

**EXHIBIT NO. ___(CR-4HC)
DOCKET NO. UG-151663
WITNESS: CLAY RIDING**

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of

PUGET SOUND ENERGY, INC.

**for (i) Approval of a Special Contract for
Liquefied Natural Gas Fuel Service with
Totem Ocean Trailer Express, Inc. and
(ii) a Declaratory Order Approving the
Methodology for Allocating Costs
Between Regulated and Non-regulated
Liquefied Natural Gas Services**

DOCKET NO. UG-151663

**THIRD EXHIBIT (~~HIGHLY~~ CONFIDENTIAL) TO THE
PREFILED DIRECT TESTIMONY OF CLAY RIDING
ON BEHALF OF PUGET SOUND ENERGY, INC.**

**CONFIDENTIAL PER PROTECTIVE ORDER IN
WUTC DOCKET No. UG-151663**

**AUGUST 11, 2015
REVISED SEPTEMBER 22, 2015**

LNG FUEL SUPPLY AGREEMENT

Dated October 27, 2014

Between

PUGET SOUND ENERGY, INC.

AND

TOTEM OCEAN TRAILER EXPRESS, INC.

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LNG SALE AND PURCHASE AGREEMENT

This LNG Fuel Supply Agreement (this “**Agreement**”) is made as of October 27, 2014 (the “**Execution Date**”), by and between Puget Sound Energy, Inc., a corporation organized under the laws of the State of Washington (“**Seller**”), and Totem Ocean Trailer Express, Inc., a corporation organized under the laws of the State of Alaska (“**Buyer**”). Seller and Buyer are each sometimes referred to in this Agreement as a “**Party**” and collectively as the “**Parties**”.

Recitals

WHEREAS, Seller intends to construct, own and operate the Tacoma LNG Facility (as hereinafter defined) to provide services relating to the liquefaction of natural gas and, among other things, the delivery of liquefied natural gas for use as fuel by ocean-going vessels.

WHEREAS, Buyer is one of the nation’s leading domestic marine transportation companies and is pioneering the nation’s switch from traditional bunker fuels to cleaner burning LNG. Buyer requires a secure “turn-key” supply of LNG that will satisfy Buyer’s volume and other requirements.

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, LNG produced by Seller at the Tacoma LNG Facility on the terms and subject to the conditions of this Agreement.

IN CONSIDERATION of the premises and the mutual agreements contained herein, and intending to be bound, the Parties agree as follows:

1. Definitions and Interpretation

1.1 Definitions

The words and expressions below shall, unless the context otherwise requires, have the meanings respectively assigned to them:

AAA: as defined in Section 20.4;

AAA Rules: as defined in Section 20.4;

Acceptance Test: the conditions to be satisfied by the Tacoma LNG Facility in order for the Tacoma LNG Facility to be declared “Substantially Complete” as set forth in the EPC Contract;

Actual Annual Contract Quantity: as defined in Section 4.3;

- Affiliate:*** with respect to any Person, any other Person which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with such Person; for purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) means the direct or indirect ownership of 50% or more of the voting rights in a Person or the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or otherwise;
- Agreement:*** as defined in the first paragraph of this Agreement;
- Applicable Laws:*** all applicable laws, statutes, rules, regulations, ordinances, codes, standards and rules of common law, and judgments, decisions, interpretations, orders, directives, injunctions, writs, decrees, stipulations, or awards of any applicable Governmental Authority or duly authorized official or court or any international treaty or convention having the force of law, in each case that relates to or affects the matters covered by this Agreement or the Tacoma LNG Facility;

Applicable Standards:

the standards and practices that are both (i) applicable to the ownership, design, equipment, operation, berthing, and maintenance of Totem Ocean Vessels and the Tacoma LNG Facility, including such standards and practices established by, but not limited to, the Code of Federal Regulations (“CFR”) (49 CFR 193 LNG Facilities Federal Safety Standards, 49 CFR 192 Transportation of Natural and Other Gas By Pipeline), 33 CFR 127 Waterfront Facilities Handling LNG and Liquefied Hazardous Gas), the Washington Administrative Code 480-93 (Gas Companies-Safety), the United States Coast Guard, the International Maritime Organization, or the International Association of Classification Societies (and any successor body for any of the above), and (ii) customarily complied with by reasonable and prudent operators of comparable Totem Ocean Vessels or facilities comparable to the Tacoma LNG Facility, as the case may be. Applicable Standards are not intended to be limited to the optimum standards and practices to the exclusion of all others, but rather to be a spectrum of good and proper standards and practices;

Approvals:

all permits, franchises, authorizations, approvals, grants, licenses, visas, waivers, exemptions, consents, permissions, registrations, decrees, privileges, variances, validations, confirmations or orders granted by or filed with any Governmental Authority relating to matters covered by this Agreement and the construction, commissioning and operation of the Tacoma LNG Facility;

<i>As Available Basis:</i>	means that Seller has LNG or LNG service capacity available for supply to Buyer that Seller reasonably determines is not required to meet delivery commitments of Seller or other Tacoma LNG Facility owners;
<i>Barrel of Oil Equivalent (BOE):</i>	a unit of energy that is equivalent to 5.98374 MMBtus measured using the low heating value; the amount of energy in one barrel of IFO-380 based on the low heating value;
<i>Btu:</i>	the unit of heat that increases the temperature of one pound of water by one degree Fahrenheit from 58.5 degrees Fahrenheit to 59.5 degrees Fahrenheit at one atmosphere (101.325 kilopascals or 14.696 pounds per square inch);
<i>Bunker:</i>	to load a quantity of LNG (including the loading of LNG to provide cool-down services), and “ Bunkering ” shall have a corollary meaning;
<i>Business Day:</i>	any Day (other than Saturdays, Sundays and national holidays in the United States of America) on which commercial banks are normally open to conduct business in Seattle, Washington;
<i>Buyer:</i>	as defined in the first paragraph of this Agreement;
<i>Buyer Failure to Take Event:</i>	as defined in Section 7.1.2;
<i>Buyer’s Allocable Share:</i>	the percentage of various costs and expenses pertaining to the Tacoma LNG Facility allocable to Buyer’s service pursuant to this Agreement, as further described in Section 11.3;

- Change in Applicable Law:*** the occurrence of any of the following after the Execution Date: (i) the enactment of any new Applicable Law, (ii) the modification, repeal or expiration of any existing Applicable Law, (iii) the entry into force of any Applicable Law that has not yet entered into force as of the Execution Date, (iv) a change in the interpretation or application of any Applicable Law, (v) the imposition of a requirement for an Approval not required as of the Execution Date, (vi) a change in the terms and conditions attached to an Approval previously granted, or the attachment of any new terms or conditions to such Approval (including in connection with any renewal thereof), or (vii) any revocation, non-renewal or suspension of any Approval not caused by the fault of Seller;
- Claim:*** all claims, demands, legal proceedings, or actions that may exist, arise, or be threatened currently or in the future at any time after the Execution Date, whether or not of a type contemplated by any Party, and whether based on federal, state, local, statutory or common law or any other Applicable Law;
- Commodity Price Triggers:*** as defined in Section 19.2.1;
- Commodity Price Trigger No. 1:*** as defined in Section 19.2.1;
- Commodity Price Trigger No. 2:*** as defined in Section 19.2.1;
- Compliant Diesel:*** Oil based marine fuel which is legally allowed to be used on the Totem Ocean Vessels without after treatment or other additional equipment. The exact product is subject to change throughout the Term based on current regulation in force at the time;
- Condition Precedent:*** as defined in Section 2.3.1;

<i>Connecting Pipeline:</i>	the Seller's distribution system or such other upstream pipelines as may be interconnected to the Tacoma LNG Facility and required for the Tacoma LNG plant to be operated, as applicable;
<i>Confidential Information:</i>	as defined in Section 18.1;
<i>Contract Price:</i>	as defined in Section 11.1.2;
<i>Contract Year:</i>	each twelve (12) month period commencing on the first Day of the Delivery Term and each annual anniversary thereof, except that if the Delivery Term commences later than January 1, 2019, the last Contract Year shall end as of the expiration of the Delivery Term;
<i>CP Deadline:</i>	as defined in Section 2.3.5;
<i>CP Fulfillment Date:</i>	as defined in Section 2.3.3;
<i>Date of First Commercial Delivery:</i>	as defined in Section 3.2.1;
<i>Day:</i>	a period of twenty four (24) consecutive hours starting at 00:00 hours local time in the location of the Tacoma LNG Facility;
<i>Deficiency Amount:</i>	as defined in Section 4.3;
<i>Deficiency Amount Charge:</i>	as defined in Section 4.3;
<i>Delivery Point:</i>	as defined in Section 5.1;
<i>Delivery Term:</i>	the period commencing on January 1, 2019, if the Date of First Commercial Delivery occurs on such Day, and otherwise the first Day of the Month following the Date of First Commercial Delivery, and in either case continuing until January 1, 2029, subject to extension as provided herein;
<i>Demand for Arbitration:</i>	as defined in Section 20.4.2;
<i>DFCD Deadline:</i>	as defined in Section 3.2.3;

<i>Dispute:</i>	any dispute or difference of whatsoever nature arising under, out of, in connection with or in relation (in any manner whatsoever) to this Agreement or the subject matter of this Agreement, including (a) any dispute or difference concerning the initial or continuing existence of this Agreement or any provision of it, or as to whether this Agreement or any provision of it is invalid, illegal or unenforceable (whether initially or otherwise); or (b) any dispute or claim which is ancillary or connected, in each case in any manner whatsoever, to the foregoing;
<i>Encumbrances:</i>	any mortgage, pledge, lien, change, exchange claim, proprietary right, assignment by way of security, security interest, title retention, preferential right or trust arrangement or any other security agreement or arrangement having the effect of security;
<i>EPC Contract:</i>	the fixed priced, turn-key, engineering, procurement and construction contract under which a contractor will carry out engineering, procurement, and construction activities with respect to the Tacoma LNG Facility;
<i>Excess LNG Amount:</i>	as defined in Section 4.4;
<i>Excess LNG Charge:</i>	as defined in Section 4.4;
<i>Execution Date:</i>	as defined in the first paragraph of this Agreement;
<i>FERC Regulations:</i>	the rules and regulations of the Federal Energy Regulatory Commission or any successor entity thereof;
<i>Fixed Charges:</i>	the Fixed Facility Charge and the Fixed O&M Charge;

Fixed Facility Charge:

for each Month during the Delivery Term, an amount determined in accordance with Exhibit B, subject to adjustment in accordance with Section 11.2.

Fixed O&M Charge:

for each Month during the Delivery Term, an amount equal to Buyer's Allocable Share of the sum of the following costs reasonably incurred by Seller in connection with the operation and maintenance of the Tacoma LNG Facility (excluding any costs to be included in the Fuel Charge or the Variable O&M Charge): lease payments; utilities, insurance; Taxes; planned preventive maintenance expense; apparatus, machinery and equipment costs necessary to maintain facility performance; all O&M and security contractor expenses, including fees, payroll, benefits and home office support; environmental expenses; office expenses; community relations expenses; service contract costs; costs for personnel (however employed) devoted full-time to the facility; a general administrative expense component; and any other expense reasonably incurred by Seller in connection with the operation and maintenance of the facility that does not vary with the operation of the facility other than the Fixed Facility Charge.

Force Majeure:

as defined in Section 15.1;

Fuel Charge:

for each Month during the Delivery Term, an amount equal to (A) the quantity of Gas required by the Tacoma LNG Facility to produce LNG delivered to Buyer during such Month (measured in MMBtus) multiplied by (B) the aggregate of (x) the Sumas Index Price for such Month plus three cents (\$.03) plus (y) the then current Northwest Pipeline LLC (“NWP”) Rate Schedule TF-1 System-Wide (Large Customer) Reservation and Volumetric maximum rates as detailed in NWP’s FERC Gas Tariff plus (z) Buyer’s Allocable Share of Seller’s distribution charges. For sake of clarity, the quantity of Gas in (x) above shall include all Process Fuel Gas and Gas provided in-kind to pipeline operators in order to transport Gas allocable to the production of LNG delivered to Buyer in such Month.

Gas:

pipeline quality natural gas consisting predominately of methane, but including other combustible hydrocarbons or mixtures of hydrocarbons, and which may include other combustible and non-combustible components, that are in a gaseous state at atmospheric conditions of temperature and pressure;

Governmental Authority:

any national, regional, state, or local government, or governmental agency or instrumentality or any judicial, legislative, or administrative body, or any subdivision, agency, commission or authority thereof (including any maritime authorities, port authority or any quasi-governmental agency), having jurisdiction over a Party or any Affiliate of such Party, the Tacoma LNG Facility or Gas or LNG while in the custody of Seller, a Totem Ocean Vessel or an owner of a Totem Ocean Vessel, or over the matter or matters in question, as the case may be;

Guarantor: the entity providing a guaranty of Buyer's obligations hereunder as contemplated by Article 13, which shall initially be Saltchuk Resources, Inc., a company organized under the laws of the State of Washington;

ICE: the Intercontinental Exchange, Inc.;

Indemnified Person: as defined in Section 16.1.5;

Indemnifying Party: as defined in Section 16.1.5;

Interim Purchase Agreement(s): the agreement or agreements to be entered into after the date hereof between Seller and one or more Third Parties pursuant to which Seller will obtain LNG for sale to Buyer pursuant to the Interim Supply Agreement. The Interim Purchase Agreements may include agreements for (i) the purchase and delivery of Gas to a liquefaction facility, (ii) liquefaction of Gas into LNG, (iii) delivery of LNG to the Totem Ocean Berthing Facility and (iv) fueling of Totem Ocean Vessels with such LNG.

Interim Supply Agreement: the LNG fuel supply agreement to be entered into after the date hereof and providing for the supply by Seller to Buyer of LNG on an interim basis pending the occurrence of the Date of First Commercial Delivery hereunder;

Interest Rate: an interest rate per annum equal to (i) two percent (2%) plus (ii) the U.S. prime rate (as quoted by the *Wall Street Journal Prime Rate*) as of 11:00 a.m. New York time, on the applicable date;

Liabilities: all liabilities, costs, claims, disputes, demands, suits, legal or administrative proceedings, judgments, damages, losses and expenses (including attorney's fees and other costs of litigation or defense), and any and all fines, penalties and assessments of Governmental Authorities;

<i>LNG:</i>	Gas in a liquid state at or below its point of boiling and at or near atmospheric pressure;
<i>LNG Delivery Pipeline:</i>	the pipeline and supporting facilities (but specifically excluding the Totem Ocean Berthing Facility) used to deliver LNG from the site of the Tacoma LNG Facility to the Delivery Point;
<i>LNG Specifications:</i>	as set out in Exhibit A;
<i>Major Maintenance:</i>	scheduled maintenance at the Tacoma LNG Facility, based on hours of operation or the passage of time, for purposes of performing major maintenance on machinery and equipment in accordance with the original equipment manufacturer's maintenance protocol;
<i>Marine Services:</i>	the tugs, pilots, harbor, line-handling, mooring, and other support services required for Totem Ocean Vessels to utilize the Totem Ocean Berthing Facility or to Bunker from the Tacoma LNG Facility or Bunker barges;
<i>Maximum Annual Contract Quantity:</i>	means, for the first Contract Year of the Delivery Term, 548,250 BOE (3,280,585 MMBtus), and for each Contract Year of the Delivery Term thereafter, an amount equal to one hundred and five percent (105%) of the then applicable Target Annual Contract Quantity;
<i>Maximum Fixed Charges:</i>	as defined in Exhibit B hereto;
<i>Minimum Annual Contract Quantity:</i>	means, for the first Contract Year of the Delivery Term, 471,750 BOE (2,822,829 MMBtus), and for each Contract Year of the Delivery Term thereafter, an amount equal to ninety five percent (95%) of the then applicable Target Annual Contract Quantity;
<i>MMBtu:</i>	one million (1,000,000) Btus, and .16712 BOE;

<i>Month:</i>	the period of time which starts at 00:00 local time in the Port of Tacoma, Washington, on the first Day of each calendar Month and ends at 24:00 local time in the Port of Tacoma, Washington on the last Day of the same calendar Month;
<i>New Regulatory Costs:</i>	as defined in Section 11.7;
<i>New Taxes:</i>	as defined in Section 11.7;
<i>NGA:</i>	as defined in Section 10.4;
<i>Notice of Readiness or NOR:</i>	as defined in Section 9.4;
<i>Off-Spec LNG:</i>	as defined in Section 8.2.1;
<i>Party:</i>	as defined in the first paragraph of this Agreement;
<i>P&I Club:</i>	a Protection and Indemnity Club that is a member of the International Group of P&I Clubs;
<i>P&I Insurance:</i>	as defined in Section 24.1.2(a);
<i>Permitted Assignee:</i>	as defined in Section 21.1.1;
<i>Person:</i>	any individual, corporation, partnership, trust, unincorporated organization or other legal entity, including any Governmental Authority;
<i>Port of Tacoma:</i>	the Port of Tacoma - Tacoma, Washington;

<i>Process Fuel Gas:</i>	Gas consumed in the production of LNG at the Tacoma LNG Facility, which for the first Contract Year of the Delivery Term is deemed to be equal to one and one-quarter percent (1.25%) of the Gas delivered to produce the LNG sold to the Buyer, but thereafter this percentage shall be updated annually based on the prior year's actual Process Fuel Gas consumption at the Tacoma LNG Facility attributable to LNG sold to the Buyer (electricity not Gas shall be the primary source of power for the Tacoma LNG Facility);
<i>Seller:</i>	as defined in the first paragraph of this Agreement;
<i>Seller Failure to Deliver Event:</i>	as defined in Section 7.2.2;
<i>Substitute Totem Ocean Vessel:</i>	as defined in Section 9.1.4;
<i>Sumas Index Price:</i>	the price of spot Gas delivered to pipelines as published Monthly by Platt's Inside FERC's Gas Market Report, for the point designated Northwest Pipeline Corp. - Canadian Border, under the column entitled "Index";
<i>Sustaining Capital Costs:</i>	capital expenditures reasonably necessary to sustain the operations of the Tacoma LNG Facility, including costs for replacement or repair of equipment or for capital improvements reasonably necessary to address operational concerns arising during the Delivery Term;

<i>Tacoma LNG Facility:</i>	The LNG liquefaction and fueling terminal to be constructed by Seller at the Port of Tacoma, Washington, together with all of their associated facilities, both inside and outside the plant, including the LNG Delivery Pipeline, processing facilities, storage tanks, utilities, and any expansion to any such facilities to the extent the Parties have agreed to expansion facilities in connection with the performance of this Agreement, and specifically excluding any Connecting Pipeline;
<i>Tank Quantity:</i>	a quantity of LNG sold or to be sold by Seller and purchased by Buyer under this Agreement in any one fueling operation; it is understood this is not an exact quantity as Buyer's needs vary voyage to voyage depending on a number of factors;
<i>Target Annual Contract Quantity:</i>	as defined in Section 4.2;
<i>Taxes:</i>	as defined in Section 14.1.1;
<i>Term:</i>	as defined in Section 2.1;
<i>Termination Notice Withdrawal Period:</i>	as defined in Section 19.2.2(c);
<i>Third Party:</i>	a Person other than a Party or an Affiliate of a Party;
<i>Third Party Controversy:</i>	as defined in Section 20.4.6;
<i>Totem Ocean Berthing Facility:</i>	the berthing and loading facilities owned or leased by Buyer at the Port of Tacoma, Washington;
<i>Totem Ocean Vessel:</i>	any of the two "Orca" class ocean going vessels operated by Buyer (the M.V. Midnight Sun and the M.V. North Star), or any replacements thereof;

- Variable O&M Charge:*** for each Month during the Delivery Term, Buyer's Allocable Share of any expenses reasonably incurred by Seller in the operation and maintenance of the Tacoma LNG Facility in such Month (to the extent not included in the Fixed O&M Charge or in the Fuel Charge) that vary based upon the operation of the facility, including Marine Services, utilities (e.g., electricity), consumables (e.g., refrigerant), wharfage fees, port charges, parts, expendables, maintenance items and labor, chemicals, catalyst, Taxes and similar charges; and
- Vehicular Natural Gas or VNG:*** as defined in Section 10.1;
- Willful Failure to Deliver:*** means that, at a time when Seller shall have been capable of delivering LNG to Buyer hereunder, Seller shall have knowingly and willfully taken action, the purpose and intent of which is to breach Seller's obligation to deliver LNG to Buyer, and such knowing and willful action shall have in fact resulted in a Seller Failure to Deliver Event having occurred pursuant to Section 7.2.2.

1.2 Interpretation

For purposes of this Agreement:

- 1.2.1 The titles, headings, and numbering in this Agreement are included for convenience only and shall have no effect on the construction or interpretation of this Agreement.
- 1.2.2 References in this Agreement to Articles, Sections and Exhibits are to those of this Agreement unless otherwise indicated. References to this Agreement and to agreements and contractual instruments include references to all exhibits, schedules, appendices, annexes, and other attachments to such agreements and instruments and all amendments and other modifications to such agreements and instruments, to the extent such amendments and other modifications are not prohibited by the terms of this Agreement.
- 1.2.3 The word "include" or "including" will be deemed to be followed by the words "without limitation." The word "may" is permissive and does not

impose an obligation, and the word “shall” is imperative and does impose an obligation.

- 1.2.4 Whenever the context so requires, the singular includes the plural and the plural includes the singular, and the gender of any pronoun includes the other gender.
- 1.2.5 Unless otherwise indicated, references to any statute, regulation or other law will be deemed to refer to such statute, regulation or other law as amended or any successor law.
- 1.2.6 All references to a Person shall include such Person’s successors and permitted assigns.
- 1.2.7 Unless otherwise indicated, any reference to a time of day shall be to Pacific Prevailing Time in the United States of America.
- 1.2.8 All references to “\$” shall be to the lawful currency from time to time of the United States of America;

1.3 Replacement of Rates and Indices No Longer Available

- 1.3.1 If (i) a publication that contains a rate or index used in this Agreement ceases to be published for any reason, or (ii) such a rate or index ceases to exist, is materially modified, or no longer is used as a liquid trading point for Gas (as applicable), so as systematically to change its economic result, or is disaggregated, displaced or abandoned, for any reason, the Parties shall promptly discuss, with the aim of jointly selecting a rate or index or rates or indices to be used in place of such rates and indices that maintains the intent and economic effect of those original rates or indices.
- 1.3.2 If the Parties fail to agree on a replacement rate or index, either Party may elect to refer the determination of the replacement rate or index for dispute resolution in accordance with Article 20.
- 1.3.3 If any rate used in this Agreement is not published for a particular date, but the publication containing such rate continues to be published and the rate itself continues to exist, the Parties shall use the published rate in effect for the date such rate was most recently published prior to the particular date, unless otherwise provided in this Agreement.
- 1.3.4 If any index in this Agreement is not published for a particular date, but the publication containing such index continues to be published and the index itself continues to exist, the Parties shall use the index from the geographic location closest in proximity to the unpublished index from the same publication in effect for the particular date adjusted by the difference between the same indices from the most recent publication published prior to the particular date, unless otherwise provided in this Agreement.

1.3.5 If an incorrect value is published for any rate or index used in this Agreement and such error is corrected and published within ninety (90) Days of the date of the publication of such incorrect rate or index, such corrected rate or index will be substituted for the incorrect rate or index and any calculations involving such rate or index will be recalculated and the Parties will take any necessary actions based upon these revised calculations, including adjustments of amounts previously invoiced and/or paid.

2. **Term; Effectiveness**

2.1 **Term**

This Agreement has been executed on the Execution Date and shall continue in effect until the earlier of the date this Agreement is terminated in accordance with its terms or the expiration of the Delivery Term (the “**Term**”).

2.2 **Extension of Term**

On or before eighteen (18) months prior to the expiration of the Delivery Term (including any extension thereof as contemplated hereby), Buyer may, by written notice to Seller, extend the Delivery Term for an additional five (5) year period; *provided*, that in no event shall Buyer be entitled to more than three (3) such extensions unless Buyer shall have requested and Seller shall have confirmed in writing that Seller will continue to own and operate the Tacoma LNG Facility and has all rights (including Approvals and leasehold rights) necessary (as reasonably determined by Seller) to continue to operate the Tacoma LNG Facility in a manner that would allow it to satisfy its obligations hereunder. Seller shall provide such confirmation within ninety (90) Days following a written request therefor from Buyer. Any such notice of extension shall be irrevocable. During any such extension of the Delivery Term, the Fixed Facility Charge shall include a plant component so as to continue to allow recovery on a Monthly basis of Seller’s fixed capital costs, including Sustaining Capital Costs, properly allocable to the satisfaction of Seller’s obligations under this Agreement during such extension. The Parties shall negotiate in good faith the components of the adjustments contemplated by the foregoing, and any disputes with respect to such adjustments shall be subject to the dispute resolution procedures set forth in Article 20. Exhibit E hereto sets forth the Fixed Facility Charge for an initial five (5) year extension of the Delivery Term.

