

**FLUXYS LNG NV/SA**

and

**[SHIPPER]**

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**LNG TERMINALLING AGREEMENT  
for LNG ~~Redelivery~~ Services**

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**THIS AGREEMENT** is made on [DATE] (hereinafter the **“LNG Terminalling Agreement”**, or the **“LTA”**) is entered into by and

## **BETWEEN**

**(1) FLUXYS LNG NV/SA**, a company incorporated in and organised under the laws of Belgium, having its registered office at rue Guimard 4, B-1040 Brussels, Belgium, registered at the Register for Legal Entities (RPR/RPM) under number 0426 047 853

Hereafter referred to as **“Fluxys LNG”** or the **“Terminal Operator”**;

Hereby duly represented by [•]

AND

**(2)** [NAME], a company incorporated in and organised under the laws of [•], having its registered office at [•], registered under number [•]

Referred to as the **“Shipper”**;

Hereby duly represented by [•]

Terminal Operator and Shipper may hereinafter individually be referred to as the **“Party”** collectively as the **“Parties”**.

## **WHEREAS**

- a) **A** Terminal Operator owns and operates the LNG Terminal. It is able, duly authorised and empowered to provide the LNG ~~Redelivery~~ Services offered by Terminal Operator to Shipper under this LTA.
- b) **B** Shipper wishes to purchase from Terminal Operator certain LNG ~~Redelivery~~ Services offered by Terminal Operator to Shipper and Terminal Operator wishes to provide the LNG ~~Redelivery~~ Services to Shipper.
- c) **C** This LTA has been set out in accordance with the code of conduct regarding access to the natural gas transmission network, storage facility for natural gas and LNG facility as approved by royal decree of 23 December 2010 (the **Code of Conduct**), and has been approved by the CREG on [DATE].

- d) **D** The Parties wish to enter into this LTA in accordance with the terms and conditions set out in this LNG Terminalling Agreement and this in order to set out the basis upon which Terminal Operator will provide to Shipper and Shipper will purchase, pay and use the LNG ~~Redelivery~~ Services.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 DEFINITIONS**

Unless the context otherwise requires in this LTA, and its attachments, capitalised words and expressions used in this LTA including its attachments and in any Services Confirmation shall have the meaning given to them in the glossary of definitions set out in Attachment C.

**1.2 INTERPRETATION**

In this LTA, unless the context otherwise requires:

- a) reference to a 'person' shall be construed so as to include any person, individual, firm, company, government, state or agency of a state or any joint venture, association or partnership (whether or not having separate legal personality);
- b) reference to a 'company' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- c) reference to any person or company includes references to that person's or company's successors and permitted assignees;
- d) the singular includes the plural and vice versa as appropriate, except where appropriate for the terms Shipper, Party and Terminal Operator;
- e) reference to any gender includes the other gender;
- f) unless otherwise specifically stated, references to an 'Attachment' and a 'Clause' shall be to an attachment and a clause in this LTA;
- g) unless otherwise specifically stated, references to 'GC' shall be to a section in the General Conditions;
- h) headings and the table of contents are inserted for convenience only and do not affect the construction or interpretation of this LTA;
- i) unless otherwise stated, reference to an agreement, instrument or procedures is to the same as amended, novated, modified or replaced from time to time;

- j) reference to a statute, by-law, regulation, rule, delegated legislation or order is to the same as amended, modified or replaced, from time to time, and to any by-law, regulation, rule, delegated legislation or order made there under; and
- k) In case an index or reference used or referred to in this LTA ceases to be available or is materially changed or affected in its content, or no longer reflects the price of the commodity it refers to at the place it refers to, or the methodology used to calculate the index is materially altered as compared to how it was calculated at the date of execution of this LTA, Terminal Operator shall, after having consulted the Shipper and the Other Shippers, provide an appropriate adjustment or replacement of such index in order to achieve as accurately as possible the objectives which were at the basis of the choice of the original index. Such adjustment or replacement shall apply automatically, as the case may be after the approval by the CREG.

## 2. SCOPE OF THIS AGREEMENT

### 2.1 OBJECT

The object of this LTA is to lay down the terms and conditions upon which the Shipper will be able, on the Service Start Date, to subscribe to the LNG ~~Redelivery~~ Services in relation to the LNG Terminal of Zeebrugge and upon which the Terminal Operator shall perform said LNG ~~Redelivery~~ Services.

For the avoidance of doubt, the provisions of this LTA and its attachments will be applicable only to the extent that the Shipper has subscribed LNG ~~Redelivery~~ Services and only for the performance of such subscribed Services.

### 2.2 CONTENTS

This LTA comprises the provisions contained herein, together with the LNG ~~Redelivery~~ Services Confirmation (the “**Services Confirmation**”) in Attachment A, the general conditions contained in Attachment B (the “**General Conditions**”) and the definitions referred to in Attachment C, which shall all form an integral part of this LTA. By signing this LTA, each of Terminal Operator and Shipper agrees to be bound by all provisions set out herein, including, without limitation, the General Conditions.

### 2.3 LNG ACCESS CODE

Any LNG ~~Redelivery~~ Service provided by Terminal Operator to Shipper under this LTA shall also be governed by the procedures, rules and regulations contained in the LNG Access Code (the “**AC**”) as approved by the CREG. By

signing this LTA, each of the Terminal Operator and Shipper acknowledges to be bound by and have taken knowledge of all provisions set out in the LNG Access Code.

## 2.4 **LNG TERMINALLING PROGRAM**

The LNG Terminalling Program as approved by the CREG describes the LNG Services which are offered by the Terminal Operator and which may be subscribed by the Shipper under this LTA. By signing this LTA, each of the Terminal Operator and Shipper acknowledges to have taken knowledge of the content of the LNG Terminalling Program as may be changed from time to time.

## 2.5 **RELATIONSHIP TO OTHER REGULATED AGREEMENTS**

Whenever Services provided by the Terminal Operator to Shipper are not booked through a Services Confirmation indicating the agreement governing such Services, such Services shall be governed by this LNG Terminalling Agreement.

## 3. **LNG ~~REDELIVERY~~ SERVICES**

### 3.1 **PROVISION OF LNG ~~REDELIVERY~~ SERVICES**

During the Contract Term, Terminal Operator agrees to provide to Shipper and Shipper agrees to purchase from Terminal Operator the LNG ~~Redelivery~~ Services, ~~in particular Additional Berthing Rights~~, set out in any Services Confirmation as enclosed in attachment A and provided by Terminal Operator to Shipper under this LTA, in accordance with the terms and conditions contained in this LTA.

### 3.2 **CONFIRMATION OF SUBSCRIPTION OF LNG ~~REDELIVERY~~ SERVICES**

During the Contract Term, Shipper may submit requests to subscribe to LNG ~~Redelivery~~ Services from Terminal Operator in accordance with the LNG Access Code. Any Services Confirmation Form duly completed and executed in accordance with the LNG Access Code shall become part of this LTA and be added in Attachment A to this LTA.

## 4. **TERM OF THE AGREEMENT**

### 4.1 **EFFECTIVE DATE**

The Effective Date, on which this LTA will enter into force and effect, shall be [●].

## 4.2 **CONTRACT TERM**

This LTA shall remain in full force and effect for an undetermined term, unless terminated in accordance with this LTA.

## 4.3 **SURVIVAL**

Termination or expiry of this LTA does not affect the provisions of this LTA which are expressly stated to survive termination or which are necessary to allow the Parties to enforce any rights associated with such provisions or rights which arose prior to such termination.

# 5. **NOTICES**

5.1 Any notice which a Party is required, or permitted, to give pursuant to this LTA or the LNG Access Code, including invoices shall be given in writing in the English language, signed by a duly authorized representative of the Party giving such notice and shall be deemed to have been properly given, except if expressly otherwise provided:

- (i) if delivered by hand to the Party in question upon actual receipt;
- (ii) if sent by registered mail (registered airmail if international), upon actual receipt; or
- (iii) if transmitted by facsimile to the address of such Party set forth below, as and when a positive transmission report is issued at the sender's end, to the Party at such address or such facsimile transmission number as the Party in question from time to time designates by notice (any such change in address or facsimile transmission number shall not be effective until thirty (30) Days after receipt of such notice) and, until such notice is given, the addresses and facsimile numbers of the Parties will be as follows, except if expressly otherwise indicated:

Terminal Operator:  
Fluxys LNG NV/SA  
Attn: Commercial Department  
Rue Guimard 4  
B-1040 Brussels  
Tel: +32 2 282 79 99  
Fax: +32 2 282 78 69  
e-mail: info.LNG@fluxys.com

Shipper:

Name:	[Name]
Attn:	[Name]
	[Address line 1]
	[Address line 2]
	[Address line 3]
Tel:	
Fax:	
e-Mail:	

5.2 All operational notices may also be sent in English by e-mail to:

(i) Fluxys LNG:

Email: [info.LNG@fluxys.com](mailto:info.LNG@fluxys.com)

Attention: LNG Operations

(ii) (Client):

Email : @

@

Attention: LNG Operations

5.3 All notices delivered by registered mail or hand or sent by facsimile are effective on the Day when received at the recipient's address set out above – such receipt deemed to have occurred as stipulated in Clause 5.1 – during normal business hours of the recipient insofar said Day is a Business Day. In case such notice is received by the Terminal Operator or Shipper outside of normal business hours on a Day or on a Day which is not respectively a Business Day, such notice shall be effective as from 10:00 a.m. on the next Business Day, as applicable.

5.4 Any notice given by facsimile transmission (but excluding any Terminal Nominations, notices and communications) shall be subsequently confirmed by letter sent by registered mail or hand, but without prejudice to the validity of the original notice if received. If a facsimile transmission given under this clause is not legible, the recipient shall inform the sending



Party thereof as soon as possible upon which the sending Party shall resend the facsimile notice.

- 5.5 For specific ship to shore communications the provisions under Clauses 5.1 to 5.3 (inclusive) above shall not apply but shall be governed by the provisions regarding the LNG Ship approval procedure as provided for in the section 3.2 of the LNG Access Code.
- 5.6 Each Party may change these contact details to which notice shall be sent, or specify one additional address to which copies of notices shall be sent, in accordance with the provisions of this LTA.

## **6. GOVERNING LAW AND DISPUTE RESOLUTION**

### **6.1 GOVERNING LAW**

This LTA shall be governed by and shall be construed and interpreted in accordance with Belgian law (which for the sake of clarity comprises the applicable European law).

### **6.2 ARBITRATION**

Except as otherwise provided in this LTA and without prejudice to Article 15/18 of the Gas Act of 12 April 1965, the Parties agree that arbitration shall be the sole means for resolution of disputes arising out of this LTA. If any dispute arises between Shipper and Terminal Operator in relation to or in connection with this LTA, or in connection with the interpretation, performance or non-performance hereof, including any question regarding its existence, validity or termination, or regarding a breach thereof (a "Dispute"), Shipper and Terminal Operator shall promptly discuss such Dispute in an attempt to resolve such Dispute amicably through negotiations. If such Dispute has not been resolved at the latest within sixty (60) Days after either Party has notified the other in writing of the existence of the Dispute, then either Shipper or Terminal Operator may, by notice to the other, refer the Dispute to be finally settled by arbitration.

Such arbitration shall be conducted in accordance with the rules of arbitration of the International Chamber of Commerce prevailing and in effect as at the date either Party refers the Dispute to arbitration by three (3) arbitrators.

The claiming Party shall appoint a qualified arbitrator within ten (10) Days of the respondent's receipt of the notice of arbitration upon which the responding Party shall appoint its arbitrator. The two arbitrators so appointed shall within ten (10) Days of the appointment of the second arbitrator, appoint a third arbitrator, who shall act as the presiding arbitrator. Should an arbitrator

fail to be so appointed, then such arbitrator will be appointed in accordance with the Rules. The place of the arbitration will be Paris, France.

The language of the arbitration will be English.

The arbitrators shall apply the governing law to the interpretation of this LTA, without reference to the conflict of law provisions thereof.

The Parties waive any defence based on sovereign immunity to arbitration, immunity to judicial proceedings to enforce or to aid any such arbitration, and immunity to enforcement and execution of the award or of any judgment entered thereon.

The decision of the arbitration panel shall include a statement of the reasons for such decision and shall be final and binding on the Parties and enforceable in accordance with the rules of the New York Convention of 1958 on the recognition and enforcement of foreign arbitral awards.

Judgement upon the award of the arbitrators may be entered in any court or other authority having jurisdiction or application may be made to said courts or other authority for a judicial acceptance of the award and an order of enforcement, as the case may be.

## **6.3 EXPERTS**

### **6.3.1 Application**

Notwithstanding the provisions of Clause 6.2 and without prejudice to Article 15/18 of the Gas Act, if a dispute arises in connection with the performance or non-performance of any of the provisions of the General Conditions in respect of 'quality requirements' and 'measurement and testing' or, if agreed by the Parties, in respect of any other matter, but for sake of clarity, not on the legal merit of any right alleged by a Party, or as otherwise specifically provided in this LTA, the Parties shall promptly discuss such dispute in an attempt to resolve the matter amicably. Failing resolution of such dispute at the latest sixty (60) Days after either Party has notified the other in writing of the dispute's existence, the Parties shall agree to either submit the matter for expert opinion or to arbitration under Clause 6.2.

### **6.3.2 Appointment of a single expert**

The Party requesting the appointment of an expert shall notify the other Party hereof by registered mail, mentioning the details of the matter which is proposed to be submitted to the expert. Upon receipt of such registered notice the submission of the matter to expert opinion, each Party shall nominate three proposed experts in order of preference. The Parties agree to appoint the expert whose name appears in common on the lists of both Parties. If the lists contain more than one common name, the expert with the

highest combined preference shall be appointed. If this process results in a tie the Parties shall promptly discuss the matter to seek agreement on the expert to be chosen. If the Parties fail within ten (10) Business Days after receipt of the registered mail to select an expert in the manner prescribed (including, without limitation, the case in which the Parties' lists contain no name in common), the most diligent Party may request the ICC International Centre for Expertise to appoint the expert in accordance with the ICC Selection Rules as then in force.

