

AIPN MODEL FORM
MASTER
LNG SALE AND PURCHASE AGREEMENT
BETWEEN¹

_____ (1)

AND

_____ (2)

Disclaimer

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¹ Guidance Note: Seller is responsible for transportation.

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EXHIBITS

- Exhibit A -- Form of Confirmation Memorandum
- Exhibit B -- Measurement and Testing Procedures
- Exhibit C1 -- Letter of Credit
- Exhibit C2 -- Guarantee²
- Exhibit D -- Offshore Title Transfer

² Guidance Note: Each Party to provide their own parent company guarantee, if applicable.

This MASTER LNG SALE AND PURCHASE AGREEMENT (“MSA”) is made as of the _____ day of _____, _____ (“**Execution Date**”), between _____, a company existing under the laws of _____ (hereinafter referred to as _____); and _____, a company existing under the laws of _____ (hereinafter referred to as _____). The companies named above, and their respective successors and assignees (if any), may sometimes in this MSA individually be referred to as “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, during the term of this MSA, Seller may have LNG available for sale, and Seller may desire to sell and Buyer may wish to purchase such LNG; and

WHEREAS, the Parties intend that the terms and conditions of this MSA shall apply from the Execution Date, provided that the provisions relating to the sale and purchase of LNG shall only apply if and to the extent that Seller and Buyer execute a Confirmation Memorandum that incorporates the terms and conditions of this MSA.

NOW, THEREFORE, the Parties agree as follows:

I. DEFINITIONS AND INTERPRETATIONS

1.1 Defined Terms

“**Administering Authority**” has the meaning set forth in Section 16.2(b);

“**Adverse Weather Conditions**” means weather and sea conditions which are sufficiently severe either: (i) to prevent an LNG Tanker from proceeding to berth, discharging or departing from berth in accordance with the weather and sea standards prescribed in the published regulations of the applicable maritime agency at the Unloading Port, or (ii) to cause an actual determination by the master of an LNG Tanker that it is unsafe for the LNG Tanker to berth, discharge or depart from berth;

“**Affiliate**” means, in relation to a Party, any Person that is controlled by, under common control with or controls the Party; a Person shall be deemed to have control of another if (directly or indirectly) it owns or has the right to cast votes of greater than fifty percent (50%) of the voting shares or other ownership interests of the other entity;

“**Agreed Interest Rate**” means a rate of interest equal to LIBOR plus ____ () percentage points, which rate of interest shall be compounded on a monthly basis; *provided, however*, that if the aforesaid rate is contrary to any applicable usury Law, the rate of interest to be charged shall be the maximum rate permitted by such applicable Law;

“**Agreement**” means, separately, each of (i) this MSA, and (ii) each Confirmation Memorandum;

“**Allowed Laytime**” has the meaning specified in Section 11.8(a);

“Arrival Period” means the period of time specified in the Confirmation Memorandum within which arrival of the LNG Tanker at the PBS is scheduled;

“Banking Day” means any Day in the relevant country of the Party with a payment obligation, other than a national holiday and any other day on which banks are closed for business. For purposes of this definition, a Party’s relevant country is the country in which that Party’s bank specified in the Confirmation Memorandum is located;³

“Boil-Off Rate” has the meaning set forth in the Confirmation Memorandum;

“BTU” or “Btu” means a British thermal unit, being the amount of heat equal to 1,055.06 joules;

“Buyer” means the Person identified as Buyer in a particular Confirmation Memorandum, provided that such Person is also a Party to this MSA or an Affiliate of a Party to this MSA;

“Buyer Control Entities” means collectively, the following Persons: (a) any owner of Buyer’s Facilities or Operator; (b) any owner or operator of a Connecting Pipeline; (c) any Affiliate of Buyer; and (d) any director, officer or employee of one or more of the foregoing Persons;

“Buyer Group” means Buyer and its Affiliates and their respective directors, officers, and employees, and the successors and assigns of each of the foregoing;

“Buyer Shortfall Quantity” has the meaning set forth in Section 5.2(a);

“Buyer’s Country” means the country in which the Buyer’s Facilities are located;

“Buyer’s Facilities” means: (a) the facilities located at or proximate to the Unloading Port, including port and marine facilities, that are used by Buyer for the fulfillment of its obligations under an Agreement, and that are capable of: (i) berthing an LNG Tanker; (ii) unloading, receiving, storing, treating (if necessary), and regasifying LNG; and (iii) receiving, processing and delivering Natural Gas, and all facilities ancillary to the foregoing, whether or not owned or operated by Buyer; and (b) any Connecting Pipeline;⁴

“Cargo Tolerance” has the meaning set forth in the Confirmation Memorandum;

“Claims” 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 Execution Date, whether or not of a type contemplated by any Party and whether or not based on an any valid Law;

“Confidential Information” has the meaning set forth in Section 19.1;

³ Guidance Note: If Buyer and Seller are from different countries with varying work week and holiday schedules, it is possible that there could be several consecutive days in which a day is not a “Banking Day” in the country of either of the Parties.

⁴ Guidance Note: If the Parties do not wish to include the Connecting Pipeline in the definition of “Buyer’s Facilities,” the Parties may exclude such pipeline in the “Special Conditions” section of the Confirmation Memorandum.

“Confirm Date” means the date so specified in the Confirmation Memorandum;

“Confirmation Memorandum” means each document executed by a Seller and a Buyer substantially in the form contained in Exhibit A and incorporating the provisions of this MSA (as such provisions may be amended, deleted or supplemented by such Confirmation Memorandum), to record the terms and conditions of a particular sale and purchase of LNG;

“Connecting Pipeline” means any pipeline facility connecting any of the facilities described in clause (a) of the definition of “Buyer’s Facilities” to a high pressure national or regional pipeline system for the transportation of Natural Gas, or if no such pipeline system exists, then the pipeline connecting Buyer’s Facilities to Buyer’s primary customers;

“Consequential Loss” means any Loss, regardless of cause, which is not immediately and directly caused by the relevant act or omission; by way of illustration and subject to satisfaction of the standard set forth in the preceding clause the following Losses shall constitute Consequential Losses:

(a) any indirect Loss arising out of any delay, reduction or loss of ability to produce, store, transport, process, deliver, purchase, sell or dispose of LNG, Natural Gas, or any other hydrocarbons;

(b) any indirect Loss associated with business interruption or increased cost of working during business interruption, including the incremental cost of overhead expenses incurred;

(c) any indirect, incidental, special, consequential or punitive damages and penalties of any kind;

(d) any loss or deferment of bargain, contract, expectation, revenues, profits, use or opportunity; and

(e) Claims made or brought by a Third Party for Loss which, had they been suffered by a Party, would have constituted Consequential Losses;

“Contract Price” has the meaning set forth in Article VII;

“Cover Price” means the price as set forth in the Confirmation Memorandum;

“Cover Purchase” has the meaning set forth in Section 5.4(b)(i);

“Cubic Meter” or “**m³**” means the unit of volume equal to a cube with a length of one (1) meter on each edge;

“Day” means a period of twenty-four (24) consecutive hours commencing at 00:00 hours: (i) in the case of obligations related to Buyer’s Facilities, in the time zone in which Buyer’s Unloading Port is located; (ii) in the case of obligations relating to the Loading Port, in the time zone in which the Loading Port is located; and (iii) in any other case where the context so requires, in the time zone relevant to the particular location;

“Delivery Point” means the point at the Unloading Port at which the flange coupling of the LNG receiving line of Buyer’s Facilities connects the flange coupling of the LNG discharging line of the LNG Tanker;

“Demurrage” has the meaning set forth in Section 11.10(a)(i);

“Departure Notice” has the meaning set forth in Section 11.6(a);

“Dispute” means any dispute, controversy, or Claim of any kind or type, whether based on contract, tort, statute, regulation, or otherwise, arising out of, relating to, or connected with an Agreement, or the operations carried out under an Agreement, including any dispute concerning the existence, construction, validity, interpretation, enforceability, performance, breach, or termination of an Agreement, including any dispute as to whether a dispute is properly subject to resolution by arbitration as provided in such Agreement;

“Disputed Amount” has the meaning set forth in Section 8.7(a);

“DOP Liquidated Damages Amount” has the meaning set forth in the Confirmation Memorandum;

“Estimated Time of Arrival” or **“ETA”** means the estimated time of arrival of an LNG Tanker at the PBS;

“Execution Date” means the date first written above;

“Expected Delivery Quantity” means the quantity of LNG, expressed in MMBtu, that Buyer and Seller expect Seller to deliver to Buyer, as specified in the Confirmation Memorandum, applicable to an LNG Cargo;

“Expected LNG Quality” has the meaning specified in Section 11.6(a)(vi);

“Expert” means an independent expert appointed to resolve a Dispute of a technical nature pursuant to Section 16.4;

“Force Majeure” has the meaning set forth in Section 14.1(b);

“Gas Supply Area” has the meaning set forth in the Confirmation Memorandum;

“Governmental Approvals” means all permits, licenses, authorizations, consents, decrees, waivers, privileges, approvals, or exemptions required from any applicable Governmental Authority;

“Governmental Authority” means: (i) any national, regional, state, municipal, local or other government; (ii) any subdivision, agency, commission or authority thereof, including any port authority; and (iii) any quasi-governmental organization, in each case acting within its legal authority; *provided, however*, that any entity identified in this definition may constitute a Governmental Authority for purposes of Section 14 whether or not such entity is acting within its legal authority;

“Gross Heating Value”⁵ means the quantity of heat produced by the complete combustion of one (1) Standard Cubic Foot of anhydrous gas in anhydrous air, and the condensation of all the water formed, with the initial and final temperature and pressure being sixty (60) degrees Fahrenheit and fourteen point six hundred ninety-six (14.696) pounds per square inch absolute, respectively;

“ICC” has the meaning set forth in Section 16.2(a);

“Income Tax” means any tax of general application imposed on net income;

“Independent Surveyor” means the independent expert identified in the Confirmation Memorandum and appointed jointly by the Seller and Buyer to witness the unloading and the calculation of the Quantity Delivered;

“Insured Loss” means any loss of an LNG cargo that is within the scope of the cargo insurance described in paragraph (c) of Exhibit D1, if applicable;

“International Association of Classification Societies” means the non-governmental organization composed of several classification societies established to develop and apply technical standards in relation to the design, construction and survey of marine-related facilities, including ships and offshore structures;

“International Maritime Organization” or **“IMO”** means that agency of the United Nations established in 1948 to promote cooperation among governments and the shipping industry to improve maritime safety and security and to prevent marine pollution from ships;

“International Standards” means the international standards and practices that are both: (a) applicable, as of the Confirm Date, to the ownership, design, equipment, operation and berthing or maintenance of LNG Tankers (in Seller’s case) and Buyer’s Facilities (in Buyer’s case), as established by the International Maritime Organization, the Oil Companies International Marine Forum, the Society of International Gas Tanker and Terminal Operators, or the International Association of Classification Societies (and any successor body for any of the above); and (b) customarily complied with by Reasonable and Prudent Operators of facilities comparable to the LNG tankers or Buyer’s Facilities, as the case may be;

“ISO” means the International Organization for Standardization, a non-governmental organization that develops and promulgates common standards and assists in their worldwide implementation;

“ITF Blue Certificate” means the certificate issued to LNG tankers by the Secretariat of the International Transport Workers’ Federation to signify its acceptance of the wages and working conditions on board such LNG tanker; **[TEH--Please Revise as per the latest Brass Draft]**.

“Late Arriving Cargo” has the meaning set forth in Section 5.5(b);

⁵ Refer to Technical Subcommittee.

“Late Delivery Damages” means Demurrage multiplied by the period of time (measured in Days, or pro rata for partial Days) commencing when an LNG cargo becomes a Late Arriving Cargo pursuant to Section 5.5(b) and ending on the earlier to occur of (x) the time at which cancellation of such Late Arriving Cargo is deemed effective pursuant to paragraph (h) of Exhibit D1, if applicable, or (y) the time at which the Late Arriving Cargo is deemed to be a Late Unloading Cargo pursuant to Section 5.3(b);

“Late Unloading Cargo” has the meaning set forth in Section 5.3(b);

“Law” means any national, state, regional or local constitution, charter, act, treaty, statute, law, ordinance, code, rule, regulation, Governmental Approval, order or other applicable legislative or administrative action of a government or Governmental Authority or a decree, judgment or order of a court;

“Letter of Credit” means a letter of credit in the form attached as Exhibit C1;

“LIBOR” means the rate per annum equal to the one (1) month term, London Interbank Offered Rate for U.S. dollar deposits, as published in London by the Financial Times or if not published therein, then by The Wall Street Journal, applicable on the Banking Day immediately preceding the Day on which payment is due and thereafter on the first Banking Day of each succeeding month.

“LNG” means Natural Gas in a liquid state at or near atmospheric pressure at sea level;

“LNG Cargo” means LNG to be sold by Seller using an LNG Tanker and purchased by Buyer pursuant to a Confirmation Memorandum;

“LNG Heel” means, the amount of LNG actually retained by an LNG Tanker after completion of unloading of the LNG Cargo at the Buyer’s Facilities;

“LNG Tanker” means an ocean going vessel meeting the requirements of Section 11.3 and suitable for transporting LNG, which shall be identified in the applicable Confirmation Memorandum, or alternatively, be approved as a Substitute LNG Tanker in accordance with Section 11.1(c);

“Loading Country” means the country where Seller’s Facilities are located;

“Loading Port” means the port identified in the Confirmation Memorandum as the port where Seller’s Facilities are located;

“Loss” means any and all losses, liabilities, damages, costs, judgments, settlements, and expenses (whether or not resulting from Claims), including interest and penalties with respect thereto and reasonable legal costs and attorneys’ and accountants’ fees and expenses;

“Marine Incident” means any casualty or accident, including any collision, allision, release, discharge, or grounding that occurs during the operation of an LNG Tanker at Buyer’s Facilities or the Unloading Port;

“Marine Services” means such tugs, pilots, or harbor, line handling, mooring or other support services in relation to LNG Tankers required for berthing at, during unloading at, or for departure of LNG Tankers from, Buyer’s Facilities;

“Marine Terminal Liability Regime” means an agreement to be entered into between the owner of Buyer’s Facilities, Operator (on behalf of such owner of Buyer’s Facilities), or an applicable Governmental Authority, and the owner of an LNG Tanker (or the operator or master of such LNG Tanker on behalf of such owner), in respect of the delivery of LNG pursuant to an Agreement, which sets forth the liability between such Persons and remedies for Claims and Losses to each Person and property, directors, officers and employees arising from the performance by such Persons of their duties in connection with such Agreement; the foregoing shall include the Marine Terminal Manual, any conditions of use or other regulatory instruments (whether as agreed by the master of an LNG Tanker or mandatorily applied, and including those applicable by Law) or any portion thereof, that contain such liability provisions;

“Marine Terminal Manual” means the manual issued by Buyer or Operator, in consultation with applicable Governmental Authority where required, that governs the requirements and procedures for operations to be followed by the Buyer’s Facilities and all LNG tankers using Buyer’s Facilities and the Unloading Port, including procedures for the berthing and arrival, unloading, and the departure of LNG Tankers from Buyer’s Facilities and the Unloading Port, including applicable safety and emergency response procedures;

“Master LNG Sale and Purchase Agreement” or **“MSA”** means the provisions of Articles I through XXIII of this instrument, together with the Exhibits attached hereto, but not including an executed Confirmation Memorandum;

“Mitigation Sale” has the meaning set forth in Section 5.2(b);⁶

“MMBtu” means one million (1,000,000) Btu;

“Natural Gas” means any combustible hydrocarbon or mixture of hydrocarbons consisting primarily of methane and including other combustible and non-combustible gases in a gaseous state;

“Nominee” has the meaning set forth in Section 16.2(b);

“Notice of Dispute” has the meaning specified in Section 16.3(a);

“Notice of Readiness” or **“NOR”** has the meaning specified in Section 11.7(a);

“OCIMF” means the “Oil Companies International Marine Forum,” a voluntary association of oil companies having an interest in the shipment and terminalling of crude oil and oil products, the promotion of safety, and the prevention of pollution from tankers and at oil terminals;

“Off-Spec Damages Cap” has the meaning set forth in the Confirmation Memorandum;

⁶ Guidance Note: Use only if Section 5.2(b), Alternative 1 is used.

“Off-Spec LNG” has the meaning set forth in Section 6.1;

“Operator” means the operator of Buyer’s Facilities;

“Party” means (i) with respect to this MSA, the Persons identified in first paragraph hereof, and (ii) with respect to a Confirmation Memorandum, each of Buyer and Seller identified therein;

“PBS” means the customary pilot boarding station at the Unloading 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 Unloading Port;

“Person” means any natural person, corporation, company, partnership (general or limited), limited liability company, business trust, Governmental Authority or other entity or association;

“Port Charges” means fees, imposts or charges imposed for use of any port or marine facility, including all harbor dues, tonnage dues, wharfage charges and charges related to immigration and customs clearance for the LNG Tanker and its crew and harbor master dues, established by a Governmental Authority or other Person having jurisdiction over an LNG Tanker in relation to the Loading Port or the Unloading Port;

“Pricing Month” has the meaning set forth in the Confirmation Memorandum;

“Protection and Indemnity Club” or **“P&I Club”** means an independent, mutual insurance association that is a member of the International Group of P&I Clubs, and which provides liability protection to ship-owners and charterers against third-party liabilities encountered in their commercial operations;

“Provisional Invoice” has the meaning set forth in Section 8.4(a);

“Quality Specifications” has the meaning set forth in Section 6.1;

“Quantity Delivered” means the quantity of LNG, expressed in MMBtu, unloaded from an LNG Tanker at the Delivery Point;

“R/E Period” has the meaning set forth in the Confirmation Memorandum;

“Ready to Discharge” has the meaning set forth in Section 11.6(b)(viii);

“Reasonable and Prudent Operator” means a Person seeking in good faith to perform its contractual obligations and comply with applicable Laws, while exercising that degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator complying with applicable Laws and engaged in the same type of undertaking under the same or similar circumstances and conditions;

“Reasonable Efforts” means efforts by the appropriate Party to meet its applicable obligation but that do not require the performing Party to expend any funds or assume any

liabilities other than expenditures and liabilities reasonable in nature and amount in the context of the action required;

“Related Agreement” means any other agreement between the Parties reasonably related to the performance by either Party of its obligations under the Agreement;

“Resale Price” means the price, per MMBtu, of LNG deemed to be sold by Seller pursuant to Section 5.2(b), as set forth in the Confirmation Memorandum;

“Rules” has the meaning set forth in Section 16.2(a)(i);

“Seller” means the Person identified as Seller in a particular Confirmation Memorandum, provided that such Person is also a Party to this MSA or an Affiliate of a Party to this MSA;

“Seller Control Entities” means collectively, the following Persons: (a) any supplier of Natural Gas to Seller; (b) any owner or operator of the Upstream Facilities; (c) any owner or operator of Seller’s Facilities; (d) Seller’s Transporter; (e) any Affiliate of Seller; and (f) any director, officer or employee of one or more of the foregoing Persons;

“Seller Group” means Seller and its Affiliates and their respective directors, officers, and employees, and the successors and assigns of each of the foregoing;

“Seller’s Facilities” means liquefaction trains and associated liquefaction facilities, Natural Gas inlet facilities, Natural Gas pre-treatment and processing facilities, LNG storage and loading facilities, berthing and marine facilities and other facilities at the Loading Port, including, without limitation, LNG storage tanks, infrastructure and utilities, together with all their associated facilities, whether or not owned or operated by the Seller, at which the LNG to be sold pursuant to an Agreement is produced, stored, transported, and loaded;

“Seller Shortfall Quantity” has the meaning set forth in Section 5.4(a);

“Seller’s Transporter” means any Person who is a registered owner or a disponent owner of any LNG Tanker, or any Person who contracts with the same or with Seller or with any other Person for the purposes of providing or operating any LNG Tanker;

“Senior Executives” means those Persons having decision-making authority for a Party as to any material decisions required in respect of it under an Agreement;

“Ship/Shore Safety Checklist” means the ship/shore safety checklist, which has been approved by the IMO for use by ship and terminal operators, incorporating guidance on completion and an example loading/unloading plan;

“International Gas Tanker and Terminal Operators” or “SIGTTO” means the Society of International Gas Tanker and Terminal Operators, a non-profit company formed to promote high operating standards and best practices in gas tankers and terminals throughout the world, and which provides technical advice and support to its members in technical and operational matters;

“Standard Cubic Foot” or “SCF” means in relation to Natural Gas, the quantity of anhydrous gas which occupies one (1) cubic foot of space at a temperature of sixty (60) degrees Fahrenheit and a pressure of 14.696 pounds per square inch absolute;

“Substitute LNG Tanker” has the meaning set forth in Section 11.1(c);

“Taxes” means any tax, levy, rate, duty, fee, or other charge (other than any Port Charges) imposed directly or indirectly on a Party, its assets, income, dividends, or profits (without regard to the manner of collection or assessment, whether by withholding or otherwise) by any government, Governmental Authority, or other body authorized by Law to impose such tax, levy, rate, duty, fee, or other charge. Without limiting the generality of the foregoing, Taxes includes, Income Tax(es), goods and services taxes, capital gains taxes, property taxes, excise taxes, value-added taxes, or any tax related to environmental effects of exploring for, producing, processing, transporting, storing, supplying, selling, or consuming LNG sold pursuant to an applicable Confirmation Memorandum, including a carbon tax; Taxes also include penalties and interest that may be imposed for underpaying, failing to report, or late filing of returns or reports for any Taxes; [Tom: Check prior emails for Stuart Schaffer’s comments.]

“Third Party” means any Person other than a Party to this MSA and, with respect to a Confirmation Memorandum, any Person other than Seller and Buyer;

“Title Transfer Point” has the meaning set forth in paragraph (a) of Exhibit D1 or Exhibit D2, as applicable;⁷

“TOP Liquidated Damage Amount”⁸ has the meaning set forth in the Confirmation Memorandum;

“UNCITRAL” means the United Nations Commission on International Trade Law;

“Unloading Port” means the port identified in a Confirmation Memorandum where Buyer’s Facilities are located;

“Upstream Facilities” means all facilities for the production, gathering, processing, and delivery of Natural Gas to Seller’s Facilities from the Gas Supply Area, including wells, production platforms, transportation, compression, treatment facilities, and pipelines;

“USD” or “US\$” means the legal currency of the United States of America; and

“Used Laytime” has the meaning specified in Section 11.8(c).

1.2 Interpretation

(a) Words denoting the singular shall have the corresponding meaning when used in the plural and vice versa.

⁷ Guidance Note: Use only if either Exhibit D1 or D2 is selected.

⁸ Guidance Note: Use only if Alternative 2 of Section. 5.2(a) is selected.

- (b) References to any gender include all others if applicable in the context.
- (c) References to “include” or “including” shall not be construed as being by way of limitation.
- (d) References to Articles, Sections, Exhibits, and paragraphs are to Articles, Sections, Exhibits, and paragraphs of an Agreement. The table of contents and headings to Articles, Sections, and Exhibits are inserted for convenience of reference only and shall not affect the construction of this MSA or a Confirmation Memorandum.
- (e) Unless otherwise provided in this MSA, all references to time are to local time at Buyer’s Facilities, and all references to dates and periods of time shall be determined by reference to the Gregorian calendar.
- (f) References to a Party shall include the successors and permitted assigns of that Party.
- (g) References to any statute, ordinance, or other Law shall include all regulations and other instruments thereunder and all consolidations, amendments, re-enactments, or replacements thereof.

1.3 Rounding

Except as otherwise defined, units of measurements and their prefixes shall be based on the metric system in accordance with ISO 1000: 1992 “SI Units and recommendations for the use of their multiples and certain other units.” Rounding shall be made according to ISO310: 1992(E), Annex B, related to rules for rounding of numbers. If the value to be rounded is equally located between two (2) numbers, rounding shall be made to the higher integer number according to ISO 310: 1992(E), Annex B, Rule B.

