

**FLUXYS LNG NV/SA**

and

**[SHIPPER]**

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**LNG SERVICES AGREEMENT**

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THIS AGREEMENT is made on [DATE] (hereinafter the “LNG Services Agreement”, or the “LSA”) 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

Terminal Operator owns and operates the LNG Terminal. It is able, duly authorised and empowered to provide the LNG Services offered by Terminal Operator to Shipper under this LSA.

Shipper wishes to purchase from Terminal Operator LNG Services offered by Terminal Operator to Shipper and Terminal Operator wishes to provide the LNG Services to Shipper.

This LSA 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**”).

The Parties wish to enter into this LSA in order to set out the basis upon which Terminal Operator will provide to Shipper and Shipper will pay for and use the LNG Services.

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

**1 DEFINITIONS AND INTERPRETATION**

**1.1 DEFINITIONS**

Unless otherwise defined in this LSA, and its attachments, capitalised words and expressions used in this LSA including its attachments and in any Services Confirmation shall have the meaning given to them in Chapter 5 “Glossary of Definitions” of in the LNG Access Code.

**1.2 INTERPRETATION**

In this LSA, unless the context otherwise requires:

- (i) 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);
- (ii) reference to a ‘company’ shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (iii) reference to any person or company includes references to that person’s or company’s successors and permitted assignees;
- (iv) the singular includes the plural and vice versa as appropriate, except where appropriate for the terms Shipper, Party and Terminal Operator;
- (v) reference to any gender includes the other gender;
- (vi) unless otherwise specifically stated, references to an ‘Attachment’ and a ‘Clause’ shall be to an attachment and a clause in this LSA;
- (vii) unless otherwise specifically stated, references to ‘GC’ shall be to a section in the General Conditions;
- (viii) unless otherwise specifically stated, references to ‘SC’ shall be to a section in the Services Confirmation;
- (ix) unless otherwise specifically stated, references to ‘AC’ shall be to a section in the LNG Access Code;
- (x) headings and the table of contents are inserted for convenience only and do not affect the construction or interpretation of this LSA;

- (xi) unless otherwise stated, reference to an agreement, instrument or procedures is to the same as amended, novated, modified or replaced from time to time;
- (xii) 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
- (xiii) in case an index or reference used or referred to in this LSA 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 LSA, Terminal Operator shall, after having consulted with 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 consultation of the concerned users and the approval by the CREG.

## **2 SCOPE OF THIS AGREEMENT**

### **2.1 OBJECT**

The object of this LSA 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 Services in relation to the LNG Terminal of Zeebrugge and upon which the Terminal Operator shall perform said LNG Services.

The provisions of this LSA and its attachments will be applicable only to the extent that the Shipper has subscribed LNG Services and only for the performance of such subscribed Services.

### **2.2 CONTENTS**

This LSA comprises the provisions contained herein, together with any Services Confirmation (as defined in Article 3.2) and the general conditions contained in Attachment B (the “*General Conditions*”), which shall all form an integral part of this LSA. By signing this LSA, 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 Service provided by Terminal Operator to Shipper under this LSA 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 LSA, 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 LSA. By signing this LSA, each of the Terminal Operator and Shipper acknowledges to have taken knowledge of the content of the LNG Terminalling Program.

## **3 LNG SERVICES**

### **3.1 PROVISION OF LNG SERVICES**

During the Contract Term, Terminal Operator agrees to provide to Shipper and Shipper agrees to receive from Terminal Operator and pay for the LNG Services, set out in any Services Confirmation(s) as enclosed in attachment A and provided by Terminal Operator to Shipper under this LSA, in accordance with the terms and conditions contained in this LSA.

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

During the Contract Term, Shipper may submit requests to subscribe to LNG 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 constitute a “*Services Confirmation*” and deemed to be added as Attachment A to this LSA.

## **4 TERM OF THE AGREEMENT**

### **4.1 EFFECTIVE DATE**

Without prejudice to the provisions set out in the relevant Service Confirmation(s), this LSA shall enter into force and effect on the date of signing this LSA (the “**Effective Date**”) and shall continue in full force and effect until the end of the Contract Term.

### **4.2 SURVIVAL**

Termination or expiry of this LSA does not affect the provisions of this LSA 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.

**4.3 EXISTING AGREEMENT TO REMAIN IN FORCE**

[The signature or entering into effect of this LSA, or any Services Confirmation, shall not affect the existence or validity or purport to replace the Capacity Subscription Agreement entered into on [•] (as amended from time to time), nor any other agreement entered into between the Parties, which shall continue to be in full force and effect in accordance with their terms.]<sup>1</sup>

**5 NOTICES**

Any notice which a Party is required, or permitted, to give pursuant to this LSA -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;
- (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; or
- (iv) 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]

<sup>1</sup> Only include to the extent previous agreements exist between parties

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

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 above – 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 10h00 on the next Business Day, as applicable.

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.

For specific ship to shore communications the provisions of this Clause 5 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.

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 LSA.

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

### **6.1 GOVERNING LAW**

This LSA shall be governed by and shall be construed and interpreted in accordance with Belgian law, excluding any conflict of law provisions.

## 6.2 ARBITRATION

Except as provided in GC 6.3 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 final resolution of any disputes arising out of or in connection with this LSA, including any question regarding its existence, validity, interpretation, performance or termination or relating to non-contractual obligations arising out of or in connection with this LSA (a “Dispute”).

