

Section 8.6 Excess Quantities.

(a) In addition to the ACQ in any Contract Year, Seller shall have the right to request not later than eighty-five (85) Days prior to such Contract Year, to deliver additional quantities of LNG to the LNG Terminal during such Contract Year, *provided that* Seller requests to deliver such LNG in Arrival Windows allocated to Seller in the Annual Program other than Firm Arrival Windows. Buyer shall use reasonable efforts to accept such quantities; *provided, however, that:*

- (i) the total quantity of LNG delivered by Seller to Buyer for the Scheduling Year corresponding to such Contract Year shall not exceed Seller's Requested Quantity for such Scheduling Year, and
- (ii) Buyer shall have no obligation during such Contract Year to use reasonable efforts to receive any such excess quantities if, at the time the Annual Program for the Scheduling Year corresponding to such Contract Year was established, Buyer requested that Make-Up Quantities be scheduled and Seller refused to schedule delivery of such Make-Up Quantities.

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Article 9. Quality

Section 9.1 Acceptance and Rejection.

(a) Buyer will examine or cause Southern LNG to examine promptly the results of the inspection and tests described in Article 10 to determine whether Buyer accepts or rejects Seller's delivery of LNG. Buyer shall have the right to reject any delivery that does not comply in all respects with the specifications set forth in Exhibit 9.1; *provided, however,* that Buyer shall use reasonable efforts to accept, and shall cause Southern LNG to use reasonable efforts to accept, LNG that does not meet the specifications set forth in Exhibit 9.1 (including the provision of Injection Services to the extent such Injection Services are available to Southern LNG); *provided further, however,* that if Southern LNG, having exercised reasonable efforts, nonetheless rejects any quantity of LNG that does not meet the specifications set forth in Exhibit 9.1, Buyer will be deemed to have rejected such quantity of LNG and shall have no liability to Seller with respect to such quantity.

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(b) In the event that Seller becomes aware prior to loading of a cargo that the LNG in question will not conform to the specifications set forth in Exhibit 9.1, Seller shall notify Buyer of such non-conformity and, if requested by Seller, Buyer shall use reasonable efforts to notify Seller, within the time specified by Seller, of whether it will accept or reject such cargo; *provided, however*, that if Buyer fails to so notify Seller, such failure shall not be considered acceptance of Seller's request to take such cargo. Buyer's election to accept shall be binding (subject to Section 9.2) so long as the quality of the LNG at the Delivery Point is consistent with the quality notified to Buyer prior to the loading of such cargo. At the time Buyer notifies Seller of its willingness to accept such cargo, Buyer shall provide Seller a good faith estimate of the costs described in Section 9.2, which estimate shall not limit or otherwise affect Buyer's right to compensation under Section 9.2.

Section 9.2 Results of Acceptance. In the event Buyer accepts delivery of LNG that does not meet the specifications set forth in Exhibit 9.1, regardless of whether Seller has provided notice of such nonconformity pursuant to Section 9.1(b),

(a) Seller shall pay Buyer any incremental costs reasonably incurred by Buyer in connection with such nonconforming LNG, and

(b) upon such payment by Seller, such LNG shall be deemed, for purposes of this Article 9, to meet the specifications set forth in Exhibit 9.1.

Section 9.3 Results of Rejection. If Buyer rejects a delivery of LNG:

(a) title to such LNG shall be deemed to remain at all times with Seller;

(b) the risk of loss associated with such LNG shall remain at all times with Seller;

(c) Buyer shall have no obligation to pay for such LNG or any demurrage or other costs resulting from such rejection;

(d) Buyer shall have no take-or-pay liability with regard to such cargo; and

(e) Seller shall be deemed, for all purposes of this Agreement, including Article 19, to have failed to deliver the quantity of LNG rejected by Buyer.

#### Article 10. Testing and Measurement

Section 10.1 Testing and Measurement Equipment. All LNG delivered by Seller to Buyer hereunder shall be measured as specified in Exhibit 10.1.

Section 10.2 Testing by Seller. Seller shall, at its own expense, test all of the LNG it seeks to deliver hereunder to determine if such LNG meets the specifications set forth in Exhibit 9.1. Each such test shall be conducted according to the standards and procedures described in Exhibit 10.2.

In addition, Southern LNG and Buyer shall have the right to test such LNG at the Delivery Point according to the standards and procedures described in Exhibit 10.2 to determine if such LNG meets the specifications set forth in Exhibit 9.1.

#### Article 11. Title and Risk of Loss

Section 11.1 Title. Title to the LNG sold and purchased under this Agreement will transfer from Seller to Buyer at a point (the "Title Transfer Point") which is the last point where the LNG Tanker carrying the LNG is outside the territorial waters of the United States or another point to be mutually agreed upon; *provided, however*, that Seller will fully indemnify Buyer and the Buyer Indemnified Parties, pursuant to Article 23, for all risks of loss, liabilities and Claims associated with such passage of title prior to transfer of custody of the LNG at the Delivery Point; *provided, further, however*, that in the event delivery of such cargo to the Delivery Point is cancelled, title will revert from Buyer to Seller upon the effectiveness of such cancellation.

Section 11.2 Risk of Loss. The risk of loss of the LNG and any liabilities resulting therefrom will remain with Seller until transferred to Buyer upon delivery of the LNG by Seller at the Delivery Point.

#### Article 12. Transportation and Unloading

##### Section 12.1 Seller's Responsibility for Shipping and Unloading.

(a) Seller shall be responsible for arranging, and shall pay all costs (including shipping costs, port charges and insurance costs) associated with the transportation of LNG to the LNG Terminal and, subject to the provisions of Article 13, to Alternative Destinations, except as provided in Section 16.1 of this Agreement.

(b) Seller shall inform Buyer, as soon as practical, of the identity of any LNG Tanker that Seller intends to use to deliver LNG to Buyer under this Agreement in lieu of any LNG Tanker specified pursuant to the Scheduling Terms and shall provide all necessary details concerning the dimensions, specifications, operating characteristics and requirements of such LNG Tanker; *provided, however*, that such substitution by Seller of an LNG Tanker will in no way affect Buyer's obligations to take or Seller's obligations to deliver the quantities of LNG that were scheduled for delivery under this Agreement pursuant to the Annual Program for the Scheduling Year in which such LNG Tanker is substituted.

##### Section 12.2 LNG Tanker Requirements.

(a) The LNG Tankers at all times shall be maintained and safely operated, compatible with the Unloading Port facilities and compliant with Southern LNG's FERC Gas Tariff as it may be amended from time to time;

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Tankers used by Seller shall, at a minimum and without limitation, at all times comply with the following:

- (i) be designed, equipped and manned so as safely to permit the unloading of a full cargo of LNG, from the port side of such LNG Tanker, during a period of less than [REDACTED] hours at an average pressure of forty pounds per square inch gauge (40 psig), such [REDACTED] hours not to include time for connection and cooldown of LNG unloading arms, pipes and other transfer equipment;
- (ii) be equipped with communications equipment that is in compliance with all applicable Laws or other requirements and that permits the LNG Tanker to be in communication with land stations and the control rooms of Southern LNG;
- (iii) be equipped with adequate facilities for mooring, unmooring and handling LNG at the Delivery Point and related port navigation;
- (iv) be in compliance with all applicable Laws and other requirements of the country of vessel registry and the United States that relate to seaworthiness, design, safety, environmental protection, navigation, operation and similar technical and operational matters as with respect to such LNG Tanker that may be in effect from time to time;
- (v) be manned with a qualified and competent crew, including the master and enough crew members fluent in written and spoken English to coordinate with personnel at the Unloading Port and a master, chief engineer, chief mate and cargo engineer (and such other officers having responsibilities associated with the preparation of the LNG Tanker for the discharge and unloading of LNG) who are all experienced in LNG Tanker operations;
- (vi) be maintained in class with either the American Bureau of Shipping, Lloyds Register of Shipping, Nippon KK or Det Norske Veritas or any other classification society that is mutually agreeable to the Parties;
- (vii) be adequately covered by marine insurance policies
  - (A) in amounts and at levels customarily maintained by first class operators and meeting the minimum insurance requirements set forth in Exhibit 22.2, and
  - (B) if requested by Southern LNG or the terminal operator at an Alternative Destination, provide to Southern LNG and such other operator with a satisfactory certificate of such insurance prior to berthing of such LNG Tanker;

- (viii) be capable of carrying a cargo of at least seventy thousand (70,000) Cubic Meters of LNG but no more than one hundred forty-three thousand (143,000) Cubic Meters of LNG;
- (ix) be able to berth safely at, and compatible in all respects with, the LNG Terminal as it is configured as of the Effective Date; and
- (x) in the event that:
  - (A) LNG Tankers are required by any Government Entity to unload at the LNG Terminal from the starboard side of such LNG Tankers, and
  - (B) the LNG Terminal provides facilities for unloading of LNG Tankers on the starboard side,

then each such LNG Tanker must be designed, equipped and manned so as safely to permit the unloading of a full cargo of LNG from the starboard side of such LNG Tanker, during a period of less than [REDACTED] hours at an average pressure of forty pounds per square inch gauge (40 psig) such [REDACTED] hours not to include time for connection and cooldown of LNG unloading arms, pipes and other transfer equipment.