II. SCOPE

2.1 Requirement for a Confirmation Memorandum

(a) Notwithstanding any provision of this MSA, neither Party shall be under any obligation whatsoever, express or implied, to sell or purchase LNG, and Articles IV - XII and Section 13.2 shall have no effect, unless and until the Parties execute a Confirmation Memorandum with respect to such sale and purchase.

(b) Neither Party shall be under any obligation whatsoever, express or implied, to agree to or execute any Confirmation Memorandum at any time.

(c) In case of any conflict between any of the terms and conditions of this MSA and a particular Confirmation Memorandum, the terms and conditions of the Confirmation Memorandum shall take precedence.

2.2 Rights of Affiliate

Notwithstanding Section 20.1, an Affiliate of a Party to the MSA may execute one or more Confirmation Memoranda incorporating the terms and conditions of this MSA as either Seller or Buyer, *provided, however*, that only the Buyer and Seller shall be bound by the provisions of any such Confirmation Memoranda.

III. TERM

3.1 Term of MSA

SELECT ONE ALTERNATIVE

ALTERNATIVE 1

This MSA shall become effective as of the Execution Date and shall remain in full force and effect until [_____], unless earlier terminated by a Party by written notice pursuant to Section 17.1.

ALTERNATIVE 2

This MSA shall become effective as of the Execution Date and shall remain in full force and effect until terminated by a Party by written notice pursuant to Section 17.1.

3.2 Term of Each Confirmation Memorandum

Each Confirmation Memorandum shall become effective as of the Confirm Date (subject to any conditions precedent contained in the Confirmation Memorandum) and, notwithstanding the earlier termination of the MSA, shall remain in full force and effect, unless earlier terminated in accordance with its terms, until the fulfillment of Buyer's and Seller's respective obligations under the terms and conditions of such Confirmation Memorandum.

3.3 Certain Rights and Remedies

The following provisions, unless pursuant to Section 2.1(a), such provisions are not in effect, shall survive the expiry or termination of an Agreement: 1, 2.1(c), 3.2, 3.3, 8, 9, 10, 13, 15, 16, 17.3, 18.2, 19, 20.2, 21.3, 22.4, 22.6, and 23.1-23.4.

IV. SALE AND PURCHASE

4.1 Seller's and Buyer's Obligation to Sell and Purchase

Seller agrees to sell and make available, and Buyer agrees to purchase, take and pay for, or pay for if not taken, LNG in accordance with the terms and conditions of each Confirmation Memorandum.

4.2 Source of Gas

The Natural Gas to be processed into LNG and sold and purchased under a Confirmation Memorandum shall be produced from the Gas Supply Area; *provided, however*, that the

Confirmation Memorandum may specify that the LNG sold and purchased under such Confirmation Memorandum may be supplied from any source available to Seller other than those sources, if any, specifically prohibited in the Confirmation Memorandum.

OPTIONAL PROVISION

Notwithstanding anything in an Agreement to the contrary, LNG may not be supplied from any source where such supply would be prohibited by applicable Law, including U.S. sanctions Laws (found at and promulgated pursuant to: (a) the Trading With the Enemy Act, 50 U.S.C. § 5; (b) the International Emergency Economic Powers Act, 50 U.S.C. § 1701; and (c) the regulations administered by the United States Office of Foreign Assets Control under 31 C.F.R. Parts 500 - 598).

4.3 Title and Risk of Loss⁹

Unless otherwise specified in a Confirmation Memorandum, delivery of LNG shall be deemed complete, and title to and risk of loss of LNG delivered shall pass from Seller to Buyer, as the LNG passes the Delivery Point.

V. QUANTITIES

5.1 Quantities

Subject to the provisions of this Agreement, the quantity of LNG to be sold and made available by Seller, and purchased, taken and paid for, or paid for if not taken, by Buyer shall be the quantity of LNG specified in each applicable Confirmation Memorandum.

5.2 Buyer's Liability for Shortfall¹⁰

(a) With respect to each LNG Cargo, if Buyer does not take delivery of the quantity of LNG made available by Seller, up to the Expected Delivery Quantity for any reason, other than:

- (i) Force Majeure affecting Buyer, where Buyer notified Seller of such Force Majeure prior to the time at which title to and risk of loss of such LNG Cargo passes from Seller to Buyer;
- (ii) failure of Seller to deliver such quantities, but excluding quantities that Seller is excused from making available due to Buyer's breach of an Agreement; or
- (iii) Buyer refusing to take delivery of all or part of any LNG Cargo by reason of its not complying with the Quality Specifications;

⁹ Guidance Note: Based upon any tax advice received, the Parties may choose to have an alternative risk of loss/title regime govern. In such a case, the Confirmation Memorandum must provide that Exhibit D1, D2, or another alternative, shall apply.

¹⁰ Guidance Note: This MSA includes remedies other than make-up in respect of LNG for which it has paid but not taken. If the Parties wish to include a make-up right, additional provisions will need to be added.

then the amount by which the quantity of LNG made available by Seller exceeds the quantity of LNG taken by Buyer shall constitute a “Buyer Shortfall Quantity.”

- (b) With respect to any Buyer Shortfall Quantity:

SELECT ONE ALTERNATIVE

ALTERNATIVE 1

- (i) Seller shall use Reasonable Efforts to mitigate its Losses resulting from Buyer’s failure to take such Buyer Shortfall Quantity by reselling such LNG (or regasified LNG) to Third Parties (each such sale a “Mitigation Sale”); *provided, however*, that any sale of a quantity of LNG (or regasified LNG) by Seller to Third Parties that Seller was already obligated to make at the earlier to occur of: (x) Buyer’s default, determined pursuant to this Section 5.2; or (y), Buyer’s notice to Seller that it will not take such LNG, shall not constitute a Mitigation Sale;
- (ii) Buyer shall pay to Seller an amount equal to (x) the Contract Price multiplied by (y) the Buyer Shortfall Quantity; and
- (iii) Seller shall credit Buyer with (x) the proceeds from any Mitigation Sale, plus (y) reasonable, verifiable, incremental savings obtained by Seller, including savings related to transportation and Third Party costs avoided, as a result of the Mitigation Sale as opposed to the sale to Buyer, less (z) reasonable, verifiable, incremental costs incurred by Seller (acting as a Reasonable and Prudent Operator) as a result of such Mitigation Sale, including costs related to the transportation, marketing, selling, and delivering such LNG Cargo; *provided, however*, that under no circumstances shall Buyer be entitled to any credit, rebate or offset of any amount in excess of the Expected Delivery Quantity multiplied by the Contract Price applicable to such LNG Cargo on the date of scheduled delivery to Buyer at the Unloading Port.

OPTIONAL PROVISION TO ALTERNATIVE 1

- (iv) If Seller, acting as a Reasonable and Prudent Operator, is unable to make a Mitigation Sale of all of the LNG not taken by Buyer, or if Seller is unable to ascertain or identify a specific cargo that constitutes a Mitigation Sale, then, with respect to the quantity of such LNG that has not been sold through a Mitigation Sale, Seller shall be deemed to have made a Mitigation Sale of such LNG at the Resale Price.

ALTERNATIVE 2

Buyer shall pay to Seller the TOP Liquidated Damage Amount specified in the Confirmation Memorandum multiplied by the Buyer Shortfall Quantity.¹¹

5.3 **Buyer's Late Take**

(a) If an LNG Tanker issues a valid NOR prior to or during the Arrival Period and Buyer issues a notice to the LNG Tanker to proceed to berth prior to or during the Arrival Period, then Seller shall be obligated (without prejudice to the provisions of Section 11.10(a)) to cause the LNG Tanker to proceed to berth upon receipt of such Buyer's notice.

(b) If (x) an LNG Tanker issues a valid NOR prior to or during the Arrival Period for such LNG Cargo and Buyer fails to issue a notice to such LNG Tanker to proceed to berth during the Arrival Period; or (y) Buyer agrees to accept delivery of a Late Arriving Cargo and fails to direct a tanker to proceed to berth within six (6) hours following the estimate provided by Buyer pursuant to Section 5.5(b)(v), such LNG Cargo shall be a "**Late Unloading Cargo**," and the following shall apply:

- (i) Subject to Section 5.3(b)(ii), Buyer will (unless such delay by Buyer in issuing a notice to proceed to berth is attributable to Seller, an LNG Tanker, or Force Majeure) be deemed to have elected not to take such Late Unloading Cargo, in which event Seller may dispose of such Late Unloading Cargo without prejudice to Seller's other rights under the Agreement, including Section 5.2.
- (ii) Buyer may request by written notice to Seller prior to or during the Arrival Period that Seller continue to make available such Late Unloading Cargo. Such request shall indicate a date and time (based on Buyer's reasonable estimate) during the R/E Period on which Buyer anticipates it will be able to complete unloading.
- (iii) If Buyer issues a request pursuant to Section 5.3(b)(ii), Seller shall use Reasonable Efforts to continue to make available such Late Unloading Cargo up to the date and time notified by Buyer, but not to exceed the end of the R/E Period, taking into account, *inter alia*, the following:
 - (A) any shipping constraints Seller may have as a result of such delay;
 - (B) the impact, if any, that delivery of such Late Unloading Cargo will have on the respective abilities of the Seller and Buyer to deliver and accept other cargoes in a timely manner, and the ability of the Seller and Buyer to agree to make appropriate modifications in the scheduled deliveries of other LNG Cargoes, if necessary; and

¹¹ Guidance Note: The TOP Liquidated Damage Amount may be expressed in the Confirmation Memorandum as a percentage of the Contract Price, as a fixed price, or as a combination of both, in each case to be applied per MMBtu of the quantity of LNG that Buyer has failed to take.

- (C) whether such LNG Cargo is anticipated to contain Off-Spec LNG under Section 6.3 at the time of delivery as a result of such delay *provided, however*, that if Buyer agrees to accept Off-Spec LNG in accordance with Section 6.3, Seller shall continue to use Reasonable Efforts to make available such Late Unloading Cargo of Off-Spec LNG, *provided, however*, that in such case, Seller will not be liable to Buyer pursuant to Section 6.3(b) for delivery of such Off-Spec LNG.

Buyer may request an extension to the date and time agreed by Seller pursuant to Section 5.3(b)(v) or, if Seller has not agreed on a date and time, then to the requested date and time specified in Section 5.3(b)(ii), which request shall be treated as a new request for a Late Unloading Cargo and shall be subject to Sections 5.3(b)(ii) and (b)(iii).

- (iv) If Seller determines that it cannot continue to make available such Late Unloading Cargo during the R/E Period pursuant to Buyer's request made pursuant to Section 5.3(b)(ii), then Section 5.3(b)(i) shall apply.
- (v) If Seller determines that it can continue to make available such Late Unloading Cargo pursuant to Buyer's request provided in accordance with Section 5.3(b)(ii), Seller shall, promptly, but in no case later than [____] hours following the receipt of Buyer's request, deliver to Buyer a notice setting forth Seller's good faith reasonable estimate of the Losses that Seller will incur as a result of Seller continuing to make such Late Unloading Cargo available. If Buyer promptly, but in no event later than [____] hours after the receipt of Seller's notice, consents to reimburse Seller for the Losses associated with Seller continuing to make such Late Unloading Cargo available, then (unless the Parties otherwise agree) without prejudice to Seller's other rights, Buyer shall pay to Seller for the period between the end of the Arrival Period and when Buyer issues a notice to the LNG Tanker to proceed to berth:

SELECT ONE ALTERNATIVE

ALTERNATIVE 1

the amount estimated by Seller pursuant to this Section 5.3(b)(v);

ALTERNATIVE 2

the Losses incurred by Seller in continuing to make such LNG Cargo available pursuant to this Section 5.3(b)(v);

ALTERNATIVE 3

the Losses incurred by Seller in continuing to make such LNG Cargo available pursuant to this Section 5.3(b)(v), not to exceed 110% of the amount estimated by Seller pursuant to Section 5.3(b)(v);

provided, however, that if Buyer does not issue a notice to the LNG Tanker to proceed to berth by the date and time notified by Buyer pursuant to Section 5.3(b)(ii) then Section 5.3(b)(i) shall apply.

- (vi) For the purposes of calculating Buyer's liability pursuant to Section 5.3(b)(v), and 5.3(c), Seller shall not include any amounts specified in Section 11.10(a), as such amounts shall apply, if at all, pursuant to the provisions of that section and not this Section 5.3. In the event that Buyer takes a Late Unloading Cargo, Buyer's liability to Seller pursuant to this Section 5.3 shall not exceed the amount that Buyer would owe pursuant to Section 5.2 for failure to take such LNG Cargo.

5.4 Seller's Liability for Shortfall

(a) With respect to each LNG Cargo, if Seller does not make available any quantity of LNG at least equal to the Expected Delivery Quantity less the Cargo Tolerance, for any reason other than:

- (i) Force Majeure affecting Seller; or
- (ii) failure of Buyer to fulfill its obligations under an Agreement, but excluding quantities that Buyer is excused from taking due Seller's breach of the Agreement,

then the amount by which the Expected Delivery Quantity less the Cargo Tolerance exceeds the quantity of LNG (if any) taken by Buyer shall constitute a "Seller Shortfall Quantity."

(b) With respect to any Seller Shortfall Quantity:

SELECT ONE ALTERNATIVE

ALTERNATIVE 1

- (i) Buyer shall use Reasonable Efforts to mitigate its Losses resulting from Seller's failure to make such LNG available by purchasing an equivalent quantity of Natural Gas, LNG, or other fuel from Third Parties not to exceed the Seller Shortfall Quantity (each such purchase a "**Cover Purchase**"); *provided, however*, that any purchase of LNG, Natural Gas or other fuel by Buyer from Third Parties that Buyer was already obligated to make at the earlier to occur of: (x) Seller's default determined pursuant to this Section 5.4, or (y) Seller's notice to Buyer that Seller will not make available the LNG Cargo, shall not constitute a Cover Purchase; and

- (ii) Seller shall pay to Buyer an amount equal to (A) the amount paid by Buyer for any Cover Purchase, plus (B) all reasonable and verifiable incremental costs incurred by Buyer (acting as a Reasonable and Prudent Operator) as a result of such Cover Purchase, including costs related to transportation, terminal fees, and Third Party costs, less (C) all reasonable and verifiable savings obtained by Buyer as a result of the Cover Purchase, including savings related to transportation and Third Party costs avoided; less (D) the Contract Price multiplied by the quantities of Natural Gas, LNG, or other fuel purchased by Buyer through any Cover Purchase; *provided, however*, that Seller's obligation to pay Buyer pursuant to this Section 5.4(a) shall only apply if the result of such calculation is greater than zero.

OPTIONAL PROVISION

If Buyer, acting as a Reasonable and Prudent Operator, is unable to make a Cover Purchase to cover the Seller Shortfall Quantity, or if Buyer is unable to ascertain or identify a specific purchase that constitutes a Cover Purchase, then with respect to the quantity of LNG that Buyer is unable to cover, Buyer shall be deemed to have made a Cover Purchase of such LNG at the Cover Price.

ALTERNATIVE 2

Seller shall pay to Buyer the DOP Liquidated Damage Amount specified in the Confirmation Memorandum multiplied by the Seller Shortfall Quantity.¹²

(c) For the purpose of an Agreement, the obligation of Seller to "make available" to Buyer a specified quantity of LNG (or words of similar import) shall be satisfied if (x) Seller has caused an LNG Tanker containing such quantity of LNG to arrive at the PBS and (i) issues a NOR prior to or during the Arrival Period or (ii) issues a NOR following the end of the Arrival Period, and Buyer has agreed to take a Late Arriving Cargo in accordance with Section 5.5(b)(v); and (y) such LNG complies with the terms and conditions hereof. Except as provided in Section 5.5(b)(i), Section 5.5(b)(iv) and Section 6.3, if Buyer has notified Seller that Buyer will not accept a particular LNG Cargo scheduled for delivery by Seller, then Seller will be deemed to have made available such LNG Cargo.

5.5 Seller's Late Arrival

(a) If an LNG Tanker issues a valid NOR prior to or during the Arrival Period then Buyer shall be obligated (without prejudice to the other provisions of the Agreement) to take such LNG Cargo.

(b) If the LNG Tanker transporting an LNG Cargo: (x) fails to issue a valid NOR prior to or during the Arrival Period; or (y) issues a valid NOR prior to or during the Arrival

¹² Guidance Note: The DOP Liquidated Damage Amount may be expressed in the Confirmation Memorandum as a percentage of the Contract Price, as a fixed price, or as a combination of both, in each case to be applied per MMBtu of the quantity of LNG that Seller has failed to make available to Buyer.

Period, but, for reasons attributable to Seller or the LNG Tanker, fails to be “all fast” at berth within six (6) hours after being instructed to proceed to berth by Buyer or Operator, such LNG Cargo shall be deemed to be a “Late Arriving Cargo,” and the following shall apply:

- (i) Subject to Section 5.5(b)(ii), Seller will be deemed to have elected not to make available such Late Arriving Cargo (unless such delay by the LNG Tanker in issuing an NOR is attributable to Buyer or Force Majeure), in which event, Buyer may, by notice to Seller, refuse to accept such Late Arriving Cargo without compensation to Seller and without prejudice to Buyer’s other rights under the Agreement, including Section 5.4.
- (ii) Seller may request by written notice to Buyer prior to or during the Arrival Period that Buyer attempt to take a Late Arriving Cargo during the R/E Period. Such request shall indicate a date and time (based on Seller’s reasonable estimate) during the R/E Period on which Seller anticipates that it will be able to tender NOR.
- (iii) If Seller issues a notice pursuant to Section 5.5(b)(ii), Buyer shall use Reasonable Efforts to take such Late Arriving Cargo up to the date and time notified by Seller, but not to exceed the end of the R/E Period, taking into account, *inter alia*, the following:
 - (A) the impact, if any, that acceptance of such Late Arriving Cargo will have on the availability to Buyer of sufficient LNG storage capacity at Buyer’s Facilities in order to accept delivery of subsequent LNG deliveries;
 - (B) the impact, if any, that acceptance of such Late Arriving Cargo will have on the Buyer’s and Seller’s respective abilities to deliver and accept other cargoes in a timely manner and the ability of the Buyer and Seller to agree to make appropriate modifications in the scheduled deliveries of other LNG Cargoes, if necessary; and
 - (C) whether such LNG Cargo is anticipated to be Off-Spec LNG under Section 6.3 at the time of delivery as a result of boil-off as a result of such delay.

Seller may request an extension to the date and time agreed by Buyer pursuant to Section 5.5(b)(v) or, if Buyer has not agreed on a date and time, then to the requested date and time specified in Section 5.5(b)(ii), which request shall be treated as a new request for a Late Arriving Cargo and shall be subject to Sections 5.5(b)(ii) and (b)(iii).

- (iv) If Buyer determines that it cannot accept such Late Arriving Cargo during the R/E Period pursuant to Seller’s request provided in accordance with Section 5.5(b)(ii), Section 5.5(b)(i) shall apply.

- (v) If Buyer determines that it can accept such Late Arriving Cargo during the R/E Period pursuant to Seller's request provided in accordance with Section 5.5(b)(ii), Buyer shall promptly, but in no case later than [_____] hours following the receipt of Seller's request, deliver to Seller a notice setting forth Buyer's estimate of the date and time when Buyer will be able to take such Late Arriving Cargo. The notice shall further provide Buyer's good faith reasonable estimate of (A) the delays or limitations on Buyer's ability to complete the unloading of such LNG Cargo (*e.g.*, whether the LNG Cargo will be subject to a slower unloading rate than specified in an Agreement, or whether there will be multiple berthings at Buyer's Facilities), (B) the effect on Buyer's ability to take other scheduled cargoes, and (C) Losses that Buyer will incur as a result of Buyer's taking such late LNG Cargo. If Seller promptly, but in no event later than [_____] hours after the receipt of Buyer's notice, consents to the conditions under which Buyer is able to take such Late Arriving Cargo, Buyer shall promptly issue a notice to the LNG Tanker to proceed to berth and Seller shall pay to Buyer:

(A) for the period of time after the Arrival Period,

SELECT ONE ALTERNATIVE

ALTERNATIVE 1

the amount estimated by Buyer pursuant to this Section 5.5(b)(v);

ALTERNATIVE 2

the Losses incurred by Buyer as a result of taking such Late Arriving Cargo in accordance with this Section 5.5(b)(v);

ALTERNATIVE 3

the Losses incurred by Buyer as a result of taking such Late Arriving Cargo pursuant to this Section 5.5(b)(v), not to exceed 110% of the amount estimated by Buyer in accordance with this Section 5.5(b)(v);

provided, however, that if Seller does not tender NOR by the date and time notified by Buyer pursuant to Section 5.5(b)(v), then Section 5.5(b)(i) shall apply; and *provided further that* any LNG Cargo shall cease to be a Late Arriving Cargo at the time that such LNG Cargo becomes a Late Unloading Cargo, and Seller shall have no further liability for costs incurred by Buyer with respect to a Late Arriving Cargo after such time.

- (vi) For the purposes of calculating Seller's liability pursuant to Section 5.5(b) Buyer shall not include any amounts specified in Section 11.11(b), as such amounts shall apply, if at all, pursuant to the provisions of that section and

not this Section 5.3. In the event that Seller delivers a Late Arriving Cargo, Seller's liability to Buyer pursuant to this Section 5.5 shall not exceed the amount that Seller would owe under Section 5.4 for failure to make available the relevant LNG Cargo.

VI. QUALITY

6.1 Specifications

LNG delivered to Buyer, in its gaseous state, shall comply with the specifications set forth in the Confirmation Memorandum ("**Quality Specifications**"). LNG that fails to satisfy the Quality Specifications shall be referred to as "Off-Spec LNG."

6.2 Determining LNG Quality Specifications

LNG shall be measured as such LNG is unloaded at Buyer's Facilities in accordance with Article XII and Exhibit B to determine whether such LNG complies with the Quality Specifications.

6.3 Off-Spec LNG

(a) If either Seller or Buyer, acting as a Reasonable and Prudent Operator, determines, prior to unloading an LNG Cargo, that the LNG is expected to be Off-Spec LNG upon unloading, such Person shall notify the other Person as soon as practicable, but in no case later than the commencement of unloading of such LNG Cargo, as to the extent of the expected variance, and Seller and Buyer shall discuss such variance and possible mitigating actions, subject to the following:

- (i) Buyer shall use Reasonable Efforts, including coordinating with the Operator, to accept Off-Spec LNG; and
- (ii) as soon as practicable after becoming aware that LNG is expected to be Off-Spec LNG, Buyer shall notify Seller that Buyer either: (A) despite using Reasonable Efforts to accept the LNG Cargo, rejects the LNG Cargo containing such Off-Spec LNG, or (B) subject to Section 6.3(b), is willing to accept all or any of the Off-Spec LNG; *provided, however*, that if the quality of the Off-Spec LNG delivered by Seller is not materially consistent with the expected variance notified by Buyer or Seller pursuant to this Section 6.3(a), upon which expected variance Buyer's decision pursuant to this Section 6.3(a)(ii)(B) is based, then notwithstanding Buyer's initial acceptance of such Off-Spec LNG, Buyer shall be entitled to reject all or part of such Off-Spec LNG in accordance with the provisions of this Section 6.3.

(b) If Buyer determines that it could accept Off-Spec LNG pursuant to Sections 6.3(a)(ii)(B) or 6.3(d), Buyer shall include with its notice issued pursuant to Section 6.3(a)(ii)(B) or 6.3(d), Buyer's good faith estimate of the Losses that Buyer will incur as a result of the receipt and treatment of such Off-Spec LNG. If Seller promptly, but in no case later than twelve (12)

hours after receiving Buyer's notice, consents to reimburse Buyer for Buyer's Losses associated with the delivery of such Off-Spec LNG, Buyer shall accept such Off-Spec LNG, and Seller shall reimburse Buyer for

SELECT ONE ALTERNATIVE

ALTERNATIVE 1

the amount estimated by Buyer pursuant to Section 6.3(b);

ALTERNATIVE 2

the Losses incurred by Buyer as a result of the receipt and treatment of such Off-Spec LNG;

ALTERNATIVE 3

the Losses incurred by Buyer as a result of the receipt and treatment of such Off-Spec LNG; *provided, however*, that Seller's liability to Buyer for such Losses shall not exceed the Off-Spec Damages Cap.