2.3 **Effectiveness; Conditions Precedent**

2.3.1 The provisions of Articles 1, 2, and 13 through 23 of this Agreement shall be binding and effective as of the Execution Date. The provisions of Articles 3 and 24 of this Agreement shall be binding and effective upon satisfaction by Seller or express written waiver by Seller of the last to be

satisfied of the following conditions precedent (each, a “**Condition Precedent**”):

- (a) Seller has received all Approvals that are necessary for Seller to construct and operate the Tacoma LNG Facility in accordance with this Agreement, including the construction and operation of the LNG Delivery Pipeline, and all such Approvals shall be in form and substance reasonably acceptable to Seller and shall have become final and non-appealable;
- (b) Seller has executed a binding ground lease at the Port of Tacoma for the site on which the Tacoma LNG Facility will be constructed;
- (c) Seller has executed a binding EPC Contract in form and substance reasonably satisfactory to Seller, which provides for the construction and commissioning of the Tacoma LNG Facility on a basis consistent with the scope and design criteria contemplated by this Agreement, on a lump-sum turnkey basis for a price not in excess of one hundred and ten percent (110%) of the aggregate pricing estimate included in the front end engineering and design study completed in August of 2013 by Chicago Bridge and Iron, and with a guaranteed date of substantial completion to occur on the earlier of thirty-six (36) months following the issuance of notice to proceed thereunder or January 1, 2020; and
- (d) Seller has received approval by the Washington Utilities and Transportation Commission, and such approval shall be in form and substance reasonably acceptable to Seller and shall have become final and non-appealable.

All other provisions of this Agreement are conditional upon the occurrence of the Date of First Commercial Delivery. Notwithstanding anything to the contrary contained herein, Seller shall not be permitted to waive the condition set forth in Section 2.3.1(a) with respect to the construction and operation of the LNG Delivery Pipeline without the prior written consent of Buyer.

- 2.3.2 Prior to the CP Fulfillment Date (as defined below), Seller shall provide to Buyer monthly (or more frequently, as reasonably requested by Buyer) updates on Seller’s progress with respect to each Condition Precedent.
- 2.3.3 Promptly upon satisfaction of each of the Conditions Precedent, Seller shall notify Buyer of such satisfaction. The date on which the last of the Conditions Precedent is satisfied or waived shall be the “**CP Fulfillment Date**”.
- 2.3.4 After the CP Fulfillment Date, Seller shall provide monthly (or more frequently, as reasonably requested by Buyer) updates on Seller’s

forecasts for availability and status of the Tacoma LNG Facility and operating assets thereat (such as the LNG tank), its production and related matters.

2.3.5 Seller shall use commercially reasonable efforts to satisfy or procure the satisfaction of each Condition Precedent by the CP Deadline. As used herein, the “**CP Deadline**” means January 1, 2017 or, if earlier, the date which is 180 days following satisfaction of all of the Conditions Precedent other than that set forth in Section 2.3.1(c) pertaining to the EPC Contract, and in any case as may be revised in accordance with Section 2.3.6.

2.3.6 If any Condition Precedent is not satisfied or waived by Seller by the CP Deadline, Seller shall give notice to that effect to Buyer and, if requested by Buyer, shall provide an explanation of the reason for the delay in satisfaction of the Conditions Precedent and the revised date on which it is reasonably expected that all Conditions Precedent will be satisfied. If the Parties agree in writing to change the deadline for satisfaction of the Conditions Precedent to the revised date notified by Seller or another later date, such revised date shall be deemed the CP Deadline for all purposes of this Agreement.

2.3.7 Early Termination

(a) If any Condition Precedent has been neither satisfied nor waived by the CP Deadline (as such CP Deadline may be revised pursuant to Section 2.3.6), then either Party shall have the right, exercisable by delivery of written notice to the other Party at any time during the sixty (60) day period following the CP Deadline (it being understood that after the expiration of such sixty (60) day period there shall no longer be any right of a Party to so terminate this Agreement under this Section 2.3.7), at such Party’s sole discretion, to terminate this Agreement.

(b) If any of the Approvals necessary for the satisfaction of the Conditions Precedents set forth in Section 2.3.1(a) or 2.3.1(d) shall have been denied pursuant to an order of a Governmental Authority that has become final and non-appealable, then either Party shall have the right, exercisable by delivery of written notice to the other Party at any time during the sixty (60) day period following such event (it being understood that after the expiration of such sixty (60) day period there shall no longer be any right of a Party to so terminate this Agreement under this Section 2.3.7), at such Party's sole discretion, to terminate this Agreement.

(c) If this Agreement is terminated pursuant to this Section 2.3.7, (A) subject to Section 19.3.4, there shall be no liability of either Party to the other arising out of such termination and (B) Seller shall

promptly assign to Buyer all of its right, title and interest in and to, and Buyer shall assume all Liabilities of Seller under (whether arising before or after such assignment), the Interim Purchase Agreement(s), and effective upon such assignment, the Interim Supply Agreement shall be automatically terminated and Seller shall be released of all Liabilities under the Interim Supply Agreement arising from and after such termination.

2.4 Interim Supply

2.4.1 The Parties recognize that Buyer requires LNG prior to January 1, 2019, which is the date on which the Date of First Commercial Delivery is expected to occur. The Parties will cooperate in good faith to work with Third Parties to develop and provide an interim supply solution for Buyer, including mutually acceptable and commercially reasonable Interim Purchase Agreement(s) that Seller would enter into and a mutually acceptable and commercially reasonable Interim Supply Agreement between Seller and Buyer. The Interim Supply Agreement is intended to function as, and will provide for, a pass-through to Buyer of all risks, liabilities and obligations of Seller in the Interim Purchase Agreement(s), with the expectation that, absent a material breach or willful or other tortious misconduct by Seller of its obligations under the Interim Purchase Agreement, not otherwise proximately caused by Buyer, the sole liability of Seller in respect of Buyer's requirements for the interim supply of LNG will be the reimbursement obligation contained in Section 2.4.2 hereof, and Seller shall not be obligated to enter into any Interim Supply Agreement or Interim Purchase Agreement(s) that provide otherwise. The delivery term under the Interim Supply Agreement shall not extend beyond January 1, 2021, and such agreement shall be terminable in the circumstances described in this Agreement as set forth in Sections 2.3.7 or 3.2.3. In addition, the Interim Supply Agreement will include the right of Seller to make deliveries thereunder from alternate sources of LNG (in accordance with the LNG Specification), and Buyer acknowledges and agrees that (i) such alternate sources may include LNG produced at and delivered from the Tacoma LNG Facility prior to January 1, 2019 and (ii) if Seller makes deliveries from the Tacoma LNG Facility prior to January 1, 2019 under the Interim Supply Agreement, the Date of First Commercial Delivery and the Delivery Term hereunder, and Buyer's obligation to pay the Contract Price hereunder, shall not commence until January 1, 2019.

2.4.2 Notwithstanding anything to the contrary contained herein or in the Interim Supply Agreement, the Parties agree that if (A) the Date of First Commercial Delivery occurs after January 1, 2019 (including, for sake of clarity, where this Agreement is terminated pursuant to Section 3.2.3) or (B) this Agreement is terminated pursuant to Section 2.3.7, Seller shall reimburse Buyer on a monthly basis, within ten (10) days following

receipt of an invoice therefor from Buyer (including reasonable supporting documentation), fifteen dollars (\$15.00) per BOE of fuel actually used by Buyer in Totem Ocean Vessels in the ordinary course of business during the period commencing on January 1, 2019 and continuing until the earlier to occur of (1) the Date of First Commercial Delivery and (2) January 1, 2021. For sake of clarity, the Parties agree that Buyer's fuel usage in the ordinary course of business will be deemed not to exceed 510,000 BOE per annum, and as a result the maximum reimbursement amount payable hereunder shall be Six Hundred Thirty-Seven Thousand Five Hundred Dollars (\$637,500) in any month (with partial months being pro-rated accordingly).

- 2.4.3 Notwithstanding anything to the contrary contained herein or in the Interim Supply Agreement, Seller shall have no further obligations or Liabilities under this Section 2.4 or under the Interim Supply Agreement arising from and after January 1, 2021, regardless of whether or not the Interim Purchase Agreement(s) are assigned to Buyer. Notwithstanding anything to the contrary contained herein, the provisions of this Section 2.4 shall survive any termination of this Agreement pursuant to Sections 2.3.7 or 3.2.3 hereof.

3. **Tacoma LNG Facility**

3.1 **Facilities to be Provided as Part of the Tacoma LNG Facility**

3.1.1 The Tacoma LNG Facility shall at all times on and after the Date of First Commercial Delivery include at least the following:

- (a) (i) an annual LNG production capacity sufficient to serve Buyer's Maximum Annual Contract Quantity, (ii) LNG storage facilities with a total gross capacity sufficient to provide 500,000 gallons of LNG storage allocable to Seller's obligations to Buyer under this Agreement, and (iii) Bunkering operations capable of completing a transfer of 6,310 BOE of LNG to a Totem Ocean Vessel in four (4) hours including documentation, start-up, and topping-off;
- (b) measurement, sampling, testing and analysis facilities;
- (c) appropriate systems for communications with Totem Ocean Vessels; and
- (d) emergency shutdown systems.

3.2 **Date of First Commercial Delivery**

3.2.1 Subject to Section 3.2.4, the "**Date of First Commercial Delivery**" shall be the date on which the Tacoma LNG Facility has received and accepted

all Approvals that are necessary for Seller to operate the Tacoma LNG Facility and is commercially operable as evidenced by

- (a) the satisfactory completion of the Acceptance Test;
- (b) the production by the Tacoma LNG Facility of a sufficient quantity and quality of LNG for Seller to satisfy its obligations under this Agreement; and
- (c) the declaration by Seller that the Tacoma LNG Facility has otherwise been constructed in accordance with this Agreement.

3.2.2 Seller shall notify Buyer promptly following the issuance by Seller of a notice to proceed under the EPC Contract of the Day on which Seller anticipates that the Date of First Commercial Delivery will occur, and Seller will provide Buyer updates on a monthly basis thereafter.

3.2.3 The Date of First Commercial Delivery is expected to occur on January 1, 2019, *provided, however*, that if the Date of First Commercial Delivery does not occur by January 1, 2021 (the “**DFCD Deadline**”), either Party shall have the right, exercisable by delivery of written notice to the other Party at any time during the thirty (30) day period following the DFCD Deadline (it being understood that after the expiration of such thirty (30) day period the Parties shall no longer have any right to so terminate this Agreement under this Section 3.2.3), at their sole discretion, to terminate this Agreement. If either Party terminates this Agreement pursuant to this section, (i) subject to Section 19.3.4, there shall be no liability of either Party to the other arising out of such termination and (ii) Seller shall promptly assign to Buyer all of its right, title and interest in and to, and Buyer shall assume all Liabilities of Seller under (whether arising before or after such assignment), the Interim Purchase Agreement(s), and effective upon such assignment, the Interim Supply Agreement shall be automatically terminated and Seller shall be released of all further obligations and Liabilities under the Interim Supply Agreement arising from and after such assignment.

3.2.4 Notwithstanding anything to the contrary contained herein, the Parties agree that (i) the Date of First Commercial Delivery shall not occur prior to January 1, 2019 and (ii) the Fixed Charges shall be calculated on the basis that the Delivery Term commenced on January 1, 2019 and shall not be subject to adjustment if, due to the occurrence of the Date of First Commercial Delivery after January 1, 2019, the initial Delivery Term runs for a period of less than ten (10) years.

3.3 **Construction Review Meetings; Related Matters**

3.3.1 Commencing with the Execution Date and continuing to the Date of First Commercial Delivery, Seller shall meet with Buyer no less frequently than

once every two (2) Months for purposes of reviewing the progress in the design, engineering, construction, testing and commissioning of the Tacoma LNG Facility and the satisfaction of the Conditions Precedent. Seller shall provide Buyer with monthly updates on the progress of obtaining Approvals for the Tacoma LNG Facility, construction of the Tacoma LNG Facility, and such other information as Buyer may reasonably request prior to such meetings. Seller will notify Buyer at such meetings if any schedule or milestone related to Approvals for or construction of the Tacoma LNG Facility will not be met.

- 3.3.2 Without limiting any of Seller's other obligations under this Agreement, during the performance of the EPC Contract, Seller shall, to the extent reasonably possible, provide Buyer with: (i) access to information relating to the costs incurred by Seller under the EPC Contract, including the right to review Seller's books of account and supporting documents relating to the EPC Contract; (ii) copies of drafts of any proposed change orders under the EPC Contract, and any correspondence relating thereto; (iii) advance notice of, and the right to attend, meetings between Seller and Seller's contractor related to milestones in the design, engineering and construction of the Tacoma LNG Facility; and (iv) copies of any progress reports furnished to Seller by Seller's contractor under the EPC Contract.

3.4 **Government Assistance**

To the extent that any Governmental Authority provides Buyer with any financial assistance, tax credits, rebates, land grants or use rights as a result of Buyer's construction and/or operation of the Tacoma LNG Facility, and such assistance, tax credits, rebates, land grants or use rights result in costs attributable to the design, construction or operation of the Tacoma LNG Facility that are lower than those incorporated into the Contract Price at the time of the Execution Date, the Contract Price shall be amended accordingly to reflect such lower costs; *provided, however,* that such Contract Price adjustment shall be reasonably allocated to all applicable customers of the Tacoma LNG Facility in a manner consistent with the Buyer's Allocable Share, taking into account the purpose of the applicable assistance, tax credits, rebates, land grants or use rights.

3.5 **Buyer Inspection Rights**

Upon reasonable notice to Seller, and subject to any restrictions contained in any license or other agreements relating to the design or construction of the Tacoma LNG Facility and the reasonable rules of Seller, a reasonable number of Buyer's representatives may from time to time inspect the construction and the operation of the Tacoma LNG Facility. Any such inspection shall be at Buyer's sole risk and expense. Such inspection shall occur during ordinary business hours and shall be accomplished in a manner that does not interfere with the construction or operation of the Tacoma LNG Facility. No inspection (or failure to inspect) by Buyer shall modify Seller's obligations, representations, warranties and covenants

under this Agreement or under any agreement or instrument contemplated by this Agreement or constitute an acceptance or waiver by Buyer of Seller's obligations under this Agreement.

4. Sale and Purchase of LNG

4.1 Sale and Purchase

4.1.1 From and after the Date of First Commercial Delivery until the expiration of the Delivery Term, Seller shall sell and deliver LNG in accordance with the LNG Specifications to Buyer at the Delivery Point, and Buyer shall purchase and Bunker LNG at the Delivery Point. Deliveries of LNG shall be scheduled pursuant to Section 9.1.

4.1.2 Seller intends to provide the LNG which is the subject of this Agreement from the Tacoma LNG Facility. Notwithstanding the foregoing, Seller shall have the right, but not the obligation, upon reasonable notice to Buyer, to supply, or cause to be supplied by Seller's designee, LNG to Buyer from an alternate source to meet the Seller's obligations to supply LNG to Buyer hereunder, *provided that*:

- (a) LNG to be provided from the alternate source complies with the LNG Specifications;
- (b) Bunkering operations are capable of completing a transfer of 6,310 BOE of LNG to a Totem Ocean Vessel in four (4) hours including documentation, start-up, and topping-off;
- (c) alternate delivery modes are compatible with the applicable Totem Ocean Vessel;
- (d) Seller agrees to deliver, or have Seller's designee deliver, LNG at the then current Contract Price; and
- (e) Seller is otherwise complying with its obligations under this Agreement.

4.2 Target Annual Contract Quantity

During the first Contract Year of the Delivery Term, the "**Target Annual Contract Quantity**" shall be an amount equal to 510,000 BOE. After the first Contract Year of the Delivery Term, and for the duration of the Delivery Term, the Target Annual Contract Quantity shall be adjusted to an amount equal to the Actual Annual Contract Quantity for the first Contract Year of the Delivery Term; *provided, however*, that: (i) any LNG sold by or on behalf of Buyer for purposes other than mitigation of a Buyer Failure to Take Event shall not be included in the calculation of the Actual Annual Contract Quantity for the first Contract Year of the Delivery Term; (ii) if such adjustment would result in the Target Annual

Contract Quantity being less than 471,750 BOE then the Target Annual Contract Quantity shall equal 471,750 BOE, and if such adjustment would result in the Target Annual Contract Quantity being greater than 548,250 BOE, then the Target Annual Contract Quantity shall equal 548,250 BOE; and (iii) if the last Contract Year is less than twelve (12) months, the Target Annual Contract Quantity in the last Contract Year shall be prorated based on the number of Days in such Contract Year.

4.3 **Guaranteed Minimum Annual Contract Quantity**

During each Contract Year of the Delivery Term, Buyer will use reasonable efforts to purchase the Target Annual Contract Quantity and agrees to take and pay for, or pay for even if not taken, not less than the Minimum Annual Contract Quantity. Within thirty (30) Days following the end of each Contract Year during the Delivery Term, Seller shall furnish Buyer with a statement detailing the actual quantity of LNG (measured in BOE) purchased by Buyer during such Contract Year (the “**Actual Annual Contract Quantity**”). If, for any Contract Year during the Delivery Term, the Actual Annual Contract Quantity is less than the Minimum Annual Contract Quantity, Buyer shall be obligated to pay for the resulting deficiency (such quantity, the “**Deficiency Amount**”), and Seller shall invoice Buyer for the Deficiency Amount as follows:

$$\text{Deficiency Amount Charge} = (\text{DA} \times \text{FC}) + (\text{DA} \times \text{VC}) - \text{M}$$

Where:

DA = Deficiency Amount

FC = the weighted average per BOE Fuel Charge invoiced to Buyer during the Contract Year to which such Deficiency Amount relates, but not including the commodity cost of any Gas otherwise included in such Fuel Charges. For sake of clarity, while Gas commodity costs shall be excluded from the calculation of FC, all other charges attributable to Gas deliveries (e.g. pipeline transportation charges) shall be included

VC = the weighted average per BOE Variable O&M Charge invoiced to Buyer during the Contract Year to which such Deficiency Amount relates.

M = the amount recovered by Seller through mitigation in respect of the Deficiency Amount in accordance with Section 7.3 (without duplication), net of all costs and expenses attributable to such mitigation efforts and any LNG sold in connection therewith.

Examples of calculations of the Deficiency Amount Charge are set forth in Exhibit H.

4.4 **Maximum Annual Contract Quantity**

If, for any Contract Year during the Delivery Term, the Actual Annual Contract Quantity (as set forth in the statement furnished pursuant to Section 4.3 above) is

greater than the Maximum Annual Contract Quantity, Buyer shall be obligated to pay an additional surcharge (in excess of the Contract Price otherwise payable with respect thereto) for such excess (such quantity, the “**Excess LNG Amount**”), and Seller shall invoice Buyer for the Excess LNG Amount as follows:

Excess LNG Charge = (ELA x AFC)

Where:

ELA = the Excess LNG Amount, measured in BOE.

AFC = the average per BOE Fixed Charges, excluding amounts attributable to the LNG Delivery Pipeline and the LNG storage tank, for the Contract Year in question, calculated as (i) the aggregate of the Fixed Charges for the Contract Year in question less that portion of such Fixed Charges attributable to the LNG Delivery Pipeline and the LNG storage tank, divided by (ii) the Maximum Annual Contract Quantity.

If Buyer exceeds its Maximum Annual Contract Quantity in any two consecutive Contract Years, and Seller determines in its sole discretion that it can commit to the higher demand, Seller may increase the Target Annual Contract Quantity to an amount equal to the average of the two years’ Actual Annual Contract Quantity, and in such event the Fixed Charges shall be adjusted accordingly to reflect such increase. For sake of clarity, Seller shall not be under any obligation to supply LNG in excess of the Maximum Annual Contract Quantity, any such supply being subject to Section 4.5.

Examples of calculations of the Excess LNG Amount are set forth in Exhibit H.

4.5 **Certain Limitations on Seller’s Supply Obligations**

If Buyer requires (i) more than the Maximum Annual Contract Quantity in any Contract Year, (ii) more than 6,310 BOE in any four (4) hour period, (iii) deliveries of LNG to any Delivery Point other than the intake manifold of the applicable Totem Ocean Vessel at the Totem Ocean Berthing Facility, (iv) deliveries pursuant to Section 9.1.5, or (v) Bunkering events within less than forty-eight (48) hours of one another or more often than two (2) Bunkering events in any six (6) Day period, Seller shall only be obligated to provide such LNG on an As Available Basis.

4.6 **Exclusivity**

Buyer acknowledges and agrees that from and after the Date of First Commercial Delivery and continuing until the expiration of the Delivery Term, Seller shall be the exclusive supplier of LNG to all Totem Ocean Vessels, except in the event and to the extent that Seller cannot deliver LNG as scheduled, whereupon other provisions of this Agreement shall apply.

4.7 **Use of Totem Ocean Berthing Facility**

The Parties acknowledge that (i) in accordance with the terms of the lease between Buyer and the Port of Tacoma, Buyer has priority rights to use the Totem Ocean Berthing Facility, but does not have exclusive control over the use of the Totem Ocean Berthing Facility and (ii) Seller desires to use the Totem Ocean Berthing Facility for the purpose of making deliveries of LNG to Third Parties via the LNG Delivery Pipeline. Buyer agrees, subject to the terms of the lease between it and the Port of Tacoma, that, as between Buyer and Seller, Seller shall be permitted to use the Totem Ocean Berthing Facility in order to make deliveries of LNG to Third Parties via the LNG Delivery Pipeline during periods of time when Buyer is not making use of the Totem Ocean Berthing Facility, and Buyer shall cooperate in good faith with any efforts of Seller in respect thereof (including efforts of Seller to secure from the Port of Tacoma rights to use the Totem Ocean Berthing Facility for such purpose), it being agreed that Buyer shall not be entitled to any fees in connection with any such use but that if Seller is successful in using the Totem Ocean Berthing Facility for purposes of making deliveries of LNG to Third Parties via the LNG Delivery Pipeline, Buyer's Allocable Share shall be adjusted accordingly pursuant to Section 11.2 hereof.

4.8 **No Encumbrances**

Seller covenants that all LNG Bunkered by Buyer and purchased from Seller shall be free and clear of all Encumbrances when Bunkered.

4.9 **Audit Rights**

Buyer shall have the right to cause an independent auditor jointly appointed by the Parties to audit the books, records and accounts of Seller that are relevant to the determination of the LNG sold pursuant to this Agreement and the relevant Contract Price thereof; *provided, however*, that any audit shall only include the current and the immediately preceding Contract Year, and can be undertaken only once in any calendar year. In the event that Buyer and Seller are unable to agree on the appointment of such auditor within thirty (30) Days of Buyer's request for an audit, Buyer shall have the right to appoint the auditor, which must be a major international accounting firm which has not represented either Party or their Affiliates in the five (5) years preceding its appointment. All such audits shall be completed within sixty (60) Days after Seller's relevant records have been made available to the independent auditor. Buyer shall bear all costs of the independent auditor. The independent auditor shall be required to enter into appropriate non-disclosure agreements reasonably acceptable to Seller relative to its audit and the information obtained in connection therewith. The independent auditor shall deliver the results of its audit to Buyer and Seller simultaneously. The report of the independent auditor shall be final and binding for all purposes of this Agreement.

5. **Delivery Point, Title and Risk**

5.1 **Delivery Point**

Seller shall deliver LNG to Buyer at the LNG intake manifold of the applicable Totem Ocean Vessel at the Totem Ocean Berthing Facility, or such other point as may be mutually agreed by the Parties (the “**Delivery Point**”).

5.2 **Title and Risk of Loss**

Title and risk of loss of LNG Bunkered by Buyer and purchased from Seller shall pass from Seller to Buyer at the Delivery Point.

