Buyer that:

- (a) Seller is and shall remain duly formed and in good standing under the laws of the republic of Ireland and duly qualified to do business in Ireland;
- (b) Seller has the requisite power, authority and legal right to execute and deliver, and to perform its obligations under this Agreement; and



(c) neither the execution, delivery, nor performance of this Agreement, violates or will violate, results or will result in a breach of, or constitutes or will constitute a default under, any provision of Seller's organizational documents, any Applicable Law, judgment, order, decree, rule, or regulation of any court, administrative agency, or other instrumentality of any Governmental Authority or of any other material agreement or instrument to which Seller is a party.

## CLAUSE 25.3 Compliance with Applicable Law

(a) In performance of the Parties' respective obligations under this Agreement, each Party agrees to comply with all Applicable Laws.

## (b) Applicable Anti-Corruption Laws

- (i) Each Party represents and warrants that, in relation to this Agreement, it has not previously failed to comply with, and following the Execution Date it will at all times comply with and use Reasonable Efforts to procure that relevant third parties used for fulfilling the Parties' respective obligations under this Agreement will comply with all Applicable Anti-Corruption Laws.
- (ii) Buyer and Seller each represent, warrant and undertake to the other that in connection with this Agreement they shall not, directly or indirectly:
  - (A) pay, offer, give or promise to pay or authorize the payment of, any monies or other things of value to: a government official or an officer or employee of a government or any department, agency or instrumentality of any government; an officer or employee of a public international organization; any Person acting in an official capacity for or on behalf of any government or department, agency, or instrumentality of such government or of any public international organization; any political party or official thereof, or any candidate for political office; or any other Person, individual or entity (whether at the suggestion, request or direction or for the benefit of any of the above-described persons and entities or otherwise); or
  - (B) engage in other acts or transactions that violate the anti-bribery or antimoney laundering legislation of any Governmental Authority.
- (iii) Further each Party will indemnify and hold the other Party harmless from and against any and all Losses resulting from any formal requirements or obligation imposed to the other Party by any Governmental Authority in connection with any Applicable Anti-Corruption Laws to which only the indemnifying Party is subject.



- (iv) If in the performance of this Agreement a party breaches the requirements of this CLAUSE 25.3(b), the non-breaching Party may terminate this Agreement immediately upon providing notice to the breaching Party.
- (v) The Parties agree to cooperate and conduct their businesses and activities pursuant to this Agreement and any transaction hereunder in such a manner so as to ensure that neither Party nor any of its Affiliates is placed in a position of noncompliance with Applicable Laws. Each Party shall exercise reasonable care and diligence to prevent any illegal or unethical actions or conditions.

## (c) Applicable Sanctions Laws

- (i) Each Party represents and warrants that, in relation to this Agreement, it has not previously failed to comply with, and following the Execution Date it will at all times comply with and ensure that third parties used for fulfilling the Parties' respective obligations under this Agreement will comply with all applicable sanctions laws, rules and regulations, including, at a minimum, those administered by the United States Department of the Treasury, the United States Department of Commerce, the United States Department of State; the European Union, and the United Nations ("Sanctions Authority").
- (ii) Each Party represents and warrants that:
  - it is not a "Sanctioned Party," defined to include (I) a party that appears on the Office of Foreign Assets Control's ("OFAC") Specially Designated Nationals and Blocked Persons ("SDN") List, the OFAC Consolidated List, the European Union ("EU") Consolidated List, the U.S. Department of Commerce Bureau of Industry and Security's Entity List, Unverified List or Denied Persons List, or are otherwise designated as a party with whom business is restricted or prohibited by a Sanctions Authority; (II) the government, including any political subdivision, agency, or instrumentality thereof, of any country against which a Sanctions Authority maintains comprehensive economic sanctions or an embargo, which at the time of signing include the Crimea region of Ukraine, Cuba, Iran, North Korea and Syria ("Sanctioned Country"); (III) a national of, or entity registered in or established under the jurisdiction of a Prohibited Country; or (IV) a party acting or purporting to act, directly or indirectly, on behalf of, or a party owned or controlled by, any of the parties listed in clauses (I), (II) or (III); and
  - (B) its affiliates, directors, officers, employees and agents are not Sanctioned Parties.



## (d) Applicable Anti-Money Laundering Laws

Each Party represents and warrants that, in relation to this Agreement, it has not previously failed to comply with, and following the Execution Date it will at all times comply with and ensure that third parties used for fulfilling the Parties' respective obligations under this Agreement will comply with all applicable antimoney laundering laws, rules and regulations, including at a minimum, the U.S. Bank Secrecy Act and the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (Title III) of the USA Patriot Act and similar laws and regulations of the United Kingdom and European Union.

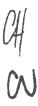
#### CLAUSE 25.4 Severability

If any provision (or part thereof) of this Agreement is or becomes illegal, ineffective, or inoperable, the legality, effectiveness or operability of any other part of that provision or any other provision shall not be affected but shall continue in force and effect. In such event, the Parties shall meet promptly to discuss and agree on any amendments to this Agreement necessary to maintain the original intention of the Parties.

#### CLAUSE 25.5 Third Party Rights

The Parties do not intend any term of this Agreement to be for the benefit of, or enforceable by, any third party. The Parties may rescind or vary this Agreement, in whole or in part, without the consent of any third party, even if as a result such third party's rights to enforce a term of this Agreement will be varied or extinguished.

[Remainder of page left blank.]



IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed in Madrid, Spain by its duly authorized representative as of the date first written above.

**SELLER:** 

GAS NATURAL VENOSA LNG MARKETING LIMITED

By:\_

Name: Gregorio Morales Schmid

Title: Head of LNG

**BUYER:** 

CONSTELLATION LNG, LLC

Name: Corey Hessen

Title: Vice President

SIGNATURE PAGE

LNG Sale and Purchase Agreement

#### **EXHIBIT A - MEASUREMENTS**

## MEASUREMENT AND TESTING PROCEDURES

This Exhibit A shall take into account the latest standards applicable to measurements unless the Exhibit specifies a year or edition of the standard to apply.

# ARTICLE A.1 - MEASUREMENT OF QUANTITY OF LNG RECEIVED FROM LNG TANKERS

- The volume of LNG received at the Buyer's Facilities shall be measured in metric units 1.1 by gauging the liquid in the tanks of each LNG Tanker. Seller shall cause the list and trim of the LNG Tanker to be measured at the same time as the liquid level, pressure, and temperature readings of the tanks of the LNG Tanker are secured. Seller shall cause the first gauging to be made after the master of the LNG Tanker has given notice of Ready to Discharge, cessation of Natural Gas burning, and confirmation of stoppage of all spray pumps and compressors and shut-off of Natural Gas master valve to the LNG Tanker's boilers, but prior to starting the LNG transfer pumps. Seller shall cause the second gauging operation to be made immediately after the completion of unloading (and confirmation of shut-off of the vapor manifold emergency shutdown valve and Natural Gas master valve to the LNG Tanker's boilers). Measurements prior to commencement of unloading and after completion of unloading will be carried out based on the LNG Tanker's condition upon arrival at the berth (depending on whether the LNG Tanker arrives with deck piping full or deck piping empty). As significant volumes of LNG may remain in the LNG Tanker's manifold and crossover, Seller shall cause gauging to be performed with these lines in the same condition prior to commencement of unloading and again after completion of unloading. If the LNG Tanker's manifold and crossover lines are empty (warm) when the measurement is taken before commencement of unloading, then they will be emptied prior to the measurement following the completion of unloading. If the crossover lines are liquidfilled (cold) when the measurement is taken before commencement of unloading, then they must remain full (cold) until the measurement is taken following the completion of unloading. Representatives of Buyer and Seller are entitled to be present at the gaugings. If emergency shut-down testing commences when the transfer piping is in a warm condition, such testing shall take place prior to shut-off of the Natural Gas master valve. If emergency shut-down testing commences while the transfer piping is in a cold condition, such testing shall take place after the LNG transfer pumps are started.
- 1.2 Seller shall cause the amount of vapor sent to an LNG Tanker during unloading to be determined by calculating the difference in the liquid volume in the tanks of the LNG Tanker at the initial gauging compared to the final gauging and correcting it for the average temperature and absolute pressure of the vapor in the tanks of the LNG Tanker on final gauging. The results shall then be applied to the vapor displacement calculation illustrated below in Article A.5.3.
- 1.3 Seller shall furnish to the other Party evidence of calibration of the LNG tanks of each LNG Tanker for volume against level by a qualified Independent Surveyor, calibration authority, or contractor.



