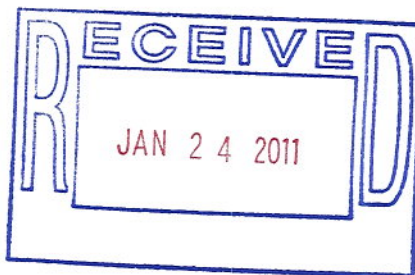


John S. Decker jdecker@velaw.com  
Tel 202.639.6599 Fax 202.639.6604



January 24, 2011

Mr. John Anderson  
Manager, Natural Gas Regulatory Activities  
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

Re: **BG LNG Services, LLC**  
FE Docket No. 11-09-LNG

Dear Mr. Anderson:

Pursuant to Part 590 of the regulations of the Department of Energy ("DOE"), 10 C.F.R. Pt. 590 (2010), please find enclosed the application of BG LNG Services, LLC ("BGLS") for long-term authorization to import liquefied natural gas from the Arab Republic of Egypt 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.

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,

John S. Decker  
Attorney for BG LNG Services, LLC

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

**ORIGINAL**

BG LNG Services, LLC

)  
)  
)

FE Docket No. 11-09-LNG

**APPLICATION OF BG LNG SERVICES, LLC  
FOR LONG-TERM AUTHORIZATION  
TO IMPORT LIQUEFIED NATURAL GAS  
FROM THE ARAB REPUBLIC OF EGYPT**

Thomas Smith  
Chief Counsel  
BG LNG Services, LLC  
5444 Westheimer, Suite 1775  
Houston, Texas 77056  
(713) 599-4010

John S. Decker  
Christopher J. Terhune  
Vinson & Elkins L.L.P.  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004-1008  
(202) 639-6599

January 24, 2011

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

BG LNG Services, LLC

)  
)  
)

FE Docket No. 11-09-LNG

**APPLICATION OF BG LNG SERVICES, LLC  
FOR LONG-TERM AUTHORIZATION  
TO IMPORT LIQUEFIED NATURAL GAS  
FROM THE ARAB REPUBLIC OF EGYPT**

Pursuant to Section 3 of the Natural Gas Act (“NGA”), as amended,<sup>1</sup> Department of Energy (“DOE”) Delegation Order Nos. 0204-111 and 0204-127,<sup>2</sup> and Part 590 of the Regulations of the DOE, Office of Fossil Energy (“OFE”),<sup>3</sup> BG LNG Services, LLC (“BGLS”) hereby submits this application for long-term authorization to import liquefied natural gas (“LNG”) from the Arab Republic of Egypt pursuant to an executed Second Amended and Restated Master LNG Sale and Purchase Agreement (“Master Agreement”) and a Memorandum to the Master Agreement (“Confirmation Memorandum”) between BGLS and BG LNG Trading, LLC (“BGLT”). In support of this application, BGLS respectfully shows as follows:

**I.  
CORRESPONDENCE AND COMMUNICATIONS**

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

---

<sup>1</sup> 15 U.S.C. § 717b (2006).

<sup>2</sup> DOE Delegation Order No. 0204-111, Administrator of the Economic Regulatory Administration (Feb. 22, 1984); DOE Delegation Order No. 0204-127, Assistant Secretary for Fossil Energy (Feb. 7, 1989).

<sup>3</sup> 10 C.F.R. Pt. 590 (2010).

Thomas Smith  
BG LNG Services, LLC  
5444 Westheimer, Suite 1775  
Houston, Texas 77056  
tel: (713) 599-4010  
fax: (713) 599-4250  
email: Thomas.smith@bg-group.com

John S. Decker  
Vinson & Elkins L.L.P.  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004-1008  
tel: (202) 639-6599  
fax: (202) 639-6604  
email: jdecker@velaw.com

## **II. BACKGROUND**

BGLS is a limited liability company organized under the laws of the State of Delaware, having its principal place of business at 5444 Westheimer, Suite 1775, Houston, Texas 77056. BGLS is a wholly-owned subsidiary of BG Group plc, which has its principal place of business at 100 Thames Valley Park Drive, Reading, Berkshire, RG6 1PT, England. Pursuant to authorizations previously granted to BGLS by the OFE, BGLS engages in the business of importing LNG from various international sources.<sup>4</sup> BGLS currently imports LNG from the Arab Republic of Egypt pursuant to DOE/FE Order No. 2283, which expires February 4, 2011.

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

BGLS is seeking long-term authorization to continue importing LNG from the Arab Republic of Egypt pursuant to the terms of the Master Agreement and Confirmation Memorandum. BGLS and BGLT have entered into a Master Agreement that contains general terms and conditions applicable to all contracts between BGLS and BGLT for the importation of LNG into the United States. BGLS filed a previous version of the Master Agreement with the OFE on July 11, 2008 in DOE/FE Docket No. 08-64-LNG and is filing the Second Amended and

---

<sup>4</sup> BGLS also imports LNG pursuant to the following authorizations: DOE/FE Order No. 2756 (Mar. 8, 2010); DOE/FE Order no. 2527 (Aug. 14, 2008); DOE/FE Order No. 2288 (Nov. 17, 2006); DOE/FE Order No. 2287 (Nov. 17, 2006); DOE/FE Order No. 2286 (Nov. 17, 2006); DOE/FE Order No. 2285 (Nov. 17, 2006); DOE/FE Order No. 2284 (Nov. 17, 2006); DOE/FE Order No. 2283 (Nov. 17, 2006); DOE/FE Order No. 1977-B (May 22, 2006); DOE/FE Order No. 2199 (May 22, 2006); and DOE/FE Order No. 1932 (December 30, 2003).

Restated Master LNG Purchase and Sale Agreement with this filing.<sup>5</sup> BGLS filed the Confirmation Memorandum with the OFE on January 5, 2006 in DOE/FE Docket No. 06-01-LNG, and the Confirmation Memorandum is hereby incorporated by reference. The Confirmation Memorandum contains the terms specific to the particular transaction, including: identification of the upstream agreement under which the LNG is being obtained; the source of the supply; the name of the supplier; and the term and quantity of the contract. By structuring its transactions in such a manner, BGLS can obtain greater flexibility in executing its transactions as well as increased transparency in its transactions.

Pursuant to the terms of the Master Agreement and Confirmation Memorandum, BGLS will purchase LNG from BGLT for importation into the United States. Upon importation, BGLS will sell the LNG and the natural gas resulting from vaporization of the LNG to BG Energy Merchants, LLC (“BGEM”), an affiliate of BGLS who is also wholly owned indirectly by BG Group plc. BGEM then will sell this gas to various third parties in the regular course of business. BGLT will acquire the LNG subject to the terms of a separate confirmation memorandum with BG Gas Marketing, Ltd. (“BGGM”). BGGM will purchase the LNG from the Egyptian General Petroleum Corporation, BG International Limited, and PICL (Egypt) Corporation Ltd. (collectively, the “LNG Suppliers”) in the Arab Republic of Egypt (“Supply Agreement”). The point of entry for the importation of LNG into the United States will be the LNG terminalling, storage and vaporization facilities located on Elba Island, in the vicinity of Savannah, Georgia, the Lake Charles Terminal in Lake Charles, Louisiana, or such other LNG terminals as may be constructed in the future (the “LNG Terminal(s)”).

---

<sup>5</sup> The Second Amended and Restated Master LNG Sale and Purchase Agreement also governs sales encompassed by DOE/FE Order No. 2527 (Aug. 14, 2008); DOE/FE Order No. 2288 (Nov. 17, 2006); DOE/FE Order No. 2287 (Nov. 17, 2006); DOE/FE Order No. 2286 (Nov. 17, 2006); DOE/FE Order No. 2285 (Nov. 17, 2006); DOE/FE Order No. 2284 (Nov. 16, 2006); DOE/FE Order No. 2283 (Nov. 16, 2006); DOE/FE Order No. 2199 (May 22, 2006).

The Confirmation Memorandum term runs for the life of the Supply Agreement, which currently expires on December 31, 2012. BGLS is requesting authorization until February 4, 2016 to accommodate a potential extension of the Supply Agreement. BGLS will purchase LNG from BGLT in an amount up to the annual contract quantity of 37.59 TBtu per year of LNG or LNG equivalent pursuant to the Confirmation Memorandum.

The Master Agreement requires BGLS to take any LNG provided to BGLT by BGGM under the Confirmation Memorandum or pay damages incurred by BGLT for a failure to accept delivery. The price BGLS will pay BGLT for the LNG it purchases under the Master Agreement<sup>6</sup> is a formula based on natural gas index prices appropriate for each receiving terminal. BGLS will pay a price for LNG delivered pursuant to either (i) the final settlement price for the New York Mercantile Exchange's Henry Hub natural gas futures contract for delivery during such month for cargoes included on the unloading schedule as of the 15th day of the month preceding delivery and delivered within seven days after commencement of its arrival window; or (ii) a price agreed to between BGLS and BGLT for all other cargoes. The price may also include an allocation of fixed and variable terminal costs. Because the contract price for LNG under the Agreement is linked to published natural gas price indices, the price of LNG supplied during the term of the Confirmation Memorandum will remain competitive.

## **V. ENVIRONMENTAL IMPACT**

BGLS intends to continue to use existing facilities for importing LNG as requested herein. This application therefore neither contemplates nor requires the construction of new facilities. Consequently, granting this application will not involve a federal action significantly affecting the quality of the human environment within the meaning of the National

---

<sup>6</sup> The pricing formula is included in the general terms of the Master Agreement and not in the Confirmation Memorandum.

Environmental Policy Act.<sup>7</sup> Accordingly, neither an environmental impact statement, nor an environmental assessment, is required.

**VI.  
REQUEST FOR WAIVER OF 10 C.F.R. § 590.201(b)**

BGLS respectfully requests waiver of the requirement that applications for import authorization be filed at least 90 days in advance of the proposed import to permit the import authorization to become effective on February 5, 2011. Pursuant to Section 590.201(b) of DOE's regulations, good cause exists to permit the proposed importation to commence promptly upon the issuance of the authorization requested herein. The term of the Confirmation Memorandum begins on the date of the first delivery, which will occur shortly after an order issues pursuant to this application. Moreover, the Confirmation Memorandum reflects the continuation of an existing transaction and existing import authorization that expires February 4, 2011, pursuant to which BGLS already imports LNG from the Arab Republic of Egypt. Waiver of Section 590.201(b) will permit BGLS to continue importing LNG immediately to the benefit of buyers in U.S. markets.

**VII.  
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>8</sup> Under Section 3(c), the importation of LNG "is deemed to be consistent with the public interest and must be granted without modification or delay."<sup>9</sup> The long-term import authorization sought by

---

<sup>7</sup> 42 U.S.C. § 431, *et seq.* (2006).

<sup>8</sup> 15 U.S.C. § 717b(a) (2006).

<sup>9</sup> *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).

BGLS herein meets the Section 3(c) criterion and, therefore, is consistent with the public interest.

### **VIII. REPORTING REQUIREMENTS**

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

- A. Within two weeks after deliveries begin, BGLS 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, BGLS 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));

### **IX. CORPORATE POWER OF COMPANY**

The opinion of counsel, required by 10 C.F.R. § 590.202(c) (2010), showing that the proposed importation of LNG is within the corporate powers of BGLS, is attached as Exhibit A.



**X.  
RELATED REGULATORY PROCEEDINGS**

BGLS'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.

**XI.  
CONCLUSION**

WHEREFORE, for the foregoing reasons, BGLS respectfully requests that OFE grant the instant application for long-term import authorization to import LNG from the Arab Republic of Egypt. BGLS submits that a grant of such authorization would be consistent with the public interest.

Respectfully submitted,



John S. Decker  
Christopher J. Terhune  
Vinson & Elkins L.L.P.

Attorneys for BG LNG Services, LLC

Dated: January 24, 2011

**EXHIBIT A**  
**CORPORATE POWER OF ATTORNEY**



**BG LNG SERVICES, LLC**  
**5444 Westheimer, Suite 1775**  
**Houston, Texas 77056**

January 21, 2011

Mr. John Anderson  
Manager, Natural Gas Regulatory Activities  
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

Dear Mr. Anderson:

This opinion is furnished in accordance with the requirements of 10 C.F.R. § 590.202(c) (2010), in conjunction with the application of BG LNG Services, LLC 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 BG LNG Services, LLC, in the above-referenced matter, and as such, I am familiar with the Certificate of Formation, Operating Agreement and company records of BG LNG Services, LLC. I have examined these and other relevant documents and am of the opinion that the proposed importation of liquefied natural gas by BG LNG Services, LLC is within the corporate powers of BG LNG Services, LLC.