**Section 12.3 LNG Tanker Inspection.**

- (a) Before the berthing and commencement of unloading of any LNG Tanker at the Unloading Port, Buyer shall have the right to conduct an inspection of the LNG Tanker for the purpose of determining Seller's compliance with Section 12.2, which Seller shall facilitate by providing Buyer, Southern LNG and their respective agents reasonable access to the LNG Tanker and such information regarding its condition and operation as is reasonably requested by Buyer, Southern LNG, the operator of any Alternative Destination or their respective agents. If:
  - (i) such inspection reveals that the LNG Tanker fails to comply with the Section 12.2 standards to the extent that a Reasonable and Prudent Operator would not permit such LNG Tanker to berth, or if berthed to unload, and
  - (ii) Buyer has confirmation in writing that Southern LNG will not permit such LNG Tanker to berth, or if berthed to unload,

then Buyer shall have the right to reject the LNG Tanker.

- (b) Rejection of an LNG Tanker pursuant to this Section 12.3 shall be deemed failure by Seller to deliver the Expected Delivery Quantity of the cargo scheduled for delivery on such LNG Tanker.

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Section 12.4 LNG Terminal Facility Inspection. Before the berthing and commencement of unloading of any LNG Tanker at the LNG Terminal, Seller shall have the right to conduct an inspection of the LNG Terminal for the purpose of determining Buyer's compliance with Exhibit 12.5(e) which Buyer shall facilitate by providing Seller and its agents reasonable access to the LNG Terminal facilities and such information regarding their condition and operation as is reasonably requested by Seller or its agents. If:

(a) such inspection reveals that Buyer has materially failed to comply with Exhibit 12.5(e) to the extent that a Reasonable and Prudent Operator of an LNG Tanker would not permit such LNG Tanker to berth, or if berthed, to unload, and

(b) Seller has confirmation in writing that the master of such LNG Tanker will not permit such LNG Tanker to berth,

then Seller shall have the right to refuse to unload at such facilities and such refusal shall be deemed failure by Buyer to accept the Expected Delivery Quantity of the cargo scheduled for delivery on such LNG Tanker.

Section 12.5 Unloading Port Obligations.

(a) Seller shall cause each of the LNG Tankers that utilize the Unloading Port to observe and comply with all applicable Laws.

(b) Any tugs, pilots, escort vessels or other vessels attending the LNG Tanker while at the Unloading Port shall be employed by and at the sole risk and expense of Seller.

(c) Seller shall, at no cost or expense to Buyer, obtain and maintain, or cause to be obtained and maintained, all approvals (including all port approvals, marine permits, and other technical and operational authorizations) required from Government Entities for each LNG Tanker to enter and travel in the territorial waters of the United States, to enter the Unloading Port, to berth and unload its cargo, to depart from the Unloading Port, and to leave the territorial waters of the United States.

(d) Seller shall be responsible for the payment of:

- (i) all amounts due for supplies and services requested by masters of LNG Tankers delivering LNG under this Agreement, and
- (ii) all port charges, including costs of dockage and wharfage, port service charges, line handling fees, harbor dues, inspection and customs fees, telephone and postage fees and charges, tonnage taxes and other similar costs incurred in connection with the delivery of LNG by such LNG Tankers to the Delivery Point.

With respect to any such charges imposed by Southern LNG, Seller shall only be responsible for payment of such charges to the extent that these charges are uniformly applied to all LNG vessels

delivering LNG to the Delivery Point and to the extent that such charges are permitted under Southern LNG's FERC Gas Tariff.

(e) Buyer shall cause Southern LNG to:

- (i) provide reasonable assistance to Seller in coordinating delivery of equipment, supplies and services for LNG Tankers berthing at the LNG Terminal; and
- (ii) provide, maintain, and operate or cause to be provided, maintained and operated at the LNG Terminal a berth and receiving facilities substantially as described in Exhibit 12.5(e).

(f) Buyer shall arrange for line handling services to be provided to Seller at the LNG Terminal; *provided, however*, that Seller will reimburse Buyer for any costs reasonably incurred by Buyer in connection with such line handling service.

Section 12.6 Notices of Estimated Time of Arrival. Seller shall provide, or cause each LNG Tanker delivering a cargo of LNG to Buyer to provide, to each of Buyer and Southern LNG the series of notices regarding the delivery of such cargo of LNG set forth below (or if such LNG Tanker is travelling to an Alternative Destination, such LNG Tanker will provide the notices reasonably required by the operator of such Alternative Destination to addresses which have been given to Seller at the time the Alternative Destination has been designated by Buyer), with each such notice specifying the name of such LNG Tanker, the total quantity of LNG (in Cubic Meters) to be delivered to Buyer by such LNG Tanker, any operational deficiencies in the LNG Tanker that may affect its performance at the Delivery Point, and the estimated date and time of the arrival (the "Estimated Time of Arrival" or "ETA") of such LNG Tanker at the Delivery Point:

(a) first notice [REDACTED] hours before such LNG Tanker departs the port of loading, following receipt of which Buyer shall, or shall cause Southern LNG to, notify Seller whether Southern LNG is able to schedule the arrival of Seller's LNG Tanker at the date and hour stated in Seller's notice;

(b) a second notice when such LNG Tanker departs the port of loading;

(c) a third notice for receipt ninety-six (96) hours before the ETA; and if such ETA changes by more than twelve (12) hours and the notice set forth in Section 12.6(d) has not yet been given then an updated notice will be sent;

(d) a fourth notice for receipt seventy-two (72) hours before the ETA; and if such ETA changes by more than six (6) hours and the notice set forth in Section 12.6(e) has not yet been given then an updated notice will be sent;

(e) a fifth notice for receipt forty-eight (48) hours before the ETA; and if such ETA changes by more than six (6) hours and the notice set forth in Section 12.6(f) has not yet been given then an updated notice will be sent;

(f) a sixth notice for receipt twenty-four (24) hours before the ETA; and if such ETA changes by more than two (2) hours and the notice set forth in Section 12.6(g) has not yet been given then an updated notice will be sent;

(g) a seventh notice for receipt five (5) hours before the ETA; and if such ETA changes by more than two (2) hours and the notice set forth in Section 12.6(h) has not yet been given then an updated notice will be sent;

(h) an eighth notice (the "Arrival Notice") when such LNG Tanker has:

(i) arrived at the location where a pilot is first required to be on board the LNG Tanker, as established in accordance with the port regulations of the Unloading Port, and

(ii) received all approvals required under applicable Laws to:

(A) in the case of deliveries to the LNG Terminal, to enter the channel of the Savannah River (exclusive of any approvals that could not be obtained due to the actions or omissions of Buyer, the actions or omissions of Southern LNG or the presence at the Berth or in the channel of the Savannah River of another LNG Tanker), or

(B) in the case of deliveries to an Alternative Destination, to proceed to the Berth at the Alternative Destination;

*provided, however,* that if such Arrival Notice is issued prior to the Arrival Window established for such LNG Tanker in the current Ninety-Day Schedule, the Arrival Notice shall be deemed effective as of 6:00 a.m. local time at the Unloading Port during the first twenty-four (24) hour period of the Arrival Window established for such LNG Tanker; and

(i) a ninth notice when such LNG Tanker enters the channel of the Savannah River.

Section 12.7 Notice of Readiness. Following the arrival of each LNG Tanker at the Berth and its receipt of all necessary clearances to discharge LNG, Seller shall cause the master of such LNG Tanker to provide its notice of readiness to discharge LNG (the "Notice of Readiness"). At any time after the LNG Tanker has delivered its Notice of Readiness, Buyer shall be entitled to send a representative of Buyer and/or Southern LNG to board such vessel and act as an observer with respect to all activities occurring after the delivery of such Notice of Readiness until the completion of unloading of the LNG Tanker.



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**Article 13. Alternative Destinations**

**Section 13.1**

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Section 13.2

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Article 14. LNG Delivery Schedule

Section 14.1 Scheduling Terms.