- 1.4 Buyer shall furnish to the other Party evidence of calibration of the gas chromatograph (GC) pursuant to GPA 2261, validation of the GC before and after discharge and verification of the sampling system, vaporizer and any other device for testing and analysis. Buyer shall furnish to Seller data about calibration, standard gas and GC analysis (once the same are available) in a pdf and excel format.
- 1.5 Seller shall ensure tank gauge tables for each LNG tank of each LNG Tanker are available onboard such LNG Tanker. Such tank gauge tables shall include sounding tables, correction tables for list and trim, volume corrections to tank service temperature, density correction, and other necessary corrections, and shall indicate volumes in Cubic Meters (expressed to the nearest thousandth), with tank depths expressed in meters (to the nearest hundredth/thousandth).
- 1.6 Seller is entitled to audit the other Party's records and tables that are relevant to the determination of the measurements and calculations referred to in this Article A.I, upon notice and at reasonable times.
- 1.7 If the LNG tanks of any LNG Tanker suffer distortion of such nature as to create a reasonable doubt regarding the validity of the tank gauge tables described herein (or any subsequent calibration provided for herein), then Seller shall cause the recalibration of the damaged tanks, and the LNG Tanker shall not transport any LNG Cargo until appropriate corrections are made. If mutually agreed between Seller's and Buyer's representatives, then recalibration of damaged tanks can be deferred until the next time when the damaged tanks are warmed for any reason, and any corrections to the prior tank gauge tables shall be made from the time the distortion occurred. If the initial time of distortion cannot be determined, then Buyer and Seller shall mutually agree on the time period for retrospective adjustments.

## ARTICLE A.2 - SELECTION OF GAUGING DEVICES

- 2.1 Seller (DES) shall provide or cause to be provided to Buyer (DES) a copy of certified gauging tables for each tank of each LNG Tanker in metric units approved by NKKK or SGS or DNV or Intertek or any other mutually agreed independent survey authority as well as correction charts (list, trim, tanks' contractions, etc.) for each tank. Such gauging tables and correction charts shall be according with the tanks. The tank gauge tables shall indicate volumes in Cubic Meters expressed to the nearest thousandth (0.001) with tank depths expressed in meters to the nearest thousandth (0.001).
- 2.2 Each LNG tank of each LNG Tanker shall be equipped with a main and an auxiliary liquid level-gauging device. The measurement accuracy of the main liquid level gauging devices shall be plus or minus seven decimal five (+/- 7.5) millimeters and of the auxiliary liquid level gauging devices shall be plus or minus ten (+/- 10) millimeters. The level from the main and auxiliary gauging devices in each LNG tank shall be logged or printed.
  - Its characteristics, tolerances, installation, operation and checking will be based on the following standards:
  - Microwaves gauges. ISO 13689. Refrigerated light hydrocarbon fluids Measurement of liquid levels in tank containing liquefied gases – Microwave gauges.



- Electrical capacitance gauges. ISO 8309. Refrigerated light hydrocarbon fluids Measurement of liquid levels in tank containing liquefied gases Electrical capacitance gauge.
- Float type level gauges. ISO 10574. Refrigerated light hydrocarbon fluids Measurement of liquid levels in tank containing liquefied gases – Float type level gauges.
- Refrigerated hydrocarbon and non-petroleum based liquefied gaseous fuels
   General requirements for automatic tank gauges. ISO:18132-1. Part1:
   Automatic tank gauges for Liquefied Natural Gas on board marine carriers and floating storage
- 2.3 Each LNG Tanker shall be equipped with a list-gauging device and a trim-gauging device. List and trim measurements shall be made using devices with accuracy of plus zero decimal five percent (+ 0.5%) of full span, and no worse than zero decimal one (0.1) degrees for list and zero decimal five (0.5) meters for trim.
- 2.4 Each LNG tank of each LNG Tanker shall be equipped with a minimum of five pairs of temperature-gauging devices located on or near the vertical axis of such LNG tank. The temperature-gauging devices shall be installed at various locations from the top to the bottom of each LNG tank. The temperatures in each LNG tank shall be logged or printed. In the temperature range of negative one hundred and sixty five degrees Centigrade (- 165° C) to negative one hundred and forty five degrees Centigrade (- 145° C), the accuracy shall be plus or minus zero decimal two degrees Centigrade (+/- 0.2° C). In the temperature range of negative one hundred and forty five degrees Centigrade (- 145° C) to forty degrees Centigrade (+ 40° C), the accuracy must be plus or minus one decimal five degrees Centigrade (+/- 1.5° C).
- 2.5 Each LNG tank of each LNG Tanker shall have one absolute pressure-gauging device. The measurement accuracy of the pressure-gauging device shall be plus or minus one percent (+/- 1%) of full-scale and in no case greater than plus ten (+ 10) millibar. The pressure in each LNG tank shall be logged or printed.
- Gauging devices shall be verified for accuracy, and any inaccuracy of a device exceeding the permissible tolerance shall require correction of recordings and computations in accordance with this Exhibit A. Seller shall verify the accuracy of gauging devices by providing sufficient documentation thereof to the other Party in each of the following circumstances: (a) if Buyer, acting as a Reasonable and Prudent Operator, requests the verification due to changes in the accuracy of custody transfer measurements related to the specific LNG Tanker in question; (b) during each LNG Tanker dry docking; or (c) at least once every five (5) years. Buyer shall verify the accuracy of gauging devices by providing sufficient documentation thereof to the other Party in each of the following circumstances: (1) if Seller, acting as a Reasonable and Prudent Operator, requests the verification for sampling, testing, analysis, calibration/validation quality determination, and GC readings (excel file) related for specified delivery in question.

#### **ARTICLE A.3 - MEASUREMENT PROCEDURES**

- 3.1 Liquid levels in each tank shall be determined pursuant to ISO 13398-97 Section 6.2 and Article A.2.2 of this Exhibit A. Measurement of the liquid level in each LNG tank of each LNG Tanker shall be made to the nearest millimeter by using the main liquid level-gauging device referred to in Article A.2. Should the main device fail, the auxiliary device shall be used. At least five (5) readings shall be made in close succession within a span of seconds. The arithmetic average of the readings shall be deemed the liquid level. The arithmetic average shall be calculated to the nearest zero decimal one (0.1) millimeter and be rounded to the nearest millimeter. The main device and the auxiliary device readings shall be read and recorded consecutively and without interruption.
- As the liquid level is measured, temperature shall be measured to the nearest zero decimal one degrees Centigrade (0.1° C) by using the temperature-gauging devices referred to in Article A.2. To determine the temperature of liquid and vapor in the tanks of an LNG Tanker, one (1) reading shall be taken at each temperature-gauging device in each LNG tank. An arithmetic average of such readings in each tank with respect to vapor, for those readings taken of vapor, and liquid, for those readings taken of liquid, shall be deemed the final temperature of vapor and liquid, respectively, for such tank. The arithmetic average shall be calculated to the nearest zero decimal zero one degrees Centigrade (0.01° C) and rounded to the nearest zero decimal one degree Centigrade (0.1° C).
- 3.3 As the liquid level is measured, the absolute pressure in each LNG tank shall be measured to the nearest one millibar by using the pressure-gauging device referred to in Article A.2. The determination of the absolute pressure in each LNG tank of each LNG Tanker shall be made by taking one reading of the pressure-gauging device in each LNG tank and then taking an arithmetic average of all such readings. The arithmetic average shall be calculated to the nearest zero decimal one (0.1) millibar and rounded to the nearest one millibar.
- As the liquid level is measured, the list and trim of the LNG Tanker shall be measured by taking one reading from the list and trim devices. The list and trim shall be measured to the nearest zero decimal one (0.1) degrees for list and the nearest zero decimal five (0.5) meters for trim (or, in each case, more precisely if the applicable LNG Tanker is so equipped and capable).
- 3.5 If the measurements referred to in this Article A.3 become impossible to perform due to a failure of gauging devices, then alternative gauging procedures shall be determined by mutual agreement between Buyer and Seller in consultation with the Independent Surveyor.
- 3.6 The volume of LNG transferred, stated in Cubic Meters to the nearest zero decimal zero zero one (0.001) Cubic Meter, shall be determined by (a) using the tank gauge tables referred to in Article A.1.5; (b) applying the volume corrections specified in Article A.1.5; and (c) deducting the total volume of LNG in all tanks immediately after completion of unloading (or emptying of deck piping where required pursuant to Article A.1.1) from the total volume in all tanks immediately before commencement of unloading. The volume of LNG unloaded shall then be rounded to the nearest zero decimal zero zero one (0.001) Cubic Meter.

#### ARTICLE A.4 - DETERMINATION OF COMPOSITION OF LNG UNLOADED

- 4.1 LNG sampling during transferring shall be performed in accordance with the protocol employed by the Discharge Port, which shall be in accordance with international standards according to the 2nd edition of the GIIGNL LNG Custody Transfer Handbook ("GIIGNL") or a later edition as may be agreed between the Parties, and may be either continuous or discontinuous.
- 4.2 If any Dispute as to the accuracy of any analysis is raised, any LNG samples collected shall be retained until Buyer and Seller mutually agree to retain it no longer.
- 4.3 Tests for trace contaminants shall be performed in accordance with the procedures utilized at the Discharge Port, as applicable, which shall be in accordance with international standards according to the 2nd edition of GIIGNL or a later edition as may be agreed between the Parties.

