

08-152-LNG

December 23, 2008

Mr. Robert Corbin  
Office of Oil & Gas Global Security and Supply  
Fossil Energy  
U.S. Department of Energy  
Docket Room 3E-042  
Forrestal Building  
1000 Independence Avenue, SW  
Washington, DC 20585

DEC 23 2008

DEC 23 2008

DOE/OST

Re: **TOTAL GAS & POWER NORTH AMERICA, INC.**  
FE Docket No. 08-\_\_\_\_-LNG

Dear Mr. Corbin:

Pursuant to Part 590 of the regulations of the Department of Energy ("DOE"), 10 C.F.R. Pt. 590 (2008), please find enclosed the application of TOTAL GAS & POWER NORTH AMERICA, INC. ("TGPNA") for long-term authorization to import liquefied natural gas from the State of Qatar pursuant to Section 3 of the Natural Gas Act, as amended. Also please find enclosed a check for \$50 made payable to the Treasury of the United States as required by 10 C.F.R. § 590.207.

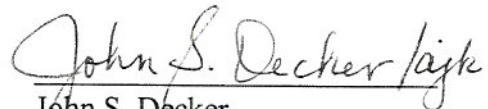
Pursuant to 10 C.F.R. §§ 590.202(e) and 1004.11, TGPNA hereby notifies DOE that the Sale and Purchase Agreement ("SPA") submitted herewith contains highly sensitive commercial information that is exempt from public disclosure. In particular, the SPA, which is attached to the application as Exhibit B, contains certain commercially sensitive terms, the disclosure of which would place the parties at a commercial disadvantage.

Accordingly, TGPNA is providing one original copy of the application with the SPA clearly marked "Contains Confidential Information—Do Not Release" and three copies with the confidential information redacted from the SPA. The redacted copies of the SPA are clearly marked "Privileged Information Removed for Confidential Treatment." Notwithstanding the filing of a redacted copy of the application, TGPNA reserves its right, pursuant to 10 C.F.R. § 1004.11(c), to be notified prior to any disclosure of the confidential information and to be allowed an opportunity to submit its views with respect to such

disclosure. TGPNA further requests that you return the unredacted copy of the SPA to TGPNA following your office's action on the application.

Please file stamp the enclosed extra copies of this application and return them to our messenger. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "John S. Decker" followed by a stylized flourish.

John S. Decker

Attorney for

TOTAL GAS & POWER NORTH  
AMERICA, INC.

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY**

TOTAL GAS & POWER NORTH )  
AMERICA, INC. ) FE Docket No. 08-\_\_\_\_-LNG

**APPLICATION OF TOTAL GAS & POWER NORTH AMERICA, INC.  
FOR LONG-TERM AUTHORIZATION  
TO IMPORT LIQUEFIED NATURAL GAS  
FROM THE STATE OF QATAR**

Bruce E. Henderson  
President & General Manager  
TOTAL GAS & POWER NORTH  
AMERICA, INC.  
Total Plaza  
1201 Louisiana, Suite 1600  
Houston, Texas 77002  
(713) 547-4008

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Managing Counsel  
TOTAL GAS & POWER NORTH  
AMERICA, INC.  
Total Plaza  
1201 Louisiana, Suite 1600  
Houston, Texas 77002  
(713) 647-4058

and

John S. Decker  
James E. Olson  
Vinson & Elkins L.L.P.  
The Willard Office Building  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004  
(202) 639-6599

December 23, 2008

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY**

TOTAL GAS & POWER NORTH AMERICA, INC.	) ) )	FE Docket No. 08-____-LNG
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**APPLICATION OF TOTAL GAS & POWER NORTH AMERICA, INC.  
FOR LONG-TERM AUTHORIZATION  
TO IMPORT LIQUEFIED NATURAL GAS  
FROM THE STATE OF QATAR**

Pursuant to Section 3 of the Natural Gas Act (“NGA”), as amended,<sup>1</sup> and Part 590 of the Regulations of the DOE, Office of Fossil Energy (“OFE”),<sup>2</sup> TOTAL GAS & POWER NORTH AMERICA, INC. (“TGPNA”) hereby submits this application for long-term authorization to import liquefied natural gas (“LNG”) from the State of Qatar for a term of 25 years commencing on April 1, 2009, pursuant to an executed Sale and Purchase Agreement (“SPA”) between TGPNA and Qatar Liquefied Gas Company Limited (II) (“QGII”), as described more fully herein. In support of this application, TGPNA respectfully shows as follows:

**I.  
CORRESPONDENCE AND COMMUNICATIONS**

Correspondence and communications regarding this application should be addressed to the following:

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<sup>1</sup> 15 U.S.C. § 717b (2006). This authority is delegated to the Assistant Secretary for Fossil Energy pursuant to Redesignation Order No. 00-002.04B (September 23, 2005).  
<sup>2</sup> 10 C.F.R. Pt. 590 (2008).



Bruce E. Henderson  
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1455 Pennsylvania Avenue, NW  
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(202) 639-6599

## **II. BACKGROUND**

TGPNA is a corporation organized under the laws of the State of Delaware, with its principal place of business at 1201 Louisiana, Suite 1600, Houston, Texas 77002. TGPNA is an indirect wholly-owned subsidiary of TOTAL S.A., which has its principal place of business at 2, place Jean Miller – La Défense 6, 92078 La Défense Cedex, France. Pursuant to authorizations previously granted to TGPNA by the OFE, TGPNA engages in the business of importing LNG from various international sources.<sup>3</sup>

## **III. LONG-TERM AUTHORIZATION REQUESTED**

TGPNA is seeking long-term authorization to import LNG from the State of Qatar effective April 1, 2009, pursuant to the terms of the SPA. TGPNA and QGII have entered into the SPA, which contains the agreement between TGPNA and QGII for the importation of LNG into the United States, including the term, quantity, and price of the contract.

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<sup>3</sup> TGPNA also has authority to import LNG pursuant to DOE/FE Order No. 2331.

Pursuant to the terms of the SPA, TGPNA will purchase LNG from QGII for importation into the United States. Upon importation, TGPNA will sell the LNG and the natural gas resulting from vaporization of the LNG to various third parties in the regular course of business. The point of entry for the importation of LNG into the United States will be primarily the LNG terminalling and vaporization facilities located near Sabine Pass, Louisiana, as well as all other existing LNG receiving facilities in the United States and any such other LNG terminals as may be constructed in the future (the "LNG Terminal(s)"), though any such future construction is not necessary for the performance of the SPA.

Importation of LNG under the SPA will commence on the Start Date and continue for 25 years. The Start Date is the date of the first cargo departing QGII's project facilities. The Start Date is currently estimated to be on or after June 1, 2009. However, TGPNA requests authorization beginning on April 1, 2009, in order to ensure that it has authorization commencing simultaneously with the commencement of TGPNA's terminalling service at Sabine Pass. TGPNA will purchase LNG from QGII in an amount up to the annual contract quantity of approximately 96.2 million Dth per year of LNG, with QGII having the right to increase the annual quantity if there is sufficient supply and capacity.

The price TGPNA will pay QGII for the LNG it purchases under the SPA is a formula based on published natural gas index prices appropriate for each receiving terminal. The price will also include an allocation of terminal and transportation costs. Because the contract price for LNG under the SPA is linked to published natural gas price indices, the price of LNG supplied during the term of the SPA will remain competitive.

**V.  
ENVIRONMENTAL IMPACT**

TGPNA intends to use existing facilities for importing LNG and, in the future, any other such facilities that happen to be constructed in the United States. However, no construction of new facilities in the United States is necessary in order for the parties to perform their obligations fully under the terms of the SPA. Consequently, granting this application will not involve a federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act.<sup>4</sup> Accordingly, neither an environmental impact statement, nor an environmental assessment, is required.

**VI.  
THE PUBLIC INTEREST**

Section 3 of the NGA provides that an import or export of natural gas must be authorized unless there is a finding that it “will not be consistent with the public interest.”<sup>5</sup> Under Section 3(c), the importation of LNG “shall be deemed to be consistent with the public interest, and applications for such importation ... shall be granted without modification or delay.”<sup>6</sup> The long-term import authorization sought by TGPNA herein meets the Section 3(c) criterion and, therefore, is consistent with the public interest.

**VII.  
REPORTING REQUIREMENTS**

In accordance with DOE/FE Order No. 2464 and its other existing import authorization, TGPNA agrees to follow the reporting requirements listed below as a condition to receiving the requested long-term import authorization:

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<sup>4</sup> 42 U.S.C. § 431, *et seq.* (2000).

<sup>5</sup> 15 U.S.C. § 717b(a) (2006).

<sup>6</sup> 15 U.S.C. § 717b(c). *See also Sonat Energy Services Co.*, Order Granting Long-Term Authorization to Import Liquefied Natural Gas From Trinidad and Tobago, DOE/FE Order No. 1549, FE Docket No. 99-93-LNG (Dec. 8, 1999).

- A. Within two weeks after deliveries begin, TGPNA must provide written notification to OFE of the date on which the first import of LNG occurred pursuant to the authorization requested herein.
- B. With respect to the LNG imports authorized in this docket, TGPNA will file within 30 days following the last day of each calendar month a report indicating whether imports have been made describing: (1) the name of the U.S. receiving terminal; (2) the name of the LNG tanker; (3) the date of arrival at the U.S. receiving terminal; (4) the country of origin; (5) the name of the supplier/seller; (6) the volume in Mcf; (7) the landed price per MMBtu at the point of import; (8) the duration of the supply agreement (indicating spot purchases); (9) the name(s) of the purchaser(s); and (10) the geographic market(s) served (listing state(s), U.S. Census Region(s), or general U.S. geographic area(s));

**VIII.  
CORPORATE POWER OF COMPANY**

The opinion of counsel, required by 10 C.F.R. § 590.202(c) (2008), showing that the proposed importation of LNG is within the corporate powers of TGPNA, is attached as Exhibit A.

**IX.  
RELATED REGULATORY PROCEEDINGS**


TGPNA's request for long-term import authorization is not being considered by any other part of DOE, including the Federal Energy Regulatory Commission, or any other federal agency or department.



**X.  
CONCLUSION**

WHEREFORE, for the foregoing reasons, TGPNA respectfully requests that OFE grant the instant application for long-term import authorization to import LNG from the State of Qatar for a term of 25 years commencing on April 1, 2009. TGPNA submits that a grant of such authorization would be consistent with the public interest.

Respectfully submitted,



Bruce E. Henderson  
President & General Manager  
TOTAL GAS & POWER NORTH  
AMERICA, INC.  
Total Plaza  
1201 Louisiana, Suite 1600  
Houston, Texas 77002

FM

Fundi A. Mwamba  
Managing Counsel  
TOTAL GAS & POWER NORTH  
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1455 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Attorneys for  
TOTAL GAS & POWER NORTH  
AMERICA, INC.

Dated: December 23, 2008



**EXHIBIT A**

**CORPORATE POWER OF ATTORNEY**

**TOTAL GAS & POWER NORTH AMERICA, INC.**

December 23, 2008

Mr Robert Corbin  
Office of Oil & Gas Global Security and Supply  
Office of Fossil Energy (FE-34)  
U.S. Department of Energy  
Room 3E-033  
1000 Independence, Avenue, S.W.  
Washington, D.C. 20585

Dear Mr. Corbin:

This opinion is furnished in accordance with the requirements of 10 C.F.R. § 590.202(c), in conjunction with the application of TOTAL GAS & POWER NORTH AMERICA, INC. ("TGPNA") for an order requesting long-term authorization to import liquefied natural gas into the United States pursuant to Section 3 of the Natural Gas Act, as amended.

I am counsel for TGPNA in the above-referenced matter, and as such, I am familiar with the Articles of Incorporation, By-laws, and corporate records of TGPNA. I have examined these and other relevant documents and am of the opinion that the proposed importation of liquefied natural gas by TGPNA is within the corporate powers of TGPNA.

This opinion is submitted solely for the purpose of this matter, and may not be relied upon by the Office of Fossil Energy, or by any other governmental entity, or any person, for any other purpose.

Respectfully Submitted,



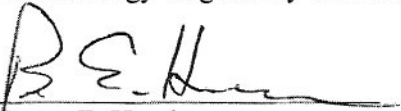
Fundi A. Mwamba  
Attorney for  
TOTAL GAS & POWER NORTH AMERICA, INC.



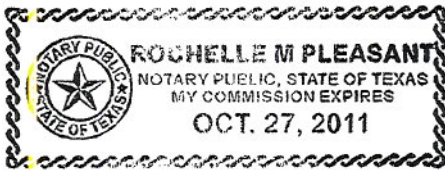
VERIFICATION


The State of Texas )  
 )  
County of Harris )

Bruce E. Henderson, declares before me on this date and says that he is President & General Manager for TOTAL GAS & POWER NORTH AMERICA, INC., the applicant in this document; that he is authorized to verify the foregoing document pursuant to 10 C.F.R. § 590 103; that he has examined the statements contained therein and that all such statements are true and correct to the best of his knowledge, information and belief; and that he is the duly authorized representative of TOTAL GAS & POWER NORTH AMERICA, INC.; and that to the best of his knowledge, neither this nor any related matter is being considered by any other part of the Department of Energy, including the Federal Energy Regulatory Commission, or any other federal agency or department.

  
Bruce E. Henderson

SUBSCRIBED and SWORN TO before me, a Notary Public, this day: December 22, 2003.



  
Notary Public in and for the  
State of Texas

My Commission Expires: 10.27.2011

**EXHIBIT B**

**SALE AND PURCHASE AGREEMENT BETWEEN  
TOTAL GAS & POWER NORTH AMERICA, INC. AND  
QATAR LIQUEFIED GAS COMPANY LIMITED (II)**

EXECUTION VERSION



as Seller

AND

TOTAL GAS & POWER NORTH AMERICA, INC.

as Buyer

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U.S.A. SALE AND PURCHASE AGREEMENT FOR  
LIQUEFIED NATURAL GAS

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*Handwritten initials*



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THIS AGREEMENT is made on the 6<sup>th</sup> day of July 2006.

**BETWEEN:**

- (1) [REDACTED], a joint stock company, organised and existing under the laws of the State of Qatar, whose registered office is situated at [REDACTED] (the "Seller");

AND

- (2) Total Gas & Power North America, Inc., a company existing under the laws of The United States of America, whose registered office is situated at [REDACTED] (the "Buyer").

WHEREAS the Seller wishes to sell and the Buyer wishes to purchase LNG upon and subject to the terms and conditions of this Agreement.

NOW THEREFORE it is agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Defined terms

In this Agreement:

"Additional Annual Quantities" has the meaning given to it in Clause 6.8;

"Adjusted Annual Contract Quantity" or "AACQ" has the meaning given to it in Clause 6.5;

"Adverse Weather Conditions" means weather and/or sea conditions which are sufficiently severe either:

- (a) to delay or prevent an LNG Vessel (whether before or after reaching the Delivery Point) or another LNG vessel from proceeding to berth, unloading or departing from berth in accordance with the weather standards prescribed in published rules and regulations in effect at the relevant port or Receiving Terminal or by order of the port master or Terminal Operator; or
- (b) to cause an actual determination by the Master of the LNG Vessel that it is unsafe for the LNG Vessel to berth, discharge or depart from berth.