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Article 15. Price

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Section 15.7 Terminalling Costs.

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**Article 16. Duties And Taxes**

Section 16.1 Duties and Taxes. All customs, taxes, excises, fees, duties, levies, charges and other assessments payable on or with respect to the sale or delivery of LNG sold and purchased under this Agreement to Buyer, its exportation from the Republic of Trinidad and Tobago and the importation of LNG by Buyer into the United States, shall be the responsibility of Seller;

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Article 17. Billing And Payment

Section 17.1 Monthly Invoices.

(a) On or before the twenty-fifth (25<sup>th</sup>) Day of each Month following the earlier of the Month in which the first delivery of LNG by Seller to Buyer occurs under this Agreement or the Payment Commencement Date, Buyer shall forward to Seller:

- (i) a monthly statement, calculated in accordance with Article 15, indicating:
  - (A) the total amount due to Seller in such Month under this Agreement, with respect to deliveries of LNG made in the previous Month, and
  - (B) the total amount due to Buyer in such Month under this Agreement, including the amount due with respect to the Terminalling Costs, and
- (ii) unless Section 17.1(c) applies, payment by Buyer of the net amount due to Seller, if any, as set forth in such monthly statement.

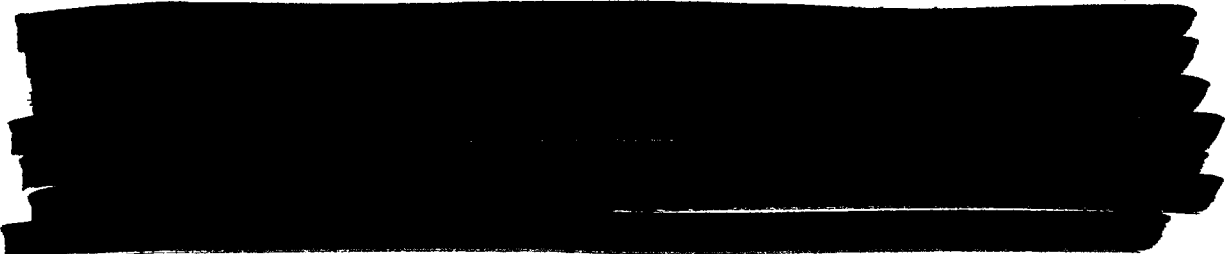
(b) Buyer may, without liability to Seller, withhold sums in respect of payments which would otherwise be made by Buyer to Seller to the extent that such withholding is required by Laws; *provided, however*, that, if Buyer ever becomes an entity formed under the laws of a jurisdiction other than a political subdivision of the United States, Buyer shall not be entitled to withhold any amount that would not be required to be withheld had Buyer remained an entity formed under the laws of any political subdivision of the United States. Buyer shall notify Seller as soon as reasonably practicable after becoming aware of the legal requirement to withhold sums from Seller's payments. In the event that Buyer is obliged to withhold any amounts from Seller's invoices and pay such amounts to a competent taxing authority then Buyer shall furnish Seller with proof of payment of such sums paid together with tax receipts for such sums paid over. Seller shall be responsible for, indemnify, defend and hold harmless Buyer against any claims arising in connection with such withholding or failure to withhold that arise due to the actions of Seller.

(c) If the total amount due to Buyer with respect to Terminalling Costs, as reflected in the monthly statement, exceeds the total amount due to Seller with respect to deliveries of LNG, Seller shall pay Buyer, within ten (10) Days of Seller's receipt of Buyer's statement, the net amount due to Buyer, as set forth in such monthly statement.



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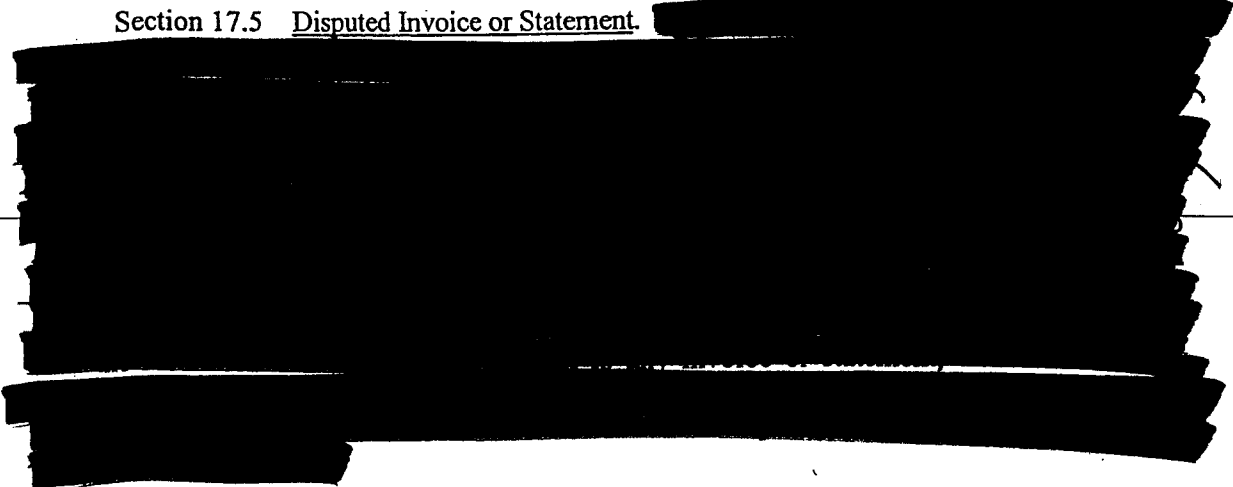
(e) When calculating the unit prices to be paid per MMBtu of LNG under this Agreement, all Dollar amounts will be rounded to four (4) decimal places.

Section 17.2 Quantity Deficiency Invoices. If any Monthly Quantity Deficiency is incurred by Buyer in a given Month, Buyer shall pay amounts due under Section 8.4 for such Monthly Quantity Deficiency on or before the twenty-fifth (25<sup>th</sup>) Day of the following Month.

Section 17.3 Shortfall Quantity Invoices. If any Shortfall Quantity is incurred by Seller in a given Month, Seller shall pay amounts due under Article 19 for such Shortfall Quantity on or before the twenty-fifth (25<sup>th</sup>) Day of the following Month. Any liability of Seller for a Shortfall Quantity may be satisfied should Buyer so elect by crediting the amount of such liability against any amount payable by Buyer under this Agreement.

Section 17.4 Interest on Late Payments. Interest on past due amounts shall accrue from the due date to the date payment is actually made at the Base Interest Rate plus one hundred (100) basis points compounded monthly.

Section 17.5 Disputed Invoice or Statement.



Section 17.6 Payment. Buyer shall pay, or cause to be paid, in Dollars, in immediately available funds all amounts which become due and payable by Buyer pursuant to Section 17.1(a) or Section 17.2 to a bank account or accounts designated by and in accordance with instructions issued by Seller. Seller shall pay, or cause to be paid, in Dollars, in immediately available funds all amounts which become due and payable by Seller pursuant to Section 17.1(c) or Section 17.3 to a bank account or accounts designated by and in accordance with instructions issued by Buyer. The

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paying Party shall not be responsible for a designated bank's disbursement of amounts remitted to such bank, and a deposit in immediately available funds of the full amount of each invoice with such bank shall constitute full discharge and satisfaction of the obligations to pay such invoice under this Agreement.

## Article 18. Force Majeure

Section 18.1 Performance Excused. A Party shall be excused for failure to carry out its obligations under this Agreement to the extent that and for the period during which it is rendered unable to carry out such obligations by reason of Force Majeure.

### Section 18.2 Force Majeure Defined.

(a) "Force Majeure" shall mean, with respect to either Party, any event or circumstance beyond the reasonable control of such Party and its Affiliates, each such Party having acted as a Reasonable and Prudent Operator, and which results in or causes the failure of such Party to perform any one or more of its obligations under this Agreement. For the purposes of this definition only, each of Atlantic LNG 2/3, Atlantic 1, the operator of the LNG Tanker delivering LNG to the LNG Terminal or Alternative Destinations and each of the NCMA Parties shall be deemed an Affiliate of Seller.

(b) In addition, any "force majeure" (as such term is defined in Exhibit 18.2 to this Agreement) that affects either Southern LNG or SNG and results in or causes the failure of Buyer to perform any one or more of its obligations under this Agreement shall be deemed to be a Force Majeure of Buyer.