Upon an expert being agreed or selected, under the foregoing provisions of this Clause 6.3, the most diligent Party shall forthwith notify such expert of his selection and shall request him within ten (10) Business Days to indicate whether or not he is willing and able to accept the appointment and the compensation conditions of its intervention (the "Acceptance"). If such expert is either unwilling or unable to accept such appointment or has not indicated his willingness and ability to accept such appointment or that no agreement can be reached regarding the compensation conditions within the said period of ten (10) Business Days, then the procedure as described under paragraph 'Appointment of a single expert' above shall again be applied to nominate an expert and this process shall be repeated until an expert is found who accepts appointment. The date on which the expert notifies the Acceptance shall be the date of his appointment.

#### **6.3.3 Qualification of expert/ Conflicting Interest**

No person nominated by a Party or appointed pursuant to the ICC Selection Rules shall be entitled to act as an expert under this Clause 6.3 unless such person is qualified by education, experience and training to determine the matter in dispute. Any person appointed or selected as the expert in accordance with the above provisions shall be entitled to act as such expert provided that before accepting such appointment the proposed expert shall have fully disclosed any interest or duty which conflicts or may conflict with the function under the appointment and/or may prejudice an opinion. No person shall, without the prior written agreement of both Parties, be appointed as expert who is (or has been at any time within the preceding six (6) Years) an employee of either Party or either Party's Affiliate or who is (or has been at any time within the preceding three (3) Years) a consultant to or contractor of either Party or either Party's Affiliate or who holds any significant financial interest in either Party or either Party's Affiliate. No person shall be appointed as an expert who has not agreed to hold in confidence any and all information furnished by the Parties in connection with the dispute under this LTA and the existence of the dispute and the outcome thereof.

Any expert, whether or not he has rendered an opinion, shall not be appointed as an arbitrator and/or an expert under Clause 6.2 or Clause 6.3 within a period of three (3) Years as from such appointment.

#### 6.3.4 Opinion

Together with the mention that the expert accepts his appointment in accordance with this Article, the expert shall invite Parties to communicate to him all evidence and/or information within ten (10) Business Days. The expert may make all other enquiries and require any other evidence as may be necessary for issuing its opinion on the matter. The proceedings shall be conducted in English. Unless otherwise agreed between the Parties, the Parties and the Expert treat the information and the data they exchange between them as confidential. Both Parties shall have the opportunity to make representations to the expert. All submissions and information submitted by one Party to the expert shall also be provided to the other Party.

The expert shall make a draft opinion in writing and in such draft opinion shall provide reasons for the draft opinion, not later than forty-five (45) Days after the date of appointment and shall ignore data, information and submissions supplied and made more than thirty (30) Days following such date of appointment unless the same are furnished in response to a specific request from the expert. The expert shall issue such draft opinion to the Parties and each Party shall have fifteen (15) Days to provide the expert with comments on such draft opinion. Within ten (10) Days after the date for receipt of such comments the expert shall issue its final opinion.

The expert may obtain such independent professional and/or technical advice as may be reasonably required.

The said expert shall be deemed not to be an arbitrator but shall render an opinion as an expert and any applicable law or legislation relating to arbitration shall not apply to such expert or the opinion or the procedure by which such opinions are reached. The opinion of the expert must be written and must be motivated. The opinion of the expert shall be final and binding upon the Parties save in the event of fraud, mistake or failure by the expert to disclose any relevant interest or duty in accordance with this Clause 6.3. As the case may be, the opinion shall be translated into French or Dutch by a sworn translator. Unless otherwise agreed by the Parties, the expert's opinion shall be admissible in any judicial proceeding in which the Parties thereto were Parties to the expertise proceedings in which such opinion was issued.

#### 6.3.5 Substitution of expert

If within a reasonable period (which shall not without the prior written consent of both Parties exceed forty-five (45) Days after the acceptance by an expert of the appointment) such expert shall not have rendered a draft opinion or shall not have rendered a final opinion within twenty-five (25) Days thereafter, then upon notice of either Party the Parties shall discuss in good faith on the need for the appointment of a new expert under the provisions of this Article. The appointment of the previous expert shall cease upon agreement by the

Parties pursuant to this clause, and the previous expert will return all papers, documents, and information to the Party which has provided the same to the expert and, upon demand of either Party, destroy all work products that the expert has created.

#### **6.3.6 Costs**

Each Party shall bear the costs and expenses of all counsel, witnesses and employees retained by it. The costs and expenses of the expert shall be apportioned between the Parties in a manner that is proportionate to the level of responsibility of the Parties as determined by the expert. The determination shall be reasoned and the reasoning shall in any event address the proportions in which the Parties should bear the expert's costs. Any costs of an expert who shall not have rendered a determination shall be shared equally between the Parties.

Made on the date here above mentioned, in two (2) originals, of which one original will be held by Terminal Operator and the other will be held by Shipper.

**FLUXYS LNG NV/SA**  
**as Terminal Operator**

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

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

**[SHIPPER]**  
**as Shipper**

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

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

# ATTACHMENT A

SERVICES CONFIRMATION FOR LNG ~~REDELIVERY~~ SERVICES

# ATTACHMENT B

## GENERAL CONDITIONS FOR LNG ~~REDELIVERY~~ SERVICES

## 1. DEFINITIONS

In these General Conditions, capitalised words and expressions shall have the meaning given to them in Clause 1.1 of the LTA.

## 2. LNG ~~REDELIVERY~~ SERVICES

### 2.1 SERVICE TERMS AND CONDITIONS

Subject to the terms and conditions of this LTA and the section 2 of the LNG Access Code, during the Contract Term, Terminal Operator shall provide Shipper with, and Shipper shall pay for, the LNG Services ~~LNG Redelivery Services~~—as Shipper may have subscribed pursuant to any Services Confirmation (attachment A of the LTA), for the relevant Service Term.

### 2.2 LIMIT OF TERMINAL OPERATOR'S OBLIGATION

2.2.1 Subject to AC 3.1, Terminal Operator shall at no time be obliged to redeliver to Shipper at the Redelivery Point:

- (i) a Quantity of Natural Gas in energy terms (expressed in kWh) greater than Shipper's Gas In Storage at that time or (ii) the quantity of LNG made available by any Other Shipper to Shipper and such Other Shipper has sufficient Gas in Storage; or
- (ii) a Quantity of Natural Gas in energy terms (expressed in kWh) at a rate exceeding Shipper's Send Out Capacity.

~~2.2.1~~2.2.2In accordance with the Code of Conduct, Terminal Operator shall at no time be obliged to deliver to Shipper at the Redelivery Point for Loading a Quantity of LNG in energy terms (expressed in kWh) greater than (i) the Shipper's Gas In Storage at that time or (ii) the Quantity of LNG made available by any Other Shipper to Shipper and to the extent that such Other Shipper has sufficient Gas In Storage. In such case, the Terminal Operator shall inform as soon as reasonably possible the Shipper in advance.

2.2.3 Without prejudice to section AC 3.7.1 and AC 3.1 ~~12~~, Terminal Operator could decide to deliver to Shipper a Quantity of LNG at the Redelivery Point for Loading which is less than the Nominated Volume of LNG in case Terminal Operator has reasonable and documented grounds (including but not limited to Adverse Weather Conditions, pressure in the tanks, etc.) to believe that a threat to the structural and operational integrity of the LNG Terminal would occur prior to the arrival of Shipper's or Other Shipper's LNG Ship that is expected to berth at the LNG Terminal. In such case, the Terminal Operator shall as soon as possible inform the Shipper in advance.



### **3. CUSTODY, RISK AND TITLE**

3.1.1 Custody and all risks with respect to, including risk of loss, to all LNG shall remain with Shipper upstream of the Delivery Point and shall pass to Terminal Operator at the Delivery Point. Custody and all risks with respect to, including risk of loss, of the LNG received by Terminal Operator and the associated regasified Natural Gas shall remain with Terminal Operator from the Delivery Point to the Redelivery Point or to the Redelivery Point for Truck Loading or to the Redelivery Point for Loading. Custody and all risks with respect to, including risk of loss, of the LNG redelivered to Shipper shall pass to Shipper immediately downstream of the Redelivery Point for Truck Loading or of the Redelivered Point for Loading. Custody and all risks with respect to, including risk of loss, of the associated regasified Natural Gas redelivered to Shipper shall pass to Shipper immediately downstream of the Redelivery Point.

For the avoidance of doubt,

- (i) Terminal Operator shall not be liable for any loss or damage arising from any act, event or omission occurring before receipt of Shipper's LNG by the Terminal Operator at the Delivery Point except to the extent caused by Terminal Operator.
- (ii) Without prejudice to the provision here below, Shipper shall not be liable for any loss or damage arising from any act, event or omission occurring before delivery of Shipper's regasified LNG by Terminal Operator at the Redelivery Point except to the extent caused by Shipper.
- (iii) Without prejudice to the provision here below, Shipper shall not be liable for any loss or damage arising from any act, event or omission occurring before redelivery of Shipper's LNG by Terminal Operator at the Redelivery Point for Truck Loading or the Redelivery Point for Loading except to the extent caused by Shipper.

3.1.2 Subject to GC ~~3.1.32-3.3~~, title to Shipper's LNG and the associated regasified Natural Gas shall remain with Shipper at all times at and between the Delivery Point and the Redelivery Point or Redelivery Point for Truck Loading or Redelivery Point for Loading.

~~2.2.23.1.3~~ Shipper acknowledges that Shipper's LNG and associated regasified Natural Gas shall be commingled with LNG and associated regasified Natural Gas of Other Shippers and/or Other Users as well as the operational Quantity of LNG and the associated regasified Natural Gas of the Terminal Operator.

### **3.4. QUALITY REQUIREMENTS**

#### **3.14.1 SPECIFICATION**

4.1.1 Shipper shall deliver LNG at the Delivery Point, which complies with the Specification for the Delivery Point in accordance with AC 3.3.1.

4.1.2 Provided Shipper's LNG delivered at the Delivery Point complied with the Specification for the Delivery Point, Terminal Operator shall redeliver to, or make available at the Redelivery Point, Natural Gas which complies with the Specification for the Redelivery Point.

4.1.3 As soon as either Party knows or has reason to know that Shipper's LNG being delivered at the Delivery Point or the Natural Gas being redelivered by Terminal Operator at the Redelivery Point (as the case may be) shall not or may not be in compliance with the applicable Specification, such Party shall notify the other Party with the details and cause of such non-compliance, if known, and give a good faith estimate of the probable duration of such non-compliance. In such case and without prejudice to GC 4.2 and 4.3 hereunder, the Parties shall consult with each other to determine what steps can be reasonably taken to alleviate or to eliminate the problem.

4.1.4 Terminal Operator, based on its available knowledge, will only accept to unload Off-Specification LNG if Terminal Operator can reasonably expect to be able to redeliver Natural Gas at the Redelivery Point which is compliant with the Specification for the Redelivery Point.

4.1.5 Notwithstanding the provisions of AC 3.3, if the Gross Heating Value and/or Wobbe Number of Shipper's LNG to be delivered under this Agreement is higher than the limits of the Specification for the Delivery Point by reason of boil-off occurring during a delay in unloading an LNG Ship of more than forty-eight (48) hours after Notice of Readiness has been given such LNG shall be deemed to have met the Specification for the Delivery Point regarding Gross Heating Value and/or Wobbe Number, except where the delay is due to reasons which would result in an extension of the Allowed Laytime as per AC 3.1.4.5.1.

3.1.14.1.6 Provided the LNG in the tanks in the LNG terminal complies with the Specification at the Redelivery Point for Loading, LNG delivered by Terminal Operator to Shipper at the Redelivery Point for Loading pursuant to and in accordance with this LTA and the LNG Access Code, shall comply with the Specification for the Redelivery Point for Loading, as provided for in the section 3.3 of the LNG Access Code.

3.1.24.1.7 As soon as Terminal Operator knows or has reason to know that LNG being delivered to the LNG Ship shall not or may not be in compliance with the applicable Specification as per the present GC ~~43.1.61~~, Terminal Operator shall notify Shipper with the details and cause of such non-

compliance, if known, and give a good faith estimate of the probable duration of such non-compliance. Shipper shall be entitled to either (i) accept such non compliant LNG in which case Terminal Operator could in no case be held liable for any damages incurred by the Shipper due to such non compliancy or (ii) to refuse the non compliant LNG.

4.1.8 Neither Party can be held liable for damages arising out of the ageing of LNG to be delivered under this LTA, it being understood that the Terminal Operator shall make reasonable endeavours to minimize the consequences of the ageing.

## 4.2 SHIPPER'S FAILURE TO CONFORM

4.2.1 Without prejudice to GC 4.1, if Shipper tenders for delivery Off-Specification LNG, Terminal Operator may refuse, without prejudice to any other right or remedy it may have under this GC 4, to receive and accept in whole or in part any such Off-Specification LNG. Notwithstanding the previous sentence, Terminal Operator shall use its reasonable endeavours, with the existing installations and provided Terminal Operator shall not incur any costs other than those, which Shipper shall reimburse pursuant to this section, to accept such Off-Specification LNG and (i) to redeliver Natural Gas that complies with the Specification for the Redelivery Point or (ii) to redeliver to Shipper LNG which complies with the Specification for the Redelivery Point for Loading. Shipper shall notify Terminal Operator as soon as reasonably possible once Shipper knows or has reason to suspect that the LNG scheduled to be delivered to the LNG Terminal shall not or may not be in compliance with the Specification for the Delivery Point. Insofar as Terminal Operator knows, ultimately no later than six (6) hours before the Tide on which an LNG Ship actually proceeds to the LNG Terminal for unloading, that the LNG scheduled to be delivered to the LNG Terminal will not or may not be in compliance with the Specification for the Delivery Point, Terminal Operator shall not knowingly accept delivery of such a Nominated Cargo of LNG, in whole or in part, from Shipper without first informing Shipper of the terms and conditions upon which Terminal Operator could accept delivery of such Off-Specification LNG including, as the case may be, a good faith estimate of any direct costs, direct expenses and other direct losses (including, amongst others, the costs and expenses related to:

- (i) the segregation of the Off-Specification LNG;
- (ii) the treatment of LNG of Other Shippers or Other Users that may be contaminated due to such acceptance; and,

(iii) other means downstream of the LNG Terminal which Terminal Operator could use to make the Natural Gas compliant with the Specification for the Redelivery Point).

which Terminal Operator believes it will incur in order to accept delivery of the Off-Specification LNG and (i) redeliver to Shipper Natural Gas which complies with the Specification for the Redelivery Point or (ii) redeliver to Shipper LNG which complies with the Specification for the Redelivery Point for Loading. Terminal Operator shall act as a Reasonable and Prudent Operator in order to minimize such direct costs, direct expenses and direct losses.