6. **Scheduled and Major Maintenance**

6.1 **Scheduled and Emergency Maintenance**

Seller may temporarily suspend deliveries of LNG from the Tacoma LNG Facility for scheduled maintenance other than Major Maintenance, and for emergency repairing or replacing of a portion of the Tacoma LNG Facility or its equipment; *provided, however*, that Seller shall provide Buyer with as much notice as possible with respect to such suspension, but in no event less than twenty-four (24) hours prior notice except when prevented by Force Majeure, in which case the Force Majeure provisions of Article 15 of this Agreement would apply. Any suspension of deliveries under this Section 6.1 shall be a Seller Failure to Deliver Event subject to the provisions of Section 7.2.2.

6.2 **Major Maintenance**

Major Maintenance for the Tacoma LNG Facility will be performed by Seller not more frequently than once every five (5) Contract Years. During periods in which Major Maintenance is being performed, Seller may suspend deliveries of LNG from the Tacoma LNG Facility and such circumstance shall not be considered a Seller Failure to Deliver Event or any other default hereunder; *provided*, that in no event shall any such suspension result in more than four (4) Tank Quantities not being delivered to Buyer, it being understood that any additional Tank Quantities not delivered as a result of any such suspension for Major Maintenance shall be considered to be Seller Failure to Deliver Events under Section 7.2.2. Buyer will share its vessel schedule, including known maintenance outages, with Seller to facilitate coordination between the Parties with respect to scheduling Major Maintenance so as to minimize, to the extent practical and consistent with Applicable Standards, disruption to Buyer’s operations. Seller shall provide Buyer with a preliminary schedule for Major Maintenance not less than six (6) months prior thereto, and shall provide as much notice as possible with respect to the actual timing of such Major Maintenance, but in no event less than five (5) Business Days prior notice thereof. During any Contract Year in which Major Maintenance is performed, any undelivered Tank Quantities during such Major Maintenance period shall be deemed delivered to Buyer for the purposes of

calculating the Actual Annual Contract Quantity (with the basis for calculation of the Tank Quantity being the Target Annual Contract Quantity divided by the number of that calendar year's planned number of voyages). Seller shall make reasonable efforts to minimize suspension or curtailment of LNG deliveries for Major Maintenance and to restore LNG deliveries to Buyer as quickly as reasonably possible.

7. Failure to Deliver or Bunker LNG

7.1 Buyer's Failure to Receive

7.1.1 In the event that Buyer fails to accept delivery of Tank Quantities for reasons attributed to Force Majeure affecting Buyer, then:

- (a) Buyer shall remain obligated to pay to Seller the Fixed Charges; but
- (b) Any undelivered Tank Quantities shall be deemed delivered to Buyer for the purposes of calculating the Deficiency Amount, if any (but not for purposes of calculating the Excess LNG Amount), with the basis for calculation of the Tank Quantity being the Target Annual Contract Quantity divided by the number of that calendar year's planned number of voyages; and
- (c) If the applicable Force Majeure event shall continue on an uninterrupted basis such that Buyer is completely prevented from accepting deliveries of LNG hereunder (whether at the Delivery Point or to an alternate customer acceptable to the Parties) for a period of fifteen (15) consecutive days, the Delivery Term shall be extended until such time as Buyer shall have purchased during such extension a quantity of LNG hereunder equal to the volume of LNG that Buyer failed to purchase (or mitigate) due to such Force Majeure event; *provided*, that in no event shall such extension exceed a period of time equal to the total number of consecutive days after such fifteen (15) day period that such Force Majeure event continues to prevent Buyer from accepting deliveries of LNG hereunder; and *provided further*, that during any such extension no Fixed Charges shall be payable by Buyer.

7.1.2 In the event that Buyer fails to accept delivery of Tank Quantities for reasons other than Force Majeure affecting Buyer, then a "**Buyer Failure to Take Event**" shall be deemed to have occurred. Upon the occurrence of a Buyer Failure to Take Event:

- (a) Buyer and Seller shall use reasonable efforts to reschedule delivery of the relevant Tank Quantity; and
- (b) Buyer shall remain obligated to pay to Seller the Fixed Charges.

7.2 Seller's Failure to Deliver

7.2.1 In the event that Seller fails to deliver Tank Quantities for reasons attributed to Force Majeure affecting Seller, then:

- (a) Subject to Section 7.2.1(d) below, Buyer shall remain obligated to pay to Seller the Fixed Charges;
- (b) Buyer shall not be obligated to pay Seller for any Fuel Charges or Variable O&M Charges for any undelivered LNG;
- (c) Any undelivered Tank Quantities shall be deemed delivered to Buyer for the purposes of calculating the Deficiency Amount, if any (but not for purposes of calculating the Excess LNG Amount), with the basis for calculation of the Tank Quantity being the Target Annual Contract Quantity divided by the number of that calendar year's planned number of voyages; and
- (d) If an event of Force Majeure affecting Seller results in the complete failure of Seller to deliver any LNG hereunder for a period of more than thirty (30) consecutive Days, then from and after such time:
 - (i) Buyer shall be relieved of its payment obligations with respect to the Fixed Charges (on a pro rata basis for any partial Months) until resumption of Seller's delivery of LNG under this Agreement; and
 - (ii) The Delivery Term shall be extended until such time as Seller shall have sold to Buyer during such extension a quantity of LNG hereunder equal to the volume of LNG that Seller failed to sell (or mitigate) due to such Force Majeure event; *provided*, that in no event shall such extension exceed a period of time equal to the total number of consecutive days after such thirty (30) day period that such Force Majeure event continues to prevent Seller from making deliveries of LNG hereunder; and *provided further*, that during any such extension the Fixed Charges shall be payable by Buyer.

7.2.2 In the event that Seller fails to deliver Tank Quantities for reasons other than Force Majeure affecting Seller, then a "**Seller Failure to Deliver Event**" shall be deemed to have occurred. Upon the occurrence of a Seller Failure to Deliver Event:

- (a) Buyer and Seller shall use reasonable efforts to reschedule delivery of the relevant Tank Quantity before the vessel's posted sailing

time, with the understanding that Buyer shall not be obligated to take any delivery ending beyond the vessel's posted sailing time;

- (b) Buyer shall be relieved of its payment obligations with respect to the Fixed Charges (on a pro rata basis for any partial Months) until resumption of Seller's delivery of LNG under this Agreement;
- (c) If rescheduling is not feasible and Seller does not provide LNG from an alternative source satisfying the criteria of Section 4.1.2, then Seller shall promptly notify Buyer and if, as a result thereof, Buyer makes a purchase of LNG from an alternative supplier or utilizes Compliant Diesel as fuel, then, within ten (10) days of invoice from Buyer (including reasonable supporting documentation), Seller shall pay an amount equal to the excess, if any, of (i) the costs actually incurred by Buyer for such LNG or Compliant Diesel as is consumed by Buyer during the course of its normal sailing route (round trip from the Port of Tacoma to Anchorage, Alaska), including allocable delivery and ancillary charges, over (ii) the total Contract Price that would have been paid by Buyer for the LNG not delivered by Seller hereunder (including, for sake of clarity, any Fixed Charges not paid due to the application of Section 7.2.2(b)), but for the occurrence of such Seller Failure to Deliver Event, *provided* that in no event (except a Seller's Willful Failure to Deliver discussed in the final clause of this sentence) shall Seller's liability under this Section 7.2.2(c) for any single Seller Failure to Deliver Event exceed an amount equal to one hundred percent (100%) of the amount calculated pursuant to clause (ii) of this Section 7.2.2(c), *provided* further, the limitation on liability set forth in the preceding clause of this sentence shall not apply for any Seller Failure to Deliver Event arising out of Seller's Willful Failure to Deliver; and
- (d) Any undelivered Tank Quantities shall be deemed delivered to Buyer for the purposes of calculating the Deficiency Amount, if any (but not for purposes of calculating the Excess LNG Amount), with the basis for calculation of the Tank Quantity being the Target Annual Contract Quantity divided by the number of that calendar year's planned number of voyages.

7.2.3 Notwithstanding anything to the contrary in Section 4.6, if Seller shall fail to deliver Tank Quantities for any reason, Buyer shall be permitted to purchase such Tank Quantities (or alternate fuel) from Third Parties to the extent not so provided by Seller hereunder in compliance with this Section 7.2.3. Any agreement entered into by Buyer with respect to such alternate supply shall be entered into on commercially reasonable terms and for a commercially reasonable delivery term (taking into account the expected

duration of Seller's inability to deliver LNG hereunder). Prior to entering into any such agreement with an alternate supplier, Buyer shall consult with Seller as to the expected duration of Seller's inability to deliver LNG hereunder, and Buyer shall use commercially reasonable efforts to cause such alternate supply agreement to be terminable without penalty at such time as Seller is able to resume deliveries hereunder; *provided, however*, that if, notwithstanding such efforts by Buyer, such alternate supply agreement is not capable of termination without penalty at the time that Seller is able to resume deliveries hereunder, Buyer shall be permitted to continue to accept deliveries under such alternate supply agreement for a commercially reasonable period of time; *provided, further*, that if Buyer continues to so accept deliveries under such alternate supply agreement after Seller is able to resume deliveries hereunder (i) Seller shall have no further liability under Section 7.2.2(c) hereof, if applicable, and (ii) the Delivery Term shall be extended until such time as Seller shall have sold to Buyer during such extension a quantity of LNG hereunder equal to the volume of LNG that Buyer accepted delivery of under such alternate supply agreement after Seller was able to resume deliveries hereunder (and for sake of clarity, during any such extension the Fixed Charges shall be payable by Buyer).

- 7.2.4 Buyer's remedies in this Section 7.2 shall be exhaustive and shall be the full extent of Buyer's claims, remedies and methods of compensation (whether in contract or in tort or otherwise) with respect to Seller's failure to deliver the relevant Tank Quantity, whether in whole or in part. Buyer expressly agrees to waive and forego all other claims, remedies and methods of compensation in respect thereof.
- 7.2.5 Seller's maximum liability for Seller Failure to Deliver Events shall not exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000) during any Contract Year, *provided*, however, that the foregoing limitation on liability shall not apply for any Seller Failure to Deliver Event arising out of Seller's Willful Failure to Deliver.
- 7.2.6 For sake of clarity, if at any time Seller has agreed to make deliveries of LNG to Buyer on an As Available Basis, any failure to deliver any such LNG shall not result in any remedies under this Section 7.2 or otherwise under this Agreement.

7.3 **Mitigation of Failure to Receive or Deliver**

- 7.3.1 Each of the Parties shall use reasonable efforts to mitigate the impact of any failure to deliver or failure to receive LNG hereunder, which efforts shall include the reasonable expenditure of money to mitigate or otherwise reduce or eliminate any liabilities for which payment would otherwise be due hereunder; provided, that the other Party shall be responsible to reimburse such mitigation costs as they are incurred.

7.3.2 In the event Buyer fails to receive LNG at the Delivery Point, and such failure would reasonably be expected to cause Buyer to not meet its Minimum Annual Contract Quantity, the Parties will use reasonable efforts to sell any such volumes of LNG not received by Buyer to an alternate customer; *provided, however*, sales of such volumes shall be subject to the operating parameters and limitations contained in this Agreement. To the extent Seller is successful in remarketing such LNG volumes to alternate customers, Buyer shall receive a credit for such third-party sales to mitigate the amounts owed to Seller. For sake of clarity, Buyer acknowledges that (i) the Tacoma LNG Facility has been constructed for purposes of the regulated utility activities of Seller and (ii) other parties may have rights to the LNG output from the Tacoma LNG Facility, in each case that is not allocated to Buyer hereunder, and the foregoing shall not require Seller to seek to prioritize any mitigation hereunder over Seller's operations or any sale or purchase rights of others with respect to LNG produced by the Tacoma LNG Facility that is not allocated to Buyer hereunder.

8. LNG Measurement and Quality

8.1 Measurement of LNG at the Delivery Point

LNG Bunkered by Buyer at the Delivery Point shall be measured and tested in accordance with the measuring and testing protocols set out in Exhibit F.

8.2 Off-Spec LNG

8.2.1 Any LNG that does not conform to the LNG Specifications shall be “**Off-Spec LNG**”.

8.2.2 Seller shall not deliver any Off-Spec LNG.

8.2.3 Buyer shall not accept any Off-Spec LNG.

8.2.4 If a notice of Off-Spec LNG is given before commencement of loading of a Totem Ocean Vessel, Buyer will not accept Bunkering of the Off-Spec LNG. If a notice of Off-Spec LNG is given after commencement of LNG Bunkering but before completion of Bunkering, Seller shall immediately suspend Bunkering and Buyer will not accept further Bunkering of the Off-Spec LNG and, if possible, Seller shall unload the Off-Spec LNG already Bunkered.

8.2.5 When Buyer does not take delivery of Off-Spec LNG, the undelivered quantity of LNG (which for this purpose shall include any Off-Spec LNG that is unloaded) shall be deemed delivered to Buyer for the purposes of calculating the Actual Annual Contract Quantity.

8.2.6 If Buyer receives Off-Spec LNG, Buyer acknowledges that, as between Buyer and Seller, and as contemplated by Section 16.1.2, Buyer shall be responsible for all costs to repair or replace existing facilities or the Totem Ocean Vessel that Bunkered such Off-Spec LNG incurred by Buyer in connection with receiving and treating such Off-Spec LNG; *provided, however,* that if Buyer receives insurance recoveries from Buyer's insurance coverages in connection with any such costs incurred due to receipt of Off-Spec LNG, and the delivery of such Off-Spec LNG was due to the fault or negligence of Seller, Seller agrees to reimburse Buyer for any deductible incurred by Buyer under Buyer's insurance coverages, with such reimbursement not to exceed One Million Dollars (\$1,000,000) per occurrence.

9. **Bunkering and Transportation**

9.1 **General**

- 9.1.1 The maximum quantity for any one Bunkering operation that Seller shall be required to deliver shall be 6,310 BOE.
- 9.1.2 Bunkering events shall not occur within forty-eight (48) hours of one another and no more than two (2) Bunkering events shall occur in any six (6) Day period.
- 9.1.3 Upon request of Seller, Buyer shall furnish Seller with such documentation as may be reasonably necessary to demonstrate that any Totem Ocean Vessel proposed to be used by Buyer for Bunkering (or a Substitute Totem Ocean Vessel notified pursuant to Section 9.1.4) is capable of receiving the LNG to be Bunkered safely and in an environmentally sound and timely manner. No acceptance of a Totem Ocean Vessel by Seller shall modify or otherwise affect Buyer's obligations or representations and warranties under this Agreement.
- 9.1.4 Buyer is entitled to use a substitute Totem Ocean Vessel of similar LNG capacity and which otherwise meets the requirements of Section 9.2.1 for Bunkering (a "**Substitute Totem Ocean Vessel**").
- 9.1.5 Buyer is entitled to substitute or augment a Totem Ocean Vessel with ISO containers or tank trucks as alternate receipt methods, provided that Seller's obligation to make LNG available to Buyer pursuant to any such alternate receipt methods shall be on an As Available Basis. If Buyer chooses to receive LNG in either manner, Seller may allocate Buyer the Buyer's pro rata share of infrastructure charges for the equipment necessary to facilitate such delivery.

9.2 Totem Ocean Vessels

9.2.1 Buyer shall ensure that each Totem Ocean Vessel used to Bunker LNG shall at all times be:

- (a) capable of Bunkering LNG at a bulk rate of no less than 6,310 BOE in four (4) hours;
- (b) equipped with adequate facilities for Bunkering and handling of LNG;
- (c) constructed and maintained pursuant to the rules and regulations of, and maintained in class with the American Bureau of Shipping (ABS) or another member of the International Association of Classification Societies that has prior experience in classifying LNG Vessels, and in compliance with Applicable Laws;
- (d) operated in compliance with Applicable Standards and Applicable Laws of the country of vessel registry, including those that relate to seaworthiness, design, safety, environmental protection, navigation, and other operational matters, and all permits and Approvals for Totem Ocean Vessels that are required for the Bunkering of LNG from the Tacoma LNG Facility;
- (e) manned with skilled and competent sailors, officers, and crew, who (i) are suitably qualified, trained, and experienced in international marine cargo operations and qualified to a minimum of International Maritime Organization standards, (ii) are able to communicate with regulatory authorities and Seller at the Tacoma LNG Facility and are fluent in written and spoken English, and (iii) have subscribed to a maritime drug and alcohol policy regarding the use of drugs and alcohol aboard a marine cargo vessel; and
- (f) in possession of and at all relevant times shall maintain a valid international ship security certificate.

9.2.2 A Totem Ocean Vessel shall not be modified in any manner that would render it incompatible with the Tacoma LNG Facility unless required by international safety regulations or standards, and then only upon not less than six (6) Months prior written notice to Seller. Any modifications to the Tacoma LNG Facility as a result thereof shall be made at Buyer's cost and expense.

9.3 **Obligations of Buyer and Seller**

- 9.3.1 Subject to Section 9.5, Buyer shall cause the Totem Ocean Vessel to be cold and ready to load at the time that its NOR is issued in accordance with Section 9.4.
- 9.3.2 During each Bunkering, Seller shall accept from the Totem Ocean Vessel returned Gas in such quantities as are necessary for the safe Bunkering of the LNG at such rates, pressures and temperatures as may be required by the Totem Ocean Vessel. All such returned Gas shall be treated as having been Bunkered by Buyer and sold and purchased pursuant to this Agreement; *provided, however*, that Seller shall credit Buyer with the quantity of Gas so returned as measured in MMBtu; *provided* that such returned Gas meets the properties detailed on Exhibit A.
- 9.3.3 If a problem occurs or is foreseen to occur that will or might cause delay to the Totem Ocean Vessel in berthing, loading or departing berth, Seller and Buyer shall use reasonable efforts to minimize or to avoid the delay, and shall cooperate to identify measures to minimize or avoid the occurrence of any similar delay in the future.

9.4 **Notice of Readiness**

Upon arrival at the Totem Ocean Berthing Facility, the master of the Totem Ocean Vessel or her agent shall notify Seller when such Totem Ocean Vessel is fully secured, fit in every way and ready for Bunkering of LNG (“**Notice of Readiness**” or “**NOR**”).

9.5 **Cool Down**

Seller will provide one (1) cool down service to the Totem Ocean Vessel per calendar year at no cost to Buyer; provided that Buyer provides Seller with the necessary notice pursuant to this Section 9.5. Any cool down required by the Totem Ocean Vessel without the proper notice or that is in excess of one (1) a year shall be charged to Buyer at Seller’s incremental and documented costs. Buyer shall provide not less than twenty-four (24) hour prior notice to Seller if cool down services in respect of a Totem Ocean Vessel are required, and such services shall be provided as part of the Bunkering to be performed by such Totem Ocean Vessel. All LNG used to perform cool down services shall be treated as having been Bunkered by Buyer and sold and purchased pursuant to this Agreement. The Parties acknowledge that the cool down process must be completed before the four (4) hour fueling window commences and is not considered part of the fueling process with respect to the four (4) hour fueling requirement.

10. Use Restrictions and Other Limitations

10.1 Use by Buyer and its Affiliates

Buyer acknowledges and agrees that any LNG sold to Buyer under this Agreement shall be consumed as VNG by Buyer or its Affiliates, except to the extent resold by Buyer in accordance with the restrictions set forth in this Article 10. As used herein, “**Vehicular Natural Gas**” or “**VNG**” means natural gas or LNG that is ultimately used, in a gaseous or liquid state, as a fuel in a self-propelled vehicle, including, but not limited to automobiles, trucks, buses, trains, aircraft, boats, non-road farm vehicles, and construction vehicles.

10.2 Resales of LNG

LNG sold to Buyer may be resold by Buyer to third party purchasers, provided that: (a) such LNG is consumed as VNG; or (b) any transportation, sale, or ultimate use of such LNG does not subject the Tacoma LNG Facility or Seller to the jurisdiction of the Natural Gas Act, 15 U.S.C. § 717 et seq. Any contract entered into by Buyer for the resale of LNG sold to Buyer under this Agreement shall contain all conditions and terms necessary to impose upon the Person purchasing such LNG restrictions on use or resale of such LNG that are the same, in all material respects, to those contained in this Article 10.

10.3 No Exports

Buyer shall not export LNG sold to Buyer under this Agreement from the United States of America, either directly or indirectly through a third party purchaser.

10.4 Natural Gas Act Liability

Buyer shall bear financial responsibility for all reasonable and actual costs and other Liabilities incurred by Seller if Buyer or any entity that subsequently purchases LNG from Buyer exports such LNG or transports, sells or consumes (other than in Totem Ocean Vessels or Substitute Totem Ocean Vessels or as VNG), such LNG and as a result thereof (i) the Tacoma LNG Facility or Seller becomes or allegedly becomes subject to the jurisdiction of the Natural Gas Act, 15 U.S.C. § 717 et seq. (the “**NGA**”) or (ii) any violation or alleged violation by Seller of the NGA or any FERC Regulations arises. In the event of any such action or alleged action by Buyer, Seller shall (A) upon request from Buyer, promptly provide to Buyer all documents or communications in Seller’s possession or control (including, but not limited to, any notice of violation) related to any assertion or claim of jurisdiction under the NGA or of any violation or alleged violation of the NGA or FERC Regulations, and (B) reasonably cooperate with Buyer in minimizing any related Liabilities; provided, however, that the foregoing shall not require Seller to provide any such documents or communications if the provision thereof would violate any Applicable Law, cause the loss of any legal privilege or violate any confidentiality restrictions or otherwise result in a breach by Seller of any contractual obligation, it being

agreed that if any such confidentiality restriction applies, Seller shall use commercially reasonable efforts to obtain a waiver thereof (and Buyer agrees to enter into a commercially reasonable confidentiality agreement in connection therewith). Except for amounts that are actually recovered under the Buyer's insurances, Buyer's liability to Seller under this Section 10.4 shall not exceed Fifteen Million Dollars (\$15,000,000) during any Contract Year.

10.5 **Audit Rights**

Seller shall have the right, on reasonable prior notice to Buyer and during normal business hours, to audit or cause to be audited the books, records and accounts of Buyer that are relevant to the compliance by Buyer with the provisions of this Article 10.

11. **Contract Price**

11.1 **Contract Price**

11.1.1 For deliveries of LNG made from and after the Date of First Commercial Delivery and prior to the commencement of the Delivery Term, Buyer shall pay to Seller an amount equal to (A) the quantity of LNG delivered (measured in BOE) multiplied by (B) the average expected cost of LNG as calculated by dividing Buyer's total expected annual costs by 510,000 BOE.

11.1.2 For each Month during the Delivery Term, Buyer shall pay to Seller an amount (the "**Contract Price**") equal to the sum of the following:

- (a) the Fixed Facility Charge;
- (b) the Fixed O&M Charge;
- (c) the Fuel Charge;
- (d) the Variable O&M Charge;
- (e) the Deficiency Amount Charge, if any, due pursuant to Section 4.3;
- (f) the Excess LNG Charge, if any, due pursuant to Section 4.4; and
- (g) any Taxes, as applicable

11.2 **Adjustments to the Fixed Charges**

11.2.1 Exhibit B sets forth the methodology for the calculation of the Contract Price, and includes in Section B.7 thereof an initial estimate of the Contract Price, including Buyer's Allocable Share of the capital costs for

the Tacoma LNG Facility, based upon the current estimate thereof as of the date of this Agreement. The Parties agree that the Fixed Facility Charge shall be adjusted to reflect the actual amount of such costs incurred. In furtherance thereof, not later than forty-five (45) Days after the commencement of the Delivery Term, Seller shall furnish to Buyer documentation setting forth in reasonable detail the actual amounts of all costs incurred in connection with the design, construction, completion and commissioning of the Tacoma LNG Facility, including all amounts paid or payable under the EPC Contract, and the Fixed Facility Charge shall thereupon be recalculated and shall be increased or decreased as a result thereof. In addition, if at any time thereafter additional capital costs incurred prior to the commencement of the Delivery Term have been identified and determined, a subsequent recalculation in the Fixed Facility Charge shall be made and Seller shall furnish to Buyer in writing additional documentation setting forth in reasonable detail the amount of such adjustment. During the course of project development, Seller shall notify Buyer on a quarterly basis regarding the expected capital cost of the Tacoma LNG Facility.

