

**DATED \_\_\_\_\_ 2024**

**DEUTSCHE ENERGY TERMINAL GMBH**

**as**

**Operator**

**AND**

**The Users**

**TERMINAL INTER-USER AGREEMENT**

**FOR**

**FLOATING LNG IMPORT TERMINAL IN THE PORT OF WILHELMSHAVEN (WHV01)**

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**THIS TERMINAL INTER-USER AGREEMENT** is made on \_\_\_\_\_ 2024 (the "**Effective Date**")

**BETWEEN:**

- (1) **DEUTSCHE ENERGY TERMINAL GMBH**, a company incorporated under the laws of Germany whose registered office is at Breite Strasse. 3, 40213 Düsseldorf, Germany ("**Operator**"); and
- (2) The Users (as defined below) set out in Schedule 2 (*List of Users*).

**RECITALS:**

- (A) The German Federal Government has chartered several floating storage and regasification units in order to enable LNG flows into Germany. Operator has been tasked by the German Federal Government to operate the LNG import terminal in Wilhelmshaven (WHV01), Germany, and to maximise the utilisation of the Terminal capacity in order to meet the legislative requirements of § 3 sentence 3 of the LNG Acceleration Act.
- (B) The General Terms and Conditions for Floating LNG Import Terminal in the Port of Wilhelmshaven (WHV01) ("**GTCs**") which are incorporated by reference into each User's Terminal Use Agreement in respect of the Terminal ("**TUA**") require that each User of the Terminal becomes a party to and is bound by the terms of this Agreement as a condition to the effectiveness of its TUA. Each TUA for the Terminal consists of specific terms that govern the commercial arrangement between Operator and the relevant User and incorporates the GTCs, which are identical for all TUAs for the Terminal.
- (C) User wishes to receive LNG unloading, storage and regasification services from Operator at the Terminal, in accordance with the terms of a TUA entered into between Operator and such User.
- (D) Operator and each User set out in Schedule 2 (*List of Users*) ("**User**") have executed this Agreement on the Effective Date in fulfilment of the requirement under each such User's TUA that such User becomes a Party to this Agreement.
- (E) New Users may, from time-to-time, desire to receive LNG unloading, storage and regasification services from Operator at the Terminal, in accordance with the terms of a TUA to be entered into between Operator and such New User.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 GTC Definitions**

Capitalised terms used but not defined in this TIUA shall have the meanings given in the GTCs.

**1.2 Definitions**

"**Accession Date**" means, in respect of any New User which executes a TIUA Accession Agreement, the effective date of such TIUA Accession Agreement.

"**Agreement**" means this Terminal Inter-User Agreement, including all Schedules hereto, as the same may be amended, supplemented, restated or otherwise modified from time to time.

"**B&L Schedule**" has the meaning given in Clause 4.4.1.

"**Borrowed Inventory Quantity**" has the meaning given in Clause 4.3.2.

"**Borrower User**" has the meaning given in Clause 4.3.1.

"**Cancelled Gas Compensation**" has the meaning given in Clause 7.2.2.

"**Cargo Credit Support Deadline**" means the date which is the earlier of seven (7) Business Days prior to the first day of the relevant Reference Period or twenty (20) days prior to the day on which the User's relevant Unloading Slot is scheduled to commence (or, in respect of a Cargo where the Unloading Slot and corresponding Capacity are allocated to the User after this deadline, within two (2) Business Days of the Unloading Slot and corresponding Capacity being allocated to the User).

"**Cargo LC**" means an irrevocable standby letter of credit in substantially the form set out in Schedule 3 (*Form of Cargo Letter of Credit*), or in such other form acceptable to Operator (acting reasonably).

"**Compensation Event**" has the meaning given in Clause 7.1.1.

"**Defaulting User**" has the meaning given in Clause 7.1.1.

"**Deferred Gas Compensation**" has the meaning given in Clause 7.3.2.

"**Disputing Parties**" means any Parties to a Dispute.

"**Effective Date**" has the meaning given in the Preamble to this Agreement.

"**Impacted User**" has the meaning given in Clause 7.1.1.

"**Lender User**" has the meaning given in Clause 4.3.1.

"**New User**" means a Person that has acceded to this Agreement after the Effective Date by entering into a TIUA Accession Agreement.

"**Parties**" means Operator and each User listed in Schedule 2 (*List of Users*), and "**Party**" means any one of them.

"**Replenishment of Minimum Inventory Compensation**" has the meaning given in Clause 7.4.2.

"**Rescheduled Cargo Compensation**" has the meaning given in Clause 7.5.1.