4.2.2 If the Parties agree to unload the Off-Specification LNG, Terminal Operator shall use its reasonable endeavours (unless otherwise agreed) to (i) redeliver Natural Gas at the Redelivery Point that is in compliance with the Specification for the Redelivery Point or (ii) redeliver to Shipper LNG which complies with the Specification for the Redelivery Point for Loading but, subject to GC 4.2.7, Terminal Operator cannot be held liable if, after having used its reasonable endeavours, the Natural Gas redelivered at the Redelivery Point or the LNG redelivered at the Redelivery Point for Loading is not in compliance with the Specification for the Redelivery Point or Redelivery Point for Loading. Terminal Operator shall give Shipper regular and frequent updates as to the status of this process, which shall be given at least once a Day. It is understood however that Shipper shall pay such direct costs, direct expenses and other direct losses actually incurred by Terminal Operator including the direct costs, direct expenses and other direct losses exceeding Terminal Operator's agreed good faith estimate, which are properly documented and presented to Shipper provided Terminal Operator takes measures, acting as a Reasonable and Prudent Operator, to minimize such direct costs, direct expenses and other direct losses. Any properly documented direct damages, direct costs and direct expenses relating to the abovementioned consultation process shall be the full responsibility of Shipper, which include, amongst others, any delay and/or Demurrage Rate.

4.2.3 Terminal Operator shall unload LNG Ships in such a way as to minimise the risk of contaminating LNG already in the LNG Terminal which, when delivered, was in compliance with the Specification for the Delivery Point until the Nominated Cargo of LNG being unloaded is determined to be in compliance with the Specification for the Delivery Point.

4.2.4 If Terminal Operator has been notified, in accordance with the preceding paragraphs of this section, that the Nominated Cargo of LNG that is to be unloaded will not or may not meet the Specification for the Delivery Point, Terminal Operator shall not commingle such LNG that will or may not meet the Specification for the Delivery Point without first obtaining the consent of all Other Shippers and Other Users that currently have Gas In Storage within the LNG Terminal or would have Gas In

Storage within the affected period pursuant to the RBS. Notwithstanding the approval of Other Shippers and/or Other Users, Terminal Operator shall be entitled to refuse to accept the Off-Specification LNG.

4.2.5 In case:

- (i) Terminal Operator becomes aware later than six (6) hours before the Tide on which an LNG Ship actually proceeds to the LNG Terminal for discharging, that the LNG scheduled to be delivered to the LNG Terminal will not or may not be in compliance with the Specification for the Delivery Point and if, in such case the LNG is delivered to Terminal Operator; or,
- (ii) Off-Specification LNG is delivered without having been accepted by Terminal Operator.

Shipper shall reimburse Terminal Operator all reasonable properly documented direct costs, direct expenses and other direct losses (including (x) the costs related to the segregation of the Off-Specification LNG, (y) the treatment of LNG of Other Shippers and Other Users that is contaminated due to such delivery and (z) other means downstream of the LNG Terminal which Terminal Operator could use to make the Natural Gas compliant with the Specifications for the Redelivery Point, or the LNG compliant with the Specifications for the Redelivery Point for Loading) actually incurred by Terminal Operator which are properly documented and presented to Shipper due to the failure of Shipper's LNG to be in compliance with the Specification for the Delivery Point. Terminal Operator shall act as a Reasonable and Prudent Operator and take all reasonable measures to minimize such direct costs, direct expenses and direct losses, which Terminal Operator may incur.

4.2.6 When Off-Specification LNG is being delivered by Shipper pursuant GC 4.2, Terminal Operator shall, upon becoming aware of the situation pursuant to the measurement and testing of the LNG at the Delivery Point by virtue of AC 3.4.4.1, notify Shipper as soon as possible hereof and shall have the right to request Shipper (master of the LNG Ship) to stop unloading LNG forthwith. Thereafter, if Terminal Operator cannot despite the use of its reasonable endeavours accept the Off-Specification LNG, Terminal Operator shall be entitled to request Shipper to cause the LNG Ship to promptly leave the LNG Terminal provided the master of the LNG Ship can do so safely (which actions may include but not be limited to rearranging of the LNG cargo within the LNG Ship). If Terminal Operator does not make such request, Shipper shall nevertheless have the right to stop unloading of the Off-Specification LNG and to leave the LNG Terminal. For the avoidance of doubt, any damages, costs and expenses shall be treated in accordance with the provisions of this GC 4.2.

4.2.7 If Terminal Operator has accepted from Shipper Off-Specification LNG at the Delivery Point (or from Transhipper at the Delivery Point for

Transshipment and Transshipper subsequently transfers such Off-Specification LNG to Shipper), Shipper may not (and Shipper procures that any other User to whom the Off-Specification LNG is transferred shall not) refuse to accept Off-Specification Natural Gas at the Redelivery Point or Off-Specification LNG at the Redelivery Point for Loading (and Shipper procures that any other User to whom the Off-Specification LNG is transferred), to the extent that Terminal Operator has used its reasonable endeavours to bring the Off-Specification LNG in compliance with the Specification in accordance with the provisions of this GC 4 and the cause of the Off-Specification Natural Gas is related to the Off-Specification LNG. The quality of the redelivered Natural Gas, insofar accepted by Terminal Operator at the Delivery Point, shall not be further out of compliance for the parameters for which the LNG was Off-Specification LNG and the Natural Gas shall not be out of compliance for any parameters for which the LNG was in compliance with the Specification for the Delivery Point.

#### **4.3 TERMINAL OPERATOR'S FAILURE TO CONFORM**

4.3.1 If Terminal Operator makes Off-Specification Natural Gas available at the Redelivery Point or Off-Specification LNG available at the Redelivery Point for Loading, and provided Shipper's LNG complied with the Specification for the Delivery Point, Shipper may refuse but shall use reasonable endeavours, without prejudice to any other right or remedy it may have, to receive and accept in whole or in part any Off-Specification Natural Gas or Off-Specification LNG, subject to Terminal Operator: (i) requesting the Transmission System Operator to accept Off-Specification Natural Gas at the Redelivery Point; and (ii) Terminal Operator reimbursing Shipper all reasonable direct costs, direct expenses and other direct losses actually incurred by Shipper which are properly documented and presented to Terminal Operator due to the failure of Terminal Operator to comply with the Specification for the Redelivery Point or Redelivery Point for Loading. Shipper shall take all reasonable measures to minimize such direct costs, direct expenses and direct losses, which Shipper may incur.

3.1-34.3.2 If Off-Specification Natural Gas is redelivered at the Redelivery Point or Off-Specification LNG is redelivered at the Redelivery Point for Loading without having been accepted by Shipper, and provided Shipper's LNG complied with the Specification for the Delivery Point, Terminal Operator shall reimburse Shipper all reasonable direct costs, direct expenses and other direct losses actually incurred by Shipper which are properly documented and presented to Terminal Operator due to Terminal Operator's failure to redeliver Natural Gas in compliance with the Specification for the Redelivery Point or Terminal Operator's failure to redeliver LNG in compliance with the Specification for the Redelivery Point for Loading, provided Shipper takes all reasonable measures to



minimize such direct costs, direct expenses and other direct losses which Shipper may incur. This GC 4.3.2 shall also apply if Terminal Operator has accepted Off-Specification LNG from Other Shipper(s) or Other User(s) under GC 4.2.4 without consulting with Shipper or after Shipper has refused to allow Terminal Operator to commingle its LNG already within the LNG Terminal with such Off Specification LNG.

## **4.5. MEASUREMENT AND TESTING**

### **4.15.1 MEASUREMENT AND TESTING AT THE DELIVERY POINT AND REDELIVERY POINT FOR LOADING**

#### **4.1.15.1.1 General**

Unloaded Quantities of LNG and loaded Quantities of LNG shall be measured and the determination of the quality of the unloaded or loaded LNG shall be determined in accordance with the procedures of section 3.4 of the LNG Access Code. For any issues associated with measurement and quality that are not addressed by the LNG Access Code, the best practices and recommendations of the most recent version of the GIIIGNL LNG Custody Transfer Handbook, as far as practicable shall apply.

#### **4.1.25.1.2 Obligation of the Parties to supply devices**

Shipper shall supply, operate and maintain, or cause to be supplied, operated and maintained, suitable gauging devices for the LNG tanks of the LNG Ships, as well as pressure and temperature measuring devices and all other measurement or testing devices that are incorporated in the structure of such LNG Ships or customarily maintained on board of the LNG Ships for accurate LNG cargo custody transfer.

Terminal Operator shall supply, operate and maintain, or cause to be supplied, operated and maintained, devices required for collecting continuous and discontinuous (for monitoring and as a back-up) 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 the LNG Terminal.

#### **4.1.35.1.3 Tank gauge tables of LNG Ships**

Shipper shall furnish Terminal Operator or cause Terminal Operator to be furnished, a certified copy of tank gauge tables as described in section 3.4 of the LNG Access Code for each tank of each LNG Ship.

#### **4.1.45.1.4 Gauging and measuring LNG volumes unloaded or loaded**

Volumes of LNG delivered under this LTA shall be determined by gauging the LNG in the tanks of the LNG Ship(s) immediately before and after unloading or loading. Gauging the liquid in the tanks of the LNG Ship(s) and the

measuring of liquid temperature, vapour temperature and vapour pressure in each LNG tank and the trim and list of the LNG Ship(s) shall be performed, or caused to be performed, by Shipper and may be witnessed by both Parties before and after [unloading or](#) loading. Copies of gauging and measurement records shall be furnished to Terminal Operator, and in the absence of manifest error, shall be conclusive. Gauging devices shall be selected, and measurements shall be effected, in accordance with the terms of section 3.4 of the LNG Access Code.

#### [4.1.55.1.5](#) **Samples for quality analysis**

Representative samples of the [unloaded or](#) loaded LNG shall be obtained or caused to be obtained by Terminal Operator during the time of loading as provided in section 3.4 the LNG Access Code.

#### [4.1.65.1.6](#) **Quality analysis**

Unless otherwise agreed, the samples referred to in GC [5.4.1.5](#) shall be analysed, or caused to be analysed by Terminal Operator in accordance with the terms of section 3.4 of the LNG Access Code to determine the molar fraction of the hydrocarbons and other components in the sample.

#### [4.1.75.1.7](#) **Operating procedures**

Shipper, at no cost to Terminal Operator, shall procure that all measurements, gauging and analyses provided for in GC [54.1.4](#) to GC [45.1.6](#) inclusive shall be witnessed and verified by an independent surveyor agreed upon by Terminal Operator and Shipper. Prior to effecting such measurements, gauging and analyses, the Party responsible for such operations shall notify the independent surveyor, allowing such surveyor a reasonable opportunity to be present for all operations and computations; provided, however, that the absence of the independent surveyor after notification and reasonable opportunity to attend shall not prevent any operation or computation from being performed. The results of such independent surveyor's verifications shall be made available promptly to each Party. All records of measurements and the computation results shall be preserved by the Party responsible for effecting such measurements and held available to the other Party for a period of three (3) Years after such measurements and computations have been completed.

#### [4.1.85.1.8](#) **LNG Quantity delivered**

The Quantity of LNG in energy terms delivered at the [Delivery Point or at the Redelivery Point](#) for Loading shall be calculated by Terminal Operator following the procedures set forth in section 3.4 of the LNG Access Code and shall be verified by an independent surveyor agreed upon by Shipper and Terminal Operator in accordance with GC [54.1.7](#).



#### **4.1.95.1.9 Verification of Accuracy and Correction for Error**

Shipper and Terminal Operator shall test and verify or cause to be tested and verified the accuracy of its respective gauging devices at intervals to be agreed between the Parties. In the case of gauging devices on LNG Ship(s), such tests and verifications shall take place during scheduled dry-docking periods. Each Party shall have the right to inspect at any time the gauging devices installed by the other Party, provided that the other Party shall be notified reasonably in advance. Testing shall be performed using methods recommended by the manufacturer or any other method agreed upon by Shipper and Terminal Operator. Tests shall be witnessed and verified by an independent surveyor agreed upon by Shipper and Terminal Operator, provided, however, that the absence of the independent surveyor after notification and reasonable opportunity to attend shall not prevent any test, operation or computation from being performed.

Permissible tolerances shall be as described in section 3.4 of the LNG Access Code. If an inaccuracy of a device exceeding the permissible tolerances is established, recordings and computations made on the basis of those inaccurate readings shall be reviewed, in order to correct all errors with respect to any period that is definitely known or agreed by the Parties, as well as adjustment of the device. In the event that the period of error is neither definitely known nor agreed, corrections shall be made for each delivery and each energy balance made during the last half of the period since the date of the most recent calibration of the inaccurate device.

#### **4.1.105.1.10 Costs and expenses of tests and verifications**

All costs and expenses for testing and verifying measurement devices, including the fees of the independent surveyor, shall be borne by the Party whose devices are being tested and verified; provided, however, that representatives of the Parties attending such tests and verifications shall do so at the cost and risk of the Party they represent.

### **5.2 MEASUREMENT AND TESTING AT THE REDELIVERY POINT**

#### **5.2.1 General**

The Redelivery Metering Facility Operator (RMFO), shall, if not being Terminal Operator, on behalf of Terminal Operator, perform the measurement and testing at the Redelivery Point in accordance with the agreement between Terminal Operator and the RMFO.

Terminal Operator shall procure that Shipper shall have access to such agreement and that such agreement shall include, amongst others, the provisions set forth in this GC. Prior to any amendment to such agreement that may have an impact on Shipper, Terminal Operator shall consult with Shipper and Other Shippers.

Shipper shall have the right to appoint a representative to execute Shipper's rights concerning measurement and testing at the Redelivery Point. All relevant details concerning measurement and testing at the Redelivery Point shall follow the same principles and shall be in substantially the same form as the operating procedures in AC 3.6 and shall be based on the principles set out hereinafter.