- 11.2.2 Not later than thirty (30) Days after the end of the first (1st) Contract Year, Seller shall furnish Buyer with a revised calculation of Buyer's Allocable Share, based upon any changes to the Target Annual Contract Quantity calculated in accordance with Section 4.2, and the Fixed Facility Charge and Fixed O&M Charge shall thereupon be recalculated and shall be increased or decreased as a result thereof; *provided* that increases in Buyer's Allocable Share shall be proportionate to increases in Buyer's Target Annual Contract Quantity.
- 11.2.3 Not later than thirty (30) Days after the end of the fifth (5th) Contract Year, Seller shall furnish Buyer with documentation setting forth in reasonable detail the amount of any Sustaining Capital Costs incurred or expected to be incurred with respect to the Tacoma LNG Facility, together with a revised calculation of the Fixed Facility Charge, taking into account any such Sustaining Capital Costs.
- 11.2.4 Any increases in or reductions to the Fixed Facility Charge pursuant to this Section 11.2 shall be effective retroactive to the date on which Buyer's obligation to pay the Fixed Charges begins (including, for sake of clarity, changes resulting from adjustments to Buyer's Allocable Share following the first anniversary of the Date of First Commercial Delivery) or, in the case of Section 11.2.3, retroactive to the commencement of the sixth (6th) Contract Year.
- 11.2.5 In addition to the foregoing, the Fixed Charges shall be adjusted if and to the extent required in accordance with Section 4.4 in connection with any increase in the Target Annual Contract Quantity.

11.2.6 Within thirty (30) Days after any adjustments in the Fixed Facility Charge and/or the Fixed O&M Charge pursuant to this Section 11.2, Seller shall prepare and deliver to Buyer an invoice setting forth any charges or credits due as a result of the adjustments made pursuant to this Section 11.2.

11.2.7 Buyer shall have the right to terminate this Agreement if (i) Buyer's Fixed Charges (not including any increases required as a result of New Regulatory Costs or New Taxes) exceed the Maximum Fixed Charges detailed on Exhibit B and (ii) Seller does not elect to cap the Fixed Charges at the Maximum Fixed Charges, all as further provided in Exhibit B hereto; *provided*, that written notice of such termination must be delivered to Seller no later than thirty (30) Days after Seller shall have furnished to Buyer a revised calculation of Buyer's Fixed Charges that exceeds the Maximum Fixed Charges, after which time such termination right shall irrevocably lapse. Subject to Section 19.3, any such termination shall be without liability of Seller of any kind, including for any termination payment.

11.3 **Buyer's Allocable Share**

Buyer's Allocable Share of the capital costs attributable to the Tacoma LNG Facility shall be determined in accordance with Section 11.2 and Exhibit B. Buyer's Allocable Share of the Fixed O&M Charges shall generally be allocated based on (i) Buyer's percentage allocation of the capital costs as determined in accordance with Section 11.2 and Exhibit B, or (ii) on expected LNG throughput volumes, *provided, that*, if any particular cost item is properly allocable to Buyer on a different basis, Seller shall so allocate such cost item and bill Buyer accordingly. Buyer's Allocable Share of the Variable O&M Charges and the Fuel Charges shall be determined on a pro rata basis, based upon the applicable volume of Gas allocable to LNG sold to Buyer hereunder as compared to Gas used for LNG production for other uses. If and to the extent necessary, Buyer's Allocable Share will be adjusted in connection with any New Regulatory Costs or New Taxes allocated pursuant to Section 11.7. Within thirty (30) Days of the CP Fulfillment Date, Seller shall provide Buyer with documentation detailing Buyer's Allocable Share and the related allocation method. The foregoing or any other provision of this Agreement notwithstanding, Buyer's Allocable Share shall not exceed that allowed under Exhibit B.

11.4 **Affiliate Pricing**

11.4.1 If at any time Buyer or any of its Affiliates require additional quantities of LNG sufficient to support an expansion of the Tacoma LNG Facility, Buyer may, by notice to Seller, request such expansion and, if Seller in its sole discretion determines that such expansion is economically viable and operationally feasible, Seller shall, for a period of not less than ninety (90) Days, negotiate in good faith with Buyer or its Affiliates as applicable, with respect to the provision of such additional quantities of LNG on

terms and conditions substantially similar to those set forth in this Agreement. Notwithstanding the foregoing, the Parties agree that quantities that Buyer or its Affiliates, at the time of the request, are receiving from Seller or other owners or contracting parties of the Tacoma LNG Facility shall not be included in any “additional quantities” required by Buyer or its Affiliates in order to support any such expansion request.

11.4.2 If Seller in its sole discretion determines that expansion of the Tacoma LNG Facility is economically viable and operationally feasible, Seller shall, for a period of not less than ninety (90) Days, negotiate in good faith with Buyer or its Affiliates, with respect to the provision of such additional quantities of LNG on terms and conditions substantially similar to those set forth in this Agreement.

11.5 **Plant Expansion**

If any event, including but not limited to an expansion of the Tacoma LNG Facility pursuant to Section 11.4 of this Agreement, results in an aggregate per MMBtu reduction in the costs included in the Fixed Facility Charge and/or Fixed O&M Charge, as calculated under Seller’s cost-of-service pricing model, then the Fixed Facility Charge and/or the Fixed O&M shall be reduced accordingly.

11.6 **Most Favored Nation**

During the Delivery Term, Seller shall not make available to other similarly situated buyers quantities of LNG produced at the Tacoma LNG Facility on pricing terms (exclusive of delivery mode costs) that are lower than the Contract Price (exclusive of delivery mode costs), without also offering such pricing terms to Buyer hereunder. For purposes of this Section 11.6, “similarly situated” shall mean that such other buyers of LNG have agreed to commitments of longer than six (6) months (but not longer than ten (10) years) or for volumes in excess of 40,000 BOE in any thirty (30) day period, in either case with similar firm take and delivery obligations. The Parties acknowledge that Seller may have arrangements in place with Persons that own an interest in the Tacoma LNG Facility or have otherwise entered into long-term marketing rights with respect to the Tacoma LNG Facility, which arrangements may not include Fixed Facility Charges, and that sales prices for LNG sold to such Persons (which may include only Fixed O&M, Variable O&M and Fuel Charges) shall not trigger Buyer’s rights under this Section 11.6. For sake of clarity, Buyer's rights under this Section 11.6 shall not be triggered by, and Seller shall not be restricted in making, sales to any Persons that own an interest in the Tacoma LNG Facility or have otherwise entered into long-term marketing rights with respect to the Tacoma LNG Facility, regardless of whether any such Persons themselves make available LNG on pricing terms (exclusive of delivery mode costs) that are lower than the Contract Price (exclusive of delivery mode costs). Notwithstanding anything to the contrary in this Section 11.6, sales occurring at any time that Buyer is in default of its obligations hereunder (including during a Buyer Failure to Take Event) or at

any time that Buyer is not taking deliveries of LNG hereunder by reason of Force Majeure, shall not trigger Buyer's rights under this Section 11.6.

11.7 **New Regulatory Costs; New Taxes**

If at any time after the Execution Date (i) any Governmental Authority, as a result of any Change in Applicable Law, requires Seller or the Tacoma LNG Facility to incur any costs not originally required at the time of this Agreement (“**New Regulatory Costs**”) or (ii) any Governmental Authority imposes any new Taxes on the Tacoma LNG Facility or Seller or increases the rate of existing Taxes on Seller or the Tacoma LNG Facility or imposes any new Taxes on Seller's sale of LNG pursuant to this Agreement other than Taxes on Seller's income (“**New Taxes**”), Seller shall notify Buyer of such New Regulatory Costs and/or New Taxes, and Buyer's Allocable Share of such New Regulatory Costs and/or New Taxes shall be included (without duplication) in the Contract Price.

12. **Invoicing and Payment**

12.1 **Invoicing**

12.1.1 Seller shall prepare and provide Buyer with an invoice for each Month during the Delivery Term.

12.1.2 All other invoices shall be prepared and provided by the Party to whom payment is due at any time after such payment becomes due and payable.

12.2 **Invoice Due Dates**

Each invoice shall be due and payable ten (10) Days after the date of receipt of such invoice.

12.3 **Payment**

12.3.1 Each Party shall pay or cause to be paid, on or before the due date, all amounts due and payable by such Party to the other Party pursuant to an invoice issued under this Agreement. Such payments shall be made by wire transfer in immediately available funds to such account or accounts with such bank and in such location as shall have been designated by the Party receiving the payment.

12.3.2 The payment of any amount owing hereunder shall be for the full amount due, without any reduction, withholding or set-off for any reason, including any exchange charges, bank transfer charges, any fees, or Taxes. If the Party making the payment is required to withhold or deduct any Taxes from or in respect of any payment, (i) the Party making the payment shall make such withholding or deduction and shall remit the amount withheld or deducted to the relevant Governmental Authority and (ii) shall pay an additional amount to the Party to which the payment is due such

that such Party receives after all withholdings or deductions an amount equal to the amount such Party would have received had no withholdings or deductions been made.

12.3.3 Any amount due under this Agreement which remains outstanding for more than ten (10) Days from the due date thereof shall bear interest from the relevant due date to and including to date paid at the Interest Rate.

12.4 **Disputed Invoices**

In the event a Party disagrees with any invoice, it shall inform the other Party of the reasons of the disagreement but still be required to pay the full amount of any undisputed amounts on such invoice. An invoice may be contested by the Party that received it, or modified by the Party that sent it, by notice delivered to the other Party within a period of ninety (90) Days after such receipt or sending, as the case may be. If no such notice is given, such invoice shall be deemed correct and accepted by both Parties. Promptly after resolution of any dispute as to an invoice, the amount of any overpayment or underpayment shall be paid by the Party obligated thereon to the other Party, together with interest on such amount at the Interest Rate from the date payment was originally due to the date of payment.

12.5 **Netting and Setoff.**

Unless otherwise expressly provided in this Agreement, no Party shall be entitled to deduct, set-off against, net-off against or reduce any amounts due to such Party from amounts due to the other Party under this Agreement.

13. **Credit Support**

Buyer shall deliver concurrently herewith and thereafter maintain throughout the Initial Term of this Agreement, an irrevocable guaranty substantially in the form attached as Exhibit G hereto, which guaranty shall initially be issued by Saltchuk Resources, Inc., the ultimate parent company of Buyer.

14. **Taxes**

14.1 **General**

14.1.1 Buyer shall be responsible for, pay (or cause to be paid), and indemnify and hold Seller and its Affiliates harmless against any form of taxes (including, but not limited to, ad valorem and transfer taxes, but excluding income taxes imposed on Seller) payments in lieu of taxes, royalties, customs, excises, tariffs, duties, levies, assessments, or other imposts, fees or charges (including, without limitation, any amounts imposed with respect to carbon or the environment), together with any interest, penalties or additional amounts imposed with respect thereto (“**Taxes**”) that are

currently, or at any point during the Term of the Agreement, levied or imposed, directly or indirectly, by any Governmental Authority on:

- (a) the income of Buyer and its Affiliates;
- (b) Buyer's purchase of LNG pursuant to the terms of this agreement or any LNG after such LNG is Bunkered by Buyer;
- (c) the Totem Ocean Vessels and Totem Ocean Berthing Facilities, including equipment or property located thereon or related thereto, and on any LNG transportation services; and
- (d) the loading, transport, sale, transfer, receipt, or delivery of LNG to which the Agreement applies.

14.1.2 Seller shall be responsible to pay or cause to be paid and shall indemnify Buyers and its Affiliates and hold them harmless against any form of Taxes levied or imposed, directly or indirectly, by any Governmental Authority, together with any interest, penalties or additional amount on

- (a) the income of Seller and its Affiliates;
- (b) the Tacoma LNG Facility; or
- (c) the sale of LNG to any other buyers using the Tacoma LNG Facility.

14.2 Procedures

14.2.1 Where a payment has been made under Section 14.1, and the recipient of such payment receives or is entitled to receive a refund in respect of Taxes which gave rise to the right to that payment (whether by way of actual receipt, credit, set-off or otherwise), the recipient shall repay, or cause to be repaid, to the other Party a part of that payment equal to the amount of the refund effectively received or enjoyed, less any reasonable costs incurred in obtaining the refund, and less any Taxes levied or levy-able in respect of that refund.

14.2.2 In the event either Party becomes aware of a potential or actual liability to make any payment of Taxes which might give rise to a claim under Section 14.1, it shall give notice of the circumstances to the other Party as soon as reasonably practicable in order to allow both Parties a reasonable opportunity to minimize their liability for such Taxes, acting always in compliance with the Applicable Laws of the relevant country. Each Party shall give the other Party such assistance as is reasonable in this regard, and Seller or Buyer (as appropriate) shall not make any payment of such Taxes until the due date on which such Taxes are due and payable in accordance with the relevant Tax regulations unless an early payment

could result in a reduction of the liability to such Taxes. In order to allow the Parties to make payments to each other without neglecting compliance with any Tax, royalty, duty or other impost levied, Parties agree that if requested by the other Party, they will diligently complete, execute and arrange for any required certification and/or document in a manner reasonably satisfactory to the other Party, and will deliver to the other Party and/or to any government or taxing authority as the other party reasonably directs, copies of any such document.

15. Force Majeure

15.1 Force Majeure

Neither Party shall be liable to the other Party for any delay or failure in performance under this Agreement if and to the extent such delay or failure is a result of Force Majeure. To the extent that the Party so affected fails to use reasonable efforts to overcome or mitigate the effects of such events of Force Majeure, it shall not be excused for any delay or failure in performance that would have been avoided by using such reasonable efforts. Subject to the provisions of this Article 15, the term “**Force Majeure**” shall mean any act, event or circumstance, whether of the kind described herein or otherwise, that is not reasonably within the control of, does not result from the fault or negligence of, and would not have been avoided or overcome by the exercise of reasonable diligence by, the Party claiming Force Majeure or an Affiliate of the Party claiming Force Majeure, such Party and, as applicable, its Affiliate having observed a standard of conduct that is consistent with a reasonable and prudent operator, and that prevents or delays in whole or in part such Party’s performance of one or more of its obligations under this Agreement.

15.1.1 Force Majeure may include circumstances of the following kind, provided that such circumstances satisfy the definition of Force Majeure set forth in Section 15.1:

- (a) fire, flood, atmospheric disturbance, lightning, typhoon, cyclone, hurricane, tornado, tidal wave, volcanic eruption, epidemic, earthquake, landslide, epidemic or other natural disasters or acts of God;
- (b) war (whether declared or undeclared), riot, civil war, armed conflict, invasion, embargo, revolution, rebellion, sabotage, acts or threats of terrorism, insurrection, blackouts, acts of public enemies, civil disturbances, blockade, or sanctions on the import or export of goods, services or technology;
- (c) radioactive contamination or ionizing radiation;
- (d) strike, lockout or other industrial disturbances other than those involving the affected Party’s employees;

- (e) acts of Governmental Authority, or compliance with such acts that directly affect Seller's ability to perform its obligations under this Agreement, except to the extent that they constitute remedies or sanctions lawfully exercised by a Governmental Authority as a result of a breach of any Approval or Applicable Law;
- (f) in respect of Seller: (i) the loss of or serious damage to (x) the Tacoma LNG Facility or any Connecting Pipeline, or (y) associated machinery, liquefaction, storage, dispensing equipment, lines of pipes, or freezing pipelines; and (ii) failure of electric, gas or other utility or commodity supply (temporary or otherwise), declaration of force majeure or curtailment by electric, gas or other utility or commodity suppliers or transporters (unless such entity is a Party or a Party's Affiliate, except in the case of Seller, for curtailments declared due to acts or omissions by Third Parties) that results in inaccessibility or inoperability of the Tacoma LNG Facility or any Connecting Pipeline or the breakdown of any equipment included in or used by the Tacoma LNG Facility or any Connecting Pipeline; and
- (g) in the case of Buyer, the loss of or serious damage to a Totem Ocean Vessel scheduled to Bunker LNG pursuant to this Agreement or the breakdown of any equipment included in or used by such Totem Ocean Vessel, accruing in each case after Seller has been notified by Buyer pursuant to Section 9.1.3.

15.1.2 Notwithstanding Section 15.1.1, none of the following shall constitute an event of Force Majeure:

- (a) inability to finance obligations under this Agreement or the unavailability of funds to pay amounts when due in the currency of payment;
- (b) changes in either Party's market factors, default of payment obligations or other commercial, financial or economic conditions;
- (c) breakdown or failure of Totem Ocean Vessels or plant or equipment located at the Totem Ocean Berthing Facility, the Tacoma LNG Facility or any Connecting Pipeline owned by Seller, and in either case caused by a failure to properly maintain such vessels, plant or equipment;
- (d) any event arising from an action or omission of (i) any Affiliate of the affected Party, (ii) the contractor or sub-contractor or agent of the affected Party or an Affiliate of the affected Party, in either case taken at or with respect to Totem Ocean Vessels or plant or equipment located at the Totem Ocean Berthing Facility or the

Tacoma LNG Facility, to the extent that, had the affected Party taken such action or experienced such event, such event would not constitute Force Majeure pursuant to the provisions of this Section 15;

- (e) the loss of interruptible or secondary firm transportation service on a Connecting Pipeline or any pipeline upstream of a Connecting Pipeline unless the cause of such loss was an event that would satisfy the definition of Force Majeure hereunder and primary in-the-path transportation service on such pipeline was also interrupted as a result of such event; and
- (f) the ability of a Party to obtain better economic terms for the Plant Services or similar services.

15.2 Notification

15.2.1 A Force Majeure event shall take effect at the moment such an event or circumstance occurs. Within twenty-four (24) hours of obtaining knowledge of the occurrence of a Force Majeure event that prevents, interferes with or delays the performance by Seller or Buyer, in whole or in part, of any of its obligations under this Agreement, the Party affected shall give notice thereof to the other Party (which notice may be given orally) describing such event and stating the obligations the performance of which are affected, which notice shall be followed by written notice furnished within five (5) Days of the affected Party's having obtained knowledge of the occurrence of such Force Majeure stating (either in the original or in supplemental notices), as applicable:

- (a) the particulars of the event giving rise to the Force Majeure claim, in as much detail as is then reasonably available including the time at which the Force Majeure event arose;
- (b) the obligations under this Agreement the performance of which have been actually prevented, hindered or delayed and an estimate (acting in good faith) of the period during which the affected Party believes the performance is likely to be prevented, hindered or delayed, including, to the extent known or ascertainable, the estimated extent of such reduction in performance; and
- (c) the particulars of the program to be implemented to resume normal performance under this Agreement.

15.2.2 Such notices shall thereafter be updated at least every fifteen (15) days during the period of such claimed Force Majeure specifying the actions being taken to remedy the circumstances causing such Force Majeure.

15.3 **Measures**

The Parties shall exercise all reasonable efforts and diligence to resume normal performance of this Agreement after the occurrence of an event of Force Majeure. Prior to resumption of normal performance, the Parties shall continue to perform their obligations under this Agreement to the extent not prevented by such event of Force Majeure. Prior to resumption of normal performance, the Parties shall continue to perform their obligations under this Agreement to the extent not excused by such event of Force Majeure.

15.4 **Settlement of Labor Disputes**

Notwithstanding any of the provisions of this Article 15, the timing and terms and conditions of the settlement of strikes, labor disputes or industrial disturbances will be entirely within the discretion of the particular party involved and the party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the party of the benefit of Force Majeure.

15.5 **Pro Rata Allocation**

Notwithstanding any other provision in this Article 15, during any event of Force Majeure affecting Seller, Seller shall apportion the remaining capacity at the Tacoma LNG Facility on a pro rata basis, according to Buyer's Allocable Share and the allocable share of each other Person (including Seller) having rights to the respective services.

15.6 **Force Majeure Termination Right**

If an event of Force Majeure affecting either Party results in the complete failure of either Party's ability to deliver or receive any LNG hereunder for a period of more than two hundred and seventy (270) consecutive Days, the un-affected Party may terminate this Agreement upon thirty (30) Days' notice to the Party affected by the event of Force Majeure; *provided, however*, if the Party suffering such event of Force Majeure is using commercially reasonable efforts to remedy the effects of the Force Majeure, then no termination right shall arise pursuant to this Section 15.6. If this Agreement is terminated pursuant to this Section 15.6, subject to Section 19.3, there shall be no liability of either Party to the other arising out of such termination.

16. **Indemnification; Limitations of Liability**

16.1 **Indemnity**

Notwithstanding anything in this Agreement to the contrary:

16.1.1 To the fullest extent permissible by Applicable Law, Seller agrees (regardless of cause or the presence or absence of insurance) to indemnify,

defend and hold Buyer harmless from and against any and all Claims relating to any of the following:

- (a) injury to or death of the employees of Seller or any of its Affiliates;
- (b) loss of or damage to all property belonging to or leased by Seller or any of its Affiliates;
- (c) ownership, title to, loss of or any other Claim otherwise related in any way to any Gas or LNG during such time as such Gas or LNG is in the possession of Seller; and
- (d) wreckage and debris removal of and pollution emanating from the Tacoma LNG Facility.

16.1.2 To the fullest extent permissible by applicable law, Buyer agrees (regardless of cause or the presence or absence of insurance) to indemnify, defend and hold Seller harmless from and against any and all Claims relating to any of the following:

- (a) injury to or death of the employees of Buyer or any of its Affiliates;
- (b) loss of or damage to all property belonging to or leased by Buyer or any of its Affiliates;
- (c) ownership, title to, loss of or any other Claim otherwise related in any way to any Gas or LNG during such time as such Gas or LNG is in the possession of Buyer; and
- (d) wreckage and debris removal of and pollution emanating from any Totem Ocean Vessel or the Totem Ocean Berthing Facilities.

16.1.3 Except for Claims described in Section 16.1.1, Buyer shall defend, indemnify and hold Seller and each of its Affiliates harmless from and against all Claims for death of or personal injury to Third Parties and damage to or loss of such Third Parties' property, to the extent caused by Buyer or any of its Affiliates.

16.1.4 Except for Claims described in Section 16.1.2, Seller shall defend, indemnify and hold Buyer and each of its Affiliates harmless from and against all Claims for death of or personal injury to Third Parties and damage to or loss of such Third Parties' property, to the extent caused by Seller or any of its Affiliates.

16.1.5 When required to indemnify a Person hereunder (each, an “**Indemnified Person**”), Seller or Buyer, as the case may be (the “**Indemnifying**”

Party”), shall assume on behalf of such Indemnified Person, and conduct with due diligence and in good faith, the defense of any claim against such Indemnified Person, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Person shall cooperate fully with the Indemnifying Party in such defense, at the Indemnifying Party’s expense. The Indemnifying Party shall have charge and direction of the defense and settlement of such claim; *provided, however*, that without relieving the Indemnifying Party of its obligations hereunder or impairing the Indemnifying Party’s right to control the defense or settlement thereof, the Indemnified Person may elect to participate through separate counsel in the defense of any such claim. The fees and expenses of separate counsel retained by the Indemnified Person shall be at the expense of such Indemnified Person unless (a) there exists a material conflict of interest between the Indemnifying Party and such Indemnified Person in the conduct of the defense of such claim (in which case the Indemnifying Party shall not have the right to control the defense or settlement of such claim, on behalf of such Indemnified Person), or (b) the Indemnifying Party shall not have employed counsel to assume the defense of such claim within a reasonable time after notice of the commencement thereof or shall not be pursuing the defense of such claim with due diligence or in good faith (and in each such case the fees and expenses of counsel shall be at the expense of the Indemnifying Party). No Indemnifying Party shall settle any such claims or actions in a manner which would require any action or forbearance from action by any Indemnified Person, impose liability on such Indemnified Person (except for the payment of money, which shall be paid in full by the Indemnifying Party), include an admission of wrongdoing or materially and adversely affect the Indemnified Person’s rights under this Agreement without the prior written consent of the Indemnified Person, which consent shall not be unreasonably withheld, conditioned or delayed.

16.2 General Limitations of Liability

16.2.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NEITHER PARTY WILL BE LIABLE TO THE OTHER IN TORT, CONTRACT, INDEMNITY, STRICT LIABILITY OR OTHERWISE FOR:

- (a) LOSS OF PROFIT, LOSS OF REVENUE, LOSS OF USE, LOSS OF CONTRACT OR LOSS OF GOODWILL, BUSINESS INTERRUPTION; OR
- (b) ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR LOSSES;

IN EITHER CASE SUFFERED OR INCURRED BY THE OTHER PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT.