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,

Thomas Smith  
Attorney for BG LNG Services, LLC

Dated: January 21, 2011

**BG AMERICAS & GLOBAL LNG**  
5444 Westheimer, Suite 1200  
Houston, TX 77056  
Tel (713) 599-4000  
Fax (713) 599-3781

VERIFICATION

The State of Texas )  
 )  
County of Harris )

Thomas Smith, declares before me on this date, and says that he is counsel of BG LNG Services, LLC, the applicant in this document; that he is authorized to verify the foregoing document pursuant to 10 C.F.R. § 590.103 (2010); 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 a duly authorized representative of BG LNG Services, LLC; 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.

Thomas A Smith  
Thomas Smith

SUBSCRIBED and SWORN TO before me, a Notary Public, this 21<sup>st</sup> day of January, 2011.



Beatriz Boyne  
Notary Public in and for the  
State of Texas

**EXHIBIT B**

**SECOND AMENDED AND RESTATED  
MASTER LNG SALE AND PURCHASE AGREEMENT  
FOR U.S. DELIVERIES BETWEEN  
BG LNG SERVICES, LLC AND  
BG LNG TRADING, LLC**

SECOND AMENDED AND RESTATED MASTER LNG SALE AND PURCHASE  
AGREEMENT FOR U.S. DELIVERIES

by and between

BG LNG TRADING, LLC

as Seller

and

BG LNG SERVICES, LLC

as Buyer

Effective January 1, 2009

## TABLE OF CONTENTS

<b>ARTICLE 1.</b>	<b>Definitions.....</b>	<b>2</b>
Section 1.1	Interpretation.....	2
Section 1.2	Definitions.....	2
Section 1.3	Volumetric Conversion Factor.....	9
<b>ARTICLE 2.</b>	<b>Amendment and Restatement; Sale And Purchase.....</b>	<b>9</b>
Section 2.1	Amendment and Restatement.....	9
Section 2.2	Agreement.....	9
Section 2.3	Long-Term Supply.....	9
Section 2.4	Short-Term Supply.....	10
Section 2.5	Supply Agreements.....	10
<b>ARTICLE 3.</b>	<b>Term.....</b>	<b>10</b>
Section 3.1	Term.....	10
<b>ARTICLE 4.</b>	<b>Quantities.....</b>	<b>10</b>
Section 4.1	Contract Quantity; Minimum Quantities.....	10
Section 4.2	Diversions and Cancellations; Failure to Supply Minimum Quantities....	10
<b>ARTICLE 5.</b>	<b>Quality.....</b>	<b>11</b>
Section 5.1	Acceptance and Rejection.....	11
Section 5.2	Results of Acceptance.....	12
Section 5.3	Results of Rejection.....	12
<b>ARTICLE 6.</b>	<b>Testing and Measurement.....</b>	<b>12</b>
Section 6.1	Exchange of Information.....	12
Section 6.2	LNG Analysis.....	12
Section 6.3	Devices.....	12
Section 6.4	Gauging of Quantities Delivered.....	13
<b>ARTICLE 7.</b>	<b>Title and Risk of Loss.....</b>	<b>13</b>
<b>ARTICLE 8.</b>	<b>Transportation and Unloading.....</b>	<b>13</b>
Section 8.1	Seller's Responsibility for Shipping and Unloading.....	13
Section 8.2	LNG Tanker Requirements.....	13
Section 8.3	LNG Tanker Inspection; Effect of Rejection.....	14
Section 8.4	LNG Terminal Facility Inspection.....	15
Section 8.5	Unloading Port Obligations.....	15
Section 8.6	Notices of Estimated Time of Arrival.....	16
Section 8.7	Notice of Readiness.....	17
Section 8.8	Postponement of Arrival Window.....	18
<b>ARTICLE 9.</b>	<b>LNG Delivery Schedule.....</b>	<b>18</b>
Section 9.1	Annual Program.....	18
Section 9.2	Exchange of Information.....	18

Section 9.3	Reserved. ....	18
<b>ARTICLE 10.</b>	<b>Price.....</b>	<b>19</b>
Section 10.1	Monthly Payment. ....	19
Section 10.2	Audit Rights. ....	21
Section 10.3	Failure to Take Delivery. ....	21
Section 10.4	Late Delivery. ....	21
Section 10.5	Failure to Deliver. ....	22
Section 10.6	Under-Delivery. ....	22
<b>ARTICLE 11.</b>	<b>Duties And Taxes .....</b>	<b>22</b>
<b>ARTICLE 12.</b>	<b>Billing And Payment.....</b>	<b>23</b>
Section 12.1	Monthly Invoices. ....	23
Section 12.2	Interest on Late Payments.....	24
Section 12.3	Disputed Invoice or Statement.....	24
Section 12.4	Payment. ....	24
<b>ARTICLE 13.</b>	<b>Force Majeure .....</b>	<b>24</b>
Section 13.1	Performance Excused. ....	24
Section 13.2	Related Parties.....	26
Section 13.3	Notice; Resumption of Normal Performance. ....	26
<b>ARTICLE 14.</b>	<b>Indemnity .....</b>	<b>27</b>
Section 14.1	Indemnity. ....	27
Section 14.2	Notice of Proceedings.....	28
Section 14.3	Conduct of Proceedings.....	28
<b>ARTICLE 15.</b>	<b>Dispute Resolution .....</b>	<b>29</b>
Section 15.1	Arbitration.....	29
Section 15.2	Decisions and Awards; Costs.....	29
Section 15.3	Remedies.....	30
<b>ARTICLE 16.</b>	<b>Seller’s Covenant .....</b>	<b>30</b>
<b>ARTICLE 17.</b>	<b>Confidentiality.....</b>	<b>31</b>
Section 17.1	Confidentiality. ....	31
Section 17.2	Remedies.....	32
Section 17.3	Survival.....	32
<b>ARTICLE 18.</b>	<b>Notices .....</b>	<b>32</b>
Section 18.1	Notices. ....	32
<b>ARTICLE 19.</b>	<b>Assignment.....</b>	<b>33</b>
Section 19.1	General Prohibition. ....	33
Section 19.2	Permitted Assignment. ....	33
<b>ARTICLE 20.</b>	<b>Representations and Warranties .....</b>	<b>34</b>



Section 20.1	Representations and Warranties.....	34
Section 20.2	Compliance with Law.....	34
Section 20.3	Covenant to Act as a Reasonable and Prudent Operator.....	34
Section 20.4	Firm Terminal Service Agreement.....	34
<b>ARTICLE 21.</b>	<b>Security .....</b>	<b>34</b>
Section 21.1	Credit Support.....	34
Section 21.2	Credit Requirements.....	34
<b>ARTICLE 22.</b>	<b>Termination Rights.....</b>	<b>35</b>
Section 22.1	Termination for Bankruptcy.....	35
Section 22.2	Seller Termination Rights.....	35
Section 22.3	Buyer Termination Rights.....	36
Section 22.4	No Other Right of Termination.....	36
<b>ARTICLE 23.</b>	<b>Miscellaneous.....</b>	<b>36</b>
Section 23.1	Governing Law.....	36
Section 23.2	Compliance with Laws.....	36
Section 23.3	Language.....	36
Section 23.4	Amendment.....	36
Section 23.5	Waiver.....	36
Section 23.6	Entire Agreement; Exhibits.....	37
Section 23.7	Third Party Beneficiaries.....	37
Section 23.8	No Partnership.....	37
Section 23.9	Severability.....	37
Section 23.10	Consequential Loss or Damage.....	37
Section 23.11	Tortious Liability.....	37
Section 23.12	Survival.....	37
Section 23.13	Counterpart Execution.....	37

Schedule A Form of Memorandum

**SECOND AMENDED AND RESTATED MASTER LNG SALE AND PURCHASE  
AGREEMENT FOR U.S. DELIVERIES**

This Second Amended and Restated Master LNG Sale and Purchase Agreement for U.S. Deliveries (the "Agreement") is executed as of the 1<sup>st</sup> day of January, 2009, (the "Effective Date"), by and between BG LNG SERVICES, LLC, a Delaware limited liability company ("Buyer"), and BG LNG TRADING, LLC, a Delaware limited liability company ("Seller"). Buyer and Seller may be referred to herein individually as a "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, Buyer has entered into service agreements pursuant to which it has access to firm terminalling, storage and vaporization services for liquefied natural gas tendered by of for the account of Buyer at certain liquefied natural gas receiving terminals located in the United States of America;

WHEREAS, Seller is party to an Amended and Restated Master LNG Sale and Purchase Agreement with BG Gas Marketing Ltd ("BGGM"), pursuant to which Seller purchases certain quantities of liquefied natural gas from BGGM, which agreement is being amended and restated as of the Effective Date (as amended and restated, the "BGGM-BGLT Agreement");

WHEREAS, Seller has entered into various LNG purchase agreements with third parties, pursuant to which Seller may acquire cargoes of LNG from time to time;

WHEREAS, the Parties have entered into a separate LNG Sale and Purchase Agreement (NLNG Deliveries) effective from January 1, 2008, to provide for the purchase by Seller from Buyer of cargoes sold to Buyer under the NLNG Agreement that Seller has scheduled for diversion to LNG Terminals other than Buyer's current U.S. terminals;

WHEREAS, Buyer and Seller entered into that certain Master LNG Sale and Purchase Agreement dated as of August 2, 2005 (the "Original Agreement") and amended and restated the Original Agreement effective from January 1, 2007 by the certain Amended and Restated Master LNG Sale and Purchase Agreement dated effective from January 1, 2007 (as amended prior to the date hereof, the "First Amended and Restated SPA") and desire now to amend and restate the First Amended and Restated SPA in its entirety; and

WHEREAS, Buyer desires to purchase from Seller and Seller desires to resell to Buyer certain quantities of liquefied natural gas purchased by Seller.

**AGREEMENT**

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants and stipulations set forth herein, the Parties hereby agree as follows:

**ARTICLE 1. Definitions**

Section 1.1 Interpretation. Unless the context of this Agreement otherwise requires, the following rules of interpretation shall apply with respect to this Agreement:

(a) references to this Agreement or any other agreement, deed, instrument, license, Law, code or other document of any description shall be construed as a reference to this Agreement or such other agreement, deed, instrument, license, Law, code or other document as the same may have been or may be amended, varied, supplemented, modified, superseded, restated or novated from time to time;

(b) references to any person shall include such person's successors and assigns;

(c) words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality);

(d) references to a particular clause, paragraph, sub-paragraph, Article, Section or Exhibit shall be a reference to that clause, paragraph, sub-paragraph, Article, Section or Exhibit in or to this Agreement;

(e) the headings are inserted for convenience only and are to be ignored for the purposes of construction;

(f) terms defined in the Exhibits hereto shall have the meanings ascribed thereto in the Exhibits when used elsewhere in this Agreement;

(g) the words "include" and "including" are to be construed without limitation; and

(h) references in the singular shall include references in the plural and vice versa.

Section 1.2 Definitions. The following terms shall have the meanings specified in this Section 1.2 when used with initial capitalization (unless otherwise specified in this Section 1.2):

"AAA" means the American Arbitration Association.

"AAA Rules" means the Commercial Arbitration Rules of the AAA.

"Affiliate" means, with respect to any Party, an individual or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, another individual or entity. The term "controls" (including the terms "controlled by" and "under common control with") refers to the possession, direct or indirect, of the power or authority to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise. For the avoidance of doubt, the ownership directly or indirectly of fifty percent (50%) or more of the shares or voting rights in a company, partnership or other legal entity shall be deemed to be control of such company, partnership or legal entity. Notwithstanding anything to the contrary, Seller, BGGM, their

transporters and Suppliers shall not be considered "Affiliates" of Buyer for purposes of this Agreement.

"Agreement" has the meaning specified in the preamble to this Agreement.

"Annual Program" has the meaning set forth in Article 9.

"Arrival Notice" has the meaning specified in Section 8.6(h).

"Arrival Window" means the dates and times identified in the Annual Program, as such window may be adjusted by the Parties.

"Available Arrival Window" has the meaning specified in Section 9.1.

"Bankruptcy Event" means, with respect to any person, that (a) such person (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for such person a reorganization, liquidation, dissolution, or similar relief under any law; (v) files an answer or similar pleading admitting or failing to contest the material allegations of a petition filed against such person in a proceeding of the type described in subclauses (i) through (iv) of this part (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of such person or of all or any substantial part of such person's properties; or (b) a proceeding is filed against such person seeking for such person a reorganization, liquidation, dissolution, or similar relief under any law has been commenced and 30 Days have expired without dismissal thereof; or (c) without such person's consent or acquiescence, a trustee, receiver, or liquidator of such person or of all or any substantial part of such person's properties has been appointed and 30 Days have expired without the appointment having been vacated or stayed, or 30 Days have expired after the date of expiration of a stay, if the appointment has not previously been vacated or the substantial equivalent of the same under the laws of any competent jurisdiction.