## ARTICLE A.5 - DETERMINATION OF QUANTITY OF LNG UNLOADED

5.1 The density of LNG shall be calculated using the revised Klosek and McKinley method and using the formulas:

$$\rho_{lig} = \underbrace{\sum (X_i \times M_i)}_{\sum (X_i \times V_i) - [K_1 + (K_2 - K_1) \times X_n] \times X_m}$$
0.0425

where:

$$D = \frac{\sum (X_i \times M_i)}{\sum (X_i \times V_i) - X_m \times C} \text{ and } C = K_1 + \frac{(K_2 - K_1) \times X_n}{0.0425}$$

D = the LNG density to six (6) significant figures of the LNG unloaded, stated in kilograms per Cubic Meter at temperature TL;

Xi = the mol fraction, to the nearest fourth (4<sup>th</sup>) decimal place, of component i from the composition obtained pursuant to Article A.4;

Mi = the molecular weight of component i as specified in the then current GPA Publication 2145 (Physical Constants);

Vi = the molar volume, to the nearest sixth (6<sup>th</sup>) decimal place, of component i, stated in Cubic Meters per kilo mol at temperature TL and obtained by linear interpolation of the data specified in the then current National Bureau of Standards Interagency Report 77-867;

Xm = the mol fraction, to the nearest fourth (4<sup>th</sup>) decimal place, of methane from the composition obtained pursuant to Article A.4;

Xn = the mol fraction, to the nearest fourth (4<sup>th</sup>) decimal place, of nitrogen from the composition obtained pursuant to Article A.4;

K1 = the volume correction factor derived from the values specified in the then current National Bureau of Standards Interagency Report 77-867; and



- K2 = the volume correction factor derived from the values specified in the then current National Bureau of Standards Interagency Report 77-867.
- 5.2 the Gross Heating Value (mass basis) of LNG, stated in Btu per lbm, shall be calculated by use of the formula:

where:  $P = \frac{\sum (H_i \times X_i \times M_i)}{\sum (X_i \times M_i)}$ 

P = Gross Heating Value of LNG, stated in Btu per lbm;

Hi = Gross Heating Value of component i, stated in Btu per lbm as specified in the then current GPA Publication 2145 (Physical Constants);

Xi = the mol fraction, to the nearest fourth (4th) decimal place, of component i from the composition obtained pursuant to Article A.4; and

Mi = the molecular weight of component i as specified in the then current GPA Publication 2145 (Physical Constants).

The Gross Heating Value (volume basis) shall be calculated by use of the formula:

where:  $H_{V} = \sum (H_{I} x H_{Vi})$ 

Hv = the Gross Heating Value, stated in Btu per cubic foot;

Xi = the mol fraction, to the nearest fourth (4th) decimal place, of component i from the composition obtained pursuant to Article A.4; and

Hvi = the Gross Heating Value of component i, stated in Btu per cubic foot, as specified in the then current GPA Publication 2145 (Physical Constants).

5.3 The quantity of energy unloaded shall be computed using the following formula and applying the method of rounding specified in Article A.5.4:

$$Q = VxDxPx 2.204622-Q_R$$

where:

Q = the quantity of LNG unloaded, stated in Btu;

V = the volume of the LNG unloaded, stated in Cubic Meters, obtained pursuant to Article A.3;

D = the density of the LNG, stated in kilograms per Cubic Meter, as calculated pursuant to this Article A.5;

P = the Heating Value of the LNG, stated in Btu per lbm, as calculated pursuant to this Article A.5; and

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QR = the Quantity of the vapor, stated in Btu, which displaced the volume of the LNG unloaded. In respect of Buyer Delivery Sales, QR shall be zero. In respect of Seller Delivery Sales, QR shall be computed by use of the following formula:

where:

$$Q_R = Vx \frac{288.8}{273.2 + T_V} x \frac{P_a}{101.325} xHV_{vapor} x35.31467$$

TV = the temperature of the vapor in the tanks of the LNG Tanker after completion of unloading, stated in degrees Centigrade to the nearest zero decimal one (0.1) degree C;

Pa = the absolute pressure of the vapor in the tanks of the LNG Tanker after completion of unloading, stated in kPa (at a temperature of 60°F: 14.696 psi = 101.325 kPa) (1 bar = 1000 milibar = 100 kPa); and

HVvapor = the Gross Heating Value of the vapor (assumed to be methane), stated in Btu per cubic foot at Standard Conditions (sixty degrees Fahrenheit (60° F), one four decimal six nine six (14.696) psia and equivalent to one five decimal six zero degrees Centigrade (15.60° C) and one zero one decimal three two five (101.325) kPa) pursuant to the current GPA 2145.

The value Q shall be divided by 1,000,000 to obtain the energy delivered in MMBtu.

## 5.4 Rounding

If the first of the figures to be discarded is five or more, then the last of the figures to be retained shall be increased by one. If the first of the figures to be discarded is four or less, then the last of the figures to be retained shall be unaltered. For the purpose of rounding to a zero, the last of the figures to be retained shall have the same value as a ten (10).

5.5 The following conversions shall be used:

2.204622 lbm = 1 kg; 35.314667 cubic feet = 1 Cubic Meter. (1 foot = 0.3048 meter)

#### ARTICLE A.6 - FAILURE OF DEVICES

If there is any device which is out of service or registering inaccurately at the Delivery Point shall apply the following:

- 6.1 If it is the primary system which measures the level of LNG, it shall apply the secondary system.
- 6.2 If there are one of the following ones: vaporizer, sampling, gas chromatograph or any other device used to determine quality, the quality shall be estimated by the independent surveyor through an ageing model, taking into account loading documents (as quality, closing custody transfer and time log) and opening custody transfer and time log for unloading.

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## EXHIBIT B - FORM OF MARINE TERMINAL LIABILITY AGREEMENT

## MARINE TERMINAL LIABILITY AGREEMENT

THIS MARINE TER	MINAL LIABILITY AGRE	EMENT (this "Agreement") is
effective as of		and between DISTRIGAS OF
MASSACHUSETTS LLC	("Distrigas"), and	, a
	xisting under the laws of	and whose
registered office is at		("Vessel Owner"). Distrigas
and Vessel Owner are sometim	es referred to individually as	a "Party" and collectively as the
"Parties."	•	<b>3</b>

#### **RECITALS**

WHEREAS, Vessel Owner, as owner, owner pro hac vice, or operator of the LNG vessel(s) set forth below under its name and signature (referred to herein as the "Vessel" whether singular or plural), proposes to have the Vessel call at the Marine Terminal (as defined below) for the purpose of delivering certain quantities of liquefied natural gas ("LNG") to Distrigas or for other purposes; and

WHEREAS, the Parties desire to allocate the risk of and the responsibility for loss and damage resulting from a Marine Incident (as defined below) in the manner set forth in this Agreement;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## ARTICLE 1 DEFINITIONS

In addition to the terms defined in the preamble and recitals above, capitalized terms used in this Agreement shall have the meanings assigned to such terms below:

"Affiliate" with respect to a Person means any Person that directly or indirectly (through one or more entities) controls, is controlled by, or is under common control with such Person. For this purpose, "control" means the beneficial ownership, either directly or indirectly, of more than fifty percent (50%) of the voting rights, voting stock or shares carrying a right to vote at a general meeting (or its equivalent) or, (whether alone or acting in concert with others, and whether by ownership, possession, contract or otherwise) the right to appoint the majority of the board of directors or equivalent management body of such corporation, partnership or other Person.

"Covered Claims" means damages, claims and liabilities (including, without limitation, all damages, losses, costs, expenses, professional fees, penalties, and the amount of any settlement of claims) that, in any case, arise out of or relate to a Marine Incident.

"LNG Tanker Interests" means (i) Vessel Owner, (ii) all Affiliates of Vessel Owner, (iii) all Persons (other than the Terminal Interests) employed or providing services in



connection with the ownership or operation (including all operations related to navigation, arrival, berthing/deberthing and departure) of the Vessel, and (iv) the employees and agents of all Persons referred to in parts (i), (ii) and (iii) of this definition.

"Marine Incident" means any occurrence or series of occurrences having the same origin arising out of, caused or contributed to by, or relating to the Vessel's use of the Port and/or the Marine Terminal in which there is any one or more of the following: (i) loss of or damage to the Port, the Marine Terminal and/or the Vessel; (ii) injury to employees or agents of the Port, the LNG Tanker Interests or the Terminal Interests; (iii) loss or damage arising within the maritime jurisdiction of the United States, other than to the Port, Marine Terminal and/or the Vessel, caused or contributed to by the Vessel or the LNG Tanker Interests, including but not limited to injury to third parties or damage to the property of third parties; or (iv) an obstruction or danger affecting or interfering with the normal operation of the Port and/or the Marine Terminal.