(c) If either Seller or Buyer becomes aware of the existence of Off-Spec LNG only after the commencement of unloading an LNG Cargo or reasonably believes that such Off-Spec LNG exists, such Person shall promptly, but in no event later than [] hours after becoming aware of such Off-Spec LNG, notify the other of such Off-Spec LNG. Either Seller or Buyer may, subject to Section 6.3(a)(i), at any time thereafter, suspend unloading of the Off-Spec LNG concerned. Without prejudice to Buyer's rights pursuant to Section 6.3(a)(ii) and 6.3(d) with respect to 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 Section 6.3(c); *provided, however*, that Seller shall reimburse Buyer for all Losses incurred by Buyer as a result of Buyer's receipt of such Off-Spec LNG, including: (1) the loss in value of any other LNG supplies at Buyer's Facilities (other than the Off-Spec LNG unloaded by Buyer), where such loss in value results from blending such Off-Spec LNG with other LNG supplies at Buyer's Facilities; and (2) all Losses relating to damage caused by such Off-Spec LNG to the Buyer's Facilities.

(d) After becoming aware of the existence of Off-Spec LNG pursuant to Section 6.3(c), Buyer may elect to accept any Off-Spec LNG that has not been unloaded prior to suspension, in which case, Section 6.3(b) shall apply with respect to such Off-Spec LNG; *provided, however*, that if the quality of the Off-Spec LNG delivered by Seller is not materially consistent with the expected variance notified by Buyer or Seller pursuant to Section 6.3(a), upon which expected variance Buyer's decision pursuant to this Section 6.3(d) is based, then notwithstanding Buyer's initial acceptance of such Off-Spec LNG, Buyer shall be entitled to reject all or part of any such Off-Spec LNG that has not been unloaded in accordance with the provisions of this Section 6.3. Buyer shall have no obligation to Seller under Section 5.3 or Section 11.10(a) for any delays associated with unloading such Off-Spec LNG, *provided that* Buyer acted as a Reasonable and Prudent Operator and in accordance with the provisions of this Section 6.

(e) If Buyer, in accordance with this Section 6.3, refuses to take delivery of any Off-Spec LNG, 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 in accordance with Section 5.4. Without prejudice to Seller's obligations to Buyer pursuant to other provisions of an Agreement, Seller shall have the right to deliver such Off-Spec LNG to any Third Party without restriction.

VII. PRICE

The price of LNG ("**Contract Price**") applicable to each LNG Cargo shall be on a per MMBtu basis and shall be as set forth in the Confirmation Memorandum for such LNG Cargo. To the extent the Contract Price includes a reference to a monthly index price, the applicable Contract Price for each LNG Cargo shall be determined with respect to the Pricing Month applicable to such LNG Cargo.

VIII. INVOICES AND PAYMENT

8.1 Delivery Invoices

After completion of unloading of each LNG Cargo delivered pursuant to an Agreement, Seller shall send to Buyer an invoice showing:

- (a) the Gross Heating Value content of the LNG Cargo delivered, expressed in MMBtu, calculated in accordance with the provisions of Article XII and Exhibit B, together with any relevant documents showing the basis for such calculation;
- (b) the Contract Price applicable to such LNG Cargo; and
- (c) the sum due from Buyer in respect of the relevant LNG Cargo, which shall be calculated by multiplying the relevant MMBtu content specified in Section 8.1(a) by the Contract Price specified in Section 8.1(b).

8.2 Statements of LNG Not Taken/Not Made Available/Not Delivered

(a) If Buyer incurs a liability to Seller pursuant to Section 5.2 for failing to take an LNG Cargo, Seller shall, following the later of (x) the end of the Arrival Period for the LNG Cargo, or (y) to the extent that Seller agreed to make available a Late Unloading Cargo pursuant to Section 5.3(b)(v), the expiration of the R/E Period for that LNG Cargo, send to Buyer an invoice and reasonable supporting documentation showing the amount payable by Buyer pursuant to Section 5.2 for Buyer's failure to take such LNG.

(b) If Seller incurs a liability to Buyer pursuant to Section 5.4 for failing to make available an LNG Cargo, Buyer shall, following the later of (x) the end of the Arrival Period for the LNG Cargo, or (y) to the extent that Buyer agreed to take a Late Arriving Cargo pursuant to Section 5.5(b)(v), the expiration of the R/E Period for that LNG Cargo, send to Seller an invoice and reasonable supporting documentation showing the amount payable by Seller pursuant to Section 5.4 for Seller's failure to make available such LNG.

8.3 Other Invoices

In the event that any sums are due from Seller or Buyer to the other, other than for reasons addressed in Sections 8.1 or 8.2, the Person to whom such sums are owed shall furnish to the other an invoice therefore describing in reasonable detail the basis for such invoice and providing relevant documents supporting the calculation thereof. The procedure set forth in Section 8.5(b) for settlement of an invoice shall be followed.

8.4 Provisional Invoices

(a) In the event of (i) the inability of Seller to obtain from Buyer the quantity of MMBtus of LNG delivered to Buyer within three (3) Days after making an LNG Cargo available to Buyer (including the results of sampling and analysis in accordance with Section 4 of Exhibit B), or to have a representative present in accordance with Section 1(a) of Exhibit B; or (ii) the unavailability of any other relevant information necessary to compute an invoice in accordance with Section 8.1, Seller may issue a provisional invoice (“**Provisional Invoice**”) in an amount calculated based on the Expected Delivery Quantity. A Provisional Invoice shall be deemed to be an invoice issued pursuant to Section 8.1 for the purposes of the payment obligations of Buyer, and shall be subject to subsequent adjustment in accordance with Section 8.4(b).

(b) If Seller issues a Provisional Invoice, Seller shall issue a final invoice reflecting any credit or debit, as applicable, to the Provisional Invoice as soon as reasonably practicable after (x) notifications have been received by Seller of the results of sampling, analysis and quantity determination in accordance with Section 12.3 and Sections 4 and 5 of Exhibit B, if the Provisional Invoice was issued as a result of Section 8.4(a)(i); or (y) the information necessary to compute the payment has been obtained by Seller, if the Provisional Invoice was issued as a result of Section 8.4(a)(ii). Seller and Buyer shall settle such debit or credit amount, as the case may be, when payment of the next invoice is due pursuant to Section 8.5(a), or upon the termination of the Agreement, if earlier. No interest shall be due with respect to such final invoice so long as the final invoice is timely settled in accordance with this Section 8.4(b). If such final invoice is not so settled, Seller or Buyer (as applicable) shall pay interest on the unpaid amount in accordance with Section 8.8.

8.5 Payment Due Dates

(a) The due date for payment of each invoice delivered pursuant to Section 8.1 or 8.2 shall be as set forth in the Confirmation Memorandum.

(b) The due date for payment of each invoice delivered pursuant to Section 8.3 shall, subject to any netting pursuant to Section 8.10, be within thirty (30) Days after receipt of such invoice.

(c) If the due date for any invoice as set forth in Section 8.5(a) or Section 8.5(b) is not a Banking Day, then such invoice shall be due on the next Banking Day.

8.6 Payment Method and Currency

Payment shall be pursuant to the instructions set forth in the relevant Confirmation Memorandum.

8.7 Disputed Invoices

(a) If any portion or all of any amount in any invoice is disputed (the “**Disputed Amount**”) by Seller or Buyer, the Person that is obligated to pay such amount shall immediately notify the other of the reasons for such dispute and shall pay the:

SELECT ONE ALTERNATIVE

ALTERNATIVE 1

full amount invoiced on or before the due date for payment, and the Seller and Buyer shall seek to settle the Disputed Amount in accordance with Section 16.2;

ALTERNATIVE 2

undisputed amount due under such invoice, on or before the due date for payment, and the Seller and Buyer shall seek to settle the Disputed Amount in accordance with Section 16.2;

ALTERNATIVE 3

undisputed amount due under such invoice, on or before the due date for payment and shall deposit the Disputed Amount in an interest bearing escrow account to be mutually agreed to between the Seller and Buyer until such dispute is resolved in accordance with Section 16.2;

provided, however, that in the case of manifest error, the correct amount shall be paid disregarding such manifest error, and any necessary correction and consequent adjustment shall be made within five (5) Banking Days after agreement on or determination of the correct amount.

- (b) The Seller and Buyer shall endeavor to resolve any Disputed Amount as quickly as possible, and any adjustments, necessary to reconcile the resolution of the Disputed Amount with the amount actually paid, shall be paid within [____ (___)] Days following resolution of the Disputed Amount.
- (c) All such adjustments, whether for over payment or under payment, shall bear interest in accordance with Section 8.8.
- (d) Seller and Buyer shall promptly discuss any disputed invoice in good faith; *provided, however*, that either Seller or Buyer may refer such Disputed Invoice to binding arbitration in accordance with Section 16.2 at any time following sixty

(60) Days after delivery of written notice by either Seller or Buyer questioning the correctness of such invoice in accordance with this Section 8.7.

- (e) Except with respect to Section 8.7(f), any invoice may be contested only if, within a period of three hundred sixty-five (365) Days after its receipt thereof, the Person receiving the invoice serves notice to the other questioning the correctness of such invoice. If no such notice is served, the invoice shall be deemed correct and accepted by both Seller and Buyer.
- (f) Any errors found in an invoice that are caused by the inaccuracy of any measuring or analyzing equipment or device shall be corrected in accordance with Section 12.2(b) and shall be settled in the same manner as is set out above in this Section 8.7.

8.8 Late Payment and Refunds

(a) If either Seller or Buyer fails to pay any sum as and when due hereunder, it shall pay interest thereon to the other at the Agreed Interest Rate on and from the Day when payment was due until the Day of payment. If Seller or Buyer receives payment of a sum subsequently determined not to have been payable hereunder, the recipient of such over-payment shall pay interest on the amount of over-payment at the Agreed Interest Rate on and from the Day when such sum was originally paid until the date of its repayment. Interest shall accrue from day to day and be calculated on the basis of a three hundred sixty (360) Day year.

(b) Taking into account the time zones and Banking Days applicable in the countries in which Buyer's and Seller's banks are located, transfer of funds to or from Buyer's or Seller's bank, as the case may be, effected before the close of business of the bank of the Person to whom such funds are to be transferred on or before the due date of any invoice, shall be deemed timely payment, notwithstanding that the bank receiving the transfer may not have been able to credit such transfer as immediately available funds by reason of such different time zones or Banking Days.

OPTIONAL PROVISION

(c) If Seller or Buyer makes a payment to an escrow account pursuant to Section 8.7 Alternative 3, then any interest accruing in such account shall be for the benefit of the Person to which such amount is owed.

8.9 Access To Information

(a) Seller and Buyer shall each have the right, with reasonable notice, to examine during normal business hours each other's books, records and charts to the extent necessary to verify the accuracy of any invoice, charge or computation made pursuant to this Article VIII; *provided, however* that such books, records and charts, or any microfilm or computer record thereof, need not be preserved for more than three hundred sixty-five (365) Days from the date of the recording, unless they relate to an outstanding Dispute, in which event they shall be maintained until three hundred sixty-five (365) Days following final resolution of such Dispute.

If such examination establishes any inaccuracy in any billing theretofore made, the necessary adjustments in such billing and payments shall be made promptly

SELECT ONE ALTERNATIVE

ALTERNATIVE 1:

without any interest charge.

ALTERNATIVE 2:

with interest at the Agreed Interest Rate.

8.10 Netting of Invoices

SELECT ONE ALTERNATIVE

ALTERNATIVE 1

Subject to Section 8.7, all amounts due under each invoice shall be paid in full without netting or offsetting.

ALTERNATIVE 2

Subject to Section 8.7, the Seller and Buyer shall net all amounts due and owing, and/or past due, arising under a single Confirmation Memorandum, such that the Person owing the greater amount shall make a single payment of the net amount to the other in accordance with this Article VIII; *provided, however*, that any credit support required pursuant to the terms of Article IX shall not be subject to netting under this Section 8.10.

ALTERNATIVE 3

Subject to Section 8.7, the Seller and Buyer shall net all amounts due and owing, and/or past due, arising under one or more Confirmation Memoranda entered into by such Seller and Buyer, such that the Person owing the greater amount shall make a single payment of the net amount to the other in accordance with this Article VIII; *provided, however*, that any credit support required pursuant to the terms of Article IX shall not be subject to netting under this Section 8.10.

IX. CREDIT SUPPORT

9.1 Credit Support - Buyer

No later than the date specified in each Confirmation Memorandum, Buyer shall provide to Seller credit support in the form described in such Confirmation Memorandum executed to support the performance of Buyer's obligations under the Agreement, if any.

9.2 Credit Support – Seller

No later than the date specified in each Confirmation Memorandum, Seller shall provide to Buyer credit support, in the form described in such Confirmation Memorandum executed to support the performance of Seller's obligations under the Agreement, if any.

X. TAXES, DUTIES AND CHARGES¹³

10.1 Seller's Tax Obligations

(a) Seller shall pay, indemnify, defend, and hold harmless Buyer against and from, or shall reimburse Buyer for payments made by Buyer with respect to, all Taxes levied or imposed on Buyer by any Governmental Authority of or in any country (other than Taxes imposed by any Governmental Authority of or in Buyer's Country) arising from or in connection with the following: (1) the sale, purchase, loading, transportation, storage, import, export, or delivery of LNG sold or to be sold under an Agreement or in respect of the LNG itself or its ownership (including any Taxes which may be imposed as a result of the license described in paragraph (b) of Exhibit D1 or Exhibit D2, if applicable), and any receipts, revenues, profits, or income resulting therefrom; (2) payments made by Buyer to Seller under an Agreement; (3) income resulting from payments made by Seller to Buyer pursuant to paragraphs (d)(i) (in the case of Force Majeure affecting Seller), (ii), or (iv) of Exhibit D1, if applicable, paragraph (d) of Exhibit D2, if applicable, and Section 11.11; (4) the assignment by Seller to any Person (including an Affiliate of Seller) of an Agreement or any of Seller's rights or obligations under such Agreement; and (5) income resulting from payments made by Seller to any Governmental Authority of or in the Loading Country or any transit country pursuant to this Section 10.1(a). All payments made by Seller under or in connection with an Agreement shall be made without set-off or counterclaim, free and clear of and without deduction or withholdings for or on account of such Taxes. If Seller is compelled to make payment subject to any such Taxes, Seller shall pay such additional amount as is necessary to ensure receipt by Buyer of the full amount due.

(b) Except in the case of Taxes described in Section 10.1(a)(4), no indemnity or reimbursement under Section 10.1(a) relating to Taxes shall be provided or paid by Seller to Buyer for any Taxes payable by Buyer resulting from (i) any activity of Buyer which does not directly relate to the performance by Buyer of its obligations under an Agreement or (ii) the existence or establishment of a permanent presence, office, fixed place of business, nexus, or other connection between Buyer (or any Affiliate or agent of Buyer) and the taxing jurisdiction except by reason of (x) the delivery or transportation of LNG under an Agreement, and (y) the receipt of payments under an Agreement.

(c) In the event Seller has notified Buyer in writing on a timely basis and in reasonable detail of any reasonable certification, documentation, or other reporting requirements of any Governmental Authority that may levy or impose Taxes which require any action by Buyer in order to reduce or avoid Taxes, or if Seller reasonably relies on any material information with respect to Taxes provided by Buyer at Seller's request but which later proves to be materially incorrect, Seller shall not be obligated to indemnify or hold harmless Buyer from

¹³ The AIPN LNG committee will need tax review and advice on Art. XII.

any such Taxes that are levied or imposed solely by reason of the failure by Buyer to comply with such requirements.

10.2 Buyer's Tax Obligations

(a) Buyer shall pay, indemnify, defend, and hold harmless Seller against and from, or shall reimburse Seller for payments made by Seller with respect to, all Taxes levied or imposed on Seller, Seller's Transporter or the LNG Tankers by any Governmental Authority of or in Buyer's Country arising from or in connection with the following: (1) the sale, purchase, unloading, transportation, storage, import, export or delivery of LNG sold or to be sold under an Agreement or in respect of the LNG itself or its ownership (including any Taxes which may be imposed as a result of the license described in paragraph (b) of Exhibit D1 or Exhibit D2, if applicable), and any receipts, revenues, profits, or income resulting therefrom; (2) payments made by Buyer to Seller under an Agreement; (3) income resulting from payments made by Seller to Buyer pursuant to paragraphs (d)(i) (in the case of Force Majeure affecting Buyer) or (iii) of Exhibit D1, if applicable; (4) the assignment by Buyer to any Person (including an Affiliate of Buyer) of an Agreement or any of Buyer's rights or obligations under such Agreement; and (5) income resulting from payments made by Buyer to any Governmental Authority of or in Buyer's Country pursuant to this Section 10.2(a). All payments made by Buyer under or in connection with an Agreement shall be made without set-off or counterclaim, free and clear of and without deduction or withholdings for or on account of such Taxes. If Buyer is compelled to make payment subject to any such Taxes, Buyer shall pay such additional amount as is necessary to ensure receipt by Seller of the full amount due.

OPTIONAL PROVISION

The foregoing obligations shall not apply to Taxes imposed by Section 887 of the United States Internal Revenue Code of 1986, as amended.

(b) Except in the case of Taxes described in Section 10.2(a)(4) no indemnity or reimbursement under Section 10.2(a) relating to Taxes shall be provided or paid by Buyer to Seller for any Taxes payable by Seller resulting from (i) any activity of Seller which does not directly relate to the performance by Seller of its obligations under an Agreement or (ii) the existence or establishment of a permanent presence, office, fixed place of business, nexus, or other connection between Seller (or any Affiliate or agent of Seller) and the taxing jurisdiction except by reason of (x) the delivery or transportation of LNG under an Agreement, and (y) the receipt of payments under an Agreement.

(c) In the event Buyer has notified Seller in writing on a timely basis and in reasonable detail of any reasonable certification, documentation, or other reporting requirements of any Governmental Authority that may levy or impose Taxes which require any action by Seller in order to reduce or avoid Taxes, or if Buyer reasonably relies on any material information with respect to Taxes provided by Seller at Buyer's request but which later proves to be materially incorrect, Buyer shall not be obligated to indemnify or hold harmless Seller from any such Taxes that are levied or imposed solely by reason of the failure by Seller to comply with any such requirements or by reason of Buyer's reasonable reliance on that information.

10.3 Tax Refunds

Where any payment has been made under Section 10.1 or 10.2 and the recipient of such payment actually receives 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 a part of that payment equal to the amount of the refund effectively received or enjoyed, less any actual, veritable, incremental costs incurred in obtaining the refund, and less any Taxes levied or leviable in respect of that refund. Where the recipient is entitled to a refund in respect of the Taxes which gave rise to the right to the payment, the recipient shall use Reasonable Efforts to apply for and secure such refund.

10.4 Procedure for Payment of Taxes

Where either Buyer or Seller becomes aware of a potential or actual liability to make any payment of Taxes which might give rise to a claim under Section 10.1 or 10.2, it shall give notice of the circumstances to the other as soon as reasonably practicable, in order to allow both Buyer and Seller reasonable opportunity to seek to minimize their liability for such Taxes, acting always in compliance with the applicable Laws of the relevant country and give such assistance as is reasonable in the circumstances to the other in doing so.

XI. TRANSPORTATION AND UNLOADING¹⁴

11.1 Transportation by Seller

(a) Seller shall be responsible, at its expense, for the providing or procuring of transportation from the Loading Port to the Unloading Port of all LNG Cargoes sold and made available under each Confirmation Memorandum.

(b) Buyer reserves the right, at its expense, to inspect and approve LNG Tanker(s) specified in the Confirmation Memorandum (or a Substitute LNG Tanker notified pursuant to Section 11.1(c)) to satisfy itself, without in any way assuming or reducing any of Seller's obligations, that each such LNG Tanker is capable of delivering the LNG Cargoes safely and in an environmentally sound and timely manner, such approval not to be unreasonably withheld.

(c) Although Seller is not obligated to do so, Seller may use a substitute LNG tanker ("**Substitute LNG Tanker**") of similar cargo capacity to the LNG Tanker specified in the Confirmation Memorandum, if necessary. Seller shall not use such a Substitute LNG Tanker until Buyer has approved the use of such Substitute LNG Tanker (such approval shall not be unreasonably withheld). An approved Substitute LNG Tanker shall be included within the definition of "LNG Tanker" for all purposes hereof. The use of any Substitute LNG Tanker shall not change the Expected Delivery Quantity, unless the Confirmation Memorandum is amended accordingly.

11.2 Unloading Port

¹⁴ Refer to technical subcommittee.

(a) Buyer, at no cost to Seller, shall ensure that Buyer's Facilities shall be in all respects compatible with the LNG Tanker(s) specifications set forth in the applicable Confirmation Memorandum with respect to the LNG Cargo(es) identified therein. Buyer and Seller shall co-operate to ensure such compatibility. Buyer's Facilities shall be of appropriate design and sufficient capacity to enable Buyer to perform its obligations to take the quantities of LNG that Buyer is obligated to purchase, and to store and regasify the same, all in accordance with an Agreement, and shall include, without limitation, the following:

- (i) berthing facilities that comply with International Standards at which such LNG Tanker can safely reach and safely depart, fully laden, and at which such LNG Tanker can lie safely berthed and discharge safely afloat at all times;
- (ii) unloading facilities capable of receiving LNG at a rate that shall permit the full discharge of an LNG Cargo from a fully loaded LNG Tanker at a rate of no less than 11,000 cubic meters per hour;
- (iii) a vapor line system of sufficient capacity to transfer to an LNG Tanker quantities of regasified LNG necessary for the safe unloading of LNG at such rates, pressures and temperatures as may be required by either or both of such LNG Tanker's design or good operating practice;
- (iv) facilities allowing access to the LNG Tanker(s) from the terminal (but not warehousing facilities) adequate for handling and delivery to the LNG Tanker(s) of ship's stores, provisions and spare parts, together with necessary assistance and support for such handling and delivery, and a suitable gangway, barge, or launch for personnel access;
- (v) LNG storage tanks (whether onshore, offshore, or floating) of adequate capacity to accept the LNG Cargo upon arrival of the LNG Tanker;
- (vi) appropriate systems for necessary email, facsimile, telephone and radio communications with the LNG Tanker(s);
- (vii) LNG regasification facilities;
- (viii) shore-based tanks and loading lines for liquid or gaseous nitrogen adequate to purge the unloading lines of Buyer's Facilities; and
- (ix) emergency shut-down systems.