Section 18.3 Limitations. Where a claim of Force Majeure hereunder is based on events affecting a third party (including SNG, Southern LNG, Atlantic LNG 2/3, Atlantic 1, and the NCMA Parties) and such events reduce but do not eliminate the ability of such third parties to perform their contractual obligations, such Force Majeure shall constitute an excuse of Buyer's or Seller's obligations hereunder only to the extent that the relevant contractual arrangements require such partial disability to be apportioned to Buyer or Seller, as applicable.

Section 18.4 Procedure. Upon the occurrence of an event of Force Majeure, the affected Party shall:

- (a) promptly notify the other Party of the invocation of Force Majeure and state in such notice:
- (i) the particulars of the event giving rise to such Force Majeure claim, in as much detail as is then reasonably available;
  - (ii) its bona fide good faith estimate of the period during which performance may be suspended or reduced, including to the extent known or ascertainable, the estimated extent of such reduction in performance; and

- (iii) the particulars of the program to be implemented to ensure full resumption of normal performance hereunder;
- (b) thereafter provide interim reports of the Force Majeure event, reasons for continued invocation of Force Majeure and an estimate of the anticipated duration of the Force Majeure event;
- (c) use reasonable endeavors to overcome and minimize the effects of any such Force Majeure and resume performance of obligations as soon as practicable after removal of the Force Majeure;
- (d) not be excused by reason of Force Majeure from any failure to comply with an obligation to indemnify or to make any payments then due or that may become due; and
- (e) upon request in writing by the other Party, give or procure access insofar as is reasonably practicable to do so for a reasonable number of representatives of that other Party at that other Party's sole risk and cost, to examine the scene of the relevant event or circumstances of Force Majeure.

Section 18.5 Exclusions. While not an exhaustive list, Force Majeure shall not include:

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- (d) any failure by any customer of Buyer to take natural gas;

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- (f) the availability to Buyer of lower prices for LNG from other sellers;
- (g) the availability to Seller of higher prices for the LNG from other purchasers;

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(h) the depletion of the reservoirs in the NCMA or the inability of such reservoirs to produce natural gas in sufficient quantities to satisfy Seller's obligations under this Agreement, except to the extent that such inability results from an event of Force Majeure as otherwise defined herein;

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Section 18.6

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Section 18.7 Effect on Payment Obligations. Nothing in this Article 18 shall be construed to relieve a Party of its obligation to pay sums of money due or that may become due under this Agreement; *provided, however*, that Buyer shall not be responsible for any payment for LNG it does not take due to a Force Majeure event. Notwithstanding any provision herein to the contrary, in the event of a Force Majeure declared by either Buyer or Seller, Seller shall be obligated to pay the Terminalling Costs during such event of Force Majeure

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Article 19. Seller's Liabilities

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**Article 20. Default and Termination**

Section 20.1 Termination by Buyer. Buyer may terminate this Agreement by providing notice to Seller as set forth herein immediately upon the occurrence of any of the following events (each such event a "Seller Event of Default"):

(a) Seller's failure to cure one or more of the following which, in Buyer's opinion, will have or be likely to have a material adverse effect on Seller's ability to perform its obligations hereunder within [REDACTED] notice from Buyer:

- (i) a receiver, custodian, liquidator or trustee of Seller, or of all or any of the property of Seller, is appointed by court order and such order is consented to by Seller or remains in effect for more than [REDACTED] after the commencement of such action;
- (ii) an order for relief under any state or federal bankruptcy law is entered with respect of Seller or Seller is adjudicated a bankrupt or insolvent;
- (iii) any of the property of Seller is sequestered by court order and such order is consented to by Seller or remains in effect for more than [REDACTED] after the commencement of such action; or
- (iv) a petition is filed by or against Seller under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within [REDACTED] after such filing.

(b) Seller's failure, for reasons not excused by this Agreement, to tender for delivery:

- (i) each of [REDACTED] consecutive cargoes of LNG scheduled pursuant to the Scheduling Terms for delivery by Buyer, or
- (ii) any [REDACTED] LNG scheduled pursuant to the Scheduling Terms for delivery by Buyer during a [REDACTED] month period

where, in either case, Seller was able, acting as a Reasonable and Prudent Operator, to tender such cargoes of LNG for delivery.

(c) Subject to Section 17.5 with respect to disputed amounts, Seller fails to pay any amount to Buyer when due hereunder and such failure is not cured within [REDACTED] after notice from Buyer.

(d) Either (i) there exists a material breach or a termination of Seller's Guaranty or (ii) Seller fails to provide Seller's Guaranty and the requisite authorities as set forth in Section 21.1(b); *provided, however*, the right to terminate in the event of a default under this Section 20.1(d)(ii) must

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be exercised within [REDACTED] the deadline for providing such authorities and Seller's Guaranty set forth in Section 21.1(b).

(e) The occurrence of any "Seller Event of Default" (as such term is defined in the Train 3 Agreement) provided that Buyer simultaneously terminates the Train 3 Agreement under such "Seller Event of Default."

Section 20.2 Termination by Seller. Seller may terminate this Agreement by providing notice to Buyer as set forth herein immediately upon the occurrence of any of the following events (each such event a "Buyer Event of Default"):

(a) Buyer's failure to cure one or more of the following which, in Seller's opinion, will have or be likely to have a material adverse effect on Buyer's ability to perform its obligations hereunder within thirty [REDACTED] notice from Seller to Buyer:

- (i) a receiver, custodian, liquidator or trustee of Buyer, or of all or any of the property of Buyer, is appointed by court order and such order is consented to by Buyer or remains in effect for more than [REDACTED] Days after the commencement of such action;
- (ii) an order for relief under any state or federal bankruptcy law is entered with respect of Buyer or Buyer is adjudicated a bankrupt or insolvent;
- (iii) any of the property of Buyer is sequestered by court order and such order is consented to by Buyer or remains in effect for more than [REDACTED] after the commencement of such action; or
- (iv) a petition is filed by or against Buyer under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within [REDACTED] after such filing.

(b) Buyer's failure, for reasons not excused by this Agreement, to take delivery of

- (i) each of [REDACTED] LNG tendered for delivery by Seller or
- (ii) any [REDACTED] of LNG tendered for delivery by Seller during a [REDACTED]

where, in either case, Buyer was able, acting as a Reasonable and Prudent Operator, to take such cargoes of LNG.

(c) Subject to Section 17.5 with respect to disputed amounts, Buyer fails to pay any amount to Seller when due hereunder and such failure is not cured within [REDACTED] after notice from Seller to Buyer.

(d) Either (i) there exists a material breach or a termination of Buyer's Guaranty or (ii) Buyer fails to provide Buyer's Guaranty and the requisite authorities as set forth in Section 21.1(a); *provided, however*, the right to terminate in the event of a default under this Section 20.2(d)(ii) must be exercised within [REDACTED] after the deadline for providing such authorities and Buyer's Guaranty set forth in Section 21.1(a).

(e) The occurrence of any "Buyer Event of Default" (as such term is defined in the Train 3 Agreement) provided that Seller simultaneously terminates the Train 3 Agreement under such "Buyer Event of Default."

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**Article 21. Security**

Section 21.1 Guaranties. Within fourteen (14) Days of the execution of this Agreement:

(a) Buyer will cause El Paso Energy Corporation to execute, deliver, and thereafter maintain Buyer's Guaranty which will be in the form attached as Appendix 21.1(a). In addition, Buyer will furnish evidence reasonably satisfactory to Seller that (i) El Paso Energy Corporation has

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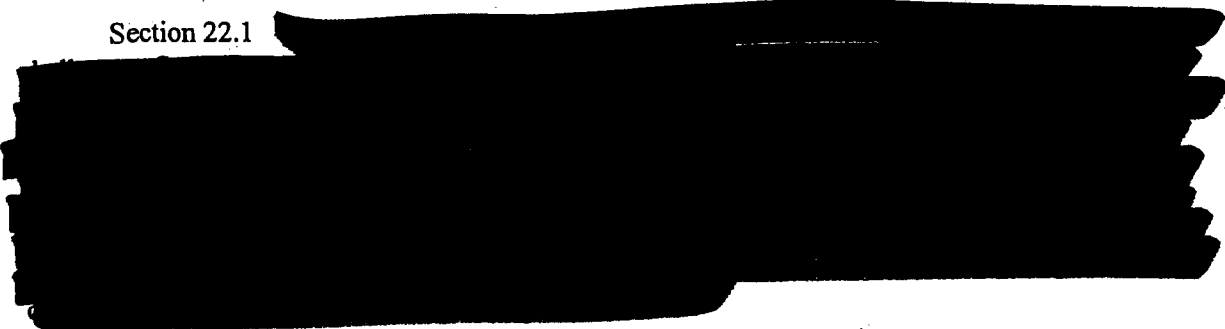
all requisite corporate power and authority to execute and deliver, and perform its obligations under Buyer's Guaranty and (ii) Buyer's Guaranty has been duly and validly executed by El Paso Energy Corporation.