"Marine Terminal" means Distrigas' marine terminal and Receiving Facilities located at the Port, including all berths, buoys, gear, craft, facilities and equipment located thereat or adjacent thereto and in the ownership, possession or control of the Terminal Interests.

"Port" means the port where the Receiving Facilities are located.

"Receiving Facilities" means the LNG receiving facilities located at Everett in the Port of Boston, Massachusetts, USA, which include, without limitation, berthing and unloading facilities, LNG storage tanks, a regasification plant, LNG truck loading facilities, and appurtenant facilities, as modified or expanded from time to time.

"Terminal Interests" means (i) Distrigas, (ii) all Affiliates of Distrigas, (iii) all Persons employed or providing services at the Marine Terminal on behalf of Distrigas in connection with the unloading, storage, or regasification of LNG at the Marine Terminal, and (iv) the employees and agents of all Persons referred to in parts (i), (ii) and (iii) of this definition. Notwithstanding the foregoing, the Terminal Interests shall not include the LNG Tanker Interests.

#### ARTICLE 2 LIMITATIONS ON EACH PARTY'S LIABILITY

interests, nowever arising, in respect of any one Marine Incident, shall not exceed
Payment of an aggregate sum
to any one or more of the
Terminal Interests in respect of any one Marine Incident shall be a complete defense to any claim, suit or demand relating to such Marine Incident made by the Terminal Interests against the LNG Tanker Interests.
SE 2.2 The total aggregate liability of the Terminal Interests to the LNG Tanker Interests, however arising, in respect of any one Marine Incident, shall not exceed
Payment of an aggregate sum

CLAUSE 2.1 The total aggregate liability of the LNG Tanker Interests to the Terminal

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to any one or more of the

LNG Tanker Interests in respect of any one Marine Incident shall be a complete defense to any claim, suit or demand relating to such Marine Incident made by the LNG Tanker Interests against the Terminal Interests.

## ARTICLE 3 KNOCK FOR KNOCK ABOVE LIMITS ON LIABILITY

- CLAUSE 3.1 To the extent that aggregate liability of Terminal Interests in respect of any one Marine Incident exceeds the limitations set forth in CLAUSE 2.2 above, regardless of fault for such Marine Incident, Vessel Owner shall indemnify and hold Terminal Interests harmless for such amounts in excess of such limits on liability in respect of any Covered Claim made or asserted by or on behalf of any Person within the definition of the LNG Tanker Interests.
- CLAUSE 3.2 To the extent that aggregate liability of LNG Tanker Interests in respect of any one Marine Incident exceeds the limitations set forth in CLAUSE 2.1 above, regardless of fault for such Marine Incident, Distrigas shall indemnify and hold LNG Tanker Interests harmless for such amounts in excess of such limits on liability in respect of any Covered Claim made or asserted by or on behalf of any Person within the definition of the Terminal Interests.

## ARTICLE 4 CONFIRMATION OF INSURANCE

Prior to any call by the Vessel at the Marine Terminal, or such other times as may be requested by Distrigas, Vessel Owner shall provide sufficient written evidence that the Vessel's Protection and Indemnity Association has agreed to:

- CLAUSE 4.1 cover Vessel Owner as a member of the Association against the liabilities and responsibilities provided for in this Agreement in accordance with its Rules;
- CLAUSE 4.2 waive in favor of the Terminal Interests all rights of subrogation against the Terminal Interests to the extent such claims have been waived in this Agreement by Vessel Owner; and
- CLAUSE 4.3 acknowledge, confirm and adopt the waiver by the Vessel Owner of its right to limit its liability as against the Terminal Interests pursuant to Article 4 herein.

## ARTICLE 5 WAIVER OF STATUTORY LIMITS ON LIABILITY

CLAUSE 5.1 As to matters subject to this Agreement and with respect to Covered Claims, Vessel Owner hereby expressly, voluntarily and intentionally waives any rights to limit its liability under the United States Limitation of Vessel Owners Liability Act (46 U.S.C. §§30501, et seq.) or any other similar law (and including any modifications, amendments and extensions thereto) of the United States of America or any subdivision thereof, but specifically excluding any limitations provided under the United States Oil Pollution Act of 1990 (33 U.S.C. App. §§2702, et seq.) (including any modifications, amendments and extensions thereto).

Such waiver shall include any right to petition a court, arbitral tribunal or other entity for limitation of liability, any right to claim limitation of liability as a defense in an action, and any other similar right under relevant law. Such waiver shall apply for the benefit of all Persons within the definition of the Terminal Interests but shall not apply to any other third parties.

#### ARTICLE 6 MISCELLANEOUS

- CLAUSE 6.1 The federal maritime law of the United States and, to the extent not preempted by such law, the substantive law of the state of New York (U.S.A.), without regard to any conflicts of law principles that could require the application of any other law, shall govern the interpretation of this Agreement and any dispute, controversy, or claim arising out of, relating to, or in any way connected with this Agreement, including, without limitation, the existence, validity, performance, or breach of this Agreement.
- CLAUSE 6.2 Each of the Terminal Interests and the LNG Tanker Interests that have not independently executed this Agreement are intended to be third-party beneficiaries of this Agreement, and to the maximum extent allowed by law they shall be entitled to enforce the provisions of, and shall be bound to the obligations.

[Remainder of page left blank.]



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the date first set forth above.

DISTRIGAS OF MASSACHUSETTS LLC	[X]	
Ву:	Ву:	
Name:	Name:	
Title:	Title:	
	As owner of the	
		Name of Vessel
	Registration No.	
	Country of Registry	

### EXHIBIT C [RESERVED]

**EXHIBIT C** 

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## EXHIBIT D - LNG TANKER REQUIREMENTS

#### 1. DESCRIPTION AND CONDITION OF VESSEL

- she will be in class, and in every way fit for the safe loading, discharging, handling and carrying of LNG in bulk at atmospheric pressure;
- 1.2 she will be tight, staunch, strong, in good order and condition, and in every way fit for the service of carrying LNG and unloading LNG, with her machinery, boilers, hull, and cargo installation, including gauging and other equipment suitable for measuring the level and temperature of LNG discharged from the vessel, and any other equipment (including but not limited to hull stress calculator, radar, computers and computer systems) in a good and efficient state;
- 1.3 her tanks, valves and pipelines will be liquid- and gas-tight;
- 1.4 she will have her insulation spaces prepared according to her containment system design conditions;
- 1.5 she will have on board all certificates, permits, records or other documents required by the conventions, laws, regulations or requirements referred to in CLAUSE 13.1 of the Agreement and Part 3 below, including ISM certification, and equipment required from time to time by any applicable law to enable her to perform in accordance with the Agreement without delay;
- she will be capable of operating with no venting of boil-off gases to the atmosphere, but will be capable of venting if circumstances so require and if governmental authorities and other authority and safety of the vessel so permit;
- 1.7 she will be in full compliance with all applicable international conventions, safety and security standards, applicable permits, laws, regulations, and/or other requirements of the country of her registry, her country of registry and any other country, port or place to which she may call, and all applicable regulations and/or requirements of any terminals or facilities in such ports or places where she may discharge;
- 1.8 she will be compatible in all respects with the Receiving Facilities; and
- 1.9 she will be insured with the maximum amount of coverage reasonably obtainable under all customary marine insurance policies, including collision insurance, hull insurance and protection and indemnity insurance.

#### 2. SHIPBOARD PERSONNEL AND DUTIES

2.1 She will have a full and efficient complement of master, officers and crew for a vessel of her type, who will in any event be not less than the number required by the laws of the



country of registry and who will be trained to operate the vessel and her equipment competently and safely with the ability, experience, licenses and training commensurate with the performance of their duties in accordance with internationally accepted standards as adopted on first class LNG carriers as required by applicable governmental authorities and any labor organization having jurisdiction over the vessel, her officers or crew;

- all shipboard personnel will hold valid certificates of competence in accordance with the requirements of the laws of the vessel's country of registry, and other certificates generally held by personnel on LNG carriers, as applicable;
- 2.3 all shipboard personnel will be trained and certified to a standard customary for first class LNG carriers in accordance with the relevant provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (the "STCW") and the code related thereto (the "STCW Code"), including any future amendments, supplements or replacements of the STCW or the STCW Code, and such personnel will subscribe to a policy accepted by Seller regarding the use of alcohol and drugs;
- 2.4 the master, chief engineer, all cargo engineers and all deck officers will have a good working knowledge of English and will maintain all reports with respect to the vessel in English. All helmsmen will have a good working knowledge of English, and there will be on board sufficient personnel with a good working knowledge of the English language to enable cargo operations at discharging places to be carried out efficiently and safely and to enable communications between the vessel and those accepting discharge from the vessel to be carried out quickly and efficiently;
- 2.5 while at the berth of the Receiving Facilities, the vessel's cargo control room will be manned by at least one officer having a good working knowledge of the English language; and
- 2.6 the terms of employment of the vessel's staff and crew will always remain acceptable to the International Transport Worker's Federation and the vessel will at all times carry a Blue Card.