"Affiliate" means in relation to a Party, any Person which directly or indirectly (i) controls such Party; or (ii) is controlled by such Party; or (iii) is controlled by a Person which directly or indirectly controls such Party; where "control" means the right either to exercise not less than fifty percent (50%) of the voting rights at a general meeting of the relevant Person or to appoint not less than one half by number of the directors of such Person;

"Agreed Demurrage Rate" has the meaning given to it in Clause 10.6;



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"Agreement" means this agreement for the sale and purchase of LNG entered into by the Parties on the date first above written including the schedules, annexes and exhibits thereto, as the same may be amended, modified or supplemented from time to time;

"Alternative Delivery Point" means the point at which the flange coupling of the unloading line at the Alternative Receiving Terminal joins the flange coupling of the discharging manifold of a LNG Vessel;

"Alternative Receiving Terminal" means a LNG receiving terminal located in the United States of America, [REDACTED] nominated by the Seller and reasonably acceptable to the Buyer, other than the receiving terminal initially nominated by the Seller as the Receiving Terminal;

"Annual Contract Quantity" or "ACQ" has the meaning given to it in Clause 6.1.2;

"Annual Delivery Programme" or "ADP" means the programme of deliveries of LNG established in accordance with the provisions of Clause 6.2 and Schedule 2 (*Delivery Schedules and Cargo Information*);

"Arbitration Tribunal" means an arbitration tribunal formed in accordance with the provisions of Clause 22.3;

"Audit" has the meaning given to it in Clause 15.5.1;

"Auditors" has the meaning given to it in Clause 15.5.1;

"Banking Day" means a day on which banks are open for business in New York;

"Btu" means British Thermal Unit, being the amount of heat equal to one thousand and fifty five decimal zero five five six (1,055.0556) Joules as defined by the 11th Conference Generale de Poids et Mesures at Paris, France in 1960;

"Business Day" means any day starting at 00:00 hours local time and ending on the next day at 00:00 hours local time in the relevant country or State of the Party which received notification from the other Party other than Saturdays, Sundays, the national holidays of such country and any other day on which the banks in such country or State are closed for business;

"Buyer Event of Default" has the meaning given to it in Clause 20.1;

"Buyer's Facilities" means the facilities at a Receiving Terminal for LNG Vessel berthing, LNG unloading, storage, regasification and, in the case of the Sabine Pass Receiving Terminal only, [REDACTED] as described in Part A of Schedule 5 including all modifications, alterations and additions thereto;

"Buyer's Planned Maintenance" shall have the meaning given to it in Clause 8.1.2(b);

"Buyer's Unplanned Maintenance" has the meaning given to it in Clause 8.2.2;

"Cargo" means a cargo of LNG transported by a LNG Vessel loaded at the Loading Facility to its maximum safe capacity (within the operational tolerance established by the



LNG Vessel's Master and/or the operator of the Loading Facility) and fully unloaded (except for heel) at the Receiving Terminal;

"**Cargo Information Notice**" means a Notice setting out the information specified in Schedule 2 Part B;

"**C.I.F.**" has the meaning given to it in the INCOTERMS 2000 as varied by this Agreement;

"**Commercially Sensitive Information**" means any information relating to the commercial and/or marketing strategy of the Buyer in its relations with companies other than the Seller, which would be unlawful for the Buyer to pass to the Seller including, but not limited to:

- (a) the price at which regasified gas derived from LNG (whether supplied under this Agreement or otherwise) is sold, or contracted to be sold, by the Buyer to a customer; and
- (b) the price paid by the Buyer for LNG or natural gas purchased from a supplier other than the Seller;

"**Completion of Unloading**" means in respect of a Cargo, the disconnection of the last flange coupling of the discharging manifold of a LNG Vessel from the last flange coupling on the unloading line at a Receiving Terminal following unloading of the LNG Vessel and the disconnection of the vapour return line;

"**Conditions Precedent**" means the conditions precedent set out in Schedule 1 (*Conditions Precedent*);

"**Confidential Information**" has the meaning given to it in Clause 24.1;

"**Consenting Party**" has the meaning given to it in Clause 17.3.1(b);

"**Contract Price**" means the price (in US\$/MMBtu) in respect of the Sabine Pass Receiving Terminal determined pursuant to Clause 7 (*Contract Price*). Where the Receiving Terminal is an Alternative Receiving Terminal, the Contract Price shall be agreed prior to the use or nomination of the Alternative Receiving Terminal in accordance with the processes and procedures set out in Clause 7.12;

"**Contract Year**" means for the first Contract Year the period from 06:00 hours on the Start Date to 06:00 hours on the next following first (1st) October and for each successive Contract Year means a period of twelve (12) consecutive months beginning at 06:00 hours on first (1st) October in any year and ending as 06:00 hours on first (1st) October in the succeeding year provided that if the Term shall terminate on a date other than first (1st) October, the last Contract Year shall be a period beginning at 06:00 hours on first (1st) October prior to the date of termination and expiring at 06:00 hours on the date of termination;



"Conventional Vessel" means a LNG Vessel with capacity from one hundred and twenty five thousand (125,000) m<sup>3</sup> up to one hundred and sixty five thousand (165,000) m<sup>3</sup>;

"Co-ordinated Maintenance Schedule" has the meaning given to it in Clause 8.1.2;

"CPI" means the consumer price index as monthly published by the Bureau of Labor Statistics in the Department of Labor of the United States of America in its monthly news release (available at <http://www.bls.gov/cpi/>) denoted U.S. All Items (current series) with the base 100 in 1982 (an index reflecting the changes in the prices paid by all urban consumers for a representative basket of goods and services). A reference to CPI applicable to a calendar year is a reference to such index for the month of October preceding that calendar year;

"CTMS" has the meaning given to it in Clause 12.1;

"Cubic Metre" or its abbreviations "CBM" or "m<sup>3</sup>" means a volume equal to the volume of a cube whose edges are all one (1) metre;

"Day" means a period during the Term beginning at 06:00 hours on any day and ending at 06:00 hours on the following day, and "Daily" shall be construed accordingly;

"Degrees Celsius" and "°C" means the particular interval between the temperature in Kelvin and the temperature of two hundred and seventy three decimal one five (273.15) Kelvin as defined in ISO 1000: 1992(E);

"Delivery Month" means a month in which discharge of a Cargo commences at a Receiving Terminal;

"Delivery Point" means the point at which the flange coupling of the unloading line at a Receiving Terminal joins the flange coupling of the discharging manifold of a LNG Vessel;

"Delivery Point Diversion" shall have the meaning given to it in Clause 5.4.1;

"Delivery Point Diversion Costs" shall have the meaning given to it in Clause 5.4.2;

"Dispute" has the meaning given to it in Clause 22.1.1;

"Diversion Costs" shall have the meaning given to in Clause 9.1.3;

"Effective Date" means the date hereof;

"EPC Contract" means any contract entered into by the Seller or an Affiliate of the Seller for the engineering, procurement, construction and commissioning of any portion of the Seller's Facilities, including the shipbuilding contract in relation to a LNG Vessel;

"ETA" means the estimated time of arrival of an LNG Vessel at the Unloading Port to be notified in accordance with Clause 10.2.1 and Part B of Schedule 2;

"Excess Berth Occupancy Charge" has the meaning given to it in Clause 10.7;

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"Expert" means an expert appointed (or required to be appointed) pursuant to the provisions of Clause 22.6;

"FOB" has the meaning given to the term "Free on Board" in the INCOTERMS 2000 as varied by this Agreement;

"Force Majeure" has the meaning specified in Clause 19.2.1;

[REDACTED]

"Full Cargo Lots" means the maximum amount of LNG that can safely and practically be loaded onto the applicable LNG Vessel at the Loading Port, taking into account the LNG Vessel capacity in Cubic Metres, heel requirements, LNG properties and boil off gas (as applicable);

"Gas" means any hydrocarbons or mixture of hydrocarbons and other gases consisting primarily of methane (CH<sub>4</sub>) which are or is predominantly in the gaseous state;

"Gas Supply Area" has the meaning given to it in Schedule 9 (*Gas Supply Area*);

"Gas Transporter" means the operator of [REDACTED];

"Gas Transporter's Planned Maintenance" means the scheduled maintenance programme relating to improvements, maintenance, testing, inspection, installation, repair, replacement or modification [REDACTED] as informed by the Gas Transporter;

"Gross Heating Value" (Mass Based) means the quantity of heat in Megajoules per Kilogram produced by the complete combustion in excess air of one (1) Kilogram of Gas at fifteen (15)°C and an absolute pressure of one decimal zero one three two five (1.01325) bar when the products of combustion are cooled to fifteen (15)°C and then the water formed by combustion is condensed to the liquid state and the products of combustion contain the same total mass of water vapour as the Gas and air before combustion;

"Gross Heating Value" (Volume Based) means the quantity of heat in Btu per Standard Cubic Foot produced by the complete combustion in excess air of one (1) Standard Cubic Foot of Gas at sixty (60) degrees Fahrenheit and an absolute pressure of fourteen decimal six nine six (14.696) pounds per square inch absolute when the products of combustion are cooled to sixty (60) degrees Fahrenheit and then the water formed by combustion is condensed to the liquid state and the products of combustion contain the same total mass of water vapour as the Gas and air before combustion;

"Guarantee" means a guarantee in the form of that set out in Schedule 7 (*Form of Guarantee*);

"Guarantor" means Total S.A.;



"Implementation Procedures" means the implementation procedures to be developed in accordance with Clause 12.7;

"Integrated Fleet" means, at any time, all LNG Vessels available for use at that time by the Seller, together with any vessel then under construction, testing or delivery which have been duly nominated by the Seller as part of the Integrated Fleet for that Contract Year in accordance with this Agreement;

"Interest Rate" has the meaning given to it in Clause 15.3.3;

"ISO" means the International Organisation for Standardisation;

"Joule" means the joule as defined in ISO 1000: 1992(E);

"Kilogram" or "kg" has the meaning given in ISO 1000: 1981 (E);

"Kilowatt Hour" or "kWh" means three decimal six (3.6) million Joules or 0.0341214245 Therms;

\_\_\_\_\_ means \_\_\_\_\_ as further specified in paragraph 3 of Part A of Schedule 5;

"LNG" means a product of natural gas consisting primarily of methane (CH<sub>4</sub>) that is in liquid form at near atmospheric pressure;

"LNG Vessel" means, at any time, any LNG vessel in the Integrated Fleet which conforms to the specifications set out in Part A of Schedule 6 (*LNG Vessels*);

"LNG Vessel Nomination Date" has the meaning given to it in Clause 17.1.2;

"Loading Facility" means the facilities for the loading of LNG Vessels which form part of the Seller's Facilities;

"Loading Port" means the port of \_\_\_\_\_ or, in the case of Substitution LNG the port at which the Substitution LNG is loaded onto the LNG Vessel;

"Make-Up LNG" shall have the meaning ascribed to it in Clause 6.7.2;

"Master" means the legally appointed commanding officer responsible for the safe navigation and management of a LNG Vessel or in his absence his duly authorised deputy;

"Matters" has the meaning given to it in Clause 22.6;

"Megajoule" means one (1) million Joules;

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

"Millibar" means zero decimal zero zero one (0.001) bar;

④

"MMBtu" means one million (1,000,000) Btu or zero point one (0.1) Therms;

"MMTA" means a million metric tons per annum;

"Modified Relevant Facility" has the meaning given to it in Clause 17.3.1(a);

"Monthly Reconciliation Statement" shall have the meaning specified in Clause 15.1.3;

"Ninety Day Schedule" means the programme of deliveries of LNG based on the ADP established in accordance with the provisions of Clause 6.4 and Part A of Schedule 2 (*Delivery Schedules and Cargo Information*);

"Nominated LNG Vessel" has the meaning given to it in Clause 17.1.2;

"Normal Cubic Metre" or "nm<sup>3</sup>" means the quantity of Gas which at zero (0) °C and at an absolute pressure of one decimal zero one three two five (1.01325) bar and when free of water or water vapour occupies the volume of one (1) Cubic Metre;

"Notice" has the meaning given to it in Clause 23.1;

"Notice of Intent to Terminate" has the meaning given to it in Clause 20.3.1;

"Notice of Readiness" has the meaning specified in Clause 10.2.3;

"Notice of Termination" has the meaning given to it in Clause 20.3.4;

"Off-Specification Costs" has the meaning given to it in Clause 11.2.1(b);

"Party" means either the Buyer or the Seller as appropriate and "Parties" means both of them;

"Permitted Laytime" has the meaning given to it in Clause 10.5.1;

"Person" shall mean any individual, company, firm, partnership, association, body corporate, unincorporated association, trust or other legal entity, including any governmental authority;

"Port Charges" means any port dues in respect of LNG imported by the Buyer that become payable in connection with the use of a Receiving Terminal at the rates published by any relevant authority from time to time;

"Port Regulations" means all laws and regulations imposed by any governmental or other relevant authority from time to time in relation to or affecting the use of the port (where a Receiving Terminal is situated at) by any vessel (including LNG Vessels hereunder);

"Provisional End Date" has the meaning given to it in Clause 4.1.2;

[REDACTED]

[REDACTED] Vessel" means a LNG Vessel with a capacity from [REDACTED]  
[REDACTED]



[REDACTED] means a LNG Vessel with a capacity from [REDACTED]  
[REDACTED]  
[REDACTED]

"Quantity Delivered" means the number of MMBtus, based on gross calorific value at 60 °F, contained in a Cargo of LNG delivered pursuant to this Agreement, determined in accordance with Clause 12 (*Measurement, Sampling and Testing*) and Schedule 3 (*Measurement, Analysis and Calculation*);

"Reasonable and Prudent Operator" means a Person seeking in good faith to perform its contractual obligations and, in so doing, and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight and incurring a level of expenditure 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 or conditions and any reference to the "standard of a Reasonable and Prudent Operator" shall be construed accordingly;

"Receiving Terminal" means such terminal located in the Gulf of Mexico as may, prior to 31 December 2006, be nominated by the Seller on terms reasonably acceptable to the Buyer (as of the date hereof the Seller has nominated the Sabine Pass Receiving Terminal) or thereafter, a terminal located in the United States of America to be mutually agreed between the Buyer and the Seller or an Alternative Receiving Terminal;

"Relevant Facility" has the meaning given to it in Clause 17.3.1;

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

"Resumption Date" has the meaning given to it in Clause 19.6.1;

"Round Down Quantity" has the meaning given to it in Clause 6.1.4;

"Round Up Quantity" has the meaning given to it in Clause 6.1.3;

"Sabine Pass Receiving Terminal" means the receiving terminal located at Sabine Pass in the United States of America as further specified in Part A of Schedule 5 (*The Buyer's Facilities and Seller's Facilities*).