"**Rescheduled Cargo Compensation Notification**" means a notification issued by Operator to a Defaulting User pursuant to Clause 7.5.2 detailing the compensation to be paid to one or more Rescheduling Users.

"**Rescheduling User**" has the meaning given in Clause 7.5.1(b).

"**Sale Transaction**" has the meaning given in Clause 6.1.1(b).

"**Term**" has the meaning given in Clause 2.1.

"**TIUA Accession Agreement**" means the agreement substantially in the form set forth in Schedule 1 (*Form of TIUA Accession Agreement*) to be entered into by Operator and a Person which becomes a Party to this Agreement as a User in accordance with Clause 3.

"**TIUA Event of Default**" has the meaning given in Clause 10.1.

"**User**" has the meaning given in Recital (D).

"User Invoice" has the meaning given in Clause 5.1.

### 1.3 Interpretation

The provisions of GTC 1.2 shall be deemed to be incorporated by reference into this Agreement.

## 2. TERM AND EFFECTIVENESS OF AGREEMENT

### 2.1 Term

The term (the "**Term**") of this Agreement will commence in respect of a User on the Effective Date of such User's TUA and will terminate on the date of termination of such User's TUA.

### 2.2 New Users

2.2.1 In respect of a New User, this Agreement shall become effective on the date such New User becomes a Party to this Agreement by executing a TIUA Accession Agreement.

2.2.2 Operator shall provide each existing Party to this Agreement with as much advance notice of the impending accession of a new Party to this Agreement as is reasonably practicable.

## 3. TIUA ACCESSION MECHANISM

### 3.1 General Provisions

Operator shall not provide Services in respect of the Terminal to any User, and no User shall be entitled to receive Services from Operator, unless and until such User shall have met the requirements set forth in this Clause 3. Subject to Clause 3.2, this Agreement shall benefit and bind the Parties, their permitted assignees and their respective successors, and shall be valid and binding on all Parties notwithstanding the addition or substitution of any Party.

### 3.2 Requirement for TIUA Accession Agreement

3.2.1 Operator shall not provide Services to any New User, and no New User shall be entitled to receive Services from Operator, unless and until such New User shall have entered into a valid TIUA Accession Agreement, under which it agrees to be bound by the provisions of this Agreement and has delivered (or caused to be delivered) an executed copy of such executed TIUA Accession Agreement to Operator.

3.2.2 Upon a New User's execution of a valid TIUA Accession Agreement in accordance with Clause 3.2.1, Operator shall update Schedule 2 (*List of Users*) to include such New User and Operator shall promptly issue a revised Schedule 2 (*List of Users*) to all Users.

3.2.3 A Person who executes a TIUA Accession Agreement agrees to benefit from and be bound by the terms of this Agreement, and such Person shall thereby become a Party to this Agreement on and from the applicable Accession Date.

3.2.4 Each Party agrees to be bound by this Agreement with respect to all other Parties, including any new Parties (including New Users) substituted or added pursuant to this Clause 3, notwithstanding the substitution or addition of any new Party (including New Users).

3.2.5 Each Party irrevocably appoints Operator as its attorney-in-fact for the execution of the TIUA Accession Agreement and releases Operator from the restrictions of Sec. 181 (both alternatives) of the German Civil Code.

### 3.3 **No User Approval Rights in Respect of New Users**

No User shall, by virtue of any right under this Agreement, have any right to approve, deny or otherwise consent to, or interfere with, Operator's entry into a TUA and its provision of Services under a TUA to any Person or any related accession by such Person to this Agreement, provided that such Person complies with the express requirements for a New User.

### 3.4 **Relationship to Terminal Use Agreements**

Nothing in this Agreement is intended or should be construed to expand or modify the Services to be provided by Operator pursuant to a User's TUA, including a User's Capacity or entitlement to Unloading Slots pursuant to the User's TUA.

## 4. **BORROWING AND LENDING**

### 4.1 **Scope of Compulsory Borrowing and Lending**

Each User shall be subject to compulsory lending of its Available Inventory to other Users with Capacity in the same Reference Period, and each User shall be entitled to borrow (by requiring other Users to so lend on a compulsory basis) from the Available Inventory of other Users with Capacity in the same Reference Period, subject to the conditions set forth in this Clause 4. In order to facilitate the provisions of this Clause 4, Operator shall from time to time calculate and notify to all Users the aggregate Available Inventory of all Users with Capacity in the relevant Reference Period.

### 4.2 **Compulsory Lending Obligation Criteria**

Each User may be required to lend a portion of its Available Inventory for the purposes of enabling continuous send-out of Regasified LNG during a Reference Period at the Reference Regasification Rate to all Users with Capacity in such Reference Period.