### 3. ADDITIONAL REQUIREMENTS

In addition to providing an LNG Tanker and procuring that she and her shipboard personnel meet the requirements specified in Parts 1 and 2 of this EXHIBIT D, Seller will also meet the requirements specified in this Part 3.

#### 3.1 Pollution

Seller will comply (and will procure that the vessel complies) with all financial capability, responsibility, security or like laws, regulations and/or other requirements of whatever kind with respect to pollution damage (including compliance with the United States Oil Pollution Act, 1990, as amended or as it may be amended from time to time, when the vessel is trading with ports in the United States and, when the vessel is trading elsewhere, the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended by the 1992 Protocol and the 2000 Amendments and as may be further amended from time to time) in effect on the date of this Agreement which are applicable to the vessel entering, leaving, remaining at or passing through any places or waters in the performance of this Agreement. Seller will make all arrangements by bond, insurance or otherwise and take all such other action as may be necessary to satisfy such laws, regulations and/or other requirements. All costs and expenses incurred in complying with these obligations will be for Seller's account

## 3.2 Safety Management

Seller will operate, or cause the vessel owner or operator to operate:

- (i) a safety management system certified to comply with the International Safety Management Code ("ISM Code") for the Safe Operation of Ships and for Pollution Prevention;
- (ii) a documented safe working procedures system (including procedures for the identification and mitigation of risks);
- (iii) a documented environmental management system; and
- (iv) a documented accident/incident reporting system compliant with requirements of the vessel's country of registry.

#### 3.3 HSE Compliance

Seller will maintain Health Safety Environmental ("HSE") records sufficient to demonstrate compliance with the requirements of the HSE system. Seller will provide



Buyer such documents and records as are reasonably requested by Buyer to confirm compliance with the HSE system.

#### 3.4 ISPS Code/USMTSA 2002

This provision makes reference to the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS ("ISPS Code") and the U.S. Maritime Transportation Security Act 2002 ("MTSA").

- (i) Seller will procure that both the vessel and "the Company" (as defined by the ISPS Code) and the "owner" (as defined by the MTSA) will comply with the requirements of the ISPS Code relating to the vessel and "the Company" and the requirements of MTSA relating to the vessel and the "owner".
- (ii) All measures required of Seller to comply with the security plan required by the ISPS Code/MTSA, and any loss, damage, expense or delay caused by failure on the part of Seller or "the Company"/"owner" to comply with the requirements of the ISPS Code/MTSA, will be for Seller's account.
- (iii) Seller will provide such documents or records as are reasonably requested by Buyer to confirm Seller's compliance with the IPS Code and MTSA.

#### 3.5 Master's Recordkeeping

Seller will cause the master of the vessel to keep a full and correct log of her voyage or voyages. The master will, when requested by the U.S. Coast Guard or other appropriate authority, furnish such authority with a true copy of such log and with properly completed discharging port sheets and voyage reports for each voyage and other returns as such authority may require.

#### 3.6 Provisions and Other Costs

Seller will provide and pay for (i) all provisions, wages (including but not limited to all overtime payments, statutory or otherwise), and shipping and discharging fees and all other expenses of the master, officers and crew, (ii) all deck, cabin and engine-room stores and necessary spare parts, including water; (iii) all dry-docking (and associated gas-freeing of the vessel), overhaul, maintenance and repairs to the vessel, including maintaining and operating the vessel in good working order in accordance with prudent industry practices and for all fumigation expenses and de-rat certificates. Seller's obligations include customs or import duties in relation to the personal effects of the



master, officers and crew, and in relation to the stores, provisions and other items mentioned in this clause 3.6. Seller will refund, or cause the owner of the vessel to refund to Buyer any sums Buyer or its agents may have paid or been compelled to pay in respect of any such obligation on presentation by Buyer of reasonable supporting documentation.

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# EXHIBIT E - SELLER'S LNG TANKERS

LNG Vessel	Cargo Capacity (k cbm)	Containment system	IMO
Castillo de Villalba	138	Membrane	9236418
Catalunya Spirit	138	Membrane	9236420
Ibérica Knutsen	138	Membrane	9326603

EXHIBIT E

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## **EXHIBIT F-1 – FORM OF CORPORATE GUARANTEE**

This is an irrevocable guaranty (the "<u>Corporate Guarantee Agreement</u>"), dated as of [•], 20\_\_, given by [•], a company organized and existing under the laws of [•] whose registered office is at [•] ("<u>Guarantor</u>"), in favor of [•], a company organized and existing under the laws of [•] whose registered office is located at [•] ("<u>Beneficiary</u>").

#### WITNESSETH:

WHEREAS, Beneficiary entered into the SPA with [•], a company formed under the laws of [•] (together with any successor or permitted assign under the SPA, "Company");

WHEREAS, Guarantor owns either a direct or an indirect equity interest in Company;

WHEREAS, the execution and delivery of this Corporate Guarantee Agreement is a condition to Beneficiary's further performance of its obligations under the terms of the SPA; and

WHEREAS, pursuant to CLAUSE 9.7 of the SPA and in accordance with and subject to the provisions of this Corporate Guarantee Agreement, Guarantor hereby agrees (it being in its best commercial interests to do so) to enter into this Corporate Guarantee Agreement in respect of the Guaranteed Obligations up to the Guarantee Limit.

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, Guarantor and Beneficiary hereby agree as follows:

#### SECTION 1. DEFINITIONS

(a) <u>Definitions</u>. Except as otherwise expressly provided or unless the context otherwise requires, the terms defined in this Section 1 shall, for all purposes of this Corporate Guarantee Agreement, have the meanings herein specified, the following definitions to be equally applicable to both the singular and plural forms of any of the terms herein defined:

"Banking Day" means any day other than a Saturday, a Sunday or any other day on which commercial banks in New York, New York, USA or Madrid, Spain are authorized or required to be closed.

"Beneficiary" has the meaning set out in the preamble of this Corporate Guarantee Agreement.

"Company" has the meaning set out in the preamble of this Corporate Guarantee Agreement.

"Corporate Guarantee Agreement" means this Corporate Guarantee Agreement dated as of the date first written above, as may from time to time be supplemented, modified or amended as provided herein.

EXHIBIT F-1(i)

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"Guarantee Limit" has the meaning set forth in Section 3(b).

"Guaranteed Obligations" has the meaning set forth in Section 3(a) of this Corporate Guarantee Agreement.

"Guarantor" has the meaning set out in the preamble of this Corporate Guarantee Agreement.

"Local Banking Day" has the meaning set forth in Section 4(b)(i) of this Corporate Guarantee Agreement.

"SPA" means that certain LNG Sale and Purchase Agreement dated [•], 2018, by and between Gas Natural Fenosa LNG Marketing Limited and Constellation LNG, LLC, as such SPA may from time to time be supplemented, modified or amended as provided therein.

(b) Other Defined Terms. Capitalized terms not otherwise defined in this Corporate Guarantee Agreement shall have the meanings ascribed thereto in the SPA.

#### SECTION 2. REPRESENTATIONS OF GUARANTOR

- (a) Representations of Guarantor. Guarantor makes the following representations to Beneficiary as of the date hereof:
  - (i) Guarantor has been duly organized and is validly existing under the laws of [●], has full legal right, power and authority to enter into this Corporate Guarantee Agreement and to carry out and consummate all transactions contemplated by this Corporate Guarantee Agreement, and by proper corporate action has duly authorized the execution and delivery of this Corporate Guarantee Agreement;
  - (ii) the execution and delivery of this Corporate Guarantee Agreement and the consummation of the transactions herein contemplated will not conflict with or constitute on the part of Guarantor a breach of or default under its relevant organizational documents, as existing on the date hereof, or any indenture, or other material agreement or instrument to which Guarantor is a party or by which it or its properties are bound or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Guarantor or any of its activities or properties; and
  - (iii) this Corporate Guarantee Agreement has been duly authorized, executed and delivered by Guarantor and constitutes the valid, binding and enforceable obligation of Guarantor, except to the extent enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and by general equitable principles.