If any Dispute arises between Shipper and Terminal Operator, the Parties shall first promptly discuss such Dispute in an attempt to resolve such Dispute amicably through negotiations.

If any 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 refer the Dispute to be finally settled under the Rules of Arbitration of the International Chamber of Commerce (“ICC”).

Such arbitration shall be conducted in accordance with the Rules of Arbitration of the ICC prevailing and in effect as at the date either Party refers the Dispute to arbitration.

The arbitral tribunal shall be composed of three (3) arbitrators, appointed in accordance with the said Rules.

The seat of the arbitration will be Paris, France.

The language of the arbitration will be English.

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 arbitral tribunal shall include a statement of the reasons for such decision and shall be final and binding on the Parties.

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 (GC 3)’ and ‘measurement and testing (GC 4)’ 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 LSA, 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. In case the Parties do not agree to submit the matter for expert opinion or to arbitration, arbitration will apply.

### **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 or if the lists do not contain any common name or if one of the Parties does not nominate any expert, 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. 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 LSA 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 his or her 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 in English 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 in English.

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 [Brussels], 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

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[Name]  
[Function]

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[Name]  
[Function]

[SHIPPER]  
as Shipper

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[Name]  
[Function]

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[Name]  
[Function]

# ATTACHMENT A

## SERVICES CONFIRMATION FOR LNG SERVICES

# ATTACHMENT B

## GENERAL CONDITIONS FOR LNG SERVICES

### 1 LNG SERVICES

#### 1.1 SERVICE TERMS AND CONDITIONS

- 1.1.1 Subject to the terms and conditions of this LSA and the AC, during the Contract Term, Terminal Operator shall deliver to Shipper, and Shipper shall pay for the LNG Services that Shipper has subscribed pursuant to any Services Confirmation in accordance with the LNG Access Code.
- 1.1.2 Terminal Operator shall provide the LNG Services as from the relevant Service Start Term during for the relevant Service Term.

#### 1.2 SUBSCRIBED SLOTS

- 1.2.1 As from the Service Start Date, the Subscribed Slot as referred to in the Services Confirmation, is contracted for by Shipper and Terminal Operator is obligated to supply such Subscribed Slot pursuant to the terms and conditions of this Agreement and the LNG Access Code.
- 1.2.2 Subject to the terms and conditions of this Agreement and the LNG Access Code, for a Subscribed Slot, Terminal Operator shall:
- (i) accept within the Window the LNG Ship and at the Delivery Point take delivery of the Nominated Cargo of LNG, provided such Nominated Cargo of LNG (when unloaded) does not exceed Shipper's Storage Capacity and meets the Specification for the Delivery Point;
  - (ii) provide Basic Storage for the Nominated Cargo of LNG for a period equal to the Basic Storage Duration;
  - (iii) provide the Basic Send Out Capacity for the Nominated Cargo of LNG and regasify and redeliver to Shipper (or Shipper's Client) at the Redelivery Point a Quantity of Natural Gas which meets the Specification for the Redelivery Point and is equivalent, in energy terms, to the Quantity of LNG available in the Basic Storage less FGm (as defined in the LNG Access Code) in compliance with the Terminal Nominations.
  - (iv) provide the Additional Storage contracted for by Shipper, if any;
  - (v) provide the Additional Send Out Capacity contracted for by Shipper, if any;
  - (vi) provide the Daily Storage contracted for by Shipper, if any; and

Based on version approved by the CREG on December 17<sup>th</sup> 2020

Applicable as of January 1<sup>st</sup> 2021

(vii) provide the Daily Send Out Capacity contracted for by Shipper.

### **1.3 LIMITATION OF TERMINAL OPERATOR'S OBLIGATION**

Terminal Operator shall not be obliged to accept at the Delivery Point a Nominated Cargo of LNG which exceeds Shipper's Storage Capacity.

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.

### **1.4 THREAT TO HEEL**

Shipper shall ensure that its Gas in Storage at the Terminal is positive at all times by taking all appropriate and necessary actions, e.g. buying LNG from other Terminal Users and/or have an LNG Ship deliver a LNG cargo at the Terminal. In the event of non-compliance, Terminal Operator is entitled, at the cost of Shipper, to take all actions and measures it deems necessary or useful to safeguard the structural and operational integrity of the LNG Terminal. In such case, the Terminal Operator shall inform as soon as reasonably possible the Shipper in advance.

Without prejudice to section AC 3.7.1 and AC 3.11, Terminal Operator may deliver to Shipper a Quantity of Natural Gas at the Redelivery Point which is less than the Nominated Hourly Delivery 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. In such case, the Terminal Operator shall as soon as possible in advance advise and duly justify the required Gas In Storage level, consistent with good industry practice.

## **2 CUSTODY, RISK AND TITLE**

- 2.1.1 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. Custody and all risks with respect to, including risk of loss, of 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.
- 2.1.2 Subject to GC 2.1.3, 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.
- 2.1.3 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 QUALITY REQUIREMENTS**

#### **3.1 SPECIFICATION**

- 3.1.1 Shipper shall deliver LNG at the Delivery Point, which complies with the Specification for the Delivery Point in accordance with AC 3.3.1.
- 3.1.2 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.
- 3.1.3 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 noncompliance. In such case and without prejudice to GC 3.2 and 3.3 hereunder, the Parties shall consult with each other to determine what steps can be reasonably taken to alleviate or to eliminate the problem.
- 3.1.4 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.