"Bankruptcy Event Cure Period" has the meaning specified in Section 22.1(a).

"Base Interest Rate" means the rate of interest announced from time to time to the press by Citibank, N.A., New York ("Citibank") as Citibank's base interest rate, which may not necessarily be the lowest rate charged by Citibank to its borrowers. If there is any doubt as to the base interest rate for any period, a written confirmation signed by an officer of Citibank shall conclusively establish the base interest rate in effect for such period. In the event that Citibank shall for any reason cease quoting a base interest rate as described above, then a comparable rate shall be determined by the Parties using rates then in effect and shall be used in place of the said base interest rate.

"Bcf" means one billion (1,000,000,000) Scf.

"BGEM" means BG Energy Merchants, LLC (or its successors and assigns).

"BGGM" has the meaning specified in the recitals to this Agreement.

“BGGM-BGLT Agreement” has the meaning specified in the recitals to this Agreement.

“Berth” means the area at the Scheduled LNG Terminal where the LNG Tanker unloads the LNG for receipt by Buyer.

“Btu” means British thermal unit, which is equal to the amount of heat required to raise the temperature of one (1) avoirdupois pound of pure water from fifty-nine degrees Fahrenheit (59°F.) to sixty degrees Fahrenheit (60°F.) at a constant pressure of fourteen and six hundred ninety-six thousandths pounds per square inch absolute (14.696 psia).

“Buyer” has the meaning specified in the preamble of this Agreement.

“Buyer Indemnified Parties” has the meaning specified in Section 14.1(a).

“Buyer’s LNG Terminal” means an LNG receiving terminal owned by Buyer, or at which Buyer has long-term firm capacity rights or other contractual rights to unload, receive, store, and regasify LNG, including, but not limited to, the Elba Island Terminal and the Lake Charles Terminal.

“Buyer’s Related Facilities” means the berthing, vessel service, unloading, receipt, storage, regasification and regasified LNG processing and delivery facilities (including utilities, other infrastructure and ancillary facilities) located at the Scheduled LNG Terminal. In the case of the Lake Charles, Louisiana LNG Terminal, “Buyer’s Facilities” shall include that portion of the Trunkline Gas Company pipeline system that connects the Trunkline LNG Company regasification facilities to the Longville compression station, such pipelines comprising (1) twenty-five (25) miles of thirty (30) inch pipeline connecting the regasification facilities to Trunkline Gas Company’s main pipeline system and (2) eighty-three (83) miles of pipeline connecting the Kaplan and Longville compressor stations, together with any additional pipelines connecting the Trunkline LNG Terminal to Trunkline’s Kaplan system. In the case of the Elba Island, Georgia LNG Terminal, “Buyer’s Facilities” shall include the portion of the Southern Natural Gas Company (“Sonat”) pipeline system that connects the Southern LNG Inc. regasification facilities to the main Southern Natural pipeline system, including the 14” Savannah/Wrens 112 mile pipeline owned and operated by Sonat, the 14” Savannah/Wrens 15.2 mile loop owned and operated by Sonat, the 20” Savannah/Wrens 104.5 mil second loop owned and operated by Sonat, the parallel 30” Elba/Savannah 13.2 mile pipelines owned and operated by Sonat, and the compressor station located at Wrens, Georgia owned and operated by Sonat

“Claim” has the meaning specified in Section 14.1(a).

“Confidential Information” has the meaning specified in Section 17.1.

“Contract Sales Price” has the meaning set forth in Section 10.1(a).

“Credit Test” has the meaning specified in Section 21.2.

“Cubic Foot” means a measure of the volume equal to the volume of a cube whose edge is one (1) foot. For purposes of reference, one foot equals three thousand and forty-eight ten thousandths (0.3048) meter and one Cubic Foot equals 0.0283168 Cubic Meter.

“Cubic Meter” means a measure of volume equal to the volume of a cube whose edge is one (1) meter.

“Day” means a twenty-four (24) hour period beginning at 12:00 a.m. on any calendar day and ending at 12:00 am on the following calendar day.

“Delivery Point” means the point, whether one or more, at which a flange at the outlet of the unloading piping of the LNG Tanker joins a flange at the entry of the receiving LNG pipeline at the Scheduled LNG Terminal.

“Dispute” has the meaning specified in Section 15.1(a).

“Dollars” or “\$” means the lawful currency of the United States.

“Effective Date” has the meaning specified in the preamble to this Agreement.

“Elba Island Terminal” means the LNG receiving terminal located on Elba Island near Savannah, Georgia, inclusive of all facilities owned and operated at that site by Southern LNG Inc., its successors, Affiliates and assigns, together with all expansions or additions thereto.

“Elba Minimum Monthly Quantity” has the meaning given to it in the Gas Supply Agreement.

“Estimated Time of Arrival” or “ETA” has the meaning specified in Section 8.6.

“FERC” means the Federal Energy Regulatory Commission.

“FERC Gas Tariff” means, with respect to any Buyer LNG Terminal, the effective tariff of a regulated jurisdictional company on file with the FERC, including service agreements, rate schedules and general terms and conditions of service applicable to such Buyer LNG Terminal.

“Fixed Price” has the meaning set forth in Section 10.1(d).

“Fixed Terminal Costs” has the meaning set forth in Section 10.1(a).

“Force Majeure” has the meaning specified in Section 13.1

“Gas Sales Agreement” means that certain Amended and Restated Gas Sales Agreement between Buyer and BGEM as amended and restated on the Effective Date.

“Government Agency” means

- (i) any legislative, judicial, regulatory or executive body (including any agency, bureau, department, commission or office) of the government of any sovereign state or any political subdivision thereof, or

- (ii) any entity, excluding the Operator of a Buyer LNG Terminal, with the authority to regulate or otherwise control ingress to or egress from the Unloading Port.

“Guarantor” has the meaning specified in Section 21.1.

“HH” has the meaning set forth in Section 10.1(a).

“Lake Charles Terminal” means the LNG receiving terminal at Lake Charles, Louisiana, inclusive of all facilities owned and operated at that site by Trunkline LNG Company, LLC, its successors, Affiliates and assigns, together with all expansions or additions thereto.

“Laws” means all applicable laws, treaties, conventions, statutes, rules, regulations, decrees, ordinances, licenses, permits, compliance requirements, decisions, orders, directives, policies that are enforceable through regulatory and/or judicial processes.

“LNG” means liquefied natural gas meeting the quality specifications set forth in Section 5.1, liquefied natural gas that Buyer is required to accept pursuant to Section 5.1(a), and liquefied natural gas that Buyer is not required to accept, but which Buyer elects to accept.

“LNG Tanker” means an ocean-going vessel, meeting the requirements of Section 8.2, suitable for transporting LNG, which is used for the transportation of LNG delivered from Seller to Buyer under this Agreement.

“Long-Term Supply” means any supply of LNG available to Seller for delivery to Buyer pursuant to a Long-Term Supply Agreement.

“Long-Term Supply Agreements” has the meaning specified in Section 2.3.

“Marathon Agreement” means that certain LNG Sale and Purchase Agreement between Buyer and Marathon LNG Marketing LLC dated June 3, 2005, as such agreement may be amended, modified, restated or replaced from time to time.

“Margin” has the meaning specified in Section 10.1(a)

“Mcf” means one thousand (1,000) Scf.

“Memorandum” has the meaning set forth in Section 2.3.

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

“Moody’s” has the meaning specified in Section 21.2(b).

“Month” means a calendar month according to the Gregorian calendar.

“Monthly Payment” has the meaning specified in Section 10.1(a).

“NLNG Agreement” means that certain LNG Sale and Purchase Agreement between Buyer and Nigeria LNG Limited dated October 13, 2003, as such agreement may be amended or modified from time to time.

“Nominees” has the meaning specified in Section 15.1(b).

“Notice of Readiness” has the meaning specified in Section 8.7.

“Noticed Party” means, with respect to any notice required or permitted under this Agreement, the Party receiving such notice.

“Noticing Party” means, with respect to any notice required or permitted under this Agreement, the Party delivering such notice.

“Operator” means

- (i) with respect to LNG delivered to the Elba Island Terminal, Southern LNG, or its successors and assigns;
- (ii) with respect to LNG delivered to the Lake Charles Terminal, Trunkline LNG Company, LLC, or its successors and assigns; and
- (iii) with respect to LNG delivered to any other Buyer LNG Terminal, the owner of such Buyer LNG Terminal or the issuer of the FERC Gas Tariff applicable to such Buyer LNG Terminal.

“Party” has the meaning specified in the preamble to this Agreement.

“Reasonable and Prudent Operator” means a person acting in good faith with the intention of performing its contractual obligations and who, in so doing and in the conduct of its undertaking, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced person complying with applicable Laws engaged in the same type of undertaking under the same or similar circumstances and conditions.

“Reserved Window” means any Arrival Window in which a Supplier is able to deliver a cargo to a Buyer LNG Terminal for or on behalf of BGGM, Buyer or Seller, but where the Supplier is not required to deliver such cargo. Reserved Windows include, but are not limited to, Arrival Windows reserved pursuant to the Marathon Agreement.

“Sales Proceeds” has the meaning set forth in Section 10.1(a).

“S&P” has the meaning specified in Section 21.2(b).

“Scheduled LNG Terminal” has the meaning specified in Section 9.1.

“Seller” has the meaning specified in the preamble to this Agreement.



“Seller Indemnified Parties” has the meaning specified in Section 14.1(b)

“Short-Term Supply” means any cargo or series of cargoes of LNG acquired by Seller for delivery to Buyer, other than cargoes that constitute Long-Term Supplies.

“Source of Supply” means, with respect to Long-Term Supplies, the source of supply identified in the applicable Memorandum, and with respect to Short-Term Supplies, the source of supply identified in the Annual Program.

“Standard Cubic Foot” or “Scf” means the quantity of dry natural gas occupying a volume of one (1) Cubic Foot at fourteen and seventy-three one hundredths pounds per square inch absolute (14.73 psia) and sixty (60) degrees Fahrenheit.

“Suppliers” means each “seller” under any of the Long-Term Supply Agreements, or any “seller” of a Short-Term Supply.

“Terminal Pipeline Agreement(s)” means any service agreement between BGEM (or its Affiliates) and the owner or operator of a Terminal Pipeline for firm transportation services on a Terminal Pipeline, including:

- (i) The Trunkline Gas Company Firm Transportation Service Agreement (Rate Schedule FT) No. 017892, as amended or restated from time to time; and
- (ii) Each service agreement for firm transportation service on the proposed Elba Express Company pipeline, as described in that certain Precedent Agreement between Elba Express Company, LLC and BGEM (as successor-in-interest to BG LNG Services, LLC), as amended or restated from time to time.

“Terminal Pipeline(s)” means the pipeline systems immediately downstream of each LNG Terminal on which Buyer or BGEM has acquired long-term, firm transportation capacity pursuant to a Terminal Pipeline Agreement.

“Third Party LNG SPA” means the Marathon Agreement, the NLNG Agreement and any other agreement entered into by Buyer from time to time for the purchase of and delivery to Buyer of cargoes of LNG to any Buyer LNG Terminal.

“Title Transfer Point” means with respect to each cargo of LNG to be sold by Seller to Buyer hereunder, the later of (a) the point at which title to such cargo has passed to Seller from BGGM under the BGGM-BGLT Agreement, or, if such cargo is not sourced from BGGM, the point at which title such cargo has passed to Seller under the terms of the purchase and sale of such cargo between Seller and the seller of such cargo, and (b) the last point immediately prior to the entry by the LNG Tanker carrying such cargo into waters deemed to be U.S. territorial waters for purposes of US Internal Revenue Code taxing authority.

“Ultimate Parent Company” means, in relation to any Party, any company that ultimately directly or indirectly controls such Party and is not itself controlled by any other company. For

the purposes of this definition, a company is directly or indirectly controlled by another company holding shares or an interest carrying in the aggregate the majority of votes exercisable at a general meeting of the first-mentioned company or the right to appoint or dismiss a majority of the directors thereof; and a particular company is ultimately directly or indirectly controlled by an Ultimate Parent Company if a series of companies can be specified, beginning with the Ultimate Parent Company and ending with the particular company, in which the companies are so related that each company of the series, except the Ultimate Parent Company, is directly controlled by one or more of the companies in the series.

“Unloading Port” means the port where the Delivery Point is located.

“Variable Terminal Costs” has the meaning set forth in Section 10.1(a).

Section 1.3      Volumetric Conversion Factor.

(a) In converting any quantities of natural gas expressed in Bcf from or to quantities of LNG expressed in Cubic Meters, the following conversion factor shall apply: one (1) Bcf of natural gas equals forty-six thousand one hundred twenty (46,120) Cubic Meters of LNG.

(b) In converting any quantities of LNG expressed in Mcf equivalent from or to quantities of LNG expressed in MMBtu, the following conversion factor shall apply: one thousand forty (1040) Btu per Cubic Foot.