#### **5.2.2 Standards**

The Natural Gas shall be measured in accordance with the procedures described in the operating procedures as set forth in AC 3.6. The applicable standards used in AC 3.6 shall comply with all applicable laws and regulations in force relevant to the measurement and testing of Natural Gas.

All measurement equipment shall have as little tolerance as technically and reasonably possible, not to exceed the tolerances as described in the operating procedures in AC 3.6.

The measurement and testing equipment shall be designed, operated and calibrated so that, at any time, known systematic errors can and shall be corrected insofar as such errors are exceeding the technical tolerance of the applicable measurement and testing equipment.

#### **5.2.3 Unit of measurement**

The unit of measurement at the Redelivery Point shall be normal cubic metre at the specified reference conditions and GHV expressed in kWh or multiples thereof per normal cubic metre. The Quantity of Natural Gas made available to Shipper by Terminal Operator at the Redelivery Point shall be measured and computed by automatic equipment.

#### **5.2.4 Equipment**

The RMFO shall at the Redelivery Point, at its sole cost and expense, provide, maintain and operate or cause to be provided, maintained and operated all measurement and testing equipment which will be subject to applicable laws and regulations in force and relevant to the measurement and testing of Natural Gas.

#### **5.2.5 Determination of Gross Heating Value**

The GHV shall be determined by means, which are approved under applicable regulations as described in AC 3.6, such means currently being on-line gas chromatographs using ISO 6974 and calculated using ISO 6976-1995 at combustion reference temperature of 25°C and normal volumetric conditions, as specified in AC 3.6.

### 5.2.6 Tests and correction of errors

The accuracy of the measurement equipment provided or caused to be provided by the RMFO at the Redelivery Point shall be verified and calibrated by the RMFO at intervals as set forth in AC 3.6. Shipper shall have the right to attend such verifications. Except in case of Emergency, the RMFO shall give notice to Terminal Operator and Terminal Operator to Shipper, ten (10) Working Days before the start of any such test.

All tests of such measurement equipment shall be made at the RMFO's expense.

If the aggregate error in any of the individual metering lines is found to exceed the technical tolerance of the applicable measurement equipment in such metering line being one decimal zero (1.0) per cent then any previous recordings of such measurement equipment shall be corrected to zero (0) error for any period which is known definitely, or agreed upon, but in case the period is not known or agreed upon, such corrections shall be for a period extending over one-half of the time elapsed since the date of the last test, or another correction period specified in AC 3.6.

Fuel Gas calculations pursuant to GC 4.1 and GC 5.3 and energy balance calculations pursuant to AC 3.1.6.3, over such period shall be corrected accordingly.

Following each test, the measurement equipment shall be adjusted if found to be necessary to record accurately and said measurement equipment shall be secured against unauthorised manipulations by personnel of Shipper, Terminal Operator and the RMFO.

If, for any reason, meters are faulty or out of service, so that the Quantity of the Natural Gas redelivered at the Redelivery Point cannot be ascertained or computed from the reading thereof, the Natural Gas made available during the period during which such meters are out of service or faulty shall be determined upon the basis of the best data available, using only the first feasible method of those listed hereunder in the same order:

- (i) by using the registration of any check measurement equipment if installed and accurately measuring; or
- (ii) by adjusting for the error, if the extent of the error is ascertainable by calibration, test or mathematical calculation; or
- (iii) by estimation on the basis of deliveries made during preceding periods under similar conditions when the equipment was registering accurately. For the purpose of said estimation, the Parties may agree upon using data from measurements not being performed by the equipment provided under GC 5.2.4; or

(iv) by Terminal Operator 's daily aggregate balance calculation sheet.

### **5.3 MEASUREMENT OF FUEL GAS**

#### **5.3.1 General**

Shipper shall have the right to appoint a representative to execute Shipper's rights regarding measurement and testing of Fuel Gas metering at the LNG Terminal.

#### **5.3.2 Standards**

Fuel Gas metering shall be implemented in accordance with the latest published edition of ISO 6976, based on the molar gas composition determined by gas chromatographic analysis in accordance with the latest published edition of ISO 6974.

#### **5.3.3 Unit of measurement**

The unit of measurement for Fuel Gas metering shall be normal cubic metre at the specified reference conditions and GHV expressed in kWh or multiples thereof per normal cubic metre. Each of the Fuel Gas streams used by Terminal Operator for its operations at the LNG Terminal shall each be measured by automatic equipment, and computed by automatic equipment or in a spreadsheet.

#### **5.3.4 Equipment**

For the Fuel Gas metering Terminal Operator shall, at its sole cost and expense, provide, maintain and operate or cause to be provided, maintained and operated all measurement and testing equipment which will be subject to applicable laws and regulations in force relevant to the measurement and testing of Fuel Gas.

#### **5.3.5 Determination of Gross Heating Value**

The GHV of the Fuel Gas shall be determined by use of on-line gas chromatographs, which are operated in accordance with applicable standards and regulations, which are as of the Effective Date, ISO 6974 for molar gas composition, and ISO 6976 for GHV computation at combustion reference temperature of 25°C and normal volumetric conditions.

#### **5.3.6 Tests and correction of errors**

The accuracy of the measurement equipment provided or caused to be provided by Terminal Operator for measurement of Fuel Gas shall be tested and verified by Terminal Operator at reasonable intervals, not to exceed six (6) Months as set forth in Terminal Operator's operating procedures. Shipper shall have the right to attend such verifications. Except in case of Emergency,

Terminal Operator shall give to Shipper at least ten (10) Working Days' notice before the start of any such test or verification.

Flow metering devices and flow totalizers used for Fuel Gas metering shall be recalibrated with intervals, normally not exceeding six (6) Years.

All tests of Fuel Gas flow metering devices shall be made at Terminal Operator's sole expense.

If any aggregate error in one of the Fuel Gas flow metering devices is found to exceed the technical tolerance for such device, which shall in any case be lower than three decimal zero (3.0) per cent for Fuel Gas flow meters, or lower than three decimal zero (3.0) per cent for Fuel Gas totalisers, then any previous recordings of such equipment shall be corrected to zero (0) error for any period which is definitely known or agreed upon, but in case the period is not known or agreed upon, such corrections shall be for a period extending over one-half of the time elapsed since the date of the last test.

Following each test, the measurement equipment shall be adjusted if found to be necessary to record accurately and said equipment shall be secured against unauthorised manipulations by personnel of Terminal Operator.

If, for any reason, Fuel Gas meter(s) are faulty or out of service, so that the Quantity of Fuel Gas used cannot be ascertained or computed from the reading thereof, the Fuel Gas used during the period during which such Fuel Gas meter(s) are out of service or faulty shall be determined upon the basis of the best data available, using only the first feasible method of those listed hereunder in the same order:

- (i) by using the registration of any check measurement equipment if installed and accurately measuring; or
- (ii) by adjusting for the error, if the extent of the error is ascertainable by calibration, test or mathematical calculation; or
- (iii) by estimation on the basis of used Fuel Gas during preceding periods under similar conditions when the equipment was registering accurately. For the purpose of said estimation, the Parties may agree upon using data from measurements not being performed by the equipment provided under GC 4.3.4; or
- (iv) by Terminal Operator's daily aggregate energy balance calculation sheet.

#### **5.4 REIMBURSEMENT OF FUEL GAS**

- 5.4.1 The estimated quantity of Fuel Gas expressed in kWh for each Month M, FGm, shall be determined as a percentage of the Natural Gas redelivered by Terminal Operator to Shipper, the Other Shippers and the Other Users at the Redelivery Point. Before the end of each Month M-1, Terminal Operator shall notify Shipper, for Month M, the value of FGm which shall not exceed the Maximum Fuel Gas Reimbursement Percentage
- 5.4.2 The Maximum Fuel Gas Reimbursement Percentage shall be one decimal three zero percent (1.30 %). However if the actual monthly average aggregate of Shipper's and Other Shippers' Send Out in a given Month M is less than two decimal five three (2.53) GWh/hour and is not due to Terminal Operator's fault or due to Force Majeure, then the Maximum Fuel Gas Reimbursement Percentage shall be calculated as follows: Maximum Fuel Gas Reimbursement Percentage = 1.30% + 1.3%\*(2.53 -actual monthly average aggregate of Shipper's and Other Shippers' Send Out (in GWh/hour)), calculated to two significant digits. The Maximum Fuel Gas Reimbursement Percentage shall not exceed three decimal four zero percent (3.40%).
- 5.4.3 In the course of Month M+1, Terminal Operator shall determine the Actual Fuel Gas Consumption during the Month M. Actual Fuel Gas Consumption means the Quantity of Fuel Gas used by Terminal as measured in accordance with the rules set out in GC 5.3. If the Actual Fuel Gas Consumption during the Month M exceeds the Maximum Fuel Gas Reimbursement Percentage of the Natural Gas redelivered by Terminal Operator at the Redelivery Point during said Month M, the Actual Fuel Gas Consumption shall be deemed to be equal to the Maximum Fuel Gas Reimbursement Percentage multiplied by the Natural Gas redelivered by Terminal Operator at the Redelivery Point. Terminal Operator will use reasonable endeavours to minimize Actual Fuel Gas Consumption at the LNG Terminal, which shall include using the heat of the CHP unit at the Terminal much as reasonably possible, so long as it is operated (whereby the Shipper acknowledges that Terminal Operator does not control nor cannot guarantee continued operation of said CHP).
- 5.4.4 The difference between: (i) the quantity, expressed in kWh, resulting from applying FGm, to the Natural Gas redelivered at the Redelivery Point by Terminal Operator, and (ii) the Actual Fuel Gas Consumption (or Deemed Fuel Gas Consumption, if applicable according to the following paragraph) determined for the Month M, taking into account the Maximum Fuel Gas Reimbursement Percentage, shall be credited or debited, as applicable, to Shipper's and Other Shippers' Gas In Storage pro rata the Natural Gas redelivered at the Redelivery Point by Terminal Operator to Shipper and Other Shippers during the Month M. Such credit

or debit shall be applied after Shipper or Other Shipper has unloaded its first LNG Ship in Month M+2 or in any later Month.

5.4.5 If Terminal Operator makes any capital investment decision which results in reducing the Actual Fuel Gas Consumption at the LNG Terminal, including the open rack vaporizer commissioned mid-2013, then Shipper shall pay the Deemed Fuel Gas Consumption in lieu of the Actual Fuel Gas Consumption. The Deemed Fuel Gas Consumption shall be calculated as the Actual Fuel Gas Consumption plus energy savings resulting from such new capital investment. When calculating such energy savings Terminal Operator shall take into account the highest rate of use as is reasonably possible of the CHP unit at the Terminal, so long as it is operated, if the new capital investment resulted in a reduced utilisation of such CHP.

Any other actions taken by Terminal Operator which result in reducing the Actual Fuel Gas Consumption at the LNG Terminal shall be for the benefit of Shipper and Other Shippers and not be credited back to Terminal Operator when calculating the Actual or Deemed Fuel Gas Consumption.

## **5.6. COMMINGLING**

Subject to and without prejudice to the other provisions of this LTA, it is acknowledged and agreed that Terminal Operator may (receive and) store LNG in the LNG Terminal with LNG received from, *inter alia* Shipper, Other Shippers and/or Other Users.

## **6.7. OPERATION AND MAINTENANCE OF THE LNG TERMINAL; STANDARD OF PERFORMANCE**

Terminal Operator shall during the term of the LTA operate, maintain and repair the LNG Terminal and keep the LNG Terminal in good working order and condition in order to fulfil its obligations under this LTA and under the LNG Access Code (amongst others the sections 3.1 and 3.7) and to operate the LNG Terminal in accordance with the standards of a Reasonable and Prudent Operator and pursuant the applicable law.

Terminal Operator and Shipper shall and shall cause their respective employees, agents, contractors and sub-contractors to act in accordance with the standards of a Reasonable and Prudent Operator

## **7.8. TARIFF AND INDEXATION**

### **7.8.1 TARIFF**



~~7.1.18.1.1~~ The LNG ~~Redelivery~~ Services performed by Terminal Operator to Shipper under this LTA are subject to the applicable Regulated Tariffs as approved by CREG.

~~7.1.28.1.2~~ Shipper shall pay to Terminal Operator the Monthly Capacity Charge and any other amount invoiced pursuant to GC 8.

~~7.1.38.1.3~~ The Capacity Charges or any other amounts invoiced pursuant to the GC 8 and due by Shipper to Terminal Operator are exclusive of any taxes, duties, levies or other charges imposed on Terminal Operator by any competent authority with respect to or affecting the LNG ~~Redelivery~~ Service by Terminal Operator under this LTA (including but not limited to VAT, excise or levies imposed by the public authorities, or other surcharges such as CO2 taxes but excluding taxes on income and profit, taxes on share capital and any real estate taxes and other taxes on the LNG Terminal which are recovered or recoverable through the Regulated Tariffs). Terminal Operator may include in any invoice the amount due by Shipper associated with all taxes, duties, levies or other charges.

## 7.28.2 CALCULATION AND INDEXATION

The Monthly Capacity Charge, invoiced by Terminal Operator to Shipper shall be calculated and indexed in accordance with the Regulated Tariffs as approved by CREG.

## 8.9. INVOICING AND PAYMENT

### 8.19.1 SUBMISSION OF INVOICE

~~8.1.19.1.1~~ As from the Effective Date and insofar as Shipper has subscribed to at least one (1) LNG ~~Redelivery~~ Service under this LTA, the Terminal Operator shall on the tenth (10<sup>th</sup>) Day of each Month (or the next Business Day if the tenth (10<sup>th</sup>) Day is not a Business Day) render an invoice to Shipper, showing:

- (i) the Monthly Capacity Charge (as adjusted for any reduction in the Capacity Charge for reasons of Force Majeure under GC ~~123.3.2~~);
- (ii) any Demurrage Rate, due by Shipper under GC ~~142.1.5~~, which will be invoiced in the Month following the relevant Month in which they occurred;
- (iii) any correction on the Monthly Capacity Charge and/or any Demurrage Rate paid by the Shipper for the previous Months.