"Scheduled Loading Window" means the scheduled window for loading a Cargo specified in the Annual Delivery Programme and/or Ninety Day Schedule not exceeding forty eight (48) hours;

"Scheduled Unloading Window" means the scheduled window for commencement of unloading a Cargo specified in the Annual Delivery Programme and/or Ninety Day Schedule not exceeding forty eight (48) hours;

*ADW*



[REDACTED]

"Seller Event of Default" has the meaning given to it in Clause 20.2;

"Seller's Facilities" means the facilities at [REDACTED] for Gas production, treatment, processing, liquefaction, storage and loading of LNG, LNG Vessels and LNG vessel berthing as described in Part B of Schedule 5 (*The Buyer's Facilities and Seller's Facilities*), including all modifications, alterations and additions thereto;

"Seller's Planned Maintenance" has the meaning given to it in Clause 8.1.1;

"Seller's Unplanned Maintenance" has the meaning given to it in Clause 8.2.1;

"Specification" means the specification of LNG as set out in Schedule 8 (*LNG Specification*);

"Standard Cubic Foot" or "SCF" means the quantity of Gas, free of water vapour, of one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit and at an absolute pressure of fourteen decimal six nine six (14.696) pounds per square inch, the Gas being assumed to be an ideal gas;

"Standard Cubic Metre" or "Sm<sup>3</sup>" means, in relation to Gas, the quantity of any ideal gas, at a temperature of fifteen (15) °C and a pressure of one hundred one decimal three two five (101.325) kPa absolute contained in a volume of one (1) cubic metre;

"Start Date" has the meaning given to it in Clause 4.2.1;

"Substitution LNG" has the meaning specified in Clause 5.3;

"Take or Pay Statement" has the meaning given to it in Clause 15.1.4;

"Tariff Amounts" means the Terminal Tariff, the Pipeline Tariff, the Fuel Tariff and the Pipeline Operating Tariff, as further defined in Clause 7 (*Contract Price*);

"Tariff Arrangements" means the arrangements made in relation to the Receiving Terminal or pipeline to reserve capacity as set out in Clause 7 (*Contract Price*);

"Tax" means any tax, levy, royalty, rate, duty, fee, stamp duty or other charge (including sales tax) imposed directly or indirectly on a Party, its assets, income, dividends and profits (without regard to the manner of collection or assessment and whether by withholding or otherwise) by any governmental agency authorised by law to impose the same. Without limiting the generality of the foregoing, Tax includes a goods and services tax, a value-added tax, a petroleum revenue tax, any tax respecting environmental effects of exploring for, producing, processing, transporting, storing, supplying, selling, or consuming Gas, including a carbon tax;

"Term" has the meaning given to it in Clause 4.1.2;

"Terminal Operator" means, at any time, the operator of the Receiving Terminal;

**"Terminal Operator's Planned Maintenance"** means the scheduled maintenance programme in relation to the Receiving Terminal as published by the Terminal Operator;

**"Terminal Procedures"** means the regulations (to be approved by the Seller) from time to time in force controlling the use of the Receiving Terminal;

**"Therm"** means one hundred and five million, five hundred and five thousand, five hundred and sixty (105,505,560) Joules or twenty nine decimal three zero seven one (29.3071) kWh;

**"Train"** means [REDACTED]

**"Transporter"** means any Person who is either the owner or the operator of the LNG Vessels, or the contractor to the Seller for the purpose of providing or operating any of the LNG Vessels;

**"United States Dollars"** or **"US\$"** means the lawful currency of the United States of America;

**"Unloading Port"** means the port at which the Receiving Terminal is located;

**"Used Laytime"** means the laytime actually used in berthing and unloading the LNG Vessel at a Receiving Terminal in accordance with Clause 10.4.4;

**"Wilful Misconduct"** means any act or failure to act (whether sole, joint or concurrent) taken or not taken by a Party with an intentional conscious or reckless disregard of its obligations under this Agreement.

## 1.2 Interpretation

- 1.2.1 Where the context requires, words denoting the singular only shall also include the plural, or vice versa. References to the male shall include the female, or vice versa;
- 1.2.2 References to Clauses, Schedules, Annexes and Exhibits are (unless otherwise specified) references to Clauses of and Schedules, Annexes and Exhibits to this Agreement, and such Schedules, Annexes and Exhibits are hereby incorporated as part of this Agreement;
- 1.2.3 Reference to a statutory provision (including those contained in subordinate legislation) is a reference to such provision as amended or re-enacted or as modified by other statutory provisions from time to time and includes subsequent legislation made under the relevant statute;



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for Confidential Treatment**

- 1.2.4 References to any agreement or instrument is to the same as amended, novated, modified or replaced from time to time in accordance with its terms;
- 1.2.5 References to a Party undertaking to use its "reasonable endeavours" to perform an obligation shall, unless otherwise stated, be construed as that Party undertaking to do everything reasonably practicable in the circumstances to achieve the performance of such obligation including incurring a level of expenditure which might reasonably and ordinarily be expected;
- 1.2.6 References to the word "include" and "including" are to be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- 1.2.7 References to the "Seller" and the "Buyer" shall in each case include successors and assigns permitted hereunder;
- 1.2.8 References to a "day" means a period during the Term beginning at 00:00 hours on any day and ending at 00:00 hours on the following day and "daily" shall be construed accordingly;
- 1.2.9 References to a "month" shall unless otherwise stated mean a calendar month;
- 1.2.10 References to a "year" shall unless otherwise stated mean a calendar year;
- 1.2.11 References to "quantity" or "quantities" shall be construed as references to the energy content of the same in MMBtus as the context may require;
- 1.2.12 All calculations made under this Agreement shall be made to eight (8) places of decimals without rounding and the value so calculated shall be rounded to the fourth (4th) decimal. A figure of five thousand (5000) or more in the last four (4) of the eight (8) decimal places shall cause rounding up of the fourth (4th) decimal;
- 1.2.13 The index and headings in this Agreement are for ease of reference only and shall not be taken into account in construing this Agreement; and
- 1.2.14 References to time unless otherwise stated shall refer to a time in force in the country where the Receiving Terminal is situated.

**2. RELATIONSHIP OF SELLER AND BUYER**

**2.1 Several Liability**

The obligations and liabilities of the Parties to this Agreement are several and not joint, nor joint and several.

**2.2 No Partnership**

Nothing in this Agreement, and no action taken by the Seller and/or the Buyer pursuant to this Agreement, shall constitute, or be deemed to constitute, a partnership, unincorporated association or other co-operative entity.



**2.3 No Agency**

2.3.1 Each of the Seller and Buyer enters into this Agreement acting only as a principal for its own account. Nothing in this Agreement, and no action taken by the Seller and/or the Buyer pursuant to this Agreement, shall constitute, or be deemed to constitute, any relationship as between the Seller and the Buyer as principal and agent of each other, as the case may be.

2.3.2 Each of the Seller and Buyer hereby acknowledges that the Buyer shall not have any authority to conclude contracts on behalf of, or otherwise bind, or do business on behalf of, the Seller and, in particular, that the Buyer shall not have any authority to conclude any Gas supply contracts with any third party customers on behalf of the Seller.

**3. CONDITIONS PRECEDENT**

**3.1 Conditions Precedent**

3.1.1 The rights and obligations of the Parties under this Agreement set out in Clauses 1 (*Definitions and Interpretation*), 2 (*Relationship of Seller and Buyer*), 3 (*Conditions Precedent*), 4.2.2, 6.2.2 to 6.2.6, 8.1, 8.2, 18 (*Warranties and Covenants*), 19 (*Force Majeure*), 20 (*Default and Termination*), 21 (*Governing Law*), 22 (*Dispute Resolution*), 23 (*Notices*), 24 (*Confidentiality*), 25 (*Assignment and Direct Agreement*) and 27 (*Miscellaneous*), shall all be in effect as of the Effective Date.

3.1.2 Subject to Clause 3.1.1, all of the rights and obligations of the Parties under this Agreement are subject to and shall only become effective on the satisfaction of the Conditions Precedent unless waived in accordance with Clause 3.2.

**3.2 Waiver of Conditions Precedent**

The Seller shall have the right by giving Notice to the Buyer to waive any of the Conditions Precedent.

**3.3 Notification Regarding Progress**

The Seller shall keep the Buyer informed regarding progress in satisfying the Conditions Precedent on a regular basis and will give Notice to the Buyer as soon as any such Condition Precedent has been satisfied, or when it is anticipated that a Condition Precedent cannot be satisfied. The Seller shall use reasonable endeavours to procure that the Conditions Precedent are satisfied within three (3) years of the Effective Date or the later date as may be agreed under Clause 3.4.1.

**3.4 Non-satisfaction of Conditions Precedent**





[REDACTED]

**4. TERM OF AGREEMENT**

**4.1 Term of Agreement**

- 4.1.1 Subject to, and in accordance with Clause 3 (*Conditions Precedent*), this Agreement shall become effective as of the Effective Date and shall continue in effect until the expiry of the Term as provided for in Clause 4.1.2 or the earlier termination of this Agreement in accordance with its terms.
- 4.1.2 The term of this Agreement ("Term") shall be the period beginning on the Effective Date in accordance with Clause 4.1.1 and ending at 06:00 hours on the date falling twenty five (25) years after the Start Date (the "Provisional End Date").
- 4.1.3 Each of the LNG Vessels already loaded at the Provisional End Date shall be required to deliver its Cargo of LNG to the Buyer at the Receiving Terminal and the terms and conditions of this Agreement shall apply to such additional period of time.
- 4.1.4 The terms and conditions of this Agreement shall apply to any additional period of time as necessary to allow the Buyer to take Make-Up LNG for a period of six (6) months after the end of the Term in accordance with Clause 6.7.2.
- 4.1.5 From the Start Date, the Term of this Agreement shall be divided into Contract Years.

**4.2 Start Date**

- 4.2.1 Subject to Clause 4.2.3, the Start Date shall be either:
  - (a) the day on which the LNG Vessel containing the first Cargo of [REDACTED] LNG departs from [REDACTED] as duly notified by Notice from the Seller to the Buyer; or
  - (b) such earlier date as the Parties may agree, provided that:

*Handwritten mark*

- (i) the Seller is satisfied that the Train has the ability to produce sufficient LNG to meet its obligations pursuant to this Agreement; and
- (ii) the Seller has sufficient LNG transportation capacity to meet its obligations pursuant to this Agreement.

4.2.2 The Seller shall, by Notice to the Buyer, provide the following forecast information and the following times for the anticipated Start Date:

Column A Time periods in advance of the anticipated Start Date	Column B Window periods within which the anticipated Start Date will occur
24 months	12 months
12 months	6 months
6 months	3 months
3 months	1 month
1 month	14 days
7 days	1 day

4.2.3 [REDACTED]

**4.3 Obligations Survive Termination**

Termination of this Agreement pursuant to its terms, for whatever reason, shall be without prejudice to any rights, remedies, powers, obligations and liabilities in respect of this Agreement accrued at or prior to the termination or to any continuing confidentiality obligations under Clause 24 (*Confidentiality*).

**5. GENERAL SCOPE OF AGREEMENT**

**5.1 Sale and Purchase**

5.1.1 The Seller agrees to sell and deliver, and the Buyer agrees to purchase, take and pay for, or pay for if not taken, LNG in the quantities and at the prices and in accordance with the other terms and conditions set out in this Agreement.

5.1.2 LNG shall be delivered C.I.F. to the Unloading Port in Cargoes.





[REDACTED]

**5.2 Source of Supply**

The Gas to be processed into LNG and sold hereunder shall (subject to Clause 5.3) be produced from the Gas Supply Area.

**5.3 Substitution Rights**

In fulfilling the Seller's obligations under this Agreement to deliver to the Buyer any Cargoes scheduled for delivery under the Annual Delivery Programme or the Ninety Day Schedule, the Seller shall have the right, but not the obligation, to sell and deliver at the Delivery Point LNG from sources other than the Gas Supply Area ("Substitution LNG"), provided that [REDACTED]

(ii) any such Substitution LNG conforms to the Specification and (iii) such LNG is not from a source which is prohibited from importation by the laws of the country where the Receiving Terminal is located.

**5.4 Alternative Delivery Point**

5.4.1 [REDACTED]

5.4.2 [REDACTED]

[REDACTED]

5.4.3 [REDACTED]

5.4.4 [REDACTED]

**5.5 Delivery to Third Parties**

Nothing in this Agreement shall prevent the Seller from delivering LNG derived from the Gas Supply Area to third parties other than the Buyer.

**5.6 Guarantee**

The Buyer shall procure that the Guarantor provides to the Seller on the date hereof a duly executed Guarantee as security for the Buyer's obligations under this Agreement.

**6. QUANTITIES, NOMINATIONS, ANNUAL DELIVERY PROGRAMME AND OPERATIONAL MITIGATION**

**6.1 Transportation**

6.1.1 Delivery of LNG by the Seller and receipt by the Buyer shall at all times be made in Full Cargo Lots at the Delivery Point on the terms set out in this Agreement.

6.1.2 The number of Full Cargo Lots required to deliver the annual contract quantity ("Annual Contract Quantity" or "ACQ") shall be determined by the Seller at the time of setting the Annual Delivery Programme for such Contract Year as per Clause 6.2.5.

6.1.3 If it is estimated that the allocation of annual quantities delivered in Full Cargo Lots would result in a partial cargo exceeding fifty percent (50%) of a Full Cargo Lot, the Seller may require the Buyer to include in the ACQ the amount sufficient to complete such Full Cargo Lot, such additional quantity, if any, being a "Round Up Quantity". Any such Round Up Quantity shall be included in the ACQ for that Contract Year and shall be excluded from the ACQ for the next Contract Year.

6.1.4 If it is estimated that the allocation of annual quantities delivered in Full Cargo Lots would result in a partial cargo of fifty percent (50%) or less of a Full Cargo



Lot, Seller may exclude from the ACQ the amount sufficient to eliminate such partial cargo, such reduction, if any, being a "Round Down Quantity". Any Round Down Quantity arising under this Clause 6.1.4 shall be excluded from the ACQ for that Contract Year and shall be included in the ACQ for the next Contract Year.

- 6.1.5 In calculating the quantity of LNG made available by the Seller and taken by the Buyer for each Contract Year, there shall be included the quantity taken within the first seven (7) days of the next Contract Year, providing such quantity was scheduled in the Annual Delivery Programme of the subject Contract Year with respect to which the calculation is being made. Any such quantity shall not be considered to have been made available by Seller or taken by Buyer in the next Contract Year.

6.2 Annual Delivery Programme

6.2.1

- (a) In setting the Annual Delivery Programme, the Seller shall have the right in each Contract Year to establish the volume of LNG to be delivered between zero and 1.85 MMTA LNG. As such, with effect from the Start Date the ACQ shall, subject to Clauses 6.2.1(b) and 6.2.1(c), be up to ninety six million two hundred thousand (96,200,000) MMBtu (the equivalent of approximately 1.85 MMTA LNG). The Seller shall have the right to profile deliveries on a seasonal basis (subject to the Seller being able to optimise its utilisation of the Integrated Fleet). For the sake of clarity, the quantities for any month shall not exceed twice the annual monthly average (being 1.85 MMTA divided by 12).
- (b) [REDACTED]  
[REDACTED]  
[REDACTED] the ACQ under this Agreement shall for the duration [REDACTED]  
[REDACTED] be up to fifty nine million eight hundred thousand (59,800,000) MMBtu (equivalent to 1.15 MMTA LNG) (including seasonal variations as the Seller may determine).
- (c) At any time prior to 31 December 2006 the Seller may, on as many occasions as the Seller may determine, issue a Notice to the Buyer reducing the ACQ for the duration of the Term by such amount as the Seller may determine, provided that in each instance the Seller has concluded that the sale to a party other than the Buyer of the quantity of LNG corresponding to such reduction is beneficial to the economic interests of the Seller.

6.2.2 Notwithstanding the indicative ACQ set out in Clause 6.2.1(a) not later than:

- (a) in the case of the first (1st) Contract Year, one hundred and eighty (180) days prior to the mid-point of the three (3) months window period set out in Column B and advised pursuant to Clause 4.2;
- (b) in the case of every succeeding Contract Year, 1 April prior to the beginning of each such Contract Year,

the Seller shall give Notice to the Buyer specifying the anticipated annual quantity, consistent with Clause 6.2.1 and Clause 8.1.2 and its request for firm Cargoes as per Clause 6.3.1 including any seasonal variations for such Contract Year (taking into consideration any Co-ordinated Maintenance Schedule agreed at that time and/or any Buyer's or Seller's Planned Maintenance), the anticipated quantities of the ACQ available for delivery hereunder at the Delivery Point in each month of such Contract Year and other information as may be reasonably requested by the Terminal Operator. The Seller shall also provide a provisional estimate of the ACQ for the following Contract Year.