- 3.1.5 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.

### **3.2 SHIPPER'S FAILURE TO CONFORM**

- 3.2.1 Without prejudice to GC 3.1, 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 3, 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 to redeliver Natural Gas that complies with the Specification for the Redelivery Point. 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 High 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 redeliver to Shipper Natural Gas which complies with the Specification for the Redelivery Point. Terminal Operator shall act as a Reasonable and Prudent Operator in order to minimize such direct costs, direct expenses and direct losses.

- 3.2.2 If the Parties agree to unload the Off-Specification LNG, Terminal Operator shall use its reasonable endeavours (unless otherwise agreed) to redeliver Natural Gas at the

Redelivery Point that is in compliance with the Specification for the Redelivery Point but, subject to GC 3.2.7, Terminal Operator cannot be held liable if, after having used its reasonable endeavours, the Natural Gas redelivered at the Redelivery Point is not in compliance with the Specification for the Redelivery Point. 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.

- 3.2.3 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.
- 3.2.4 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.
- 3.2.5 In case:
- (i) Terminal Operator becomes aware later than six (6) hours before the High 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) 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.

- 3.2.6 When Off-Specification LNG is being delivered by Shipper pursuant GC 3.2, 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 3.2.
- 3.2.7 If Terminal Operator has accepted from Shipper Off-Specification LNG at the Delivery Point, Shipper may not refuse to accept Off-Specification Natural Gas at the Redelivery Point, 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 3 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.

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

- 3.3.1 If Terminal Operator makes Off-Specification Natural Gas available at the Redelivery Point 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, 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

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Applicable as of January 1<sup>st</sup> 2021

presented to Terminal Operator due to the failure of Terminal Operator to comply with the Specification for the Redelivery Point. Shipper shall take all reasonable measures to minimize such direct costs, direct expenses and direct losses, which Shipper may incur.

- 3.3.2 If Off-Specification Natural Gas is redelivered at the Redelivery Point 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, provided Shipper takes all reasonable measures to minimize such direct costs, direct expenses and other direct losses which Shipper may incur. This GC 3.3.2 shall also apply if Terminal Operator has accepted Off-Specification LNG from Other Shipper(s) or Other User(s) under GC 3.2.4 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 MEASUREMENT AND TESTING**

### **4.1 Measurement and testing of LNG at the Delivery Point**

#### **4.1.1 General**

Unloaded Quantities of LNG shall be measured and the determination of the quality of the unloaded LNG shall be determined in accordance with the procedures of AC 3.4. 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 GIIGNL LNG Custody Transfer Handbook, as far as practicable shall apply.

#### **4.1.2 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.

#### **4.1.3 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 AC 3.4 for each tank of each LNG Ship.

#### 4.1.4 Gauging and measuring LNG volumes unloaded

Volumes of LNG delivered under this LSA shall be determined by gauging the LNG in the tanks of the LNG Ship(s) immediately before and after unloading. 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. 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 AC 3.4.

#### 4.1.5 Samples for quality analysis

Representative samples of the unloaded LNG shall be obtained or caused to be obtained by Terminal Operator during the time of unloading as provided in AC 3.4.

#### 4.1.6 Quality analysis

Unless otherwise agreed, the samples referred to in GC 4.1.5 shall be analysed, or caused to be analysed by Terminal Operator in accordance with the terms of AC 3.4 to determine the molar fraction of the hydrocarbons and other components in the sample.

#### 4.1.7 Operating procedures

Shipper, at no cost to Terminal Operator, shall procure that all measurements, gauging and analyses provided for in GC 4.1.4 to GC 4.1.6 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.

#### 4.1.8 LNG Quantity delivered

The Quantity of LNG in energy terms delivered at the Delivery Point shall be calculated by Terminal Operator following the procedures set forth in AC 3.4 and can be verified by an independent surveyor agreed upon by Shipper and Terminal Operator in accordance with GC 4.1.7.

#### 4.1.9 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 AC 3.4. 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.

#### 4.1.10 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.

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

#### 4.2.1 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.

#### 4.2.2 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.

#### 4.2.3 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.

#### 4.2.4 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.

#### 4.2.5 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.

#### 4.2.6 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 3.1 and GC 4.3 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 4.2.4; or
- (iv) by Terminal Operator 's daily aggregate balance calculation sheet.



#### **4.3 REIMBURSEMENT OF FUEL GAS**

The Terminal Operator shall be entitled to deduct FGm (as defined in the LNG Access Code) from Shipper's Gas in Storage in accordance with the provisions of the LNG Access Code.

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

Terminal Operator shall during the term of the LSA 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 LSA and under the LNG Access Code (amongst others AC 3.1 and 3.7) and to operate the LNG Terminal in accordance with the standards of a Reasonable and Prudent Operator and 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

#### **6 TARIFF AND INDEXATION**

The LNG Services delivered by Terminal Operator to Shipper under this LSA are subject to the applicable Regulated Tariffs as approved by the CREG. Shipper shall pay to Terminal Operator the Monthly Capacity Charge calculated and indexed in accordance with the Regulated Tariffs and any other amount invoiced pursuant to GC 7.