(b) Buyer's Facilities shall not be modified in any manner whatsoever that would render them incompatible with any LNG Tanker that has been accepted by Buyer for deliveries

to Buyer's Facilities under a Confirmation Memorandum with respect to the LNG Cargo(es) identified therein; *provided, however*, that:¹⁵

- (i) Buyer's Facilities may be modified pursuant to a change in International Standards or any change in Law with which Buyer's Facilities are required to comply, in which case such modifications necessary for Buyer's Facilities shall be paid for by Buyer;
- (ii) any modification of an LNG Tanker required, in consequence of any modification of Buyer's Facilities contemplated in Section 11.2(b)(i), to maintain compatibility with Buyer's Facilities, shall be paid for by Seller (unless the applicable change in Law was a change in the Law of Buyer's Country and such change mandated standards beyond those recommended by International Standards, in which case Buyer shall pay for such modifications to the LNG Tanker);
- (iii) Buyer's Facilities may be modified by Buyer, at Buyer's sole expense, in respect of any change not described in Section 11.2(b)(i), *provided, however*, that Buyer shall reimburse Seller for all reasonable costs and expenses incurred by Seller in modifying an LNG Tanker previously accepted by Buyer for deliveries to Buyer's Facilities under a Confirmation Memorandum to maintain compatibility with Buyer's Facilities as so modified;
- (iv) Buyer shall notify Seller promptly of any proposed modification to Buyer's Facilities if such modifications will affect the compatibility of Buyer's Facilities with any LNG Tanker scheduled to deliver one or more LNG Cargoes to the Unloading Port under a Confirmation Memorandum. If any modification to Buyer's Facilities in accordance with Sections 11.2(b)(i) or (iii) would require the modification of an LNG Tanker in order for Seller to perform its obligations hereunder, Seller may elect, within five (5) Days of receiving notice from Buyer of the proposed modification to Buyer's Facilities, to cancel delivery of any LNG Cargo(es) scheduled to be delivered by an LNG Tanker that would require modification, provided that prior to canceling such LNG Cargo(es), Seller shall use Reasonable Efforts to utilize a Substitute LNG Tanker that is compatible with Buyer's Facilities (as modified) to deliver the affected

¹⁵ Guidance Note: The Committee recognizes that modifications to LNG Tankers and Buyer's Facilities are unlikely to occur during the tenor a Confirmation Memorandum. Nonetheless, if such modifications do occur, the general principle set forth in Sections 11.2(b) and 11.3(b) is that each Party carries their own costs unless a modification is required in order to conform with a modification made by the other Party that is either not required by Law or is required by Law that is not consistent with International Standards. Recognizing that Parties to a short-term agreement may not wish to modify their facilities in order to conform with modifications made by the other Party to its facilities, Section 11.2(b) and Section 11.3(b) allow a Party in such circumstance to cancel the Confirmation Memorandum without liability. Sections 11.2(b) and 11.3(b) also allow a Party to terminate a Confirmation Memorandum to avoid modifying its own facility in order to comply with a change in Law or International Standards applicable to that Party or its facility, provided that such Party pays take-or-pay or deliver-or-pay damages as specified by the Agreement.

LNG Cargo(es). Neither Seller nor Buyer shall incur any liability to the other Party as a consequence of Seller's cancellation of such LNG Cargoes;

- (v) If as a consequence of any modification to Buyer's Facilities, Buyer would have to reimburse Seller for any modifications to the LNG Tanker(s) pursuant to Section 11.2(b)(ii) or (iii), Buyer may elect, upon five (5) Days notice, to cancel the LNG Cargo(es) affected, in which case Buyer shall be liable to Seller pursuant to Section 5.2 for failure to take such cancelled LNG Cargo(es).

(c) Prior to execution of any Confirmation Memorandum, Buyer shall provide to Seller a copy of the Marine Terminal Manual then in effect. Seller shall either comply with such Marine Terminal Manual, or shall obtain a waiver of such from the Buyer or Operator, as applicable (such waiver may be obtained before or after execution of the applicable Confirmation Memorandum).

11.3 LNG Tankers

(a) Seller shall ensure that, with respect to the LNG Cargo(es) identified in the Confirmation Memorandum, each LNG Tanker shall at all times be:

- (i) of a maximum and minimum gross volumetric capacity as set forth in the Confirmation Memorandum;
- (ii) equipped with appropriate systems for communication with the Unloading Port and Buyer's Facilities, including all ship-shore communication systems normally required for the discharge of LNG;
- (iii) entered for insurance with a P&I Club, including pollution liability standard for LNG tankers, and carrying an ITF Blue Certificate;
- (iv) equipped with adequate facilities for mooring, unmooring and handling LNG;
- (v) constructed and maintained in accordance with the rules and regulations of, and maintained in class with, a member of the International Association of Classification Societies that has prior experience in classifying LNG tankers, and in compliance with applicable Laws;
- (vi) operated in compliance with International Standards and applicable Laws of the country of vessel registry, including those that relate to seaworthiness, design, safety, environmental protection, navigation, and other operational matters, and all permits and approvals from Governmental Authorities for LNG tankers that are required for the transportation and discharge of LNG at the Delivery Point;

- (vii) manned with skilled and competent operators, officers and crew who (A) are suitably qualified, trained and experienced in international LNG tanker operations and qualified to a minimum of International Maritime Organization standards, (B) are able to communicate with regulatory authorities and operators at the Buyer's Facilities in written and spoken English, and (C) have subscribed to a policy, reasonably acceptable to Buyer, precluding the use of drugs or alcohol aboard an LNG Tanker; and
- (viii) operated in accordance with a plan that is consistent with the IMO's Ship/Shore Safety Checklist for discharging LNG and which has been agreed in writing with Buyer before the commencement of unloading operations.

(b) Once an LNG Tanker has been accepted by Buyer for the transportation of LNG pursuant to a Confirmation Memorandum, such LNG Tanker shall not continue to deliver LNG pursuant to such Confirmation Memorandum if such LNG Tanker is modified in any manner whatsoever that would render it not in conformity with the specifications set forth in such Confirmation Memorandum; *provided, however*, that:¹⁶

- (i) such LNG Tanker may be modified pursuant to a change in International Standards or in order for such LNG Tanker to retain its classification or comply with its registration requirements, or pursuant to any change in Law with which such LNG Tanker is required to comply, in which case such modification necessary for such LNG Tanker shall be paid for by Seller (unless the applicable change in Law was a change in the Law of Buyer's Country and such change mandated standards beyond those recommended by International Standards, in which case Buyer shall Pay for such modifications to the LNG Tanker);
- (ii) any modification to Buyer's Facilities that is required, in consequence of a modification to an LNG Tanker contemplated in 11.3(b)(i) shall be paid for by Buyer, unless the applicable change in Law both (A) is a change in Law other than a change in the Law of Buyer's Country referred to in Section 11.3(b)(i), and (B) mandates standards beyond those recommended by International Standards, in which case Seller shall pay for such modifications to Buyer's Facilities;
- (iii) The LNG Tanker(s) may be modified, at Seller's sole expense, in respect of any change not described in Section 11.3(b)(i), *provided, however*, that Seller shall reimburse Buyer for all reasonable costs and expenses incurred by Buyer due to any resulting modification to Buyer's Facilities that are necessary to maintain compatibility with the LNG Tanker(s) as so modified;

¹⁶ Guidance Note: See Guidance Note to Section 11.2(b).

- (iv) Seller shall notify Buyer promptly of any required or planned modification of an LNG Tanker that will affect the compatibility of the LNG Tanker with Buyer's Facilities. If any modification to an LNG Tanker in accordance with Section 11.3(b)(i) or (iii) (other than a modification required by a change in Law of Buyer's Country that mandates standards beyond those recommended by International Standards) would require the modification of Buyer's Facilities for Buyer to perform its obligations hereunder, Buyer may elect, within five (5) Days of receiving notice from Seller of the modification to the LNG Tanker(s), to cancel delivery of any LNG Cargo(es) scheduled to be delivered to Buyer's Facilities by such modified LNG Tanker(s), such cancellation effective upon receipt of such notice; *provided, however*, if Seller gives notice within five (5) Days after receipt of Buyer's notice of cancellation that Seller can utilize one or more Substitute LNG Tankers to deliver the relevant LNG Cargo(es), such LNG Cargo(es) shall not be cancelled. If any change in Law of Buyer's Country would require the modification to an LNG Tanker for Seller to perform its obligations hereunder, Seller may elect, upon five (5) Days notice, to cancel any LNG Cargo(es) scheduled for delivery by an LNG Tanker that would require modification; *provided, however*, that prior to canceling such LNG Cargo(es), Seller shall use Reasonable Efforts to utilize a Substitute LNG Tanker that would not require modification to deliver such LNG Cargo(es). Neither Seller nor Buyer shall incur any liability to the other Party as a consequence of a cancellation of any LNG Cargo(es) pursuant to this Section 11.3(b)(iv).
- (v) If (A) an LNG Tanker must be modified for any reason other than a change in Law of Buyer's country, or (B) as a consequence of any modification to any LNG Tanker, Seller would have to reimburse Buyer for any modification to Buyer's Facilities pursuant to Section 11.3(b)(ii) or (iii), Seller may elect to cancel, upon five (5) Days notice, the LNG Cargo(es) affected by such modifications, in which case Seller shall be liable to Buyer pursuant to Section 5.4 for failure to make available the cancelled LNG Cargo(es).

11.4 Obligations of Buyer and Seller at the Unloading Port

(a) Seller shall berth the LNG Tanker or cause it to be berthed as safely and expeditiously as reasonably possible in accordance with all requirements prescribed by the Marine Terminal Manual and in cooperation with Buyer. Buyer shall cooperate to commence unloading or cause it to be commenced upon completion of berthing and complete unloading or cause it to be completed safely and as expeditiously as reasonably possible and in accordance with all requirements prescribed by the Marine Terminal Manual

(b) During discharge of each LNG Cargo, Buyer shall return to the LNG Tanker Natural Gas in such quantities as are necessary for the safe unloading of the LNG at such rates, pressures and temperatures as may be required by the LNG Tanker.

(c) Seller shall cause the LNG Tanker to depart as safely and expeditiously as reasonably possible from the berth after completion of unloading in accordance with all requirements prescribed by the Marine Terminal Manual and in cooperation with Buyer.

(d) If any problem occurs or is foreseen to occur which will or may cause delay to the LNG Tanker in berthing, loading, unloading, or departing berth, Seller and Buyer shall discuss such problem in good faith and shall use Reasonable Efforts to minimize or to avoid the delay. Buyer and Seller shall cooperate with each other to find countermeasures to minimize or avoid the occurrence of any similar delay in the future.

11.5 Marine Services and Port Charges

(a) Buyer shall ensure that Marine Services are available at the Unloading Port and that Seller shall be able to contract for such Marine Services on reasonable terms and conditions. Marine Services shall be employed by Seller and Seller shall pay for Marine Services required for delivery of LNG by each LNG Tanker.

(b) Seller shall pay all Port Charges that are incurred in connection with delivery of LNG by each LNG Tanker; *provided however*, that such Port Charges, if imposed by Buyer, an Affiliate of Buyer, or Operator, shall be imposed on a non-discriminatory basis with respect to other similar users of the Unloading Port.

11.6 LNG Tanker Arrival Notices

(a) As soon as reasonably practicable but no later than eight (8) hours after the LNG Tanker's departure from the Loading Port, Seller shall give notice to Buyer of the following (the **"Departure Notice"**):

- (i) the name of the LNG Tanker;
- (ii) the ETA of the LNG Tanker;
- (iii) details of any operational deficiencies in the LNG Tanker that may affect its operations at the Unloading Port or at the Buyer's Facilities;
- (iv) the quantity of LNG loaded at Seller's Facilities;
- (v) the quantity of LNG that Seller expects to be available for unloading at the Buyer's Facilities;
- (vi) the quality composition of such LNG Cargo as loaded, and the qualities that Seller reasonably anticipates that such LNG Cargo will possess at unloading, the later being the **"Expected LNG Quality"**; and
- (vii) such other information as Buyer may reasonably require.

Seller or the master of the LNG Tanker shall inform Buyer as soon as practicable of any material change in any of the foregoing.

(b) In addition to the Departure Notice, Seller or the master of the LNG Tanker shall send to Buyer the following written notices confirming the ETA of an LNG Tanker (or updating the ETA with respect to any change in the ETA equal to or greater than six (6) hours), and such other information as set forth below or as Buyer may reasonably require:

- (i) *first*, one hundred and twenty (120) hours prior to the ETA specified in the notice required by Section 11.6(a), unless such LNG Tanker's loaded voyage is less than one hundred and twenty (120) hours;
- (ii) *second*, ninety-six (96) hours prior to the most recently notified ETA, which notice shall include a crew list of LNG Tanker personnel unless such LNG Tanker's loaded voyage is less than ninety-six (96) hours;
- (iii) *third*, seventy-two (72) hours prior to the most recently notified ETA (which notice shall include a crew list of LNG Tanker's personnel to the extent a notice was not required to be given under Section 11.6(b)(ii) above);
- (iv) *fourth*, forty-eight (48) hours prior to the most recently notified ETA, which notice shall also include the following information:
 - (A) a list of services the LNG Tanker has scheduled while at the Unloading Port and the scheduled date and time of such services (such as bunkering, stores, waste removal, or other services from another vessel alongside the LNG Tanker while at the Unloading Port); and
 - (B) a visitor list for personnel boarding the LNG Tanker from the berth at the Buyer's Facilities;
- (v) *fifth*, twenty-four (24) hours prior to the most recently notified ETA;
- (vi) *sixth*, [____()] hours prior to the most recently notified ETA;
- (vii) *seventh*, NOR as provided in Section 13.7; and
- (viii) *eighth*, notice of **"Ready to Discharge"** to be issued as soon as the LNG Tanker is all fast at berth.

(c) In addition to the foregoing, Seller shall give such other notices and supply such other information as may be from time to time required by any applicable Law.¹⁷

11.7 Notice of Readiness and Berthing Priority

¹⁷ Guidance Note: If specific ports require additional or different notices, then such notices should be specified in the Confirmation Memorandum.

(a) Upon arrival of the LNG Tanker at the PBS, the master of the LNG Tanker or its agent shall give notice to Buyer that such LNG Tanker is fit in every way and ready to discharge LNG (“**Notice of Readiness**” or “**NOR**”). A NOR may be tendered and shall be accepted by Buyer on any Day of the week and any hour of the Day. The NOR shall become effective:

- (i) In the event that the LNG Tanker tenders its NOR prior to the end of the Arrival Period, at the later of (A) the time such LNG Tanker tenders its NOR or (B) the start of such LNG Tanker’s Arrival Period; *provided, however,* that if such LNG Tanker tenders its NOR, berths at the Buyer’s Facilities, and initiates commencement of unloading prior to the start of its Arrival Period, the NOR shall be deemed to have become effective when the LNG Tanker is all fast at such berth; or
- (ii) In the event that the LNG Tanker tenders its NOR after the end of the Arrival Period, at such time (if ever) that Buyer provides notice to Seller in accordance with Section 11.7(b) that the LNG Tanker may proceed to the berth; *provided, however,* if subsequent to the LNG Tanker tendering NOR, a Late Arriving Cargo is deemed to become a Late Unloading Cargo, then NOR is deemed effective at earlier to occur of (x) such time as such LNG Cargo is deemed to be a Late Unloading Cargo, or (y) Buyer provides notice to Seller that the LNG Tanker may proceed to berth.

(b) Subject to the applicable rules of any Governmental Authority and those set forth in the Marine Terminal Manual and decisions taken by pilots with respect to the berthing of LNG tankers, in determining the berthing sequence, upon receipt of Seller’s NOR, Buyer shall provide Seller with notice to proceed to berth, subject to the following assigned berthing priority:

- (i) *first*, to LNG tankers arriving within the Arrival Period, and as between such LNG tankers, to the LNG tanker whose Arrival Period is the first to occur; and
- (ii) *second*, to LNG tankers arriving prior to the commencement of the Arrival Period or after the end of the Arrival Period, and as between such LNG tankers, on a “first come, first served” basis.

Subject to the foregoing paragraphs of this Section 11.7(b), Buyer shall use Reasonable Efforts to berth as soon as practicable an LNG Tanker that arrives prior to the Arrival Period; *provided, however,* that Buyer shall have no obligation to berth such LNG Tanker prior to the commencement of the Arrival Period to the extent that such obligation would affect the ability of other LNG tankers arriving within their arrival periods to proceed to berth.

(c) Notwithstanding the foregoing provisions of this Section, Buyer may refuse to allow the LNG Tanker to proceed to berth if, acting as a Reasonable and Prudent Operator, Buyer determines that the berthing of the LNG Tanker would affect the safe operations of the Buyer’s Facilities.

(d) If Operator does not follow the normal industry practice of “first come, first served” with respect to LNG tankers, each of which arrives at the Unloading Port not on schedule:

- (i) Seller shall be relieved of any liability to Buyer for any of Buyer’s incremental costs in respect of a Late Arriving Cargo for the period of delay in the berthing of Seller’s LNG Tanker resulting from Operator’s decision to allow any other LNG Tanker not on schedule to berth prior to Seller’s LNG Tanker; and
- (ii) Buyer shall compensate Seller for Demurrage (LNG Tanker rate per day) and excess boil-off that results from Operator’s decision to allow any other LNG Tanker not on schedule to berth prior to Seller’s LNG Tanker in the same manner as set forth, respectively, in Sections 11.10(a)(i) and 11.10(a)(ii).

11.8 Laytime

(a) “**Allowed Laytime**” shall mean the allotted unloading laytime as set forth in the Confirmation Memorandum.

(b) The Allowed Laytime shall be extended for a period of time as reasonably required to overcome delays in the unloading of the LNG Cargo due to any of the following:

- (i) reasons attributable to Seller, the LNG Tanker, the master, crew, owner or operator of such LNG Tanker, or any provider of Marine Services or other services for which the LNG Tanker or Seller is responsible;
- (ii) reasons attributable to a Governmental Authority (including without limitation Government Authority-mandated repairs to an LNG Tanker at the berth) except where the reason for the delay was within Buyer’s or Operator’s reasonable control;
- (iii) Force Majeure;
- (iv) nighttime transit or berthing restrictions notified by Buyer in advance that actually delay the LNG Tanker from proceeding to berth or berthing immediately following NOR;
- (v) vessel traffic within the approach channel of the Unloading Port;
- (vi) Adverse Weather Conditions affecting Buyer’s Facilities or the Unloading Port;
- (vii) occupancy of the berth by a previous LNG Tanker of Seller or another LNG tanker where that occupancy is due to reasons attributable to Force Majeure or Adverse Weather Conditions; and

- (viii) delays associated with limited tidal windows for the approach channels to an Unloading Port (if any) but solely to the extent that such tidal windows actually delay the LNG Tanker from proceeding to berth immediately following NOR.

(c) **“Used Laytime”** shall mean the period of time, stated in hours, which commences and ends as hereinafter specified:

- (i) Used Laytime commences at the time that the NOR is effective pursuant to Section 11.7.
- (ii) Used Laytime shall end when all discharge and return lines have been disconnected and the LNG Tanker’s master has received all necessary clearances to depart from the Unloading Port.
- (iii) Reasonable actual transit time, taking into consideration current conditions in the approach channel of the Unloading Port and the size of the LNG Tanker, to move the LNG Tanker from the PBS (upon receipt of Buyer’s authorization to proceed to berth) to all fast shall not count as Used Laytime, but any time following the effectiveness of NOR in which the LNG Tanker (A) waits for Buyer or Operator to provide notice to proceed to berth, or (B) is delayed in transit from the PBS to the berth, shall count as Used Laytime.

11.9 Requirement to Leave Berth

(a) Upon receiving notice to proceed to berth, an LNG Tanker shall proceed to berth and become all fast, initiate commencement of unloading, achieve completion of unloading, and shall use Reasonable Efforts, acting as a Reasonable and Prudent Operator, to vacate the berth promptly following disconnecting of the LNG unloading arms and emptying of deck piping. Under certain limited circumstances, as detailed below, Buyer may direct an LNG Tanker to leave the berth after becoming all fast, prior to initiating commencement of unloading or prior to achieving completion of unloading (and completion of necessary pre-departure activities). In so exercising its discretion, Buyer shall not require an LNG Tanker to vacate the berth so long as either: (i) allowing the LNG Tanker to remain at berth will not be detrimental to the operations at the Buyer’s Facilities (including the scheduled arrivals of other LNG tankers), or (ii) it is not safe for the LNG Tanker to leave the berth. Prior to directing an LNG Tanker to leave the berth, Buyer shall use Reasonable Efforts to allow the LNG Tanker to remain at the berth. Subject to the foregoing, Buyer may direct the LNG Tanker to vacate the berth and proceed to sea under any of the following circumstances, provided that if any of (i)-(iii) below apply, the event described therein is caused by the action or inaction of Seller, Seller’s Transporter, or the LNG Tanker:

- (i) an LNG Tanker is not ready for unloading or commencement of unloading is not expected to start within six (6) hours;
- (ii) the unloading process is interrupted for more than six (6) hours;

- (iii) completion of unloading (and completion of necessary pre-departure activities) of the LNG Tanker has not been achieved nor can reasonably be expected to be achieved within the Allowed Laytime; or
- (iv) in the opinion of Operator, the LNG Tanker presents an unacceptable health, safety, environmental or operational risk.

(b) When an LNG Tanker which has not been allowed to berth (or which has vacated the berth and proceeded to sea under Section 11.9(a)) is ready for unloading, Seller shall, if Seller desires the LNG Tanker to return to the berth, notify Buyer by tendering NOR (which supersedes any previous NOR), in which case the provisions of Sections 11.7 and 11.10 shall apply and a new Allowed Laytime shall commence.

11.10 Unloading Delay

(a) Except as otherwise provided in Section 5.2 or Section 5.3, the remedies provided in this Section shall be Seller's sole and exclusive remedy in respect of any delay by Buyer or Operator in berthing and unloading an LNG Tanker. Seller shall invoice Buyer for any boil-off or demurrage due under this Section 11.10 in accordance with Section 8.3, and Buyer shall pay such invoice in accordance with Section 8.5(b).

- (i) If Used Laytime exceeds Allowed Laytime (as the same may be extended in accordance with Section 11.8(b)), then for the period of time that Used Laytime exceeds Allowed Laytime, Buyer shall pay to Seller, as liquidated damages, demurrage, at a daily rate (pro-rata for any portion of a day) set forth in the Confirmation Memorandum ("**Demurrage**") until the earlier of: (A) the end of Buyer's Used Laytime, or (B) such time at which Buyer is deemed to have failed to take LNG pursuant to Section 5.3.
- (ii) If (x) the LNG Tanker tenders its NOR prior to or during the Arrival Period and is delayed in berthing or commencement of unloading (including a delay pending notification by Buyer that it will not take an LNG Cargo for reasons that are not excused under an Agreement), or if unloading is interrupted, in each case, for reasons that would not result in an extension of Allowed Laytime under Section 11.8(b), and (y) as a result thereof, the commencement of unloading is delayed beyond the effective time of the NOR by an amount of time which, when added to the amount of time of any interruptions in unloading, exceeds twenty-four (24) hours, Buyer shall pay Seller an amount, on account of excess boil-off, equal to (A) the Contract Price, per MMBtu, applicable to the relevant LNG Cargo, *multiplied* by (B) the Boil-Off Rate applicable to such LNG Cargo, as set forth in the Confirmation Memorandum, *multiplied* by (C) the amount, in hours, by which (1) the period of time between the effective time of the NOR and the commencement of unloading of such LNG Tanker (as increased by any period of time following such commencement of unloading during which unloading has stopped), exceeds (2) twenty-four (24) hours; *provided, however*, that if Buyer ultimately incurs liability

pursuant to Section 5.2 with respect to such LNG Cargo, Buyer shall be relieved of any obligation to pay Seller pursuant to this Section 11.10(a).

(b) If the Gross Heating Value of LNG to be made available by Seller hereunder is higher than the specifications set forth in the Confirmation Memorandum by reason of boil-off occurring during a delay in unloading an LNG Tanker of more than forty eight (48) hours after NOR is effective, such LNG shall be deemed to have met the Quality Specifications in accordance with Section 6.1 as set forth in the applicable Confirmation Memorandum regarding Gross Heating Value.

11.11 Vessel Not Ready for Unloading; Excess Berth Occupancy by Seller

(a) The remedies provided in this Section shall be Buyer's sole and exclusive remedy for Seller's excess berth occupancy. Buyer shall invoice Seller for any boil-off or Demurrage due under this Section in accordance with Section 8.3, and Seller shall pay such invoice in accordance with Section 8.5(b).

(b) If, for reasons attributable to Seller or the LNG Tanker, (x) an LNG Tanker delays in vacating the berth after unloading ends and return lines have been finally disconnected and the LNG Tanker is cleared by Operator for departure, and (y) as a result of the unavailability of the berth, Buyer makes a payment to any Third Party for demurrage or for excess boil-off with respect to another LNG tanker, Seller shall pay to Buyer, as liquidated damages:

SELECT ONE ALTERNATIVE

ALTERNATIVE ONE

- (i) an excess berth occupancy charge equal to a daily rate (pro rata for any portion of a day), the amount of which shall be determined by multiplying Demurrage by the ratio of (A) the capacity (in tons of displacement) of the LNG tanker(s) of any other supplier(s) to whom Buyer owes demurrage charges as a result of the excess berth occupancy, divided (B) by the capacity (in tons of displacement) of the LNG Tanker; *provided, however*, that such excess berth occupancy charge shall not exceed the maximum amount actually paid by Buyer to such other supplier(s); and
- (ii) an amount equal to the excess boil-off charges paid by Buyer with respect to the LNG tanker(s) of any other supplier whose arrival at the Buyer's Facilities is delayed as a result of the excess berth occupancy; *provided, however* that such excess boil-off charges payable by Seller may not exceed the payments by Buyer to Seller that would apply for equivalent excess boil-off caused by Buyer, as provided in Section 11.10(a)(ii).