6.2.3 On or before:

- (a) in the case of the first (1st) Contract Year, the thirtieth (30th) day after the Notice given pursuant to Clause 6.2.2(a); and
- (b) in the case of every succeeding Contract Year, 1 May prior to the beginning of each such Contract Year,

the Buyer shall give Notice to the Seller advising any change to the Buyer's Planned Maintenance then known.

6.2.4 Commencing no later than:

- (a) in the case of the first (1st) Contract Year, the sixtieth day (60th) day after the Notice given pursuant to Clause 6.2.2(a); and
- (b) in the case of every succeeding Contract Year, 1 June prior to the beginning of each such Contract Year,

the Seller and the Buyer shall, on a good faith basis, consult regarding a schedule for the Contract Year and shall use all reasonable endeavours to agree such schedule, having regard to the quantities nominated by the Seller pursuant to Clause 6.2.2 and the Co-ordinated Maintenance Schedule. The Buyer shall provide to the Seller its preferred schedule at such time.

6.2.5 No later than:

- (a) in the case of the first Contract Year, the ninetieth (90th) day after the Notice given pursuant to Clause 6.2.2(a); and



- (b) in the case of every succeeding Contract Year, 1 July prior to the beginning of each such Contract Year,

the Seller shall issue a programming schedule including delivery quantities for each month, including any seasonal variations, at the Delivery Point of the forthcoming Contract Year (the "Annual Delivery Programme"). The Annual Delivery Programme shall reflect the schedule, if any, agreed between the Seller and the Buyer, but in the absence of such agreement the Annual Delivery Programme shall comprise such quantities and delivery programme as shall be notified by the Seller to the Buyer. The Buyer shall be deemed to have accepted the Annual Delivery Programme so notified by the Seller without the Buyer having any right to object to or amend such Annual Delivery Programme.

6.2.6 The Annual Delivery Programme shall show the following information in respect of each Cargo to be delivered within a Contract Year:

- (a) the LNG Vessel which the Seller provisionally has nominated for such delivery;
- (b) in relation to such LNG Vessel:
  - (i) the Scheduled Loading Window;
  - (ii) the name of the Receiving Terminal;
  - (iii) the Scheduled Unloading Window;
  - (iv) in the case of Substitution LNG, the source of such LNG, if applicable;
  - (v) estimated unloaded quantity of LNG (m<sup>3</sup> and MMBtu); and
  - (vi) any additional information as the Parties may agree or as may be reasonably requested by the Terminal Operator.

### 6.3 Terminal Capacity

6.3.1 The Buyer shall procure capacity and berthing slots at the Sabine Pass Receiving Terminal sufficient for the Buyer to accept and efficiently off-load the quantity of LNG comprised [REDACTED] in the ACQ as per Clause 6.2. [REDACTED]

[REDACTED]

[REDACTED] To the extent that Clause 6.2.1(c) is applicable, the Buyer shall procure the relevant terminal and berthing slots sufficient for the Buyer to accept and efficiently off-load the ACQ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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6.3.2 In circumstances where the Seller has nominated the ACQ in accordance with Clause 6.2.1 but such quantities [REDACTED] the Buyer shall use reasonable endeavours to procure capacity and berthing slots first at (a) the Sabine Pass Receiving Terminal, and then (b) an Alternative Receiving Terminal, sufficient for the Buyer to accept and efficiently off-load the quantity of LNG comprised [REDACTED] in the ACQ specified in the Annual Delivery Programme issued by the Seller in accordance with Clause 6.2.5 and/or in the Ninety Day Schedule as specified in Clause 6.4. For the avoidance of doubt, the Seller shall not be liable to the Buyer for any costs incurred by the Buyer relating to any unused terminal capacity and berthing slots reserved by the Buyer that are not required by the Buyer to receive the ACQ.

6.3.3 The Buyer shall not dispose of any capacity or berthing slots reserved by it at the Receiving Terminal which is required to meet its obligations under Clause 6.3.1 during the setting of the Annual Delivery Programme under Clause 6.2.

#### 6.4 Delivery Schedules

For the purpose of regulating the Annual Delivery Programme, a schedule (the "Ninety Day Schedule") shall be drawn up by the Seller in accordance with the procedures contained in Schedule 2 (*Delivery Schedules and Cargo Information*). In the absence of agreement between the Parties in drawing up the Ninety Day Schedule, the Ninety Day Schedule shall comprise such quantities and delivery programme as shall be notified by the Seller to the Buyer. The Buyer shall be deemed to have accepted the Ninety Day Schedule so notified by the Seller without the Buyer having any right to object to or amend such Ninety Day Schedule. LNG deliveries and receipts shall be made on the basis of the Annual Delivery Programme and the Ninety Day Schedule. In the event of any inconsistencies between the Annual Delivery Programme and the Ninety Day Schedule, the latter shall prevail.

#### 6.5 Take-or-Pay

In respect of each Contract Year throughout the Term, the Buyer shall take and pay the Seller for, or pay the Seller for if not taken, a quantity of LNG (the "Adjusted Annual Contract Quantity" or "AACQ"), which shall be calculated for such Contract Year (for inclusion as part of the Take or Pay Statement) in the manner set forth in Clause 6.6.

#### 6.6 AACQ

The AACQ for each Contract Year shall be determined according to the following formula:

[REDACTED]

[REDACTED]

**6.7 Take or Pay Payments**

6.7.1 In the event that in a Contract Year the Buyer takes a quantity of LNG less than the AACQ then the Buyer shall pay to the Seller, in respect of the quantity of LNG not taken, an amount equal to such quantity multiplied by the simple arithmetical average of all monthly Contract Prices applicable at the Delivery Point in that Contract Year (usually twelve (12) in each Contract Year save in respect of the first and last Contract Years). Any amount payable by the Buyer pursuant to this Clause 6.7 shall be included in the Take or Pay Statement rendered pursuant to Clause 15.1.4.

6.7.2 Any quantities of LNG in respect of which the Buyer shall have made the payment due pursuant to this Clause 6.7 shall be designated as "Make-Up LNG". Upon any Make-Up LNG accruing the Buyer shall be entitled to nominate and take Make-Up LNG up to the balance of the same as soon as possible [REDACTED]

[REDACTED] and the Seller shall use reasonable endeavours to deliver the same to the Buyer in such further period. If the Seller is unable to deliver Make-Up LNG as a result of unavailability of adequate shipping capacity, the Buyer shall have the right to lift FOB at [REDACTED] (subject to the



relevant LNG vessel being acceptable to the Seller) such Make-Up LNG at the prevailing Contract Price less any avoided variable transportation costs to be agreed by the Parties. The price for the Make-Up LNG shall be the Contract Price determined in accordance with Clause 7 (*Contract Price*). Any difference between the invoice amounts for LNG initially paid for but not taken pursuant to Clause 6.7.1 and Make-Up LNG subsequently nominated, delivered and taken pursuant to this Clause 6.7.2 shall be offset against each other on the basis of the volume of the earliest accrued rights to Make-Up LNG being extinguished first and any such amount owed by one Party or the other in respect of a particular Cargo shall be invoiced in accordance with Clause 15.1.5.

- 6.7.3 Notwithstanding Clause 6.7.2, the Buyer shall not be entitled to nominate or take any remaining Make-Up LNG [REDACTED]  
[REDACTED] the Seller shall have no obligation to refund unrecouped take-or-pay payments after such period.

#### 6.8 Additional Annual Quantities

- 6.8.1 If, after the Annual Delivery Programme for a Contract Year has been established, the Seller determines that the Seller's delivery capability (in relation to that Contract Year or any remaining part thereof) is greater than what was notified by the Seller under Clause 6.2.5 or Clause 6.4, the Seller may at its own discretion give Notice to the Buyer of an increase in the AACQ for the relevant Contract Year specifying:
- (a) the additional quantities of LNG (expressed in MMBtu) which the Seller is able to deliver to the Buyer at a Receiving Terminal specified by the Seller (the "Additional Annual Quantities");
  - (b) the date(s) on which the Additional Annual Quantities can be delivered; and
  - (c) the LNG Vessel(s) which the Seller proposes to use to deliver the Additional Annual Quantities.
- 6.8.2 The Seller shall give any notification under Clause 6.8.1 as far in advance of the availability of the Additional Annual Quantities as is reasonably practicable, and in any event shall not (unless the Buyer consents, such consent not to be unreasonably withheld or delayed) so notify an Additional Annual Quantity for delivery less than ten (10) days before the first day of the proposed delivery month.
- 6.8.3 The Buyer will use reasonable endeavours to procure the requisite terminal capacity and terminal send out capacity. Should such capacities not be made available to the Buyer on commercially reasonable terms, the Buyer has the right to reject the request for Additional Annual Quantities.

#### 6.9 Operational Mitigation

















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[REDACTED]







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[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]













[REDACTED]

**8 MAINTENANCE**

**8.1 Seller's and Buyer's Maintenance Notice**

- 8.1.1 The Seller shall procure the necessary information for the preparation of a maintenance plan for the Seller's Facilities and shall prepare a maintenance plan for the Seller's Facilities due to improvements, maintenance, testing inspection, installation, repair, replacement or modification downtime ("Seller's Planned Maintenance").
- 8.1.2 No later than two hundred (200) days prior to the beginning of each Contract Year, the Seller and the Buyer shall consult in good faith and use reasonable endeavours to agree on a programme designed to co-ordinate during a Contract Year:
  - (a) Seller's Planned Maintenance; and
  - (b) the anticipated scheduled maintenance in relation to the Buyer's Facilities due to improvements, maintenance, testing, inspection, installation, repair,



replacement or modification downtime ("**Buyer's Planned Maintenance**").

Such programme (the "**Co-ordinated Maintenance Schedule**") shall be devised so as to minimise the collective impact of such downtime periods on the delivery of LNG hereunder. The Parties shall use reasonable endeavours to conduct such consultations and reach agreement under this Clause 8.1.2 at the same time as or so that it may be taken into account in the determination of the ACQ pursuant to Clause 6.2.2.

8.1.3 If after setting the Annual Delivery Programme the Seller believes that changes in its requirements for the Seller's Planned Maintenance will affect its ability in the Contract Year to deliver LNG, it shall, as soon as reasonably practicable in the relevant Contract Year, co-ordinate and establish with the Buyer a mutually agreeable reduction in the ACQ in order to take account of changes in its requirements for and to carry out the Seller's Planned Maintenance, provided however that in the absence of any such agreement, the Seller may, by Notice to the Buyer not less than two (2) months prior to the commencement of such Seller's Planned Maintenance, reduce the ACQ in order to take account of changes in its requirements for and to carry out the Seller's Planned Maintenance and the Seller shall in such Notice specify the reduced ACQ.

8.1.4 If after setting the Annual Delivery Programme, the Buyer is informed by the Gas Transporter or Terminal Operator of changes to the Gas Transporter's Planned Maintenance schedule or changes to the Terminal Operator's Planned Maintenance schedule as previously taken into account in setting the Annual Delivery Programme which affects the Buyer's ability in the Contract Year to receive LNG, it shall, as soon as reasonably practicable in the relevant Contract Year, co-ordinate and establish with the Seller a mutually agreeable reduction in the ACQ in order to take account of changes in its requirements for and to carry out the Gas Transporter's Planned Maintenance schedule and the Terminal Operator's Planned Maintenance schedule, provided however that in the absence of any such agreement, the Seller may, by Notice to the Buyer not less than two (2) months prior to the commencement of such Gas Transporter's Planned Maintenance or Terminal Operator's Planned Maintenance, reduce the ACQ.

## **8.2 Maintenance Imposed by Authorities and Unplanned Maintenance**

8.2.1 In the event that the Seller's Facilities require the implementation of improvements, maintenance, testing, inspection, installation, repair, replacement or modification as required by or in connection with government regulations or relevant certifying authorities, or where the Seller receives (and passes on to the Buyer) a notice from an operator acting as a Reasonable and Prudent Operator that the same are reasonably necessary in order to ensure the safe and proper operation of any part of the Seller's Facilities other than the Seller's Planned Maintenance ("**Seller's Unplanned Maintenance**"), the Seller shall by Notice to the Buyer have the right to reduce the ACQ to the extent required to perform





such Seller's Unplanned Maintenance. The Seller shall only be obliged to give the Buyer as much notice as practicable consistent with any notice period provided by the governmental agency, other authority or operator aforesaid so as to ensure the safe and proper operation of any part of the Seller's Facilities.

8.2.2 In the event that the Buyer's Facilities require the implementation of improvements, maintenance, testing, inspection, installation, repair, replacement or modification as required by or in connection with government regulations or relevant certifying authorities, or where the Buyer receives (and passes on to the Seller) a notice from an operator acting as a Reasonable and Prudent Operator that the same are reasonably necessary in order to ensure the safe and proper operation of any part of the Buyer's Facilities other than the Buyer's Planned Maintenance ("Buyer's Unplanned Maintenance"), the Buyer shall by Notice to the Seller have the right to request the reduction of the ACQ to the extent required to perform such Buyer's Unplanned Maintenance and the Seller shall issue a revised Ninety Day Schedule to take account of such reduction of the ACQ. The Buyer shall only be obliged to give the Seller as much notice as practicable consistent with any notice period provided by the governmental agency, other authority or operator aforesaid so as to ensure the safe and proper operation of any part of the Buyer's Facilities.

8.3 The Seller shall procure that the effect of all Seller's Planned Maintenance and Seller's Unplanned Maintenance activities on off-takers of the Seller's Facilities shall be fair and equitable on all off-takers of the Seller's Facilities.

8.4 The Buyer shall procure that the effect of all Buyer's Planned Maintenance and Buyer's Unplanned Maintenance activities on suppliers of LNG to the Buyer's Facilities shall be fair and equitable on all suppliers of LNG to the Buyer's Facilities.

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**10. TRANSPORTATION AND UNLOADING**

**10.1 Responsibilities of the Parties**

10.1.1 The Seller shall be responsible for the transportation from the Loading Facility to the Delivery Point of all quantities of LNG to be sold and purchased under this Agreement.

10.1.2 The Seller shall provide, maintain, equip and operate or cause to be provided, maintained, equipped and operated, in good working order, the LNG Vessels, which shall be compatible in all material respects with the Receiving Terminal. The LNG Vessels shall be approved by the port authority at the Unloading Port and the Terminal Operator and shall comply with all maritime regulations applicable to the United States of America and the State in which the Receiving Terminal is located, so as to enable the Seller to deliver LNG in accordance with this Agreement.

10.1.3 The Buyer shall be responsible for providing or causing to be provided the services of the Receiving Terminal which has been designed and constructed so that it incorporates off-loading and storage facilities fit for fully loaded LNG Vessels (the characteristics of which are set out in Schedule 6 (*LNG Vessels*)) and which meets the berthing and off-loading requirements of such LNG Vessels.

**10.2 Shipping Notifications**

10.2.1 The Seller shall procure that the Master of each of the LNG Vessels gives to the Buyer and the Terminal Operator a first Notice upon departure of the LNG Vessel from the Loading Facility or (as the case may be) other point of departure for the Unloading Port setting forth the time and date that loading was completed, the volume, expressed in m<sup>3</sup> of LNG loaded on board the LNG Vessel, any operational deficiency of the LNG Vessel that may affect its performance at the Unloading Port, and the estimated time of arrival of the LNG Vessel at the Unloading Port (the "ETA"), and shall update such Notice and any later Notice in the event of a change of the ETA as specified below:

Time when Notice to be given	Content of Notice	Change of ETA requiring updated Notice
Arriving/Departing the Suez Canal (if appropriate)	Confirmed or updated ETA	6 hours
96 hours before current ETA	Confirmed or updated ETA	6 hours
48 hours before current ETA	Confirmed or updated ETA	6 hours
24 hours before current ETA	Confirmed or updated ETA	Any change

10.2.2 As soon as reasonably practicable and at the latest, within forty eight (48) hours of departing the berth at the Loading Port, the Seller shall give a Cargo Information Notice to the Buyer as further described in Part B of Schedule 2 (*Delivery Schedules and Cargo Information*).