(b) Seller will cause BG Energy Holdings, Limited to execute, deliver, and thereafter maintain Seller's Guaranty which will be in the form attached as Appendix 21.1(b). In addition, Buyer will furnish evidence reasonably satisfactory to Seller that (i) BG Energy Holding, Limited has all requisite corporate power and authority to execute and deliver, and perform its obligations under Seller's Guaranty and (ii) Seller's Guaranty has been duly and validly executed by BG Energy Holdings, Limited.

Section 21.2 Impact of Assignment. In the event either Buyer or Seller assigns its rights and obligations under this Agreement pursuant to Article 29, the relevant guaranty shall remain in full force and effect unless and until a replacement guaranty that is permitted pursuant to the terms of such guaranty is in place.

#### Article 22. Insurance

##### Section 22.1



Section 22.2 Seller's Insurance. From and after the Effective Date, Seller will be obligated to obtain and maintain all policies of insurance as required by Exhibit 22.2.

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#### Article 23. Indemnity

##### Section 23.1 Indemnity.

(a) To the fullest extent permissible by Law, Seller agrees (regardless of the presence or absence of insurance) to indemnify, defend and hold Buyer, Southern LNG, SNG, their Affiliates, and their respective officers, directors, employees, agents, successors, assigns and contractors/subcontractors (other than the owner and/or operator of an LNG receiving terminal at an Alternative Destination (collectively, the "Buyer Indemnified Parties") harmless from and against any and all claims, losses, demands, damages, liabilities, costs and expenses (collectively, "Claims" and each a "Claim") relating to any of:

- (i) the property, facilities or other assets of any of the Seller Indemnified Parties,

- (ii) the officers, directors, employees, and agents of Seller or any of the Seller Indemnified Parties, or
- (iii) any LNG Tanker utilized by Seller in connection with the performance of this Agreement

regardless of whether such Claims under Sections 23.1(a)(i), (ii), or (iii) arise from or relate to any act or incident involving any of the Buyer Indemnified Parties.

(b) To the fullest extent permissible by Law, Buyer agrees (regardless of the presence or absence of insurance) to indemnify, defend, and hold Seller, its Affiliates, each of the NCMA Parties, and their respective officers, directors, employees, agents, successors, assigns, contractors and subcontractors (the "Seller Indemnified Parties") harmless from and against any and all Claims relating to any of:

- (i) the property, facilities or other assets of any of the Buyer Indemnified Parties or
- (ii) the officers, directors, employees, and agents of Buyer or any of the Buyer Indemnified Parties,

regardless of whether such Claims under Sections 23.1(b)(i) or (ii) arise from or relate to any act or incident involving any of the Seller Indemnified Parties.

Section 23.2 Notice of Proceedings. The Party entitled to indemnification shall promptly notify the Party obligated to indemnify that Party of any Claims in respect of which it is entitled to be indemnified under this Article 23. Such notice shall be given not later than thirty (30) Days after the Party entitled to indemnification becomes aware of such Claims.

Section 23.3 Conduct of Proceedings. Any Party entitled to indemnification shall have the right, but not the obligation, to contest, defend and litigate (and to retain legal advisers of its choice in connection therewith) any Claims, action, suit, or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the said indemnity; *provided, however,* that the Party obligated to indemnify the other Party shall be entitled, at its option, to assume and control the defense of such Claim, action, suit, or proceeding at its expense and through legal advisers of its choice if it:

- (a) gives notice of its intention to do so to the other Party;
- (b) acknowledges in writing its obligation to indemnify the other Party to the full extent provided by this Article; and
- (c) reimburses the other Party for the reasonable costs and expenses previously incurred by the other Party prior to the assumption of such defense by the Party obligated to provide indemnification. No Party entitled to indemnification shall settle or compromise any Claim, action,

suit or proceeding in respect of which it is entitled to be indemnified by the other Party without the prior written consent of the Party obligated to provide indemnification, which consent shall not be unreasonably or arbitrarily withheld or delayed.

## Article 24. Dispute Resolution

### Section 24.1 Arbitration.

(a) Any dispute, claim or controversy (a "Dispute") arising out of or in connection with this Agreement shall be settled exclusively and finally by arbitration conducted by three (3) arbitrators in accordance with the ICC Rules in effect at the time of such proceeding, except as modified herein.

(b) Buyer and Seller shall each nominate one (1) arbitrator in accordance with the ICC Rules (such arbitrators, the "Nominees"). The Nominees shall then agree within thirty (30) Days from the date on which the second (2<sup>nd</sup>) Nominee was nominated on a third (3<sup>rd</sup>) arbitrator to serve as chairperson of the tribunal. If the Nominees are unable to select a third (3<sup>rd</sup>) arbitrator within such period, the ICC Court shall appoint such third (3<sup>rd</sup>) arbitrator within thirty (30) Days of the written request by either Party.

(c) Any arbitration proceeding pursuant to this Article 24 shall be conducted and any award shall be rendered in New York, New York in the English language.

#### (d) Consolidation.

(i) The Parties are committed to the prompt and efficient resolution of Disputes arising under this Agreement, the Train 3 Agreement, Buyer's Guaranty, and Seller's Guaranty (collectively, the "Related Agreements"). Accordingly, if two (2) or more Disputes arise under this Agreement, or under this Agreement and one or more of the Train 3 Agreement, the PFLE2 Agreement, Seller's Guaranty and Buyer's Guaranty, then any such Disputes for which a party to any such agreement seeks an arbitral resolution may be consolidated in a single arbitral proceeding, as follows:

(ii) If one or more arbitrations are already pending with respect to a Dispute under any of the Related Agreements, then either Buyer or Seller may request that any new Dispute or Disputes arising under any of the Related Agreements be consolidated into any such prior arbitration. If more than one arbitration already is pending, then Buyer and Seller 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 Buyer and Seller are unable to select the arbitration within such twenty (20) day period, then the ICC Court shall select the arbitration within twenty (20) Days of a written request by Buyer or Seller. The new Dispute shall be so consolidated, provided that the arbitral tribunal for the arbitration so selected determines that:

- (A) the new Dispute presents significant issues of law or fact common with those in the pending arbitration,
- (B) no Party would be unduly prejudiced, and
- (C) 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 Buyer and Seller. Buyer and Seller waive any right they may have to appeal or to seek interpretation, revision or annulment of such order under the ICC Rules or in any court. In any such consolidated arbitration, each group of (i) Buyer and its Guarantor, and (ii) Seller and its Guarantor shall each be treated as a single party to the arbitration. 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 Article 24, the subject of which has been consolidated into a separate arbitral proceeding under this Article 24.

Section 24.2 Multi-Party Arbitration.

(a) In the event that:

- (i) any Dispute between Buyer and Seller arises out of or relates to (A) the interpretation or application of the Scheduling Terms, or (B) the scheduling of cargoes for delivery by Seller to the LNG Terminal (a "Seller Scheduling Dispute"), and
- (ii) any Dispute between Buyer and a Third Party Scheduler arises out of or relates to (A) the interpretation or application of the scheduling terms between such parties, or (B) the scheduling of cargoes for delivery by such Third Party Scheduler to the LNG Terminal (a "Third Party Scheduling Dispute")

then, subject to Section 24.3, such Seller Scheduling Dispute and such Third Party Scheduling Dispute may be consolidated by Buyer in a single arbitration to which all parties to such Seller Scheduling Dispute and such Third Party Scheduling Dispute shall be parties (a "Multi-Party Arbitration");

[REDACTED] At the request of Buyer, and subject to Section 24.3, such Seller Scheduling Dispute and all such Third Party Scheduling Disputes shall be consolidated into a single Multi-Party Arbitration, and Seller covenants to dismiss any arbitration(s) that it may have

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brought, the subject of which is any Dispute that has been consolidated into such Multi-Party Arbitration, and to bring any and all claims or counterclaims with regard to such Seller Scheduling Dispute and such Third Party Scheduling Dispute in such Multi-Party Arbitration

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(d) In the event that consolidation of two (2) or more pending arbitrations is sought pursuant to this Section 24.2, and any party to such an arbitration objects to such consolidation, within thirty (30) Days of the date that the request for consolidation is received by such objecting party, the parties to such arbitrations shall have fifteen (15) Days from the date of receipt of notice of the first objection to consolidation to agree on an expert to determine whether such consolidation is appropriate. If the parties are unable to timely agree on such expert within such fifteen (15) Day period, then the parties shall have an additional fifteen (15) Days to agree on and submit to the ICC Centre for Expertise ("ICC Centre") a list of at least three (3) independent experts, and the ICC Centre shall appoint an expert from such list. If the parties are unable to timely agree on such a list, then at the request of any party, the ICC Centre shall appoint the expert, who shall be an experienced international arbitrator. The Parties agree that in the event of a determination that a Multi-Party Arbitration is appropriate, they will move expeditiously to dismiss any arbitration that has been brought under Section 24.1, the subject of which is any Dispute which has been consolidated into such Multi-Party Arbitration, and to bring any and all claims or counterclaims with regard to such Dispute(s) in such Multi-Party Arbitration.

