

DATED \_\_\_\_\_ 20\_\_

**[BG International Limited] / [PETRONAS Energy Trading Limited]**

**(Please delete either BG or PETRONAS Energy Trading Limited)**

**and**

**Dragon LNG Limited**

**and**

**[Customer]**

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**CONFIDENTIALITY AGREEMENT**

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THIS AGREEMENT is made on \_\_\_\_\_ 20\_\_

BETWEEN:

- (1) **[BG International Limited/PETRONAS Energy Trading Limited]** (Please delete either **BG** or **PETRONAS Energy Trading Limited**) (hereinafter referred to as the "**Primary Shipper**") a company registered, incorporated and existing under the laws of England with its registered office at [ \_\_\_\_\_ ], United Kingdom; and
- (2) **Dragon LNG Limited** (hereinafter referred to as the "**Operator**") a company registered, incorporated and existing under the laws of England with its registered office at Main Road, Waterston, Milford Haven, Pembrokeshire, SA73 1DR, United Kingdom; and
- (3) \_\_\_\_\_ (hereinafter referred to as the "**Customer**") a company registered, incorporated and existing under the laws of \_\_\_\_\_ with its \_\_\_\_\_ registered \_\_\_\_\_ office \_\_\_\_\_ at \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

WHEREAS:

- (A) The Primary Shipper and the Operator entered into a contract (the "**Throughput Agreement**") for the long term supply of LNG regasification services by the Operator to the Primary Shipper at the Dragon LNG regasification facility at Milford Haven, Wales (the "**Facility**").
- (B) The Primary Shipper, under the Throughput Agreement, has been allocated a number of delivery slots for delivery of LNG cargoes to the Facility.
- (C) The Primary Shipper may not use certain delivery slots over the term of the Throughput Agreement and may invite offers in respect of any such unused slots from qualified third parties by way of an auction via the Auction Site (the "**Auction**").
- (D) The Customer would like to qualify as a potential participant to future Auctions with the aim, if successful in an Auction, of entering into an agreement with the Primary Shipper for the delivery of LNG by the Customer to the Primary Shipper at the Facility and receipt of Natural Gas by the Customer from the Primary Shipper at the NBP (the "**Contract**").
- (E) In order for the Customer to (a) qualify; (b) and if so qualified, participate and Bid in an Auction; and (c) if successful in the Auction, to enter into and perform and receive the obligations, rights and benefits under the Contract (together the "**Purpose**"), it is necessary for the Parties to exchange information between each other in relation to their businesses and the Purpose. It being acknowledged that, even though the Operator will not have any direct liabilities to the Customer under the Auction or the Contract; the Customer and the Operator will have to exchange information in order for the Customer to berth a vessel, discharge LNG and vacate the berth at the Facility in accordance with the Contract.
- (F) The Parties wish to enter into this agreement relating to the disclosure of Confidential Information by one Party to any other Party.

For the purposes of this Agreement, the Primary Shipper, the Operator and the Customer are each a "**Party**" and are referred to collectively as the "**Parties**".

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 **"Affiliate"** means in relation to a Party, a Member of that Party's Group (other than the Party);
- 1.2 **"Auction Code"** means the terms and conditions governing the basis on which the Primary Shipper will qualify applicants to Bid in and upon which it will administer any Auction, as amended from time to time;
- 1.3 **"Auction Documents"** means the Auction Code and any other documents exchanged between any of Customer, the Operator or the Primary Shipper pursuant to the requirements of the Auction Code or otherwise in connection with the Auction;
- 1.4 **"Auction Site"** means the Dragon LNG website i.e. <http://www.dragonlng.co.uk> as amended from time to time;
- 1.5 **"Bid"** means the terms of the final offer submitted by a bidder in an Auction in respect of Unused Capacity that is sold via such Auction;
- 1.6 **"Confidential Information"** means all information which the Disclosing Group discloses to the Recipient Group in connection with the Purpose whether in written, electronic or any other form of medium in which such information may be kept, or in the course of any oral or written communications in relation to the Purpose, including but not limited to:
- 1.6.1 technical, contractual and commercial data and information relating to the Purpose including certificates, data, maps, models and interpretations;
  - 1.6.2 all information relating to the strategy, financial or commercial affairs of any member of the Disclosing Group;
  - 1.6.3 all information relating to operations at the Facility, including the scheduling, berthing, unloading and vacation of vessels at or from the Facility;
  - 1.6.4 all notes, reports, reviews and analyses generated by or on behalf of the Recipient Group to the extent that the Recipient Group incorporates into such notes, reports, reviews and analyses information referred to in sub-clauses 1.6.1 to 1.6.3 above; and
  - 1.6.5 this Agreement, the Auction Documents, the Throughput Agreement and the Contract and the existence, nature and status of the discussions between the Parties and their respective Groups concerning the Purpose and the existence, nature and status of any documents created in relation thereto,
- except:
- (A) any information that is already in the public domain or comes into the public domain otherwise than as a result of breach of this Agreement; and
  - (B) already lawfully known to the Recipient at or before the time at which such Confidential Information is disclosed to the Recipient by the Disclosing Party other than as a result of breach of this Agreement.
- 1.7 **"Day"** means a period starting at 06:00 on any day and ending at 06:00 on the next day;
- 1.8 **"Disclosing Group"** means the Disclosing Party and any member of its Group;