All invoices shall include a detailed calculation of the Monthly Capacity Charge(s), mentioning amongst others the performed LNG ~~Redelivery~~



Services, the pricing formula and the values of the relevant parameters and indexes (if applicable), the invoicing date, the bank account information, the payment terms (including the time of payment), the currency and the interest rates if applicable. Together with the invoice, the utilization rate of the LNG ~~Redelivery~~ Services and a detailed summary table per performed LNG ~~Redelivery~~ Service shall be communicated, particularly including the gas allocation and measurement results.

~~8.1.29.1.2~~ Terminal Operator shall issue a credit note to Shipper as soon as reasonably possible for any amount, invoiced according to the above, which turns out not to be due by Shipper pursuant to the provisions of this LTA, such as in case of a service not being provided due to a Force Majeure Event arising during such Month.

~~8.1.39.1.3~~ For the avoidance of doubt, unless relieved by another provision of this LTA, the Monthly Capacity Charge is payable irrespective of whether Shipper actually uses the LNG ~~Redelivery~~ Service it has subscribed via the Services Confirmation for that Month.

~~8.1.49.1.4~~ Invoices may be rendered electronically, or by letter or by telefax during normal office hours. The receipt of the invoice is deemed to have occurred the fifth (5<sup>th</sup>) Business Day following the date of the invoice.

9.1.5 At the end of the LTA and each time the Shipper requests it, the Terminal Operator delivers a statement of account.

8.1.59.1.6 Each Party shall have a right to set-off any amount payable by the other with the amount that it has to pay to the other under this LTA to the extent these amounts are payable, defined and undisputed.

## 8.29.2 **PAYMENT TERMS**

~~8.2.19.2.1~~ Shipper shall pay the invoice referred to in GC ~~98.1~~ in Euros by the Due Date being thirty (30) Days after receipt such invoice within the framework of this LTA. If the Due Date is not a Business Day, the first following Business Day shall apply.

~~8.2.29.2.2~~ Without prejudice to GC ~~98.2.1~~, payment shall be deemed to have been made when the invoiced amount shall have been credited to the Terminal Operator's bank account as specified on the invoice. If no such bank account is specified on any invoice then payment shall be made at the last specified bank account.

## 8.39.3 **DISPUTED PAYMENTS**

~~8.3.19.3.1~~ If there is a calculation error(s), Shipper notifies such error to the Terminal Operator at the latest on the Due Date. In such case, only the undisputed part of the invoice, including VAT, shall be paid on the Due Date. The Terminal Operator shall treat the complaint within thirty (30)

Business Days after receipt of such notification. In case the Parties cannot come to an agreement, either Party may call upon Clause 6.2 or 6.3 (as the case may be) of the LTA.

~~8.3.29.3.2~~ If Shipper disputes part or all sums of the invoice(s) for reasons other than a calculation error(s), Shipper notifies such contestation to the Terminal Operator at the latest on the Due Date. In such case the Shipper shall pay the undisputed part(s) of the invoice, including VAT, at the latest on the Due Date, while the disputed part(s) of the invoice, including VAT will be paid within two (2) Business Days after notification of such contestation to the Terminal Operator into an Escrow Account of the Terminal Operator. The Terminal Operator shall treat the complaint within thirty (30) Business Days after receipt of such notification. In case the Parties cannot come to an agreement, either Party may call upon Clause 6.2 or 6.3 (as the case may be) of the LTA.

~~8.3.39.3.3~~ Parties shall provide each other on time the data necessary for establishing and paying invoices.

In the event that the Terminal Operator needs information from Shipper in order to establish the invoices and Shipper has this information available which it has not communicated previously, Shipper shall make available this information to the Terminal Operator within twenty (20) Business Days after being requested to do so by the Terminal Operator.

In such case the Shipper must pay within fifteen (15) Business Days after receipt of such invoice.

~~8.3.49.3.4~~ If the invoice has not been paid on the Due Date or if the Shipper has made an undue payment in accordance with GC ~~98.3~~, default interest shall be due respectively by the Shipper for each Day payment is overdue or by the Terminal Operator for each Day reimbursement is overdue. Said default interest shall be calculated in accordance with the EURIBOR three (3) months rate on the Due Date increased by two hundred (200) basis points.

~~8.3.59.3.5~~ Any invoice not disputed within twelve (12) Months after the Due Date for payment shall be considered as final between the Parties.

~~8.3.69.3.6~~ At the end of the contract and each time the Shipper requests it, Terminal Operator delivers a statement of account.

## **9.10. CREDIT COVER**

### **9.10.1 CREDITWORTHINESS REQUIREMENTS**

~~9.1.1~~10.1.1 In order to secure Shipper's due performance of this Agreement, the Terminal Operator is entitled to require the Shipper and the Other Shippers having entered into an LTA for LNG ~~Redelivery~~ Services to :

- (i) Provide a Financial Bank Guarantee in accordance with GC ~~109~~.2; or,
- (ii) Provided that there are no invoiced amounts overdue, at the latest five (5) Business Days before the Services Start Date, have an acceptable credit rating – which corresponds to a rating for the Shipper's long term unsecured and non credit enhanced debt obligations of not less than ~~BBB+A-~~ by Standard & Poor's Rating Services or Fitch Ratings or not less than ~~Baa1A3~~ by Moody's Investor Services – or to provide an unconditional and irrevocable parent company guarantee via its parent company who has an acceptable credit rating (Standard & Poor's/Fitch : ~~BBB+A-~~ and Moody's : ~~Baa1A3~~). The Shipper must demonstrate annually and at the latest on the anniversary date of the subscribed LNG ~~Redelivery~~ Services, with a term of at least thirty (30) Days left to run, that itself or its parent company still meets the requirements of an acceptable credit rating.

~~9.1.2~~10.1.2 Terminal Operator shall be entitled at any time during the Service Term to request Shipper to demonstrate within fifteen (15) Business Days after the notification by Terminal Operator that the Financial Bank Guarantee or the acceptable credit rating, is in fact compliant with this GC ~~109~~.

If the Shipper no longer meets the requirements stipulated in GC ~~109~~.1, it must, at the risk of breach of contract, immediately notify the Terminal Operator hereof by registered mail. The Shipper has ~~twenty-five~~ (15) Business Days in order to demonstrate to the Terminal Operator that it complies with the provisions of GC ~~109~~.1.1. If upon expiry of this period, the Shipper does not comply with the provisions of GC ~~109~~.1.1, the LNG ~~Redelivery~~ Services will be suspended in accordance with GC ~~165~~.2.

~~9.1.3~~10.1.3 Any modification of Shipper's Subscribed LNG ~~Redelivery~~ Service(s), lower or higher, during the Service Term covered by the Financial Bank Guarantee or the parent company guarantee as the case may be, shall automatically entail the adjustment of the amount of accordingly.

## ~~9.2~~10.2 FINANCIAL BANK GUARANTEE

~~9.2.1~~10.2.1 The Shipper who has to provide a Financial Bank Guarantee must, five (5) Business Days before the Service Start Date, have an unconditional and irrevocable Financial Bank Guarantee issued by a bank approved by the Financial Services & Market Banking (or by an equivalent body in one of the Members States of the European Union), for an amount of Shipper's Capacity Charge for the next two Months with a minimum of one hundred thousand Euros (EUR 100,000). This amount shall however be rounded upwards to the first thousand Euros (EUR 1000).

If the LNG ~~Redelivery~~ Service has a duration of less than thirty (30) Days, the Shipper shall pay to the Terminal Operator at the latest on the date of subscription of the LNG ~~Redelivery~~ Service, the expected invoice amount (VAT included).

~~9.2.2~~10.2.2 Shipper must demonstrate annually and at the latest on the anniversary date of the LNG ~~Redelivery~~ Service subscribed, with a term of at least thirty (30) Days left to run, that the financial institution, or the equivalent body that meets the requirements stipulated in GC 109, which has issued the Financial Bank Guarantee, has extended the Financial Bank Guarantee's term and has amended the amount thereof to correspond to the amount as specified in GC 109.2.

~~9.2.3~~10.2.3 The Financial Bank Guarantee shall at all times have a validity of at least one (1) Month after the expiry of the Service End Date, as specified in the relevant Services Confirmation.

~~9.2.4~~10.2.4 If Shipper fails for whatever reason to pay any invoiced amount by the Due Date, Terminal Operator shall notify Shipper and if such invoice plus accrued interest is not thereafter paid within fourteen (14) Days after receipt of such notice, Terminal Operator may immediately make a claim under the Financial Bank Guarantee provided by Shipper.

~~9.2.5~~10.2.5 If Terminal Operator has drawn on the Financial Bank Guarantee pursuant to GC 109.2 Shipper shall, within fifteen (15) Business Days as from the date of such drawdown (i) demonstrate that the financial institution which provided the Financial Bank Guarantee, has adjusted the amount to the level of the Financial Bank Guarantee as specified in GC 109.2 or by providing an new Financial Bank Guarantee which meets the requirements of GC 109 or (ii) submit a new Financial Bank Guarantee that complies with the conditions stipulated in GC 109.1.1. In case of default, the LNG ~~Redelivery~~ Services will be suspended in accordance with GC 165.2.

## 10.11. WARRANTIES

### ~~10.1~~11.1 MUTUAL WARRANTIES

Each Party (in respect of itself and each of its successors and permitted assigns) warrants to the other Party (for the benefit of the other Party and each of its successors and permitted assigns) as follows:

- a) it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, in good standing);
- b) it has the power (i) to execute this LTA and any other documentation relating to this LTA to which it is a Party, (ii) to deliver this LTA and any other documentation relating to this LTA that it is required by this LTA to deliver, and (iii) to perform its obligations under this LTA and has taken all necessary action to authorise that execution, delivery and performance;
- c) the execution, delivery and performance referred to in paragraph (b) do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- d) its obligations under this LTA constitute its legal, valid and binding obligations, enforceable in accordance with its terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law).

#### ~~10.211.2~~ **SHIPPER'S WARRANTIES**

Shipper hereby warrants to Terminal Operator that:

- a) it has title and/or all rights to the LNG unloaded at the Delivery Point at the LNG Terminal by it and that such LNG is free of all claims or encumbrances;
- ~~e)b)~~ it has title and/or all rights to the LNG at the Redelivery Point for Loading for the provision of LNG Redelivery Services at the LNG Terminal by it and that such LNG is free of all claims or encumbrances;
- ~~f)c)~~ it holds any and all licenses, permits and authorisations required under applicable law to load LNG and to cool-down and/or gas-up LNG Ships at the LNG Terminal and that it shall use its reasonable endeavours to maintain such licenses, permits and authorisations during the Service Term;

~~9)d)~~ it will duly and timely file in compliance with applicable law, all returns, reports and declarations that ought to be filed with regard to customs duties; it will pay in full and timely all amounts due in this respect to the tax authorities; and it will keep Terminal Operator safe from any claim from the tax authorities in respect to customs duties.

### ~~10.311.3~~ **TERMINAL OPERATOR WARRANTIES**

Terminal Operator hereby warrants to Shipper that:

- a) it holds any and all licenses, permits, authorisations and rights required under applicable law to operate the LNG Terminal and that it shall take all necessary steps to keep the same during the Service Term and that it has all the rights to possess and operate LNG Terminal as of the Effective Date and that it shall keep such rights during the Service Term;
- b) it holds any and all licenses, permits and authorisations required under applicable law to provide LNG ~~Redelivery~~ Services and that it shall use its reasonable endeavours to maintain such licenses, permits and authorisations during the Service Term.

## ~~11.12.~~ **LIABILITIES AND INSURANCE**

### ~~11.112.1~~ **LIABILITIES**

#### ~~11.112.1.1~~ **General**

##### ~~12.1.1.1~~

Terminal Operator shall not be liable for any loss or damage arising from any act, event or omission occurring after delivery of Shipper's LNG by the Terminal Operator at the Redelivery Point for Loading except to the extent caused by Terminal Operator.

Without prejudice to the provision here below, Shipper shall not be liable for any loss or damage arising from any act, event or omission occurring before delivery of Shipper's LNG by Terminal Operator at the Redelivery Point for Loading except to the extent caused by Shipper.

Terminal Operator and Shipper shall and shall cause their respective employees, agents, contractors and sub-contractors to act in accordance with the standards of a Reasonable and Prudent Operator.

121.1.1.2

- a) Neither Party nor its Affiliates is liable, whether in contract, in tort or otherwise, to the other Party or its Affiliates for any Consequential Losses.
- b) In the event Terminal Operator is liable, whether in contract, in tort or otherwise, pursuant to a breach of any of the provisions of this LTA, Terminal Operator shall indemnify and hold harmless Shipper from and against any and all direct costs, direct losses (including loss of income) and direct expenses suffered by Shipper as a result of such breach. It is understood that payment by Terminal Operator of said direct costs, direct losses (including loss of income) and direct expenses shall be considered as final and full payment of all losses and/or damages suffered by Shipper and in such case no other amounts are due by Terminal Operator for the same contractual breach.
- c) In the event Shipper is liable, whether in contract, in tort or otherwise, pursuant to a breach of any of the provisions of this LTA, Shipper shall indemnify and hold harmless Terminal Operator from and against any and all direct costs, direct losses and direct expenses (including loss of income) suffered by Terminal Operator as a result of such breach. It is understood that payment by Shipper of said direct costs, direct losses (including loss of income) and direct expenses shall be considered as final and full payment of all losses and/or damages suffered by Terminal Operator and in such case no other amounts are due by Shipper for the same contractual breach.
- d) It is hereby understood that if and to the extent Other Shipper and/or an Other User is liable for any damages suffered by Shipper, Terminal Operator shall only pay damages (including Demurrage Rate) to Shipper insofar as Terminal Operator has been indemnified by Other Shipper and/or Other User who are liable for Shipper's damages.
- e) Except as limited by GC 121.1.2(a), GC 121.1.2(b) and GC 121.1.4, each Party shall indemnify, hold harmless and defend the other Party from and against any claim, demand, cause of action, expense or liability whatsoever (including, but not limited to the costs of litigation, and whether arising in contract or otherwise), from or in respect of any third party, arising out of the LTA and its attachments.