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(e) In the event that a Party requests consolidation pursuant to this Section 24.2 of any arbitration proceeding commenced pursuant to Section 24.1, more than thirty (30) Days after the arbitrators have been selected for such pending arbitration, the Party requesting such consolidation shall reimburse the other Party for all expenses, including arbitrator's fees and administrative fees incurred by the other Party in connection with such proceedings prior to the termination of such proceedings pursuant to Section 24.2. In all other cases, the costs of such prior arbitration shall be allocated pursuant to Section 24.4.

Section 24.3 Procedures for Multi-Party Arbitration.

(a) The Parties agree that any Multi-Party Arbitration conducted pursuant to the terms hereof shall be finally settled under the ICC Rules by three (3) arbitrators, except to the extent that the provisions of this Article 24 may be in conflict with such ICC Rules. The parties to the Multi-Party Arbitration shall have fifteen (15) Days from the receipt of a determination that a Multi-Party Arbitration is appropriate to agree on a panel of three (3) arbitrators for the Multi-Party Arbitration. During such period the parties may confer with each other regarding prospective arbitrators; however, there shall be no ex-parte communications between any party and any arbitrator. Following the expiration of such fifteen (15) Day period, the parties shall submit their agreed nominees to the ICC Court for confirmation; or if the parties have failed to agree on a panel, then each party shall independently nominate directly to the ICC Court (without copying the other parties) three (3) arbitrator-nominees, such nomination to be made within fifteen (15) Days of the expiration of the original fifteen (15) Day period. Following the submission of such nominations to the ICC Court, there shall be no communications between the parties with regard to the arbitrator-nominees. If a party fails to timely nominate three (3) arbitrator-nominees within fifteen (15) Days, the ICC Court shall nominate arbitrator-nominees for such party. The ICC Court shall circulate to the parties a list of the names of the arbitrator-nominees without indicating the source of such names. Within fifteen (15) Days of the receipt of such list, each party shall strike two arbitrator-nominees, rank the remainder of the arbitrator-nominees, and return the list to the ICC Court. At no time shall there be any ex-parte communication between any of the arbitrator-nominees and any of the parties, nor shall the arbitrator nominees be informed at any time which party nominated them. The ICC Court shall select from the arbitrator-nominees remaining on the list the two highest ranked arbitrators who are able to serve. Following confirmation of such arbitrators, the ICC Court shall appoint a third arbitrator to serve as chair of the tribunal. Such arbitrator shall be admitted to practice in a common law country and shall not be an arbitrator-nominee whose name was stricken by any party. In any Multi-Party Arbitration, any group of Affiliates shall be treated as a single party. Any Multi-Party Arbitration shall be held and any Multi-Party Arbitration award shall be issued in New York, New York. The language of the Arbitration shall be English.

(b) Notwithstanding Sections 24.2 and 24.3(a), Seller shall not be required to withdraw or to dismiss any arbitral proceeding or submit any Dispute for resolution pursuant to Section 24.3(a), unless all parties to such Multi-Party Arbitration agree or have agreed to the Multi-Party Arbitration and that the arbitral tribunal in such Multi-Party Arbitration shall apply Sections 24.3(a), 24.4 and 24.5, *mutatis mutandis*, to each Other Dispute and Third Party Scheduling Dispute to be resolved in such Multi-Party Arbitration.

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Section 24.4 Decisions and Awards; Costs.

(a) Any decision of or award by an arbitral tribunal pursuant to this Article 24 shall be reduced to writing and shall include the findings of fact and conclusions of Law upon which it is based. The award shall be final and binding upon the Parties and judgment for execution and enforcement of any award may be entered by any court of competent jurisdiction.

(b) The Parties hereby waive any rights of application or appeal to any national or state court or tribunal to the fullest extent permitted by law in connection with any question of law arising in the course of the arbitration or with respect to the merits of any award made, except for actions relating to enforcement of the arbitration agreement or an arbitral award and except for actions seeking interim or other provisional relief in aid of arbitration proceedings in any court of competent jurisdiction.

(c) The costs of arbitration, including reasonable attorneys' fees shall be allocated to each party involved in such proceedings as determined by the arbitral tribunal. The decision or award shall include interest from the date of any breach or other violation of an agreement between the parties at an interest rate specified in such agreement, or if no such interest rate is provided in such agreement for such breach of violation, at an interest rate specified by the arbitral tribunal. Unless otherwise agreed by the Parties, all payments made pursuant to the arbitration decision or award shall be made in United States Dollars free of any deduction or withholding for taxes. Each Party hereby irrevocably waives any challenge to the enforcement of an arbitration decision or award issued in accordance with the provisions of this Article 24; *provided, however*, that any Party may challenge the enforcement of the decision or award on any of the grounds stated in Article 5 of the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the Federal Arbitration Act. The Parties hereby further irrevocably waive any claim against each other for incidental, consequential, multiple, special or punitive damages.

Section 24.5 Remedies. Seller and Buyer agree that irreparable damage could occur in the event that this Agreement were not performed in accordance with its specific terms or were otherwise breached. Accordingly, each of Seller and Buyer shall have the right to seek from any court of competent jurisdiction, provisional measures in aid of arbitration (~~including, a temporary restraining order or preliminary injunction~~) to prevent harm; *provided, however*, that the Parties 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. An arbitral tribunal convened under this Article 24 shall have the power to grant an injunction or injunctions to prevent breaches of this Agreement and impose penalties for any Party's failure to comply therewith. Each of Seller and Buyer shall be entitled to enforce specifically the terms and provisions of a decision or an award of such arbitral tribunal providing for such an injunction or injunctions in any court of competent jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity. Seller and Buyer also agree that with regard to any arbitration involving a matter under the Scheduling Terms:

- (i) specific performance of any Annual Program or proposed Annual Program schedule is not an available remedy under this Agreement,

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- (ii) the arbitral tribunal shall not in any way set, or recommend, or require Buyer to adopt an Annual Program, and
- (iii) the arbitral tribunal shall limit its award to the award of monetary damages.

**Article 25. Representations, Warranties and Covenants**

**Section 25.1 Seller's Representations and Warranties.** Seller represents and warrants to Buyer that as of the Effective Date:

- (a) Seller is duly organized and validly existing under the Laws of the jurisdiction of its organization, with full power, authority and capability to enter into this Agreement and to perform all acts contemplated herein;
- (b) this Agreement is a valid and binding agreement of Seller; and
- (c) the execution, delivery and performance of this Agreement, and the performance of all acts contemplated herein by Seller, do not constitute any of the following:
  - (i) contravention of any provisions of any document relating to the incorporation or constitution of Seller;
  - (ii) breach of or default under any material contract binding upon Seller; or
  - (iii) violation of any applicable Laws.

**Section 25.2 Seller's Covenants.**

(a) Seller covenants that Seller shall have good and marketable title to all LNG delivered to Buyer under this Agreement, as of the date delivered, and that all LNG delivered hereunder shall be free and clear of all liens, security interests, charges, assessments, adverse claims and other encumbrances of every form and nature.