The Capacity Charges or any other amounts invoiced pursuant to the GC 7 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 Services by Terminal Operator under this LSA (including but not limited to VAT, excise or levies imposed by the public authorities, or other surcharges such as CO2 taxes decided or increased after the Effective Date 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 INVOICING AND PAYMENT

### 7.1 SUBMISSION OF INVOICE

7.1.1 For any LNG Services subscribed by a Service Confirmation, as from the Service Start Date the Terminal Operator shall on the tenth (10th) Day of each Month (or the next Business Day if the tenth (10th) Day is not a Business Day) issue 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 12.3.2 or for the Service Unavailability under the last paragraph of this GC 7.1.1) of the current Month;
- (ii) any Demurrage Rate, due by Shipper under GC 10.1.5, which will be invoiced in the Month following the relevant Month to which it relates;
- (iii) any correction on the Monthly Capacity Charge and/or any Demurrage Rate paid by the Shipper for the previous Month(s);

All invoices shall include a detailed calculation of the Monthly Capacity Charge(s), mentioning amongst others the performed LNG 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 (EUR) and the interest rates if applicable. Together with the invoice, the utilization rate of the LNG Services and a detailed summary table per performed LNG Service shall be communicated, particularly including the gas allocation and measurement results.

7.1.2 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 LSA, such as in case of a service not being provided due to a Force Majeure Event arising during such Month.

7.1.3 For the avoidance of doubt, in the event where the Terminal Operator provides or makes available less than all of the Services subscribed to by the Shipper with any Service Confirmation in breach with its obligations excluding for the avoidance of doubt circumstances of Force Majeure for which GC 12 shall apply (the “**Service Unavailability**”), then the Capacity Charge for the relevant period shall be reduced pro rata the reduction in LNG Services, taking into account the allowed number of Reduced Service Days, as specified in AC 3.7. 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 LSA. For the avoidance of doubt, unless relieved by another provision of this LSA, the Monthly Capacity Charge is payable irrespective of whether Shipper actually uses the LNG Service it has subscribed via the Services Confirmation for that Month.

7.1.4 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 (5th) Business Day following the date of the invoice.

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

7.1.6 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 LSA to the extent these amounts are payable, defined and undisputed.

## **7.2 PAYMENT TERMS**

7.2.1 Shipper shall pay the invoice referred to in GC 7.1 in Euro by the Due Date being thirty (30) Days after receipt of such invoice within the framework of this LSA. If the Due Date is not a Business Day, the first following Business Day shall apply.

7.2.2 Without prejudice to GC 7.2.1, 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.

## **7.3 DISPUTED PAYMENTS**

7.3.1 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 LSA.

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. 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 LSA.

7.3.2 If the invoice has not been paid on the Due Date or if the Shipper has made an undue payment in accordance with GC 7.3, 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.

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

## **8 CREDIT COVER**

### **8.1 CREDITWORTHINESS REQUIREMENTS**

8.1.1 The Terminal Operator is entitled to require the Shipper having entered into an LSA to:

- (i) Provide a Financial Bank Guarantee in accordance with GC 8.2; or,
- (ii) Provided that there are no invoiced amounts overdue, at the latest five (5) Business Days before the Services Start Date and until the Service End Date of any Service Confirmation, 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+ by Standard & Poor’s Rating Services or Fitch Ratings or not less than Baa1 by Moody’s Investor Services – or to provide an unconditional and irrevocable parent company guarantee to cover for the obligations of Shipper under this Agreement via its parent company who has an acceptable credit rating (Standard & Poor’s/Fitch : BBB+ and Moody’s : Baa1). The Shipper must demonstrate annually and at the latest on the anniversary date of the subscribed LNG 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.

8.1.2 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 8.

8.1.3 If the Shipper no longer meets the requirements stipulated in GC 8.1, it must, at the risk of breach of contract, immediately notify the Terminal Operator hereof by registered mail. The Shipper has fifteen (15) Business Days in order to demonstrate to the Terminal Operator that it complies with the provisions of GC 8.1.1. If upon expiry of this period, the Shipper does not comply with the provisions of GC 8.1.1, the Terminal Operator will be entitled to suspend the LNG Services in accordance with GC 16.

8.1.4 Any modification of Shipper’s subscribed LNG 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.

### **8.2 FINANCIAL BANK GUARANTEE**

8.2.1 The Shipper who has to provide a Financial Bank Guarantee must, five (5) Business Days before the Service Start Date and until the Service End Date of any Service Confirmation, have an unconditional and irrevocable Financial Bank Guarantee issued by a bank licensed by the Belgian Financial Services & Market Authority (or by an equivalent body in one of the Members States of the European Union), for an amount equal to two times the Monthly Capacity Charge.

If the LNG 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 Service, the expected invoice amount (VAT included).

- 8.2.2 Shipper must demonstrate annually and at the latest on the anniversary date of the subscribed LNG Services, 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 8, 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 8.2.
- 8.2.3 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. If more than one Service Confirmation has been entered into, the Services Confirmation with the most remote Service End Date shall apply for the purposes of this GC 8.2.3
- 8.2.4 Without prejudice to GC 16, 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.
- 8.2.5 If Terminal Operator has drawn on the Financial Bank Guarantee pursuant to GC 8.2 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 8.2 or (ii) provide a new Financial Bank Guarantee that complies with the conditions stipulated in of GC 8.2. In case of default, the LNG Services may be suspended in accordance with GC 16.