- 10.2.3 When the LNG Vessel has arrived at the pilot station or customary anchorage of the Unloading Port, has cleared the necessary formalities with the relevant authorities and is ready in all respects to proceed to berth and commence unloading, the Master of the LNG Vessel shall give Notice ("Notice of Readiness") to the Buyer and the Terminal Operator.
- 10.2.4 Where a Receiving Terminal requires a different timing or procedure for such Notices, the Seller shall procure that the Master of the LNG Vessel shall comply with such other timing or procedure.

### 10.3 Berthing of LNG Vessel

- 10.3.1 Subject to Clause 10.3.2, after Notice of Readiness has been given, the Seller shall cause the LNG Vessel to be berthed safely and expeditiously at the berth designated by the Buyer and/or the Unloading Port authority, and the Buyer shall co-operate, or cause the Terminal Operator to co-operate, in the LNG Vessel's being so berthed. The LNG Vessel may be shifted from berth or prevented from loading without any liability for the Buyer in any of the following cases:
- (a) failure by the Seller to obtain necessary authorisations and customs clearances;
  - (b) the Seller not following the Terminal Procedures;
  - (c) if the Terminal Operator properly determines that the continued unloading poses a security or other risk to the operations, personnel or environment;
  - (d) Force Majeure;
  - (e) the LNG Vessel, previously believed to be ready for unloading, is determined by the Terminal Operator to be not ready for being berthed; or
  - (f) the LNG Vessel fails to depart after unloading and end of Permitted Laytime.
- 10.3.2 If a LNG Vessel arrives at the Receiving Terminal prior to the applicable Scheduled Unloading Window and tenders a Notice of Readiness, the Buyer will make a request to the Terminal Operator to agree to the LNG Vessel berthing early (it will be at the Terminal Operator's discretion whether to accept or reject such request). In any event, Notice of Readiness shall be deemed to have been accepted at the earlier of:
- (a) 06:00 hours local time on the first day of the Scheduled Unloading Window; or
  - (b) the time at which the LNG Vessel is berthed and ready to unload.
- 10.3.3 The Buyer shall notify the Master of the LNG Vessel of its berthing priority at the Receiving Terminal upon its receipt of Notice of Readiness.





- 10.3.4 If the LNG Vessel does not give Notice of Readiness by the end of the Scheduled Unloading Window but does thereafter give Notice of Readiness, the Buyer shall berth the LNG Vessel as soon as reasonably practicable in order to unload the Cargo.
- 10.3.5 The Seller may request that its LNG Vessel is berthed in priority to all other LNG vessels if it considers it necessary. If the Seller makes such a request, the Buyer shall make a request to the Terminal Operator to berth the LNG Vessel ahead of all other LNG vessels. Acceptance of such a request shall be at the discretion of the Terminal Operator.
- 10.3.6 If a number of LNG vessels, having arrived at the Unloading Port on or before their respective scheduled unloading windows, are waiting to proceed to berth and/or unload, having been prevented from doing so as a result of Adverse Weather Conditions affecting the Buyer at the Receiving Terminal, then (from the time when berthing and unloading is no longer prevented by such circumstances) the Buyer shall use its reasonable endeavours to procure that such LNG vessels shall be unloaded in the order of their scheduled unloading windows.
- 10.3.7 When a LNG Vessel is due to arrive at the same Buyer's berth at a Receiving Terminal at approximately the same time of day as a LNG vessel other than the LNG Vessel in question, then the Buyer shall use its reasonable endeavours to procure that the LNG Vessel shall be berthed in priority to the other LNG vessel, but in accordance with the following priorities:
- (a) if the LNG Vessel is due to arrive at the applicable first pilot boarding station on schedule, the LNG Vessel shall be berthed in priority to the other LNG vessel;
  - (b) if the other LNG vessel is due to arrive at the applicable first pilot boarding station on schedule, the other LNG vessel may be berthed in priority to the LNG Vessel; and
  - (c) if both the LNG Vessel and the other LNG vessel are due to arrive at the applicable first pilot boarding station outside their respective schedules, then the normal shipping industry practice of "first come, first served" shall apply.
- 10.3.8 Where a LNG Vessel is shifted away from any Buyer's berth for the Buyer's purpose and the shift is not as a result of the occurrence of a Force Majeure event or Adverse Weather Conditions or as per the circumstances referred to in Clause 10.3.1, the Buyer shall pay for any expense relating to such shifting. Any time lost in unloading due to such shifting of a LNG Vessel shall not be added to Permitted Laytime.

#### 10.4 Unloading



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- 10.4.1 The Seller and the Buyer shall commence unloading or cause unloading to be commenced as soon as practicable after the completion of berthing and shall complete unloading or cause unloading to be completed safely, effectively and expeditiously taking into account the then prevailing weather conditions. The Buyer shall use all reasonable endeavours to cause the Terminal Operator to operate the Receiving Terminal so as to permit unloading of the LNG Vessel as quickly and efficiently as reasonably possible.
- 10.4.2 The Seller shall cause the LNG Vessel to depart safely and expeditiously from the berth after the Completion of Unloading taking into account the then prevailing weather conditions and the Buyer shall co-operate, or cause the Terminal Operator to co-operate, in the safe and expeditious departure of the LNG Vessel from the berth.
- 10.4.3 Without prejudice to Clause 10.5, if (after Notice of Readiness has been given) any problem occurs or is foreseen to occur which will or may cause delay to the LNG Vessel in berthing, unloading or departing beyond the Permitted Laytime the Seller and the Buyer shall discuss such problem in good faith and use all reasonable endeavours to minimise or to avoid the delay, and at the same time shall co-operate with each other to find counter-measures to minimise or avoid the occurrence of any similar delay in the future.
- 10.4.4 Used Laytime shall begin to count in accordance with Clause 10.5.2 and shall cease upon Completion of Unloading, except that if the LNG Vessel is delayed after disconnection of the last cargo arm or vapour return line for the Buyer's purposes, Used Laytime shall continue to run and demurrage, if incurred, shall continue to be payable by the Buyer from disconnection of the last cargo arm or vapour return line until the termination of such delay.

**10.5 Unloading delays**

- 10.5.1 The maximum laytime allowed to the Buyer for the unloading of each LNG shipment ("Permitted Laytime") shall be thirty six (36) hours in the case of Conventional Vessels and in the case of LNG Vessels greater than one hundred sixty five thousand (165,000) m<sup>3</sup> shall be established after due diligence by the Seller but in no case shall exceed forty (40) hours extended by any period of delay that is caused by Force Majeure or Adverse Weather Conditions or the circumstances outlined in Clause 10.3.1 or due to compliance by the LNG Vessel with Port Regulations and Terminal Procedures.
- 10.5.2 Used Laytime shall start:
- (a) if the LNG Vessel gives Notice of Readiness on the Scheduled Unloading Window, on the earlier of:
- (i) six (6) hours after the Notice of Readiness was given; or
- (ii) the time at which the LNG Vessel is berthed and ready to unload;









[REDACTED]

**10.7 Excess Berth Occupancy Charge**

[REDACTED]

**11. SPECIFICATION**

**11.1 Quality Specification**

- 11.1.1 LNG to be delivered under this Agreement shall, when converted into a gaseous state, comply with the Specification at the Loading Facility at the time of loading. The quality of LNG loaded shall be determined in accordance with Clause 12 (*Measurement, Sampling and Testing*).
- 11.1.2 The Seller shall keep the Buyer informed, as soon as reasonably practicable after becoming aware of any deviation in the quality of LNG from the Specification and the expected extent and duration of the deviation; and in case of such deviation the Parties shall forthwith consult and use all reasonable endeavours to agree on appropriate measures (on a temporary or permanent basis) to address such deviation from the Specification.

11.2 LNG outside Specification

11.2.1 If the quality of any LNG [REDACTED] LNG Vessel hereunder is not within the Specification based on [REDACTED] tested in accordance with Schedule 3 (*Measurement, Analysis and Calculation*) (subject to any measures agreed under Clause 11.1),

[REDACTED] Following the receipt of such Notice, the Buyer shall have the right either:

- (a) subject to Clause 11.2.2, to give Notice of rejection to the Seller rejecting such LNG as soon as practicable and in any event within twelve (12) hours after the Seller gave Notice to the Buyer of or the Buyer otherwise became aware of the LNG's non-compliance with the Specification (but not in any event after loading of the LNG) provided, however, that the Buyer shall use its reasonable endeavours to accept such LNG; or
- (b) subject to Clause 26.1, to recover from the Seller all relevant costs related to the LNG outside Specification ("**Off-Specification Costs**").

11.2.2 The Buyer shall have the right to reject LNG under Clause 11.2.1(a) only by reason of its non-compliance with the Specification.

11.2.3 For the purposes of this Clause 11.2:

- (a) "**relevant costs**", in relation to LNG delivered to the Buyer, means the reasonable and verifiable actual net costs incurred by the Buyer in relation to the receipt, treatment or disposal of the LNG (or the Gas regasified there from), as a result of the LNG being outside the Specification;
- (b) Relevant costs shall not include any liability which the Buyer may incur to any third party, or to the Seller, as a result of:
  - (i) the delivery of such out of Specification LNG (other than liability for costs of receipt, treatment or disposal as provided in paragraph (a));
  - (ii) the sale, supply or delivery by any Person of Gas resulting from (or Gas comprising in whole or part Gas resulting from) the regasification of such out of Specification LNG.

11.2.4 The provisions of this Clause are the Buyer's only rights and remedies in respect of the quality of LNG delivered or to be delivered under this Agreement to the Buyer.

12. MEASUREMENT, SAMPLING AND TESTING

12.1 CTMS



The volume of LNG in each Cargo unloaded at the Delivery Point shall be measured by or on behalf of the Seller using the LNG Vessel's Custody Transfer and Measurement System ("CTMS"). The measurement appliances shall be used in compliance with the handbook 'LNG Custody Transfer' published by GIIGNL (edition 2001) as amended from time to time. The Seller shall ensure that the LNG Vessel is equipped with a CTMS as her main measuring device, which is operated, maintained and calibrated to recognised industry standards. The Seller shall give a Notice to the Buyer of the volume of LNG unloaded promptly following Completion of Unloading. In the absence of Notice by the Buyer of its disagreement [REDACTED]

[REDACTED] the volume of LNG unloaded so notified shall be final.

**12.2 Specification Determination**

The Specification of the LNG in each Cargo shall be determined (by sampling and testing):

12.2.1 by the Seller, for the purposes of Clause 11 (*Specification*), by the methods described or referred to in Schedule 3 (*Measurement, Analysis and Calculation*);

12.2.2 by the Buyer or the Terminal Operator, for the purposes of the determination of Quantity Delivered, by the method described in Schedule 3 (*Measurement, Analysis and Calculation*);

The Seller shall give Notice of the results of sampling and testing under Clause 12.2.1 or cause such Notice to be given to the Buyer promptly after completion of loading. The Buyer shall give Notice of the results of sampling and testing under Clause 12.2.2 or cause such Notice to be given to the Seller promptly after Completion of Unloading. In the absence of Notice by the Party receiving such Notice of its disagreement [REDACTED] after the date of receipt of such Notice, the quality so notified shall be final.

**12.3 Calculation of Quantity Delivered**

The Seller shall calculate the Quantity Delivered or cause it to be calculated, using the results derived from the procedures specified in Clauses 12.1 and 12.2 and the method specified in Schedule 3 (*Measurement, Analysis and Calculation*). The Seller shall promptly after the receipt of Notice from the Buyer in accordance with Clause 12.2.2 give Notice of the result or cause such a Notice to be given to the Buyer. Such Notice shall include or be accompanied by all data and documents reasonably necessary to support the calculation of the Quantity Delivered.

**12.4 Independent Surveyor**

The Parties shall jointly appoint an independent surveyor at the Unloading Port to witness and verify the measurement, sampling and testing of LNG. Either Party may have a representative present, in addition, to witness the measurement, sampling and testing of LNG.





[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. INVOICING AND PAYMENT

15.1 Invoicing

15.1.1 The amount payable by the Buyer to the Seller for each Cargo of LNG sold under this Agreement shall be calculated by multiplying the Quantity Delivered as determined pursuant to Clause 12 (*Measurement, Sampling and Testing*) by the Contract Price for the calendar month in which commencement of unloading occurs.

15.1.2 The Seller shall, within 48 hours after Completion of Unloading of each Cargo, send to the Buyer an invoice showing the amount payable calculated pursuant to Clause 15.1.1.

15.1.3 In relation to each month, the Buyer shall render to the Seller a statement ("**Monthly Reconciliation Statement**") within ten (10) Days of expiry of that month which shall show for that month:

(a) the total amount of the Quantity Delivered under this Agreement (as determined in accordance with Clause 12 (*Measurement, Sampling and Testing*)) in that month;

(b) [REDACTED]

(c) [REDACTED]  
that month;

(d) [REDACTED]

*[Handwritten signature]*



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- (e) the total amount of Off-Specification Costs, if any, in respect of that month;
- (f) [REDACTED]
- (g) any other amount due to be paid by the Buyer to the Seller or by the Seller to the Buyer in accordance with the terms of this Agreement;
- (h) the net sum (if any) payable by one Party to the other at the end of that month after taking account of all the foregoing matters set out in this Clause 15.1.3 (and the reason why such sum is due and owing in respect of the month) together with a sum, where relevant and as applicable, representing interest thereon at an annualised rate equivalent to the Interest Rate plus one percent (1%) (compounded monthly) from and including the due date of the payment of such sum to but not including the date of payment of such sum;
- (i) in respect of the final month of any Contract Year, the take or pay payment for such Contract Year calculated in accordance with Clause 6.7; and
- (j) the due date for payment in accordance with the terms hereof.

As soon as reasonably practicable thereafter, the Seller shall issue an invoice, or, where applicable, a credit note, consistent with applicable sales tax regulations.

The format of the Monthly Reconciliation Statement shall be agreed between the Parties no later than twelve (12) months prior to the estimated Start Date.

- 15.1.4 Where an amount is payable by the Buyer pursuant to Clause 6.7 the Seller shall, as soon as reasonably practicable after the end of that Contract Year, send to the Buyer an invoice showing the amount payable calculated pursuant to Clause 6.6 ("Take or Pay Statement").
- 15.1.5 In the event that any sums are due from one Party to the other hereunder other than as provided for in Clauses 15.1.1, 15.1.2, 15.1.3 and 15.1.4, the Party to whom such sums are owed shall furnish an invoice therefor, together with relevant supporting documents showing the basis thereof.
- 15.1.6 Any invoice may be sent by facsimile, email or PDF but (without prejudice to the effective receipt of an invoice so sent) shall be confirmed by sending an original signed invoice without delay.
- 15.1.7 If the relevant supporting documents contain Commercially Sensitive Information, the Buyer shall not disclose such Commercially Sensitive Information to the Seller without prejudice to its obligations pursuant to Clause 24.2. In such an event, the Seller shall be entitled to require confirmation by an



Auditor that the relevant sums are properly due and payable under this Agreement.