(b) 

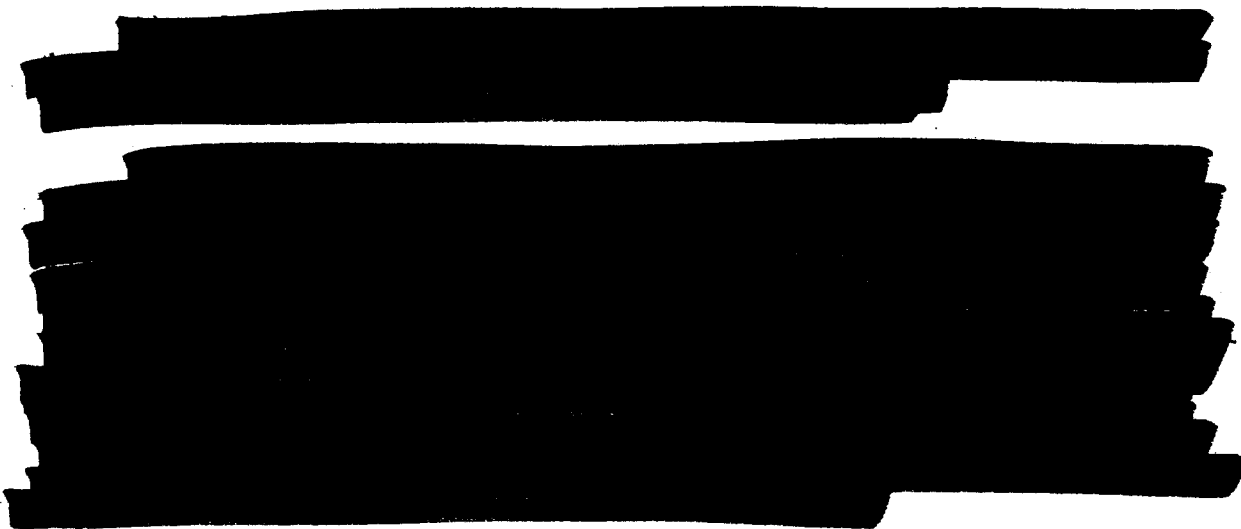
(c) Seller acknowledges that Southern LNG may file with the FERC to adjust its rates to reflect its revised cost of service prior to or within sixty (60) Days following the In-Service Date, updated for actual capital costs and revised revenue requirements associated with then-anticipated plant operations through filing either:

- (i) an amended certificate application prior to the In-Service Date; or

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(ii) a general or limited rate filing under Section 4 of the Natural Gas Act (either filing referred to in (i) or (ii), the "True-Up Filing").

(d) Seller covenants that neither it, nor any of its Affiliates, nor any of the NCMA Parties shall oppose the True-Up Filing before the FERC to the extent such True-Up Filing includes a Requested Cost of Service that does not exceed the Permitted Cost of Service.



Section 25.3 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that as of the Effective Date:

(a) Buyer is duly organized and validly existing under the Laws of the jurisdiction of its organization, with full power, authority and capability to enter into this Agreement and to perform all acts contemplated herein;

(b) this Agreement is a valid and binding agreement of Buyer; and

(c) the execution, delivery and performance of this Agreement, and the performance of all acts contemplated herein by Buyer, do not constitute any of the following:

(i) contravention of any provisions of any document relating to the incorporation or constitution of Buyer;

(ii) breach of or default under any material contract binding upon Buyer; or

(iii) violation of any applicable Laws.

Section 25.4 Buyer's Covenants.

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**Article 26. Confidentiality**

**Section 26.1 Confidentiality.**

(a) Each Party shall maintain in strict confidence and protect the confidentiality of all the provisions and contents of this Agreement and of all information, reports, data, software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof and any reports, digests or summaries created or derived from any of the foregoing that is provided by one Party to the other Party ("Confidential Information"), and shall not disclose any such Confidential Information to any third party without the prior written consent of the other Party; *provided, however,* that each Party shall be entitled to use the Confidential Information for any and all lawful

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purposes relating to its business, operations and activities, including the financing and auditing thereof and shall be entitled (without prior written consent of the other Party) to disclose Confidential Information to its respective Affiliates and to officers, directors and employees of such Affiliates, provided that such Party shall procure that such Affiliate and its officers, directors and employees do not disclose further, such Confidential Information. In addition, Seller, may disclose Confidential Information to each of the NCMA Parties and to officers, directors and employees of such NCMA Parties, provided that Seller shall procure that the NCMA Parties and their officers, directors, and employees do not disclose further such Confidential Information, except as otherwise provided in this Article 26.

(b) Notwithstanding the previous subsection, each Party may disclose Confidential Information to the extent that such Confidential Information:

- (i) was public prior to its delivery to such Party;
  - (ii) was obtained from a third party with no known duty to maintain its confidentiality;
  - (iii) is required to be disclosed by Laws (including the Employment Rights Act 1999 (Eng.) (as amended by the Public Interest Disclosure Act 1998 (Eng.)) or judicial or administrative or arbitral process or by any governmental authority or by the rules of any recognized stock exchange on which the shares of a Party (or its Affiliates) are traded;
  - (iv) is provided to professional advisors, agents, auditors or representatives of the Party as is reasonable under the circumstances; *provided, however*, that the Party receiving such Confidential Information shall require such persons, other than legal counsel, to undertake in writing to keep such Confidential Information confidential and shall use reasonable efforts to ensure compliance with such undertaking;
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- (v) is provided to Lenders or potential Lenders to either Party, the NCMA Parties, Atlantic LNG 2/3 or Atlantic 1; *provided, however*, that the Party, Lenders or potential Lenders receiving such Confidential Information shall require such persons to undertake in writing to keep such Confidential Information confidential and shall use reasonable efforts to ensure compliance with such undertaking; or
  - (vi) is provided by Seller to Buyer pursuant to Article 3 of the Scheduling Terms.

Section 26.2 Remedies. The Parties agree that:

- (a) damages would not be an adequate remedy for any breach of the provisions of this Article 26;

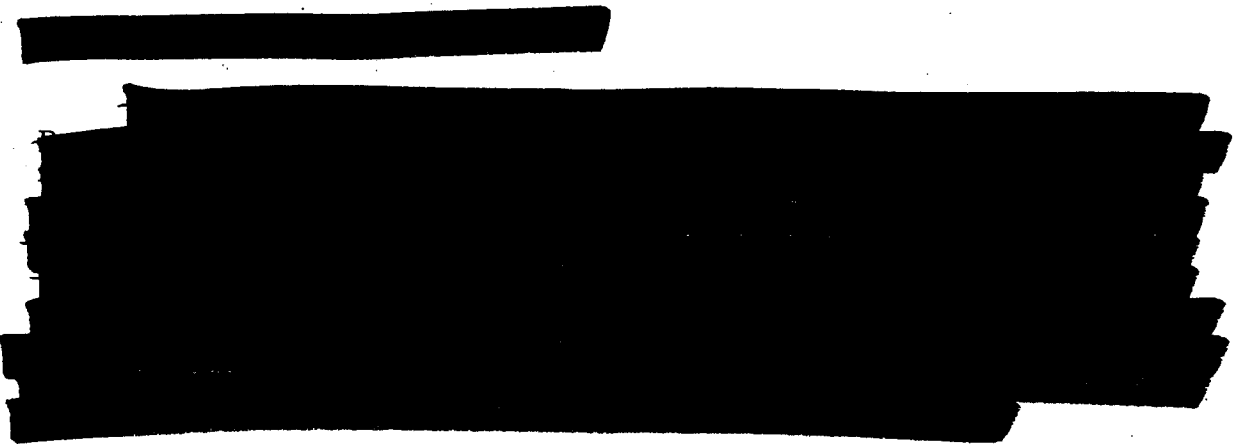
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(b) either Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Article by the other Party or a third party; and

(c) no proof of special damages shall be necessary for the enforcement of this Article.

Section 26.3 Survival. The provisions of this Article 26 shall survive the termination or expiration of this Agreement for a period of two (2) years.



**Article 28. Notices**

**Section 28.1 Notices**

(a) Unless otherwise provided in this Agreement, any notice to be given hereunder shall be in writing, except that notices given from LNG Tankers at sea may be given by radio. Written notices may be delivered

- (i) by hand (including by express courier) against written receipt,
- (ii) by first class mail postage prepaid,
- (iii) by facsimile copy with telephone confirmation thereof, promptly followed by a written notice sent by first class mail postage prepaid to the persons and addresses specified below, or
- (iv) electronically as an electronic mail, provided that such electronic mail notice is identified as such in the electronic mail and within five (5) Days following the Day of its electronic service, is confirmed by letter or facsimile.

(b) The Parties shall maintain radio channels, frequencies and procedures for all notices and communications between LNG Tankers, the LNG Terminal and the authorities for the Unloading Port.

*Handwritten initials and signature:*  
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Cm N e

- (c) A notice shall be deemed to have been served:
- (i) when delivered by hand at the appropriate address for the receiving party,
  - (ii) when received by facsimile copy or electronic mail,
  - (iii) if sent by first class mail postage prepaid five (5) Days after it was posted, or
  - (iv) if given by radio (in the case of communication contemplated by this Agreement to be given or received by LNG Tankers), when receipt of such radio transmission has been acknowledged by the receiving Party.