- 1.9 **"Disclosing Party"** means, in relation to any information, a Party who discloses such information under this Agreement (whether itself or through a member of its Group);
- 1.10 **"EC Directive"** means the directive entitled "Directive 2003/55/EC of the European Parliament and of the Council" as may be amended, restated or replaced from time to time;
- 1.11 **"Exemption"** means any present or future exemption in respect of the Facility that the Operator has the benefit of that exempts the Operator (in whole or in part) from complying with any of the principles as contemplated by Articles 18, 25(2) and/or 25(4) of the EC Directive or any applicable law that implements such articles.
- 1.12 **"Group"** means in relation to a Party, the group of companies and corporations from time to time comprising that Party and its ultimate Holding Company and all Subsidiaries of that Holding Company and **"Member of that Party's Group"** shall be construed accordingly provided that Dragon LNG Group Limited (and its subsidiaries, including the Operator) shall not be deemed to be a Member of a Primary Shipper's Group and Dragon LNG Group Limited shall be deemed to be the ultimate Holding Company of all of its Subsidiaries (including the Operator) and shall not be deemed to be Subsidiaries of a Primary Shipper or of a Holding Company or Subsidiary of a Primary Shipper;
- 1.13 **"Holding Company"** means a holding company within the meaning of section 736 of the Companies Act 1985;
- 1.14 **"Inter Base Customer Agreement"** means the agreement to be entered into between BG International Limited and PETRONAS Energy Trading Limited in relation to the co-ordination and fulfilment of their joint obligations under the Throughput Agreement;
- 1.15 **"Inter Toller Agreement"** means the agreement to be entered into between BG International Limited, PETRONAS Energy Trading Limited and Dragon LNG Limited and any future long term customer of Dragon LNG Limited, in relation to the allocation of risks and liabilities between the customers of Dragon LNG Limited pursuant to their use of the Facility.
- 1.16 **"Lenders"** means any banks and/or other financial institutions, any agent or trustee for any such persons and any interest rate swap counterparty from time to time issuing, providing or otherwise directly or indirectly participating in the financing by, or on behalf of, the Operator of any element of the engineering, procurement, construction, commissioning, ownership, operation and/or maintenance of the Facility (or any part thereof), and any refinancing thereof, including any modifications, supplements, extensions, renewals and replacements of any such financing or refinancing, including (i) any working capital facility provider, and (ii) any letter of credit issuer (where such letter of credit is issued on behalf of the Operator) in support of any such financing or refinancing;
- 1.17 **"Member of that Party's Group"** has the meaning given to it in the definition of Group;
- 1.18 **"Other Base Customer"** means any person (including the Primary Shipper) to whom the Operator is providing services for the receipt, storage, processing and regasification of LNG at or from the Facility under an agreement which gives such person a right to a share of the nameplate capacity of the Facility for a period of at least 5 years;
- 1.19 **"Other Customer"** means any Other Base Customer(s) and any Short Term Customer(s);

- 1.20 **"Recipient"** means, in relation to any information, the Party who receives such information under this Agreement (whether directly to itself or through a member of its Group);
- 1.21 **"Recipient's Group"** means the Recipient and any member of its Group;
- 1.22 **"Short Term Customer"** means any person with whom the Operator has entered into an agreement for the provision by the Operator of services for the receipt, storage, processing and regasification of LNG at or from the Facility but excluding the Customer, any Other Base Customer and any person who is a sub-lessee of an Other Base Customer;
- 1.23 **"Subsidiary"** means a subsidiary within the meaning of section 736 of the Companies Act 1985;
- 1.24 **"Unused Capacity"** means any delivery slot (together with any associated storage and send out capacity):
- 1.24.1 to which a Primary Shipper is entitled;
- 1.24.2 in respect of which the Primary Shipper has not allotted a vessel [12 Days] prior to day on which the relevant Delivery Slot is scheduled to be made available to the Primary Shipper; and
- 1.24.3 which the Primary Shipper is offering to third parties via an Auction, as contemplated by the Auction Code, in order to comply with applicable law.
- 1.25 All references to a person include, where the context admits, a body corporate, partnership and unincorporated association of persons.
- 1.26 References to clauses and sub-clauses are to clauses and sub-clauses in this Agreement.
- 1.27 References to the words **"include"** or **"including"** shall be deemed to be qualified by a reference to "without limitation".