**ARTICLE 2.      Amendment and Restatement; Sale And Purchase**

Section 2.1      Amendment and Restatement. Subject to the provisions of the Cost Contribution Agreement pursuant to which the First Amended and Restated SPA may become reinstated, the First Amended and Restated SPA is hereby amended and restated in its entirety by this Agreement and is of no further force and effect whatsoever as of the Effective Date (except for those rights and obligations of the parties thereunder accrued as of the Effective Date).

Section 2.2      Agreement. Seller agrees to sell and Buyer agrees to take and pay for LNG upon the terms and conditions stated in this Agreement.

Section 2.3      Long-Term Supply. The Parties may, from time to time, execute a memorandum substantially in the form of Schedule A (or any other form agreed by the Parties) (the “Memorandum”), setting forth (i) either (A) an agreement pursuant to which Seller has the right to, or is obligated to, acquire LNG for a period of three-hundred sixty five (365) or more days, which Seller may subsequently sell to Buyer under this Agreement, or (B) an agreement pursuant to which BGGM has the right to, or is obligated to, acquire LNG for a period of three-hundred sixty five (365) or more days, which BGGM desires to sell to Seller under the BGGM-BGLT Agreement, which Seller may subsequently sell to Buyer under this Agreement, (each such agreement described in (A) or (B), a “Long-Term Supply Agreement”), (ii) the source of supply under such Long-Term Supply Agreement, (iii) the annual contract quantity contemplated by such Long-Term Supply Agreement, and (iv) the basic contract term of such Long-Term Supply Agreement. Buyer shall execute any Memorandum requested by Seller if the collective firm receipt, storage and regasification capacity at Buyer’s LNG Terminals is sufficient to take delivery of all LNG contemplated to be delivered to Buyer’s LNG Terminals under the Long-

Term Supply Agreement set forth in such Memorandum, taking into account (X) the maximum quantity of LNG to be delivered to Buyer's LNG Terminals pursuant to all previously executed Memoranda, (Y) any then-scheduled Short-Term Supplies, and (Z) the maximum quantity of LNG to be delivered to Buyer's LNG Terminals pursuant to the Marathon Agreement or the NLNG 4/5 Agreement. Each Memorandum that was effective under the First Amended and Restated SPA and in effect on the date of the execution of this Agreement shall be considered an effective Memorandum hereunder.

Section 2.4 Short-Term Supply. In addition to the foregoing, Seller may notify Buyer that Seller intends to deliver a cargo of LNG to Buyer pursuant to a Short-Term Supply to the extent that the then-current Annual Program reflects (i) Available Arrival Windows at Buyer's LNG Terminals, or (ii) Reserved Windows at Buyer's LNG Terminals, where the Supplier entitled to such Reserved Window has elected not to utilize such Reserved Window, or where such Supplier has failed to provide any notice required under the respective Supply Agreement to utilize such Reserved Window.

Section 2.5 Supply Agreements. Seller shall act diligently and in good faith to enforce its contractual rights under the Long-Term Supply Agreements and the agreements related to any Short-Term Supply and shall not, without prior written consent of Buyer, such consent not to be unreasonably withheld, amend or waive any of its rights under the Long-Term Supply Agreements or an agreement related to a Short-Term Supply in a manner that might adversely affect Buyer's rights hereunder.

### **ARTICLE 3. Term**

Section 3.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue until the latest termination or expiration of Buyer's firm capacity rights at each of Buyer's LNG Terminals.

### **ARTICLE 4. Quantities**

Section 4.1 Contract Quantity; Minimum Quantities. Except with respect to cancellations pursuant to Section 4.2 below, Seller shall sell and deliver to Buyer and Buyer shall purchase, receive, and pay for, (i) the Annual Contract Quantity set forth in each applicable Memorandum, adjusted pursuant to the provisions of each of the respective Long-Term Supply Agreements and reduced to reflect expected boil-off in transit to the Delivery Point, where applicable, and (ii) all quantities of Short-Term Supply reflected in the then-current Annual Program. Notwithstanding the fact that Seller's supply availability under the Long-Term Supply Agreements or any other source of LNG may be insufficient to do so, Seller shall sell and deliver sufficient quantities of LNG each Month to each applicable Terminal to enable Buyer to provide to BGEM under the Gas Sales Agreement the Elba Minimum Monthly Quantity to the extent not already supplied through firm supply commitments under a Third Party LNG SPA.

Section 4.2 Diversions and Cancellations; Failure to Supply Minimum Quantities.

(a) Notwithstanding anything to the contrary contained in Sections 10.4 through 10.6, and subject to Seller's compliance with the other provisions set forth in this Section 4.2, Seller

shall have the right from time to time to cancel any cargo to be delivered hereunder for any reason and to divert such cargo to another delivery port of its choosing.

(b) Seller acknowledges that Buyer has, in reliance upon Seller's supply commitments in Section 4.1 and its commitment of firm cargoes in each Annual Program committed and agreed to supply to BGEM (i) the Elba Minimum Monthly Quantity and (ii) each other LNG cargo that Seller has committed to supply to Buyer hereunder, and that any cancellations of scheduled quantities (or, in the case of the Elba Minimum Monthly Quantity, any failure by Seller to supply the minimum quantities required) to enable Buyer to provide the Elba Minimum Monthly Quantity or to deliver any other LNG cargo that Buyer has committed to BGEM for delivery at the Lake Charles Terminal or the Elba Island Terminal may result in Buyer owing amounts to, or being entitled to receive amounts from, BGEM under Section 4.2(b) of the Gas Sales Agreement. Seller and Buyer agree that all amounts owing to or from Buyer under Section 4.2(b) of the Gas Sales Agreement shall be for the account of Seller, provided, however, the foregoing shall not apply to the extent Buyer has incurred costs under such section due to the fault of Buyer or the failure of supply under a Third Party LNG SPA. Except for amounts related to the proviso in the forgoing sentence, Seller shall promptly reimburse Buyer for any amounts it owes to BGEM under such section, and Buyer shall promptly turn over any amounts it is owed from BGEM under such section.

## **ARTICLE 5. Quality**

### **Section 5.1 Acceptance and Rejection.**

(a) Buyer will examine or cause the Operator to examine promptly the results of the inspection and tests described in Article 6 to determine whether Buyer accepts or rejects Seller's delivery of LNG. Buyer shall have the right to reject any delivery that does not comply in all respects with the specifications set forth in the FERC Gas Tariff for the Scheduled LNG Terminal; provided, however, that Buyer shall use reasonable efforts to accept, and shall cause the Operator to use reasonable efforts to accept, LNG that does not meet the specifications set forth in the applicable Memorandum; provided further, however, that if the Operator, having exercised reasonable efforts, nonetheless rejects any quantity of LNG that does not meet the specifications set forth in the FERC Gas Tariff for the Scheduled LNG Terminal, Buyer will be deemed to have rejected such quantity of LNG and shall have no liability to Seller with respect to such quantity.

(b) In the event that Seller becomes aware prior to loading of a cargo that the LNG in question will not conform to the specifications set forth in the FERC Gas Tariff for the Scheduled LNG Terminal, Seller shall notify Buyer of such non-conformity and, if requested by Seller, Buyer shall use reasonable efforts to notify Seller, within the time specified by Seller, of whether it will accept or reject such cargo; provided, however, that if Buyer fails to so notify Seller, such failure shall not be considered acceptance of Seller's request to take such cargo. Buyer's election to accept shall be binding (subject to Section 5.2) so long as the quality of the LNG at the Delivery Point is consistent with the quality notified to Buyer prior to the loading of such cargo. At the time Buyer notifies Seller of its willingness to accept such cargo, Buyer shall provide Seller a good faith estimate of the costs described in Section 5.2, which estimate shall not limit or otherwise affect Buyer's right to compensation under Section 5.2.

Section 5.2      Results of Acceptance. In the event Buyer accepts delivery of LNG that does not meet the specifications set forth in the FERC Gas Tariff for the Scheduled LNG Terminal, regardless of whether Seller has provided notice of such nonconformity pursuant to Section 5.1(b),

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

(b) upon such payment by Seller, such LNG shall be deemed, for purposes of this Article 5, to meet the specifications set forth in the FERC Gas Tariff for the Scheduled LNG Terminal.

Section 5.3      Results of Rejection. If Buyer rejects a delivery of LNG in accordance with Section 5.1:

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

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

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

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

## **ARTICLE 6.      Testing and Measurement**

Section 6.1      Exchange of Information Prior to the commencement of unloading at a Buyer LNG Terminal, Seller or its representative shall furnish to Buyer any and all documentation sufficient, in Buyer's reasonable estimation, to demonstrate that the LNG Tanker and its cargo have properly and completely cleared customs in the United States of America.

Section 6.2      LNG Analysis. Promptly after completion of unloading of the LNG Tanker at a Buyer LNG Terminal, Seller or its representative shall furnish to Buyer a certificate of quantity unloaded. Buyer shall, on a reasonable efforts basis within twenty-four (24) hours but in no event later than forty-eight (48) hours after completion of unloading, complete a laboratory analysis and calculations to determine the quality and BTU content of the LNG unloaded and shall promptly furnish to Seller or its representative a copy of the laboratory analysis with respect thereto, together with a calculation of the number of BTUs unloaded and delivered.

Section 6.3      Devices.

(a) Seller shall supply, operate and maintain, or cause to be supplied, operated and maintained, suitable gauging devices for the LNG tanks of the LNG Tanker, as well as density, pressure and temperature measuring devices and all other measurement or testing devices that are incorporated in the structure of the LNG Tanker.

(b) Buyer (for the purposes of enabling the quantity of LNG delivered to be determined) shall supply, operate and maintain, or cause to be supplied, operated and maintained, devices required for collecting continuous samples and for determining quality and composition of the delivered LNG and all other measurement or testing devices that are necessary to perform the measurement and testing required hereunder at each Buyer LNG Terminal.

Section 6.4 Gauging of Quantities Delivered. Volumes of LNG delivered under this Agreement shall be determined by gauging the LNG in the LNG tanks of the LNG Tanker immediately before and after unloading. Gauging the liquid in the tanks of the LNG Tanker and the measuring of liquid temperature, vapor temperature and vapor pressure in each LNG tank and the trim and list of the LNG Tanker shall be performed, or caused to be performed, by Seller before and after unloading. Copies of gauging and measurement records shall be furnished to Buyer. Notwithstanding the foregoing, in the event of a discrepancy between the volumes determined pursuant to this Section 6.4 and the volumes determined by Buyer's Operator, the determination of Buyer's Operator shall determine the amount of LNG delivered under this Agreement. Buyer agrees to use reasonable efforts to dispute any unreasonable LNG volume determinations by Buyer's Operator.

#### **ARTICLE 7. Title and Risk of Loss**

Title and risk of loss of all LNG sold and purchased under this Agreement, as well as any and all of Seller's right, title and interest in such LNG and all liabilities resulting therefrom, will transfer from Seller to Buyer at the Title Transfer Point.

#### **ARTICLE 8. Transportation and Unloading**

Section 8.1 Seller's Responsibility for Shipping and Unloading. Seller shall be responsible for arranging, and shall pay all costs (including shipping costs, port charges and insurance costs) associated with the transportation of LNG to the Delivery Point.

##### Section 8.2 LNG Tanker Requirements.

(a) The LNG Tankers at all times shall be maintained and safely operated, compatible with the Unloading Port facilities and compliant with the FERC Gas Tariff and applicable laws, regulations and conditions of use at the Scheduled LNG Terminal as the same may be amended from time to time; provided, however, that Seller will not be required to comply with changes to any conditions of use that are not consistent with accepted international standards unless such changes are required or imposed by any Laws. The provisions of this Agreement applicable to LNG Tankers shall apply whether any LNG Tanker is owned and operated by Seller, or owned and/or operated by a third party (including Affiliates of Seller). All LNG Tankers used by Seller shall, at a minimum and without limitation, at all times comply with the following:

- (i) be equipped with communications equipment that is in compliance with all applicable Laws or other requirements and that permits the LNG Tanker to be in communication with land stations and the control rooms of the Operator;

- (ii) be equipped with adequate facilities for mooring, unmooring and handling LNG at the Delivery Point and related port navigation;
- (iii) be in compliance with all applicable Laws and other requirements of the country of vessel registry and the United States that relate to seaworthiness, design, safety, environmental protection, navigation, operation and similar technical and operational matters as with respect to such LNG Tanker that may be in effect from time to time;
- (iv) be manned with a qualified and competent crew, including the master and enough crew members fluent in written and spoken English to coordinate with personnel at the Unloading Port and a master, chief engineer, chief mate and cargo engineer (and such other officers having responsibilities associated with the preparation of the LNG Tanker for the discharge and unloading of LNG) who are all experienced in LNG Tanker operations;
- (v) be maintained in class with either the American Bureau of Shipping, Lloyds Register of Shipping, Nippon KK or Det Norske Veritas or any other classification society that is mutually agreeable to the Parties;
- (vi) be adequately covered by marine insurance policies
  - (A) in amounts and at levels customarily maintained by first class operators, and
  - (B) if requested by the Operator, provide such Operator with a satisfactory certificate of such insurance prior to berthing of such LNG Tanker;
- (vii) be compatible with the maximum LNG Tanker dimensions permitted by the FERC Gas Tariff and/or other applicable requirements at the Scheduled LNG Terminal;
- (viii) be able to berth safely at, and compatible in all respects with, the Scheduled LNG Terminal; and

Section 8.3 LNG Tanker Inspection; Effect of Rejection.