#### ~~11.1.2~~12.1.2 Liability maximum amount

- a) Shipper's liability towards Terminal Operator for any and all direct damages caused to the LNG Terminal by Shipper's actions or omissions shall not exceed a maximum amount of one hundred and fifty million (150,000,000) Euros per event.
- b) Terminal Operator's liability towards Shipper for any and all direct damages caused to an LNG Ship by Terminal Operator's actions or omissions shall not exceed a maximum amount of one hundred and fifty million (150,000,000) Euros per event.
- c) Without prejudice to GC ~~12~~1.1.2 (e), to the extent that Terminal Operator's damages arising pursuant to GC ~~12~~1.2 (a) exceed the amount provided therein, Terminal Operator shall make no further claim from Shipper for any such damages and Terminal Operator shall indemnify, hold harmless and defend Shipper from and against any claim, demand, cause of action, expense or liability for any and all direct damages to the LNG Terminal.
- d) Without prejudice to GC ~~12~~1.1.2 (e), to the extent that Shipper's damages arising pursuant to GC ~~12~~1.2 (b) exceed the amount provided therein, Shipper shall make no further claim from Terminal Operator for any such damages and Shipper shall indemnify, hold harmless and defend Terminal Operator from and against any claim, demand, cause of action, expense or liability for any and all direct damages to an LNG Ship.

~~11.1.3~~12.1.3 Terminal Operator shall be liable towards Shipper, up to the value of the LNG or Natural Gas as determined by application of the Zig Day-Ahead price on the Day of the loss, for any and all loss to Shipper's LNG in the LNG Terminal, except to the extent caused by Shipper.

#### ~~11.1.4~~12.1.4 Limitation of liability for LNG ~~Redelivery~~ Services

Except in case of: (i) liability of Terminal Operator by virtue of GC ~~12~~1.3 (ii) liability of Shipper by virtue of GC ~~12~~1.2 (a), the aggregate liability of each Party to the other Party under this LTA (whether such liability arises in contract, tort, including negligence, breach of statutory duty or otherwise in connection with this LTA) shall be limited to:



- a) for an Additional Berthing Right or a ~~Small Scale Berthing Right~~Stand Alone Berthing Right (or Berthing Right as the case may be) that is lost or foregone or impacted as a result of a single event or series of events, to five (5) times the Regulated Tariff for such Additional Berthing Right or such ~~Small Scale Berthing Right~~Stand Alone Berthing Right (or Berthing Right as the case may be), insofar as this amount does not exceed the amount provided in paragraph (c) hereunder. For the application of this maximum, the payment or non-payment by Shipper of the Regulated Tariff relating to the lost, foregone or impacted Additional Berthing Right or ~~Small Scale Berthing Right~~Stand Alone Berthing Right (or Berthing Right as the case may be) shall not be taken into account;
- b) for any other LNG ~~Redelivery~~ Service (or part thereof), subscribed under this LTA, that is lost or foregone or impacted as a result of a single event or series of events, to two decimal five (2.5) times the Regulated Tariff for ~~such Additional Berthing Right or such Small Scale Berthing Right (or Berthing Right as the case may be)~~ the relevant LNG Service, insofar as this amount does not exceed the amount provided in paragraph (c) hereunder. For the application of this maximum, the payment or non-payment by Shipper of the Capacity Charges or any other charges set forth in this LTA (or part thereof) relating to the lost, foregone or impacted LNG ~~Redelivery~~ Service (or part thereof), subscribed under this LTA, shall not be taken into account;
- c) per Contract Year, to the higher of: (i) one fourth (1/4) of the Capacity Charge invoiced and due during the Contract Year; or (ii) the Regulated Tariff for one Additional Berthing Right or ~~Small Scale Berthing Right~~Stand Alone Berthing Right (or Berthing Right as the case may be);
- d) without prejudice to GC ~~12~~1.1.1.2(e), to the extent that Terminal Operator's damages arising pursuant to GC ~~12~~1.1.1.2(c) and limited under GC ~~12~~1.1.4 (a), (b) and (c) exceed the amount provided therein, Terminal Operator shall make no further claim from Shipper for any such damages and Terminal Operator shall indemnify and hold harmless and defend Shipper from and against any claim, demand, cause of action, expense or liability suffered by Terminal Operator which arise as a result of such breach under GC ~~12~~1.1.1.2 (c);

- e) without prejudice to GC 124.1.1.2(e), to the extent that Shipper's damages arising pursuant to GC 124.1.1.2(b), and limited under GC 124.1.4 (a), (b) and (c) exceed the amount provided therein, Shipper shall make no further claim from Terminal Operator for any such damages and Shipper shall indemnify and hold harmless and defend Terminal Operator from and against any claim, demand, cause of action, expense or liability suffered by Shipper which arise as a result of such breach under GC 124.1.1.2(b).

#### ~~11.1.5~~12.1.5 **Demurrage – Boil-Off**

- a) In the event Terminal Operator, an Other Shipper or an Other User causes the Actual Laytime to exceed the Allowed Laytime in loading an LNG Ship, Terminal Operator shall pay, subject to GC 124.1.4 and GC 124.2.1, Shipper the Demurrage Rate (pro-rated for any portion of a Day).

In the event Shipper causes the Actual Laytime to exceed the Allowed Laytime, Shipper shall pay, subject to GC 124.1.4 and GC 124.2.2, demurrage actually incurred by Terminal Operator for the next LNG Ship due to berth at the LNG Terminal at the Demurrage Rate (pro-rated for any portion of a Day).

In the event both Terminal Operator and Shipper are partly responsible for causing the Actual Laytime to exceed the Allowed Laytime in unloading or loading an LNG Ship, each Party shall pay the Demurrage Rate pro rata its portion of responsibility.

No Party shall be held liable for the payment of the Demurrage Rate to the other to the extent any third party has caused the Allowed Laytime to be exceeded.

If during a queuing event, as described in section 3.21.5.1 of the LNG Access Code, Terminal Operator causes a delay which results in the Actual Laytime to exceed the Allowed Laytime for an LNG Ship on the berth, then Terminal Operator shall pay the Demurrage Rate (pro-rated for any portion of a Day) for the delay to such LNG Ship and the delay to the next LNG Ship in the queue. If there is no LNG Ship on the berth, and Terminal Operator causes a delay to the first LNG Ship in the queue, Terminal Operator shall, for the delay, pay, subject to GC 124.1.4 and GC 124.2.1, to the Shipper of that LNG Ship the Demurrage Rate (pro-rated for any portion of a Day).

- b) If an LNG Ship is delayed in berthing and/or commencement of loading or unloading for reasons that would not result in an extension of the Allowed Laytime under the LNG Access Code, and if, as a result thereof, the commencement of unloading or loading is delayed, Terminal Operator shall, subject to GC 121.1.4 and GC 121.2.1, pay to Shipper an amount, on account of excess boil-off for such delay, equal to the Zig Day-Ahead for the Day in question multiplied by the energy equivalent of five decimal five (5.5) m³ LNG for each hour or part thereof from thirty (30) hours after giving Notice of Readiness until the commencement of unloading. The energy equivalent shall be based on the GHV of the LNG loaded onto the applicable LNG Ship.

~~11.1.6~~12.1.6 Concerning death and/or personal injury or illness of a member of personnel of one of the Parties and except for gross negligence (Dutch: 'zware fout'; French: 'faute grave') or wilful misconduct (Dutch: 'opzettelijke fout'; French: 'faute intentionnelle'), the Parties mutually waive all claims they may have against each other for such damages caused to their member of personnel or proxy holder. The Parties shall do all that is necessary so that such waiver of recourse and waiver of all rights of recourse or subrogation against the other Party shall be accepted by their respective insurers.

~~11.1.7~~12.1.7 Subject to the provisions of this LTA, each Party is liable for the acts, defaults and negligence of any of its sub-contractors, and the personnel or agents of such sub-contractors as fully as if they were acts, defaults or neglects of that Party.

~~11.1.8~~12.1.8 Both Parties acknowledge and agree that the other Party holds the benefit of GC 121.1.6 and 121.1.7 inclusive for itself and as trustee and agent for its officers, employees or agents.

~~11.1.9~~12.1.9 In case of gross negligence, wilful misconduct and fraud GC 121.1.2 to GC 121.1.8 inclusive shall not apply.

## ~~11.2~~ **OTHER SHIPPERS AND OTHER USERS**

~~11.2.1~~ If Shipper claims Terminal Operator is in breach of this LTA, and in Terminal Operator's opinion, such breach arises wholly or partly from a breach by any Other Shipper(s) and/or Other User(s) of its agreement with Terminal Operator, then the following provisions shall apply:

- a) ~~As soon as possible and in any case within ten (10) Business Days of receiving notice of Shipper's claim, Terminal Operator shall notify Shipper that this GC 121.2.1 applies to Shipper's claim;~~

- ~~b) Following such notification by Terminal Operator, Shipper shall notify Terminal Operator within five (5) Business Days whether it has decided to: (i) proceed on its own against the Other Shipper(s) and/or Other User(s); or (ii) if it requests Terminal Operator to do so;~~
- ~~c) Terminal Operator shall be under no obligation whatsoever to pay or reimburse to Shipper any amount unless and until Terminal Operator has obtained such amount or reimbursement on behalf of Shipper from the relevant Other Shipper(s) and/or Other User(s) upon final judgement, final sentence and/or final decision further to the proceedings initiated under this GC 121.2.1. Promptly upon receiving such payment, Terminal Operator will transfer to Shipper any amount or reimbursement obtained on behalf of Shipper from the Other Shipper and/or Other User;~~
- ~~d) At any time, Shipper is entitled to pursue, on its own and without the assistance of Terminal Operator, or to intervene into the proceedings initiated against the relevant Other Shipper and/or Other User. Shipper could notify Terminal Operator forthwith of such decision, in which case Terminal Operator shall be entitled to withdraw from the proceedings it has initiated on behalf of Shipper;~~
- ~~e) The legal costs incurred by Terminal Operator in relation to the proceedings initiated under this GC 121.2.1 will be borne by Shipper provided that the Terminal Operator in making those legal costs has acted as a Prudent and Reasonable Operator;~~
- ~~f) If Shipper disputes the assertion of Terminal Operator that the loss arises wholly or partly from a breach by any Other Shipper or Other User, nothing in this GC 121.2.1 shall prevent Shipper from pursuing its claim directly against Terminal Operator; and~~
- ~~g) In case any breach of this LTA arises partly from a breach by any Other Shipper(s) and/or Other User(s) of its LNG agreement with Terminal Operator, Terminal Operator shall not be jointly and severally liable towards Shipper with such Other Shipper(s) and/or Other User(s) but shall only be liable towards Shipper to the extent of its own breach.~~

~~11.2.2 If Terminal Operator claims Shipper is in breach of this LTA, and in Shipper's opinion, such breach arises wholly or partly from a breach by any Other Shipper and/or Other User of its LNG agreement with Terminal Operator, then the following provisions shall apply:~~

- ~~a) As soon as possible and in any case within ten (10) Days of receiving notice of Terminal Operator's claim, Shipper shall notify Terminal Operator that this GC 112.2.2 applies to Terminal Operator's claim;~~

- ~~b) Following such notification by Shipper, Terminal Operator shall notify Shipper within five (5) Business Days whether it has decided to: (i) proceed on its own against the Other Shipper(s) and/or Other User(s); or (ii) if it requests Shipper to do so;~~
- ~~c) Shipper shall be under no obligation whatsoever to pay or reimburse to Terminal Operator any amount unless and until Shipper has obtained such amount or reimbursement on behalf of Terminal Operator from the relevant Other Shipper(s) and/or Other User(s) upon final judgement, final sentence and/or final decision further to the proceedings initiated under this GC 121.2.2. Promptly upon receiving such payment, Shipper will transfer to Terminal Operator any amount or reimbursement obtained on behalf of Terminal Operator from the Other Shipper(s) and/or Other User(s).~~
- ~~d) At any time, Terminal Operator is entitled to pursue, on its own and without the assistance of Shipper, or to intervene into the proceedings initiated against the relevant Other Shipper(s) and/or Other User(s). Terminal Operator could notify Shipper forthwith of such decision, in which case Shipper shall be entitled to withdraw from the proceedings it has initiated on behalf of Terminal Operator;~~
- ~~e) The legal costs incurred by Shipper in relation to the proceedings initiated under this GC 121.2.2 will be borne by Terminal Operator provided that the Shipper in making those legal costs has acted as a Prudent and Reasonable Operator;~~
- ~~f) If Terminal Operator disputes the assertion of Shipper that the loss arises wholly or partly from a claim by any Other Shipper or Other User, nothing in this GC 121.2.2 shall prevent Terminal Operator from pursuing its claim directly against Shipper; and~~
- ~~g) In case any breach of this LTA arises partly from a breach by any Other Shipper(s) and/or Other User(s) of its LNG agreement with Terminal Operator, Shipper shall not be jointly and severally liable towards Terminal Operator with such Other Shipper(s) and/or Other User(s) but shall only be liable to the extent of its own breach.~~

~~11.2.3~~12.1.10 For the avoidance of doubt, nothing in this LTA restricts any right of Parties to seek redress in tort against any Other Shipper and/or Other User.

## ~~11.3~~12.2 **INSURANCES**

~~11.3.1~~12.2.1 Terminal Operator shall effect and maintain such insurances as would be maintained by a Reasonable and Prudent Operator for:

- a) the LNG Terminal. This shall mean that Terminal Operator shall cause its insurer to waive any claim against Shipper above the amount as provided in GC ~~12~~1.1.2(a); and
- b) any liability to third parties.

~~11.3.2~~12.2.2 Shipper shall effect and maintain such insurances as would be maintained by a Prudent and Reasonable Operator for:

- c) the LNG Ship. This shall mean that Shipper shall use its reasonable endeavours to cause the owner of the LNG Ship and its insurer to waive any claim against Terminal Operator above the amount as provided in GC ~~12~~1.1.2(b); and
- d) any liability to third parties.

~~11.3.3~~12.2.3 Each Party shall attempt that all and any insurances effected by or on behalf of a Party shall provide that the underwriters waive their rights of subrogation against the other Party with the effect that the insurers of a Party may not make a claim against the other Party which the insured Party would not have been entitled to make.

~~11.3.4~~12.2.4 Each Party shall before the beginning of each Contract Year, produce a certificate from its insurers to the other Party demonstrating compliance with its obligations under GC ~~12~~1.3.