16.2.2 TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID FOR A BREACH OR FAILURE HEREUNDER ARE REFERRED TO AS LIQUIDATED DAMAGES HEREIN, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES SUFFERED AS A RESULT OF SUCH BREACH OR FAILURE ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT THE LIQUIDATED DAMAGES SET FORTH HEREIN CONSTITUTE THE PARTIES' GENUINE PRE-ESTIMATE OF THE LOSS EXPECTED TO BE INCURRED BY THE OTHER PARTY AS A RESULT OF THE DEFAULTING PARTY'S FAILURE TO PERFORM AND ARE THEREFORE AN APPROPRIATE REMEDY.

17. Representations, Warranties and Undertakings

17.1 Representations and Warranties of Buyer

As of the Execution Date, Buyer represents and warrants that:

- 17.1.1 It is duly organized and in good standing under the laws of the place of its formation and duly qualified to do business in those jurisdictions where the nature of its activities or property requires such qualification in order to perform its obligations under this Agreement.
- 17.1.2 It has all requisite power and authority and has taken all necessary action to authorize the execution, delivery and performance of its obligations hereunder.
- 17.1.3 It has not retained, employed or used any broker or intermediary in connection with the negotiation of this Agreement and has no obligation to any Third Party by way of commissions, finder's fees or similar fees with respect to the execution of this Agreement.
- 17.1.4 Neither the execution, delivery nor performance of this Agreement conflicts or will conflict with, results or will result in a breach of, or constitutes or will constitute a default under, any provision of its constitutive instruments or any law, judgment, order, decree, rule or regulation of any court, administrative agency or other instrumentality of any Governmental Authority or of any other agreement or instrument to which it is a party.
- 17.1.5 It has duly and validly executed and delivered this Agreement and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally and general principles of equity).

17.2 Representations and Warranties of Seller

As of the Execution Date, Seller represents and warrants that:

- 17.2.1 It is duly organized and in good standing under the laws of the place of its formation and duly qualified to do business in those jurisdictions where the nature of its activities or property requires such qualification in order to perform its obligations under this Agreement.
- 17.2.2 It has all requisite power and authority and has taken all necessary action to authorize the execution, delivery and performance of its obligations hereunder.
- 17.2.3 It has not retained, employed or used any broker or intermediary in connection with the negotiation of this Agreement and has no obligation to any Third Party by way of commissions, finder's fees or similar fees with respect to the execution of this Agreement.
- 17.2.4 Neither the execution, delivery nor performance of this Agreement conflicts or will conflict with, results or will result in a breach of, or constitutes or will constitute a default under, any provision of its constitutive instruments or any law, judgment, order, decree, rule or regulation of any court, administrative agency or other instrumentality of any Governmental Authority or of any other agreement or instrument to which it is a party.
- 17.2.5 It has duly and validly executed and delivered this Agreement and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally and general principles of equity).

18. Confidentiality

18.1 Confidential Information

Subject to Section 18.2 and 18.3, each Party shall treat as confidential and shall use all reasonable endeavors to prevent disclosure to all Persons, other than the other Party, of this Agreement and all information relating directly or indirectly to this Agreement and the activities performed pursuant to this Agreement (“**Confidential Information**”).

18.2 Exceptions

Section 18.1 does not apply to Confidential Information to the extent that:

- 18.2.1 The Confidential Information is already in the possession of the public or becomes available to the public other than through the act or omission of a

Party or its Affiliate or any of the directors, officers or employees of any of them.

18.2.2 The Confidential Information is required to be disclosed under Applicable Law, by order of a court of competent jurisdiction or by a governmental order, decree, regulation or rule, including, without limitation, any regulation or rule of any regulatory agency, securities commission or stock exchange on which a Party or its ultimate parent company are or are to be listed if that Party first consults with the other Party on the proposed form, nature and purpose of the disclosure.

18.2.3 The Confidential Information is acquired independently from a Third Party whom the disclosing Party reasonably believed was under no obligation of confidentiality relating thereto.

18.2.4 In the case of Seller, if Seller reasonably determines, based upon its status as a regulated public utility, that disclosure to Governmental Authorities is necessary or appropriate in connection with any submission or application to, or response from, any such authorities regarding the obligations as Seller under this Agreement, the effect thereof on Seller's rates, investment return, proprietary business information or similar matters, *provided that* Seller shall promptly inform Buyer of any disclosure of Confidential Information pursuant to this Section 18.2.4, and to the extent possible and reasonably practicable, provide such notice five (5) Days prior to such disclosure. The Parties acknowledge that Seller intends to submit copies of this Agreement and related information in connection with its rate proceedings and that it shall seek confidential treatment of such information, including seeking the highest level of confidential treatment with respect to cost and pricing information as may be reasonably available therefor. In addition, Seller shall inform Buyer promptly if any third party contests or challenges the confidential treatment of any such Confidential Information or seeks its disclosure. Seller acknowledges that Buyer may intervene or otherwise participate in any dispute or other proceeding relating to the foregoing, including for purposes of seeking to prevent the disclosure of Confidential Information.

18.3 **Permitted Disclosures**

A Party may disclose Confidential Information to Third Parties to the extent required in connection with the performance of its obligations under this Agreement. In addition, a Party may disclose Confidential Information to any of the following Persons:

18.3.1 Affiliates of such Party and employees, officers and directors of such Party or its Affiliates.

- 18.3.2 Any professional consultant or advisor retained by such Party or its Affiliates.
- 18.3.3 Any bona fide transferee of this Agreement or of any direct or indirect interest in such Party.
- 18.3.4 Any Governmental Authority for the purposes of grant applications or loan guarantee programs.
- 18.3.5 Any bank or other financial institution from which such Party or any of its Affiliates is seeking or has obtained financing, insurance or financial guarantees.
- 18.3.6 Subject to Section 18.2.4 in respect of disclosures relating to any regulatory proceeding involving Seller, to any Person if disclosure is required by any Applicable Law or by the rules or regulations of any recognized stock exchange or by any Governmental Authority; *provided, however,* that the disclosing Party shall, to the extent reasonably feasible, inform the other Party prior to making any such disclosures and allow the other Party to seek to obtain confidential treatment of such items as such other Party may reasonably require to the extent such treatment may be available under Applicable Law.

18.4 **Duration of Confidentiality**

The foregoing obligations with regard to the Confidential Information shall remain in effect for three (3) years after this Agreement is terminated or expires.

19. **Termination**

19.1 **Termination Events**

- 19.1.1 In addition to any other rights Seller may have under this Agreement, Seller may terminate this Agreement by notice to Buyer in any of the following circumstances:
 - (a) if Buyer fails to pay or cause to be paid undisputed amounts due to Seller pursuant to the terms of this Agreement in excess of One Hundred Thousand Dollars (\$100,000) in the aggregate, and such non-payment continues for a period of twenty (20) Business Days following notice of such non-payment from Seller to Buyer;
 - (b) if a Governmental Authority enters a decree or order for relief in respect of Buyer or any guarantor of any of Buyer's obligations under this Agreement in an involuntary proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appoints a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Party or

such guarantor (as the case may be) or for substantially all of its property, or orders the winding up or liquidation of its affairs, if such decree or order shall remain unstayed and in effect for a period of sixty (60) consecutive Days;

- (c) if either Buyer or any guarantor of any of Buyer's obligations under this Agreement commences a voluntary proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in any involuntary case under any such law, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of such Party or such guarantor (as the case may be) or for substantially all of its property or such Party or such guarantor (as the case may be) makes any general assignment for the benefit of its creditors;
- (d) if either Buyer or any guarantor of any of Buyer's obligations under this Agreement passes a resolution, commences proceedings or has proceedings commenced against it (which are not stayed within sixty (60) Days of service thereof) in the nature of bankruptcy or reorganization resulting from insolvency or for its liquidation or for the appointment of a receiver, trustee in bankruptcy or liquidator of its undertaking or assets;
- (e) if the guaranty delivered to Seller in accordance with Article 13 is disavowed by the Guarantor or otherwise ceases to be in effect, or upon the occurrence of any default under such guaranty, and in any such case such circumstance is not cured by Buyer within five (5) Business Days following notice thereof from Seller to Buyer; or
- (f) Buyer breaches any provision of this Agreement and such breach is not cured within sixty (60) Days after notice thereof from Seller or such longer period of time as may be reasonably necessary provided that Buyer has commenced and is diligently pursuing cure thereof.

19.1.2 In addition to any other rights that Buyer may have under this Agreement, including rights of termination provided for in other provisions of this Agreement, Buyer may terminate this Agreement by notice to Seller in any of the following circumstances:

- (a) if Seller fails to pay or cause to be paid undisputed amounts due to Buyer pursuant to the terms of this Agreement in excess of One Hundred Thousand Dollars (\$100,000) in the aggregate, and such non-payment continues for a period of twenty (20) Business Days following notice of such non-payment from Buyer to Seller;

- (b) if a Governmental Authority enters a decree or order for relief in respect of Seller in an involuntary proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appoints a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Seller or for substantially all of its property, or orders the winding up or liquidation of its affairs, if such decree or order shall remain unstayed and in effect for a period of sixty (60) consecutive Days;
- (c) if Seller commences a voluntary proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in any involuntary case under any such law, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Seller or for substantially all of its property or Seller makes any general assignment for the benefit of its creditors;
- (d) if Seller passes a resolution, commences proceedings or has proceedings commenced against it (which are not stayed within sixty (60) Days of service thereof) in the nature of bankruptcy or reorganization resulting from insolvency or for its liquidation or for the appointment of a receiver, trustee in bankruptcy or liquidator of its undertaking or assets; or
- (e) Seller breaches any provision of this Agreement and such breach is not cured within sixty (60) Days after notice thereof from Buyer or such longer period of time as may be reasonably necessary provided that Seller has commenced and is diligently pursuing cure thereof.

19.2 Special Termination Events for Commodity Price Triggers

19.2.1 Exhibit C sets forth certain termination trigger calculations relating to the price of fuel oil (“**Commodity Price Trigger No. 1**”) and the price of ultra low sulfur diesel (“**Commodity Price Trigger No. 2**” and, together with Commodity Price Trigger No. 1, the “**Commodity Price Triggers**”). If, during the Delivery Term, one of the Commodity Price Triggers is satisfied, Buyer shall have the right to terminate this Agreement on the terms and subject to the conditions set forth in this Section 19.2.1, subject in all events to Seller’s price matching rights contained herein; *provided, however,* that notwithstanding the satisfaction of a Commodity Price Trigger, if Buyer is not then capable of actually using as its primary fuel for Totem Ocean Vessels the fuel that is the subject of the applicable Commodity Price Trigger that has been satisfied, then no termination right shall arise by reason of such Commodity Price Trigger having been satisfied.

19.2.2 If Commodity Price Trigger No. 1 is satisfied, Buyer must comply with the following in order to terminate this Agreement:

- (a) Buyer must deliver a written notice of termination to Seller, including in such notice a specified termination date, which termination date must be eighteen (18) Months after the date of such termination notice;
- (b) Such notice of termination may only be issued on the first Day of any calendar quarter (January 1st, April 1st, July 1st or October 1st) of any given Contract Year;
- (c) Buyer may withdraw its termination notice by delivering a written notice of withdrawal to Seller at any time during the six (6) Month period following the date of the applicable termination notice (the “**Termination Notice Withdrawal Period**”); *provided, that* following any such withdrawal Buyer shall not thereafter be permitted to deliver a notice of termination for either of the Commodity Price Triggers for a period of twenty-four (24) Months following issuance of such notice of withdrawal; and
- (d) Buyer shall pay the applicable termination fee set forth on Exhibit D as a liquidated damage amount within sixty (60) Days after the expiration of the Termination Notice Withdrawal Period;

If the foregoing is complied with, Buyer does not withdraw a termination notice within the Termination Notice Withdrawal Period, and Seller does not exercise its right to match pricing as described below, this Agreement will terminate on the termination date set forth in Buyer’s termination notice, *provided, however*, that the exclusivity provisions of Section 4.6 shall survive any such termination.

19.2.3 If Commodity Price Trigger No. 2 is satisfied, Buyer must comply with the following in order to terminate this Agreement:

- (a) Buyer must deliver a written notice of termination to Seller, including in such notice a specified termination date, which termination date must be six (6) Months after the date of such termination notice;
- (b) Such notice of termination may only be issued on the first Day of any calendar Month during the Delivery Term;
- (c) Buyer shall pay the applicable termination fee set forth on Exhibit D as a liquidated damage amount within sixty (60) Days after the date of issuance of the termination notice;

If the foregoing is complied with and Seller does not exercise its right to match pricing as described below, this Agreement will terminate on the termination date set forth in Buyer's termination notice, *provided, however*, that the exclusivity provisions of Section 4.6 shall survive any such termination.

19.2.4 Notwithstanding the issuance by Buyer of a termination notice pursuant to Sections 19.2.2 and 19.2.3 above, Seller shall have the right, but not the obligation, to amend the Contract Price such that the applicable Commodity Price Trigger that had been satisfied is no longer satisfied for all or part of the Delivery Term. Seller shall deliver written notice of its decision to match pricing within thirty (30) Days of (i) the expiration of the Termination Notice Withdrawal Period, in the case of a termination notice issued in connection with Commodity Price Trigger No. 1 and (ii) the date of delivery of the applicable termination notice, in the case of a termination notice issued in connection with Commodity Price Trigger No. 2. If Seller delivers a notice to match pricing, the applicable termination notice shall be automatically deemed withdrawn and this Agreement shall continue in full force and effect.

19.3 **Consequences of Termination**

19.3.1 If this Agreement is terminated by Seller pursuant to Section 19.1.1, Seller shall be entitled to such remedies and damages as may be available to it at law or in equity, subject to Section 16.2.

19.3.2 If this Agreement is terminated by Buyer pursuant to Section 11.2.7 or Section 19.1.2, such termination shall be without liability of Seller of any kind, including for any termination payment.

19.3.3 If this Agreement is terminated by Buyer pursuant to Section 19.2, Buyer shall pay to Seller the termination fee in the manner required by Section 19.2 and Exhibit D.

19.3.4 Termination of this Agreement by either Party shall not relieve a Party of any liabilities that accrued hereunder prior to such termination.

19.3.5 The provisions of Articles 1, 12, 14, 16, 18, 20, 22 and 23 shall survive the termination of this Agreement.

19.4 **Seller's Right to Suspend Performance**

Notwithstanding anything to the contrary herein, if Buyer fails to pay any amount due under this Agreement and such failure continues for a period of ten (10) Business Days following notice thereof from Seller to Buyer, Seller may, upon two (2) Days' notice to Buyer, suspend any or all performance by Seller under this Agreement until Buyer has cured such payment default. Buyer shall not be

relieved of its obligations under this Agreement during any such period of suspension, and Seller may draw on any credit support provided by Buyer at any time payment is past due without giving any notice to Buyer. No suspension of services under this Section 19.4 shall constitute a Seller Failure to Deliver Event or a Seller default or shall affect any other rights and remedies of Seller under this Agreement.

19.5 Buyer's Right to Suspend Performance

Notwithstanding anything to the contrary herein, if Seller fails to pay any amount due under this Agreement and such failure continues for a period of ten (10) Business Days following notice thereof from Buyer to Seller, Buyer may, upon two (2) Days' notice to Seller, suspend any or all performance by Buyer under this Agreement until Seller has cured such payment default. Seller shall not be relieved of its obligations under this Agreement during any such period of suspension, and Buyer may draw on any credit support provided by Seller at any time payment is past due without giving any notice to Seller. No suspension of services under this Section 19.5 shall constitute a Buyer Failure to Take Event or a Buyer default or shall affect any other rights and remedies of Buyer under this Agreement.

20. Dispute Resolution

20.1 Friendly Consultation

The Parties agree to attempt to resolve all Disputes arising hereunder promptly, equitably and in a good faith manner. In the event of any Dispute, the Parties shall attempt in the first instance to resolve any such Dispute through friendly consultations between the Parties for a period of ten (10) Days. If such consultations do not lead to a resolution, the Parties shall refer the Dispute to their senior management for further consultation for an additional thirty (30) Days. If such consultations do not result in a resolution of the Dispute within such thirty (30) Day period, either Party may seek recourse pursuant to the arbitration provisions set forth in Section 20.4 below. The Parties agree to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to such Dispute.

20.2 Continued Performance

Except as otherwise expressly contemplated hereby, during the continuation of any Dispute arising under this Agreement, the Parties shall continue to perform their respective obligations under this Agreement, including prompt and timely payment of all undisputed amounts due hereunder, until a final non-appealable resolution is reached.

20.3 Equitable Relief

Notwithstanding anything to the contrary contained in this Article 20, if, due to a

material breach or threatened material breach or default or threatened default, a Party is suffering or threatened with irreparable harm for which monetary damages are inadequate, such Party may petition a court of competent jurisdiction, subject to Section 22.2, for injunctive or other equitable relief. The inclusion of this Section 20.3 does not imply that either Party has or has not consented to the appropriateness of the granting of equitable relief under Applicable Laws.

20.4 **Dispute Resolution—Arbitration**

20.4.1 AAA Rules. The Parties agree to conduct all arbitration proceedings in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) in effect at the time of the arbitration (“AAA Rules”), except as such AAA Rules may be modified by this Agreement. The Parties shall be entitled to engage in reasonable discovery, including the right to the production of relevant and material documents by the opposing Party and the right to take depositions reasonably limited in number, time and place.

20.4.2 Demand for Arbitration; Selection of Arbitrators. A Party desiring to submit a Dispute to arbitration hereunder shall file a demand for arbitration (“**Demand for Arbitration**”) with the AAA. A copy of such Demand for Arbitration shall be sent to the other Party at the same time. The arbitration proceeding shall be conducted by a panel of three (3) arbitrators. Within ten (10) calendar days after a Demand for Arbitration has been made by either Party, each Party shall appoint one arbitrator. If a Party fails to appoint an arbitrator, such arbitrator shall be appointed in accordance with the AAA Rules. Within twenty (20) calendar days after the Demand for Arbitration has been made, the two (2) arbitrators shall choose a third arbitrator who shall act as chairperson of the arbitral proceedings. If the two (2) arbitrators chosen by the Parties do not agree upon a third arbitrator within twenty (20) calendar days after the filing of the Demand for Arbitration, then upon the application of either Party, the third arbitrator shall be appointed by the AAA. Notwithstanding the foregoing, if any third party consents to be joined to a Dispute hereunder pursuant to Section 20.4.6 within ten (10) calendar days after a Demand for Arbitration has been made, then the Parties and any third party so joined shall mutually agree within twenty (20) calendar days on the appointment of one (1) arbitrator, which arbitrator shall serve individually in lieu of a panel of three (3) arbitrators. If the Parties and any such third party fail to appoint an arbitrator, a panel of three (3) arbitrators shall be appointed by the AAA.

20.4.3 Request for Production. Following the appointment of the arbitrators, each Party shall have the right to mail to the other Party (with a copy to the arbitrators) a written request for the production of certain identified documents in possession of the other Party relevant to any claims or

counterclaims in said arbitration and the Parties shall produce documents in accordance with such request. The Party receiving the request for documents shall, unless it objects to such request within ten (10) calendar days of receipt of such request, respond to such request within thirty (30) calendar days of receipt of such request, unless otherwise ordered by the arbitrators or mutually agreed by the Parties. A Party may not unreasonably delay the production of any documents responsive to a request to which it has not objected. A Party may refuse to produce documents responsive to any request to which it has objected pending a mutual agreement governing such disclosure or an arbitration ruling on the objection. All disputes regarding discovery shall be resolved by the arbitrators.

20.4.4 Proceeding. The site of the arbitration shall be Seattle, Washington, unless otherwise agreed to by the Parties. The Parties shall diligently and expeditiously proceed with arbitration. Upon the conclusion of the hearings, the Parties shall have thirty (30) calendar days to submit written briefs in support of their respective positions. The arbitrators shall be instructed to render a written decision within forty-five (45) calendar days after the expiration date for the filing of such briefs, subject to any reasonable delay due to unforeseen circumstances.

20.4.5 Arbitration Award. Except to the extent the Parties' remedies may be waived or limited by the terms of this Agreement, the arbitrators shall be empowered to award any remedy available under the laws of the State of New York, including monetary damages, but subject to the limitations of liability contained in this Agreement. The award of the arbitrators shall be in writing with reasons for such award and signed by the arbitrators. The Parties agree that any such award rendered shall be final and binding. Judgment rendered by the arbitrators may be entered in any court having jurisdiction thereof.

20.4.6 Third Parties. If a Dispute arises between the Parties which is subject to the arbitration provisions hereunder and there exists or later arises a controversy, claim, dispute or difference between one of the Parties and any third party arising out of or related to the same transaction or series of transactions ("**Third Party Controversy**"), either Party shall be entitled to require that (i) the other Party be joined as a party to any arbitration of such Third Party Controversy being pursued with such third party and the other Party shall permit, and cooperate in, such joinder or (ii) the third party be joined as a party to the arbitration proceeding hereunder; *provided, however*, that for the purposes of clause (i) above, the third party must be a party to an agreement with a Party, or an Affiliate of a Party, which provides for arbitration of disputes thereunder in accordance with rules and procedures substantially the same in all material respects as provided for herein; and *provided further* that, for purposes of clause (ii) above, the third party consents to such joinder within ten (10) calendar

days after a Demand for Arbitration has been made or, if later, ten (10) calendar days after a Third Party Controversy has arisen. Once a third party is joined to a dispute hereunder pursuant to this Section 20.4.6, such third party shall be entitled to treatment as a Party for purposes of the arbitration procedures of this Section 20.4.

20.4.7 Qualifications of Arbitrators. Unless otherwise agreed by the Parties, the arbitrators shall be attorneys or former judges experienced in the LNG industry and competent to pass on the matter presented for arbitration. No arbitrator shall have any interest in or prior connection with Buyer, Seller or any of their respective Affiliates (other than a connection that would not create a conflict of interest for such arbitrator in fact or appearance) or the third party in respect of a Third Party Controversy, and shall be impartial toward each Party at the time of their selection.

20.4.8 Expenses. Buyer, on the one hand, and Seller, on the other, shall share equally the compensation and expenses of the arbitrators as well as all fees imposed by the AAA, including transcript fees, hearing room rentals, filing fees and administrative costs. Buyer and Seller shall be responsible for their own costs and legal fees, if any. Notwithstanding the foregoing, the arbitrators shall award the prevailing Party its reasonable costs, reasonable expenses and reasonable legal fees, including any of the foregoing that would otherwise be shared pursuant to this Section 20.4.8.

21. Assignments

21.1 Prior Written Consent

21.1.1 Either Party may assign this Agreement in its entirety, for the remainder of the Term, with the prior written consent of the other Party (which consent shall not be unreasonably withheld, conditioned or delayed), to any Person (a “**Permitted Assignee**”), provided that the Permitted Assignee assumes all of the obligations of the assignor under this Agreement (whether commencing before or after the date of such assignment) by execution of a copy of this Agreement in its own name (countersigned by the non-assigning Party) or by execution of a binding assignment and assumption agreement which is reasonably acceptable in form and substance to, and enforceable by, the non-assigning Party. For sake of clarity, it shall be reasonable for the non-assigning Party to take into account the creditworthiness or qualifications of a proposed Permitted Assignee when making a determination as to whether or not to grant consent to a proposed assignment pursuant to this Section 21.1.

21.1.2 A Party assigning this Agreement to a Permitted Assignee pursuant to this Section 21.1 shall not be relieved of its obligations under this Agreement except and only to the extent explicitly set forth in a written consent to such assignment countersigned by both Parties.

21.2 Without Prior Consent.

21.2.1 Either Party may assign this Agreement in its entirety, for the remainder of the Term, upon prior written notice to, but otherwise without the other Party's prior consent, to an Affiliate of such Party, *provided* that such Affiliate assignee assumes all of the obligations of the assignor under this Agreement (whether commencing before or after the date of such assignment) by execution of a copy of this Agreement in its own name (countersigned by the non-assigning Party) or by execution of a binding assignment and assumption agreement which is reasonably acceptable in form and substance to, and enforceable by, the non-assigning Party.

21.2.2 A Party assigning this Agreement to an Affiliate pursuant to this Section 21.2 shall not be relieved of its obligations under this Agreement.

22. Miscellaneous

22.1 Governing Law

This Agreement shall be governed by the provisions of the substantive law of the State of New York, exclusive of any conflicts of law principles that could require application of the law of any other jurisdiction.