## 9 WARRANTIES

### 9.1 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 from the Effective Date, as follows:

- (i) 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);
- (ii) it has the power (i) to execute this LSA and any other documentation relating to this LSA to which it is a Party and (ii) to perform its obligations under this LSA and has taken all necessary action to authorise that execution and performance;

- (iii) the execution and performance referred to in paragraph (ii) does 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;
- (i) its obligations under this LSA 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.

## **9.2 SHIPPER'S WARRANTIES**

Shipper hereby warrants to Terminal Operator that:

- (i) 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;
- (ii) 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 with respect to the LNG unloaded at the Delivery Point.

## **9.3 TERMINAL OPERATOR'S WARRANTIES**

Terminal Operator hereby warrants to Shipper that:

- (i) 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; and
- (ii) it holds any and all licenses, permits and authorisations required under applicable law to provide LNG Services and that it shall use its reasonable endeavours to maintain such licenses, permits and authorisations during the Service Term.

# **10 LIABILITY**

## **10.1 GENERAL**

- 10.1.1 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.

- 10.1.2 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 LSA, 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.
- 10.1.3 In the event Shipper is liable, whether in contract, in tort or otherwise, pursuant to a breach of any of the provisions of this LSA, 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.
- 10.1.4 Except as limited by GC 10.2 and GC 10.4, 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 LSA and its attachments, except when such claim arises due to gross negligence or wilful misconduct of the other Party.

## **10.2 LIABILITY MAXIMUM AMOUNT**

- 10.2.1 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.
- 10.2.2 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.
- 10.2.3 Without prejudice to GC 10.1.4, to the extent that Terminal Operator's damages arising pursuant to GC 10.2.1 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.
- 10.2.4 Without prejudice to GC 10.1.4, to the extent that Shipper's damages arising pursuant to GC 10.2.2 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.

### 10.3 LNG VALUE IN CASE OF LOSS OF LNG

Where Terminal Operator is liable for the loss of LNG or Natural Gas, the amount of the loss shall be determined by application of the Zig Day Ahead on the Day of the loss.

### 10.4 LIMITATION OF LIABILITY FOR LNG SERVICES

10.4.1 Except in case of: (i) liability of Shipper by virtue of GC 3.2 or GC 10.2.1 (ii) liability of Terminal Operator by virtue of GC 3.3, 10.2.2 or 10.3, the aggregate liability of each Party to the other Party under this LSA (whether such liability arises in contract, tort, including negligence, breach of statutory duty or otherwise in connection with this LSA) shall be limited to:

- (i) for a Subscribed Slot 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 one Slot, insofar as this amount does not exceed the amount provided in paragraph (iii) hereunder;
- (ii) for any other LNG Service (or part thereof), subscribed under this LSA, 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 the relevant LNG Service, insofar as this amount does not exceed the amount provided in paragraph (iii) hereunder.
- (iii) 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 Slot;

10.4.2 Without prejudice to GC 10.1.4, to the extent that Terminal Operator's damages arising pursuant 10.1.2 and limited under GC 10.4 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 10.1.2;

10.4.3 Without prejudice to GC 10.1.4, to the extent that Shipper's damages arising pursuant to GC 10.1.3, and limited under GC 10.4 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 10.1.3.

10.4.4 The limitations of liability set forth under this GC 10.4

- (i) are without prejudice to and shall remain unaffected by the right of Shipper to suspend payments under the conditions of GC 7.1.3; and
- (ii) do not apply to the obligation to pay the Regulated Tariff, any termination fee or any late payment interest.



## **10.5 DEMURRAGE**

- 10.5.1 In the event Terminal Operator, an Other Shipper or an Other User causes the Actual Laytime to exceed the Allowed Laytime in unloading an LNG Ship, Terminal Operator shall pay, subject to GC 10.4, Shipper the Demurrage Rate (pro-rated for any portion of a Day).
- 10.5.2 In the event Shipper causes the Actual Laytime to exceed the Allowed Laytime, Shipper shall pay, subject to GC 10.4, 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).
- 10.5.3 In the event both Terminal Operator (including, for the purposes of this GC 10.5.3 an Other Shipper or an Other User) and Shipper are partly responsible for causing the Actual Laytime to exceed the Allowed Laytime in unloading an LNG Ship, each Party shall pay the Demurrage Rate pro rata its portion of responsibility.
- 10.5.4 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.
- 10.5.5 If during a queuing event, as described in AC 3.1.5.1, 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 10.4, to that LNG ship the Demurrage Rate (pro-rated for any portion of a Day).
- 10.5.6 If an LNG Ship is delayed in berthing and/or commencement of unloading for reasons that would not result in an extension of the Allowed Laytime under AC 3.1.4.5.1, and if, as a result thereof, the commencement of unloading is delayed, Terminal Operator shall, subject to GC 10.4, 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) m<sup>3</sup> 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 unloaded from the applicable LNG Ship.

## **10.6 LIABILITIES VIS-À-VIS OTHER PARTIES**

- 10.6.1 Subject to the provisions of this LSA, 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. Terminal Operator shall not be liable for any loss, damage and expenses suffered by the Shipper through any act or omission of any other Terminal User, save as provided for under GC 10.5 or to the extent Terminal Operator has not acted as a Reasonable and Prudent Operator.

10.6.2 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 intentionelle'), 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.