ALTERNATIVE 2

the demurrage and excess boil-off charges paid by Buyer with respect to the vessels of any other supplier whose arrival at the Buyer's Facilities is delayed as a result of the excess berth occupancy.

11.12 Tanker Operations at Berth

None of the LNG Tankers shall engage in or cause any repairs, other than minor housekeeping repairs that do not materially affect the operation of such LNG Tanker, to be made while at the berth; *provided, however*, that upon written notice and explanation to Buyer, an LNG Tanker may make repairs which an applicable Governmental Authority requires to be made in order for such LNG Tanker to leave the berth.

OPTIONAL PROVISION

11.13 Diversions¹⁸

(a) Buyer may request that Seller deliver an LNG Cargo to any discharge port that is not the Unloading Port (“Diversions Destination”). Seller shall deliver such LNG Cargo to the Diversions Destination if each of the following conditions are satisfied:

- (i) Buyer provides written notice to Seller of such request no later than as follows:
 - (1) If the LNG Tanker, transiting at its normal cruising speed and with full consideration for safe and secure operations at all times, can complete the round-trip to the Diversions Destination and return to the LNG Tanker’s next scheduled destination (whether for loading, maintenance, inspection, unloading of a remaining partial cargo, or otherwise) without the LNG Tanker incurring additional time compared to the previously scheduled time for completing the round-trip to the original Unloading Port (“Closer Diversions”), then Buyer shall provide such notice to Seller no less than [__] hours prior to the time at which the LNG Tanker has passed the first point at which the relevant LNG Tanker would be required to revise its original course in order to transit directly to the Diversions Destination.
 - (2) In all cases that do not qualify as a Closer Diversions, Buyer shall provide such notice to Seller no less than [__] days prior to completion of loading of the LNG Tanker.
- (ii) In the case that Section 11.13(a)(i)(2) applies, then Seller shall have determined, in its sole discretion, that Seller has sufficient shipping capacity to deliver such LNG Cargo to the Diversions Destination and still be capable of returning to the LNG Tanker’s next scheduled destination in a timely manner.
- (iii) Buyer warrants that the Diversions Destination complies with the requirements of Sections 11.2(a) and 11.2(b) *mutatis mutandis* and Buyer

¹⁸ Guidance Note: Optional Section 11.13 allows Buyer to divert an LNG Cargo to another destination upon the fulfillment of certain specified conditions. These conditions are intended to ensure that Seller is in no worse position than Seller would have been if the diversion did not occur and to require that the Parties have agreed on a mechanism for sharing any incremental profit realized by Buyer as a result of such diversion.

shall provide Seller a reasonable opportunity to conduct due diligence regarding the Diversion Destination and its compliance with such provisions; *provided, however*, that Seller's conducting of such due diligence, or not conducting such due diligence, shall in neither event diminish or mitigate in any way the warranty provided by Buyer pursuant to this Section 11.13(a)(iii).

- (iv) Buyer has provided Seller with a copy of the Marine Terminal Manual for such Diversion Destination, in accordance with Section 11.2(c).
- (v) The Parties have agreed on a profit sharing mechanism or other price revision by no later than the applicable deadline for notice set forth in Section 11.13(a)(1) that:

1. Compensates Seller for all of its reasonable incremental costs actually incurred as a result of Seller undertaking to deliver the LNG Cargo to the Diversion Destination. Such costs may include incremental voyage costs, demurrage (hire) charges (up to the maximum daily amount set forth in the Confirmation Memorandum), excess berth occupancy charges, delay penalties, Marine Services charges, Port Charges, and Taxes (except for any Taxes attributable solely to the existence of an office or other fixed facility of Seller in any jurisdiction other than its principal place of business if Seller does not provide notice to Buyer of such office or fixed facility within [] hours following Buyer's delivery of notice requesting such diversion), net of Seller's reasonable incremental transportation savings realized by Seller as a result of Seller undertaking to deliver the LNG Cargo to the Diversion Destination, as such costs and savings are determined by Seller in its reasonable discretion and notified to Buyer within [] days after receipt of Buyer's diversion request notice; and

2. Allocates the incremental profit (after taking into account all incremental costs and transportation savings pursuant to Section 11.13(a)(v)(1)) realized by Buyer as a result of Seller delivering the LNG Cargo to the Diversion Destination between Buyer and Seller in a commercially reasonable manner.

(b) Seller shall promptly, but in no event later than [] hours following the deadline specified in Section 11.13(a)(i)(1), if applicable, or [] days following the deadline specified in Section 11.13(a)(i)(2), if applicable, provide notice to Buyer as to whether the foregoing requirements have been satisfied, and whether Buyer's diversion request is approved. Upon delivery of such notice by Seller confirming that Buyer's diversion request has been approved, the Diversion Destination shall thereafter be considered the Unloading Port for all purposes with respect to that LNG Cargo. The provisions of Section 8.9 shall apply to any calculations regarding incremental cost, transportation savings, and profit sharing mechanisms pursuant to this Section 11.13.

XII. MEASUREMENT AND TESTING OF LNG AND VAPORIZED LNG¹⁹

12.1 Measurement of Quantity of LNG Received from LNG Tankers

Measurement and testing shall be conducted in accordance with Exhibit B.

12.2 Verification of Accuracy

(a) Accuracy of devices used shall be tested and verified at the request of either Seller or Buyer, including the request by Seller or Buyer to verify accuracy of its own devices. Seller and Buyer shall each have the right to inspect at any time the measurement devices installed by the other; *provided, however* that the other is notified in advance. Buyer shall notify Seller of tests of Buyer's measurement devices requested by other suppliers, and may notify other suppliers of such tests requested by Seller. Testing shall be performed only when both Seller and Buyer are represented, or have received adequate advance notice thereof, using methods recommended by the manufacturer or any other recognized method mutually agreed to by Buyer and Seller. At the request of Seller or Buyer, any test shall be witnessed and verified by an Independent Surveyor mutually agreed upon by Seller and Buyer. If, after notice, Seller or Buyer fails to have a representative present, the results of the test shall nevertheless be considered accurate until the next test. Permissible tolerances shall be as defined herein or as defined in the applicable standards referenced herein.

(b) If, at the time of verification, a measuring instrument used for measuring the quality or quantity of LNG being unloaded at the Unloading Point is found to result in errors of one half percent (0.5%) or less of the energy being measured, such equipment's previous measurements shall be considered accurate and such equipment shall be adjusted forthwith as necessary. If, at the time of verification, a measuring instrument is found to result in errors of more than one half percent (0.5%) of the energy being measured, such equipment's previous measurements shall be brought to a zero (0) difference by comparison with calibration results for any period known definitively or agreed to have been affected by such error, and the calculation made during said period shall be corrected accordingly. In the event that the period during which such error occurred is not definitively known or agreed upon, corrections shall be made for the energy transferred during the last half of the period elapsed since the date of the last calibration.

(c) All costs and expenses for testing and verifying Buyer's measurement devices shall be borne by Buyer, and all costs and expenses for testing and verifying an LNG Tanker's measurement devices shall be borne by Seller, except that if Seller or Buyer requests a test and is not the owner of or responsible for the measurement device being tested, then the requestor shall bear the expense of tests (including the cost of the Independent Surveyor, if requested pursuant to Section 12.2(a)) if the inaccuracy is found to result in errors of one-half percent (0.5%) or less of the energy being measured.

12.3 Notice to Seller

¹⁹ Refer to Technical Subcommittee.

Within three (3) Days after completion of unloading of an LNG Cargo, Buyer shall send to Seller a report of the results of the measurements performed pursuant to Exhibit B.

12.4 Preservation of Records

Seller and Buyer shall each preserve for a period of at least [three hundred sixty-five (365) Days] all test data, charts, and other similar records relating to the equipment referred to in Exhibit B.

12.5 Independent Surveyor

Buyer and Seller shall mutually agree on the selection of the Independent Surveyor, and each shall equally bear the fees and charges of the Independent Surveyor, except in the circumstances described in Section 12.2(c).

XIII. LIABILITIES AND INDEMNIFICATION

13.1 Limitation on Liability²⁰

(a) Neither Party shall be liable for any Consequential Loss suffered or incurred by the other Party arising out of, in connection with or resulting from an Agreement, regardless of whether such Consequential Loss is based on tort (including negligence), strict liability, contract (including breach of or failure to perform such Agreement or the breach of any representation or warranty hereunder, whether express or implied) or otherwise. The foregoing limitation shall not apply to and shall in no way limit the liability of either Party for any remedy expressly provided under an Agreement.²¹

(b) Unless otherwise specified in an Agreement, any remedies provided for in an Agreement shall be several and cumulative. The remedies expressly provided in an Agreement shall be the sole and exclusive remedies of the Parties for liabilities to one another, and each Party waives any Claim against the other Party, whether any such Claim is based in contract (including breach or failure to perform such Agreement or the breach of any representation or warranty hereunder, whether express or implied), tort (including negligence), strict liability, or otherwise, in respect of any action or inaction for which a remedy is expressly provided in an Agreement.

(c) Where a remedy is not expressly provided for in an Agreement, subject to Section 13.1(a), each Party may bring any Claim in respect of any action or inaction arising out of or in connection with such Agreement.

²⁰ Guidance Note: This Section 13.1 prohibits the recovery of Consequential Losses. The Parties may wish to consider specifying that Consequential Losses are recoverable under certain circumstances, such as when Seller delivers Off-Spec LNG without prior notice to Buyer (§6.3(c)), or with respect to the indemnities provided in Article 10 (Taxes) and Section 22.6 (Business Practices).

²¹ Guidance Note: The Parties should carefully consider the exclusion of Consequential Losses. The carve-out may not be enforceable in certain jurisdictions if the claim arises from the willful misconduct or fraud of a Party. Note also that the definition of “Consequential Losses” in the Agreement includes lost profits, which may be a “direct damage” under the laws of certain jurisdictions.

(d) The Parties agree that it would be impracticable to determine accurately the extent of the Loss that would result from the circumstances described in Sections 5.2(b), 5.4(b), 11.10(a) and 11.11(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 Sections, and there shall be no additional liability as a result of any such circumstances. Each amount described in or determined by the provisions of Sections 5.2(b), 5.4(b), 11.10(a) and 11.11(b) are intended to represent a genuine pre-estimate by the Parties as to the Loss likely to be suffered in each such circumstance. Each Party hereby waives any right to claim or assert, in any arbitration or Expert determination pursuant to Article XVI or in any other action with respect to this Agreement, that any of the exclusive remedies set forth in Sections 5.2(b), 5.4(b), 11.10(a) and 11.11(b) do not represent a genuine pre-estimate as to the Loss likely to be suffered by the recipient of the payment or benefit in each such circumstance.

13.2 Port and Marine Facilities Liability

(a) Without prejudice to any liability that may arise or be imposed pursuant to the Marine Terminal Liability Regime or other agreement referenced in Section 13.2(c), Seller releases Buyer Group from liability to Seller incident to all Claims and Losses, brought by any Person, for injury to, illness or death of any employee of Seller, or for damage to or loss of any LNG Tanker, which injury, illness, death, damage or loss arises out of, is incident to, or results from any Marine Incident occurring as a result of the performance or failure to perform this Agreement by Buyer, its Affiliates, shareholders, officers, directors, employees, designees, representatives, and agents.

(b) Without prejudice to any liability that may arise or be imposed pursuant to the Marine Terminal Liability Regime or other agreement referenced in Section 13.2(c), Buyer releases Seller Group from liability to Buyer incident to all Claims and Losses, brought by any Person for injury to, illness or death of any employee of Buyer, or for damage to or loss of any Buyer's Facilities, which injury, illness, death, damage or loss arises out of, is incident to, or results from any Marine Incident occurring as a result of the performance or failure to perform an Agreement by Seller, any Seller's Transporter or any of their respective Affiliates, shareholders, officers, directors, employees, designees, representatives, and agents.

(c) Seller shall cause the master of each LNG Tanker transporting an LNG Cargo pursuant to an Agreement to execute, or otherwise agree to be bound by, the terms of the Marine Terminal Liability Regime (or similar document establishing the liability relationship between the LNG Tanker and the port facilities) if either:

- (i) (X) the terms of such Marine Terminal Liability Regime (aa) are consistent with applicable Law and with marine terminal liability regimes and conditions of use typically used elsewhere in the LNG industry and (bb) treat Seller's Transporter in a nondiscriminatory manner in comparison to other owners and charterers of LNG vessels that use or transit such Unloading Port, and (Y) Seller's Transporter is readily able to obtain, on commercially reasonable terms, full P&I indemnity cover from a P&I Club that is a member with full entry in the International Group of P&I Clubs, and such P&I indemnity will cover all Claims and Losses

pursuant to such Marine Terminal Liability Regime in relation to delivery of LNG Cargoes to such Unloading Port; Buyer warrants that the Marine Terminal Liability Regime for any Unloading Port at which Buyer requests Seller to make available an LNG Cargo will, at the time Seller makes available such LNG Cargo, meet the requirements set forth in this Section 13.2.(c)(i) and will not prevent Seller or Seller's Transporter from obtaining P&I full indemnity cover as described in (Y) of this Section 13.2(c)(i); or

- (ii) Buyer has provided Seller a copy of such Marine Terminal Liability Regime, as indicated in the Confirmation Memorandum, and no material changes have been made to the Marine Terminal Liability Regime since its delivery to Seller.

(d) If the Marine Terminal Liability Regime at an Unloading Port to which Seller is required to make available an LNG Cargo is inconsistent with the provisions of this Agreement (including the requirements set forth in Section 13.2(c)), then (i) the master of the relevant LNG Tanker shall not be required to execute or otherwise be bound by, the terms of such Marine Terminal Liability Regime, and (ii) Seller will be deemed to have "made available" the LNG Cargo and to have delivered such LNG Cargo to such Unloading Port for all purposes, including with respect to fulfillment of Seller's obligations pursuant to Sections 5.4 and 5.5 and with respect to Buyer's failure to take delivery of an LNG Cargo pursuant to Section 5.2.

XIV. FORCE MAJEURE

14.1 Events of Force Majeure

(a) A Party shall be excused for failure to carry out its obligations to the extent that and for the period during which it is rendered unable to carry out such obligations by reason of Force Majeure.

(b) **"Force Majeure"** shall mean, with respect to a Party, any act, event or circumstance, whether of the kind described herein or otherwise, that is not reasonably within the control of such Party claiming Force Majeure, provided that such Party has acted as a Reasonable and Prudent Operator, and which prevents or delays such Party's performance of any of its obligations affecting (1) Seller's Facilities, (2) LNG Tankers, and (3) Buyer's Facilities, or otherwise.

- (i) By way of illustration and subject to satisfaction of the conditions specified in the foregoing paragraph of this Section 14.1(b), Force Majeure may include circumstances of the following kind:
 - (A) fire, flood, atmospheric disturbance, lightning, storm, hurricane, cyclone, typhoon, tidal wave, tornado, earthquake, volcanic eruption, landslide, soil erosion, subsidence, washout, epidemic or other natural disaster or act of God;

- (B) acts of war (whether declared or undeclared), invasion, armed conflict, embargo, revolution, rebellion, sabotage, acts of terrorism or threat thereof, riot, civil war, blockade, insurrection, acts of public enemies, civil disturbances, sanctions on the import or export of goods, services or technology;
 - (C) chemical contamination, ionizing radiation or contamination, or 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;
 - (D) strike, lockout, or other industrial disturbances;
 - (E) any change in Law after the Confirm Date, or a change in the interpretation or application of existing Law after the Confirm Date, subject to Section 14.1(b)(ii)(D); and
 - (F) acts or omissions of a Governmental Authority, subject to Sections 14.1(b)(ii)(E) and (F); and
- (ii) Notwithstanding the foregoing, Force Majeure shall not include:
- (A) the ability of Buyer or Seller to obtain better economic terms for LNG from an alternative supplier or buyer, as applicable;
 - (B) any change in the market or demand for LNG or Natural Gas or events primarily affecting individual downstream customer facilities;
 - (C) any individual pipeline or ancillary facility that is not part of a Connecting Pipeline;
 - (D) any change in Law after the Confirm Date or a change in the interpretation or application of existing Law after the Confirm Date, that does not prevent performance, but merely renders such performance more costly;
 - (E) the following acts or omissions of a Governmental Authority related to a Governmental Approval:
 - 1. the original or any amended terms of any Governmental Approval,
 - 2. any action or inaction by a Governmental Authority under any Governmental Approval, or

3. the failure to obtain or the withdrawal of any Governmental Approval,

of which the Person claiming Force Majeure was aware, or should have been aware acting as a Reasonable and Prudent Operator, as of the Confirm Date of the relevant Confirmation Memorandum, to the extent such Person could have applied for, obtained, maintained, or extended any such Governmental Approval;

OPTIONAL PROVISION

(F) acts of a Governmental Authority which affect solely or primarily the affected Party and are not generally applicable to public and private entities doing business in the same country;

OPTIONAL PROVISION

(F) natural depletion of, or the absence of economically recoverable Natural Gas from, the Gas Supply Area; and

OPTIONAL PROVISION

(G) loss of, damage to, failure of, or unavailability of the Upstream Facilities.

(c) SELECT ONE ALTERNATIVE:

ALTERNATIVE 1²²

Notwithstanding Section 14.1(b)(i), any act, event, or circumstance causing nonperformance by a Third Party of obligations owed to a Party that causes such Party to be unable to perform under this Agreement shall be a Force Majeure event hereunder for such Party, if and to the extent that it is of a kind or character that, if it had happened to that Party, would have constituted Force Majeure hereunder.

ALTERNATIVE 2²³

For the purposes of Section 14.1(b), an event shall not be considered to be beyond the reasonable control of Seller or Buyer unless:

²² Guidance Note: Option 1 allows Buyer or Seller to claim Force Majeure for events affecting third parties that prevents a Party's performance, but does not allow a Party to claim Force Majeure if the event affecting the third party does not meet the definition of Force Majeure set forth in Section 14.1(b).

²³ Guidance Note: Option 2 allows Buyer or Seller to claim Force Majeure if its performance is prevented by events affecting distantly removed third parties, even where such events result from the acts of such third parties that would not otherwise meet the definition of "Force Majeure" set forth in Section 14.1(b) (including negligence, etc).

- (iii) in the case of Seller, it is beyond the reasonable control of Seller and the Seller Control Entities; or
- (iv) in the case of Buyer, it is beyond the reasonable control of Buyer and the Buyer Control Entities.

(d) A Force Majeure shall not relieve a Party of its obligation to pay sums of money due or that may become due under an Agreement except to the extent expressly provided in the Agreement.

14.2 Notice; Resumption of Normal Performance

(a) Promptly upon the occurrence of an act, event or circumstance that a Party considers to be Force Majeure, the Party affected shall give notice of such act, event or circumstance to the other, and shall state in such notice:

- (i) the particulars of the act, event or circumstance giving rise to the Force Majeure claim, in as much detail as is then reasonably available;
- (ii) the obligations that have been or are reasonably anticipated to be delayed or prevented in performance and the estimated period during which such performance may be delayed or prevented, including the estimated extent of such delay or prevention of performance; and
- (iii) the particulars of the actions to be taken by the Party affected to resume performance of its obligations.

Such notice shall thereafter be supplemented and updated as appropriate, but not less frequently than monthly, during the period of such Force Majeure, specifying the date on which such Force Majeure terminates. The Party not claiming Force Majeure may request reasonable assurances from the excused Party that the estimates as set forth in such notices and updates thereto are accurate.

(b) The Party affected by an event of Force Majeure shall, at the request of the other Party, give or procure access (at the expense and risk of the Party seeking access) at reasonable times for a reasonable number of representatives of such Party to examine the scene of the act, event or circumstance which gave rise to the Force Majeure claim.

(c) During periods in which Force Majeure is claimed by a Party, the Parties shall use Reasonable Efforts to arrange for substituted performance of the obligation(s) delayed or prevented by the Force Majeure. The Parties shall continue to perform their obligations under this Agreement to the extent not prevented by Force Majeure.

14.3 Rights Upon Force Majeure

(a) If, as a result of Force Majeure, Buyer is unable to take or Seller is unable to make available LNG Cargoes scheduled pursuant to a Confirmation Memorandum, and the

Parties are not able to agree on substitute performance pursuant to Section 14.2(c), then, during such period of Force Majeure:

- (i) if Seller is claiming Force Majeure, then Buyer may enter into LNG purchase contracts with Third Parties for the LNG Cargo(es) that Buyer would have taken hereunder except for the Force Majeure; and
- (ii) if Buyer is claiming Force Majeure, then Seller may enter into LNG sales contracts with Third Parties for the LNG Cargo(es) that Seller would have made available hereunder except for the Force Majeure.

(b) Once the Force Majeure is ended, the Parties shall resume performance of the obligations which were delayed or prevented by the Force Majeure. Notwithstanding the foregoing sentence, once the Force Majeure is ended, the Party not affected by the Force Majeure shall continue to be excused for failure to take (in the case of Buyer) or make available (in the case of Seller) quantities of LNG to the extent resulting from such Party's obligations under Third Party contracts that such Party entered into as permitted under Section 14.3(a) during the Force Majeure; *provided however*, that such Party shall terminate such Third Party contracts no later than the date that is the later of (i) the estimated duration of Force Majeure, as stated in the notice (as may be updated from time to time) provided by the Party claiming Force Majeure pursuant to Section 14.2(a), or (ii) 30 Days after the Party claiming Force Majeure delivers notice to the other Party that the Force Majeure has ended; *provided, further*, that the Party having entered into such Third Party contracts shall use Reasonable Efforts, but shall not be required, to terminate such Third Party contracts on such lesser notice as the Party claiming Force Majeure may request. The Party claiming Force Majeure shall be excused from performing to the extent the Party not claiming Force Majeure (and having entered into any Third Party contracts) is excused from performing pursuant to this Section and is not performing.

XV. NOTICES

15.1 Except as otherwise specifically provided in an Agreement, all notices, invoices, statements and other communications authorized or required under such Agreement shall be in writing in the English language and shall be delivered: (i) in person; (ii) by express courier service; or (iii) transmitted by e-mail or facsimile, in each case to the address of such Party set forth below and as supplemented by the Confirmation Memorandum. Oral communication does not constitute notice for purposes of an Agreement. A notice given under this Article XV shall be deemed delivered only when received by the Person to whom such notice is directed, and the time for such Person to deliver any notice in response to such originating notice shall run from the date the originating notice is received. "Received" for purposes of this Article XV shall mean actual delivery of the notice to the Party specified hereunder.

15.2 For purposes of the MSA, notices shall be sent to the following:

TO _____:

Attention: _____

Telephone: _____

Facsimile: _____

E-mail: _____

TO _____:

Attention: _____

Telephone: _____

Facsimile: _____

E-mail: _____

15.3 A Party may designate additional addresses for particular communications and may change any address, by giving notice to the other Party under such Agreement at least ten (10) Days in advance of such addition or change.

15.4 Immediately upon receiving communications by e-mail or facsimile (as aforesaid), the receiving Party shall acknowledge receipt by the same means and may request a repeat transmittal of the entire communication, or confirmation of particular matters. If the sender receives no acknowledgement of receipt within twenty-four (24) hours, or receives a request for repeat transmittal or confirmation, the sender shall repeat the transmittal or answer the particular request.