22.2 Consent to Jurisdiction

Subject to the provisions relating to arbitration of Disputes under Section 20.4 of this Agreement, each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings brought under this Agreement must be brought in the United States of America or Washington courts located in Seattle, Washington, and, by execution and delivery of this Agreement, each of the Parties hereby (i) accepts the exclusive jurisdiction of the foregoing courts for purposes of any such actions or proceedings, (ii) irrevocably agrees to be bound by any final judgment (after any appeal) of any such court with respect thereto, and (iii) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venues of any legal action or proceedings with respect hereto brought in any such court, and further irrevocably waives to the fullest extent permitted by law any claim that any such legal action or proceedings brought in any such court has been brought in an inconvenient forum. Each of the Parties agrees that a final judgment (after any appeal) in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner to the extent provided by law.

22.3 Disclaimer of Agency

This Agreement does not appoint either Party as the agent, partner or legal representative of the other for any purposes, and neither Party shall have any express or implied right or authority to assume or to create any obligation or

responsibility on behalf of or in the name of the other Party.

22.4 Entire Agreement

This Agreement, together with its Schedules and Exhibits, constitutes the entire agreement between the Parties and includes all promises and representations, express or implied, and supersedes all other prior agreements and representations, written or oral, between the Parties relating to the subject matter of this Agreement.

22.5 Approvals and Authorizations

Each Party shall use reasonable efforts to maintain in force all of its respective Approvals necessary, and to obtain any Approvals that become necessary, for its performance under this Agreement. Buyer and Seller shall cooperate with each other wherever necessary for this purpose.

22.6 Rights and Remedies

Except where this Agreement expressly provides to the contrary, the rights and remedies contained in this Agreement are cumulative and not exclusive of any rights and remedies provided by Applicable Law.

22.7 Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

22.8 Third Party Beneficiaries

The interpretation of this Agreement shall exclude any rights under legislative provisions conferring rights under a contract to Persons not a party to that contract. The Parties do not intend, and nothing in this Agreement shall be construed, to create any duty to, or standard of care with reference to, or any obligation or liability to, or any right of action or claim by, any Person other than a Party.

22.9 Severance of Invalid Provisions

If and for so long as any provision of this Agreement shall be deemed to be judged invalid, such invalidity shall not affect the validity or operation of any other provision of this Agreement except only insofar as shall be necessary to give effect to the construction of such invalidity, and any such invalid provision shall be deemed severed from this Agreement without affecting the validity of the remainder of this Agreement.

22.10 Expenses

Each Party shall be responsible for and bear all of its own costs and expenses incurred in connection with the preparation and negotiation of this Agreement.

22.11 Amendments and Waiver

This Agreement may not be supplemented, amended, modified or changed except by an instrument in writing signed by Seller and Buyer and which states that it is a supplement, amendment, modification or change to this Agreement. A Party shall not be deemed to have waived any right or remedy under this Agreement by reason of such Party's failure to enforce such right or remedy. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

22.12 Counterpart Execution

This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed an original Agreement for all purposes, *provided that* no Party shall be bound to this Agreement unless and until both of the Parties have executed a counterpart.

22.13 Forward Contract

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code and that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

23. Notices

23.1 Form of Notice

23.1.1 Except as expressly set forth herein, any notice, invoice or other communication from one of the Parties to the other Party (or, where contemplated in this Agreement, from or to the master of the Totem Ocean Vessel), which is required or permitted to be made by the provisions of this Agreement shall be:

- (a) made in the English language;
- (b) made in writing;
- (c) delivered by hand or sent by courier to the address of the other Party which is shown below or to such other address as the other Party shall by notice require or be sent by facsimile to the facsimile number of the other Party which is shown below or to such other

facsimile number as the other Party shall by notice require, except that operational notices directed to the operation of the Tacoma LNG Facility, Buyer's facilities or bunkering activities hereunder (which, for sake of clarity, do not include notices pertaining to defaults or breaches hereof) may also be sent via email; and

- (d) marked for the attention of the Person(s) there referred to or to such other Person(s) as the other Party shall by notice require.

23.1.2 The addresses of the Parties for notices are as follows:

Non-Operational Notices

Seller: Puget Sound Energy, Inc.
10885 NE 4th Street
Bellevue, Washington 98004-5591
Attention: Director, Natural Gas Resources
Facsimile No.: 425-456-2481

with a copy to:

Puget Sound Energy, Inc.
10885 NE 4th Street
Bellevue, Washington 98004-5591
Attention: General Counsel
Facsimile No.: 425-462-3300

Buyer: Totem Ocean Trailer Express, Inc.
32001 32nd Avenue South, Suite 200
Federal Way, Washington 98001
Attn: John Parrott, President
Facsimile No.: 253-449-2133
Email: jparrott@totemocean.com

with copies to:

TOTE, Inc.
14 Nassau Street
Princeton, New Jersey 08542
Attn: Michael B. Holt, General Counsel
Facsimile No.: 609-454-3652
Email: mholt@toteinc.com

Saltchuk Resources, Inc.
1111 Fairview Avenue North
Seattle, Washington 98109
Attention: John Hoerster, General Counsel

Facsimile No.: 206-381-8307
Email: johnh@saltchuk.com

Operational Notices

Seller: Puget Sound Energy, Inc.
10885 NE 4th Street
Bellevue, Washington 98004-5591
Attention: Director, Natural Gas Resources
Facsimile No.: 425-456-2481
Email: clay.riding@pse.com

with a copy to:

Puget Sound Energy, Inc.
901 Alexander Avenue
Tacoma, Washington 98421
Attention: Plant Manger
Facsimile No.: [To come.]
Email: [To come.]

Buyer: Totem Ocean Trailer Express, Inc.
32001 32nd Avenue South, Suite 200
Federal Way, Washington 98001
Attn: John Parrott, President
Facsimile No.: 253-449-2133
Email: jparrott@totemocean.com

with a copy to:

TOTE, Inc.
14 Nassau Street
Princeton, New Jersey 08542
Attn: Michael B. Holt, General Counsel
Facsimile No.: 609-454-3652
Email: mholt@toteinc.com

23.2 Effective Time of Notice

Any notice, invoice or other communication made by one Party to the other Party in accordance with this Section 23.2 shall be deemed to be received by the other Party (i) if delivered by hand or by courier, on the Day on which it is received at that Party's address or, (ii) if sent by facsimile or e-mail, on the Day on which received if received between the hours of 8:00 a.m. and 5:00 p.m. local time in the location of the receiving Party, and otherwise at 8:00 a.m. local time on the next Day.

24. **Insurance**

24.1 **Coverage Requirements**

24.1.1 The Parties shall each maintain, as a minimum, the following insurance coverage with insurance companies rated A-VII or better by Best's Insurance Guide and Key Ratings (or, if Best's Insurance Guide and Key Ratings is no longer published, an equivalent rating by another nationally recognized insurance rating agency of similar standing), or other insurance companies of nationally recognized responsibility reasonably satisfactory to the other Party, during the Term and for a period of six (6) years thereafter.

- (a) Workers' Compensation, Disability Insurance and Employer's Liability Insurance. Workers' Compensation Insurance, Disability Benefits Insurance and such other forms of insurance as are required by law, providing statutory benefits and other states' endorsement and USL&H Act coverage (if any exposure exists), covering Liabilities resulting from injury, sickness, disability or death of the employees. Each Party shall require that all contractors and subcontractors maintain all forms or types of insurance with respect to its employees as are required by law. Each Party shall also maintain Employer's Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per accident.
- (b) Commercial General Liability Insurance. Commercial General Liability Insurance on an "occurrence" basis or "claims made" basis, including coverage for premises/operations explosion, collapse and underground hazards, products/completed operations, broad form property damage, blanket contractual liability for written contracts, independent contractors and personal injury, with primary coverage limits of no less than Two Million Dollars (\$2,000,000) for injuries or death to one or more persons or damage to property resulting from any one occurrence and a Two Million Dollar (\$2,000,000) aggregate limit. Policy exclusions which are not standard to the Commercial General Liability Insurance form or are added by manual endorsements shall require the prior approval of the other Party.
- (c) Commercial Automobile Liability Insurance. Comprehensive Automobile Liability Insurance, including coverage for owned, non-owned and hired automobiles for both bodily injury and property damage and containing appropriate no fault insurance provisions or other endorsements in accordance with state legal requirements, with limits of not less than One Million Dollars

(U.S. \$1,000,000) per accident with respect to bodily injury, property damage or death

- (d) Umbrella Excess Liability Insurance. Umbrella Excess Liability Insurance of not less than Ten Million Dollars (\$10,000,000). Such coverage shall be on a per “occurrence” basis or “claims made” basis, and over and above the coverage provided by the policies described in Sections 24.1.1(b) and 24.1.1(c). The umbrella and/or excess policies shall not contain endorsements which restrict coverages as set forth in Sections 24.1.1(b) and 24.1.1(c) and which are provided in the underlying policies.
- (e) Physical Damage Insurance. Property damage and Boiler and Machinery insurance on an “All Risk” basis covering all assets of any kind installed in or at (i) the Tacoma LNG Facility, in the case of Seller, and (ii) the Totem Ocean Berthing Facility, in the case of Buyer, in each case on a replacement cost basis and including removal of debris and the full replacement value of the applicable buildings, structures, machinery, equipment, facilities, fixtures and other properties insured, subject at a minimum to an annual aggregate limit of Ten Million Dollars (\$10,000,000) for flood coverage and for earthquake coverage. Such insurance coverage shall be primary, regardless of any other coverages or policies as may be carried by the Parties.

24.1.2 In addition to the foregoing, Buyer shall maintain as a minimum, the following insurance coverage with nationally recognized underwriters reasonably acceptable to the Parties during the Term and for a period of six (6) years thereafter:

- (a) Protection and Indemnity Insurance. Protection and indemnity insurance (“**P&I Insurance**”) for each Totem Ocean Vessel placed on a full entry basis with a P&I Club, which shall include coverage for pollution in the maximum amount(s) per incident made available by its P&I Club at the commencement of each policy year or other applicable period of coverage.
- (b) Hull and Machinery Insurance. For each Totem Ocean Vessel, hull and machinery insurance in a minimum amount not less than a loss limit equal to the full value of each Totem Ocean Vessel placed with a reputable marine underwriter.

24.2 General Matters

24.2.1 Deductibles. Other than as expressly contemplated otherwise by this Agreement, each Party shall be responsible for the payment of any deductible under any insurance policy maintained by such Party,

regardless of whether the loss in question was caused by the negligence or misconduct of the other Party.

- 24.2.2 Limits. The required limits of liability for the insurance described in Section 24.1 above may be satisfied by purchasing coverage in the amount specified or by any combination of primary and excess/umbrella policies, so long as the total amount of insurance meets the requirements specified above.
- 24.2.3 Terms and Provisions. All policies of insurance required to be maintained under this Article 24 shall: (1) provide that should they be canceled before the expiration date thereof, notice will be delivered in accordance with the policy provisions; (2) shall be primary to and not excess to or on a contributing basis with any insurance or self-insurance maintained by the other Party; and (3) with respect to the Commercial General Liability Insurance and the Umbrella Excess Liability Insurance, provide a severability of interests or cross liability clause and be endorsed to name as additional insureds, the other Party and such other Party's directors, officers, employees and agents, and the successors and assigns of each of them. In addition, each Party shall immediately provide written notice to the other Party upon receipt of notice of cancellation of an insurance policy or a decision to terminate an insurance policy.
- 24.2.4 Waivers. The Commercial General Liability, Commercial Automobile Liability, Umbrella Excess Liability, Physical Damage, Protection and Indemnity and Hull and Machinery policies carried by the Parties pursuant to this Article 24 shall provide for a waiver of subrogation in favor of the other Party and its successors and assigns, its Affiliates, its subsidiaries, and their respective directors, officers, employees and agents, and the Parties hereby release and waive any and all rights of recovery against each other and against all of their Affiliates, subsidiaries, and their respective directors, officers, employees and agents, that they may otherwise have or acquire in or from or in any way connected with any loss covered by such policies of insurance or because of deductible clauses in, or inadequacy of limits of, any such policies of insurance.
- 24.2.5 Certificates. No later than thirty (30) Days after the CP Fulfillment Date, each Party shall furnish the other Party with certificates of insurance on forms reasonably acceptable to the other Party as evidence that policies providing the required coverages and limits of insurance for such Party are in full force and effect (or evidence of self-insurance, as applicable).
- 24.2.6 Effect on Liability. The requirements of this Agreement as to insurance and the acceptability to a Party of the insurers and insurance to be maintained by the other Party are not intended to and shall not in any manner limit or qualify the liabilities and obligations of a Party under this Agreement.

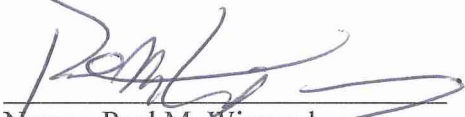
24.2.7 Claims Made Policies. If any policy of a Party is written on a “claims-made” basis and such policy is not renewed or the retroactive date of such policy is to be changed, such Party shall obtain for each such policy or policies the broadest basic and supplemental extended reporting period coverage or “tail” reasonably available in the commercial insurance market for each such policy or policies and shall provide the other Party with proof that such basic and supplemental extended reporting period coverage or “tail” has been obtained. If a Party fails to provide the other Party with proof of such coverage, the other Party may purchase the coverage and the first Party shall reimburse the other Party for the full cost of such coverage.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

SELLER:

PUGET SOUND ENERGY, INC.


Name: Paul M. Wiegand
Title: Senior Vice President, Energy Operations

BUYER:

TOTEM OCEAN TRAILER EXPRESS, INC.

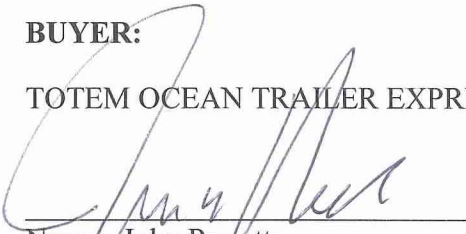

Name: John Parrott
Title: President

EXHIBIT A

LNG SPECIFICATIONS

This technical specification is based on the following bunkered LNG quality:

LNG main components	CH ₄ , C ₂ H ₆ , C ₃ H ₈ , C ₄ H ₁₀ , C ₅ H ₁₂ , N ₂
LNG minimum methane number	80
Minimum LHV (lower heating value)	28 MJ/Nm ³
Maximum Density (as a bare base for calculations)	450 kg/m ³
LNG bunkered temperature	-162 °C
LNG bunkered pressure	1 atm

NOTE 1: The required gas feed pressure is dependent on the LHV

NOTE 2: Nm³ = normal cubic meter at 101.3 kPa and 0 °C

NOTE 3: Above data shall be a base for the several calculations in this LNG Specification to dimension the equipment.

The LNG must also have the following properties:

Methane content, minimum	70% (by volume)
Hydrogen sulfide, maximum	0.05% (by volume)
Hydrogen, maximum	3% (by volume)
Ammonia, maximum	25 mg/Nm ³
Chlorine + Fluorines, maximum	50 mg/Nm ³
Particles or solid content, maximum	50 mg/Nm ³
Particles or solid size, maximum	5 µm

Gas returned must have the following properties to received credit pursuant to section 9.3.2:

Methane content, minimum	70% (by volume)
Nitrogen content, maximum	30% (by volume)

EXHIBIT B

CONTRACT PRICE

B.1 Additional Definitions

<i>AACE</i>	the Association for Advancement of Cost Engineering; an association of engineers that provide guidelines on estimating final project costs based on engineering design levels.
<i>Allocated Capital Costs</i>	the portion of the total Tacoma LNG Facility capital costs that is allocated to provide Buyer's level of service.
<i>Capital Allocation Ratio</i>	the ratio (expressed as a percentage) of the Allocated Capital Cost over the total capital costs of the Tacoma LNG Facility.
<i>Bunkering Service</i>	the Plant Service that encompasses moving LNG from the Tacoma LNG Facility's onsite storage tank to the stern of Buyer's vessel. The capital costs attributable to this service are allocated to each plant customer based on reserved capacity. For sake of clarity, the cost of the LNG Delivery Pipeline will be fully allocated to Buyer until it is demonstrated that other customers request Bunkering Service through the LNG Delivery Pipeline and it's determined that the LNG Delivery Pipeline can be used to serve other customers. Buyer will receive a credit for Bunkering Services provided to others.
<i>Liquefaction</i>	the Plant Service that encompasses receiving natural gas at the Tacoma LNG Facility, treating the gas, cooling the gas below its boiling point and sending the gas to onsite storage. The capital costs attributable to this service are allocated to each plant customer based on the quantity of Liquefaction capacity reserved for each customer in LNG gallons/day.
<i>Maximum Fixed Charges</i>	as defined in section B.8 of this Exhibit.

Plant Service

a service that the Tacoma LNG Facility provides to its customers and Puget Sound Energy (collectively referred to as “Plant Services”). The services are specifically: Liquefaction, Storage, Bunkering, Truck Loading and Vaporization.

Storage

the Plant Service that involves storing the LNG onsite in the facility’s storage tanks. The capital costs attributable to this service are allocated to each plant customer based on the level of Storage capacity reserved for each customer in LNG gallons.

Truck Loading

the Plant Service that involves moving LNG from the Tacoma LNG Facility’s onsite storage tank to tanker trucks or containers. The capital costs attributable to this service are allocated to each plant customer based on the level of Truck Loading capacity reserved for each customer in LNG gallons/year. For sake of clarity, the cost of Truck Loading facilities will not be allocated to Buyer; provided, however, Buyer will pay a fee related to Truck Loading services, if such services are eventually used.

Vaporization

the Plant Service that involves moving LNG from the Tacoma LNG Facility’s onsite storage tank and vaporizing the gas into Seller’s distribution system. This service and associated capital costs are 100% allocated to Seller.

B.2 Cost of Service Rates

Buyer’s LNG pricing is based on cost-of-service rate design. Cost-of-service rate design includes the depreciation of the asset, the cost of capital (both debt and equity) to finance the asset, a pass through of operational costs and all applicable taxes.

B.3 Fixed Facility Charge

The Fixed Facility Charge recovers Seller’s investment in the LNG Facility and includes plant depreciation and cost of capital. Table B-1 provides an example of how the Allocated Capital Costs will be calculated:

Capital Allocation (thousands)			
Allocation of Services	Buyer Capacity	Buyer's Physical Allocation of Plant Services	Buyer Allocated Capital (thousands)
Liquefaction (gal/day)	111,046	44%	\$ 47,355,000
Storage (gal)	500,000	6%	\$ 8,526,000
Direct bunkering line		100%	\$ 9,383,000
Truck Loading		0%	\$ -
Vaporization		0%	\$ -
Allocated Capital Cost			\$ 65,264,000
Capital Allocation Ratio			27%

Table B-1. Example Plant Allocation Breakout

Table B-1 provides the estimate of plant allocation with no contingency on capital costs, no sales tax and no in-water work at the Buyer loading facility, as provided in the Letter of Intent dated February 3, 2014. Ultimately, the final Allocated Capital Costs will depend on actual costs spent during construction and final plant capacities.

The Capital Allocation Ratio is calculated by dividing the Allocated Capital Costs by the total plant costs.

B.3.1. Fixed Facility Charge

The Fixed Facility Charge will be set prior to the Date of First Commercial Delivery and will be based on Buyer's Allocated Capital Costs. The Fixed Facility Charge includes three components: return on capital, depreciation and a levelized premium for a reduced contract term. The return on capital component is based on Seller's allowed rate of return on equity, Seller's weighted average cost of debt, and Seller's prevailing equity/debt structure. A straight-line depreciation will be employed based on a term defined by the ground lease for the facility. The levelized premium for the reduced contract term compensates the project for risks associated with recovery of Buyer's Allocated Capital Costs.

B.3.2. Sustaining Capital

The Fixed Facility Charge may be adjusted pursuant to Section 11.2.3 to account for Sustaining Capital Costs incurred. Sustaining Capital Costs will be allocated to the Plant Service that requires the improvements. These costs are allocated to Buyer based on Buyer's allocation of that Plant Service. Sustaining Capital improvements that cannot be directly allocated to a Plant Service will be allocated to Buyer using the Capital Allocation Ratio.

B.4 Fixed O&M Charge

Fixed O&M Charges will be passed through to plant customers at cost. All Fixed O&M Charges will be allocated based on the Capital Allocation Ratio, unless otherwise noted. Major Fixed O&M charges include but are not limited to:

B.4.1. Maintenance

This category encompasses all maintenance cost other than consumables and labor. These costs might include replacement parts and paying for outside service providers to perform maintenance on plant components or plant grounds. Maintenance that is attributable to equipment that is specifically used for a particular Plant Service will be allocated based on Buyer's use of that service. Any other maintenance will be allocated to Buyer using the Capital Allocation Ratio.

Any major replacement or maintenance that is deemed to be a Sustaining Capital Costs will not be included in the Fixed O&M charge.

B.4.2. Plant Labor

This category includes the salaries and overhead for plant staff. It's anticipated that plant staff will be fulltime Seller employees. Seller is planning for staffing of 16 employees at the plant, including 12 plant operators, which will be union positions.

Seller anticipates that the United States Coast Guard and Department of Homeland Security will require manned security at the plant at all times. Seller will contract with a service provider for security services.

B.4.3. Lease Payments

The Tacoma LNG Facility will be sited on land pursuant to a long-term lease from the Port of Tacoma. All plant tenants will pay their allocable share (based on the Capital Allocation Ratio) of the lease payments which are subject to an annual increase equal to the previous year's average CPI-U.

B.4.4. Administrative

All Seller facilities and operations are allocated a certain amount of overhead to recover corporate administrative and general expenses; such allocations are made on a formulaic basis determined by WUTC mandated ratemaking practices and rules. The administrative fee will be allocated to Buyer based on its share of the plant's previous year total O&M expenses and its share of remaining net plant. The administrative fee will be set at the start of each Contract Year.

B.4.5. Fixed Utilities and Consumables:

Fixed utility charges will be comprised mainly of fixed payments to Tacoma Power for providing electric service to the plant. Fixed Utility Charges will be allocated to Buyer based on Buyer's quantity of reserved Liquefaction Service in LNG gallons/day.

Other consumables include nitrogen and other compounds used to treat and cool the natural gas.

B.4.6. Fixed Charges

Fixed Facility Charges and Fixed O&M Charges, together, constitute Fixed Charges.

B.5 Variable O&M Charge

Operating costs will be passed through to plant customers without markup. Major Variable O&M Charges include but are not limited to:

B.5.1. Electricity and Consumables:

The electricity component of the Variable O&M Charge will reflect market prices over the course of the contract term. Tacoma Power will provide transmission service and Seller will procure the electricity necessary to operate the Tacoma LNG Facility. The total variable expenses for electricity and consumables for each month will be divided amongst the plants customers based on their utilization of the Liquefaction Service for that month.

B.5.2. Port of Tacoma Volume Charge:

The Port of Tacoma charges a fee for any commodity that is moved in the port. This fee will be assessed at \$0.085/volumetric barrel (approximately \$0.1573/BOE). This rate is subject to an annual increase by CPI-U.

B.6 Fuel Charge

The Fuel Charge is defined in Section 1.1 and includes the cost of the Natural Gas delivered to the Tacoma LNG Facility.

Buyer should note that for purposes of the Fuel Charge, Seller will be passing on charges that are calculated based on the amount of natural gas reserved or delivered on a per MMBtu basis. The thermal value for gas sold or moved on pipelines is measured based on HHV (high heating value). Buyer's estimated annual usage of 510,000 BOEs is equal to roughly 3,385,663 MMBtu/year (or approximately 9,700 MMBtu/day) when accounting for the gas being measured at the HHV.

B.6.1. Commodity Charge

The commodity charge is variable and billable each month for the previous month's usage. The commodity charge will equal the total amount of natural gas used by Buyer (as measured in MMBtu), including Process Fuel Gas and Gas provided in-kind to NWP, multiplied by the Sumas Index Price plus 3 cents (\$0.03) per MMBtu for the month in which the gas was liquefied.

B.6.2. Northwest Pipeline Charges

Seller will contract with Northwest Pipeline LLC (NWP) to deliver gas from British Columbia to Seller's distribution system via its interstate pipeline system. NWP Charges will be passed through at cost.

Current Pricing includes:

- Pipeline transportation charges – Pursuant to NWP's then effective FERC Gas Tariff –
- Rate Schedule TF-1 Reservation (Large Customer) System-Wide rate, currently \$.41/MMBtu/day;
- Rate Schedule TF-1 Volumetric (Large Customer) System-Wide rate, currently \$.0318/MMBtu/day;
- Rate Schedule TF-1 fuel use reimbursement charge (fuel reimbursed in-kind), currently 1.45%.