## 15.2 Payment

- 15.2.1 The Buyer shall pay the amount payable under an invoice issued pursuant to Clause 15.1.2 [REDACTED] after Completion of Unloading of the LNG or (if later [REDACTED]) the Buyer's receipt of such invoice.
- 15.2.2 Payment of all other invoices (whether from the Buyer to the Seller, or the Seller to the Buyer) shall be made within [REDACTED] of the invoice by the Party from whom payment is due.
- 15.2.3 Payment shall be made in United States Dollars in immediately available funds, free of all charges and without asserting any set-off or counter-claim or making any deduction or withholding (other than any required by law) into a bank account from time to time nominated by the relevant Party.
- 15.2.4 Where there has been a manifest error in the preparation of an invoice, the paying Party shall promptly on receipt of the invoice give Notice to the issuing Party and shall pay the correct amount.
- 15.2.5 If the paying Party is required by law to make any deduction or withholding, the paying Party shall pay to the other Party such amount as will result in the other Party receiving the full invoiced amount after such deduction or withholding, and promptly pay to the relevant authorities the amount deducted or withheld and provide to the other Party a receipt or other evidence of such payment.
- 15.2.6 If for any reason the Seller is unable to determine without delay the Quantity Delivered, or by the operation of any provision of Clause 12 (*Measurement, Sampling and Testing*) the Quantity Delivered notified to the Buyer is not immediately determined as final, the Seller shall provide the Buyer with a preliminary invoice as soon as practicable after the Completion of Unloading. A preliminary invoice shall be for the Quantity Delivered, as estimated in good faith by or on behalf of the Seller. The Buyer shall pay a preliminary invoice in accordance with Clause 15.2.1. After final determination of the Quantity Delivered the Seller shall promptly provide the Buyer with a final invoice and an appropriate adjustment payment shall be made by the Buyer or the Seller (as applicable) to the other [REDACTED] after the date of receipt of the final invoice by the Buyer but not earlier than the due date of the preliminary invoice as referred to in Clause 15.2.1, together with interest thereon at an annualised rate equivalent to the Interest Rate plus one percent (1%) (compounded monthly) on the amount of such adjustment from and including the due date of the preliminary invoice to but not including the date of payment of the adjustment.

## 15.3 Failure to Pay





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a firm of independent public accountants ("Auditors") to act on the Seller's instructions, to review all information provided by the Buyer to the Seller pursuant to this Agreement with the purpose of verifying (*inter alia*):

- (a) that such information is accurate in all material respects and is in conformity with the requirements of this Agreement with regard to the amounts receivable by the Seller and the amounts payable by the Seller to the Buyer (including costs payable by the Seller under the Monthly Reconciliation Statement);
- (b) that the Buyer's reporting to the Seller is accurate in all material respects and is in conformity with the requirements of this Agreement;
- (c) that all costs have been reasonably and properly incurred in conformity with the requirements of this Agreement;
- (d) the arrangements referred to in Clause 13 (*Costs*) and payment of the [REDACTED], the steps taken by the Buyer in the performance of its obligations in Clause 13 (*Costs*) and payment of the [REDACTED] and whether the costs incurred in relation thereto were reasonably and properly incurred in conformity with the requirements of this Agreement;

(collectively the "Audit").

- 15.5.2 The Audit will be conducted as and when required by the Seller.
- 15.5.3 The Auditors shall have access to, and the right to examine, all books, records, supporting documentation and systems of the Buyer that the Auditors consider relevant and necessary for the exercise of the Audit. The Auditors shall provide advance notification to the Buyer of the scope of the Audit and the information required.
- 15.5.4 The Buyer shall co-operate with the Auditors in arranging a suitable time and location for the Audit and adhering to those arrangements once confirmed. The Buyer shall provide such facilities as the Auditors may reasonably require and shall ensure that the Auditors have access to staff of the appropriate seniority as and when required by the Auditors, to the extent that the Auditors require further information or explanations for the purposes of the Audit.
- 15.5.5 The Auditors shall have the right to include technical experts (either internal or external) as part of their engagement team to ensure that appropriate technical expertise is deployed, as determined to be necessary by the Auditors. Any technical experts so appointed, will be subject to the same requirements of confidentiality as the Auditors.
- 15.5.6 After finalising the Audit, the Auditors shall prepare a report addressed to the Seller and copied to the Buyer setting out whether, in their opinion, the Buyer has acted in conformity with the requirements of this Agreement as regards the items listed in Clause 15.5.1. Subject to Clause 15.5.8, the report shall include

a summary of any matters of whatsoever nature, that the Auditors consider should be brought to the attention of the Seller regarding the accuracy or otherwise of the financial information provided by the Buyer together with appropriate supporting documentation, a quantification of the financial impact and commenting on financial processes, reports and information together with a summary of the opinions expressed by the Buyer in relation to those matters, to the extent that such matters are disputed by the Buyer.

15.5.7 In the event that there are matters that are not resolved, the Buyer and the Seller shall meet as soon as practicable after receipt of the report from the Auditors and hold discussions, in good faith, in order to resolve any matter referred to in the report in a mutually acceptable manner. In the event that the Parties are unable to resolve such matters within thirty (30) days, either Party shall be entitled to refer the matter for determination by an Expert in accordance with Clauses 22.6 to 22.10 (inclusive).

15.5.8 The Auditors shall be placed under an obligation not to provide information to the Seller pursuant to this Clause 15.5 or otherwise, that includes Commercially Sensitive Information of the Buyer and the Buyer shall have the right to review the report of the Audit before it is provided to the Seller in order to satisfy itself that no such Commercially Sensitive Information is contained within it.

**15.6 Adjustment of Errors**

If an error is found by either Party, or by the Auditors, in the amount shown due in any invoice, Take or Pay Statement, or credit note and a Notice of claim in respect of that error is given to the other Party within two (2) years of the date of the invoice, Take or Pay Statement, or credit note which is the subject of the error, the relevant Party shall issue a statement of adjustment together with an invoice and/or credit note cancelling the original which is the subject of the error as soon as reasonably practicable after the error is detected.

[REDACTED]

Any invoice, Take or Pay Statement, or credit note shall be final and binding upon the Seller and the Buyer if such invoice, Take or Pay Statement, or credit note remains unchallenged for a period of two (2) years from the date of issue of the same.

**16. OPERATOR REQUIREMENTS - SAFETY AND INSURANCE**

**16.1 Reasonable and Prudent Operators**

16.1.1 Each of the Parties undertakes to the other to act at all times as a Reasonable and Prudent Operator in the performance of all obligations under the Agreement.



- 16.1.2 The Seller and the Buyer recognise the importance of securing and maintaining safety in all matters contemplated in this Agreement including the construction and operation of their respective facilities, and it is their intention to secure and maintain high standards of safety in accordance with the generally accepted standards prevailing in the liquefied natural gas industry from time to time.
- 16.1.3 Each of the Seller and the Buyer shall at all times during the Term provide, maintain and operate or cause to be provided, maintained and operated in good working order, and in accordance with the operational, safety and insurance standards utilised by a Reasonable and Prudent Operator, the Seller's Facilities and the Buyer's Facilities, respectively.

**16.2 Safe Performance of Works and Services**

The Seller and the Buyer shall ensure that their respective employees, agents, contractors and suppliers have due regard to safety and abide by relevant regulations operating procedures and site access policies and agreements while they are performing works and services within the Seller's Facilities and the Buyer's Facilities, as the case may be.

**17. FACILITIES OF SELLER AND BUYER**

**17.1 LNG Vessels**

- 17.1.1 The Seller shall transport the LNG to be sold and delivered hereunder to the Buyer at the Delivery Point using a LNG Vessel from its Integrated Fleet.
- 17.1.2 For each Contract Year the Seller shall provisionally nominate the LNG Vessel it anticipates to use for the delivery of each Cargo of LNG (the "Nominated LNG Vessel") to be delivered in that Contract Year, during the development of the Annual Delivery Programme (such date of annual nomination being herein referred to as the "LNG Vessel Nomination Date").
- 17.1.3 In relation to each Cargo, on the LNG Vessel Nomination Date for such Cargo, the Seller must give Notice to the Buyer of the Nominated LNG Vessel it is designating at that time for delivery of such Cargo. The Seller may change the Nominated LNG Vessel at any time thereafter prior to the date of loading of the relevant Cargo provided that the new nominated LNG Vessel remains of the same class of vessel (e.g. [REDACTED]). Should the Seller wish to change the Nominated LNG Vessel to a LNG Vessel of a different class (e.g. [REDACTED]) the Seller shall give Notice to the Buyer of the proposed change in the class of vessel and the consequential adjustment in the AACQ at the time such Nominated LNG Vessel is included in the Ninety Day Schedule and the Buyer shall use reasonable endeavours to accommodate such changes. The new LNG vessel nominated by the Seller shall always be a LNG Vessel. LNG vessels under construction, testing and/or delivery may be included as part of the Integrated Fleet in any Contract Year provided that the Seller has proved to the reasonable satisfaction of the Buyer that such LNG vessel is (a) intended to form part of the Integrated Fleet, (b) is compatible with the Receiving Terminal, (c) conforms to the specifications set

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out in this Agreement, and (d) is ready for service by the time specified in the Annual Programme.

- 17.1.4 Should any vessel used by Seller as a LNG Vessel materially fail either to conform with the specifications set out in Schedule 6 (*LNG Vessels*) or materially fail to be otherwise in compliance with the provisions of this Agreement or with the international standards referred to in Schedule 6 (*LNG Vessels*), the Seller may not use such vessel as the LNG Vessel hereunder until it has been modified to be so compatible or to so comply.
- 17.1.5 The provisions of this Agreement regarding LNG Vessels shall apply whether or not a LNG Vessel is chartered, owned and/or operated by the Seller.
- 17.1.6 The Seller shall ensure that the LNG Vessel is only employed between and at safe ports, berths, wharfs, docks, anchorages and submarine lines, other than the Receiving Terminal where, pursuant to the terms of this Agreement, the LNG Vessel can always lie safely afloat.

**17.2 Receiving Terminal**

- 17.2.1 The Buyer shall provide or cause to be provided, a safe berth or berths at the Receiving Terminal which any of the LNG Vessels can safely reach, lie, unload and depart from, always safely afloat.
- 17.2.2 If cooling down of any receiving facilities at the Receiving Terminal (other than any cooling of the LNG Cargo loading arms required in the normal course of events at the commencement of every LNG discharge) is required at any time during the Term, the Buyer shall give Notice to the Seller reasonably in advance for the Seller to consider such request and if the Seller agrees to provide LNG for such cooling, the Seller shall give Notice to the Buyer as soon as reasonably practicable and the Parties shall discuss and agree on the details of provision of LNG for such cooling. The cost of such cooling shall be for the account of the Buyer except as otherwise agreed by Seller.
- 17.2.3 The Buyer shall provide the Seller, the LNG Vessel or its agent reasonable assistance in securing at the Receiving Terminal tugs, tug services and pilots as are necessary for the purposes of, amongst other things, safely and efficiently towing and escorting the LNG Vessel and berthing and unberthing the LNG Vessel.
- 17.2.4 Any tugs, pilots, escort or other support vessels or tugging services required for the towing, berthing and unberthing of the LNG Vessel shall be employed by and at the risk of the Seller and Transporter pursuant to a tug services agreement entered into or to be entered into by all or some of the Seller and/or the Transporter and the tug operator and tug owner.
- 17.2.5 The Seller shall be responsible for obtaining all port approvals, marine permits and other technical and operational authorisations which it is required to obtain for use of the LNG Vessel to transport the LNG to the Buyer hereunder





(including for use at the Loading Port and the Receiving Terminal). If requested by the Seller, the Buyer shall provide the Seller with advice on a timely basis as to the requirements of all relevant regulations and shall provide reasonable assistance to the Seller in obtaining all port approvals, marine permits and other technical and operational authorisations.

### 17.3 Compatibility

17.3.1 Neither the LNG Vessel nor the Receiving Terminal (each a "Relevant Facility") shall be modified in any manner whatsoever that would render it incompatible with the other Relevant Facility, provided however that a Relevant Facility may be modified:

- (a) pursuant to a change in any safety and environmental law or regulation with which such Relevant Facility is required to comply, in which case such modification necessary for the Relevant Facility (the "Modified Relevant Facility") shall be paid for in the case of any LNG Vessel by the Seller and in the case of the Receiving Terminal by the Buyer and any consequent change required in modifying the other Relevant Facility to maintain compatibility with the Modified Relevant Facility shall be paid for in the case of any LNG Vessel by the Seller, and in the case of the Receiving Terminal by the Buyer; or
- (b) in respect of any other change with the prior consent of, in the case of any LNG Vessel, the Buyer or in the case of the Receiving Terminal, the Seller which shall not be unreasonably withheld (the Buyer and the Seller in each such case being the "Consenting Party"); provided, further, that the Consenting Party shall be reimbursed by the other Party for any reasonable costs incurred by the Consenting Party in modifying the other facility to maintain compatibility with the Modified Relevant Facility.
- (c) For the purposes of Clause 17.3.1:
  - (i) where the Relevant Facility is an LNG Vessel, the relevant Party is the Seller, the other Party is the Buyer and the other Relevant Facility is the Receiving Terminal;
  - (ii) where the Relevant Facility is the Receiving Terminal, the relevant Party is the Buyer, the other Party is the Seller and the other Relevant Facility is the LNG Vessel.

### 17.4 Buyer's Obligations (Receiving Terminal)

17.4.1 The Buyer shall ensure that the berthing of any LNG Vessel at the Unloading Port and the receipt of LNG at the Delivery Point is carried out in conformity with the laws, rules and regulations which relate to seaworthiness, safety, environmental protection, navigation, operation and similar technical and operational matters applicable to the Unloading Port, the Receiving Terminal and such LNG Vessels to the extent such laws, rules and regulations are in



effect with respect thereto from time to time, including all applicable recommendations of advisory bodies such as the Society of International Gas Tanker and Terminal Operators Limited (SIGTTO) and Oil Companies International Marine Forum (OCIMF) which a Reasonable and Prudent Operator or a reasonable and prudent owner of a LNG vessel or a LNG receiving terminal would comply with.

- 17.4.2 The Buyer shall ensure that the Buyer's Facilities include, without limitation:
- (a) berthing facilities in accordance with Clause 17.4.1 capable of receiving each of the LNG Vessels comprising the Integrated Fleet;
  - (b) unloading arms, connections, pipelines, LNG storage tanks, communication cables, docking facilities, together with any other facilities necessary for unloading LNG, including, in particular, facilities capable of receiving LNG at an average rate of 12,000 m<sup>3</sup> per hour;
  - (c) a line for returning vaporised Gas to the LNG Vessels at such rates, temperatures and pressures that the discharging can be undertaken in a safe manner;
  - (d) appropriate systems for communications with the LNG Vessels;
  - (e) safe access for personnel to and from the LNG Vessels; and
  - (f) safety and emergency shut down systems.

**17.5 Seller's Obligations (LNG Vessels)**

- 17.5.1 The Seller shall ensure (and shall procure that the Transporter ensures) that the unloading of LNG at the Unloading Port is carried out in conformity with the laws, rules and regulations which relate to seaworthiness, safety, environmental protection, navigation, operation and similar technical and operational matters applicable to the relevant Receiving Terminal and such LNG Vessels to the extent such laws, rules and regulations are in effect with respect thereto from time to time, including all applicable recommendations of advisory bodies such as the Society of International Gas Tanker and Terminal Operators Limited (SIGTTO) and Oil Companies International Marine Forum (OCIMF) which a Reasonable and Prudent Operator or a reasonable and prudent owner of a LNG vessel or a LNG receiving terminal would comply with.
- 17.5.2 The Seller shall ensure (and shall procure that the Transporter ensures that) the Masters of the LNG Vessels shall abide by the Port Regulations and Terminal Procedures. The LNG Vessels shall observe and comply with all relevant Port Regulations.
- 17.5.3 The Seller shall cause the Transporter and/or the Masters of the LNG Vessels to execute or sign by way of acknowledgement of its terms any required



conditions for the use of the Receiving Terminal as may be reasonably specified by the Buyer or the Terminal Operator.