### 4.3 **Borrowing Entitlement**

4.3.1 With respect to any day during a Reference Period, a User (the "**Borrower User**") shall be entitled to borrow from the Available Inventory of each other User with capacity during such Reference Period (each a "**Lender User**"), an aggregate amount equal to the amount of:

(a) the Borrower User's entitlement to Gas send-out pursuant to its TUA;

*in excess of*

(b) the Borrower User's Available Inventory.

4.3.2 The aggregate of such quantities so lent by a Lender User to a Borrower User shall constitute the "**Borrowed Inventory Quantity**". The Borrowed Inventory Quantity shall be made physically available to a Borrower User in increments for each day of a Reference Period on an as-required basis only for Gas send-out actually delivered for the account of the Borrower User on such day in such Reference Period. The deduction of the Borrowed Inventory Quantity from the Available Inventory of a Lender User shall occur at the moment of delivery of Gas for the account of a Borrower User at the Gas Delivery Point.

4.3.3 A Borrower User shall not be entitled to borrow any Borrowed Inventory Quantity pursuant to Clause 4.3.1 in excess of the quantity necessary to ensure that the Borrower



User receives Gas at the Reference Regasification Rate in respect of any day in a relevant Reference Period.

#### 4.4 **Borrowing and Lending Schedule**

4.4.1 By not later than the day which is forty-five (45) days prior to each Reference Period, Operator shall publish a schedule (the "**B&L Schedule**") projecting levels of compulsory borrowing and lending during such Reference Period based upon:

- (a) the assumption that the estimated quantity of LNG (in MWh and m<sup>3</sup>) that any User is scheduled to deliver to the Terminal during such Reference Period based on the Annual Program will be unloaded as of a time that is thirty-six (36) hours after the end of the applicable Scheduled Arrival Window;
- (b) the assumption that Gas will be sent out during such Reference Period at the Reference Regasification Rate; and
- (c) other reasonable assumptions relevant to the projection of the amount of inventory borrowing likely to be necessary and possible, *provided that*, any such assumptions may be of a different type or nature from, but shall not contradict: (i) the assumptions set forth in this Clause 4.4.1; (ii) any other provision of this Agreement or (iii) any other provisions of a User's TUA.

4.4.2 The B&L Schedule shall identify, for each User with Capacity in the relevant Reference Period, the portion of such User's Gas deliveries that is expected to be supplied by borrowed LNG, and shall identify, for each User, for each Gas Day during such Reference Period, the portion of its Available Inventory that is projected to be lent to another User on such Gas Day.

4.4.3 Operator may revise the B&L Schedule from time to time as required to reflect operational developments at the Terminal. After the day which is seven (7) Business Days prior to the start of the relevant Reference Period, until the end of the relevant Reference Period, the B&L Schedule prepared pursuant to Clauses 4.4.1 and 4.4.2 (as may previously have been revised) shall be revised by Operator on a daily basis including, during the relevant Reference Period, to reflect LNG unloaded and actual daily Gas deliveries (as compared to Nominations or the Reference Regasification Rate).

4.4.4 Subject to Operator's rights pursuant to GTC 5.12, Operator may not deliver an amount of Gas to a User in excess of the Reference Regasification Rate for such Gas Day unless it has received the written consent of all other Users with Capacity in such Reference Period which are forecast in the prevailing B&L Schedule to be borrowers of LNG during the relevant Reference Period.

4.4.5 No User shall transfer any quantity of LNG that has been identified in the B&L Schedule as being subject to compulsory lending, if the effect of such transfer would be to reduce the amount of compulsory lending to Users other than the transferor and the transferee during the relevant Reference Period.

#### 4.5 **Time Limits and Method of Repayment**

4.5.1 A Borrower User shall repay any Borrowed Inventory Quantity either in-kind during the same Reference Period or in cash, subject to the provisions of this Clause 4.5 and Clause 4.6.1. Unless the relevant Lender User(s) and Borrower User(s) agree otherwise, repayment shall be made in-kind during the same Reference Period.