The NWP charges detailed above will change as NWP's regulated rates change. The reservation and volumetric rates detailed above are expected to be in place until 2017; NWP's rates typically change every 3-5 years, oftentimes through settlements negotiated with its customers. The fuel reimbursement factor changes every six months (usually effective October 1 and April 1 each year), and are adjusted to reflect actual activity.

B.6.3. Seller Distribution Charge

Seller distribution charges include the costs to move the gas on Seller's distribution system from the interstate pipeline to the LNG facility at the Port of Tacoma. These rates are regulated by the WUTC and could change as Seller files natural gas rate cases from time-to-time. The charges will be assessed on a \$/MMBtu basis and will be based on Rate Schedule 87 rates.

B.6.4. Credit for Returned Gas

Seller shall credit Buyer for Gas returned, measured in MMBtu, in the bunkering process, provided such Gas meets the properties detailed on Exhibit A. Such returned Gas shall be reprocessed for sale to Buyer, and Buyer shall not be charged for the commodity charge (B.6.1), Northwest Pipeline charges (B.6.2) or Seller distribution charge (B.6.3) for such returned Gas. All other variable charges shall apply.

B.7 Estimated Buyer Pricing

As stated in Section B.2, Seller's rates are based on cost of service rate design and all costs incurred in constructing and operating the facility will be passed through reflecting that rate design. Seller has estimated plant costs based on an ACEC class 2 estimate derived from a full front end engineering and design (FEED) study performed by Chicago Bridge and Iron. Other project items like the direct line to Buyer and the in water work at Buyer's facilities are based on ACEC class 5 estimates. Table B-2 shows the current estimated Buyer pricing.

Estimated Buyer Pricing (\$/BOE Based on 510,000 BOE annually)										
Year	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
Fixed Charges	\$41.21	\$40.41	\$39.52	\$38.69	\$38.41	\$37.68	\$36.99	\$36.62	\$35.85	\$34.99
Variable Plant Charges	\$4.87	\$4.89	\$4.91	\$4.93	\$4.95	\$4.97	\$4.99	\$5.02	\$5.04	\$5.06
Fuel Charge	\$32.74	\$32.88	\$33.02	\$33.16	\$33.31	\$33.45	\$33.60	\$33.76	\$33.91	\$34.07
Revenue Taxes	\$1.66	\$1.64	\$1.63	\$1.61	\$1.61	\$1.60	\$1.59	\$1.58	\$1.57	\$1.56
TOTAL	\$80.48	\$79.82	\$79.08	\$78.39	\$78.28	\$77.70	\$77.17	\$76.68	\$76.37	\$75.68

Table B-2. Estimated Buyer Pricing (Fuel Charge assumes \$3.70/MMBtu Gas at Sumas and variable power charges assume \$37.40/MWh at Mid-C.)

B.8 Maximum Fixed Charges

If Buyer's Fixed Charges (excluding adjustments for Sustaining Capital) increase above the Maximum Fixed Charges, Buyer will have the right, but not the obligation, to exit the contract without penalty; *provided, however*, Seller retains the right to provide pricing based on the Fixed Charges shown in Table B-3. To provide clarity, the pricing provided in Table B-3 includes all pricing components, but the maximum pricing concept only applies to the Fixed Charges. Variable O&M Charges, Fuel Charges and Revenue Taxes will reflect actual costs throughout the Term of the Agreement.

Buyer Pricing with Maximum Fixed Charges (\$/BOE Based on 510,000 BOE annually)										
Year	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
Fixed Charges	\$45.70	\$45.35	\$45.00	\$44.17	\$43.33	\$42.51	\$41.69	\$40.88	\$40.07	\$39.27
Variable O&M Charges	\$4.87	\$4.89	\$4.91	\$4.93	\$4.95	\$4.97	\$4.99	\$5.02	\$5.04	\$5.06
Fuel Charge	\$32.74	\$32.88	\$33.02	\$33.16	\$33.31	\$33.45	\$33.60	\$33.76	\$33.91	\$34.07
Revenue Taxes	\$1.74	\$1.72	\$1.70	\$1.69	\$1.67	\$1.66	\$1.64	\$1.63	\$1.62	\$1.61
TOTAL	\$85.05	\$84.84	\$84.63	\$83.95	\$83.26	\$82.59	\$81.92	\$81.29	\$80.64	\$80.01

Table B-3. Buyer Pricing with Maximum Fixed Charges (Fuel Charge assumes \$3.70/MMBtu Gas at Sumas and variable power charges assume \$37.40/MWh at Mid-C.)

B.9 Maximum Capital Allocation Ratio

The Capital Allocation Ratio for Buyer will be capped at 29% for the purposes of allocating O&M costs based on this ratio to Buyer, based on Buyer's expected annual volume of 510,000 BOE; *provided, however*, if Buyer increases its Target Annual Contract Quantity pursuant to Section 4.2, the Maximum Capital Allocation Ratio may be increased proportionally based on the increase in the Target Annual Contract Quantity.

EXHIBIT C

COMMODITY PRICE TRIGGERS

Price Trigger No. 1, IFO 380:

Subject to Section 19.2, Buyer may exercise its option to terminate this Agreement under Price Trigger No. 1 under the following conditions:

The price of [*IFO 380*] falls below:

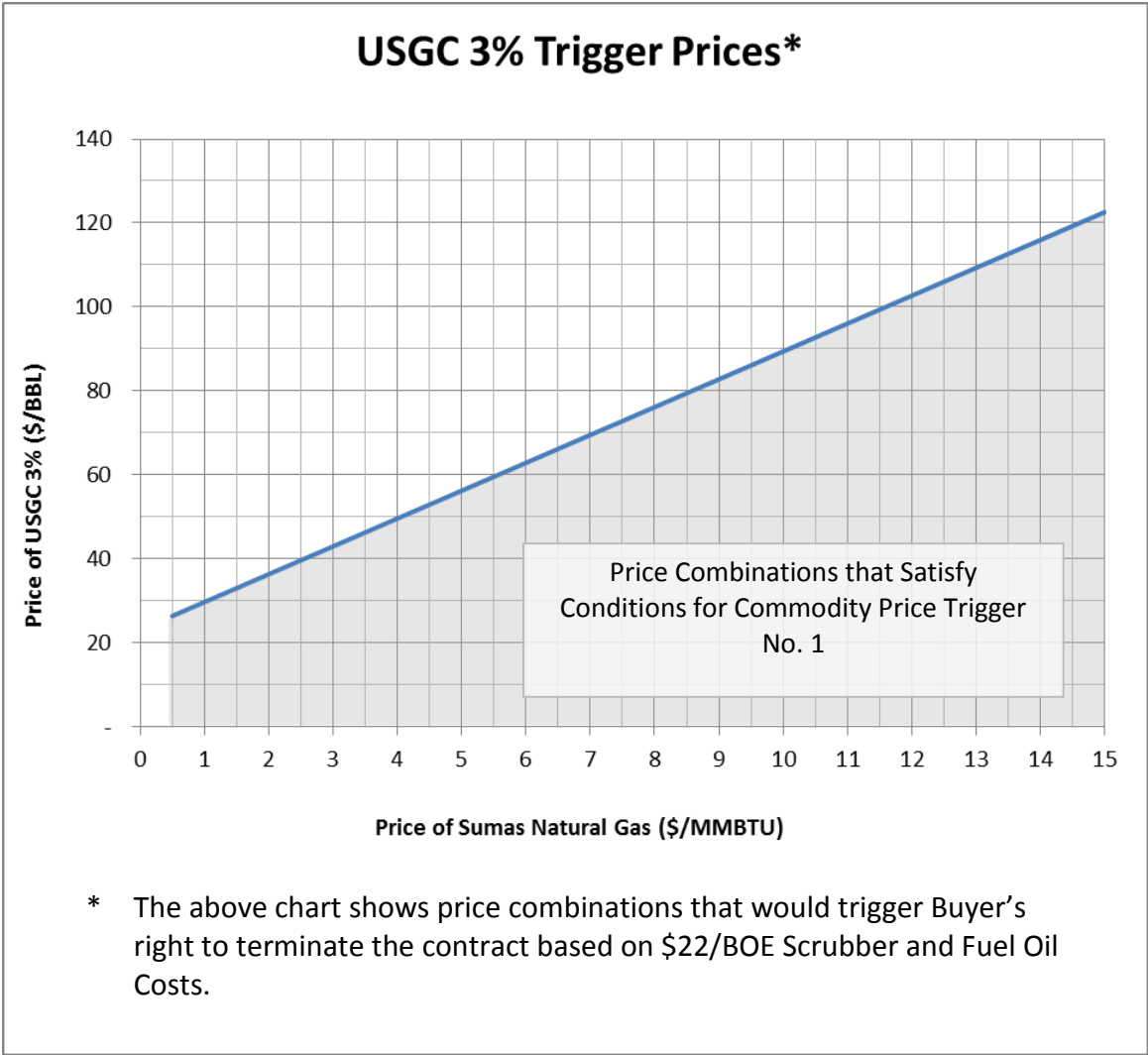
$$[\textit{Sumas}] * [\textit{C}_1] + [\textit{Liquefaction Charge}] - [\textit{Scrubber \& Fuel Oil Costs}] \quad (\text{"Equation 1"})$$

Box 1: Condition to satisfy Commodity Price Trigger No. 1

Where the variables in Equation 1 are defined as follows:

- IFO 380:** The average settlement price for "Gulf Coast No. 6 Fuel Oil 3%" in \$/bbl as listed on the Intercontinental Exchange ("ICE") for twelve (12) consecutive forward Months beginning with the Month following the date written notice is received.
- Sumas:** The average settlement price for "Sumas" natural gas in \$/MMBtu as listed on the ICE for twelve (12) consecutive forward Months beginning with the Month following the date written notice is received. Forward pricing for Sumas on ICE is derived by combining a specific NYMEX natural gas contract with a specific Sumas basis product, with the relevant nodes being "NG LD1 Futures, Henry" for the NYMEX natural gas contract and "NG Basis LD1 for IF Futures, NWP-Sumas" for the basis product.
- C₁:** The conversion factor necessary to convert a natural gas price quote based on the high heating value (in \$/MMBtu) to an equivalent price based on a barrel of IFO 380 equivalent (in \$/BOE). This conversion factor will be 6.6385.
- Liquefaction Charge:** The \$/BOE charge for transporting Sumas natural gas, liquefying the gas and delivering the LNG into Buyer's ship. The Liquefaction Charge will be \$45/BOE.
- Scrubber & Fuel Oil Costs:** The \$/BOE costs that Buyer would incur to operate using IFO 380 and scrubbers. The "Scrubber & Fuel Oil Costs" fee will be comprised of an O&M component, a capital recovery component and a fuel delivery component. The total Scrubber & Fuel Oil Costs will not be less than \$22/BOE.

The following chart gives price combinations of IFO 380 and Sumas natural gas that would satisfy the required condition for Commodity Price Trigger No. 1:



Commodity Price Trigger No. 2, Ultra Low Sulfur Diesel:

Subject to Section 19.2, Buyer may exercise its option to terminate this Agreement under Commodity Price Trigger No. 2 under the following conditions:

The price of [*ULSD*] falls below:

$$[\textit{Sumas}] * [\textit{C}_2] + [\textit{C}_3] * \{ [\textit{Liquefaction Charge}] - [\textit{Fuel Oil Costs}] \} \quad (\text{"Equation 2"})$$

Box 2: Condition to satisfy Commodity Price Trigger No. 2

Where the variables in Equation 2 are defined as follows:

- ULSD:** The average settlement price for “NY Harbor ULSD Futures” in \$/gallon as listed on the ICE for twelve (12) consecutive forward Months beginning with the Month following the date written notice is received.
- Sumas:** The average settlement price for Sumas natural gas in \$/MMBtu as listed on the ICE for twelve (12) consecutive forward Months beginning with the Month following the date written notice is received. Forward pricing for “Sumas” on ICE is derived by combing a specific NYMEX natural gas contract with a Sumas basis product, with the relevant nodes being “NG LD1 Futures, Henry” for the NYMEX natural gas contract and “NG Basis LD1 for IF Futures, NWP-Sumas” for the basis product.
- C₂:** The conversion factor necessary to convert a natural gas price quote based on the high heating value (in \$/MMBtu) to an equivalent price based on a gallon of ULSD equivalent (in \$/gallon). This constant will be 0.13738 MMBtu/gal.
- C₃** The conversion factor necessary to convert liquefaction and fuel costs (in \$/BOE) to an equivalent price based on a gallon of ULSD equivalent (in \$/gallon). This constant will be 0.02147 BOE/gallon.
- Liquefaction Charge** The \$/BOE charge for transporting Sumas natural gas, liquefying the gas and delivering the LNG into Buyer’s ship. This Liquefaction Charge will be \$45/BOE.
- Fuel Oil Costs:** The \$/BOE costs that Buyer would incur to operate using ULSD. Fuel Oil Costs will be comprised of an O&M component. The Fuel Oil Costs will not be less than \$2/BOE.

The following chart gives price combinations of ULSD and Sumas natural gas that would satisfy the required condition for Commodity Price Trigger No. 2:

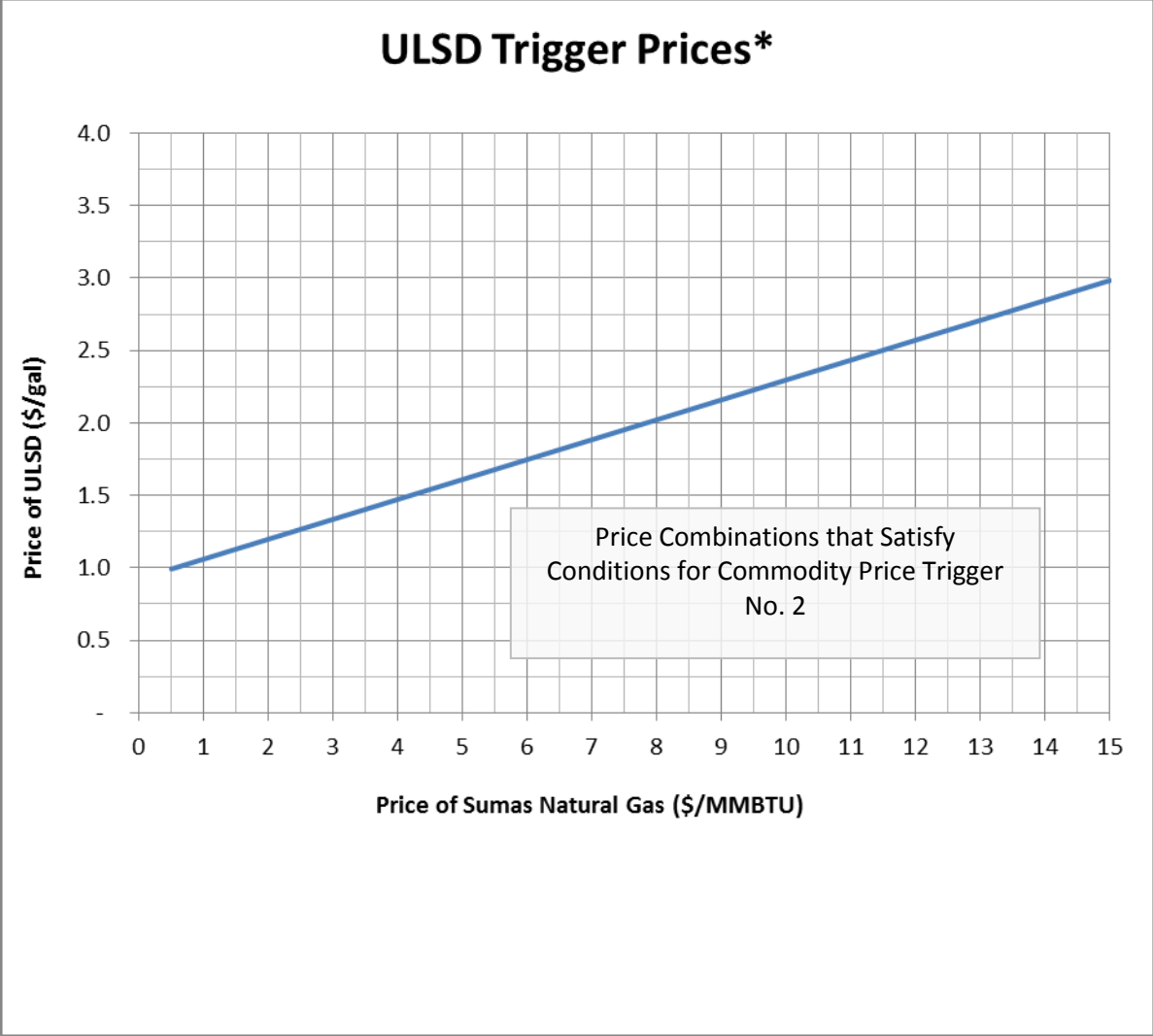


EXHIBIT D

TERMINATION FEE FOR COMMODITY TRIGGERS

The table below outlines the termination fee to be paid by Buyer to Seller upon Buyer exercising its option to terminate this Agreement pursuant to Commodity Price Trigger No. 1 or Commodity Price Trigger No. 2.

Termination Fee (millions)*										
Agreement terminates in Year:	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
Contract Termination Fee:	\$65	\$59	\$54	\$48	\$42	\$17	\$14	\$10	\$7	\$4

Termination fees assume termination at the beginning of each contract year.

EXHIBIT E

EXTENSION PRICING

The following table details the Fixed Facility Charge that will apply for the first extension of the Delivery Term. All other costs will be charged at actual cost, consistent with this Agreement.

Contract Extension Pricing					
Year	<u>11</u>	<u>12</u>	<u>13</u>	<u>14</u>	<u>15</u>
Fixed Facility Charge	\$ 5,000,000	\$ 4,647,000	\$ 4,293,000	\$ 3,939,000	\$ 3,586,000

EXHIBIT F

MEASUREMENTS AND TESTING

Custody transfer of LNG will be based upon energy content – in Btu and BOE, as defined in the Agreement.

LNG and Gas transferred to and from the vessel will be measured via mass flow meters as follows:

- LNG line: Coriolis meter
- Vapor return line: Ultrasonic meter

LNG composition will be monitored and validated via plant chromatograph system samples taken from tank outflow at the start of the bunkering process and at one hour intervals during bunkering operations. LNG shall meet the specifications detailed on Exhibit A.

Vapor composition will be monitored and validated via plant chromatograph system samples from the vapor return line at the start of the bunkering process and at one hour intervals during bunkering operations. Vapor composition changes during the bunkering process will be time averaged to determine the overall energy content transfer. Gas returned from the Totem Ocean Vessels shall meet the specifications detailed on Exhibit A to receive credit pursuant to 9.3.2.

Buyer will be billed for LNG pursuant to Section 11, and Gas returned from Totem Ocean Vessels will be credited pursuant to Section 9.3.2.

A receipt will be delivered to Buyer at the completion of the bunkering process. The receipt will be in a format agreeable to Buyer (to be developed at a later date).

Buyer shall have the right at any time, given commercially reasonable notice, to audit calibration records for any custody transfer equipment (meters or gas chromatograph) or to witness calibration activities.

EXHIBIT G

FORM OF GUARANTY

PARENT GUARANTY

GUARANTY, dated as of October __, 2014 (“Parent Guaranty”) made by Saltchuk Resources, Inc., a corporation organized under the laws of the State of Washington (“Guarantor”), in favor of Puget Sound Energy, Inc. (“Beneficiary”), for the benefit of Totem Ocean Trailer Express, Inc., a corporation organized under the laws of the State of Alaska (“Counterparty”).

WITNESSETH

WHEREAS, Beneficiary, which intends to construct, own and operate an LNG liquefaction and fueling terminal at the Port of Tacoma, Washington and other associated facilities (the “Tacoma LNG Facility”), and Counterparty have concurrently herewith entered into an agreement (the “LNG Fuel Supply Agreement”) for the supply of LNG by Beneficiary to Counterparty, pursuant to which Beneficiary will sell and Counterparty will purchase LNG produced by Beneficiary at the Tacoma LNG Facility for use as fuel by ocean-going vessels; and

WHEREAS, Counterparty is a direct subsidiary of the Guarantor and the Guarantor is desirous of having Counterparty enter into the LNG Fuel Supply Agreement with the Beneficiary and will directly or indirectly benefit therefrom; and

WHEREAS, it is a requirement under the LNG Fuel Supply Agreement that the Counterparty shall have delivered this Parent Guaranty, and Beneficiary has entered into the LNG Fuel Supply Agreement partly in reliance thereon.

NOW, THEREFORE, in order to induce the Beneficiary to enter into the LNG Fuel Supply Agreement, and for other good and valuable consideration, receipt and sufficiency of which are acknowledged, Guarantor hereby agrees and covenants as follows:

1. Definitions. Unless defined herein, capitalized terms used herein shall have the meanings set forth in the LNG Fuel Supply Agreement.
2. Guarantee to the Beneficiary. Guarantor hereby irrevocably and unconditionally guarantees to the Beneficiary, and its permitted successors and assigns, the full and prompt payment and performance by Counterparty of all its warranties, covenants, agreements and other obligations under the LNG Fuel Supply Agreement, and under all documents and instruments contemplated to be executed by Counterparty pursuant to the LNG Fuel Supply Agreement (all such warranties, covenants, agreements and other obligations arising out of or under the LNG Fuel Supply Agreement or such other documents or instruments are hereinafter collectively referred to as the “Guaranteed Obligations”). This Parent Guaranty is a guarantee of payment and of performance and not merely of collection. The liability of Guarantor under this Parent Guaranty shall not be conditional or contingent upon any action being taken against the Counterparty, any

other guarantor or person or any collateral security for the Guaranteed Obligations or any property. If the Counterparty shall fail to pay or perform in full when due all or any part of the Guaranteed Obligations, and the Beneficiary gives Guarantor and Counterparty written notice thereof, thereof (such notice having been provided in accordance with Article 23 of the LNG Fuel Supply Agreement), and the Guarantor or Counterparty shall fail to cure such failure of payment or performance within twenty (20) Business Days of the effective date of such written notice (as determined under Section 23.2 of the LNG Fuel Supply Agreement), Guarantor shall promptly pay (including any interest accrued thereon at the Interest Rate in accordance with the terms of the LNG Fuel Supply Agreement from the date due by Counterparty) or perform the unperformed Guaranteed Obligations in accordance with the terms of the LNG Fuel Supply Agreement. For sake of clarity, Beneficiary's remedies under this Parent Guaranty shall not be available unless there has been a default by the Counterparty under the LNG Fuel Supply Agreement and a failure of the Counterparty and the Guarantor to cure such default within twenty (20) Business Days of receipt of written notice of the Counterparty's default..

Notwithstanding anything to the contrary set forth in this Parent Guaranty and except for defenses waived by Counterparty or arising from the lack of authority, bankruptcy, insolvency or dissolution of Counterparty, all defenses, claims, set-offs, deductions, limitations on liability, opportunities to cure defaults and other rights available to Counterparty under the LNG Fuel Supply Agreement shall be available to Guarantor (collectively "Defenses"). However, in determining the extent to which Guarantor must perform the obligations of Counterparty pursuant to this Parent Guaranty, (a) in no event shall Guarantor be permitted to assert any Defense greater than those provided to Counterparty under the LNG Fuel Supply Agreement and (b) to the extent that it is determined by a court of competent jurisdiction that any Defense is unavailable to the Counterparty or is limited in its scope or nature, Guarantor shall be prohibited from raising such Defense to the extent same is so determined by such court to be unavailable or limited.