#### SECTION 3. GUARANTEE AND AGREEMENTS

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- (a) Guarantee. Guarantor, as primary obligor and not merely as surety, absolutely, unconditionally and irrevocably guarantees to Beneficiary the full and prompt payment when due by Company of all of its payment obligations under the SPA to Beneficiary, including payment obligations in respect of any breach of the SPA by Company (the obligations guaranteed under this Corporate Guarantee Agreement are hereinafter referred to as the "Guaranteed Obligations").
- (b) Guarantee Limit. Notwithstanding the aggregate amount of Guaranteed Obligations at any time or from time to time, the liability of the Guarantor hereunder shall not exceed in the (the "Guarantee Limit") provided that the Guaranteed Obligations may at any time or from time to time exceed the liability of the Guarantor hereunder without impairing the guarantee set forth in Section 3(a). Guarantor's obligations and liability under this Corporate Guarantee Agreement shall be limited to payment obligations only and Guarantor shall have no obligation to perform under the SPA, including, without limitation, to sell, deliver, supply or transport gas, electricity or any other commodity.

If any payment by Company to Beneficiary is rescinded or must be returned by Beneficiary, the obligations of Guarantor hereunder shall be reinstated with respect to such payment.

Except as expressly set forth in the proviso of Section 3(a), no set-off, counterclaim, reduction, or diminution of any obligation, or any defense of any kind or nature which Company has or may have against Beneficiary shall be available hereunder to Guarantor to reduce the payments to Beneficiary under Section 3(a) of this Corporate Guarantee Agreement. Furthermore, no defense previously raised by Company arising out of or in connection with a Guaranteed Obligation claimed hereunder and which has been settled in Beneficiary's favor by the dispute resolution procedures of CLAUSE 20.1 of the SPA may be raised by Guarantor and no cure period previously used by Company may be used by Guarantor.

(c) Unconditional Nature of Obligations. Except as expressly provided in the provision of Section 3(a), the obligations of Guarantor under this Corporate Guarantee Agreement shall be absolute, irrevocable and unconditional irrespective of the value, genuineness, validity, regularity or enforceability of the SPA or any other agreement or instrument referred to herein or therein. To the fullest extent permitted by applicable law, Guarantor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies. including without limitation: (i) any right to require Beneficiary to proceed against Company or any other domestic or foreign natural individual, partnership, corporation, limited liability company, group, association, joint stock company, trust, estate, joint venture, unincorporated organization, or any other form of business or professional entity or governmental authority (each, a "Person") or to proceed against or exhaust any security held by Beneficiary at any time or to pursue any other remedy in the power of Beneficiary before proceeding against Guarantor (including any right or claim of right (A) to cause a marshalling of a debtor's assets, or (B) to proceed against Guarantor, any debtor or any other guarantor of any debtor's obligations in any particular order); (ii) any defense that

may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of Company or any other Person or the failure of Beneficiary to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Company or any other Person; (iii) demand, presentment, protest and (except as otherwise expressly provided herein) notice of any kind, including without limitation notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Beneficiary, Company, any endorser or creditor, Guarantor or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Beneficiary as collateral or in connection with any of the Guaranteed Obligations: (iv) any defense based upon an election of remedies by Company; (v) any defense based on any offset against any amounts which may be owed by any Person to Guarantor for any reason whatsoever; (vi) any defense based on any act, failure to act, delay or omission whatsoever on the part of Beneficiary or the failure by Beneficiary to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the SPA; (vii) any defense based upon any applicable law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, (viii) any defense, setoff or counterclaim which may at any time be available to or asserted by Company against Beneficiary under any agreement contemplated under the SPA, or by reason of the delay or failure by Beneficiary; (ix) any duty on the part of Beneficiary to disclose to Guarantor any facts any such Person may now or hereafter know about Company, regardless of whether such Person has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, or have reason to believe that such facts are unknown to Guarantor, or have a reasonable opportunity to communicate such facts to Guarantor, and Guarantor acknowledges that it is fully responsible for being and keeping informed of the financial condition of Company and of all circumstances bearing on the risk of non-payment of any of the Guaranteed Obligations; (x) the fact that Guarantor may at any time in the future no longer be an affiliate of Company; (xi) any defense based on any change in the time, manner or place of any payment under the SPA, or any agreement contemplated under the SPA, or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the SPA; (xiii) any other circumstance whatsoever, whether voluntary or involuntary, which may or might in any manner or to any extent vary the risk of Guarantor as an obligor in respect of the Guaranteed Obligations or which constitutes, or might be construed to constitute, an equitable or legal discharge of Guarantor for the Guaranteed Obligations, whether in a proceeding instituted under the Bankruptcy Code or in any other instance; (xiv) notice of acceptance of this Corporate Guarantee Agreement, of the creation or existence of any of the Guaranteed Obligations and of any action by Beneficiary in reliance hereon or in connection herewith; (xv) notice of the entry into any SPA between Company and Beneficiary and of any amendments, supplements or modifications thereto; or any waiver of consent under the SPA, including waivers of the payment and performance of the obligations thereunder; (xvi) notice of any increase, reduction or rearrangement of Company's obligations under the SPA or any extension of time for the payment of any sums due and payable to the Company under the SPA, in either case, including, but not limited to, the Guaranteed Obligations; (xvii) any lack of validity or enforceability of or defect or deficiency applicable to Company in the SPA or any other documents executed in connection therewith; (xviii) the failure to give notice to Guarantor of the occurrence of a default under the SPA, except for the written demand required by the proviso at the end of Section 3(e) hereof; or (xix) the waiver, surrender, compromise, settlement, termination, or release of any or all of the obligations, covenants or agreements of either of them contained in the SPA or this Corporate Guarantee Agreement, as the case may be.

- (d) Reservation of Defenses. Guarantor agrees that except as expressly set forth herein, it will remain bound upon this Guaranty notwithstanding any defenses which, pursuant to the laws of suretyship, would otherwise relieve a guarantor of its obligations under a guarantee. Guarantor does reserve the right to assert defenses which Company may have to payment of any Guaranteed Obligation under the SPA other than defenses arising from the bankruptcy or insolvency of Company and other defenses expressly waived thereby.
- (e) Proceedings Against Guarantor. In the event of a default in the payment of the Guaranteed Obligations when and as the same shall become due, Beneficiary shall have the right to proceed first and directly against Guarantor under this Corporate Guarantee Agreement without proceeding against Company or exhausting any other remedies which it may have; provided that, notwithstanding the foregoing or anything to the contrary contained herein, Beneficiary shall deliver to Guarantor a written demand for payment of all amounts claimed by Beneficiary hereunder, which written demand shall specify in reasonable detail the basis for such demand and shall designate a bank account to which payment shall be made, and Guarantor shall pay such amounts promptly, but no later than three (3) Banking Days after its receipt of such written demand. Furthermore, it shall not be necessary for Beneficiary, in order to enforce payment by Guarantor under this Corporate Guarantee Agreement, to show any proof of Company's default, to exhaust its remedies against Company, any other guarantor, or any other person liable for the payment or performance of the Guaranteed Obligations.
- Subrogation. Guarantor shall be subrogated to all rights of Beneficiary against the Company in respect of any amounts paid by Guarantor pursuant to the Corporate Guarantee Agreement, provided that Guarantor waives any rights it may acquire by way of subrogation under this Corporate Guarantee Agreement, by any payment made hereunder or otherwise, reimbursement, exoneration, contribution, indemnification, or any right to participate in any claim or remedy of Beneficiary against any collateral which Beneficiary now has or acquires, until all of the Guaranteed Obligations shall have been irrevocably paid to Beneficiary in full. If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all the Guaranteed Obligations in default shall not have been paid in full, such amount shall be held in trust for the benefit of Beneficiary and shall forthwith be paid to Beneficiary to be applied to the Guaranteed Obligations. If (i) the Guarantor shall perform and shall make payment to Beneficiary of all or any part of the Guaranteed Obligations and (ii) all the Guaranteed Obligations shall have been paid in full, Beneficiary shall, at the Guarantor's request, execute and deliver to the Guarantor appropriate documents necessary to evidence the transfer by subrogation to the Guarantor of any interest in the Guaranteed Obligations resulting from such payment by Guarantor.



- (g) Costs. Guarantor agrees to pay all reasonable costs, expenses and fees, including without limitation all documented out-of-pocket attorneys' fees, which may be incurred by Beneficiary in enforcing or attempting to enforce this Corporate Guarantee Agreement following any default on the part of Guarantor hereunder, whether the same shall be enforced by suit or otherwise; provided that the Guarantor shall not be liable for any expenses of Beneficiary if it is not successful in such enforcement action.
- (h) Existence of Guarantor, Consolidation, Merger, Sale or Transfer. Guarantor covenants that so long as it has any outstanding obligations under this Corporate Guarantee Agreement, it will maintain its existence, will not dissolve, sell or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it; provided that Guarantor may, without violating the covenants contained in this Section 3(h), consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it, or sell or otherwise transfer to another corporation all or substantially all of its assets as an entirety and thereafter dissolve, if the surviving, resulting or transferee entity, as the case may be, (a) shall be incorporated, organized or formed and existing under the laws of one of the States of the United States of America or any country which is a member of the Organization for Economic Co-operation and Development, (b) assumes, if such corporation or other entity is not Guarantor, all of the obligations of Guarantor hereunder (unless such assumption occurs by operation of law, in which case no express assumption shall be required) and (c) is not, after such transaction, otherwise in default under any provisions hereof.