## **2. CONFIDENTIALITY OBLIGATIONS**

- 2.1 In consideration of the Disclosing Group allowing the Recipient access to Confidential Information for the Purpose, the Recipient agrees to keep the Confidential Information it receives from the Disclosing Group strictly confidential in accordance with the following terms:
- 2.1.1 The Recipient agrees to use the Confidential Information solely for the Purpose and agrees to keep the Confidential Information, its interest therein and its discussions with Disclosing Group in connection with the Purpose strictly confidential and secure and, subject to sub-clauses 2.1.2 and 2.1.3 below, not to disclose the same to any person in any manner whatsoever (including by means of photocopy or other reproduction) without the prior written consent of the Disclosing Party.
- 2.1.2 The Recipient may disclose the Confidential Information without the prior written consent of the Disclosing Party to the extent that such Confidential Information is required to be disclosed:

- (1) by any order of any court of competent jurisdiction or any competent judicial, governmental, regulatory or supervisory body;
- (2) by the rules of any listing authority, stock exchange or any regulatory or supervisory body (including the Panel on Takeovers and Mergers) with which any Member of the Recipient's Group is bound to comply;
- (3) by the laws or regulations of any country with jurisdiction over the affairs of any Member of the Recipient's Group;
- (4) in connection with the commencement, pursuit or defence by the Recipient of any legal proceedings to which any Confidential Information is relevant; or
- (5) to any bank or financial institution from which any Party or Member of that Party's Group is seeking or obtaining finance or that is advising it on financial matters and its advisors;
- (6) to any Expert or arbitrator appointed under this Agreement, the Throughput Agreement, the Inter Base Customer Agreement, the Inter Toller Agreement or the Contract;
- (7) where required or requested to do so by any competent authority in relation to any Exemption; or
- (8) in the case of the Primary Shipper, to the Operator, and any Other Customers to the extent that such disclosure is necessary for operational purposes, for the Primary Shipper to comply with its obligations under the Throughput Agreement, the Inter Toller Agreement or the Inter Base Customer Agreement.

2.1.3 The Recipient may also disclose the Confidential Information without the prior written consent of Disclosing Party to any member of the Recipient's Group and to Recipient's employees, professional advisers, contractors, sub-contractors, sub-lessees, assignees and insurers, who have a clear need to access it for the purposes of evaluating, advising or performing for the benefit of, or on behalf of, the Recipient in relation to the Purpose.

2.1.4 Prior to making any disclosure of Confidential Information as permitted under sub-clause 2.1.3 above, the Recipient will procure that the proposed recipient of such Confidential Information is made aware of the terms of this Agreement and the Recipient will procure that each such proposed recipient adheres to those terms as if they were a party to this Agreement.

2.1.5 The Recipient shall use or permit the use of the Confidential Information only for the purpose of evaluating, advising or performing in accordance with the Purpose and not for any other purpose.

### **3. NO REPRESENTATION OR WARRANTIES**

- 3.1 Customers should be aware that the Auction Site is provided on an "as is", "as available" basis and the Primary Shipper and the Operator make no representations and exclude any warranty, express or implied as to the availability, quality, accuracy, timeliness, completeness, non-infringement, performance or fitness for a particular purpose of the Auction Site. In particular:
- 3.1.1 the Primary Shipper and the Operator do not make any representation or warranty that:
- (A) access to the Auction Site will be free from infection by viruses or anything else that has contaminating or destructive properties; and
  - (B) access to the Auction Site and participation in any Auction (including the submission of Bids) will be secure, uninterrupted and free of errors or free of downtime, outages or technical problems that may hinder the efficacy of a Bid or any Auction.
- 3.1.2 all such terms which would otherwise be implied into the Auction Site, Auction Code or Auction are hereby excluded to the fullest extent permitted by law; and
- 3.1.3 the Customer warrants that it has not and will not rely on any representations made by the Primary Shipper or the Operator or any of their advisers, directors or employees which have not been expressly stated in the Auction Code.
- 3.2 The information provided by the Primary Shipper and the Operator under or in connection with the Auction Site, Auction Code or an Auction, does not purport to be comprehensive. While this information has been prepared in good faith, neither the Primary Shipper nor the Operator or any of their advisers, directors or employees gives any warranties and such parties make no representations, express or implied, or accept any liability or duty of care as to the accuracy or completeness of the information provided, written or oral.
- 3.3 None of the Primary Shipper nor the Operator or any of their respective personnel shall be liable or otherwise assume any responsibility or accept any duty of care to any third person in connection with the Auction Site, Auction Code or Auction or otherwise in relation to the Facility, except as may be expressly set out in any final and binding agreement entered into between any of the Parties in relation to the Purpose, and subject to such limitations as may be set out therein.
- 3.4 Nothing said or done by the Primary Shipper or the Operator under or in connection with the Auction Site, Auction Code or Auction (including any guidance on or interpretation of the Auction Site, Auction Code or Auction provided by the Primary Shipper or the Operator) shall give rise to any obligation on the part of the Primary Shipper or the Operator towards any person in relation to the Auction Site, Auction Code or Auction.