In proving service by first class mail, it shall be sufficient to prove that the letter containing the notice was properly addressed and stamped and posted. The names and addresses for the service of notices referred to in this Section are:

For notices to Buyer, to:

El Paso Merchant Energy-Gas, L.P.  
AmSouth – Sonat Tower  
1900 5<sup>th</sup> Avenue North  
P.O. Box 2563  
Birmingham, Alabama 35203  
Attention: Senior Vice President  
Facsimile: 1-205-327-2291  
Telephone: 1-205-325-7185

For notices to Southern LNG, to:

Southern LNG Inc.  
AmSouth – Sonat Tower  
1900 5<sup>th</sup> Avenue North  
P.O. Box 2563  
Birmingham, Alabama 35203  
Attention: General Counsel  
Facsimile: 1-205-327-2253  
Telephone: 1-205-325-7126

For notices to Seller, to:

Point Fortin LNG Exports, Ltd.  
BG House  
6 Stanmore Avenue  
Port of Spain  
Trinidad, W.I.  
Attention: General Manager

*Handwritten initials:*  
QNE

Facsimile: 1-868-627-4058  
Telephone: 1-868-627-8106

Either Party may change its notice address, telephone number or facsimile number by notice to the other Party in the manner specified above. Both Parties agree to promptly notify the other Party of a change in address, telephone number or facsimile number.

## Article 29. Assignment

### Section 29.1 Assignment.

(a) Except as provided in clauses (b), (c) and (d) below, neither Party shall assign any or all of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

(b) Seller shall have the right to assign any or all of its rights under this Agreement, without the consent of Buyer, in order to obtain financing or to utilize risk management products, provided that any such assignee of this Agreement also has been assigned and has assumed all of Seller's rights and obligations under the Train 3 Agreement and Seller's contracts with Atlantic LNG 2/3.

(c) Buyer shall have the right to assign any or all of its rights under this Agreement, without the consent of Seller in order to obtain financing or to utilize risk management products.

(d) Each of the Parties shall have the right to assign all of its rights and obligations under this Agreement, without the consent of the other Party, either to an Affiliate or in connection with a merger, corporate reorganization or transfer of all or substantially all of its assets. In addition, Seller shall have the right to assign all of its rights and obligations under this Agreement, without the consent of Buyer, to any of the NCMA Parties.

(e) Notwithstanding the foregoing provisions of this Section 29.1, no assignment of this Agreement by Buyer or Seller, whether with or without the consent of the other Party, shall relieve the assigning Party of any of its obligations hereunder.

## Article 30. Miscellaneous

Section 30.1 Governing Law. The interpretation and performance of this Agreement shall be governed by and construed in accordance with the Laws of the State of New York, without regard to the law thereof regarding the conflict of laws (other than Section 5-1401 of the General Obligations Law). The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

Section 30.2 Compliance with Laws. Each Party shall, in the performance of this Agreement, comply with all applicable Laws in effect on the date this Agreement was entered into, and as they may be amended from time to time. Notwithstanding anything to the contrary, this Agreement shall not be interpreted or applied so as to require either Party to do, or to refrain from

*Handwritten initials: "CN" with a circled "C" and a "2" above it, and a "e" to the right.*

doing, anything that would constitute a violation of any applicable Laws, including, the Foreign Corrupt Practices Act of 1977.

Section 30.3 Language. The language of this Agreement and all other documentation and notices relating to this Agreement shall be the English language.

Section 30.4 Amendment. This Agreement may only be amended, modified or supplemented by a written instrument signed by both Parties.

Section 30.5 Waiver. Neither Party shall be deemed to have waived any right under this Agreement, unless such Party shall have delivered to the other Party a written waiver signed by an authorized officer of such waiving Party. No delay or omission in the exercise of any power or remedy shall be construed to be a waiver of any default or an acquiescence therein.

Section 30.6 Entire Agreement; Exhibits. This Agreement, together with Buyer's Guaranty and Seller's Guaranty, constitutes the entire agreement between Buyer and Seller concerning the subject matter hereof. All previous documents, undertakings and agreements whether oral, written or otherwise, between the Parties concerning the subject matter hereof, including the Precedent Agreement, are hereby cancelled and shall not affect or modify any of the terms or obligations set forth in this Agreement, except as the same may be made part of this Agreement in accordance with its terms, including the terms of any of the Exhibits. The Exhibits are hereby made an integral part of this Agreement and shall be fully binding upon the Parties.

Section 30.7 Third Party Beneficiaries. Other than as specifically required under Article 23, this Agreement shall not be construed as creating any rights or benefits in any person or entity, other than the Parties hereto and their respective successors and permitted assigns.

Section 30.8 No Partnership. Nothing contained in this 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 either Party, to create any principal/agent relationship between the Parties, or to create any duty, standard of care or liability to any person or entity not a Party hereto.

Section 30.9 Severability. The provisions of this Agreement are severable, and if any portion of this Agreement is deemed legally invalid or unenforceable, the remainder of this Agreement shall survive and remain in full force and effect.

Section 30.10 Financing. Buyer acknowledges that, in order to finance capital and other expenditure incurred in constructing and expanding the Atlantic LNG Facility, limited recourse project finance supplied by banks and other financial institutions (together, the "Lenders") may be required. Buyer agrees that, upon the request of Seller, it will enter into a direct agreement with the Lenders, provided that the terms thereof are reasonable and not contrary to market standard for such direct agreements. Buyer acknowledges that such market standard may include provisions

- (a) consenting to the creation and enforcement of security over this Agreement, and

(b) allowing the Lenders (or any nominee of the Lenders) to step into the place of Seller and, if required, subsequently to step out, on certain terms, provided that no exercise of rights by the Lenders shall relieve any Guarantor of its obligations or liabilities under Seller's Guaranty.

Section 30.11 Consequential Loss or Damage. Notwithstanding anything contained in this Agreement but without prejudice to the express remedies set forth herein and the indemnity obligations of the Parties under Section 23.1, neither Party shall be liable to the other Party for or in respect of any consequential loss or damage, including any Claim, demand or action made or brought against the other Party by a third party, or for special or punitive damages or loss of profits or business interruption, suffered or incurred by the other Party resulting from breach of or failure to perform this Agreement or the breach of any representation or warranty hereunder, whether express or implied.

Section 30.12 Tortious Liability. With respect to breaches of this Contract (and acts or omissions which constitute breaches), the relationship between Buyer and Seller is contractual and neither Party shall have any claim against the other in tort with respect to such acts or omissions.

Section 30.13 Survival. Notwithstanding anything to the contrary herein, the provisions set forth under Articles 23 and 24, Article 26 (to the extent set forth in Section 26.3), Article 28 and Sections 15.7(b), 20.4(b), 25.2(f), 30.1, 30.2, 30.3, 30.5, 30.6, 30.7, 30.8, 30.9, 30.11, 30.12 and 30.13 shall continue and survive the termination of this Agreement.

Section 30.14 Counterpart Execution. This 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.

Section 30.15 Rates and Indexes.

(a) If (i) a publication which contains a rate or index used in this Agreement ceases to be published for any reason or (ii) such a rate or index should cease to exist for any reason, the Parties shall select a comparable rate or index to be used in place of such rate or index that maintains the intent and economic effect of the original rate or index. If the Parties fail to agree on a rate or index, the issue shall proceed to arbitration in accordance with Article 24 and the panel shall select the published rate or index, or a combination of rates or indices, that most nearly preserves the original economic balance established by the Parties.

(b) If any rate or index used in this Agreement is not published for a particular date, but the publication containing such rate or index continues to be published and the rate or index itself continues to exist, then the Parties shall use the rate or index in effect for the date such rate or index was most recently published as the rate or index for such date.

(c) If an incorrect value is published for any rate or index used in this Agreement and such error is corrected and published within one (1) year of the date of the publication of such incorrect rate or index, then such corrected rate or index will be substituted for the incorrect rate or index and any calculations involving such rate or index will be recalculated and Buyer and Seller will take any necessary actions based upon these revised calculations.

IN WITNESS HEREOF, each of the Parties has caused this LNG Sale and Purchase Agreement (Train 2) to be executed in more than one copy, each of which shall be deemed to be an original as of the day and year first above written.

EL PASO MERCHANT ENERGY-GAS, L.P.  
By: EL PASO MERCHANT ENERGY-GAS  
COMPANY, Its General Partner

By: [Signature]

Name: Kenny Eisberg

Title: Director

POINT FORTIN LNG EXPORTS LIMITED

By: [Signature]

Name: William Smaai

Title: VP International Oil & Gas Sales

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