For the avoidance of doubt, these terms and conditions shall not be applicable to internal corporate reorganizations carried out between the Guarantor and any other company of its group.

#### **SECTION 4. MISCELLANEOUS**

- (a) Governing Law. This Corporate Guarantee Agreement shall be governed by and construed in accordance with the laws of the State of New York (other than any choice of law principles which would apply the laws of another jurisdiction). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Corporate Guarantee Agreement or the transactions contemplated hereby. Each of the parties hereto (a) irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the courts of the State of New York sitting in New York County and of the United States District Court for the Southern District of New York, and any appellate court from any thereof and (b) waives any objection which such party may have to the laying of venue of any suit, action or proceeding in any such court.
- (b) Notices. All notices and other communications to Guarantor or Beneficiary may be electronically communicated or hand delivered or sent by overnight courier, to any party hereto at the addresses as provided in this Section 4(b):

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## All communications intended for Guarantor shall be sent to:

Address: Attention: Telephone:

Fax: Email:

with a copy to Company at:

Address: Attention: Telephone: Fax:

Email:

## All communications intended for Beneficiary shall be sent to:

Address:

Attention:

Telephone:

Fax: Email:

or at any other address of which either of the foregoing (or Guarantor in the case of a change of address for Company) shall have notified the other in any manner prescribed in this Section 4(b).

For all purposes of this Corporate Guarantee Agreement, a notice or communication will be deemed effective:

- (i) if delivered by hand or sent by overnight courier, on the day it is delivered unless (i) that day is not a day upon which commercial banks are open for the transaction of business in the city specified (a "Local Banking Day") in the address for notice provided by the recipient or (ii) if delivered after the close of business on a Local Banking Day, then on the next succeeding Local Banking Day, and
- (ii) if sent by facsimile transmission, on the date transmitted, provided that oral or written confirmation of receipt is obtained by the sender unless the date of transmission and confirmation is not a Local Banking Day, in which case on the next succeeding Local Banking Day.

A copy of a notice or communication will always be sent by email for information purposes but shall not be considered to be effective notification.

(c) <u>Banking Days</u>. Except as otherwise provided in this Corporate Guarantee Agreement, if any date on which a payment is to be made, notice is to be given or other action taken

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hereunder is not a Banking Day, then such payment, notice or other action shall be made, given or taken on the next succeeding Banking Day in such place, and in the case of any payment, no interest shall accrue for the delay.

- (d) Successors and Assigns. This Corporate Guarantee Agreement shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of Beneficiary. Except as provided in Section 3(h) hereof, Guarantor may not assign its obligations hereunder without the prior written consent of Beneficiary. Beneficiary may not assign its rights and obligations hereunder without the prior written consent of Guarantor, except that Beneficiary may, without any prior consent of Guarantor, (i) assign, mortgage or pledge all or any of its rights, interests or benefits hereunder to secure payment, and (ii) assign its right and obligations hereunder to any permitted assignee of the SPA, in any of such cases without any cost for the Guarantor.
- (e) Guarantee for Benefit of Beneficiary. This Corporate Guarantee Agreement is entered into by Guarantor for the benefit of Beneficiary. Nothing contained herein shall be deemed to create any right in, or to be in whole or in part for the benefit of any person other than Guarantor and Beneficiary and their respective successors and assigns.
- (f) <u>Term; Termination</u>. This Corporate Guarantee Agreement shall terminate and be of no further force and effect upon the date when any of the following has occurred first:
  - (i) the date on which the whole amount of Guarantee Limit available pursuant to this Corporate Guarantee Agreement has been received by the Beneficiary; or
  - (ii) full payment or fulfillment of the Guaranteed Obligations and all amounts, if any, owed by Guarantor pursuant to this Corporate Guarantee Agreement; or
  - (iii) the termination of the SPA according to its terms; or
  - (iv) the substitution of this Corporate Guarantee Agreement pursuant to Clause 9.7(d) of the SPA,

provided that (iii) and (iv) above shall be without prejudice to the rights or remedies the Beneficiary has accrued pursuant to Section 3(e) of this Corporate Guarantee Agreement.

- (g) <u>Amendments and Waivers</u>. Any provision of this Corporate Guarantee Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by each of Guarantor and Beneficiary.
- (h) <u>Headings</u>. The article and section headings of this Corporate Guarantee Agreement are for convenience only and shall not affect the construction hereof.
- (i) <u>Partial Invalidity</u>. The invalidity of any one or more phrases, sentences, clauses or sections in this Corporate Guarantee Agreement shall not affect the validity or enforceability of the remaining portions of this Corporate Guarantee Agreement or any part thereof.

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- (j) No Waiver, Remedies. No failure or delay by Beneficiary in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.
- (k) Execution in Several Counterparts. This Corporate Guarantee Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original; but such counterparts shall together constitute but one and the same instrument.
- (l) Confidentiality. Beneficiary shall keep the existence and the terms of this Corporate Guarantee Agreement confidential. Beneficiary shall only disclose the existence of this Corporate Guarantee Agreement to those officers, directors and employees and agents who have a need to know and who agree to keep the existence and terms of this Corporate Guarantee Agreement confidential. Beneficiary shall be responsible for any breach of this confidentiality provision by its officers, directors and employees and agents.
- (m) <u>Limitation by Law</u>. All rights, remedies and powers provided in this Corporate Guarantee Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law and all the provisions of this Corporate Guarantee Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Corporate Guarantee Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

[Remainder of page left blank.]

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IN WITNESS WHEREOF, GUARANTOR has caused this Corporate Guarantee Agreement to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

	[Guarantor]
	Ву:
	Name: Title:
ccepted and Agreed by:	[Beneficiary]
	Ву:
	Name:
	Title:

EXHIBIT F-1(x)

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## EXHIBIT F-2 – FORM OF LETTER OF CREDIT

Date of issuance;	
Letter of Credit No.:	
Issued by:	
[Performance]	

[Beneficiary] [Address]

#### Ladies and Gentlemen:

1. At the request and on behalf of our client [•] (the "Company"), whose main office is located at [insert address], we, [•] (the "Issuing Bank"), establish the present Irrevocable Standby Letter of Credit (the "Letter of Credit"), in favor of [•] (the "Beneficiary"). This Letter of Credit authorizes the Beneficiary to draw against the Issuing Bank, in one or more sight drafts (each, a "Draft"), an aggregate amount of [one hundred million (100,000,000) USD] (the "Fixed Amount"), under the terms and conditions indicated below.

This Letter of Credit is being established pursuant to Clause 9.7 of the LNG SALE AND PURCHASE AGREEMENT dated as of [•], 2018 (the "Execution Date"), by and between Beneficiary, and the Company (the "Contract"). This Letter of Credit may be extended as set forth in paragraph 11 and is subject to automatic termination as set forth in paragraph 7.

2. The Beneficiary may only draw on the funds of this Letter of Credit upon presentation of (i) a Draft attached as Exhibit A, and (ii) an Individual Drawing Certificate attached as Exhibit B (the "Drawing Certificate"). The Beneficiary may draw one or more Drafts for payments due, in conformity with the Contract, beginning at 9:00 a.m. [New York City] time on the date of issuance set forth above and ending at 5:00 p.m. [New York City] time \_\_\_\_\_ [\_\_ days thereafter], unless terminated pursuant to paragraph 7 below. All Drafts shall be drawn against the Issuing Bank and tendered to the same at the address specified herein, and dated on the date of its presentation, in accordance with the terms and conditions of this Letter of Credit. The Drawing Certificate and Draft shall only be signed and completed by a duly authorized representative of the Beneficiary.