## ~~12.13.~~12.13. **FORCE MAJEURE**

### ~~12.1~~13.1 **EVENTS OF FORCE MAJEURE**

~~12.1.1~~13.1.1 No failure, delay or omission by any Party to fulfil any of its obligations under this LTA, in whole or in part, (other than the obligation to indemnify the other Party, to make payments if and when due under this LTA and serving any notices) shall give rise to any claim against such Party or be deemed to be in breach of this LTA if and to the extent such failure, delay or omission arises from a Force Majeure Event.

The term "Force Majeure" shall mean any unforeseeable and insurmountable event which relate to the LNG Terminal, Segment 1 or the Port beyond the control of any Party acting in accordance with the standards of a Reasonable and Prudent Operator which temporarily or definitively makes impossible for such Party to fulfil any obligation under this LTA towards the other Party, including but not limited to any of the following circumstances or events :

- a) fire, flood, atmospheric disturbance, lightning, storm, typhoon, hurricane, cyclone, tornado, earthquake, landslide, soil erosion, subsidence, washout or epidemic or any other acts of God;
- b) war (whether declared or undeclared), civil war, act of terrorism, riot, civil disturbance, blockade, insurrection or act of public enemies;
- c) strike or industrial disturbance;
- d) loss of, or damage to, or failure of any the Port or the LNG Terminal or Segment 1;
- e) acts of a Government Authority, ~~other than a Government Authority from the state of the Shipper in Belgium or the European Union~~, or compliance with such acts, that directly affect such Party's ability to perform its obligations hereunder; and
- f) non-obtention or non-renewal in due time of any authorisations, or refusal by the authorities to maintain any authorisations in case such non-obtention, non-renewal or refusal is not attributable to any delay caused by the Party requesting such authorization or other fault on the part of the requesting Party.

~~12.1.2~~13.1.2 In relation to the Port ~~and Segment 1~~, Force Majeure is subject to the event in question also being beyond the reasonable control of any third party operator of any of the facilities listed herein to avoid, prevent or overcome such event.

~~12.1.3~~13.1.3 Terminal Operator shall use its best endeavours to procure that the interconnection agreement with the TSO to operate Segment 1 except the Port, shall contain provisions which: (i) reflect these requirements to the extent applicable (including an obligation to use all reasonable endeavours to rectify the event in question); (ii) give Terminal Operator access to and permit Terminal Operator to disclose all relevant information to Shipper; (iii) permit Shipper to inspect the facility to confirm that the event in question has occurred, the seriousness of the event and the likely period during which it may continue; and (iv) complies with article 231 of the Code of Conduct.

## ~~12.2~~13.2 NOTICE AND RESUMPTION OF NORMAL PERFORMANCE

~~12.2.1~~13.2.1 Promptly upon the occurrence of an event that a Party considers may subsequently lead it to claim Force Majeure relief under this LTA on account thereof, the Party affected shall give notice to such effect to the other Party, describing such event and the obligations performance of which could reasonably be expected to be delayed or prevented thereby. In the event any Party claims Force Majeure relief



under this LTA, it shall promptly notify the other Party thereof and shall state in such notice:

- a) the particulars of the event giving rise to the Force Majeure claim, in as much detail as is then reasonably available including but not limited to the place and time such event occurred;
- b) to the extent known or ascertainable, 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 the estimated extent of such reduction in performance;
- c) the particulars of the program to be implemented to ensure full resumption of normal performance hereunder; and
- d) the ~~number of Additional Berthing Rights~~LNG Services or Small Scale Berthing Right(s) (or Berthing Right(s) as the case may be) which such Party reasonably expects to be able to use in relation to Shipper or make available for use in relation to Terminal Operator, as the case may be, during the period for which Force Majeure relief can reasonably expected to be claimed.

Such notices shall thereafter be supplemented and updated monthly during the period of such recognized claimed Force Majeure specifying the actions being taken to remedy the circumstances causing such Force Majeure and the date on which such Force Majeure and its effects end. ~~Upon the end of the Force Majeure, and at the end of each Contract Year during such Force Majeure,~~ Terminal Operator shall notify Shipper when the performance of the LNG Services can be partially or wholly resumed~~of the number of Additional Berthing Rights~~LNG Services or Small Scale Berthing Right(s) (or Berthing Right(s) as the case may be).

If the estimated period during which such LNG ~~Redelivery~~ Service may be suspended or reduced as a result of a Force Majeure Event that is estimated to be less than twenty-four Months, Shipper may within thirty (30) Days of receipt of the notice herein give notice to Terminal Operator that it disputes the estimated period during which such LNG ~~Redelivery~~ Service may be suspended or reduced. If the Parties fail to recognize the estimated period of the Force Majeure Event within thirty (30) Days, the matter may be resolved pursuant to Clause 6.2 or 6.3. If the Force Majeure Event is recognized to have an estimated duration of more than twenty-four (24) Months either by the other Party either in application of Clause 6.2 or 6.3 of the LTA, then the provisions of GC 132.3.3 shall apply.

~~12.2.2~~13.2.2 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 all reasonable times for a reasonable



number of representatives of such Party to examine the scene of the event which gave rise to the Force Majeure claim. No obligation of a Party claiming Force Majeure under this LTA shall be diminished, waived or in any way affected by any such examination(s) by or on behalf of the other Party or its representatives in connection with any such examination(s).

~~12.2.3~~13.2.3 The Parties shall take all reasonable measures to minimize the consequences of the Force Majeure Event.

~~12.2.4~~13.2.4 Force Majeure takes effect at the moment a Force Majeure Event occurs and is recognized as a Force Majeure either by the other Party, either in application of Clause 6.2 or 6.3. A Party whose performance is excused by Force Majeure shall not be required to incur any unreasonable or uneconomic costs or to make any unreasonable or uneconomic additional investments in new facilities. This provision shall also apply to the owner or operator of Segment 1.

### ~~12.3~~13.3 CONSEQUENCES OF FORCE MAJEURE

13.3.1 If a Party is affected by Force Majeure and the event is recognized as Force Majeure either by the other Party either in application of Clause 6.2 or 6.3 of the LTA, the Parties shall not be relieved, by reason of Force Majeure, from any obligation to indemnify the other Party, to make any payment that is due and payable or to serve any notice.

~~12.3.1~~13.3.2 If Terminal Operator has suffered a single Force Majeure Event that results in Terminal Operator not being able to provide the Additional Berthing Right or ~~Small Scale Berthing Right~~Stand Alone Berthing Right (or Berthing Right as the case may be) and/or any portion of the LNG ~~Redelivery~~ Services under this LTA, Shipper shall continue to pay the part of the Capacity Charge relating to the Additional Berthing Right or ~~Small Scale Berthing Right~~Stand Alone Berthing Right (or Berthing Right as the case may be) and/or LNG ~~Redelivery~~ Services which is still being provided by Terminal Operator.

In relation to any Additional Berthing Right or ~~Small Scale Berthing Right~~Stand Alone Berthing Right (or Berthing Right as the case may be) or portion of the LNG ~~Redelivery~~ Services that is not made available as a result of a single Force Majeure Event suffered by Terminal Operator, Shipper shall pay fifty (50) per cent of the applicable Capacity Charges for such LNG ~~Redelivery~~ Services that Terminal Operator is not providing as a result of the Force Majeure Event for the period of three (3) weeks commencing on the date such Force Majeure Event occurs. During any Contract Year, Shippers obligation to pay fifty (50) per cent of the Capacity Charges for LNG ~~Redelivery~~ Services that Terminal Operator is not providing as a result of a Force Majeure Event shall be limited to a total of three (3) weeks of such payments. Further, over the entire Service Term, commencing from the Service Start Date, Shipper's

obligation to pay fifty (50) per cent of the Capacity Charges for LNG ~~Redelivery~~ Services that Terminal Operator is not providing as a result of a Force Majeure Event shall be limited to a total of fifteen (15) weeks of such payments. If during any Contract Year a Force Majeure Event occurs during which, subject to the limitations set forth in the preceding sentences, Shipper would pay Terminal Operator fifty (50) per cent of the Capacity Charges for LNG ~~Redelivery~~ Services that Terminal Operator is not providing as a result of a Force Majeure Event, Shipper shall thereafter have no further obligation to make any payments to Terminal Operator in relation to such Force Majeure Event. After the said term of three (3) Weeks, Shipper shall make no further payments to Terminal Operator in relation to LNG ~~Redelivery~~ Services which Terminal Operator is not providing as a result of the Force Majeure Event for a period of two (2) Years thereafter, or, if earlier, until the Force Majeure Event is ended and Terminal Operator resumes provision of all LNG ~~Redelivery~~ Services pursuant to this LTA. If such Force Majeure Event continues beyond this period, the Parties shall work together to adjust the commitment of the Parties in relation to such Force Majeure Event in accordance with GC 132.3.3.

~~12.3.2~~13.3.3 In the event performance by Terminal Operator under this LTA is substantially or totally impaired by a single Force Majeure Event which is estimated to last for a period of more than twenty-four (24) consecutive Months, Terminal Operator shall give notice hereof to Shipper within ninety (90) Days as from the date of the Force Majeure Event. Shipper shall be entitled to either (i) terminate the concerned LNG ~~Redelivery~~ Services; or (ii) for the services which the remaining duration is longer than the estimated duration of the Force Majeure, suspend the concerned service until the end of Force Majeure. In case the duration of the Force Majeure exceeds the estimated duration of the Force Majeure, Shipper shall be entitled to choose one of the possible adjustments described above.

In case the Shipper has decided to terminate the concerned LNG ~~Redelivery~~ Service, such termination shall occur upon (i) notice to terminate to the other Party, and (ii) such notice to terminate being given within ninety (90) Days of the end of such ninety (90) Day period following receipt of the notice of Force Majeure exceeding 24 Months or as the case may be extended with the duration of the arbitration procedure when the duration of the Force Majeure Event is contested. In such event, such LNG ~~Redelivery~~ Services shall terminate upon receipt of the notice to terminate by the other Party and each Party's liabilities shall be limited to those accrued prior to the date of such termination. For the avoidance of doubt Shipper shall make payments due pursuant to GC 132.3.2 in relation to the LNG ~~Redelivery~~ Services that Terminal Operator is not providing.

~~12.3.3~~13.3.4 If a Force Majeure Event within the Port (excluding for Adverse Weather Conditions but not excluding damage to the Port caused by

such Adverse Weather Conditions) but not at the LNG Terminal affects, in whole or in part, the ability of Shipper to use the LNG ~~Redelivery~~ Services made available by Terminal Operator, GC 132.3.2 and GC 132.3.3 shall apply as far as payment of the Capacity Charges by Shipper is concerned for such LNG ~~Redelivery~~ Services which Shipper is unable to use during the duration of such Force Majeure Event and Shipper and Terminal Operator shall have the right to terminate the affected LNG ~~Redelivery~~ Service if such Force Majeure Event qualifies as a Force Majeure Event of more than twenty (24) Months.

## **13.14. INCIDENT, EMERGENCIES, AND CONGESTION MANAGEMENT**

### **13.14.1 INCIDENT MANAGEMENT AND EMERGENCIES**

~~13.1.1~~14.1.1 In accordance with the LNG Access Code, the Terminal Operator may take all measures it deems necessary to guarantee and/or restore the safety and system integrity of the LNG Installation in case of an incident or emergency.

~~13.1.2~~14.1.2 Whenever deemed required, the Terminal Operator might activate the incident & emergency procedure as defined in the LNG Access Code. In the latter case, the incident or the emergency qualifies as an Emergency and the Terminal Operator shall notify the Shippers as soon as reasonably possible.

### **13.214.2 CONGESTION MANAGEMENT**

~~13.2.1~~14.2.1 The procedures referred to in the section 3.10+ of the LNG Access Code shall apply in case of a situation of congestion.

~~13.2.2~~14.2.2 Pursuant to the provisions of the Code of Conduct, the Terminal Operator shall undertake the following pro-active measures for congestion management through:

- (i) offering the maximum available amount of LNG ~~Redelivery~~ Services to Shippers on the Primary Market, taking into account system integrity and operation and within the actual exploitation boundaries;
- (ii) offering and developing LNG ~~Redelivery~~ Services that are aligned with the market needs;

- (iii) adopting non-discriminatory and transparent allocation rules as set forth in section 2.2 of the LNG Access Code;
- (iv) encouraging the “use or sell” principle for LNG ~~Redelivery~~ Services by facilitating the transfer of LNG ~~Redelivery~~ Services via the Secondary Market;

~~13.2.3~~14.2.3 Pursuant to the provisions of the Code of Conduct, the Shipper shall undertake the following pro-active measures for congestion management:

- (i) does not subscribe more LNG ~~Redelivery~~ Services than reasonably required to fulfil his contractual provisions made;
- (ii) to offer on the Secondary Market its subscribed LNG ~~Redelivery~~ Services that it temporarily or permanently does not use;
- (iii) shall refrain from using the allocated subscribed LNG ~~Redelivery~~ Services to hamper, limit or disturb the functioning of the market.

## **14.15. DURATION AND TERMINATION OF THIS AGREEMENT**

### **14.1~~15.1~~ TERM AND DURATION OF THE AGREEMENT**

The LTA shall enter into force on the Effective Date of this LTA and shall be effective for an undetermined term.

### **14.2~~15.2~~ TERMINATION OF THE AGREEMENT BY THE SHIPPER**

The Shipper may terminate this LTA at any time by giving prior written notice to the Terminal Operator to the extent that all LNG ~~Redelivery~~ Services subscribed under this LTA have been terminated in accordance with GC 165.

## **15.16. TERM, EVENT OF DEFAULT, TERMINATION AND SUSPENSION OF THE LNG REDELIVERY SERVICES**

### **15.1~~16.1~~ TERM OF LNG ~~REDELIVERY~~ SERVICES**

Each Service subscribed by Shipper under this LTA shall have a Service Term as set out in the relevant Services Confirmation. The Service shall automatically end at the end date set out in the Services Confirmation.