(a) Before the berthing and commencement of unloading of any LNG Tanker at the Unloading Port, Buyer shall have the right to conduct an inspection of the LNG Tanker for the purpose of determining Seller's compliance with Section 8.2, which Seller shall facilitate by providing Buyer, the Operator and their respective agents reasonable access to the LNG Tanker and such information regarding its condition and operation as is reasonably requested by Buyer, the Operator or their respective agents. If:

- (i) such inspection reveals that the LNG Tanker fails to comply with the Section 8.2 standards to the extent that a Reasonable and Prudent Operator would not permit such LNG Tanker to berth, or if berthed to unload, and
- (ii) Buyer has confirmation in writing that the Operator will not permit such LNG Tanker to berth, or if berthed to unload,

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

(b) Rejection of an LNG Tanker pursuant to Section 8.2 or Section 8.3 shall be deemed failure by Seller to deliver the cargo scheduled for delivery on such LNG Tanker.

Section 8.4 LNG Terminal Facility Inspection. Before the berthing and commencement of unloading of any LNG Tanker at a Buyer LNG Terminal, Seller shall have the right to conduct an inspection of such Buyer LNG Terminal for the purpose of determining Buyer's compliance with Section 8.5(e) which Buyer shall facilitate by providing Seller and its agents reasonable access to such Buyer LNG Terminal facilities and such information regarding their condition and operation as is reasonably requested by Seller or its agents. If:

(a) such inspection reveals that Buyer has materially failed to comply with Section 8.5(e) to the extent that a Reasonable and Prudent Operator of an LNG Tanker would not permit such LNG Tanker to berth, or if berthed, to unload, and

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

then Seller shall have the right to refuse to unload at such facilities.

Section 8.5 Unloading Port Obligations.

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

(b) Seller shall pay, or reimburse Buyer for, all costs and expenses of tugs, pilots, escort vessels or other vessels attending the LNG Tanker while at the Unloading Port.

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

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

- (i) all amounts due for supplies and services requested by masters of LNG Tankers delivering LNG under this Agreement, and



- (ii) all port charges, including costs of dockage and wharfage, port service charges, line handling fees, harbor dues, inspection and customs fees, telephone and postage fees and charges, tonnage taxes and other similar costs incurred in connection with the delivery of LNG by such LNG Tankers to the Delivery Point.

With respect to any such charges imposed by the Operator, Seller shall only be responsible for payment of such charges to the extent that these charges are uniformly applied to all LNG vessels delivering LNG to such Delivery Point and to the extent that such charges are permitted under the Operator's FERC Gas Tariff.

- (e) Buyer shall cause the Operator of each Buyer LNG Terminal to:

- (i) provide reasonable assistance to Seller in coordinating delivery of equipment, supplies and services for LNG Tankers berthing at such Buyer LNG Terminal; and
- (ii) provide, maintain, and operate or cause to be provided, maintained and operated at such Buyer LNG Terminal a berth and receiving facilities compatible with the LNG Tanker requirements set forth in Section 8.2 above.

(f) Buyer and Seller shall cooperate to ensure that the LNG Tankers and Buyer LNG Terminals are compatible for unloading, and each Party will provide such information as reasonably requested by the other Party to confirm such compatibility.

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

Section 8.6 Notices of Estimated Time of Arrival. Seller shall provide, or cause each LNG Tanker delivering a cargo of LNG to Buyer to provide, to each of Buyer and the Operator of the Scheduled LNG Terminal the series of notices regarding the delivery of such cargo of LNG set forth below, or such notices reasonably required by the Operator, with each such notice specifying the name of such LNG Tanker, the total quantity of LNG (in Cubic Meters) to be delivered to Buyer by such LNG Tanker, any operational deficiencies in the LNG Tanker that may affect its performance at the Delivery Point, and the estimated date and time of the arrival (the "Estimated Time of Arrival" or "ETA") of such LNG Tanker at the Delivery Point:

(a) first notice twenty-four (24) hours before such LNG Tanker departs the port of loading, following receipt of which Buyer shall, or shall cause the Operator to, notify Seller whether the Operator is able to schedule the arrival of Seller's LNG Tanker at the date and hour stated in Seller's notice;

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

(c) a third notice for receipt ninety-six (96) hours before the ETA; and if such ETA changes by more than twelve (12) hours and the notice set forth in Section 8.6(d) has not yet been given then an updated notice will be sent;

(d) a fourth notice for receipt seventy-two (72) hours before the ETA; and if such ETA changes by more than six (6) hours and the notice set forth in Section 8.6(e) has not yet been given then an updated notice will be sent;

(e) a fifth notice for receipt forty-eight (48) hours before the ETA; and if such ETA changes by more than six (6) hours and the notice set forth in Section 8.6(f) has not yet been given then an updated notice will be sent;

(f) a sixth notice for receipt twenty-four (24) hours before the ETA; and if such ETA changes by more than two (2) hours and the notice set forth in Section 8.6(g) has not yet been given then an updated notice will be sent;

(g) a seventh notice for receipt five (5) hours before the ETA; and if such ETA changes by more than two (2) hours and the notice set forth in Section 8.6(h) has not yet been given then an updated notice will be sent;

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

- (i) arrived at the location where a pilot is first required to be on board the LNG Tanker, as established in accordance with the port regulations of the Unloading Port, and
- (ii) received all approvals required under applicable Laws to proceed to the Berth;

*provided, however,* that if such Arrival Notice is issued prior to the Arrival Window established for such LNG Tanker in the current schedule established pursuant to Article 10, the Arrival Notice shall be deemed effective as of 6:00 a.m. local time at the Unloading Port during the first twenty-four (24) hour period of the Arrival Window established for such LNG Tanker; and

(i) a ninth notice when such LNG Tanker enters the channel or other waterway entrance to the Unloading Port.

Section 8.7 Notice of Readiness. Following the arrival of each LNG Tanker at the Berth and its receipt of all necessary clearances to discharge LNG, Seller shall cause the master of such LNG Tanker to provide its notice of readiness to discharge LNG (the "Notice of Readiness"). At any time after the LNG Tanker has delivered its Notice of Readiness, Buyer shall be entitled to send a representative of Buyer and/or the Operator to board such vessel and act as an observer with respect to all activities occurring after the delivery of such Notice of Readiness until the completion of unloading of the LNG Tanker.

Section 8.8 Postponement of Arrival Window. To the extent reasonably required by operational necessity, either Party may postpone the Arrival Window by up to twenty-four (24) hours without incurring liability for such postponement; provided, however, that Buyer shall not have the right to postpone an Arrival Window if such postponement would cause Seller to breach its obligations to the Suppliers under the Long-Term Supply Agreements. The Party requiring postponement shall provide notice to the other Party as soon as reasonably practicable but in no case later than when the Arrival Notice is given or has been deemed effective for the relevant LNG Tanker.

## ARTICLE 9. LNG Delivery Schedule

Section 9.1 Annual Program. Buyer and Seller shall closely cooperate in the development of an annual program of cargo deliveries at each Buyer LNG Terminal in advance of each Contract Year (the "Annual Program"). The Annual Program shall detail the expected pattern and order in which deliveries of LNG may be made to each of the Buyer LNG Terminals, including, for each cargo or Reserved Window, the Buyer LNG Terminal for such cargo or Reserved Window (as revised by mutual agreement of the Parties from time to time, the "Scheduled LNG Terminal"), the Arrival Window for such cargo or Reserved Window, the LNG Tanker to be utilized (if known), and the estimated dates of commencement of each loading (if known). The Annual Program shall reflect all cargoes and Reserved Windows arising under this Agreement, the Marathon Agreement and the NLNG 4/5 Agreement. The Annual Program shall also identify each Arrival Window that is not a Reserved Window and in which no cargo is scheduled to be delivered under this Agreement, the Marathon Agreement or the NLNG 4/5 Agreement (an "Available Arrival Window"). Where an adjustment to a loading date, LNG Tanker, Arrival Window or Scheduled LNG Terminal reflected in the Annual Program is requested by either Party for any reason, both Parties shall use reasonable efforts to accommodate such requested adjustment, taking into account its obligation to maintain as far as practicable the deliveries forecast in the Annual Program. The Parties agree that Seller shall keep the Annual Program current at all times such that it reflects the expected delivery schedule and other information relevant for Seller's LNG deliveries.

Section 9.2 Exchange of Information. Prior to providing the Suppliers any information or proposed loading schedules required under the Long-Term Supply Agreements, Seller shall consult with Buyer, and no such information or proposed loading schedule shall be provided to the Suppliers without the consent of Buyer, such consent not to be unreasonably withheld. Prior to providing any information or proposed loading schedules required under the Marathon Agreement or the NLNG 4/5 Agreement, Buyer shall consult with Seller, and no such information or proposed loading schedule shall be provided under the Marathon Agreement or the NLNG 4/5 Agreement without the consent of Buyer, such consent not to be unreasonably withheld. Upon receipt of any notices, information, or loading schedules from the Suppliers pursuant to the Long-Term Supply Agreements, Seller shall promptly provide such notices, information, or loading schedules to Buyer. Seller shall not agree to any loading schedule proposed by the Suppliers without the consent of Buyer, such consent not to be unreasonably withheld.

Section 9.3 Reserved.

**ARTICLE 10. Price**

Section 10.1 Monthly Payment.

(a) During each Month of this Agreement, there shall be a payment (expressed in Dollars) for such Month (the "Monthly Payment") equal to:

**Sales Proceeds – Fixed Terminal Costs – Variable Terminal Costs – Fixed Pipeline Costs - Monthly Management Fee**

If the foregoing calculation results in a positive number, the Monthly Payment shall be equal to such resulting number and shall be owed by Buyer to Seller. If the foregoing calculation results in a negative number, the Monthly Payment shall be equal to the absolute value of such resulting number and shall be owed by Seller to Buyer.

Where:

"Sales Proceeds" shall mean an amount equal to the total quantity of LNG (expressed in MMBtu) delivered hereunder in any Month ("the Delivered Monthly Quantity"), multiplied by the Contract Sales Price (expressed in Dollars/MMBtu).

"Contract Sales Price" shall mean:

(A) for any quantity of LNG in a cargo included in the Annual Program developed prior to the start of the Contract Year and delivered under this Agreement within seven Days after commencement of its Arrival Window,

(i) in the case of deliveries to the Lake Charles Terminal,

$99.5\% \times \text{HH/MMBtu}$ ;

(ii) in the case of deliveries to the Elba Island Terminal:

$101.3\% \times \text{HH} + \$0.036/\text{MMBtu}$

(iii) in the case of deliveries to any other Seller LNG Terminal, an amount determined pursuant to a formula agreed by Buyer and Seller with respect to such Seller LNG Terminal; and

(B) for all other LNG delivered under this Agreement, the "Contract Sales Price" shall mean a price per MMBtu (or a price based upon a pricing formula) to be agreed between Seller and Buyer that shall be based upon the price for the corresponding quantity of Gas determined under item (B) of the definition of "Contract Sales Price" in the Gas Sales Agreement

“HH” shall mean, for any Month, the final settlement price (expressed in Dollars/MMBtu) for the New York Mercantile Exchange’s Henry Hub natural gas futures contract for delivery during such Month.

“Fixed Terminal Costs” shall mean, for any Month, the total amount (expressed in Dollars) owed by Buyer (or its Affiliates) to the Operator of each Buyer LNG Terminal with respect to the receipt, storage and revaporization of LNG at each Buyer LNG Terminal in such Month in the nature of “fixed”, “reservation” or “demand” costs, excluding, without limitation on the forgoing, (i) Variable Terminal Costs, and (ii) all amounts owed to the Operator of each Buyer LNG Terminal in respect of the maximum quantity of LNG necessary for Buyer to fulfill its obligations under the Third Party LNG SPAs in such Month, regardless of whether any cargoes of LNG were delivered under the Third Party LNG SPAs in such Month.