17.5.4 All Port Charges (including [REDACTED] charges) and berth charges payable by or in respect of each LNG Vessel at the Unloading Port shall be paid by the Seller provided, however, that any such charges which are payable as a result of the LNG Vessel's shifting berth at the request of the Buyer shall be paid for in accordance with Clause 10.3.8.

17.5.5 If a LNG Vessel requires assistance from or the use in any manner of tugs, pilots, escort vessels or other support vessels (so far as such are available at the Unloading Port) in connection with the safe berthing of the LNG Vessel at the Receiving Terminal the same shall be at the risk and (subject to the following proviso) expense of the Seller; provided, however, that if such assistance or use is required as a result of the LNG Vessel's shifting berth at the request of the Buyer, then such expense shall be for the account of the Buyer in accordance with Clause 10.3.8.

**18. WARRANTIES AND COVENANTS**

**18.1 Authority**

Each Party represents and warrants that it has the full corporate power and authority to enter into and to perform this Agreement and that its entry into and performance of this Agreement will not contravene any law, regulation, order, judgment, decree or determination in effect and applicable to it or its governing documents.

**18.2 LNG Free of Claims**

The Seller warrants that it has title (free and clear from all liens, charges, encumbrances and adverse claims) to all LNG delivered under the Agreement and that all LNG delivered under this Agreement will, when loaded at the Loading Port, be free from all liens, charges, encumbrances and adverse claims which have or may have a material adverse effect on its right to sell and deliver the LNG.

**18.3 Disclaimer of Warranties**

Except to the extent provided for in Clauses 18.1 and 18.2, each of the Seller and the Buyer makes no warranties of any kind and disclaims any warranty, express or implied, arising by statute, law, or otherwise in law or from a course of dealing or usage of trade. In particular, without limitation, the Seller specifically disclaims any implied warranty or condition of merchantable quality, of fitness for any purpose, particular, specific, or otherwise.

**19. FORCE MAJEURE**

[REDACTED]

[REDACTED]

[REDACTED]





[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]







[REDACTED]

(c) the Director  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]









[REDACTED]

**21. GOVERNING LAW**

**21.1 Governing Law**

- 21.1.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales, excluding any choice of law rules which would refer the matter to the laws of another jurisdiction.
- 21.1.2 The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- 21.1.3 Subject to Clause 22 (*Dispute Resolution*) each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.

**22. DISPUTE RESOLUTION**

**22.1 Arbitration**

- 22.1.1 If any dispute, controversy or claim arises between the Seller and Buyer in relation to or in connection with this Agreement or in connection with the interpretation, performance or non-performance hereof, including any question regarding its existence, validity or termination, or regarding a breach thereof (a "Dispute") the Seller and Buyer shall promptly discuss such Dispute in an attempt to resolve such Dispute amicably through negotiations. If such Dispute has not been resolved within forty five (45) days of either the Seller or the Buyer giving Notice to the other Party of the existence of the Dispute, then either Seller or Buyer may, subject to any matter being expressly referred to an Expert in accordance with Clauses 22.6 to 22.10 (inclusive) by Notice to the other, refer the Dispute to be finally settled by arbitration.
- 22.1.2 The Dispute shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce as in force at the date of the Dispute by three (3) arbitrators appointed in accordance with the said Rules except as specifically modified by this Agreement.

**22.2 Arbitration Proceedings**

- 22.2.1 The place of the arbitration shall be in London and its procedures shall be governed by English law. Unless expressly provided otherwise, the provisions of the Arbitration Act 1996 (as amended) shall apply.
- 22.2.2 The language of the arbitration (and of all communications, submissions, Notices, decisions and documentation relating thereto or in connection therewith) shall be English.
- 22.2.3 The Seller and the Buyer waive any right to punitive or other exemplary damages allowable by common law or statute.



- 22.2.4 The Seller and the Buyer waive any defence based on sovereignty, including immunity to arbitration, immunity to judicial proceedings to enforce or to aid any such arbitration, and immunity to enforcement and execution of the award or any judgment entered thereon.
- 22.2.5 The Seller and the Buyer waive any right to seek ruling from any court on issues of law that arise during the arbitration and to challenge the award on the grounds the arbitrators made errors of fact or law, save in the event of fraud, manifest mistake of fact or law, of failure by way of the arbitrators to disclose any significant interest.

**22.3 Appointment of Arbitrators**

The arbitration tribunal shall consist of two (2) arbitrators and a third arbitrator acting as chairman (such arbitration tribunal being referred to herein as the "Arbitration Tribunal").

- 22.3.1 Each of the Seller and the Buyer shall appoint one (1) arbitrator not later than fourteen (14) days after receipt of Notice by either Party to do so. Where either the Seller or the Buyer refuses to appoint an arbitrator or fails to do so within the time specified, Section 17 of the Arbitration Act 1996 shall apply. The two (2) arbitrators so appointed shall forthwith appoint a third arbitrator as the chairman of the Arbitration Tribunal.
- 22.3.2 If the two (2) arbitrators cannot agree on the appointment of a third arbitrator, this arbitrator shall be appointed by the President of the International Chamber of Commerce.
- 22.3.3 Notwithstanding the foregoing provisions of this Clause 22.3, no Person shall, without the agreement of both Seller and Buyer, be appointed an arbitrator who at the time of the appointment is, or has been within the previous five (5) years, a director, officer or an employee or otherwise employed or retained as a consultant by any Party (or any Affiliate thereof) or who is the holder of shares in a Party (or any Affiliate thereof) unless such Party or Affiliate (as the case may be) is a company quoted on a recognised stock exchange and such Person's shareholding is less than one percent (1%) of the issued share capital of any class.

**22.4 Arbitration Proceedings**

- 22.4.1 As soon as practicable after the appointment of the chairman, the Arbitration Tribunal shall (after consultation with the Seller and the Buyer) specify the procedure to be followed by the Seller and Buyer in the arbitration (including the time limits for the Seller's and the Buyer's submissions) which shall be consistent with the terms of the Agreement.
- 22.4.2 Decisions, orders and awards shall be made by all or a majority of the Arbitration Tribunal.



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- 22.4.3 The Seller and the Buyer undertake to provide each member of the Arbitration Tribunal, (with a copy to the other Party) with such submissions and accompanying documents and information, simultaneously upon exchanging the same with the other Party, which the Party producing the documents or information considers necessary for determining the matter before the Arbitration Tribunal, or which is relevant to and bears upon the matter to be determined.
- 22.4.4 Except for oral submissions requested by the Arbitration Tribunal and made in accordance with Clause 22.4.6, all submissions from either the Seller or the Buyer, other than those requested at a later date by the Arbitration Tribunal shall be made to the Arbitration Tribunal in writing (with a copy thereof provided forthwith to the other Party) within thirty (30) days of the appointment of the Arbitration Tribunal.
- 22.4.5 Copies of all written data, information and submissions supplied or made by either the Seller or the Buyer to the Arbitration Tribunal shall be simultaneously provided to the Seller or the Buyer, as the case may be, and the recipient shall within fourteen (14) days of receipt of such data, information or submission have the right to comment in writing thereupon to the Arbitration Tribunal provided that copies of any such comments shall likewise be promptly supplied to the other Party.
- 22.4.6 All oral submissions to the Arbitration Tribunal shall be made on reasonable prior Notice, being not less than fourteen (14) days' prior Notice, in the presence of both the Seller and the Buyer. The other Party shall have the right to respond thereto within fourteen (14) days thereof and make its own respective submission, whether oral or written, in response.
- 22.4.7 The Arbitration Tribunal shall make its decision on:
- (a) such data, information and submissions as are supplied and made to it in accordance with Clauses 22.4.3, 22.4.4, 22.4.5 and 22.4.6; and
  - (b) such independent professional and/or technical advice as the Arbitration Tribunal may reasonably require to enable it to reach its decision,
- provided that in making its decision the Arbitration Tribunal shall use as given assumptions any fact, matter or circumstance which the Seller and the Buyer may jointly notify to the Arbitration Tribunal in writing as being agreed between themselves.
- 22.4.8 Upon the Arbitration Tribunal furnishing the Seller and the Buyer with a draft of its proposed final decision, both Seller and Buyer shall be entitled to make representations to the Arbitration Tribunal within fifteen (15) days after receipt thereof.

- 22.4.9 The Arbitration Tribunal shall issue its final decision within seven (7) days following the expiry of the said period of fifteen (15) days. The Arbitration Tribunal shall give full written reasons for its decision in the English language.

**22.5 Powers of the Arbitration Tribunal and Costs**

- 22.5.1 The determination of the Arbitration Tribunal shall be final and binding upon the Seller and the Buyer, from the date it is made, save in the event of fraud, manifest mistake of fact or law, or failure by any of the arbitrators to disclose any significant interest.
- 22.5.2 The Arbitration Tribunal may not order either the Seller or the Buyer to provide security for the costs of the arbitration.
- 22.5.3 Following the determination of the Arbitration Tribunal, the Parties' costs, the cost and expenses of the Arbitration Tribunal, and any independent advisers to the Arbitration Tribunal retained in relation to any matter arising under this Agreement shall be apportioned as determined by the Arbitration Tribunal and failing any such determination shall be allocated equally between the Seller and the Buyer.

**22.6 Appointment of Expert**

Whenever a Clause of this Agreement provides for a matter to be referred to an Expert, or whenever the Seller and the Buyer agree that a Dispute shall be resolved by an Expert (such matters for Expert referral and such Disputes to be referred to as "Matters"), the following procedures shall apply:

- 22.6.1 the Seller or the Buyer, as the case may be, wishing the appointment of an Expert (other than in the case of Clause 12.5) to be made shall give Notice to that effect to the other Party and with such Notice shall give details of the Matter which is proposed to be resolved by the Expert;
- 22.6.2 the Seller and the Buyer shall meet and endeavour to agree upon a single Expert to whom the Matter shall be referred for determination;
- 22.6.3 if within twenty one (21) days from the service of a Notice pursuant to Clause 22.6.1 the Seller and the Buyer have either failed to meet or failed to agree upon an Expert, then the Matter may forthwith be referred by either Party, together with a copy of this Clause, to the International Centre for Experts of the International Chamber of Commerce which shall be requested to select an Expert by Notice to the Seller and the Buyer within thirty (30) days and in so doing the International Centre for Experts of the International Chamber of Commerce may take advice as it sees fit;
- 22.6.4 upon an Expert being agreed or selected under the foregoing provisions of this Clause, the Seller and the Buyer shall forthwith give Notice to such Expert of the selection together with a copy of Clauses 22.7, 22.8 and 22.10 of this



Agreement, and shall request confirmation from such Expert within seven (7) days as to whether or not the appointment will be accepted; and

- 22.6.5 if such Expert shall be either unwilling or unable to accept such appointment or shall not have confirmed willingness and ability to accept such appointment within the said period of seven (7) days then (unless the Seller and Buyer are able to agree upon the appointment of another Expert) the Matter shall again be referred by either Party in the aforesaid manner to the International Centre for Experts of the International Chamber of Commerce which shall be requested to make a further selection and the process shall be repeated until an Expert is found who accepts the appointment.

## 22.7 Qualification

- 22.7.1 No Person shall be appointed or accept appointment to act as the Expert under this Clause unless qualified by education, experience and training to determine the Matter.
- 22.7.2 Any Person appointed or selected as the Expert in accordance with the above provisions shall be entitled to act as such Expert provided that before accepting such appointment the proposed Expert shall have fully disclosed to the Seller and Buyer any relationship, interest, or duty which could, in the reasonable view of either the Seller or the Buyer, conflict with performing functions required by such Expert's appointment and/or prejudice the Expert's ability to render an independent, impartial determination. If the proposed Expert shall not have made such disclosure before accepting such appointment either Party may subsequently object to the appointment of such Expert upon becoming aware of the same at any time.
- 22.7.3 No Person, without the prior written agreement of both the Seller and the Buyer, shall be appointed as the Expert who is (or has been at any time within the preceding six (6) years) an employee of a Party or of an Affiliate or who is (or has been at any time within the preceding three (3) years) a consultant to or contractor of a Party or of an Affiliate or who holds any significant financial interest in a Party or more than one percent (1%) of the issued share capital of any class in a Party or an Affiliate.

## 22.8 Confidentiality

No Person shall be appointed as an Expert who has not agreed to hold in confidence any and all information furnished by each of the Seller and Buyer in connection with the Matter under this Agreement, the existence of such Matter and his determination thereof.

## 22.9 Remuneration

The appointment of the Expert shall only take effect after agreement has been reached between the Seller and Buyer and the Expert as to the Expert's remuneration. The arrangement agreed on shall be clearly set out in writing and shall be part of the agreement between the Seller and Buyer and the Expert.

**22.10 Determination**

- 22.10.1 The Expert may request data, information or submissions as the Expert thinks fit and which the Seller and Buyer can reasonably be expected to surrender, and the Seller and Buyer shall use reasonable endeavours to comply promptly with such request. All information supplied to the Expert in writing by either the Seller or the Buyer shall be served by Notice simultaneously to the other Party. In the event that the Expert shall request oral submissions to be made, the Party requested to make such submissions shall give the Seller or the Buyer, as the case may be, not less than four (4) Business Days' Notice of the time and place where such submissions are to be made and shall promptly afford the other Party the opportunity to be present. Either the Seller or the Buyer may arrange for a transcript of any oral hearing to be made (whether or not that Party will be present at the hearing).
- 22.10.2 The Expert shall make a determination in writing and in such determination give reasons for the determination, not later than thirty (30) days, after acceptance of the appointment and shall ignore data, information and submissions supplied and made after such thirty (30) days unless the same are furnished in response to the Expert's specific request in which case the Expert shall have up to a maximum of a further ten (10) days in which to make his determination.
- 22.10.3 If within a reasonable period (which shall not without the prior written consent of both the Seller and the Buyer exceed thirty (30) days (or, in the circumstances contemplated in Clause 22.10.2, forty (40) days) after the acceptance by an Expert of the appointment) the Expert shall not have rendered a determination then, at the request of either Party, a new Expert shall be appointed under the provisions of this Clause and upon the acceptance of the appointment by such new Expert the appointment of the previous Expert shall cease, provided that if the previous Expert shall have rendered a determination prior to the date upon which the new Expert accepts the appointment such determination shall be binding upon the Seller and Buyer and the instructions to the new Expert shall be withdrawn.
- 22.10.4 The Expert shall be deemed not to be an arbitrator but shall render a determination as an expert and the law or legislation relating to arbitration shall not apply to such Expert or the determinations or the procedure by which such determinations are reached.
- 22.10.5 The determination of the Expert shall be final and binding upon the Seller and the Buyer save in the event of fraud, manifest error or failure by the Expert to disclose any relevant interest or duty in accordance with this Clause.
- 22.10.6 Each of the Seller and the Buyer shall bear the costs and expenses of all counsel, witnesses and employees retained by it. The costs and expenses of the Expert shall be apportioned by the Expert between the Seller and the Buyer in a manner proportionate to the determination made by the Expert.



23. NOTICES

23.1 Notices Procedures

All notices, consents, requests, and notifications authorised or required to be given by one Party to another under or in connection with this Agreement ("Notice" or "Notices") shall be in written English and delivered by hand (including by courier) or by pre-paid mail, facsimile, unless otherwise specifically provided for in this Agreement, and shall be effective if given and received in accordance with the following provisions:

In the absence of Notice to the contrary, Notices shall be given at the following addresses:

**Seller:**

[Redacted Seller Address]

**Buyer:**

Total Gas & Power North America, Inc.