XVI. GOVERNING LAW AND DISPUTE RESOLUTION²⁴

16.1 Applicable Law

²⁴ Guidance Note: This model reflects common law principles. Users seeking to enforce the model form in a civil law or other non-common-law jurisdiction are advised to seek advice from counsel licensed to practice law in that jurisdiction.

The substantive Laws of [____], exclusive of any conflicts of Laws rules that could require the application of any other Law, shall govern each Agreement. The United Nations Convention on Contracts for the International Sale of Goods, and the United Nations Convention on the Limitation Period in the International Sale of Goods shall not apply to any Agreement.

16.2 Dispute Resolution - Arbitration

SELECT ONE ALTERNATIVE

ALTERNATIVE 1

Any Dispute shall be settled [exclusively][non-exclusively] by the courts of [____], and the Parties in the Dispute irrevocably attorn and submit to the personal jurisdiction of these Courts. The Parties in the Dispute irrevocably waive any objection to venue in these Courts and any objection based on the doctrine of *forum non conveniens* or similar grounds that these Courts are inconvenient for determination of a dispute.

ALTERNATIVE 2

- (a) Except as to matters conclusively settled by an Expert in accordance with Section 16.4, any Dispute shall be exclusively and finally settled by binding arbitration.

SELECT ONE ALTERNATIVE

The arbitration shall be administered by the

ALTERNATIVE 2A

American Arbitration Association in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution (the “**Rules**”).

ALTERNATIVE 2B

International Chamber of Commerce (“**ICC**”) in accordance with the Rules of Arbitration of the ICC (the “**Rules**”).

ALTERNATIVE 2C

London Court of International Arbitration in accordance with the Arbitration Rules of the London Court of International Arbitration (the “**Rules**”).

ALTERNATIVE 2D

Singapore International Arbitration Centre in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (the “**Rules**”).

ALTERNATIVE 2E

UNCITRAL Arbitration Rules (the “**Rules**”). The appointing authority shall be [_____] [insert **Arbitral Institution**]. The administering arbitral institution shall be [_____].

ALTERNATIVE 2F

[_____] (the “**Rules**”) The appointing authority shall be [_____] [insert **Arbitral Institution**]. The administering arbitral institution shall be [_____].

The arbitration shall be conducted by three arbitrators unless all Parties in the Dispute agree to a sole arbitrator prior to thirty (30) Days after commencement of the arbitration. If the arbitration is to be conducted by three arbitrators, within twenty (20) Days following delivery of a Party’s written request for arbitration to the other Party, each Party shall nominate one (1) arbitrator in accordance with the Rules (such arbitrators, the “Nominees”). The Nominees shall then agree within twenty (20) Days from the Day on which the second (2nd) Nominee was nominated on a third (3rd) arbitrator to serve as chairperson of the tribunal. If the Nominees are unable to select a third (3rd) arbitrator within such period, either Party may request the administering authority of the arbitral authority selected in Section 16.2(a) (the “**Administering Authority**”) to appoint such third (3rd) arbitrator within twenty (20) Days of receipt by the Administering Authority of such request from such Party.

- (b) All arbitrators shall be and shall remain at all times independent and impartial, and once appointed, no arbitrator shall have any ex parte communications with any of the Parties in the Dispute concerning the arbitration or the underlying Dispute other than communications directly concerning the selection of the presiding arbitrator, when applicable. All arbitrators shall be qualified by education, training, or experience to resolve the Dispute.

OPTIONAL PROVISION

Whenever the Parties in the Dispute are of more than one nationality, the single arbitrator or the presiding arbitrator (as the case may be) shall not be of the same nationality as any of the Parties in the Dispute or their ultimate parent entities, unless the Parties in the Dispute otherwise agree.

- (c) Unless otherwise agreed by all Parties in the Dispute, the place of arbitration shall be [_____].
- (d) The arbitration proceedings shall be conducted in the English language and the arbitrator(s) shall be fluent in the English language.
- (e) Each arbitral tribunal shall have full authority to award any remedy or relief proposed by a Party in the Dispute, including damages, set-offs and equitable

relief, such as a declaratory judgment, specific performance of any obligation created under an Agreement, the issuance of an injunction, requiring the furnishing of security or guarantees and requiring the preservation of any thing or right under the control of a Party in the Dispute, and awarding damages for the failure of any Party in the Dispute to respect an arbitral tribunal's orders to that effect,

SELECT ONE ALTERNATIVE

ALTERNATIVE 1M

provided that the arbitral tribunal is prohibited from awarding punitive or exemplary damages or Consequential Loss except to the extent that they may be expressly identified as a potential remedy in the Agreement.

ALTERNATIVE 1N

including penalties for any failure to comply with any such order or remedy.

- (f) Unless the Parties in the Dispute agree upon discovery, arbitration procedures, and the time and facility for any hearings within twenty (20) Days of the nomination of the chairperson, the arbitrators shall determine discovery, arbitration procedures, and the time and facility for any hearings except as set forth in this Section 16.2. All hearings must be concluded within one hundred and fifty (150) Days of the nomination of the chairperson. Unless the Parties in the Dispute otherwise agree, the hearing procedures shall include at least the following: (i) a date for exchange of documents to be used as exhibits at the hearing; (ii) a date for identification of witnesses whose testimony will be presented; (iii) the permitted length of time for presentation by each Party at the hearing of any information required to be provided by one Party in the Dispute to the others; and (iv) orders to produce at the hearing witnesses if the presence of such witnesses is reasonably necessary for the presentation of the position of any Party in the Dispute. The arbitral tribunal shall decide any matter not agreed by the Parties in the Dispute. The validity, construction, and interpretation of this agreement to arbitrate, and all procedural aspects of the arbitration conducted pursuant to this agreement to arbitrate, including the determination of the issues that are subject to arbitrations (i.e., arbitrability), the scope of the arbitrable issues, allegations of “fraud in the inducement” to enter into this agreement to arbitrate, allegations of waiver, laches, delay or other defenses to arbitrability, and the rules governing the conduct of the arbitrations shall be decided by the arbitral tribunal.
- (g) The award shall be in writing and shall state the reasons supporting such award. The arbitrators shall make the award and any other decisions or rulings strictly according to Law and not ex aequo et bono or as amiable compositeur, and shall

not decide the Dispute by reference to any other doctrine or practice that would permit them to avoid an Agreement or the governing law hereof.

- (h) Resolution of a Dispute by arbitration is final and binding upon the Parties and entitled to all the protections and benefits of a final judgment. Each Party in the Dispute undertakes to carry out any award without delay and hereby irrevocably waives any right of appeal to any court or tribunal of competent jurisdiction to the fullest extent permitted by Law (other than internal review of the award in accordance with the Rules); provided, however, that all Parties in the Dispute retain whatever rights they may have to challenge the enforcement of any decision or award under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).
- (i) An award tribunal shall include pre-award and post-award interest at the Agreed Interest Rate from the Day of any breach or other violation of an Agreement until the Day such award is paid in full. Any costs, expenses and fees incident to enforcing any award (including attorneys' fees) shall, to the maximum extent permitted by Law, be charged against the Party in the Dispute against whom such enforcement is sought. The costs of arbitration, including reasonable attorneys' fees, shall be allocated to each Party involved in such proceedings as determined by the arbitral tribunal. Unless otherwise agreed by the Parties in the Dispute, all payments made pursuant to the arbitration decision or award shall be made in USD free of any deduction or withholding for Taxes.
- (j) Legal professional privilege, including privileges protecting attorney-client communications and attorney work product of each Party in the Dispute from compelled disclosure or use in evidence, as recognized by the applicable Laws governing each Party's relationship with its counsel, shall apply to and be binding in any arbitration proceeding conducted under this Article XVI.
- (k) Irreparable damage could occur if an Agreement is not performed in accordance with its specific terms or is otherwise breached. Accordingly, each Party in the Dispute may apply to any court of competent jurisdiction for:
 - (i) a provisional or conservatory order, including a temporary restraining order or preliminary injunction in aid of the arbitration proceeding; and
 - (ii) an order of enforcement of provisional remedies granted by an arbitral tribunal;

provided, however, that the Parties in the Dispute agree mutually to seek vacation or modification of any such measure from the issuing court consistent with any decision or order of the arbitral tribunal and each of the Parties is free to seek such a decision or order from the arbitral tribunal. In addition, each Party in the Dispute may apply to any court of Competent jurisdiction for enforcement of an arbitral award. An application for such an order pursuant to this Section 16.2(l)

shall not be deemed a violation or waiver of this Agreement, including the agreement to arbitrate pursuant to this Section 16.2.

OPTION

Each Party in the Dispute hereby submits to the non-exclusive jurisdiction of the courts of [____] with respect to the enforcement of any arbitral award pursuant to this Section 16.2. Each Party in the Dispute agrees not to plead or claim in any court of [____] that any such action or proceeding has been brought in an inconvenient forum. Each Party in the Dispute agrees that the courts of [____] shall have the power to provide any necessary interim relief prior to the formation of an arbitral tribunal.

- (l) A Party's breach of an Agreement shall not affect this agreement to arbitrate, and the Parties' obligations under this Agreement to arbitrate are enforceable even after this Agreement has terminated. The Parties intend that the provisions to arbitrate set forth in this Section 16.2 be valid, enforceable and irrevocable. The invalidity or unenforceability of any provision of this agreement to arbitrate shall not affect the validity or enforceability of the Parties' obligation to submit a Dispute to binding arbitration or the other provisions of this agreement to arbitrate. Failure of the Administering Authority or the arbitration panel to achieve time periods specified in this Section 16.2 shall not affect the validity of this agreement to arbitrate or the validity of any award or, with respect to Section 16.2(o), affect the validity of any agreement to arbitrate in any Related Agreement or the validity of any award involving a Related Agreement.

OPTIONAL PROVISION

- (m) Without limiting the generality of the foregoing, any Party in the Dispute may have recourse to, and shall be bound by, the Pre-arbitral Referee Procedure of the International Chamber of Commerce.

OPTIONAL PROVISION

- (n) If two (2) or more Disputes arise under the Related Agreements and an Agreement, then any such Disputes may be consolidated in a single arbitration proceeding, as further described in this Section 16.2(o). If one or more arbitrations are already pending with respect to a Dispute under any of the Related Agreements, then either Party may request that any new Dispute be consolidated into any such prior arbitration. If more than one arbitration already is pending, the Parties shall, within twenty (20) Days of a request to consolidate the new Dispute, select one (1) of the pending arbitrations into which the new Dispute shall be consolidated. If the Parties are unable to select the arbitration within such twenty (20) Day period, then either Party may request the Administering Authority to select the arbitration within twenty (20) Days of receipt by the Administering Authority of such request from such Party. The new Dispute shall be so consolidated, provided that the arbitral tribunal for the arbitration so

selected determines that: (i) the new Dispute presents significant issues of law or fact common with those in the pending arbitration, (ii) no Party would be unduly prejudiced and (iii) consolidation under these circumstances would not result in undue delay for the pending arbitration. Any such order of consolidation issued by the arbitral tribunal shall be final and binding upon the Parties. The Parties waive any right they may have to appeal or to seek interpretation, revision or annulment of such order under the Rules or in any court. The arbitral tribunal for the arbitration into which a new Dispute is consolidated shall serve as the arbitral tribunal for the consolidated arbitration. The Parties agree that upon such an order of consolidation, they will promptly dismiss any arbitration brought under this Section 16.2, the subject of which has been consolidated into a separate arbitral proceeding under this Section 16.2(o).

OPTIONAL PROVISION

- (o) The Parties to a Dispute agree that if any question of law arises in the course of the arbitral proceedings or arises out of an award, no application may be made or appeal brought to the High Court of England on such a question of law, and the Parties in the Dispute expressly waive their rights to make such an application or bring such an appeal under Articles 45 or 69 of the English Arbitration Act 1996 (or any amendment thereto).

16.3 Dispute Resolution – Initial Steps

(a) A Party who desires to submit a Dispute for resolution shall commence the dispute resolution process by providing the other Parties in the Dispute a “**Notice of Dispute**”. The Notice of Dispute shall identify the Parties in the Dispute and contain a brief statement of the nature of the Dispute and the relief requested. The submission of a Notice of Dispute shall toll any applicable statutes of limitation or prescriptive periods related in the Dispute, pending the conclusion or abandonment of dispute resolution proceedings under an Agreement.

OPTIONAL PROVISION

(b) The Parties in the Dispute shall seek to resolve any Dispute by negotiations among Senior Executives. Within thirty (30) Days after the date of the receipt by each Party in the Dispute of the Notice of Dispute, which notice shall request negotiations among Senior Executives, the Senior Executives representing the Parties in the Dispute shall meet at a mutually acceptable time and place to exchange relevant information in an attempt to resolve the Dispute. If a Senior Executive intends to be accompanied at the meeting by an attorney, each other Party’s Senior Executive shall be given notice of such intention at least three (3) Days in advance and may also be accompanied at the meeting by an attorney.

16.4 Expert Determination

For any Dispute referred to an Expert for determination under an Agreement, such determination shall be conducted expeditiously by an Expert selected unanimously by the Parties in the Dispute. The Expert is not an arbitrator of the Dispute and shall not be deemed to be acting in an arbitral capacity. The Party desiring an Expert determination

shall give the other Parties in the Dispute notice of the request for such determination. If the Parties in the 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 in the Dispute, the International Centre for Expertise of the ICC shall appoint such Expert and shall administer such Expert determination through the ICC's Rules for Expertise. The Parties in the Dispute agree to cooperate fully in the expeditious conduct of such Expert determination and to 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 in the Dispute to comment on it. The Expert shall endeavor to resolve the Dispute within thirty (30) Days after his or her appointment, taking into account the circumstances requiring an expeditious resolution of the matter in dispute. If the Expert has not issued a final decision within sixty (60) Days following his or her appointment, the Expert's appointment shall lapse and a Party in the Dispute may submit the Dispute to arbitration in accordance with Section 16.2. The Expert's decision shall be final and binding on the Parties in the Dispute unless challenged in an arbitration pursuant to Section 16.2 within sixty (60) Days after the date the Expert's final decision is received by the Parties in the Dispute. Any Party in the Dispute may submit the Expert's decision to arbitration pursuant to Section 16.2 for the purpose of confirming such decision as an enforceable arbitral award. In any such arbitration either to challenge or confirm the Expert's decision:

- (a) the Expert's determination on the specific matter shall be entitled to a rebuttable presumption of correctness; and
- (b) the Expert shall not (without the written consent of all the Parties in the Dispute) be appointed to act as an arbitrator or as adviser to any of the Parties in the Dispute.

16.5 Confidentiality

All negotiations, mediation, arbitration, and Expert determinations relating to a Dispute (including a settlement resulting from negotiation or mediation, an arbitral award, documents exchanged or produced during a mediation or arbitration proceeding, and memorials, briefs or other documents prepared for the arbitration) are confidential, in accordance with the terms of Article XIX, and may not be disclosed by the Parties, their employees, officers, directors, counsel, consultants, and Expert witnesses, except to the extent necessary to enforce any settlement agreement, arbitration award, or Expert determination, to enforce other rights of a Party in the Dispute, as required by applicable Law or the rules of any stock exchange on which the shares of such Party or any of its Affiliates are listed, or for a bona fide business purpose, such as disclosure to accountants, shareholders, or third-party purchasers; *provided, that*, that breach of this confidentiality provision shall not void any settlement, Expert determination, or award.

16.6 Waiver Of Sovereign Immunity

Each Party recognizes and acknowledges that each Agreement constitutes a commercial transaction, and that its rights and obligations under an Agreement are of a commercial

and not a governmental nature. To the fullest extent permitted by Law, Seller and Buyer each hereby irrevocably waives on behalf of itself and its assets, any and all sovereign immunities which it may have for jurisdiction, enforcement and any other purpose whatsoever. For the avoidance of doubt this waiver includes a waiver of immunity from (i) any Expert determination, mediation, or arbitration proceeding commenced pursuant to an Agreement; (ii) any judicial, administrative, or other proceedings to aid the Expert determination, mediation, or arbitration commenced pursuant to an Agreement; and (iii) any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order, or attachment (including pre-judgment attachment) that results from an Expert determination, mediation, arbitration, or any judicial or administrative proceedings commenced pursuant to an Agreement.

XVII. TERMINATION.

17.1 Termination of MSA by Notice

Each Party shall have the right at any time to give to the other Party notice of termination of this MSA. Such notice shall be effective upon receipt, provided that such notice shall not act to terminate a Confirmation Memorandum incorporating the terms of this MSA, which Confirmation Memorandum shall remain in full force and effect until the earlier to occur of fulfillment of the obligations provided for in such Confirmation Memorandum or termination of such Confirmation Memorandum pursuant to Section 17.2.

17.2 Termination of Confirmation Memorandum for Cause

(a) Upon the occurrence of any of the following events, either Seller or Buyer shall have the right to give to the other Party under a Confirmation Memorandum a notice of early termination of:

SELECT ONE ALTERNATIVE

ALTERNATIVE 1

such Confirmation Memorandum:

ALTERNATIVE 2

such Confirmation Memorandum and all (but not some only) outstanding Confirmation Memorandum(s):

- (i) as a result of an event of Force Majeure, the obligation of Seller to sell and make available an LNG Cargo under a Confirmation Memorandum or the obligation of Buyer to take an LNG Cargo under a Confirmation Memorandum is

ALTERNATIVE 2A

materially delayed or prevented for a period of thirty (30) consecutive Days;

ALTERNATIVE 2B

reasonably expected to be delayed or prevented for a period of two hundred forty (240) hours beyond the end of the Arrival Period as specified in the Confirmation Memorandum;

- (ii) the other Party fails or refuses to perform any of its payment obligations under such Confirmation Memorandum, including payment of any amount when due, which failure or refusal is not remedied or cured within a period of [_____] (____) Days; *provided, however*, that Seller shall not be obligated to make available any Cargoes during the cure period specified in this Section 17.2(a)(ii);
- (iii) the other Party to such Confirmation Memorandum voluntarily commences any proceeding, or files any petition seeking its liquidation, reorganization, dissolution, winding up, composition or other relief under any bankruptcy, insolvency, receivership or similar Laws applicable to such Party or consents to the commencement of any proceeding or the filing of any petition against it under any similar Law;
- (iv) the other Party to such Confirmation Memorandum makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts generally as they become due;
- (v) the other Party to such Confirmation Memorandum consents to the appointment of a receiver, trustee or liquidator over itself or any material part of its assets;
- (vi) a Third Party files a petition seeking the liquidation, reorganization, dissolution, winding-up, composition or other relief for the other Party to such Confirmation Memorandum pursuant to the provisions of such bankruptcy, insolvency, receivership or similar Laws applicable to such Party, and such petition is not dismissed within [_____] (____) Days after such filing;
- (vii) a court of competent jurisdiction enters an order or decree appointing a receiver, liquidator or trustee for the other Party to such Confirmation Memorandum or any material part of its assets, and such receiver, liquidator or trustee is not discharged within [_____] (____) Days after the Day on which such order or decree is issued;
- (viii) a court of competent jurisdiction enters an order or decree adjudicating the other Party to such Confirmation Memorandum to be bankrupt or insolvent, and such order or decree is not stayed or discharged within [_____] (____) Days after the Day on which such order or decree is issued;

- (ix) the other Party to such Confirmation Memorandum fails to provide or maintain credit support, as set forth in the Confirmation Memorandum, in accordance with Section 9.1 (in the case of Buyer) or 9.2 (in the case of Seller);
- (x) any representation or warranty given by the other Party to such Confirmation Memorandum pursuant to Article XXI is false; or
- (xi) the other Party to any Agreement (including any such Party's Affiliate that has executed a binding Confirmation Memorandum) violates Section 22.1(b) or (c) of any Agreement, or such other Party provides notice of its inability to comply with Section 22.1(b) and the terminating Party provides notice of termination pursuant to Section 22.7.

(b) Without prejudice to any of its other rights in an Agreement, the Party giving the notice of early termination of a Confirmation Memorandum under this Section 17.2 shall specify the basis for early termination and a termination date, which, in the case of termination pursuant to Section 17.2(a)(i) or (ii), shall be not less than thirty (30) Days after the date of the notice of early termination. Unless, before such specified termination date, the Party receiving the notice of early termination remedies or cures the specified basis for early termination or disputes such early termination and initiates resolution of the Dispute pursuant to Article XVI, the Confirmation Memorandum shall end on the designated termination date.

17.3 Effect of Termination

Termination of this MSA or a Confirmation Memorandum(s), howsoever caused, shall be without prejudice to any rights or remedies that may have accrued prior to the time of such termination, and any provisions of this MSA or a Confirmation Memorandum necessary for the exercise of any such accrued rights or remedies shall survive the expiry or termination of this MSA or a Confirmation Memorandum for such period as so required.

XVIII. AMENDMENT AND WAIVER

18.1 Amendment

An Agreement may not be amended, modified, varied or supplemented except by an instrument in writing signed by the Parties to such Agreement.

18.2 Waiver

Any waiver of any term or condition set forth in an Agreement, or of any breach or default, shall be given or withheld in the sole discretion of the waiving Party to such Agreement. A Party shall not be deemed to have waived any right under an Agreement, unless such Party shall have delivered to the other Party a written waiver signed by such waiving Party. Delay or failure to exercise any right, power or remedy accruing to any Party as the result of any breach or default shall not impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach or default. Any

waiver of any single breach or default shall not be deemed or otherwise constitute a waiver of any other breach or default theretofore or thereafter occurring.

XIX. CONFIDENTIALITY

19.1 Obligations of Confidentiality

The terms of an Agreement and any information directly or indirectly disclosed or furnished, whether orally, in writing or in electronic, digital or any other form, by a Party (or its Affiliates or their respective directors, officers or employees) in connection with or in relation to an Agreement which is not:

- (i) in the case of information disclosed or furnished, already known to the recipient; or
- (ii) already in the public domain (other than as a result of a breach of the terms of this Section 19.1)

(“**Confidential Information**”) shall, unless otherwise agreed in writing, be kept confidential and shall not be sold, traded, published or otherwise disclosed to any Third Party in any manner whatsoever (except as provided in Section 19.2). Nothing contained herein shall prevent the Party disclosing or furnishing information from selling, trading, publishing or otherwise disclosing its own information.

19.2 Permitted Disclosures

(a) A Party that is a recipient of Confidential Information may disclose such Confidential Information without the disclosing Person’s consent to the following:

- (i) its Affiliates and, its and its Affiliate’s directors, officers and employees;
- (ii) its lenders and its prospective lenders;
- (iii) its advisors and consultants, including counsel, accountants and other advisors;
- (iv) to Third Parties on an aggregated basis to the extent such information is delivered to such Third Party for the sole purpose of calculating a published index;
- (v) arbitrators, mediators, Experts and any court in connection with the resolution of a Dispute under this MSA or a Confirmation Memorandum;
- (vi) the Independent Surveyor; and
- (vii) to any permitted assignee of a Party's interests under Article XX.

(b) A Party may disclose technical, operational, and scheduling information regarding deliveries of and specifications for LNG to be delivered to Buyer's Facilities on an "as-needed" basis without the disclosing Party's consent to the following:

- (i) shareholders and joint venturers in upstream or downstream projects; and
- (ii) the Operator, Seller's Transporter, and any other upstream and downstream parties to the extent necessary to implement any transaction.

(c) The recipient making a disclosure to Persons listed in Sections 19.2(a) and 19.2(b) shall ensure that any Person to which it makes the disclosure undertakes to hold such Confidential Information subject to confidentiality obligations equivalent to those set out in Section 19.1.

19.3 Required Disclosures

In the event that disclosure is required by any Governmental Authority or applicable Law, the Person subject to such requirement may disclose the Confidential Information to the extent so required, but shall promptly notify the other Party, prior to disclosure, and shall cooperate (consistent with the disclosing Party's legal obligations) with the other Party's efforts to obtain protective orders or similar restraints with respect to such disclosure.

19.4 Press Releases

No press release concerning the execution of, or other matters directly related to, an Agreement shall be issued unless agreed by the Parties to such Agreement in writing.