“Variable Terminal Costs” shall mean with respect to any Month, the sum of all variable costs, usage fees and fuel charges (expressed in or converted to Dollars) owed by Buyer (or its Affiliates) to the Operator of each Buyer LNG Terminal with respect to deliveries of LNG by Seller under this Agreement in such Month.

“Fixed Pipeline Costs” shall mean the total amount (expressed in Dollars) owed by BGEM (or its Affiliates) under the Terminal Pipeline Agreement listed as item (i) in the definition thereof with respect to the reservation of capacity for the receipt and transportation of Gas at the tailgate of the Lake Charles Terminal, excluding (i) all variable costs and usage fees owed by BGEM (or its Affiliates) to the owner or operator of such Terminal Pipeline, and (ii) any amounts representing fuel costs charged to BGEM (or its Affiliates) or for fuel consumed, lost or unaccounted for such Terminal Pipeline.

“Monthly Management Fee” shall mean an amount equal to the total quantity of LNG (in MMBtus) delivered by Seller to Buyer hereunder in any Month multiplied by \$0.0237/MMBtu.

(b) Buyer (or its Affiliates) shall, throughout the term of this Agreement, use its reasonable commercial judgment to minimize the Fixed Terminal Costs and Variable Terminal Costs over the duration of this Agreement, taking into account all relevant risks, and Buyer shall not execute any agreement that would increase the total receiving capacity at Buyer’s LNG Terminals if Seller objects to such increase. All such prior increases or agreements to increase capacity are hereby ratified and approved in all respects by Seller.

(c) Notwithstanding the foregoing provisions of this Section 10.1, upon receipt of notice delivered from Seller to Buyer at any time during the term of this Agreement, Seller may elect to convert the pricing provisions under this Agreement to a realized proceeds netback, such that the “Sales Proceeds” component of the Monthly Payment will be based on Buyer’s actual realized gas sales revenues, rather than an index. In the event Seller provides such notice under this Section 10.1(c), Buyer and Seller shall negotiate in good faith towards an amendment to this agreement on terms that maintain substantially the same economic benefit to the Parties.

(d) The Parties may, from time to time, elect to price a cargo of LNG with a Contract Sales Price that is as a fixed price ("Fixed Price"), as opposed to a Contract Sales Price that floats based on HH. If the parties agree to apply a Fixed Price to a cargo, then the Contract Sales Price applicable to such cargo in Section 10.1(a) above shall be equal to such agreed Fixed Price. Notwithstanding anything to the contrary contained herein, with respect to any cargo of LNG scheduled to be delivered on or after the 25<sup>th</sup> Day of any Month, Seller may elect to apply the "HH" for the following Month, provided Seller notifies Buyer of such election no later than the 15<sup>th</sup> Day of the Month prior to the scheduled delivery.

(e) Reserved.

(f) The Parties acknowledge that the pricing formulas set forth under the definition of "Contract Sales Price" in Section 10.1(a) above may adjusted on an annual basis by agreement among Seller and BGEM (or on a more frequent basis as may be agreed among the forgoing entities), for the purpose of achieving the result that the price paid for Gas derived from regassified LNG at the Delivery Point associated with each Seller LNG Terminal reflect an equitable price for such Gas based upon available markets for such Gas and the fixed and variable costs BGEM would incur to transport such Gas to such markets (excluding any such costs that are borne by entities other than BGEM), and Buyer agrees that such formulas shall be adjusted to reflect any changes so agreed between Seller and BGEM, provided, however, that no such changes may be made that materially and adversely change Buyer's economic benefits conferred under this Agreement without Buyer's written consent.

Section 10.2 Audit Rights.

(a) Seller shall have the right to engage a third-party auditor to review Buyer's accounting records no more than once per year for the purpose of rendering an opinion regarding any amounts determined pursuant to Section 10.1, subject to such third-party auditor executing a confidentiality agreement suitable to Buyer. Buyer shall provide reasoned responses with supporting information to inquiries raised by such auditor in its opinion.

Section 10.3 Failure to Take Delivery. Unless Seller cancels or diverts a cargo pursuant to Section 4.2, if, for any reason other than (i) Force Majeure, (ii) reasons attributable to Seller or any of its agents (iii) reasons attributable to the LNG Tanker, or its owner, operator, master or crew, or (iv) reasons attributable to, or resulting from delays of, prior deliveries of LNG on behalf of Seller, Buyer fails to take delivery of a cargo scheduled for delivery to Buyer within five (5) days from the end of the Arrival Window for such cargo, or such longer period as the Parties may agree to, then Seller shall be entitled not to deliver such cargo to Buyer. In such event, Buyer shall be liable to reimburse Seller for all damages payable by Seller to the Supplier of such cargo. Seller shall be obliged to use reasonable endeavors to mitigate its damages.

Section 10.4 Late Delivery. Unless Seller cancels or diverts a cargo pursuant to Section 4.2, if, for any reason other than the fault of Buyer or Buyer's Operator, Seller issues an Arrival Notice with respect to any cargo more than forty-eight (48) hours after the end of the Arrival Window, then Seller shall pay to Buyer an amount equal to the sum of:

(a) the amount, if any, by which Buyer's cost of acquiring substitute gas required as a result of such delay exceeded the applicable Contract Sales Price for such cargo multiplied by the quantity of such substitute gas, plus

(b) the amount, if any, by which Buyer's proceeds from resale of such cargo were reduced as a result of such delay from the proceeds that Buyer would have received had such cargo been delivered during its Arrival Window.

**Section 10.5** Failure to Deliver. Unless Seller cancels or diverts a cargo pursuant to Section 4.2, if, for any reason other than the fault of Buyer or Buyer's Operator, Seller is unable to or fails to deliver any cargo within five (5) days after the end of the Arrival Window, then Buyer shall be entitled to require Seller not to deliver such cargo. If in such circumstances Buyer notifies Seller that it requires Seller not to deliver such cargo, then Seller shall pay to Buyer an amount equal to Buyer's costs, if any, incurred using reasonable efforts to procure replacement LNG or natural gas at a cost that is commercially reasonable under the circumstances, less the applicable Contract Sales Price for such cargo had Seller provided the cargo to Buyer during its Arrival Window.

**Section 10.6** Under-Delivery. If, for any reason other than the fault of Buyer or Buyer's Operator, the quantity of LNG unloaded from a cargo falls at least 50,000 MMBtu below the expected delivery quantity of such cargo as set forth in the Annual Program, then Seller shall pay to Buyer an amount equal to Buyer's or BGEM's costs, if any, incurred using reasonable efforts to procure replacement LNG or Gas for the amount of the shortfall below such 50,000 MMBtu, (which such costs shall include an amount (which may be a positive or negative number) equal to (i) any related unavoidable incremental transportation charges incurred in connection with the procurement of such replacement Gas plus (ii) any fixed transportation costs allocable to unused transportation capacity for which compensation has not already been provided for under the Cost Contribution Agreement, less (iii) any avoided variable transportation costs) at a cost that is commercially reasonable under the circumstances for the entire quantity of such excess LNG or undelivered LNG, less the applicable portion of the Contract Sales Price for such cargo had Seller delivered the scheduled quantity of such cargo during its Arrival Window. If, for any reason the quantity of LNG unloaded from a cargo exceeds the expected delivery quantity of such cargo as set forth in the Annual Program by at least 50,000 MMBtu the excess quantity over such 50,000 MMBtu shall be deemed to be priced hereunder at a price agreed to between Buyer and Seller reflective of market prices for Gas at the time of such excess delivery. The parties may accomplish the economic equivalent of this Section 10.6 by entering into one or more sale and re-delivery transactions with respect to any Gas described above.

## **ARTICLE 11. Duties And Taxes**

All customs, taxes, excises, fees, duties, levies, charges and other assessments payable on or with respect to the sale or delivery of LNG sold and purchased under this Agreement, its exportation from the Source of Supply and the importation of LNG by Buyer into the United States, shall be the responsibility of Buyer.

**ARTICLE 12. Billing And Payment**

All amounts owing between the Parties hereunder shall be settled through charges made to each Party's intercompany account balance or through the invoicing and payment procedures set forth below:

Section 12.1 Monthly Invoices.

(a) On or before the twenty-fifth (25th) Day of each Month, Buyer shall forward to Seller:

- (i) a monthly statement, calculated in accordance with Article 10 above, indicating the total amount due to Seller in such Month under this Agreement and the total amount due to Buyer in such Month under this Agreement, including any damages arising under Section 10.3, 10.4 or 10.5, and
- (ii) payment by Buyer of the net amount, if positive, due to Seller, as set forth in such monthly statement. If the net amount reflected on any monthly statement is negative, Seller shall pay such amount to Buyer within five (5) days of Seller's receipt of such monthly statement. For purposes of clarification, Buyer may setoff any amounts owed by Seller to Buyer in any Month against any amounts owed by Buyer to Seller in such Month.

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

(c) Through independent consultants and subject to appropriate confidentiality obligations, either Party, upon sixty (60) Days notice shall have the right to examine and audit the books and records of the other Party once in any twelve (12) month period to the extent necessary to administer this Agreement. Such audits must be commenced within twenty-four (24) months of receiving a statement, invoice, charge, measurement statement, payment or computation made under this Agreement which contains the information being audited and such audit will take place at the principal office of the Party whose information is being audited. Any error will be corrected retroactively.



Section 12.2 Interest on Late Payments. Interest on past due amounts shall accrue from the due date to the date payment is actually made at the Base Interest Rate plus one hundred (100) basis points compounded monthly.

Section 12.3 Disputed Invoice or Statement. Any Party may dispute the amount to be paid under any invoice or statement by delivering written notice of such dispute to the other Party within ninety (90) Days of such Party's receipt of such invoice or statement. Any such notice shall give reasons for such dispute and be accompanied by available documentation. Buyer and Seller shall attempt to reach agreement with respect to any disputed amount within thirty (30) Days following receipt of such notice. If the Parties fail to agree within such thirty (30) Day period, the matter may be referred by either Party for resolution under Article 15. In the event of a dispute with respect to an invoice or statement delivered hereunder, the Party required to make payment thereunder shall make payment of the amount not in dispute in the manner and on or before the date specified for such payment and shall promptly notify the other Party of the reasons for such dispute. Promptly after the resolution of a dispute with respect to any invoice or statement, the amount of any overpayment or underpayment shall be paid by Buyer or Seller (as the case may be) to the other Party together with interest thereon at the Base Interest Rate plus one hundred (100) basis points compounded monthly.

Section 12.4 Payment. Buyer shall pay, or cause to be paid, in Dollars, in immediately available funds all amounts which become due and payable by Buyer pursuant to Section 12.1(a), Section 12.2, or Section 12.3 to a bank account or accounts designated by and in accordance with instructions issued by Seller, provided that if the payment due date is not a business day, payment is due on the next business day following that date. Seller shall pay, or cause to be paid, in Dollars, in immediately available funds all amounts which become due and payable by Seller under this Agreement to a bank account or accounts designated by and in accordance with instructions issued by Buyer, provided that if the payment due date is not a business day, payment is due on the next business day following that date. The paying Party shall not be responsible for a designated bank's disbursement of amounts remitted to such bank, and a deposit in immediately available funds of the full amount of each invoice with such bank shall constitute full discharge and satisfaction of the obligations to pay such invoice under this Agreement.