[Redacted Buyer Address]

23.2 Change of Procedures

Either Party may change its mail address, telephone and facsimile numbers and nominated contacts by job titles for the receipt of Notices at any time and from time to time by giving Notice of the change to the other Party in accordance with the provisions of Clause 23.1 above.

23.3 Receipt of Notices

Unless there is evidence that it was received earlier, a Notice is deemed given and received if:

- (a) delivered by hand, when left at the address referred to in Clause 23.1;



- (b) sent by first class mail, (including registered mail but excluding airmail), five (5) Business Days after posting it; and
- (c) sent by facsimile when confirmation of its transmission has been recorded by the sender's facsimile machine. Any facsimile shall only become effective Notice if legibly received. In the event that a facsimile is not legibly received, the receiving Party shall use its reasonable endeavours to notify the relevant Party of that fact by return facsimile or by telephone without delay.

**24. CONFIDENTIALITY**

**24.1 Confidentiality**

Each Party shall treat and keep all terms and conditions of this Agreement, any information disclosed to it by the other Party pursuant to or in connection with this Agreement and any other information it receives as a result of the implementation of this Agreement, including all arbitration and expert proceedings, pleadings, evidence, determinations and awards hereunder (collectively referred to herein as "**Confidential Information**"), in strict confidence, and shall not transmit, reveal, disclose or otherwise communicate Confidential Information in whole or in part to any third party unless otherwise specified in this Clause.

**24.2 Commercially Sensitive Information**

The Buyer shall use reasonable endeavours to delete and/or redact any Commercially Sensitive Information from Confidential Information disclosed by it to the Seller.

**24.3 Right to Disclose**

Each of the Seller and the Buyer shall have the right to disclose Confidential Information to any shareholder or Affiliate of such Party provided always that such Party procures that such shareholder or Affiliate keeps such Confidential Information in confidence to the same extent provided for herein, except that such Party shall procure that such shareholder or Affiliate does not disclose, release or otherwise divulge such Confidential Information to any third party without the prior written approval of the Seller or the Buyer as the case may be. Under no circumstances shall a Party disclose Confidential Information to a shareholder or an Affiliate if such shareholder or Affiliate is a direct competitor of the Seller or the Buyer in the LNG or natural gas markets, as the case may be, or if it may use the Confidential Information to obtain a commercial advantage. For purposes of this Clause 24.3, "shareholder" with regard to the Seller shall include advisors of such shareholder provided that such advisors may only use Confidential Information for the sole purpose of supporting the Seller's interests regarding this Agreement and shall not use it for any other purpose.

**24.4 Non-disclosure and Limited Exceptions**

A Party shall not transmit, reveal, disclose, or otherwise communicate in whole or in part Confidential Information to any Person other than entities permitted by this Clause 24.4,





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without prior written approval from the other Party, except that each of the Seller and the Buyer may, without obtaining prior written approval from the other, disclose Confidential Information:

- 24.4.1 to the extent required by applicable laws or by regulations of any government or governmental agency;
- 24.4.2 to the extent required by the rules of any recognised stock exchange;
- 24.4.3 to the extent required by an order of a court of competent jurisdiction or to an arbitrator or Expert solely for the purpose of determining a dispute or matter under or pursuant to the terms of this Agreement;
- 24.4.4 to the extent that the Confidential Information is already or becomes lawfully in the public domain other than as a result of a failure or breach of the disclosing Party;
- 24.4.5 to the extent that the Confidential Information is at the time of its receipt or acquisition lawfully known by the receiving Party (other than as a result of a failure or breach of the disclosing Party);
- 24.4.6 to a proposed bona fide transferee or assignee of the whole or part of the disclosing Party's interest held under this Agreement;
- 24.4.7 to a proposed bona fide intended transferee, assignee, or affiliate thereof, of the whole or a significant part of the issued share capital of the disclosing Party;
- 24.4.8 to a bank or other financial institution in connection with efforts by that Party or an Affiliate to obtain funds, or to document any loan to or security granted by that Party or an Affiliate;
- 24.4.9 to the extent that the Confidential Information is properly and reasonably required by the Terminal Operator or any adviser, consultant, expert, contractor or subcontractor employed or retained by that Party or by the bank or other financial institution referred to in Clause 24.4.8 and whose function requires the same to have the Confidential Information; and
- 24.4.10 to any government department or any governmental or regulatory agency (including to any recognised stock exchange) having jurisdiction over such Party or any of its Affiliates to the extent validly required by law by such departments and/or agencies.

**24.5 Conditions to Disclosure**

Where disclosure of Confidential Information is made to any Person other than entities permitted by Clause 24.3, appropriate safeguards shall be made by the disclosing Party as a prerequisite to such disclosure to prevent such Person from making any further disclosure of such information without the prior written consent of the Seller and the Buyer and in particular, such Person shall be bound by confidentiality and non-use provisions at least as restrictive as those contained in this Clause.



**24.6 Duration of Confidentiality**

The Confidential Information shall be treated as confidential in accordance with the terms and conditions of this Clause for a period of three (3) years after this Agreement has expired or terminated for whatever reason.

**24.7 Press Releases**

The Seller and the Buyer undertake to agree on the terms of a joint press release concerning the execution of this Agreement to be issued as soon as practicable after the Effective Date. Except as provided herein neither Party shall otherwise make any public announcement regarding this Agreement without the prior agreement of the other Party in relation to the content and timing and manner of making or dispatch of such announcement.

**25. ASSIGNMENT AND DIRECT AGREEMENT**

**25.1 Written Consent**

Except as provided in Clause 25.3, neither this Agreement nor any rights or obligations hereunder may be assigned to any other Person, without the prior written consent of the non-assigning Party. The Buyer acknowledges that the Seller shall not be able to consent to any assignment by the Buyer of this Agreement, or any of the Buyer's rights or obligations hereunder, without the Seller having received from the Seller's lenders their prior consent to any such assignment.

**25.2 Assignment**

A Party wishing to assign this Agreement or any of its rights or obligations hereunder must give Notice of its intended assignment to the non-assigning Party, at least ninety (90) days prior to the proposed effective date of the assignment (which date shall be a Business Day), provided that Notice of an intended assignment to an Affiliate may be given forty five (45) days prior to the proposed effective date of the assignment.

**25.3 Assignment to Affiliate**

25.3.1 The Seller or the Buyer (as assignor) having satisfied the Notice requirement of Clause 25.2 may, without the consent of the non-assigning Party, assign this Agreement or any of its rights or obligations hereunder to an Affiliate provided that the assignor shall remain jointly and severally liable with the assignee (and any subsequent Affiliate assignees of such assignee) for the performance by the assignee (and any subsequent Affiliate assignees of such assignee) of all such rights, duties, liabilities and obligations so assigned.

25.3.2 Where the Seller or the Buyer wishes to assign all its rights and obligations to an Affiliate but wishes itself to be released from its obligations and not to remain jointly and severally liable with its Affiliate for them, the consent of the Buyer or the Seller, as the case may be, in writing shall be required (such consent not to be unreasonably withheld or delayed).





**25.4 Notice**

The Notice referred to in Clause 25.2 must contain all particulars relevant to the proposed assignment, and shall in any event include the following information:

- 25.4.1 the identity and all other relevant information in respect of the proposed assignee for the purposes of this Agreement;
- 25.4.2 in a case where part of the Agreement is proposed to be assigned, a clear identification, by means of referral to the Clauses of this Agreement, of which rights and obligations would be assigned to the proposed assignee and which rights and obligations, if any, would remain with the assigning Party; and
- 25.4.3 a description of the relationship, if any, between the assigning Party and the proposed assignee.

**25.5 Release of Assigning Party**

Save as otherwise provided in this Clause, the assigning Party under an assignment consented to by the non-assigning Party in accordance with this Clause shall be relieved and released of all rights, duties, liabilities and obligations so assigned, except with respect to any and all such rights, duties, liabilities and obligations that have arisen or accrued prior to the effective date of the assignment.

**25.6 Effectiveness of Assignment**

Save as otherwise provided in this Clause, an assignment shall be effective as of the date proposed in the Notice given pursuant to Clause 25.2 provided that no assignment under this Clause shall be effective, unless and until:

- 25.6.1 the proposed assignee covenants directly with the non-assigning Party (in a document acceptable to the non-assigning Party) to observe and perform all of the assigning Party's rights and obligations under this Agreement which have been assigned to it and to be bound by this Agreement in every way as if the assignee were a Party to this Agreement;
- 25.6.2 the assigning Party has provided to the non-assigning Party a certified copy of the assignment document (excluding the consideration paid or payable for, and any other commercial terms relating to such assignment which could not reasonably be expected to impact the non-assigning Party);
- 25.6.3 the assigning Party has undertaken to the non-assigning Party to be responsible for any costs (including Taxes) which arise as a consequence of the assignment; and
- 25.6.4 the proposed assignee of the Buyer has provided to the Seller security, in place of the Buyer's Guarantee provided pursuant to Clause 5.6, in a form and amount which is acceptable to the Seller (in the Seller's reasonable judgement) and from a creditworthy entity including, if appropriate, an Affiliate of the proposed assignee of the Buyer.



25.7 Assignment of Rights by Way of Security

25.7.1 Notwithstanding the foregoing provisions of this Clause and without the prior written consent of the Buyer, the Seller may assign its rights under this Agreement by way of security to a trust, trustee, bank, paying agent, the Seller's lenders or the Seller's lenders' agent or any other Person for the purposes of any bona fide financing.

25.7.2 In relation to Clause 25.7.1, the Buyer shall, upon the Seller's lenders' request, enter into a direct agreement or consent to an assignment by way of a security on the terms reasonably required by the Seller's lenders providing for *inter alia* the following:

- (a) delivery to the Seller's lenders of copies of all material Notices (excluding nominations and the like) given under this Agreement by the Buyer to the Seller at the same time and in the same manner as given to the Seller;
- (b) upon the occurrence of certain material events the right of the Seller's lenders to exercise all rights and be given an additional reasonable period to cure any defaults of the Seller under this Agreement and the Buyer shall accept such exercise or cure as though it had been done by the Seller;
- (c) agreement that the Buyer shall not, without the prior written consent of the Seller's lenders:
  - (i) consent to or accept any cancellation or termination of this Agreement by the Seller; or
  - (ii) amend this Agreement in any material respect;
- (d) agreement that the Buyer shall not make any demands under this Agreement on account of any default by the Seller without giving prior Notice to the Seller's lenders and providing to the Seller's lenders an opportunity to cure such default; and
- (e) agreement that the Buyer shall execute such further agreements and documents reasonably requested by the Seller's lenders providing assurances and other protections to the Seller's lenders in furtherance of the provisions set forth above in connection with any financing or refinancing of the Seller.



26. **LIMITATION OF LIABILITY**

26.1 **Limitation of Seller's liability**

If the Seller has been in breach of its obligation to deliver any Cargo to the Buyer under this Agreement (except where such breach amounts to Wilful Misconduct on the part of the Seller [REDACTED] in any of the events included in Clause 11.2 in respect of LNG outside the Specification, the amount for which the Seller may be liable in damages in contract or tort (including negligence or otherwise) to the Buyer shall not exceed on a Cargo by Cargo basis:

[REDACTED]

26.2 **No Indirect or Consequential Costs or Damages**

Save where expressly provided in this Agreement, any remedies or damages arising from a breach of this Agreement by either the Seller or the Buyer shall be limited to actual, direct and reasonably foreseeable costs, losses, or damages caused by or resulting from the breach and incurred by the Party claiming damages. No Party shall be liable to any other Party for any loss of profit or anticipated profit (including any cost, expense, loss, award or damage suffered or incurred by a Party in respect of any actions, proceedings, claims, or demands made against that Party by any of its customers or any other third party), business interruption, loss of revenue, loss of use, loss of contract, loss of goodwill, increased cost of working or loss of business opportunity, or for any indirect loss, consequential loss, or exemplary damages suffered by a Party or any other Person, all or any part of which arise out of or relate to this Agreement or the performance or breach of this Agreement, or to any act or omission related to this Agreement, whether in contract, tort (including negligence, breach of duty and Wilful Misconduct), strict liability, or any other doctrine in contract, law, or equity.

26.3 **Payment Obligations Excluded from Limitation**

No element of a payment (including payment for the AACQ pursuant to Clause 15.1.4) otherwise expressly due and payable under this Agreement shall be deemed or considered a loss of profit.

27. **MISCELLANEOUS**

27.1 **No Waiver**

27.1.1 No act or failure to act by or on behalf of a Party in respect of a breach of a provision of this Agreement or a failure to perform any obligation arising under this Agreement shall operate or be construed as a waiver unless expressly stated as a waiver in writing, duly executed and delivered by the Party giving such waiver in accordance with Clause 23 (*Notices*).

27.1.2 No waiver by a Party shall operate or be construed as a waiver in respect of any failure or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver.

27.1.3 No failure to exercise or delay in exercising any right or remedy arising from this Agreement shall operate or be construed as a waiver or impairment of such right or remedy.

**27.2 Remedies**

Unless otherwise specified in this Agreement, all remedies arising under this Agreement or at law shall be several and cumulative.

**27.3 Business Practices**

27.3.1 All statements to be made by either the Seller or the Buyer to the other Party under or pursuant to this Agreement shall accurately reflect the actual activities and transactions between the Seller and the Buyer.

27.3.2 Each Party respectively shall establish precautions to prevent its employees, personnel, or contractors from making, receiving, providing or offering any substantial gifts or entertainment, or any payments, loans or other considerations to or from the other Party's employees, personnel or contractors.

**27.4 Costs and Expenses**

Each Party shall bear the costs and expenses incurred by it in connection with the negotiation, preparation and completion of this Agreement and other documents referred to in it.

**27.5 Severability**

27.5.1 If any provision (or part thereof) of this Agreement is or becomes unlawful or void, the legality, validity, or enforceability of any other part of that provision or any other provision of this Agreement shall not (except as provided in Clause 27.5.2) be affected, but shall continue in force and effect. The unlawful or void provision shall be deleted from this Agreement by written consent of the Seller and Buyer or final court order, but only to the extent of any invalidity so as to preserve the Agreement to the maximum extent.

27.5.2 The Seller and Buyer shall use all reasonable endeavours to negotiate provisions replacing those provisions (or parts thereof) deleted from the Agreement pursuant to Clause 27.5.1 within ninety (90) days of such deletion, so as to restore the original economic value of each of the said Party's obligations. The





Agreement shall continue in force with the deletion of the unlawful or void provisions (or part thereof) notwithstanding that agreement cannot be reached between the Seller and Buyer on replacement provisions within such ninety (90) days period, unless the deletion of such provisions (or part thereof) has substantially altered the commercial efficacy of the Agreement.

**27.6 Variations to this Agreement**

Any variation or addition or amendment to this Agreement shall be in writing, and shall not be valid unless duly signed and executed by the Seller and the Buyer.

**27.7 Descriptive Headings**

The table of contents and/or headings and/or subheadings and Clause numbers in this Agreement are used for convenience and ease of reference only, and shall not be used to construe or interpret the provisions of this Agreement.

**27.8 Entire Agreement**

This Agreement contains the entire agreement between the Parties relating to the subject matter hereof, and (save in the event of manifest error or fraud) supersedes all previous negotiations, agreements, understandings, undertakings, representations, documents, minutes of meetings, letters and Notices (whether oral or written) between the Parties and/or their respective Affiliates with respect to such subject matter.

**27.9 Rights of Third Parties**

Save for the Persons specified in Clause 14.1.2 as being the beneficiaries of the indemnity therein provided for, no Person that is not a Party shall be entitled to enforce any provision of this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.



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**All Schedules Removed for  
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