XX. ASSIGNMENT²⁵

20.1 Assignment with Prior Consent

Except as otherwise provided in Section 20.2, a Party shall not have the right to assign an Agreement or any of its rights or obligations under such Agreement without the prior written consent of the other Party thereto (which consent shall not be unreasonably withheld), and any purported assignment without the consent of such other Party shall be void.

20.2 Assignment of Rights for Security and Payment

Notwithstanding Section 20.1, either Party may assign, without the prior written consent of the other, (i) its rights to payment under an Agreement to a trust, trustee, bank, paying agent, financial entity or other Person or company for the purposes of any bona fide financing, and (ii) any of such assigning Party's rights under an Agreement to any lender

²⁵ Guidance Note: A review of the relevant governing law is necessary with respect to the possibility of assigning the rights of the Parties without assigning the relevant Party's obligations (i.e., "assignment" versus "novation").

or lender's agent as security for its obligations to any such lender under any such financing.

XXI. REPRESENTATIONS AND WARRANTIES

21.1 Governmental Approvals and Other Approvals

Buyer and Seller each represent and warrant that, upon and after the Confirm Date, it shall have all Governmental Approvals and other approvals required for the performance of its respective obligations under such Confirmation Memorandum.

21.2 Corporate Good Standing and Validity

As of the Execution Date of this MSA and the Confirm Date of a Confirmation Memorandum, the respective Parties each represent and warrant as follows:

(a) It is a company duly organized, validly existing and in good standing under the Laws of the state and/or country of its incorporation and is duly qualified to do business in, and is in good standing in, all other jurisdictions where the nature of its business or nature of property owned by it make such qualification necessary.

(b) The execution, delivery and performance of its obligations respectively under an Agreement:

(i) are within its corporate powers;

(ii) have been duly authorized by all necessary corporate action; and

(iii) do not and will not:

(A) violate any provision of its charter or by-laws, or other constitutional documents or of applicable Law or

(B) violate any legal restriction binding on it.

(c) The MSA or the Confirmation Memorandum, as applicable, when signed constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms; subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to bankruptcy and other similar Laws of general application affecting rights and remedies of creditors.

(d) There are no pending or threatened actions, suits or proceedings against or, to its knowledge, before any court, governmental agency or arbitrator, that would reasonably be expected to affect the legality, validity or enforceability of the Agreement.

(e) As of each of the Execution Date of this MSA and the Confirm Date of each Confirmation Memorandum, it has not taken any actions that would, if such actions were undertaken after any such date, conflict with its obligations under Article XXII.

21.3 Warranty of Title

Seller warrants that it shall have good and marketable title to all LNG made available to Buyer under an Agreement, as of the date Seller makes available such LNG, and that all LNG made available shall be free and clear of all liens, security interests, charges, assessments, adverse Claims and other encumbrances of every form and nature.

21.4 Other Warranties

OTHER THAN THOSE EXPRESSLY PROVIDED IN SECTIONS 4.2, 6.1, 21.3 OR ANY WARRANTIES THAT MAY BE INCLUDED IN A CONFIRMATION MEMORANDUM, THE PARTIES MAKE NO REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED WITH RESPECT TO THE LNG SOLD AND PURCHASED UNDER AN AGREEMENT, INCLUDING ANY REPRESENTATION OR WARRANTY THAT THE LNG WILL BE FIT FOR A PARTICULAR PURPOSE, OR WILL BE OF MERCHANTABLE QUALITY, AND ALL SUCH REPRESENTATIONS AND WARRANTIES ARE EXPRESSLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

XXII. BUSINESS PRACTICES AND FOREIGN CORRUPT PRACTICES ACT.

22.1 No Violation of Applicable Law

Each Party specifically agrees that in connection with an Agreement and the activities contemplated therein, neither it nor any of its directors, officers, employees or agents, nor any contractors or Affiliates within such Party's control, will:

- (a) take any action, or omit to take any action, that would violate any Law applicable to that Party;
- (b) take any action, or omit to take any action, that would cause the other Party to be in violation of any Law applicable to the business practices of such other Party,²⁶ including the principles described in the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed on 17 December 1997, and the U.S. Foreign Corrupt Practices Act; or
- (c) pay, offer or promise to pay, or authorize the payment of, any money, or give or promise to give, or authorize the giving of, any services or anything else of value, either directly or through a third party, to any official or employee of any Governmental Authority, or of any agencies or subdivisions thereof, or of any governmental instrumentalities, or to any

²⁶ Guidance Note: Under some circumstances, conflicting laws may apply to the Parties. In such circumstances, the Parties may wish to clarify that one Party or the other shall not be required to comply with a particular law to the extent that doing so would violate a particular law, or the laws of a particular country.

political party or official thereof or to any candidate for political office for the purpose of (a) inducing any act or decision of that person in his or her official capacity, including a decision to fail to perform his or her official functions with such government or instrumentality, or (b) inducing such person to use his or her influence with such government or instrumentality to affect or influence any act or decision thereof or otherwise to secure any improper advantage.

22.2 Commercial Acts

Each Party agrees and undertakes, on behalf of itself, its directors, officers, employees, and agents, and any contractors or Affiliates within such Party's control, not to pay any fees, commissions or rebates to any director, officer, employee, agent or contractor of the other Party or its Affiliates or shareholders nor provide or cause to be provided to any of them any gifts or entertainment of significant cost or value in connection with any Agreement or in order to influence or induce any actions or inactions in connection with the commercial activities of the Parties hereunder.

22.3 No Brokers

Neither Party shall use any broker, agent, or other intermediary in connection with soliciting, obtaining, negotiating, structuring, or performing any Agreement or in connection with the subject matter to which any such Agreement applies.

22.4 Business Records

Each Party shall keep all records necessary to confirm compliance with Sections 22.1(b), 22.1(c), 22.2, and 22.3 and agrees to maintain adequate internal controls in respect of any Law applicable to the business practices of such Party. If either Party asserts that the other Party is not in compliance with Sections 22.1(b), 22.1(c), 22.2, or 22.3, the Party asserting noncompliance shall send a notice to the other party indicated the type of noncompliance asserted. After giving such notice, the Party asserting noncompliance may cause an independent auditor to audit the records of the other Party in respect of the asserted noncompliance within the period of two (2) years following the year for which such records apply. No Party is in any way authorized to take any action on behalf of another Party that would result in an inadequate or inaccurate recording and reporting of assets, liabilities, or any other transaction, or which would put such other Party in violation of its obligations under any Laws applicable to the activities contemplated by an Agreement.

22.5 Contractors

Each Party shall, in connection with each Agreement and the activities contemplated therein, endeavor to cause its contractors to comply with the provisions of Sections 22.1, 22.2, and 22.3.

22.6 Indemnification

Each Party shall indemnify and hold the other Party harmless from and against any and all Claims and Losses brought by any Person which arise out of, are incident to, or result from any breach by such Party of Sections 22.1(b), 22.1(c), 22.2, and 22.3.

22.7 Conflict of Laws²⁷

Neither Party shall be obligated to comply with Section 22.1(b) to the extent that doing so would cause such Party to be in violation of Section 22.1(a). In such event, such Party shall promptly provide notice to the other Party, including all relevant details regarding such Party's inability to comply with Section 22.1(b). Within thirty (30) Days after receipt of such notice, the other Party may elect to terminate any Confirmation Memorandum, the performance of which would cause such other Party to be in violation of any Law within the scope of Section 22.1(b). Neither Party shall be liable to the other solely as a result of such termination.

XXIII. MISCELLANEOUS.

23.1 Third Party Beneficiaries

Neither this MSA nor a Confirmation Memorandum shall be construed as creating any rights or benefits in any Person or entity, other than the Parties signatory to this MSA and each respective Confirmation Memorandum and their respective successors and permitted assigns. The Parties to such Agreement may rescind or vary an Agreement, in whole or in part, without the consent of any Third Party.

OPTIONAL PROVISION (TO BE SELECTED ONLY IF THE MSA AND EACH CONFIRMATION MEMORANDUM IS TO BE SUBJECT TO THE LAWS OF ENGLAND)

The Parties do not intend any term of an Agreement to be enforceable under the Contract (Rights of Third Parties) Act of 1999 by any Person who is not a Party to such Agreement.

23.2 Each Party To Bear its Own Costs

A Party shall be responsible for all costs it incurs in connection with the negotiation and implementation of an Agreement.

23.3 No Partnership

²⁷ Guidance Note: This provision recognizes that blocking statutes and other Laws may preclude a Party from ensuring that its actions will not cause the other Party to be in violation of any Laws applicable to such other Party. In such event, Section 22.7 requires that the first Party comply with the Laws applicable to it, and relieves such first Party from the obligation not to cause the other Party to be in violation of Laws applicable to such other Party. However, Section 22.7 requires the first Party to promptly provide notice to the other Party of the first Party's inability to comply with Section 22.1(b), and provides the other Party with the right to terminate any applicable Confirmation Memorandum within thirty Days, without liability to either Party.

Nothing contained in an Agreement shall be construed to create an association, trust, partnership or joint venture, to impose a trust or partnership duty, obligation or liability on or with regard to a Party, to create any principal/agent relationship between the Parties, or to create any duty, standard of care or liability to any Person not a Party to such Agreement.

23.4 Entire Agreement; Confirmation Memoranda

This MSA constitutes the entire agreement between the Parties concerning the subject matter hereof; and supersedes and replaces all previous documents, undertakings and agreements whether oral, written or otherwise, between the Parties concerning the subject matter hereof. Upon execution, each Confirmation Memorandum, together with the terms of this MSA, shall constitute an entire agreement between Seller and Buyer concerning the sale of the LNG described in the Confirmation Memorandum.

23.5 Severability

The provisions of an Agreement are severable, and if any portion of an Agreement is deemed legally invalid or unenforceable, the remainder of such Agreement shall survive and remain in full force and effect, and the Parties shall cooperate in good faith to amend such Agreement to restore their original intent to the extent permitted by Law.

23.6 Counterpart Execution

An Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this MASTER LNG SALE AND PURCHASE AGREEMENT as of the Execution Date.

[_____] [_____]

By:_____ By:_____

Name:_____ Name:_____

Title:_____ Title:_____

Exhibit A

Form of the Confirmation Memorandum

Confirmation Memorandum No: [•]

The Confirmation Memorandum is between:

| | |
|-----------------------------------------------------------------------------|----------------------------------------------------------------------------|
| [Name Party A] a [_____] existing under the Laws of [_____] “Seller” | [Name Party B] a [_____] existing under the Laws of [_____] “Buyer” |
| Tax Identification Number: _____ | Tax Identification Number: _____ |
| Notices: Attn: Phone: Fax: | Notices: Attn: Phone: Fax: |
| Invoices and Payments: Attn: Phone: Fax: | Invoices and Payments: Attn: Phone: Fax: |

Pursuant to this Confirmation Memorandum Seller agrees to sell and make available to Buyer the LNG Cargo or LNG Cargoes described below and Buyer agrees to purchase, take, and pay for such LNG Cargo or LNG Cargoes. To the extent not inconsistent herewith, the terms of that certain MASTER LNG SALE AND PURCHASE AGREEMENT between _____ and _____, dated the [•] day of [•] [_____] (the “MSA”) are incorporated herein by reference.

Capitalized terms in this Confirmation Memorandum have the same meaning given to them in the MSA.

- 1. LNG Cargoes.** The quantities of LNG shall correspond to [•] LNG Cargoes on a Unloading Port basis. The approximate quantity of LNG to be delivered and taken is [•].

2. **Expected Delivery Quantity and Cargo Tolerance.**

The Expected Delivery Quantity (calculated as set forth in the MSA) applicable to each such LNG Cargo shall be: [•] MMBtu.

The Cargo Tolerance shall be plus or minus [] [percent of the Expected Delivery Quantity].

3. **Price and Payment.**

The Contract Price for the LNG expressed in [currency] per MMBtu, shall be: []. Invoices are to be paid within [•] Days after receipt of Seller's invoice. The bank accounts for the purpose of payment under this Confirmation Memorandum are as follows:

| | <u>Seller:</u> | <u>Buyer:</u> |
|---------------|-----------------------|----------------------|
| Bank: | [•] | [•] |
| Address: | [•] | [•] |
| Account No: | [•] | [•] |
| Account Name: | [•] | [•] |
| Sort Code: | [•] | [•] |

Invoices shall be Paid:

[] by wire transfer in immediately available funds.

[] Other _____.

The Pricing Month shall be []²⁸

4. **LNG Tanker.** The LNG Tanker shall be [name of ship], which carries the [•] flag, and has an LNG capacity, when fully loaded, of between [•] and [•] Cubic Meters of LNG.

5. **Ship Dimensions.** The LNG Tanker shall have the following dimensions:

Overall length: between ____ and ____ meters.

Width: between ____ and ____ meters.

Laden draft: no greater than ____ meters.

²⁸ Guidance Note: In the event that the Contract Price refers to a monthly price index, defining the "Pricing Month" will clarify which month's index will apply to each LNG Cargo. For example, if a pricing index closes prior to the end of each month (such as the 25th day of each month), then the price for that month should only apply to LNG Cargoes scheduled for delivery prior to the 25th day of each month.

6. **Heel.** The LNG Heel to be retained by the LNG Tanker after unloading shall be approximately [•] Cubic Meters of LNG.
7. **Boil-Off Rate.** The boil-off rate during the voyage shall be approximately [•] per hour.
8. **Demurrage.** The Demurrage rate per twenty-four (24) hour period shall be: [•]
9. **Arrival Period and R/E Period.**

The Arrival Period shall be from [__] to [__]. The Arrival Period shall commence at [__] hours local time at the Buyer's Facilities.

The R/E Period shall be [] hours after the end of the Arrival Period.
10. **Allowed Laytime.** The Allowed Laytime shall be: [24 hours].
11. **Source of Gas.** The Gas Supply Area from which Natural Gas used to produce the LNG sold pursuant to this Confirmation Memorandum is derived

shall be [_____];

shall not be [_____]
12. **Loading Port.** The Loading Port shall be: [•]
13. **Estimated Loading Date.** The estimated loading date shall be [].
14. **Unloading Port.** The Unloading Port shall be: [•], or such other port agreed by Buyer and Seller in writing.
15. **Independent Surveyor.** The Independent Surveyor to verify unloading at the Unloading Port shall be: [•]
16. **LNG Quality.** The LNG shall comply with the Quality Specifications as follows:

Gross Heating Value between [] and [] Btu per standard cubic foot. If LNG has gross heating value of more than [] Btu per standard cubic foot, it may be accepted if the resultant Natural Gas sent out meets the qualify specifications for Natural Gas (above) and is determined to be interchangeable with domestic Natural Gas with regard to delivery of vaporized LNG into the pipeline at the Buyer's Facilities.

Nitrogen:

Methane:

Ethane:

Propane:

Isobutane:

Normal Butane:

Pentane Plus:

Carbon Dioxide:

Hydrogen sulfide maximum [] grains per 100 standard cubic feet

Sulfur: maximum [] grains per 100 standard cubic feet

No water, mercury, active bacteria, bacterial agent, or hazardous or toxic substance.

17. Off-Spec Damage Cap.

The Off-Spec Damages Cap applicable to Section 6.3(b) shall be (select one):

[] [_____] % of the estimate provided by Buyer pursuant to Section 6.3(b);

[] [_____] % of the product of the Expected Delivery Quantity multiplied by the Contract Price; or

[] other.

18. Seller's Credit Support.

Seller shall provide the following credit support no later than [_____] (select one):

[] a Corporate Guarantee in the form attached to the MSA as Exhibit C-2;

[] a Standby Letter of Credit in the form attached to the MSA as Exhibit C-1;

[] Other [_____] ; or

[] None.

19. Buyer's Credit Support.

Buyer shall provide the following credit support no later than [_____] (Select One):

[] Corporate Guarantee in the form attached to the MSA as Exhibit C-2;

[] Standby Letter of Credit in the form attached to the MSA as Exhibit C-1;

[] Other [_____] ; or

[] None.

20. DOP Liquidated Damages Amount. [If Alternative Selected in MSA]

The DOP Liquidated Damages shall be [].

21. TOP Liquidated Damages Amount. [If Alternative Selected in MSA]

The TOP Liquidated Damages shall be [].

22. Cover Price and Resale Price. [If Alternative Selected in MSA]

The Cover Price shall be _____.²⁹

The Resale Price shall be _____.

23. Marine Terminal Liability Regime.

Check the applicable box:

☐ Buyer has delivered to Seller a true and correct copy of the Marine Terminal Liability Regime.

☐ Buyer has not delivered to Seller a true and correct copy of the Marine Terminal Liability Regime.

24. Offshore Title Transfer provisions.

The following provisions of Exhibit D shall apply:

☐ Exhibit D1,

☐ Exhibit D2,

☐ Neither.

25. Special Provisions

²⁹ Guidance note: Cover Price may be a fixed price per-MMBtu or may be an index- based price that reflects the relevant market at the time.

IN WITNESS WHEREOF, the Buyer and Seller have executed this Confirmation Memorandum, this ____ Day of _____, 20__(the “**Confirm Date**”).

Signed for and on behalf of Seller

Signed for and on behalf of Buyer

[_____]

[_____]

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

Exhibit B**Measurement and Testing Procedures****1. Measurement of Quantity of LNG Received from LNG Tankers**

- (a) The volume of LNG received at the Buyer's Facilities shall be measured in metric units by gauging of the liquid in the tanks of each LNG Tanker. The list and trim of the LNG Tanker shall 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 completion of emergency shutdown testing (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. A second gauging operation shall take place 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 shall be carried out based on the LNG Tanker condition upon arrival at the berth (*i.e.*, depending on whether the LNG Tanker arrives with deck piping full or deck piping empty). Since significant volumes of LNG may remain in the LNG Tanker's manifold and crossover, gauging shall be performed with these lines in the same condition prior to commencement of unloading and after completion of unloading. If the LNG Tanker's manifold and crossover lines are empty (warm) when measurement is taken before commencement of unloading commences, they shall be emptied prior to measurement following the completion of unloading. If the crossover lines are liquid filled (cold) when measurement is taken before commencement of unloading, they shall remain full (cold) until measurement is taken following the completion of unloading. Representatives of Seller and Buyer shall have the right to be present at such gaugings.
- (b) The amount of vapor returned to an LNG Tanker during unloading shall be determined by calculating the difference in the amount of liquid volume in the tanks of the LNG Tanker at the initial (first) gauging compared to the final (second) 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 Section 6(c) of Exhibit B.
- (c) Seller shall furnish to Buyer evidence of calibration of the LNG tanks of each of the LNG Tankers for volume against level by a qualified Independent Surveyor, calibration authority or contractor.
- (d) 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 corrections (if necessary) and shall indicate volumes in Cubic Meters expressed to the nearest thousandth, with tank depths expressed in meters to the nearest hundredth.

- (e) Buyer may audit Seller's records and tables that are relevant to the determination of the measurements and calculations referred to in this Section 1 of Exhibit B upon notice at reasonable times.
- (f) 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), Seller or Seller's agent shall recalibrate the damaged tanks, and the LNG Tanker shall not be employed to transport any LNG Cargoes until appropriate corrections are made. If mutually agreed between Seller and Buyer representatives, recalibration of damaged tanks can be deferred until the next time when such 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 time of the distortion cannot be ascertained, the Buyer and Seller shall mutually agree on the time period for retrospective adjustments.

2. Selection of Gauging Devices

- (a) All Persons responsible for issuing and certifying the device calibrations and gauge tables for any LNG Tanker shall be certified by the applicable Governmental Authority and/or classification society rules. All devices provided for in this Exhibit B shall first be approved by Buyer, acting as a Reasonable and Prudent Operator, before such devices may be used. The required degree of accuracy (which shall in any case be within the permissible tolerances defined herein and in the applicable standards referenced herein) of such devices selected shall be mutually agreed upon by Seller and Buyer. Before any device is used, the provider of such device shall cause tests to be carried out to verify that such device has the required degree of accuracy.
- (b) 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 + 7.5 millimeters and of the auxiliary liquid level gauging devices shall be + 10 millimeters. The level from the main and auxiliary gauging devices in each such LNG tank shall be logged or printed.
- (c) 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 whose accuracy is at least + 0.5% of full span and in no case worse than 0.05 degrees for list and 0.01 meters for trim.
- (d) 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. Such temperature gauging devices shall be installed at various

locations from the top to bottom of each LNG tank. The temperatures in each LNG tank shall be logged or printed. In the temperature range of - 165 °C to -145 °C, the accuracy shall be + 0.2 °C. In the temperature range of -145 °C to +40 °C, the accuracy shall be + 1.5 °C.

- (e) Each LNG tank of each LNG Tanker shall have one absolute pressure-gauging device. The measurement accuracy of the pressure gauging device shall be $\pm 1\%$ of full-scale and in no case greater than + 10 millibar. The pressure in each LNG tank shall be logged or printed.
- (f) 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 B. Seller shall verify the accuracy of gauging devices by providing sufficient documentation thereof to Buyer in each of the following circumstances: (1) if Buyer acting reasonably and prudently requests such verification due to changes in the accuracy of custody transfer measurements related to the specific LNG Tanker in question, (2) during each LNG Tanker dry docking, or (3) at least once every five years.

3. Measurement Procedures

- (a) Liquid levels in each tank shall be determined in accordance with ISO 13398 Section 6.2, as updated from time to time. 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 Section 2 of Exhibit B hereof. 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. Such arithmetic average shall be calculated to the nearest 0.1 millimeter and shall be rounded to the nearest millimeter. The main device and the auxiliary device readings shall be read and recorded consecutively and without interruption.
- (b) At the same time the liquid level is measured, temperature shall be measured to the nearest 0.1°C by using the temperature gauging devices referred to in Section 2 of Exhibit B. In order 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. Such arithmetic average shall be calculated to the nearest 0.01°C and shall be rounded to the nearest 0.1°C.
- (c) At the same time the liquid level is measured, the absolute pressure in each LNG tank shall be measured to the nearest one (1) millibar by using the pressure-gauging device referred to in Section 2 of Exhibit B. The determination of the absolute pressure in each LNG tank of each LNG Tanker shall be made by taking one (1) reading of the pressure-gauging device in each LNG tank, and then taking

an arithmetic average of all such readings. Such arithmetic average shall be calculated to the nearest 0.1 millibar and shall be rounded to the nearest 1 millibar.

- (d) At the same time 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 measurement of the list and of the trim shall be conducted to the nearest 0.5 degree for list and the nearest 0.01 meter for trim, or, in each case, more precisely if the applicable LNG Tanker is so equipped and capable.
- (e) Should the measurements referred to in Section 3 of Exhibit B become impossible to perform due to a failure of gauging devices, alternative gauging procedures shall be determined by mutual agreement between Buyer and Seller in consultation with the Independent Surveyor.
- (f) The volume of LNG unloaded, stated in Cubic Meters to the nearest 0.001 Cubic Meter, shall be determined by (A) using the tank gauge tables referred to in Section 1(d) of Exhibit B, (B) applying the volume corrections set forth in such Section 1(d) of Exhibit B, and (C) deducting the total volume of LNG in all tanks immediately after completion of unloading (or emptying of deck piping where required under Section 1(a) of Exhibit B) from the total volume in all tanks immediately before commencement of unloading. This volume of LNG unloaded shall then be rounded to the nearest 0.1 Cubic Meter.

4. Determination of Composition of Unloaded LNG

- (a)
 - (i) Samples shall be collected in accordance with recognized LNG industry standards and the composition of the LNG unloaded shall be determined in accordance with recognized LNG industry standards.
 - (ii) SELECT ONE ALTERNATIVE

ALTERNATIVE 1

Buyer shall cause Operator to continuously sample and analyze the LNG during unloading using an on-line gas chromatograph.