- 4.5.2 Where repayment of any Borrowed Inventory Quantity is to be made in-kind, the first portion of the next Cargo delivered to the Terminal by, or for the account of, the Borrower User shall immediately upon unloading at the LNG Receipt Point be credited to the relevant Lender User and shall reduce the Borrower User's Borrowed Inventory Quantity until such quantity is reduced to zero (0). Any repayment in-kind shall be made by way of delivery of a corresponding quantity of LNG (in MMBtu), but such repayment need not be of the same molecules or the same composition of the LNG so lent; *provided* that any such repayment in-kind must consist of LNG that meets the LNG Specifications, as set forth in the GTCs.
- 4.5.3 Subject to Clause 4.5.4, a Borrower User shall be in default of its obligation under this Clause 4.5 if the repayment Cargo is a Firm Cargo or a Confirmed Cargo and (subject to GTC 5.11.2) it has not been unloaded by the later of: (i) the end of the relevant Scheduled Arrival Window; or (ii) the expiration of Allowed Unloading Time (as defined in such Borrower User's TUA) with respect to such Cargo.
- 4.5.4 Where the affected Users agree that the repayment of any Borrowed Inventory Quantity is to be made in cash, the amount of such payment for each day shall be calculated based on the THE DA Price for such day and the quantity of such Borrowed Inventory Quantity borrowed on such day.

#### 4.6 **Additional Borrowing and Lending Terms**

- 4.6.1 All compulsory lending and borrowing transactions shall be subject to the following provisions:
- (a) a Borrower User and any Lender User may agree to repayment in cash (in lieu of repayment in-kind), provided that such repayment in cash does not reduce the amount of borrowing available to Users other than such Lender User and such Borrower User during the relevant Reference Period and does not affect the efficient and safe operation of the Terminal by Operator;
  - (b) a User's rights under this Agreement (but not its obligations) shall be suspended during any period while such User is in default of its obligations to repay borrowing as required by this Agreement;
  - (c) no User shall be entitled to borrow any quantity of LNG that, at the time of the borrowing, is not scheduled according to the, then in effect, Annual Program to be repaid within the same Reference Period; and
  - (d) title to the Borrowed Inventory Quantity shall transfer from the Lender User to the Borrower User at the time of borrowing in accordance with Clause 4.3.1 and title to the LNG used to repay the Borrowed Inventory Quantity shall transfer from the Borrower User to the Lender User at the time of repayment in accordance with Clause 4.5.1.
- 4.6.2 If, by the last day of a Reference Period, a Borrower User has not returned its entire borrowed quantity in-kind, such Borrower User shall settle its repayment obligations in cash, by way of a pro-rata payment to one or more Lender Users, in an amount calculated at the applicable THE DA Price. Upon confirmed receipt of such repayment by the relevant Lender User(s), Operator shall adjust the Inventory Account in respect of the Borrower User to reflect the settlement of the borrowed quantity.

#### 4.7 **Multiple Lender Users**

If there is more than one (1) Lender User, any borrowing shall be apportioned between or among (as applicable) the multiple Lender Users on a pro-rata basis (save where the Reference Regasification Rate determined by Operator requires an apportionment other than a pro-rata basis) based upon the Available Inventory of each Lender User.

#### 4.8 **No Voluntary Borrowing or Lending**

No User shall agree to lend or borrow all or any part of its Available Inventory on a voluntary basis.

### 5. **INVOICING AND PAYMENT**

#### 5.1 **Invoices**

If any amounts are owed by one User to another User pursuant to this Agreement, the non-paying User shall deliver to the paying User an invoice (a "**User Invoice**") setting out any such amounts no later than thirty (30) Business Days of such amount being owed.

#### 5.2 **Payment**

5.2.1 Each User Invoice shall be due and payable not later than ten (10) Business Days after delivery of such invoice.

5.2.2 If the full amount of the User Invoice is not paid when due, the unpaid amount thereof shall bear interest at the Interest Rate plus two percent (2%), commencing on the first day following the applicable due date for payment of such amount and ending on the date that such amount plus interest is finally paid. Section 352 HGB and section 288 para. 2 BGB are excluded for any late payment under this Agreement.

5.2.3 In the event of any disagreement concerning, or any manifest error in, any User Invoice, the paying User shall make provisional payment of the full amount of such User Invoice and shall notify the non-paying User of the reasons for such disagreement. If, after the relevant Dispute is finally resolved by agreement between the relevant Users or pursuant to Clause 12, any amount paid by the paying User to the non-paying User under such User Invoice is required to be returned to the paying User, then the non-paying User shall, within ten (10) Business Days, reimburse to the paying User such amount plus interest thereon at the rate set out in Clause 5.2.2, which shall accrue commencing on the due date for payment of such amount and ending on the date that such amount plus interest is finally reimbursed by the non-paying User to the paying User.