### **ARTICLE 13. Force Majeure**

Section 13.1 Performance Excused. No failure, delay or omission by either Party to fulfill any of its obligations under this Agreement (other than the obligation to make payments when due) shall give rise to any claim against such Party or be deemed to be a breach of this Agreement if and to the extent such failure, delay or omission arises from any event of Force Majeure. The term "Force Majeure" shall mean any act, event, or circumstance, whether of the kind described herein or otherwise, that is not reasonably within the control of the Party claiming Force Majeure and that prevents or delays such Party's performance. It may include circumstances of the following kind:

- (a) as to the Source of Supply:

- (i) fire, flood, atmospheric disturbance, lightning, storm, typhoon, hurricane, tornado, earthquake, landslide, soil erosion, subsidence, washout or epidemic or other acts of God;
  - (ii) war (whether declared or undeclared), terrorism, riot, civil war, blockade, insurrection, acts of public enemies or civil disturbances;
  - (iii) strike, lockout or other industrial disturbances;
  - (iv) loss of or damage to or failure of any facilities comprising the Source of Supply; or
  - (v) acts of governments or compliance with such acts, that directly affect Seller's ability to perform its obligations hereunder;
- (b) as to the LNG Tankers:
- (i) loss of, damage to or failure of the LNG Tanker;
  - (ii) fire, flood, atmospheric disturbance, lightning, storm, typhoon, hurricane, tornado, epidemics or other acts of God;
  - (iii) war (whether declared or undeclared), terrorism, piracy, riot, civil war, blockade, insurrection, acts of public enemies or civil disturbances;
  - (iv) strike, lockout or other industrial disturbance occurring aboard an LNG Tanker or at a port or other facility at which such LNG Tanker calls while in passage en route to or from the Source of Supply or the Delivery Point; or
  - (v) acts of government or compliance with such acts, that directly affect Seller's or Seller's transporter's or the Suppliers' ability to perform its obligations hereunder, provided, however, that failure of the LNG Tanker to pass an inspection performed by the United States Coast Guard or other similar state or local entity shall not be considered a Force Majeure event unless such failure is as a result of circumstances beyond the reasonable control of Seller;
- (c) as to a Buyer LNG Terminal or any of Buyer's Related Facilities:
- (i) fire, flood, atmospheric disturbance, lightning, storm, typhoon, hurricane, tornado, earthquake, landslide, soil erosion, subsidence, washout or epidemic or other acts of God;
  - (ii) war (whether declared or undeclared), terrorism, riot, civil war, blockade, insurrection, acts of public enemies or civil disturbances;
  - (iii) strike, lockout or other industrial disturbances;

- (iv) loss of or damage to or failure of such Buyer LNG Terminal or any of Buyer's Related Facilities; or
  - (v) acts of governments, or compliance with such acts, that directly affect Buyer's or Buyer's Operator's ability to perform its obligations hereunder;
- (d) as to the Unloading Port:
- (i) fog, fire, flood, atmospheric disturbance, lightning, storm, typhoon, hurricane, tornado, earthquake, landslide, soil erosion, subsidence, washout, or epidemic or other acts of God;
  - (ii) war (whether declared or undeclared), terrorism, riot, civil war, blockade, insurrection, acts of public enemies or civil disturbances;
  - (iii) strike, lockout or other industrial disturbances;
  - (iv) breakdown or unavailability of port facilities (including but not limited to channel, tugs or pilots); or
  - (v) acts of or unavailability of government or port authorities, or compliance with such acts or unavailability, that directly affect Seller's or Seller's Transporter's ability to perform its obligations hereunder;

Notwithstanding the foregoing provisions of this Section 13.1, "Force Majeure" shall not include any loss or failure of gas reservoirs in the Source of Supply and the deliverability associated therewith due to natural depletion or the absence of economically recoverable gas (unless any of the foregoing itself is the result of Force Majeure).

Section 13.2 Related Parties. For the purposes of Section 13.1, an event shall not be considered to be beyond the reasonable control of a Party to this Agreement unless:

(a) in the case of Seller, it is beyond the reasonable control of BGGM, Seller, any Supplier, the operator of any of facilities comprising the Source of Supply, or the operator or disponent owner of the LNG Tankers, or any servant or agent of any of such persons; or

(b) in the case of Buyer, it is beyond the reasonable control of Buyer or Buyer's Operator, or any servant or agent of any of such persons.

Section 13.3 Notice: Resumption of Normal Performance.

(a) Promptly upon the occurrence of an event that a Party considers may subsequently lead it to claim Force Majeure relief under this Agreement on account thereof, the Party affected shall give notice of such event to the other Party, describing such event and the obligations the performance of which could be delayed or prevented thereby. In the event any Party claims Force Majeure relief under this Agreement, it shall so notify the other Party thereof as soon as reasonably practicable and shall state in such notice:

- (i) the particulars of the event giving rise to the Force Majeure claim, in as much detail as is then reasonably available;
- (ii) the obligations which have been actually delayed or prevented in performance and the estimated period during which such performance may be suspended or reduced, including (to the extent known or ascertainable) the estimated extent of such suspension or reduction in performance; and
- (iii) the particulars of the program to be implemented, if any, to ensure full resumption of normal performance hereunder.

Such notices shall thereafter be supplemented and updated at reasonable intervals during the period of such Force Majeure, specifying the actions being taken to remedy the circumstances causing such Force Majeure and the date on which such Force Majeure terminates.

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

(c) The Parties shall exercise reasonable diligence to resume normal performance of this Agreement after the occurrence of an event of Force Majeure. Prior to resumption of normal performance, the Parties shall continue to perform their obligations under this Agreement to the extent not prevented by such event of Force Majeure. For purposes of this Section 13.3, "reasonable diligence" shall include the acquisition of substitute LNG tankers when available at or below then-current market rates with respect to an event of Force Majeure affecting an LNG Tanker.

(d) To the extent the Seller provides notice of Force Majeure pursuant to Section 13.3(a) above, Buyer may purchase replacement LNG from other suppliers. To the extent Buyer provides notice of Force Majeure pursuant to Section 13.3(a) above, Seller may sell affected cargo(oes) to other buyers. Seller shall not be required to deliver make-up cargo(oes) to the Buyer in respect of amounts that Seller is excused from supplying by reason of Force Majeure.

(e) If an event of Force Majeure occurs and is continuing for a period of sixty (60) days such that it prevents a Party from performing all or substantially all of its obligations under this Agreement or any Memorandum then either Party shall be entitled to terminate this Agreement or such Memorandum without liability to the other Party by giving written notice to the other Party.

## **ARTICLE 14. Indemnity**

### Section 14.1 Indemnity.

(a) To the fullest extent permissible by Law, Seller agrees (regardless of the presence or absence of insurance) to indemnify, defend and hold Buyer, the Operator of each Buyer LNG

Terminal, their Affiliates, and their respective officers, directors, employees, agents, successors, assigns and contractors/subcontractors (collectively, the "Buyer Indemnified Parties") harmless from and against any and all claims, losses, demands, damages, liabilities, costs and expenses arising under this Agreement (collectively, "Claims" and each a "Claim") relating to any of:

- (i) the property, facilities or other assets of any of the Seller, its Affiliates, and the Suppliers,
- (ii) the officers, directors, employees, and agents of Seller, its Affiliates and the Suppliers, or
- (iii) any LNG Tanker utilized by Seller or the Suppliers in connection with the performance of this Agreement

regardless of whether such Claims under Sections 14.1(a)(i), (ii), or (iii) arise from or relate to any act or incident involving any of the Buyer Indemnified Parties. Seller shall obtain waivers from its insurers of all rights of subrogation relating to any Claims against the Buyer Indemnified Parties.

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

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

regardless of whether such Claims under Sections 14.1(b)(i), (ii), or (iii) arise from or relate to any act or incident involving any of the Seller Indemnified Parties. Buyer shall obtain waivers from its insurers of all rights of subrogation relating to any Claims against the Seller Indemnified Parties.

Section 14.2 Notice of Proceedings. The Party entitled to indemnification shall promptly notify the Party obligated to indemnify that Party of any Claims in respect of which it is entitled to be indemnified under this Article 14. Such notice shall be given not later than thirty (30) Days after the Party entitled to indemnification becomes aware of such Claims.

Section 14.3 Conduct of Proceedings. Any Party entitled to indemnification shall have the right, but not the obligation, to contest, defend and litigate (and to retain legal advisers of its choice in connection therewith) any Claims, action, suit, or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the said indemnity; provided, however, that the Party obligated to indemnify the other Party shall be

entitled, at its option, to assume and control the defense of such Claim, action, suit, or proceeding at its expense and through legal advisers of its choice if it:

- (a) gives notice of its intention to do so to the other Party;
- (b) acknowledges in writing its obligation to indemnify the other Party to the full extent provided by this Article; and
- (c) reimburses the other Party for the reasonable costs and expenses previously incurred by the other Party prior to the assumption of such defense by the Party obligated to provide indemnification. No Party entitled to indemnification shall settle or compromise any Claim, action, suit or proceeding in respect of which it is entitled to be indemnified by the other Party without the prior written consent of the Party obligated to provide indemnification, which consent shall not be unreasonably or arbitrarily withheld or delayed.

## **ARTICLE 15. Dispute Resolution**

### Section 15.1 Arbitration.

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

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

(c) Any arbitration proceeding pursuant to this Article 15 shall be conducted and any award shall be rendered in Houston, Texas in the English language.

### Section 15.2 Decisions and Awards; Costs.

(a) Any decision of or award by an arbitral tribunal pursuant to this Article 15 shall be reduced to writing and shall include the findings of fact and conclusions of Law upon which it is based. The award shall be final and binding upon the Parties and judgment for execution and enforcement of any award may be entered by any court of competent jurisdiction.

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

(c) The costs of arbitration, including reasonable attorneys' fees shall be allocated to each party involved in such proceedings as determined by the arbitral tribunal. The decision or award shall include interest from the date of any breach or other violation of an agreement between the parties at an interest rate specified in such agreement, or if no such interest rate is provided in such agreement for such breach of violation, at an interest rate specified by the arbitral tribunal. Unless otherwise agreed by the Parties, all payments made pursuant to the arbitration decision or award shall be made in United States Dollars free of any deduction or withholding for taxes. Each Party hereby irrevocably waives any challenge to the enforcement of an arbitration decision or award issued in accordance with the provisions of this Article 16; provided, however, that any Party may challenge the enforcement of the decision or award on any of the grounds stated in Article 5 of the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the Federal Arbitration Act. The Parties hereby further irrevocably waive any claim against each other for incidental, consequential, multiple, special or punitive damages.

Section 15.3 Remedies. Seller and Buyer agree that irreparable damage could occur in the event that this Agreement were not performed in accordance with its specific terms or were otherwise breached. Accordingly, each of Seller and Buyer shall have the right to seek from any court of competent jurisdiction, provisional measures in aid of arbitration (including, a temporary restraining order or preliminary injunction) to prevent harm; provided, however, that the Parties agree mutually to seek vacation or modification of any such measure from the issuing court consistent with any decision or order of the arbitral tribunal and each of the Parties is free to seek such a decision or order from the arbitral tribunal. An arbitral tribunal convened under this Article 16 shall have the power to grant an injunction or injunctions to prevent breaches of this Agreement and impose penalties for any Party's failure to comply therewith. Each of Seller and Buyer shall be entitled to enforce specifically the terms and provisions of a decision or an award of such arbitral tribunal providing for such an injunction or injunctions in any court of competent jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity. Seller and Buyer also agree that with regard to any arbitration involving a matter under the schedules established pursuant to Article 9:

- (i) specific performance of any annual program or proposed annual program schedule is not an available remedy under this Agreement,
- (ii) the arbitral tribunal shall not in any way set, or recommend, or require Buyer to adopt an annual program, and
- (iii) the arbitral tribunal shall limit its award to the award of monetary damages.

#### **ARTICLE 16. Seller's Covenant**

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

**ARTICLE 17. Confidentiality**Section 17.1 Confidentiality.

(a) Each Party shall maintain in strict confidence and protect the confidentiality of all the provisions and contents of this Agreement and of all information, reports, data, software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof and any reports, digests or summaries created or derived from any of the foregoing that is provided by one Party to the other Party ("Confidential Information"), and shall not disclose any such Confidential Information to any third party without the prior written consent of the other Party; provided, however, that each Party shall be entitled to use the Confidential Information for any and all lawful purposes relating to its business, operations and activities, including the financing and auditing thereof and shall be entitled (without prior written consent of the other Party) to disclose Confidential Information to its respective Affiliates and to officers, directors and employees of such Affiliates, provided that such Party shall procure that such Affiliate and its officers, directors and employees do not disclose further such Confidential Information.

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

- (i) was public prior to its delivery to such Party;
- (ii) was obtained from a third party with no known duty to maintain its confidentiality;
- (iii) is required to be disclosed by Laws (including the Employment Rights Act 1999 (Eng.) (as amended by the Public Interest Disclosure Act 1998 (Eng.)) or judicial or administrative or arbitral process or by any governmental authority or by the rules of any recognized stock exchange on which the shares of a Party (or its Affiliates) are traded;
- (iv) is provided to professional advisors, agents, auditors or representatives of the Party as is reasonable under the circumstances; provided, however, that the Party receiving such Confidential Information shall require such persons, other than legal counsel, to undertake in writing to keep such Confidential Information confidential and shall use reasonable efforts to ensure compliance with such undertaking;
- (v) is provided to any Supplier to either Party or any Supplier; provided, however, that the Party or Suppliers receiving such Confidential Information shall require such persons to undertake in writing to keep such Confidential Information confidential and shall use reasonable efforts to ensure compliance with such undertaking; or
- (vi) is provided by Seller to Buyer pursuant to the development of a schedule under Article 9.



Section 17.2 Remedies. The Parties agree that:

- (a) damages would not be an adequate remedy for any breach of the provisions of this Article 17;
- (b) either Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Article by the other Party or a third party; and
- (c) no proof of special damages shall be necessary for the enforcement of this Article.

Section 17.3 Survival. The provisions of this Article 17 shall survive the termination or expiration of this Agreement for a period of two (2) years.

## **ARTICLE 18. Notices**

Section 18.1 Notices.