## 10.7 NO LIMITATIONS FOR FRAUD AND WILFUL MISCONDUCT

In case of gross negligence, wilful misconduct and fraud the limitations of liability in this GC 10 shall not apply.

## 11 INSURANCES

### 11.1 TERMINAL OPERATOR'S INSURANCES

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

- (i) 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 10.2.1; and;
- (ii) the LNG and Natural Gas in the LNG Terminal;
- (iii) any liability to third parties; and
- (iv) other insurances required by applicable laws and other insurances which are necessary for the proper and complete performance of the Agreement.

### 11.2 SHIPPER'S INSURANCES

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

- (i) the LNG Ship. This shall mean that Shipper shall cause the owner of the LNG Ship and its insurer to waive any claim against Terminal Operator above the amount as provided in GC 10.2.2;
- (ii) any liability to third parties, and
- (iii) other insurances required by applicable laws and other insurances which are necessary for the proper and complete performance of the Agreement.

### **11.3 WAIVER OF SUBROGATION RIGHTS**

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.

### **11.4 DEMONSTRATING COMPLIANCE**

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 11.3.

## **12 FORCE MAJEURE**

### **12.1 EVENTS OF FORCE MAJEURE**

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

12.1.2 The term “Force Majeure” or “Force Majeure Event” 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 LSA towards the other Party. Subject to the compliance with the foregoing definition, the following events and circumstances are among those capable of constituting a Force Majeure:

- (i) fire, flood, atmospheric disturbance, lightning, storm, typhoon, hurricane, cyclone, tornado, earthquake, landslide, soil erosion, subsidence, washout or epidemic or any other acts of God;
- (ii) war (whether declared or undeclared), civil war, act of terrorism, riot, civil disturbance, blockade, insurrection or act of public enemies;
- (iii) strike or industrial disturbance;
- (iv) loss of, or serious accidental damage to, or inoperability of the LNG Terminal, Port or Segment 1 which does not result from lack of maintenance or abnormal use of the LNG Terminal or its installations;

- (i) acts of a Government Authority in Belgium or the European Union, or compliance with such acts, that directly affect such Party's ability to perform its obligations hereunder; and
- (ii) 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.

12.1.3 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.

12.1.4 Terminal Operator shall use its best endeavours to procure that the interconnection agreement with the TSO to operate Segment 1, 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 NOTICE AND RESUMPTION OF NORMAL PERFORMANCE**

12.2.1 Promptly upon the occurrence of an event that a Party considers may subsequently lead it to claim Force Majeure relief under this LSA 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 LSA, it shall promptly notify the other Party thereof and shall state in such notice:

- (i) the particulars of the event giving rise to the Force Majeure claim, in as much detail as is then reasonably available including but not limited to the place and time such event occurred;
- (ii) 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;
- (iii) the particulars of the program to be implemented to ensure full resumption of normal performance hereunder; and
- (iv) the LNG Services 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 be 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 the Terminal Operator shall establish with the Shipper the RBS or the amended RBS for such Month or its subsequent Months, as the case may be.

If the period during which such LNG Service may be suspended or reduced as a result of a single or series of Force Majeure Event is estimated to be equal to or less than twenty-four (24) 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 Service may be suspended or reduced. If the Parties fail to recognize the estimated period of the Force Majeure Event within thirty (30) Days after the receipt of the Shipper's notice to the Terminal Operator, the matter may be resolved pursuant to Clause 6.2 or 6.3 of LSA. If the Force Majeure Event is recognized to have an estimated duration of more than twenty-four (24) Months either by the other Party or by the application of Clause 6.2 or 6.3 of the LSA , then the provisions of GC 12.3.3 shall apply.

- 12.2.2 The Party affected by a Force Majeure Event 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 LSA 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 The Parties shall take all reasonable measures to minimize the consequences of the Force Majeure Event, and take all measures that are reasonable in the circumstances to resume normal performance of this Agreement after the occurrence of a Force Majeure Event. Prior to resumption of normal performance, the Parties shall continue to perform their obligations under this Agreement to the extent not prevented by such Force Majeure Event.
- 12.2.4 Force Majeure takes effect at the moment the relevant event occurs and to the extent the event is recognized as a Force Majeure Event 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.

### **12.3 CONSEQUENCES OF FORCE MAJEURE**

- 12.3.1 If a Party is affected by Force Majeure and the event is recognized as Force Majeure either by the other Party or by the application of Clause 6.2 or 6.3 of the LSA, 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 unless expressly specified otherwise in this GC 12.3.

- 12.3.2 If Terminal Operator has suffered a single Force Majeure Event that results in Terminal Operator not being able to provide any part of the LNG Services, Shipper shall continue to pay the part of the Capacity Charge relating to the LNG Services which is still being provided by Terminal Operator.

In relation to any part of the LNG 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 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, Shipper's obligation to pay fifty (50) per cent of the Capacity Charges shall be limited to a total of three (3) weeks of such payments. After the said term of three (3) Weeks, Shipper shall make no further payments to Terminal Operator in relation to LNG Services which Terminal Operator is not providing as a result of the Force Majeure Event, until the Force Majeure Event is ended and Terminal Operator resumes provision of all LNG Services pursuant to this LSA.

Over the entire Service Term, commencing from the Service Start Date, Shipper's obligation to pay fifty (50) per cent of the Capacity Charges 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, Shipper shall thereafter have no further obligation to make any payments to Terminal Operator in relation to such Force Majeure Event.