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- 3. If, at any time, the Draft or Drawing Certificate presented by the Beneficiary pursuant to the present document does not conform to the terms and conditions of this Letter of Credit, the Issuing Bank shall timely notify the Beneficiary that the intended draw was not executed in conformity with the terms and conditions of this Letter of Credit, indicating the specific reasons for this allegation. The Issuing Bank shall hold the documents at the disposal of the Beneficiary or return the same to the Beneficiary, at the option of the Issuing Bank.
- 4. Upon the presentation by the Beneficiary to the Issuing Bank of the Draft and Drawing Certificate at the office of the Issuing Bank, the Issuing Bank shall pay the lesser of (i) the amount specified in such Draft and Drawing Certificate and (ii) the Fixed Amount of this Letter of Credit, as reduced by any prior drawings hereunder, by wire transfer of immediately available funds to the Beneficiary's account with a financial institution in \_\_\_\_\_\_\_ designated in the Drawing Certificate. If a Draft and accompanying Drawing Certificate are presented by the Beneficiary in conformity with the terms and conditions of the present document by [10:00] a.m., [New York City] time on any Business Day, the payment shall be effected to the account of the Beneficiary in the amount specified, in immediately available funds, by \_\_\_\_ p.m., or if after [10:00] a.m., on the next Business Day by \_\_\_\_\_ p.m., unless the Beneficiary otherwise specifies in writing.
- 5. The term "Business Day", as used herein, shall mean any day except Saturdays, Sundays, or a day on which the banking institutions located in \_\_\_\_\_ are closed due to legal authorization or requirement. Reference to any hour of the day in this Letter of Credit shall mean the official hour in the city of \_\_\_\_\_ on said date.
- 6. In conformity with the present document, a request for payment shall not exceed the Fixed Amount. Any Draft paid by the Issuing Bank in accordance with the present document, shall reduce the Fixed Amount by the amount of such payment.
- 7. This Letter of Credit shall be terminated automatically when any of the following occurs first:
  - (A) the date on which the whole Fixed Amount available pursuant to the present document has been received by the Beneficiary; or
  - (B) the date of expiration of this Letter of Credit set forth in paragraph 2, unless extended pursuant to paragraph 11; or
  - the date specified in a written instrument signed by a duly authorized representative of the Beneficiary in the form attached as <u>Exhibit C</u> (the "<u>Termination Certificate</u>") instructing the Issuing Bank to terminate this Letter of Credit as of such date.

EXHIBIT F-2(ii)

- 8. This Letter of Credit may only be transferred and the rights hereunder, including the right to draw on the Letter of Credit, may only be exercised by a party other than the Beneficiary with the prior written consent of the Company; provided, however, that Beneficiary shall have the right to collaterally assign this Letter of Credit to any lender for collateral security purposes. Any purported transfer in violation of this provision shall be deemed null and void.
- 9. This Letter of Credit together with its Exhibits stipulates, in totality, the terms of the undertaking made by the Issuing Bank, and in no case may they be modified, amended, expanded, or limited on the basis of any document, instrument, or contract indicated herein, or by virtue of the fact that this Letter of Credit is mentioned in any of the aforementioned, or in any instrument relating to this Letter of Credit.
- 10. This Letter of Credit shall be subject to and interpreted in accordance with the Uniform Customs and Practices for Documentary Credits, International Chamber of Commerce, Publication No. 600 ("<u>Uniform Customs</u>"), unless the same are modified herein. For any other matters not contemplated under the Uniform Customs or modified herein, this Letter of Credit shall be subject to and interpreted in accordance with the Laws of [the State of New York, United States of America] (excluding therefrom principles of conflicts of law that would direct the application of the laws of any other jurisdiction).
- 11. This Letter of Credit may be extended at the request of the Company, for the remaining portion, if any, of the Fixed Amount, on the expiration date set forth in paragraph 2 of this Letter of Credit for up to eight (8) consecutive ninety (90) day periods, unless the Issuing Bank notifies the Beneficiary and the Company no later than sixty (60) days prior to any date of expiration, via certified mail or any other method that verifies that the notification has been accomplished, that the Issuing Bank opts not to consider this Letter of Credit as renewed for any additional period. The notification stipulated under this paragraph shall be considered as effectuated when received by the Beneficiary and the Company. Consequently, you may cancel the Letter of Credit provided in your files.
- 12. All bank charges from the Issuing Bank shall be for the account of the Company, whereas other bank charges (if any) shall be for the account of the Beneficiary.

Very truly yours,

[•]

Authorized Signature

EXHIBIT F-2(iii)



## EXHIBIT F2-A

## [FORM OF DRAFT]

Letter of Credit No.
[Date of Draft]

At sight	
PAY TO THE ORDER OF [BENEFICIARY], THE RECEIVED, DRAWN UNDER [NAME OF	
	[BENEFICIARY]
	By: Name: Title:
To: [●]	

[Address of Issuing Bank]

Exhibit F2-A

EXHIBIT F-2(iv)

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## EXHIBIT F2-B

## [FORM OF INDIVIDUAL DRAWING CERTIFICATE]

Reference is made to the Irrevocable Standby Letter of Credit (the "Letter of Credit")
No, dated, issued by [o], in favor of [o] (the "Beneficiary")
capitalized terms used herein and not defined have the respective meanings set forth in the
Letter of Credit or in the Contract (as defined in the Letter of Credit).
The undersigned, being duly authorized to execute this certificate on behalf of Beneficiary, hereby certifies that the Company has failed to pay amounts that are due and owing bursuant to the terms of the Contract and the Beneficiary is entitled to draw on the Letter of Credit under the Contract in the amount indicated.
Payment of [U.S. Dollars] is to be made by the Issuing Bank to the following count:
[insert details for account ]
This certificate has been duly executed by the undersigned as of thealendar day of,
[BENEFICIARY]
By:

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Exhibit F2-B

EXHIBIT F-2(v)

#### **EXHIBIT F2-C**

## [FORM OF TERMINATION CERTIFICATE]

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Exhibit F2-C

EXHIBIT F-2(vi)



## EXHIBIT G-PROFORMA PORT CHARGES

Set forth below is a representative example of port charges. The actual amounts payable will vary based upon the third party invoices for any given delivery of LNG to the receiving facilities.

SERVICE	CHARGE	INVOICE FROM
Ship Agent and Customs Fee		Agent
Tug Escort		Buyer
Tug Reservation Fee		Buyer
Harbor Pilots		Agent
Docking Pilots		Agent
Line Handlers		Agent
Police Escort with Tugs		Agent
TOTAL:		

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#### EXHIBIT H-

#### STANDARDS AND PROCEDURES FOR RECEIVING FACILITIES

- 1. The Seller and Buyer acknowledge that the Receiving Facilities are not built as per today's industry standards. However, comprehensive procedures, training programs, resources, best practices and operation manuals have demonstrated that the Receiving Facilities are operated at an acceptable standard regarding safety and quality, which has been the outcome of the Seller's (with Seller's Transporters) due diligence of the Receiving Facilities as of 20 June 2018.
- 2. The Parties note that the Receiving Facility's lack of state of the art infrastructure has been compensated by the implementation of best practices for operation of the Receiving Facilities. The Parties however agree that in order for the Receiving Facilities to remain acceptable to the Seller throughout the Term of the Agreement, the standards and practices of the Receiving Facilities as of 20 June 2018 must remain materially unaltered. Any major deviation, from the ship-to-shore interface aspects, needs to follow a "Management of Change Process" (MoC), which shall entail the preparation of a risk basis assessment to be presented by the Buyer to the Seller for its comments and review sixty (60) days before any major deviation in order to make sure that the standards and practices at the Receiving Facilities evidenced by Seller's due diligence as of 20 June 2018 remain valid and the vessel operations remain acceptable to the Seller.
- 3. The Parties agree that changes to procedures that shall be subject to communication to and review by Seller shall include but not be limited to the Receiving Facility's:
  - A. "Port Vision 2000 The Port of Boston Partnership For LNG Safety. Policies, Procedures and Guidelines";
  - B. "Everett Marine Terminal Operational Procedures Manual", particularly the procedures related to ship-shore interface;
  - C. "Everett Marine Terminal Emergency Procedures Manual", particularly the procedures related to ship-shore interface;
  - D. "Everett Marine Terminal Safety Standards and Procedures Manual", particularly the procedures related to ship-shore interface;
  - E. "Everett Marine Terminal Maintenance and Procedure Manual", particularly the procedures related to ship-shore interface;
  - F. "Everett Marine Terminal Regulatory Compliance Procedure Manual", particularly the procedures related to ship-shore interface;
  - G. the addition of any procedures not listed herein that affect ship-shore interface.
- 4. The Parties also agree that the Receiving Facilities shall have in place the following procedures during the Term of the Agreement:
  - A. a "Vessel Quick Disconnect and Emergency Departure" procedure also in line with the Emergency shutdown systems set out in CLAUSE 5.1(b)(vii) of the Agreement, which shall be developed and submitted by the Buyer to the Seller and Seller's Transporters prior to the first vessel call and incorporated in the Marine Terminal Manual;
  - B. a formal "Management of Change Assessment" protocol for the transition of the Receiving Facility ownership from Engie to Buyer, which shall be

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provided by the Buyer to the Seller prior to the first vessel call. This protocol shall ensure that all relevant aspects affecting the current practices are taken into account in the change of ownership. In particular, the transfer of the planned maintenance system database, key operational personnel, training, operation management procedures, and all key service providers e.g. tugs, pilots, mooring teams, etc. shall be assessed in the protocol for an efficient transition to ensure no compromise on overall safe operations is made.

[Remainder of page left blank.]