### **16.2 EVENTS OF DEFAULT**

16.2.1 In respect of a Party (hereinafter the "Defaulting Party"), the following events are events of default (hereinafter "Events of Default") for the purposes of this GC 16 while such events continue:

- (i) A Party is adjudicated or found bankrupt or insolvent or an order is made by any competent court or a resolution is passed by the Party for the winding up or dissolution of the Party (other than for the purposes of a merger, reconstruction or amalgamation of the Party whilst able to pay its debts as they fall due) or for the appointment of a liquidator or trustee or an order is made for the appointment of an administrator or conservator of the whole or a substantial part of the Party's assets, rights or revenues;
- (ii) proceedings in bankruptcy or applicable insolvency laws are instituted against a Party or a Party institutes such proceedings itself;
- (iii) a Party stops or suspends payment of its debts as and when they fall due pursuant to its inability to pay, or admits its inability to pay, or becomes insolvent or unable to pay its debts generally as and when they fall due;
- (iv) a Party is dissolved or in any case commits any act of bankruptcy or has a receiving order made against it or makes or negotiates for any composition or arrangement with or assignment for the benefit of its creditors; or
- (v) a failure to pay any sums due and owing by such Party (without prejudice to GC ~~8.1.3~~ 7.3.1) by the Due Date, and such sums remain unpaid three (3) Months after the Due Date.
- (vi) non-compliance with the creditworthiness requirements as specified in GC 10 or any Services Confirmation

### 15.2~~16.3~~ **SUSPENSION OF LNG ~~REDELIVERY~~ SERVICES**

~~15.2.1~~16.3.1 The LNG ~~Redelivery~~ Services may be suspended as the case may be in accordance with GC ~~132~~ and ~~143~~.

~~15.2.2~~16.3.2 In case of default of the Shipper to fulfil its obligations under GC ~~89~~ and ~~109~~, the LNG ~~Redelivery~~ Services will be suspended after written notice by the Terminal Operator and as of right and the Terminal Operator shall be entitled to re-allocate relevant LNG ~~Redelivery~~ Services to another Shipper according to the service allocation rules specified in

section 2.2 of the LNG Access Code to the extent that the relevant LNG ~~Redelivery~~ Services have not been reallocated, the Shipper remains liable for the amounts to be invoiced for such suspended LNG ~~Redelivery~~ Services which shall be reactivated within two (2) Business Days as from the payment of all of the amounts due to the Terminal Operator in accordance with GC ~~98~~ and ~~109~~.

#### ~~15.316.4~~ **TERMINATION OF LNG ~~REDELIVERY~~ SERVICES BY SHIPPER**

Shipper shall be entitled to terminate at any time a LNG ~~Redelivery~~ Service under the following conditions:

- (i) For a LNG ~~Redelivery~~ Service to be scheduled within a remaining duration of two (2) years or less than two (2) years: subject to prior written notice and payment to the Terminal Operator of a termination indemnity corresponding to 100% (one hundred percent) of the amounts still to be invoiced for such LNG ~~Redelivery~~ Service until the end date set out in the Services Confirmation (calculated on the basis of the Regulated Tariffs);

To the extent that there are no LNG ~~Redelivery~~ Services available on the Primary Market, if Terminal Operator can partly or wholly sell the validly terminated LNG ~~Redelivery~~ Services on the Primary Market to an Other Shipper, only for the sold part and the period thereof the corresponding amount shall be reimbursed by the Terminal Operator to the Shipper having terminated such LNG ~~Redelivery~~ Service.

- (ii) For a LNG ~~Redelivery~~ Service to be scheduled within a remaining duration exceeding two (2) years: subject to prior written notice and payment to the Terminal Operator of a termination indemnity corresponding to 95 % (ninety-five percent) of the amounts still to be invoiced for such LNG ~~Redelivery~~ Service until the end date set out in the Services Confirmation (calculated on the basis of the Regulated Tariffs).

To the extent that there are no LNG ~~Redelivery~~ Services available on the Primary Market, if the Terminal Operator can partly or wholly sell the validly terminated LNG ~~Redelivery~~ Services on the Primary Market to an Other Shipper, only for the sold part and the period thereof the corresponding amount shall be reimbursed by the Terminal Operator to the Shipper having terminated such Service.

- (iii) In case the Regulated Tariff for the Additional Berthing Right or ~~Small Scale Berthing Right~~ Stand Alone Berthing Right compared with the Regulated Tariff as applicable at the Service Start Date, would increase with more than ten (10) percent above the foreseen indexation (according to the indexation formula given in the Regulated Tariff), the Shipper is entitled to (i) early terminate the concerned Services with a remaining service duration which exceeds two (2) Years subscribed



under this LTA for the remaining term of such service or (ii) to reduce such concerned Services with a remaining service duration which exceeds two (2) Years subscribed under this LTA, subject in both cases to written notice to the Terminal Operator at the latest within thirty (30) Days following the notification by the Terminal Operator that such (new) Regulated Tariff is or becomes applicable.

## ~~16.17.~~ **CONFIDENTIALITY**

~~16.17.1~~ The Parties shall treat and keep any information arising out of the LTA in strict confidence, and shall not transmit, reveal, disclose or otherwise communicate Confidential Information in whole or in part to any third party unless it has obtained the prior written consent of the Party providing the same. However, this restriction shall not apply to any Confidential Information which has:

- a) entered into the public domain otherwise than through the act or failure to act of the receiving Party, or as permitted below of;
- b) has been lawfully acquired, other than in accordance with this GC ~~17.6~~.

~~16.217.2~~ Either Party may communicate Confidential Information to:

- a) Other Shippers, Other Users, Affiliates of Shipper or Terminal Operator and such of their officers, directors and employees to whom communication is reasonably necessary on a need to know basis for the purposes of the performance of this LTA, in each case provided that the Other Shippers, Other Users, Affiliates of Shipper or Terminal Operator, undertake on behalf of itself and its officers, directors and employees, to maintain the confidentiality of such Confidential Information;
- b) persons participating in the implementation of the arrangements contemplated by this LTA, to whom such communication is reasonably necessary on a need to know basis for the purposes of this LTA, including, without limitation, legal counsel, accountants, other professional, business or technical consultants and advisers, underwriters or lenders, provided the receiving persons undertake in writing to maintain the confidentiality of such Confidential Information, unless such person is already under a professional duty of confidentiality or comes within the scope of GC ~~17.6-2~~(a);

- c) any competent court of law, Government Authority or other competent authority (or any political subdivision of any of the foregoing) having jurisdiction over Terminal Operator or Shipper or any Affiliate of Shipper or Terminal Operator provided that such court of law, Government Authority or other competent authority has authority to require such disclosure and that such disclosure is made in accordance with that authority;
- d) any expert or arbitrator to which any dispute between the Parties has been referred; or
- e) any bona fide intended assignee of the whole or any part of the rights and interests of the disclosing Party under this LTA but only to the extent required for such proposed assignment and subject to such intended assignee undertaking to maintain the confidentiality of such Confidential Information.
- f) Any person to whom Confidential Information is disclosed shall be notified at the time that such information is confidential, and such person shall be required to treat it as confidential and not to disclose it further without the disclosing Party's approval.

~~16.3~~17.3 A Party may also communicate Confidential Information to any person reasonably needing to see the same in connection with any bona fide financing of the disclosing Party's operations or offering or sale of securities by Shipper, Terminal Operator, any Affiliate of Shipper or Terminal Operator, to comply with the disclosure or other requirements of applicable law or of financial institutions or other participants (including, but not limited to, rating agencies) in the financing, offering or sale, in each case provided that the receiving Party obtains an undertaking in writing from such person to maintain the confidentiality of such Confidential Information.

~~16.4~~17.4 A Party may communicate Confidential Information to a recognized stock exchange on which the shares of such Party or its shareholders are traded in accordance with the requirements of such stock exchange, provided that such Party shall inform the other Party prior to making such communication and the Party making such disclosure shall limit such disclosure to only such Confidential Information as it is required to disclose according to the applicable requirements.

~~16.5~~17.5 The obligations of confidentiality set forth in this GC ~~17~~6 shall continue for the duration of the Contract Term and for a period of five (5) Years after the end of the Contract Term or the termination of this LTA, whichever is earlier, together with such other provisions of this LTA as are necessary to enforce this GC ~~17~~6.



## **17.18. TRADING AND ASSIGNMENT OF LNG ~~REDELIVERY~~ SERVICES**

Shipper may assign or transfer any or all of the LNG ~~Redelivery~~ Services it has subscribed for under this LTA pursuant to the section 3.1. of the LNG Access Code.

Trading of LNG ~~Redelivery~~ Services on the Secondary Market entails (i) the transfer of all rights and obligations associated therewith ("assignment with release of rights and obligations") or (ii) the transfer of all rights and obligations except that both the assignor and the assignee remain liable towards the Terminal Operator for payment of all charges related to LNG ~~Redelivery~~ Services ("assignment with partial release of rights and obligations").

The following two types of assignment of the LNG ~~Redelivery~~ Services can be distinguished:

- Assignments over the counter ("OTC"); or
- Assignments via the Secondary Market Platform. For the avoidance of doubt the rights and obligations relating to the Secondary Market Platform are subject to the terms and conditions of such platform which may vary in function of its future evolution.

## **18.19. WAIVER**

The failure of a Party to this LTA to enforce or to exercise, at any time or for any period of time, any term of or any right arising under or pursuant to this LTA does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that Party's right to enforce or exercise it later except if expressly otherwise provided.

## **19.20. SUCCESSORS**

This LTA binds and inures to the benefit of the Parties and their respective successors and permitted assigns.

## **20.21. SEVERANCE**

If any provision or part of a provision of this LTA is found by a court, an authority of competent jurisdiction or a panel of arbitrators (pursuant to the application of Clause 6.2) to be void or unenforceable, that provision or part of a provision shall be deemed to be deleted from this LTA and the remaining provisions shall continue in full force and effect. If a provision of this LTA is found to be void or unenforceable, such provision shall be removed from this LTA and shall be substituted by a valid and enforceable provision after public consultation and after formal approval by the CREG pursuant to and in

accordance with the applicable regulatory framework, including without limitation the Gas Act and the Code of Conduct.

## **21.22. INFORMATION**

The Parties shall at all times provide in a full and accurate manner each other all such information as may be necessary or useful to enable each Party to exercise its rights and to carry out its obligations under this LTA and in accordance with the Code of Conduct and the LNG Access Code.

~~Failure to comply with this GC 21 shall constitute a material breach of Terminal Operator/Shipper's obligations under this LTA. Failure to comply with the information obligations by a Party shall be sanctioned, as the case may be, under criminal law in accordance with the Code of Conduct.~~

## **22.23. ENTIRE AGREEMENT**

This LTA constitutes the entire agreement and understanding between the Parties with respect to its subject matter and supersedes and extinguishes any and all previous negotiations, agreements, understandings, undertakings, representations documents, minutes of meetings, letters and notices (whether written or oral) previously given or made with respect to the subject matter of this LTA, other than those included in this LTA provided that nothing in this GC ~~23~~ shall limit or exclude liability for fraud.

## **23.24. NO INTERMEDIARIES**

Parties represent that they have no obligation to any third party by way of commissions, finder's fees or similar fees with respect to entering into this LTA. Each Party hereto agrees to indemnify and hold harmless the other Party hereto for and against all claims and losses suffered by such other Party resulting from the incorrectness of this foregoing representations made by the indemnifying Party.

## **24.25. SURVIVAL OF RIGHTS, DUTIES AND OBLIGATIONS**

**254.1** Termination of this LTA for any cause shall not release a Party from any liability which at the time of termination has already accrued to the other Party or Parties or which thereafter may accrue in respect of any act or omission prior to such termination.

**254.2** Termination shall not release the Parties from their obligations under GC ~~17~~ which shall continue in force for a period of five (5) years following termination.

## **25.26. REMEDIES**

Unless otherwise specified in this LTA, any remedies provided for in this LTA shall be several and cumulative.

## **26.27. NO PARTNERSHIP**

Nothing in this LTA and no action taken by the Parties pursuant to this LTA shall constitute, or be deemed to constitute, a partnership, unincorporated association or co-operative entity.

## **27.28. LNG TERMINAL EXTENSION**

As long as such extension has no material impact on the provision of the LNG ~~Redelivery~~ Services and/or other services provided pursuant to this LTA, Shipper shall not prevent, hinder or delay any future extension of the LNG Terminal.

## **28.29. CHANGE OF CIRCUMSTANCES**

Shipper acknowledges that the regulatory framework of LNG in Belgium and in the European Community (including the applicable legal framework relating to LNG regulations and the LNG Access Code) are evolving. If during the term of this LTA, there is a change of such regulatory framework, due to a decision of the CREG or any other regulatory authority, or due to any change in the applicable laws and regulations, such change shall automatically and *ipso jure* apply to the LTA as of the moment such change has become effective. Such change shall enter into force for Shipper on the date set by the CREG.

If certain provisions of this LTA require to be amended following a change in the applicable laws and regulations, Terminal Operator shall be entitled to amend or modify this LTA after public consultation of the market and after approval by the CREG in accordance with the applicable laws and regulations, in order to make it comply with applicable laws and regulations.

# ATTACHMENT C

## DEFINITIONS

Capitalized words and expressions used in this LTA shall have the meaning given in Chapter 5 'Glossary of Definitions' of the LNG Access Code.

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<b>19.</b>	<b>WAIVER</b>	<b><u>4340</u></b>
<b>20.</b>	<b>SUCCESSORS</b>	<b><u>4340</u></b>
<b>21.</b>	<b>SEVERANCE</b>	<b><u>4341</u></b>
<b>22.</b>	<b>INFORMATION</b>	<b><u>4441</u></b>
<b>23.</b>	<b>ENTIRE AGREEMENT</b>	<b><u>4441</u></b>
<b>24.</b>	<b>NO INTERMEDIARIES</b>	<b><u>4441</u></b>
<b>25.</b>	<b>SURVIVAL OF RIGHTS, DUTIES AND OBLIGATIONS</b>	<b><u>4441</u></b>
<b>26.</b>	<b>REMEDIES</b>	<b><u>4542</u></b>
<b>27.</b>	<b>NO PARTNERSHIP</b>	<b><u>4542</u></b>
<b>28.</b>	<b>LNG TERMINAL EXTENSION</b>	<b><u>4542</u></b>
<b>29.</b>	<b>CHANGE OF CIRCUMSTANCES</b>	<b><u>4542</u></b>
<b>ATTACHMENT C</b>		<b>1</b>
<b>DEFINITIONS</b>		<b>1</b>