3. Limitation of Liability.

- a. Guarantor's aggregate payment liability under this Parent Guaranty and the Beneficiary's right of recovery with respect to the Guaranteed Obligations shall be limited to an amount equal to \$65,000,000 (the "Guaranty Cap"); provided that the amount of the Guaranty Cap shall be reduced during the initial Delivery Term as follows:

<u>Initial Delivery Term Year</u>	<u>Guaranty Cap</u>
For the period beginning on 1/1/2019 and ending 12/31/2019	\$65,000,000
For the period beginning on 1/1/2020 and ending 12/31/2020	\$59,000,000

<u>Initial Delivery Term Year</u>	<u>Guaranty Cap</u>
For the period beginning on 1/1/2021 and ending 12/31/2021	\$54,000,000
For the period beginning on 1/1/2022 and ending 12/31/2022	\$48,000,000
For the period beginning on 1/1/2023 and ending 12/31/2023	\$42,000,000
For the period beginning on 1/1/2024 and ending 12/31/2024	\$17,000,000
For the period beginning on 1/1/2025 and ending 12/31/2025	\$14,000,000
For the period beginning on 1/1/2026 and ending 12/31/2026	\$10,000,000
For the period beginning on 1/1/27 and ending 12/31/2027	\$7,000,000
For the period beginning on 1/1/2028 and ending on the expiration date of the initial Delivery Term.	\$4,000,000

- b. If, however, the Counterparty materially breaches or defaults on any of its obligations under the LNG Fuel Supply Agreement and if, as a result, the Counterparty accrues a payment liability to Beneficiary under the LNG Fuel Supply Agreement which Guarantor does not satisfy in full within twenty (20) Business Days following Guarantor's receipt of written demand for payment (including reasonable supporting documentation) from Beneficiary, the Guaranty Gap will no longer be reduced during the duration of the initial Delivery Term as provided in Section 3(a) and will remain at the level corresponding with the initial Delivery Term year in which such payment liability arises for the remainder of the initial Delivery Term.
- c. The Guaranty Cap excludes all reasonable fees and expenses (including, without limitation, reasonable attorney's fees) incurred by Beneficiary in enforcing this Parent Guaranty, and the Guarantor agrees to pay the Beneficiary all such reasonable fees and expenses, which payment shall be made within twenty (20) Business Days following Guarantor's receipt of written demand for payment (including reasonable supporting documentation) from Beneficiary.

4. Rights of Third Parties. This Parent Guaranty shall not be construed to create any right or to confer any benefit on any persons other than the Beneficiary and the Counterparty.
5. Cumulative Rights. All rights, powers and remedies of the Beneficiary hereunder are in addition to, and not in lieu of, all other rights, powers and remedies available to Beneficiary, whether at law, in equity or otherwise.
6. Representations and Warranties. Guarantor hereby represents and warrants that:
 - a. It is a corporation, duly formed, validly existing, and in good standing under the laws of the State of Washington and has full power and authority to own its property and to carry on its business as now conducted.
 - b. This Parent Guaranty is made in furtherance of the purposes for which Guarantor has been organized. Guarantor has full legal right, power and authority to execute and deliver this Parent Guaranty and to carry out its obligations hereunder, and this Parent Guaranty has been duly authorized by all requisite corporate action on its part. This Parent Guaranty has been duly authorized, executed and delivered by Guarantor. This Parent Guaranty constitutes a valid and legally binding obligation of Guarantor, enforceable against it in accordance with its terms. No consent, authorization, order or approval of, or filing or registration with any person or entity, including any governmental entity, is required in connection with the execution, delivery and performance of this Parent Guaranty.
 - c. Guarantor's execution, delivery and performance of this Parent Guaranty and the transactions contemplated hereby do not (A) constitute a breach of any term or provision of, or a default under (1) any contract or agreement to which it or any of its affiliates is a party or by which it or any of its affiliates or its or their property is bound, (2) its organizational documents, or (3) any laws, regulation, or judicial orders having applicability to it or (B) result in the creation of any lien, charge, claim, or other encumbrance on its property or the property of its subsidiaries.
 - d. There is no action, suit or similar proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of Guarantor's knowledge, threatened against Guarantor wherein an unfavorable decision, ruling or finding would materially and adversely affect the validity or enforceability of this Parent Guaranty or any other agreement or instrument entered into by Guarantor in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by Guarantor of its obligations hereunder.
7. Continuing Guarantee.
 - a. The obligations of Guarantor under this Parent Guaranty are absolute, present, irrevocable and unconditional and shall remain in full force and effect until Counterparty shall have fully satisfied and discharged all of its obligations under the LNG Fuel Supply Agreement arising with respect to the period ending on the expiration date of the initial Delivery Term in accordance with its respective terms and shall not be released or discharged by: (i) any failure, omission or delay by the

Beneficiary in the exercise of any right, power or remedy conferred on it with respect to this Parent Guaranty or the LNG Fuel Supply Agreement, or any exercise by the Beneficiary of any right, power or remedy conferred on it with respect to this Parent Guaranty or the LNG Fuel Supply Agreement, (ii) any assignment of the LNG Fuel Supply Agreement by the Counterparty or the Beneficiary or any change in the ownership, direct or indirect, of the Counterparty or Beneficiary, (iii) any permitted assignment for the purpose of creating a security interest in all or any part of the respective interests of the Counterparty or the Beneficiary in the LNG Fuel Supply Agreement and any consent to such assignment executed by Counterparty or Guarantor, (iv) unenforceability, for any reason, of the LNG Fuel Supply Agreement, (v) the insolvency, bankruptcy, liquidation or dissolution of the Counterparty, or (vi) any other similar circumstance which might constitute a legal or equitable discharge or defense under applicable principles of suretyship law or laws affecting guaranties.

- b. Notwithstanding anything in this Parent Guaranty to the contrary, if any of the Guaranteed Obligations are waived, amended or modified by Counterparty or Guarantor and the Beneficiary, then Guarantor shall guaranty such amended or modified Guaranteed Obligations as so amended or modified. In the event of any enforcement of this Parent Guaranty, Guarantor and the Beneficiary shall be bound by such waived, amended or modified Guaranteed Obligations.
 - c. Notwithstanding the other provisions of this Section, nothing in this Section shall limit the rights expressly given to Guarantor as Guarantor under Section 2 hereof.
8. Financial Covenants. For so long as this Guaranty remains in effect in accordance with its terms, Guarantor shall deliver to Beneficiary within one hundred and five (105) days after the last day of each calendar year the audited statements of financial position of Guarantor for such calendar year, and within sixty (60) days after the last day of each calendar quarter the unaudited statements of financial position of Guarantor. In addition, Guarantor will provide its 2013 audited financial statements and its quarterly unaudited 2014 financial statements, and include a warranty that the statements are prepared in accordance with GAAP applied on a consistent basis throughout the periods covered, fairly present the Guarantor's financial position, and are consistent with the books and records of the Guarantor.
9. Credit Requirements Following a Triggering Event.
- a. Effect of Triggering Event. Following the occurrence of a Triggering Event, the following provisions shall apply:
 - (i) Guarantor shall provide, within twenty (20) Business Days of the occurrence of a Triggering Event, evidence, reasonably satisfactory to Beneficiary, that Guarantor is at such time a Creditworthy Entity or, alternatively, shall provide a Supplemental Guaranty or an Acceptable Letter of Credit.

- (ii) Guarantor covenants that at all times from and after twenty (20) Business Days following the occurrence of a Triggering Event until the expiration of the initial Delivery Term, it shall maintain its status as a Creditworthy Entity, or it shall maintain, for the benefit of Beneficiary, a Supplemental Guaranty or an Acceptable Letter of Credit.
 - (iii) If at any time Guarantor fails to satisfy the requirements of Section 9(a)(ii) above, Guarantor agrees (A) to notify Beneficiary promptly (and in any event within three (3) Business Days) upon becoming aware of any such failure and (B) no later than twenty (20) Business Days following Guarantor's becoming aware of such failure (including by reason of notice thereof from Beneficiary), to cure such failure through the provision of an additional Supplemental Guaranty or another Acceptable Letter of Credit.
 - (iv) Guarantor acknowledges that the provision of a Supplemental Guaranty or Acceptable Letter of Credit shall not release Guarantor of its obligations under this Parent Guaranty.
- b. Draw Rights. If at any time an Acceptable Letter of Credit shall be outstanding, Guarantor agrees that Beneficiary shall be entitled to draw on the full amount thereof upon the occurrence of any event that permits Beneficiary to make a claim under this Parent Guaranty. In the event Beneficiary's claim under this Parent Guaranty is disputed by Guarantor or Counterparty, it is agreed that Guarantor, Counterparty and Beneficiary will work cooperatively and in good faith for twenty-five (25) Days (measured from the date Beneficiary provides notice to Guarantor and Counterparty of Beneficiary's intent to exercise its draw rights under this clause) to enter into a mutually agreeable escrow agreement pursuant to which an escrow account will be established to hold the funds drawn on the Acceptable Letter of Credit until resolution of the disputed claim. If, after twenty-five (25) Days, Guarantor, Counterparty and Beneficiary are unable to enter into mutually agreeable escrow agreement, funds drawn on the Acceptable Letter of Credit will be placed by Beneficiary in a segregated account and held separate from all other funds owned or controlled by Beneficiary or its Affiliates until resolution of the disputed claim, and shall not be used for any other purpose; provided, that if Guarantor, Counterparty and Beneficiary subsequently reach agreement as to the terms of the escrow agreement, Beneficiary will transfer such funds to the escrow account governed thereby.
- c. Defined Terms. As used in this Section 9, the following terms shall have the meanings set forth below:
- (i) "Acceptable Letter of Credit" means an irrevocable letter of credit in favor of Beneficiary, issued by a Qualified Financial Institution and otherwise in form and substance reasonably acceptable to Beneficiary, in an amount equal to the then applicable termination fee payable by Beneficiary under the LNG Fuel Supply Agreement, as set forth in Exhibit D thereof.

- (ii) “Business Day” means any day (other than Saturdays, Sundays and national holidays in the United States of America) on which commercial banks are normally open to conduct business in Seattle, Washington.
- (iii) “Credit Rating” means a credit rating in respect of the senior, unsecured, long-term debt (not supported by third party credit enhancement) of a Person.
- (iv) “Creditworthy Entity” means a Person having at the applicable time a Credit Rating of BBB- or better from S&P, Baa3 or better from Moody’s or 2 or better from NAIC; *provided*, that if such Person has a Credit Rating from more than one of the foregoing, all such Credit Ratings then held must satisfy the applicable Credit Rating requirement.
- (v) “Moody’s” means Moody’s Investors Service, Inc., or any successor thereof.
- (vi) “NAIC” means the National Association of Insurance Commissioners, or any successor thereof.
- (vii) “Person” means any individual, corporation, partnership, trust, unincorporated organization or other legal entity, including any Governmental Authority.
- (viii) “Qualified Financial Institution” means a U.S. commercial bank or a U.S. branch office of a foreign bank having (i) assets of at least \$10 billion and (ii) a Credit Rating of (a) A or better from S&P, or A2 or better from Moody’s, or (b) if such bank has a Credit Rating at such time from both S&P and Moody’s, A or better from S&P and A2 or better from Moody’s.
- (ix) “S&P” means Standard and Poor’s Ratings Group, a division of McGraw-Hill, Inc., or any successor thereof.
- (x) “Supplemental Guaranty” means a guaranty from a Creditworthy Entity that is an Affiliate of Guarantor, in substantially the same form as this Parent Guaranty.
- (xi) “Triggering Event” means a failure by Counterparty to cure a default by Counterparty of all or any part of the Guaranteed Obligations within twenty (20) Business Days of receipt from Beneficiary of written notice of such default by Counterparty.

10. Waivers by Guarantor.

- a. The obligations of Guarantor hereunder shall not be subject to any counterclaim, set off, deduction or defense based on any claim that Guarantor may have against Counterparty, the Beneficiary or any other person, provided however, that Guarantor expressly reserves the right to pursue any claims against any of the foregoing in a separate proceeding.

- b. Guarantor hereby unconditionally and irrevocably waives as a condition to the performance or payment by Guarantor of the Guaranteed Obligations (i) except for notices required by the express terms of this Parent Guaranty or the LNG Fuel Supply Agreement, all notices which may be required by statute or otherwise, including notices of acceptance, default, presentment or demand, (ii) all suretyship defenses of every nature available under the laws of the State of New York and the law of any other state, and (iii) any defense based on an election of remedies by the Beneficiary. Guarantor also waives any right to require the Beneficiary to first proceed against Counterparty, any other guarantor or person liable on the Guaranteed Obligations or exhaust any other remedies available.
 - c. Notwithstanding anything in this Parent Guaranty to the contrary, this Parent Guaranty shall not be construed as imposing on Guarantor any obligation to perform or observe any agreement on the part of Counterparty contained in the LNG Fuel Supply Agreement that Counterparty is not then obligated to perform unless the Counterparty is not then obligated to perform or observe such agreement due to the lack of authority, bankruptcy, insolvency or dissolution of Counterparty.
 - d. Notwithstanding the other provisions of this Section 10, nothing in this Section 10 shall limit the rights expressly given to Guarantor as Guarantor under Section 2 hereof.
11. Reinstatement of Obligations. If the Beneficiary is required to refund (for any reason, including as a result of the bankruptcy or insolvency of the Counterparty) any amount previously paid in connection with a Guaranteed Obligation, the obligation of Guarantor under this Parent Guaranty with respect to such amount shall automatically be deemed to be reinstated and shall constitute a Guaranteed Obligation (including any enforcement costs associated with defending the receipt of such amounts originally paid in respect of such reinstated liability).
12. Deferral of Subrogation. Until such time as all of the Guaranteed Obligations have been fully satisfied, Guarantor shall not by virtue of this Parent Guaranty be subrogated to any rights of the Beneficiary or make any claim in competition with the Beneficiary against the Counterparty or any other collateral or security with respect to the Guaranteed Obligations in connection with any matter relating to or arising from the Guaranteed Obligations or this Parent Guaranty.
13. Payments; Taxes.
- a. Payments; Taxes.
 - (i) All payments hereunder shall be made by wire transfer of immediately available Dollar funds to such account at such financial institution as Beneficiary may from time to time designate in writing.
 - (ii) All payments by Guarantor shall be made free and clear of, and without deduction for, any and all present or future Impositions. If Guarantor shall be

required by any Applicable Laws to deduct any Imposition from or in respect of any amount payable hereunder:

- (1) the amount payable shall be increased by the amount necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 13), the recipient shall receive an amount equal, on an After-Tax Basis, to the sum it would have received had no such deduction been made;
- (2) Guarantor shall make such deduction; and
- (3) Guarantor shall pay the full amount deducted to the relevant taxing authority or other Governmental Authority in accordance with all Applicable Laws.

Within fifteen (15) days after the date of any deduction of any Imposition, Guarantor shall furnish to Beneficiary the original or a certified copy of a receipt or other documentation evidencing payment thereof as is reasonably acceptable to such recipient.

- (iii) All obligations of Guarantor pursuant to this Section 13 shall survive the expiration, cancellation or termination of this Guaranty.

b. Definitions. In Section 13(a):

“After-Tax Basis” shall mean, with respect to any payment, on a basis such that such payment shall be supplemented by a further payment or payments to the recipient so that the sum of all such payments shall, after deduction for the net increase in all Taxes (taking into account all reductions in Taxes attributable to credits and deductions resulting from the Impositions or Claims for which payments are being made, as determined in good faith by such recipient) resulting from the receipt (actual or constructive) or accrual of such payments, be equal to the payment otherwise required to be made.

“Impositions” shall mean any and all liabilities, losses, expenses and costs of any kind whatsoever for Taxes, provided that Impositions does not include taxes for which Beneficiary is responsible pursuant to Section 14 of the LNG Fuel Supply Agreement.

14. Remedies. This Parent Guaranty may be enforced as to one or more breaches either separately or cumulatively. No failure or delay on the part of the Beneficiary to exercise any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude the exercise of any other right. Without limiting any remedies or rights as may be available to Beneficiary against any other Person (including the Counterparty), the remedies and rights provided herein to the Beneficiary against Guarantor are exclusive of any remedies the Beneficiary may otherwise have under law or at equity against Guarantor. This Parent Guaranty constitutes the entire agreement between Beneficiary and Guarantor concerning the subject matter hereof.

15. Governing Law. THE LAWS OF THE STATE OF NEW YORK (EXCLUDING RULES GOVERNING CONFLICTS OF LAWS) SHALL GOVERN THE INTERPRETATION, CONSTRUCTION, ENFORCEABILITY, LEGALITY AND VALIDITY OF THIS PARENT GUARANTY, AND ALL DISPUTES ARISING HEREUNDER OR IN ANY MANNER RELATED HERETO.
16. Jurisdiction. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THE ENFORCEMENT OF THIS PARENT GUARANTY SHALL BE BROUGHT EXCLUSIVELY IN THE COURTS OF THE CITY OF SEATTLE, WASHINGTON, INCLUDING THOSE OF THE UNITED STATES OF AMERICA, AND BY EXECUTION AND DELIVERY OF THIS PARENT GUARANTY, GUARANTOR HEREBY ACCEPTS AND CONSENTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, TO THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. GUARANTOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON GROUNDS OF *FORUM NON CONVENIENS*, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS.
17. Waiver of Jury Trial. UNLESS THE LNG FUEL SUPPLY AGREEMENT PROVIDES TO THE CONTRARY, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, GUARANTOR AND THE BENEFICIARY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS PARENT GUARANTY.
18. Notices. All notices and other communications required or permitted to be given hereunder (a) shall be in writing; (b) shall be delivered in person, by express courier, or by facsimile transmission; (c) shall be deemed delivered (i) in the case of delivery in person or by courier, when actually received by the recipient party and (ii) by facsimile transmission when such transmission is sent to the proper party and is completed; and (d) shall be delivered (i) to the Beneficiary at its address specified below, (ii) to Guarantor at its address set forth below, and to (iii) Counterparty at its address specified below, or at such other addresses as any such party shall have designated in writing to the other parties on ten (10) days prior notice.

To Beneficiary: Puget Sound Energy, Inc.
10885 NE 4th St
Bellevue, Washington 98004-5591
Attn: General Counsel
Facsimile No.: (425) 462-3300

To Guarantor: Saltchuk Resources, Inc.
1111 Fairview Avenue North
Seattle, Washington 98109
Attn: John Hoerster, General Counsel
Facsimile No.: (206) 381-8307
Email: johnh@saltchuk.com

To Counterparty: Totem Ocean Trailer Express, Inc.
32001 32nd Avenue South, Suite 200
Federal Way, Washington 98001
Facsimile No.: (253)-449-2133
Email: jparrott@totemocean.com

with a copy to: TOTE, Inc.
14 Nassau Street
Princeton, New Jersey 08542
Attn: Michael B. Holt, General Counsel
Facsimile No.: (609) 454-3652
Email: mholt@toteinc.com

19. Term of the Parent Guaranty. This Parent Guaranty shall become operative and it shall remain in full force and effect from the date of execution and delivery hereof until the performance or discharge or release of all of the obligations of Counterparty under the LNG Fuel Supply Agreement arising with respect to the period ending upon the expiration of the initial Delivery Term; provided, that in the case of a discharge resulting from the lack of authority, bankruptcy, insolvency or dissolution of Counterparty this Parent Guaranty shall continue and remain in full force and effect.
20. Amendments. No amendment of any provision of this Parent Guaranty shall be effective unless it is in writing and signed by Guarantor and Beneficiary, and no waiver of any provision of this Parent Guaranty and no consent to any departure by Guarantor therefrom, shall be effective unless it is in writing and signed by Beneficiary.
21. Severability. In the event that any of the provisions, or portions or applications thereof, of this Parent Guaranty are held to be unenforceable or invalid by any court of competent jurisdiction, Guarantor and Beneficiary shall negotiate an equitable adjustment in such provisions of this Parent Guaranty with a view toward effecting the purpose of this Parent Guaranty, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

[Signature Page Follows]

The undersigned, intending to be legally bound hereby, has executed this Parent Guaranty as of the date first above written.

GUARANTOR

By: SALTCHUK RESOURCES, INC.

By: _____
Name: _____
Title: _____

EXHIBIT H

EXAMPLE CALCULATIONS OF DEFICIENCY AMOUNT CHARGE AND EXCESS LNG CHARGE

Pursuant to Section 4.3 of this Agreement, Seller shall invoice Buyer Deficiency Amount Charges if the Buyer's Actual Annual Contract Quantity is less than the Minimum Annual Contract Quantity. Further, Section 4.4 of this Agreement provides for Seller invoicing Buyer for Excess LNG Charges if Buyer's Actual Annual Contract Quantity is greater than the Maximum Annual Contract Quantity. This Exhibit H provides examples of how the Deficiency Amount Charge and Excess LNG Charge are to be calculated using hypothetical volumes and unit costs.

H.1 Example of Deficiency Amount Charge

As stated in Section 4.3 the Deficiency Amount Charge is calculated as:

$$\text{Deficiency Amount Charge} = (\text{DA} \times \text{FC}) + (\text{DA} \times \text{VC}) - \text{M}$$

Where:

DA = Deficiency Amount, equal to the Minimum Annual Contract Quantity less the Actual Annual Contract Quantity.

FC = the weighted average per BOE Fuel Charge invoiced to Buyer during the Contract Year to which such Deficiency Amount relates, but not including the commodity cost of any Gas otherwise included in such Fuel Charges. For sake of clarity, while Gas commodity costs shall be excluded from the calculation of FC, all other charges attributable to Gas deliveries (e.g. pipeline transportation charges) shall be included.

VC = the weighted average per BOE Variable O&M Charge invoiced to Buyer during the Contract Year to which such Deficiency Amount relates.

M = the amount recovered by Seller through mitigation in respect of the Deficiency Amount in accordance with Section 7.3 of the Fuel Supply Agreement (without duplication), net of all costs and expenses attributable to such mitigation efforts and any LNG sold in connection therewith.

H.1.1 Assumptions used in the Example Deficiency Amount Charge

This example will consider a Deficiency Amount Charge at the end of contract year 5 using the values in Table B-2 found in Section B.7 of Exhibit B, an assumed Minimum Annual Contract Quantity of 475,000 BOE for year 5 and an Actual Annual Contract Quantity of 465,000 BOE for year 5. The calculation assumes that 70% of the Fuel Charge is attributable to gas commodity costs. In addition, this example assumes the Seller is able to mitigate the deficiency (in accordance with Section 7.3 of the Fuel

Supply Agreement) with sales resulting in net revenues of \$100,000. Specifically the variables defined in H.1 would be as follows:

$$\begin{aligned} \mathbf{DA} &= 10,000 \text{ BOE} \\ \mathbf{FC} &= \$33.31/\text{BOE} * (1 - 70\%) = \$9.99/\text{BOE} \\ \mathbf{VC} &= \$4.95 \text{ per BOE} \\ \mathbf{M} &= \$100,000 \end{aligned}$$

H.1.2 Calculating the Deficiency Amount Charge

Using the assumptions outlined in H.1.1, the Deficiency Amount Charge would be calculated as follows:

Deficiency Amount Charge =

$$\begin{aligned} &(\mathbf{10,000 \text{ BOE} * \$9.99/\text{BOE}}) + (\mathbf{10,000 \text{ BOE} * \$4.95/\text{BOE}}) - \mathbf{\$100,000} \\ &= \mathbf{\$49,400} \end{aligned}$$

H.2 Example of Excess LNG Charge

As stated in Section 4.4 the Excess LNG Charge is calculated as:

Excess LNG Charge = (ELA x AFC)

Where:

ELA = the Excess LNG Amount, measured in BOE.

AFC = the average per BOE Fixed Charges, excluding amounts attributable to the LNG Delivery Pipeline and the LNG storage tank, for the Contract Year in question, calculated as (i) the aggregate of the Fixed Charges for the Contract Year in question less that portion of such Fixed Charges attributable to the LNG Delivery Pipeline and the LNG storage tank, divided by (ii) the Maximum Annual Contract Quantity.

H.2.1 Assumptions used in the Example Excess LNG Charge Calculation

This example will consider an Excess LNG Charge at the end of contract year 5 using the values in Section B.7 of Exhibit B, an assumed Maximum Annual Contract Quantity of 545,000 BOE for year 5 and an Actual Annual Contract Quantity of 555,000 BOE for year 5. In addition, this example assumes that 15% of the Fixed Plant Charges shown in Table B-2 are attributable the LNG Delivery Pipeline and LNG storage tank. Specifically the variables defined in H.2 would be as follows:

$$\begin{aligned} \mathbf{ELA} &= 10,000 \text{ BOE} \\ \mathbf{AFC} &= [(\$38.41/\text{BOE} * 510,000 \text{ BOE}) * (1 - 15\%)] / 545,000 \text{ BOE} \\ &= \$30.55/\text{BOE} \end{aligned}$$

H.2.2 Calculating the Excess LNG Charge

Using the assumptions outlined in H.2.1, Seller would calculate the Excess LNG Charge as follows:

$$\text{Excess LNG Charge} = (10,000 \text{ BOE} \times \$30.55/\text{BOE}) = \underline{\underline{\$305,500}}$$