- 12.3.3 In the event performance by Terminal Operator under this LSA is substantially or totally impaired by a Force Majeure Event which is estimated to last for a period of more than twenty-four (24) consecutive Months pursuant to GC 12.2.1, Terminal Operator shall give notice hereof to Shipper within ninety (90) Days as from the date of the Force Majeure Event. Upon receipt of such notice, the Terminal Operator and the concerned Terminal Users (including Shipper) shall discuss in good faith, taking into account each Party's legitimate interests to take any action in order to remedy or mitigate the effects of the Force Majeure. Absent an agreement within such 90 days, Shipper shall be entitled to either (i) terminate the concerned LNG 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. When the actual duration of the Force Majeure exceeds the estimated duration of the Force Majeure, Shipper shall at such time be entitled to choose one of the possible options described above.

- 12.3.4 In case the Shipper has decided to terminate the concerned LNG 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 as from the 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 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 12.3.2 in relation to the LNG Services that Terminal Operator is not providing.

- 12.3.5 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) or Segment 1 but not at the LNG Terminal affects, in whole or in part, the ability of Shipper to use the LNG Services made available by Terminal Operator, GC 12.3.2 and GC 12.3.3 shall apply as far as payment of the Capacity Charges by Shipper is concerned for such LNG 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 Service if such Force Majeure Event qualifies as a Force Majeure Event of more than twenty (24) Months.

### **13 CONGESTION MANAGEMENT**

Terminal Operator shall undertake the following pro-active measures for congestion management through:

- (i) offering the maximum available amount of LNG 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 Services that are aligned with the market needs;
- (iii) adopting non-discriminatory and transparent allocation rules as set forth in AC 2.2;
- (iv) encouraging the “use or sell” principle for LNG Services by facilitating the transfer of LNG Services via the Secondary Market.

Shipper shall undertake the following pro-active measures for congestion management:

- (i) does not subscribe more LNG Services than reasonably required to fulfil his contractual provisions made or intended deliveries; and
- (ii) to offer on the Secondary Market its subscribed LNG Services that it does not intend to use, according to AC 2.3.3; and
- (iii) shall refrain from using the subscribed LNG Services to hamper, limit or disturb the functioning of the market.

### **14 INCIDENT AND EMERGENCIES MANAGEMENT**

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.

Whenever deemed required, the Terminal Operator might activate the incident & emergency procedure as defined in the AC 3.11. In the latter case, the incident or the emergency qualifies as an Emergency and the Terminal Operator shall notify the Shipper as soon as reasonably possible.

## 15 DURATION AND TERMINATION OF THIS AGREEMENT

### 15.1 TERM AND DURATION OF THE AGREEMENT

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

### 15.2 TERMINATION OF THE AGREEMENT BY THE SHIPPER

The Shipper may terminate this LSA at any time without the need for a court's intervention and without indemnity by giving prior written notice to the Terminal Operator to the extent that all LNG Services subscribed under this LSA have terminated in accordance with GC 16.

## 16 TERM, EVENT OF DEFAULT, TERMINATION AND SUSPENSION OF THE LNG SERVICES

### 16.1 TERM OF LNG SERVICES

Each LNG Service subscribed by Shipper under this LSA shall have a Service Term as set out in the relevant Services Confirmation. The LNG 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 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 8 or any Services Confirmation

16.2.2 The classification of certain events as Events of Default in GC 16.2.1 is without prejudice to a Party's rights and remedies for any breach or default of the Agreement including any other rights which have been expressly provided for in this Agreement as it relates to termination and any associated rights provided therein together with any other rights which either Party may have by law.

### **16.3 SUSPENSION**

16.3.1 Each Party may suspend its performance under this Agreement with immediate effect where the Defaulting Party has failed to remedy any Event of Default within fifteen (15) Days after the Day on which a notice from the non-defaulting Party requiring such Event of Default to be remedied is deemed (in accordance with clause 5 of this Agreement) to be received by the Defaulting Party.

16.3.2 With effect from the date of suspension of the Capacity Service, if Shipper is the Defaulting Party, Shipper shall be deemed to have given a notice in accordance with AC 3.1.10.1 that it does not intend to use its Subscribed Slot, whether scheduled or not, falling after that date and wishes to make them available for resale. Terminal Operator may offer the Subscribed Slot, whether scheduled or not, for resale in accordance with AC 3.1.10.2, for so long as the period of suspension continues.

16.3.3 Shipper shall lose any rights and be relieved of all its obligations in respect of the Slot sold, or agreed to be sold, by Terminal Operator pursuant to AC 3.1.10.2 during the period of suspension, except as provided for in GC 16.3.4.

16.3.4 If Shipper is the Defaulting Party, Shipper shall not be relieved of any liability to pay the Capacity Charge for any period of suspension (whether or not a Subscribed Slot, whether scheduled or not is resold), but Shipper shall be credited, upon deduction of any amount due and unpaid and after deduction of all reasonably incurred costs by Terminal Operator, with ninety-seven (97) per cent of any revenue received by Terminal Operator as a result of the resale, if any, of a Subscribed Slot whether scheduled or not.