ALTERNATIVE 2

A sample shall be taken by Buyer and analyzed at a frequency of no more than every four minutes by an on-line gas chromatograph.
 - (iii) The results of each analysis shall be averaged to determine the final LNG Cargo composition. Additional backup samples shall be collected as specified in this Section 4 of Exhibit B. Two (2) sets of samples shall be collected at the following intervals during the unloading: one (1) hour after full pumping rate is

achieved, when unloading is 25%, 50% and 75% complete and one (1) hour prior to the first pump shutdown. Seller or Seller's agent shall arrange for an Independent Surveyor to witness the sample collection of unloaded LNG. The Independent Surveyor who witnessed such sampling shall seal such sample bottles, which sample bottles, shall be retained at Buyer's site. In the event of any dispute resulting pursuant to this Section 4(a) of Exhibit B, Seller and Buyer shall each have a right to one (1) set of samples. Disputes shall be resolved by an Expert pursuant to the procedures set forth in Section 16.3.

- (iv) The gaseous samples taken at unloading shall be distributed as follows:
 - (A) First sample: retained by Buyer for at least fifteen (15) Days for analysis by Seller at Seller's discretion.
 - (B) Second sample: retained by Buyer for at least thirty (30) Days.

In case any dispute as to the accuracy of any analysis is raised, the sample shall be further retained until Buyer and Seller mutually agree to retain it no longer.

- (v) SELECT ONE ALTERNATIVE:

ALTERNATIVE 1

Tests for trace contaminants may be performed as required.

ALTERNATIVE 2

Tests for trace contaminants are to be performed a continuous basis.

- (A) Hydrocarbons, Carbon Dioxide and Nitrogen – Samples shall be analyzed immediately to determine, by gas chromatography, the mol fraction of hydrocarbons, carbon dioxide and nitrogen in the sample. The method used shall be the method described in the latest version of the Gas Processors Association (GPA) Publication 2261 current at the time of analysis or any other method agreed upon by Buyer and Seller. Duplicate runs shall be made on each sample to determine that the repeatability of peak heights or peak areas are within acceptable limits. The calculated results of such duplicate runs shall be averaged.
- (B) Hydrogen Sulfide – ASTM D 4084-05 (Standard Test Method for Analysis of Hydrogen Sulfide in gaseous fuels (Lead Acetate Reduction Method).

- (C) Total Sulfur – The ASTM D 5504-01 (Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuel by Gas Chromatography and Chemiluminescence) procedure shall be used to determine the total sulfur content of samples, unless Seller and Buyer mutually agree that some other method should be used. If the total sulfur content is less than 5.7 mg per Cubic Meter it is not necessary to analyze the sample for H₂S.
- (D) Mercury – ASTM D 5954-98 (atomic absorption spectrophotometry).

5. Determination of Quantity of Unloaded LNG

The density of LNG shall be calculated by using the revised Klosek and McKinley method and using the formula:

where:

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

D = the density to four (4) significant figures of the LNG unloaded, stated in kilograms per Cubic Meter at temperature T_L;

X_i = the mol fraction, to the nearest fourth (4th) decimal place, of component i from the composition obtained in accordance with Section 4 of Exhibit B;

M_i = the molecular weight of component i as set forth in GPA Publication 2145 (Physical Constants) as may be revised from time to time;

V_i = the molar volume, to the nearest sixth (6th) decimal place, of component i, stated in Cubic Meters per kilo mol at temperature T_L and obtained by linear interpolation of the data set forth in the National Bureau of Standards Interagency Report 77-867 as may be revised from time to time;

X_m = the mol fraction, to the nearest fourth (4th) decimal place, of methane from the composition obtained in accordance with Section 4 of Exhibit B;

X_n = the mol fraction, to the nearest fourth (4th) decimal place, of nitrogen from the composition obtained in accordance with Section 4 of Exhibit B;

K₁ = the volume correction factor derived from the values set forth in the National Bureau of Standards Interagency Report 77-867 as may be revised from time to time; and

K_2 = the volume correction factor derived from the values set forth in the National Bureau of Standards Interagency Report 77-867 as may be revised from time to time.

- (b) The Heating Value (mass basis) of LNG, stated in Btu per lbm, shall be calculated by use of the formula:

$$P = \sum (H_i \times X_i \times M_i)$$

where:

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

H_i = Heating Value of component i, stated in Btu per lbm as set forth in GPA Publication 2145 (Physical Constants) as may be revised from time to time;

X_i = the mol fraction, to the nearest fourth (4th) decimal place, of component i from the composition obtained pursuant to Section 14.4 hereof; and

M_i = the molecular weight of component i as set forth in GPA Publication 2145 (Physical Constants) as may be revised from time to time.

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

$$H_v = \sum (H_i \times H_{vi})$$

where:

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

X_i = the mol fraction, to the nearest fourth (4th) decimal place, of component i from the composition obtained pursuant to Section 14.4 hereof; and

H_{vi} = the Heating Value of component i, stated in Btu per cubic foot, as set forth in GPA Publication 2145 (Physical Constants) as may be revised from time to time.

- (c) The quantity of energy unloaded shall be computed using the following formula and applying the method of rounding set forth in Section 14.5(d) below:

$$Q = V \times D \times P \times 2.2046 - Q^R$$

where:

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

V = the volume of the LNG unloaded, stated in Cubic Meters, obtained pursuant to Section 3 of Exhibit B;

D = the density of the LNG, stated in kilograms per Cubic Meter, as calculated in accordance with Section 5 of Exhibit B;

P = the Heating Value of the LNG, stated in Btu per lbm, as calculated in accordance with Section 5 of Exhibit B; and

Q_R = the Quantity of the vapor, stated in Btu, which displaced the volume of the LNG unloaded. Q_R shall be computed by use of the following formula:

where:

$$Q_R = V_x \frac{288.8}{273.2 + T_v} \times \frac{P_a}{101.325} \times HV_{\text{vapor}} \times 35.31467$$

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

P_a = the absolute pressure of the vapor in the tanks of the LNG Tanker after completion of unloading, stated in kPa; and

H_{vapor} = the Heating Value of the vapor (assumed to be methane), stated in Btu per cubic foot at Standard Conditions (60°F, 14.696 psia and equivalent to 15.60°C and 101.325 kPa) in accordance with GPA 2145-03 as may be revised from time to time. HV_{vapor} shall be 1010.

(d) If the first of the figures to be discarded is five (5) or more, the last of the figures to be retained shall be increased by one (1). If the first of the figures to be discarded is four (4) or less, the last of the figures to be retained shall be unaltered. For the purpose of rounding to a zero (0), the last of the figures to be retained shall have the same value as a ten (10).

(e) The following conversions shall be used:

$$2.2046 \text{ kg} = 1 \text{ lbm}; 35.31467 \text{ cubic feet} = 1 \text{ Cubic Meter.}$$

6. **Failure of Meters**

In the event a meter is out of service, or registering inaccurately, the volume of LNG unloaded at the Unloading Point shall be estimated:

(a) By using the registration of any check meter or meters if installed and accurately registering, or in the absence thereof;

(b) By correcting the error, if such error is ascertainable by calibration, test or mathematical calculation; or

(c) If the methods set forth in Sections 12.8(a) and (b) are not available, by estimating the quantity of LNG unloaded by another agreed method.

Exhibit C1
Letter of Credit
BANK

(To be issued by any 1st Class International Bank that is Acceptable to [Seller])

Irrevocable Standby Letter of Credit No. _____ Date _____

[Seller]

[insert address]

Attention: []

We hereby establish our irrevocable standby letter of credit in favor of [insert full name of Seller] (SELLER) for the account of (PLACE BUYER NAME HERE), (ADDRESS), in the amount of (AMOUNT ACCEPTABLE TO SELLER) U.S. Dollars available at (PLACE BANK NAME HERE) and at (PLACE CONFIRMING BANK NAME HERE) by payment against [SELLER'S] drafts at sight to be accompanied by:

Signed statement by a representative of [SELLER] that the amount drawn under this letter of credit represents an amount owing to [SELLER] and unpaid or defaulted by (PLACE BUYER NAME HERE).

Drafts must be presented no later than (DATE ACCEPTABLE TO SELLER).

Partial drawings are permitted.

SPECIAL CONDITION: Notwithstanding the above, this letter of credit shall also be available at (PLACE BANK NAME HERE) and at (PLACE CONFIRMING BANK NAME HERE) by payment against [SELLER'S] drafts at sight accompanied by:

Signed statement by a representative of [SELLER] that (1) as a result of pending or possible bankruptcy, reorganization or insolvency proceedings involving (PLACE BUYER NAME HERE), [SELLER] has tendered to an escrow agent designated by [SELLER] payments or deliveries [SELLER] reasonably believes are or may be subject to the aforementioned proceedings; (2) the amount drawn under this letter of credit represents or corresponds to such payments or deliveries; and (3) the escrow agent designated by [SELLER] has been instructed to release such payments or deliveries to (PLACE BUYER NAME HERE) upon receipt by [SELLER] of the amount drawn under this letter of credit.

We engage with [SELLER] that all documents presented under and in compliance with the terms of this credit shall be duly honored.

This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication Number 500.³⁰

Authorized Signature(s)
Position(s) of Authorized Person(s)
Full Bank Name

³⁰ Guidance Note: A revised Uniform Customs and Practice for Documentary Credits was adopted by the International Chamber of Commerce in 2007. Some lenders may reference the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication Number 600.

Exhibit C2

Guarantee

EXHIBIT D1³¹**Offshore Title Transfer**

(a) Title to and risk of loss of all LNG and Natural Gas being transported by an LNG Tanker en route to an Unloading Port shall pass from Seller to Buyer at the last point where the LNG Tanker carrying such LNG and Natural Gas is entirely outside the territorial waters of Buyer's Country ("Title Transfer Point"). Title to and risk of loss of any LNG and Natural Gas remaining on the LNG Tanker after discharge of the LNG Cargo at the Unloading Point will revert from Buyer to Seller at the first point where such LNG Tanker is entirely outside of the territorial waters of Buyer's Country.

(b) Buyer grants to Seller and Seller's Transporter a license to use as fuel such quantities of LNG and Natural Gas in the LNG Tanker as may reasonably be required to enable the LNG Tanker to continue its voyage from the Title Transfer Point inward bound to the Unloading Port, during berthing and unloading at the Buyer's Facilities, and from the Unloading Port outward bound until the LNG Tanker exits entirely the territorial waters of Buyer's Country, which license (i) shall automatically become effective at the Title Transfer Point (as the LNG Tanker is inward bound) without further action by Seller or Buyer; and (ii) shall not require any payment or other consideration for such LNG and Natural Gas to pass from Seller to Buyer. Nothing in this paragraph (b) shall affect the calculation of the quantity of LNG made available to, or taken by Buyer pursuant to Article V, Article XII, and Exhibit B, or the price to be paid by Buyer for such LNG pursuant to Article VII and Article VIII.

(c) If an LNG Cargo scheduled to be delivered to Buyer at the Delivery Point is cancelled for reasons specified in Sections 5.2, 5.3, 5.5, 6.3, or 14 following transfer of title from Seller to Buyer at the Title Transfer Point, Buyer shall be obligated to resell such LNG Cargo to Seller, and Seller shall be obligated to repurchase such LNG Cargo from Buyer, and title to and risk of loss of all LNG and Natural Gas in such LNG Cargo will revert from Buyer to Seller at either (A) the first point where the LNG Tanker is entirely outside the territorial waters of Buyer's Country following the effectiveness of such cancellation, or (B) if the LNG Tanker does not exit the territorial waters of Buyer's Country prior to discharging its LNG Cargo, then immediately upon notice from Seller to Buyer, but in no event later than actual discharge of the LNG Cargo; *provided however*, that if the LNG Cargo is cancelled for reasons specified in Section 5.5 or Section 14, then the foregoing provisions of this paragraph (c) shall not apply to the extent such LNG Cargo is an Insured Loss.

(d) In the case of retransfer of title and risk of loss pursuant to paragraph (c):

- (i) in the case of LNG not delivered to the Delivery Point pursuant to Article XIV, Seller shall pay Buyer for such retransferred LNG Cargo an amount equal to (x) the quantity not delivered to the Delivery Point, multiplied by (y) the Contract Price applicable on the date of such retransfer.

³¹ Guidance Note: Title transfer provisions must take into account national and international liability regimes, including Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, and parties may wish to modify these provisions accordingly.

- (ii) in the case of LNG not delivered to the Delivery Point pursuant to Section 6.3, Seller shall pay Buyer for such retransferred LNG Cargo an amount equal to (x) the Expected Delivery Quantity less any quantity of LNG from such LNG Cargo unloaded at Buyer's Facilities, multiplied by (y) the Contract Price applicable on the date of scheduled delivery to Buyer at the Unloading Port, and such LNG Cargo (or partial LNG Cargo, as the case may be) shall constitute a Seller Shortfall Quantity in accordance with Section 6.3(e); and
- (iii) SELECT ONE ALTERNATIVE

ALTERNATIVE 1³²

in the case of LNG not delivered to the Delivery Point pursuant to Section 5.2 or 5.3, Seller shall pay Buyer for such retransferred LNG Cargo an amount equal to (x) the proceeds from any Mitigation Sale pursuant to Section 5.2(b)(i) or deemed Mitigation Sale, if applicable, pursuant to Section 5.2(b)(iv), plus (y) reasonable, verifiable, incremental savings obtained by Seller, including savings related to transportation and Third Party costs avoided as a result of the Mitigation Sale as opposed to the sale to Buyer, less (z) reasonable, verifiable, incremental Losses incurred by Seller (acting as a Reasonable and Prudent Operator) as a result of such Mitigation Sale, including costs related to the transportation, marketing, selling and delivering such LNG Cargo; *provided, however, provided, however*, if the foregoing calculation results in a negative number, Buyer shall pay to Seller an amount equal to the negative result of such calculation; and *provided further*, that under no circumstances shall Buyer be entitled to any credit, rebate or offset of any amount in excess of (1) the Expected Delivery Quantity less any quantity of LNG from such LNG Cargo unloaded at Buyer's Facilities, multiplied by (2) the Contract Price applicable on the date of scheduled delivery to Buyer at the Unloading Port. Buyer shall have no liability pursuant to Section 5.2 for any LNG Cargo to which this paragraph (d)(iii) of Exhibit D1 applies.

ALTERNATIVE 2³³

in the case of an LNG Cargo not delivered to the Delivery Point pursuant to Section 5.2 or 5.3, Seller shall pay Buyer for such retransferred LNG Cargo an amount equal to: (x) (A) the Buyer Shortfall Quantity, multiplied by (B) the Contract Price applicable to such LNG Cargo on the date of such retransfer; less (y) (A) the TOP Liquidated Damage Amount, multiplied by (B) the Buyer Shortfall Quantity; *provided, however*, if the foregoing calculation results in a negative number, Buyer shall pay to Seller an amount equal to the negative result of such calculation; and

³² To be selected if Section 5.2(b), Alternative 1 is selected.

³³ To be selected if Section 5.2(b), Alternative 2 is selected.

provided further, that under no circumstances shall Buyer be entitled to any credit, rebate or offset of any amount in excess of (x) the Buyer Shortfall Quantity, multiplied by (y) the Contract Price applicable on the date of retransfer of title pursuant to paragraph (c). Buyer shall have no liability pursuant to Section 5.2 for any LNG Cargo to which this paragraph (d)(iii) of Exhibit D1 applies.

- (iv) in the case of an LNG Cargo not delivered to the Unloading Port pursuant to Section 5.5 following the transfer of title from Seller to Buyer at the Title Transfer Point, Seller shall pay to Buyer for such retransferred LNG Cargo an amount equal to (x) the Expected Delivery Quantity multiplied by the Contract Price applicable as of the date of such retransfer, plus (y) the Late Delivery Damages. Seller shall not be liable to Buyer for any amounts set forth in Section 5.4.

(e) Seller shall (at no expense to Buyer and on terms as may be reasonably required by Buyer) procure or reimburse Buyer for the cost of any and all cargo insurance, which shall not be for less than the value of the LNG Cargo on the basis of the Expected Delivery Quantity and the Contract Price, in respect of an LNG Cargo to be delivered to Buyer during the period from the passage of title and risk of loss from Seller to Buyer at the Title Transfer Point until delivery of such LNG Cargo at the Delivery Point, or retransfer of title pursuant to paragraph (c) of this Exhibit D1. [Seller shall ensure that Buyer is named as the co-insured on each policy of insurance procured by Seller pursuant to this paragraph (e) and]³⁴ Seller shall provide to Buyer, upon Buyer's request, such evidence of insurance as Buyer may reasonably require. Any proceeds of such cargo insurance procured by Seller pursuant to this paragraph (e) shall be payable directly to Buyer.

(f) Notwithstanding the first sentence of Section 5.4(c), the obligation of Seller to "make available" under an Agreement to Buyer a specified quantity of LNG shall be satisfied if (i) Seller or the master of the LNG Tanker has provided notice to Buyer that the LNG Tanker has arrived at the Title Transfer Point either (A) no later than [x] hours prior to the end of the Arrival Period, or (B) following the time specified in paragraph (f)(i)(A) of this Exhibit D1, if Buyer has, at or prior to the transfer of title, agreed to take a Late Arriving Cargo in accordance with Section 5.5, unless (ii) upon unloading at the Delivery Point such LNG fails to comply with the terms and conditions hereof.

(g) Notwithstanding the first sentence of Section 5.5(b), a "Late Arriving Cargo" shall mean an LNG Cargo that (i) arrives at the Title Transfer Point after [x] hours prior to the end of the Arrival Period; or (ii) arrives at the Title Transfer Point at or prior to the time specified in paragraph (g)(i) of this Exhibit D1, but (A) fails to issue a valid NOR prior to or during the Arrival Period, or (B) issues a valid NOR prior to or during the Arrival Period, but, for reasons attributable to Seller or the LNG Tanker, fails to be "all fast" at berth within six (6) hours after being instructed to proceed to berth by Buyer or Operator.

³⁴ **Note to Committee:** Subject to review to confirm that naming Buyer as co-insured is available and commercially practicable.

(h) For purposes of paragraph (c), cancellation of an LNG Cargo shall be without prejudice to any rights or remedies that may apply to any Party with respect to such LNG Cargo and shall be deemed effective upon the first to occur of one of the following events:

- (i) Seller notifies Buyer that Seller's Transporter will not deliver such LNG Cargo;
- (ii) Buyer notifies Seller that it will not accept such LNG cargo;
- (iii) the R/E Period for a Late Arriving Cargo has expired and Buyer has not agreed to take such Late Arriving Cargo; or
- (iv) the R/E Period for a Late Unloading Cargo has expired and Seller has not agreed to deliver such Late Unloading Cargo.³⁵

(i) Buyer shall invoice Seller pursuant to Section 8.3 for retransfer of an LNG Cargo in accordance with paragraph (d) of this Exhibit D1 as set forth below:

(A) in the event of a retransfer of an LNG Cargo from Buyer to Seller subject to paragraphs (d)(i), (ii), or (iv) of this Exhibit D1, Buyer shall issue an invoice to Seller for amounts owed as a result of such retransfer.

(B) in the event of a retransfer of LNG from Buyer to Seller subject to paragraph (d)(iii) of this Exhibit D1, Seller shall promptly, and in any event no later than five (5) Days following completion of any Mitigation Sale, provide to Buyer a statement setting forth in reasonable detail (x) the proceeds from the Mitigation Sale, or deemed mitigation sale, and (y) the actual, verifiable, incremental Losses incurred by Seller with respect to such Mitigation Sale. Buyer shall issue an invoice to Seller for the credit owed to Buyer in relation to such Mitigation Sale.

Seller shall pay such amounts pursuant to Section 8.5(b)

³⁵ Guidance Note: The provisions allowing "cancellation" of an LNG Cargo are consistent with U.C.C. § 2-720, which provides that, absent a clear contrary intent, "cancellation" of a sale shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

EXHIBIT D2

Offshore Title Transfer

(a) Title to and risk of loss of all LNG and Natural Gas being transported by an LNG Tanker en route to an Unloading Port shall pass from Seller to Buyer at the last point where the LNG Tanker carrying such LNG and Natural Gas is entirely outside the territorial waters of Buyer's Country ("Title Transfer Point"). Title to and risk of loss of any LNG and Natural Gas remaining on the LNG Tanker after discharge of the LNG Cargo at the Unloading Point will revert from Buyer to Seller at the first point where such LNG Tanker is entirely outside of the territorial waters of Buyer's Country.

(b) Buyer grants to Seller and Seller's Transporter a license to use as fuel such quantities of LNG and Natural Gas in the LNG Tanker as may reasonably be required to enable the LNG Tanker to continue its voyage from the Title Transfer Point inward bound to the Unloading Port, during berthing and unloading at the Buyer's Facilities, and from the Unloading Port outward bound until the LNG Tanker exits entirely the territorial waters of Buyer's Country, which license (i) shall automatically become effective at the Title Transfer Point (as the LNG Tanker is inward bound) without further action by Seller or Buyer; and (ii) shall not require any payment or other consideration for such LNG and Natural Gas to pass from Seller to Buyer. Nothing in this paragraph (b) shall affect the calculation of the quantity of LNG made available to, or taken by Buyer pursuant to Article V, Article XII, and Exhibit B, or the price to be paid by Buyer for such LNG pursuant to Article VII and Article VIII.

(c) If an LNG Cargo scheduled to be delivered to Buyer at the Delivery Point is cancelled for reasons specified in Section 6.3 following transfer of title from Seller to Buyer at the Title Transfer Point, Buyer shall be obligated to resell such LNG Cargo to Seller, and Seller shall be obligated to repurchase such LNG Cargo from Buyer, and title to and risk of loss of all LNG and Natural Gas in such LNG Cargo will revert from Buyer to Seller at either (A) the first point where the LNG Tanker is entirely outside the territorial waters of Buyer's Country following notice from Buyer to Seller that Buyer will not accept such LNG Cargo, or (B) if the LNG Tanker does not exit the territorial waters of Buyer's Country prior to discharging its LNG Cargo, then immediately upon notice from Seller to Buyer, but in no event later than actual discharge of the LNG Cargo.

(d) If Paragraph (c) of this Exhibit D2 applies, Seller shall pay Buyer for such retransferred LNG Cargo an amount equal to (x) the Expected Delivery Quantity less any quantity of LNG from the LNG Cargo unloaded at Buyer's Facilities, multiplied by (y) the Contract Price applicable on the date of scheduled delivery to Buyer at the Unloading Port;

(e) Seller shall procure or reimburse Buyer for any and all cargo insurance, which shall not be for less than the value of the LNG Cargo on the basis of the Expected Delivery Quantity and the Contract Price, in respect of an LNG Cargo to be delivered to Buyer after the passage of title and risk of loss from Seller to Buyer at the Title Transfer

Point. [Seller shall ensure that Buyer is named as the co-insured on each policy of insurance procured by Seller pursuant to this paragraph (e) and]³⁶ Seller shall provide to Buyer, upon Buyer's request, such evidence of insurance as Buyer may require. Any proceeds of such cargo insurance procured by Seller pursuant to this paragraph (e) shall be payable directly to Buyer.

(f) Notwithstanding the first sentence of Section 5.4(c), the obligation of Seller to "make available" under an Agreement to Buyer a specified quantity of LNG shall be satisfied if (i) Seller or the master of the LNG Tanker has provided notice to Buyer that the LNG Tanker has arrived at the Title Transfer Point either (A) no later than [x] hours prior to the end of the Arrival Period, or (B) following the time specified in paragraph (f)(i)(A) of this Exhibit D2, if Buyer has agreed to take a Late Arriving Cargo in accordance with Section 5.5, unless (ii) upon unloading at the Delivery Point such LNG fails to comply with the terms and conditions hereof. Notwithstanding the first sentence of Section 5.5(b), a "Late Arriving Cargo" shall mean an LNG Cargo that arrives at the Title Transfer Point after [x] hours prior to the end of the Arrival Period.

(g) Notwithstanding anything to the contrary in Section 5.3, Buyer shall take and Seller shall unload at the Delivery Point, any Late Unloading Cargo, and Buyer shall pay to Seller for the period between the end of the Arrival Period and when Buyer issues a notice to the LNG Tanker to proceed to berth all Losses incurred by Seller in delivering such Late Unloading Cargo.

³⁶ **Note to Committee:** Subject to review to confirm that naming Buyer as co-insured is available and commercially practicable.