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

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

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

(c) A notice shall be deemed to have been served:

- (i) when delivered by hand at the appropriate address for the receiving party.
- (ii) when received by facsimile copy or electronic mail.
- (iii) if sent by first class mail postage prepaid five (5) Days after it was posted, or

- (iv) if given by radio (in the case of communication contemplated by this Agreement to be given or received by LNG Tankers), when receipt of such radio transmission has been acknowledged by the receiving Party.

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

For notices to Buyer, to:

BG LNG Services, LLC  
5444 Westheimer, Suite 1775  
Houston, Texas 77056  
ATTN: President  
Telephone: +1 713-403-3741  
Facsimile: +1 713-403-3781

For notices to Seller, to:

BG LNG Trading, LLC  
100 Thames Valley Park Drive  
Reading  
Berkshire RG6 1PT  
Attention: Chairman  
Tel.: +44 118 935 3222  
Fax: +44 118 935 3484

Either Party may change its notice address, telephone number or facsimile number by notice to the other Party in the manner specified above. Both Parties agree to promptly notify the other Party of a change in address, telephone number or facsimile number. Buyer shall provide Seller with the address, telephone number and facsimile number for the Operators of each LNG.

## **ARTICLE 19. Assignment**

Section 19.1 General Prohibition. Neither Party shall assign any or all of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. No assignment of this Agreement by Buyer or Seller, whether with or without the consent of the other Party, shall relieve the assigning Party of any of its obligations hereunder.

Section 19.2 Permitted Assignment. Notwithstanding the provisions of Section 19.1 to the contrary, Buyer may assign its rights and obligations under this Agreement to any Affiliate of Buyer, provided that Buyer assigns all of its rights and obligations under all applicable Memoranda and such Affiliate has sufficient rights, via contract or otherwise, to deliver the cumulative Contract Quantity under all applicable Memoranda to one or more Buyer LNG Terminals.

**ARTICLE 20. Representations and Warranties**

Section 20.1 Representations and Warranties. Buyer represents and warrants to Seller, and Seller represents and warrants to Buyer, that on and as of the Effective Date:

(a) it is a company organized under the laws of the State of Delaware duly organized, validly existing and in material compliance with the laws of the jurisdiction of its organization;

(b) it has full organizational power and authority to enter into and perform this Agreement;

(c) all organizational actions necessary to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly taken;

(d) this Agreement has been duly executed and delivered by an authorized officer or other representative of such Party and constitutes the legal, valid and binding obligation of such Party enforceable in accordance with its terms, except as such enforceability may be affected by applicable bankruptcy, reorganization, insolvency, moratorium, limitation of actions, or other similar laws affecting creditors' rights generally, and except that the availability of equitable remedies is subject to judicial discretion; and

(e) the execution, delivery and performance of this Agreement does not violate the organizational documents of such Party or any material agreement to which such Party is a signatory or by which it is bound.

Section 20.2 Compliance with Law. Seller and Buyer each hereby agree to comply with all applicable laws and regulations in connection with the performance of its obligations under this Agreement.

Section 20.3 Covenant to Act as a Reasonable and Prudent Operator. Buyer shall act as a reasonable and prudent operator in the performance of and to further its obligations under this Agreement.

Section 20.4 Firm Terminal Service Agreement. At all times during the term of this Agreement, Buyer shall maintain its current contracted capacity at the Lake Charles Terminal and the Elba Island Terminal for the provision of firm terminal services necessary to enable Buyer to perform its obligations under this Agreement.

**ARTICLE 21. Security**

Section 21.1 Credit Support. If at any time the Parties no longer have the same Ultimate Parent Company, each Party shall thereafter cause to remain in effect during the term of this Agreement, a guaranty in favor of the other Party from a guarantor ("Guarantor") satisfying the requirements of this Article 21.

Section 21.2 Credit Requirements

Each Guarantor shall, as of the date a guaranty is provided pursuant to Section 21.1, satisfy the following credit test ("Credit Test");

(a) the proposed Guarantor has, on a consolidated basis, aggregate capital and reserves (equal to the difference between total assets and liabilities) as reported on its most recently prepared annual financial statements (such financial statements having been issued not more than 12 months prior to the date of the Credit Test and certified by a firm of internationally recognized chartered public accountants as fairly presenting the Guarantor's assets, liabilities and financial position as of the date of such financial statements and the results of the Guarantor's operations for the year then ended) equal to or greater than US \$2.3 billion; and

(b) the proposed Guarantor has a foreign currency issuer credit rating with respect to its senior long term unsecured debt of either Baa2 or higher from Moody's Investors Service Inc. ("Moody's") or BBB or higher from Standard and Poor's Corporation ("S&P"), or the proposed Guarantor's issued senior long term unsecured debt (in foreign currency) has an issue rating of either Baa2 or higher from Moody's or BBB or higher from S&P (in either case, in the event Moody's and S&P cease to publish credit ratings, an equivalent credit rating by a comparable credit rating agency).

## **ARTICLE 22. Termination Rights**

### Section 22.1 Termination for Bankruptcy.

(a) If a Party or its Guarantor becomes subject to a Bankruptcy Event, a Noticing Party may terminate this Agreement by giving not less than ten Days' written notice of such termination to such Party. The Noticed Party shall have such ten-Day period from the delivery of the notice ("Bankruptcy Event Cure Period") to cure such Bankruptcy Event by causing such Bankruptcy Event to cease to exist, or, in the case of a Bankruptcy Event affecting the Noticed Party's Guarantor, by providing the Noticing Party with an replacement guaranty from a Guarantor satisfying the Credit Test. If such Bankruptcy Event is not cured within the Bankruptcy Event Cure Period by the Noticed Party, then the Noticing Party shall have the right to terminate this Agreement and to accelerate the due date of all amounts accrued but not yet payable by the Noticed Party under this Agreement.

### Section 22.2 Seller Termination Rights.

(a) If Buyer fails to pay any amount to Seller on or before the date such amount becomes due and such amount exceeds \$25 million, Seller may give written notice to Buyer of its intent to terminate this Agreement not less than 60 Days after delivery of such notice. Buyer shall have such 60-Day period from the delivery of the notice to cure such default contained therein. If all defaults are not cured within such period by Buyer, then Seller shall have the right to terminate this Agreement.

(b) In the event that Buyer or any of its Affiliates materially breaches any provisions set forth in Sections 10.1, 12.1 or 21.1 or Article 20, then Seller may terminate this Agreement by giving not less than 30 Days' written notice of such termination to Buyer.

Section 22.3 Buyer Termination Rights.

(a) If Sellers fails to pay any amount to Buyer on or before the date such amount becomes due and such amount exceeds \$25 million, Buyer may give written notice to Seller of its intent to terminate this Agreement not less than 60 Days after delivery of such notice. Seller shall have such 60-Day period from the delivery of the notice to cure such default contained therein. If all defaults are not cured within such period by Seller, then Buyer shall have the right to terminate this Agreement.

(b) In the event that Seller or any of its Affiliates materially breaches any provisions set forth in Section 2.4, 12.1 or 21.1 or Article 20, then Buyer may terminate this Agreement by giving not less than 30 Days' written notice of such termination to Seller.

Section 22.4 No Other Right of Termination.

(a) Except as expressly provided in Section 13.3(e) and this Article 22, neither Party shall have any right to terminate this Agreement.

(b) Any termination of this Agreement pursuant to Section 13.3(e) or this Article 22 shall be without prejudice to any other rights and remedies of the terminating Party arising hereunder or by law or otherwise, including the right of such Party to receive payment of all obligations and claims which arose or occurred prior to such termination or by reason of such default.

**ARTICLE 23. Miscellaneous**

Section 23.1 Governing Law. The interpretation and performance of this Agreement shall be governed by and construed in accordance with the Laws of the State of New York, without regard to the law thereof regarding the conflict of laws (other than Section 5-1401 of the General Obligations Law). The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

Section 23.2 Compliance with Laws. Each Party shall, in the performance of this Agreement, comply with all applicable Laws in effect on the date this Agreement was entered into, and as they may be amended from time to time. Notwithstanding anything to the contrary, this Agreement shall not be interpreted or applied so as to require either Party to do, or to refrain from doing, anything that would constitute a violation of any applicable Laws, including, the Foreign Corrupt Practices Act of 1977.

Section 23.3 Language. The language of this Agreement and all other documentation and notices relating to this Agreement shall be the English language.

Section 23.4 Amendment. This Agreement may only be amended, modified or supplemented by a written instrument signed by both Parties.

Section 23.5 Waiver. Neither Party shall be deemed to have waived any right under this Agreement, unless such Party shall have delivered to the other Party a written waiver signed

by an authorized officer of such waiving Party. No delay or omission in the exercise of any power or remedy shall be construed to be a waiver of any default or an acquiescence therein.

Section 23.6 Entire Agreement; Exhibits. This Agreement constitutes the entire agreement between Buyer and Seller concerning the subject matter hereof. All previous documents, undertakings and agreements whether oral, written or otherwise, between the Parties concerning the subject matter hereof are hereby cancelled and shall not affect or modify any of the terms or obligations set forth in this Agreement, except as the same may be made part of this Agreement in accordance with its terms, including the terms of any of the Exhibits. The Exhibits are hereby made an integral part of this Agreement and shall be fully binding upon the Parties.

Section 23.7 Third Party Beneficiaries. Other than as specifically required under Article 15, this Agreement shall not be construed as creating any rights or benefits in any person or entity, other than the Parties hereto and their respective successors and permitted assigns.

Section 23.8 No Partnership. Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture, to impose a trust or partnership duty, obligation or liability on or with regard to either Party, to create any principal/agent relationship between the Parties, or to create any duty, standard of care or liability to any person or entity not a Party hereto.

Section 23.9 Severability. The provisions of this Agreement are severable, and if any portion of this Agreement is deemed legally invalid or unenforceable, the remainder of this Agreement shall survive and remain in full force and effect.

Section 23.10 Consequential Loss or Damage. Notwithstanding anything contained in this Agreement but without prejudice to the express remedies set forth herein and the indemnity obligations of the Parties under Section 14.1, neither Party shall be liable to the other Party for or in respect of any consequential loss or damage, including any Claim, demand or action made or brought against the other Party by a third party, or for special or punitive damages or loss of profits or business interruption, suffered or incurred by the other Party resulting from breach of or failure to perform this Agreement or the breach of any representation or warranty hereunder, whether express or implied.

Section 23.11 Tortious Liability. With respect to breaches of this Agreement (and acts or omissions which constitute breaches), the relationship between Buyer and Seller is contractual and neither Party shall have any claim against the other in tort with respect to such acts or omissions.

Section 23.12 Survival. Notwithstanding anything to the contrary herein, the provisions set forth under Articles 14 and 15, Article 17 (to the extent set forth in Section 17.3), Article 18, Article 19 and Sections 23.1, 23.2, 23.3, 23.5, 23.6, 23.7, 23.8, 23.9, 23.10, 23.11 and 23.12 shall continue and survive the termination of this Agreement.

Section 23.13 Counterpart Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument.

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

BG LNG SERVICES, LLC

By: \_\_\_\_\_

Name: Cynthia Masters

Title: Vice President

BG LNG TRADING, LLC

By: \_\_\_\_\_

Name:

Title:

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed in more than one copy, each of which shall be deemed to be an original as of the day and year first above written.

BG LNG SERVICES, LLC

By: \_\_\_\_\_

Name:

Title:

BG LNG TRADING, LLC

By: \_\_\_\_\_

Name:

Title:



Schedule A

**Memorandum to the Second Amended and Restated Master LNG Sale and Purchase Agreement**  
**Effective January 1, 2009**  
**between BG LNG Trading, LLC, as Seller**  
**and BG LNG Services, LLC, as Buyer**

**TERMS AND CONDITIONS**

1. Long-Term Supply Agreement

The Long-Term Supply Agreement, from which the LNG to be sold under this Memorandum is that certain [\_\_\_\_\_] dated [\_\_\_\_\_] between [\_\_\_\_\_] as buyer, and [\_\_\_\_\_] as seller, a copy of which has been provided to Buyer.

2. Source of Supply

The source of supply under the Long-Term Supply Agreement is the loading port and related facilities located at [\_\_\_\_\_].

3. Supplier

The supplier(s) under the Long-Term Supply Agreement is [\_\_\_\_\_].

4. Contract Term

The term of the Long-Term Supply Agreement commences on [\_\_\_\_\_] and expires on [\_\_\_\_\_] as may be extended or earlier terminated pursuant to the terms of the Long-Term Supply Agreement.

5. Annual Contract Quantity

The annual contract quantity under the Long-Term Supply Agreement is [\_\_\_\_\_] MMBtu/year], subject to adjustment pursuant to the provisions of the Long-Term Supply Agreement.

IN WITNESS HEREOF, each of the Parties has caused this Memorandum to be executed in more than one copy, each of which shall be deemed to be an original as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BG LNG SERVICES, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

BG LNG TRADING, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_