16.3.5 If either Party chooses to suspend the Capacity Service in the circumstances described in this GC 16.3, such election is without prejudice to its right of termination and without prejudice to any other rights or remedies, which may be available to the non-defaulting Party against the Defaulting Party in respect of the circumstances giving rise to suspension.

#### **16.4 TERMINATION FOLLOWING EVENT OF DEFAULT**

16.4.1 Without prejudice to any other right or remedy under the LSA, a Party may terminate (all but not part of) the LNG Services without the need for a court's intervention and without indemnity by written notice of ninety (90) Days to the other Party in case of an Event of Default in respect of the other Party which has not been remedied upon expiry of the notice served to the Defaulting Party pursuant to GC 16.3.1. Such termination shall not take effect if the Event of Default has been remedied during the ninety (90) Days' notice period under this GC 16.4.1.

16.4.2 In the event of termination by Terminal Operator pursuant to GC 16.4.1, Terminal Operator shall be entitled to and Shipper shall pay an indemnity payment equal to the termination indemnity due by Shipper in the event of termination for convenience under GC 16.5.

16.4.3 Termination of the Agreement does not affect any rights or obligations which may have accrued to either Party prior to termination, and any provisions of the Agreement necessary to settle any obligations or liabilities accrued in respect of the period prior to termination will survive termination until such obligations and liabilities have been settled finally and in full, without prejudice to GC 16.3.3 and 16.3.4.

16.4.4 Termination of the Agreement is without prejudice to any provisions of the Agreement which are expressly stated to survive termination (including the confidentiality undertakings in GC 17).

#### **16.5 TERMINATION BY SHIPPER**

In addition to any other rights Shipper may have pursuant to this Agreement, Shipper shall at all times be entitled to terminate (all but not part of) the subscribed LNG Services subject to the payment to Terminal Operator of an indemnity corresponding to

- (i) Ninety-five percent (95%) of the Capacity Charges to be invoiced under this Agreement for its remaining duration if said duration exceeds two (2) Years.
- (ii) One hundred percent (100%) of the Capacity Charges to be invoiced under this Agreement for its remaining duration if said duration is less than two (2) Years.

## 17 CONFIDENTIALITY

The Parties shall treat and keep any information arising out of the LSA 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:

- (i) entered into the public domain otherwise than through the act or failure to act of the receiving Party, or as permitted below of;
- (ii) has been lawfully acquired, other than in accordance with this GC 17.

Either Party may communicate Confidential Information to:

- (i) 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 LSA, 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;
- (ii) persons participating in the implementation of the arrangements contemplated by this LSA , to whom such communication is reasonably necessary on a need to know basis for the purposes of this LSA , 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 the preceding paragraph (i);
- (iii) 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;
- (iv) any expert or arbitrator to which any dispute between the Parties has been referred;  
or
- (v) any bona fide intended assignee of the whole or any part of the rights and interests of the disclosing Party under this LSA 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;

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.

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.

A Party may communicate Confidential Information to a recognized stock exchange on which the shares of such Party or its Affiliates 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.

The obligations of confidentiality set forth in this GC 17 shall continue for the duration of the Contract Term and for a period of two (2) Years after the end of the Contract Term or the termination of this LSA , whichever is earlier, together with such other provisions of this LSA as are necessary to enforce this GC 17.

## **18 TRADING AND ASSIGNMENT OF LNG SERVICES**

Shipper may assign any or all of the LNG Services it has subscribed to under this LSA with the consent of Terminal Operator to a third party, provided such third party has entered into a LNG Services Agreement which remains in full force and effect. Terminal Operator shall not withhold its consent except for a lawful and duly justified reason.

Provided that Terminal Operator has granted its consent, from the date of such assignment, Shipper shall be released from any rights and obligations in respect of the assigned LNG Services which shall be governed by the LNG Services Agreement entered into between Terminal Operator and Assignee.

The procedure for assignment and transfer is governed by AC 2.3. The Services Confirmation Form For Assignment shall evidence the consent of Terminal Operator as required pursuant to this GC 18.

**19 WAIVER**

The failure of a Party to this LSA 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 LSA 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.

**20 SUCCESSORS**

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

**21 SEVERANCE**

If any provision or part of a provision of this LSA 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 LSA and the remaining provisions shall continue in full force and effect. If a provision of this LSA is found to be void or unenforceable, such provision shall be removed from this LSA 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.

**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 LSA and in accordance with the Code of Conduct and the LNG Access Code.

**23 ENTIRE AGREEMENT**

This LSA 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 LSA, other than those included in this LSA provided that nothing in this GC 23 shall limit or exclude liability for fraud.

**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 LSA. 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.

**25 REMEDIES**

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

**26 NO PARTNERSHIP**

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

**27 LNG TERMINAL EXTENSION**

As long as such extension has no material impact on the provision of the LNG Services under this LSA and access to the LNG Terminal, Shipper shall not prevent, hinder or delay any future extension of the LNG Terminal. Prior to such extension, the Terminal Operator shall inform and consult with Terminal Users on such extension in accordance with applicable regulation.

**28 CHANGED CIRCUMSTANCES**

The Parties acknowledge 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 LSA, 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, to the extent applicable such change shall automatically and *ipso jure* apply to the LSA as of the moment such change has become effective. Such change shall enter into force for the Parties on the date set by the CREG.

If certain provisions of this LSA require to be amended following a change in the applicable laws and regulations, Terminal Operator shall be entitled to amend or modify this LSA 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.

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