#### **4. EQUITABLE REMEDIES**

The Parties agree that damages would not be an adequate remedy in respect of any breach of the provisions of Clause 2 (Confidentiality Obligations) and that injunctive, specific performance or other equitable relief shall be available in respect of any breach or anticipated breach of Clause 2.

#### **5. GENERAL**

- 5.1 The obligations of confidentiality herein shall terminate five (5) years from the date of expiry or, if earlier, withdrawal from, or termination of, the LNG Throughput Agreement dated 3 December 2008 between, *inter alia*, the Operator and the Primary Shipper.
- 5.2 No amendments, changes, modifications or waivers to this Agreement shall be valid, except if the same are in writing and signed by all Parties.
- 5.3 This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same agreement and any Party may enter into this Agreement by executing a counterpart.
- 5.4 The members of a Party's Group may enforce the terms of this Agreement expressed to be for its benefit subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 as if each of them was a party to this Agreement.
- 5.5 Subject to clause 5.4, a person (a "**Third Party**") who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Act**") to enforce any term of this Agreement notwithstanding that any such term may purport to confer or may be construed as conferring a benefit on such Third Party. The foregoing provisions of this clause 5.5 shall not affect any right or remedy of such Third Party which exists or is available apart from the Act.
- 5.6 This Agreement shall be binding upon and enure for the benefit of the undersigned Parties, their successors and permitted assigns provided that this Agreement may not be assigned without the written consent of all Parties (such consent not to unreasonably withheld or delayed) provided that the Operator may transfer or charge any of its rights or obligations under this Agreement to its Lenders by way of security, without the consent of the other Parties.
- 5.7 Nothing herein shall be construed (i) as creating any partnership, joint venture, or similar relationship between the Parties or (ii) as creating any obligation on the Parties to perform any work or to enter into any agreement or business arrangement with any other Party in connection with the Purpose or otherwise.
- 5.8 The Customer acknowledges that all copyright, trade marks, and other intellectual property rights in and relating to the Auction Site are owned by the Operator; its agents or contractors; or its or their third party licensors. The Customer agrees not to use any of such intellectual property rights nor any data or information generated or derived from the Auction Site, except to the extent necessary to participate in any Auction in the manner anticipated in the Auction Code.
- 5.9 Nothing in this Agreement is intended to commit the Operator and/or Primary Shipper to selling unused slots or other capacity at the Facility via an Auction and the Operator and Primary Shipper remain free to sell unused slots or other capacity by any other means.

## **6. GOVERNING LAW**

- 6.1 This Agreement (and any non-contractual disputes arising out of, or in connection with, it) shall be governed by and construed in accordance with English law.

## **7. ARBITRATION**



7.1 Any dispute, claim or controversy arising out of or in connection with this Agreement (including a dispute, claim or controversy relating to any non-contractual obligations arising out of or in connection with this Agreement) shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference into this clause.

7.2 The language of the arbitration shall be English and any award shall be written in the English language. The seat, or legal place, of the arbitration shall be London, England. The arbitral tribunal shall comprise three arbitrators each of whom shall be directly appointed by the London Court of International Arbitration.

**AS WITNESS** the hands of the Parties (or their duly authorised representatives) on the date which first appears in this Agreement.

SIGNED by

For and on behalf of

[BG International Limited / PETRONAS Energy Trading Limited] (Please delete either BG or PETRONAS Energy Trading Limited)

.....

SIGNED by

For and on behalf of

Dragon LNG Limited

.....

SIGNED by

For and on behalf of

[insert name of Customer]

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