### 6. **INTER-USER GUARANTEE OF CARGO DELIVERY OBLIGATION**

6.1.1 In respect of each Firm Cargo and Confirmed Cargo scheduled to be delivered by an Unrated User during a Reference Period, the Unrated User shall either (in the Unrated User's sole discretion):

- (a) issue, or cause to be issued, in favour of Operator (acting as agent for and on behalf of each other User allocated Capacity during the relevant Reference Period) a Cargo LC meeting the requirements set out in Clause 6.1.3; or

- (b) subject to the approval of Operator, not to be unreasonably withheld, register a sale transaction in favour of each other User allocated Capacity during such Reference Period, pursuant to Clause 6.1.4 (a "**Sale Transaction**").
- 6.1.2 An Unrated User shall issue, or cause to be issued, such Cargo LC or shall register such Sale Transaction, and shall provide reasonable evidence of issuance or registration (as applicable) to Operator no later than:
- (a) in respect of a Firm Cargo, 4pm on the Cargo Credit Support Deadline; and
  - (b) in respect of a Confirmed Cargo, the earlier to occur of:
    - (i) if such Unrated User wishes to notify Operator pursuant to GTC 5.7.1 that it will deliver the Non-Firm Cargo during the relevant Reference Period as scheduled in the Annual Program, the point at which it issues such notification to Operator; and
    - (ii) 4pm on the Cargo Credit Support Deadline.
- 6.1.3 Cargo LC
- (a) The amount of the Cargo LC shall be equal to:
    - (i) the quantity of Regasified LNG from the relevant Cargo to be delivered by the Unrated User which is forecast to be lent by the Unrated User as a Creditor User to other Users as Debtor Users in respect of such Reference Period (which shall exclude any quantity of the Cargo scheduled to be delivered by the Unrated User which is forecast to be allocated to the Creditor User); *multiplied by*
    - (ii) the arithmetic average of the bid and offer prices (expressed in EUR per MWh) for the applicable monthly price(s) for the month or months in which such Regasified LNG is forecast to be lent during such Reference Period, published in the ICIS Heren European Spot Gas Markets Report on the Cargo Credit Support Deadline in respect of the German THE (Trading Hub Europe), provided that if the applicable monthly price(s) are not available in respect of any relevant date, the applicable price in respect of such date shall be the applicable monthly price(s) as last published in the ICIS Heren European Spot Gas Markets Report.
  - (b) A Cargo LC shall be valid until the day that is two (2) Business Days after the last day of the Reference Period, *provided* that Operator shall promptly return the Cargo LC to the Unrated User for cancellation following completion of unloading of not less than ninety-eight percent (98%) of the scheduled cargo quantity of the relevant Cargo in accordance with the Annual Program.
  - (c) If:
    - (i) a Defaulting User is an Unrated User;
    - (ii) such Unrated User has issued a Cargo LC pursuant to Clause 6.1.1(a); and

- (iii) such Unrated User fails to pay under such demand in accordance with the requirements of Clause 5,

then, without prejudice to any other rights under the Defaulting User's TUA, Operator shall be entitled to draw on the Cargo LC of such Defaulting User such amounts as are required to reimburse payments due to any Impacted User.

- (d) If, at any time, the issuer of a Cargo LC is not an Acceptable Financial Institution, the Unrated User shall promptly, and in any event within five (5) Business Days, issue or cause to be issued in favour of Operator (acting for itself and as agent for and on behalf of each other User) a Cargo LC in the full amount required pursuant to Clause 6.1.3(a) from an Acceptable Financial Institution and, upon such replacement Cargo LC becoming effective, Operator shall return the User's original Cargo LC to the User for cancellation.

#### 6.1.4 Sale Transaction

- (a) A Sale Transaction registered by an Unrated User in favour of such other User(s):
  - (i) shall be a multi-day transaction:
    - (A) starting on the first day of the Reference Period during which such Cargo is scheduled to be delivered; and
    - (B) ending on the last day of the Reference Period during which such Cargo is scheduled to be delivered; and
  - (ii) shall be in respect of a total quantity equal to the quantity of the Cargo scheduled to be delivered by the Unrated User which is forecast to be lent by the Unrated User as a Creditor User to other Users as Debtor Users in respect of such Reference Period (excluding any quantity of the Cargo scheduled to be delivered by the Unrated User which is forecast to be utilised by the Creditor User).
- (b) An Unrated User may cancel a Sale Transaction it has registered in respect of a Cargo at any time following completion of unloading of not less than ninety-eight percent (98%) of the scheduled cargo quantity of the relevant Cargo in accordance with the Annual Program. If the Unrated User makes a partial delivery of some but not all of the scheduled cargo quantity of the relevant Firm Cargo or Confirmed Cargo (as applicable), the Unrated User may proportionately amend, or partially cancel, the Sale Transaction to reflect the quantity of LNG actually delivered by the Unrated User in respect of such Cargo, to account for the partial delivery.
- (c) An Unrated User which registers a Sale Transaction shall register and maintain an account with Trading Hub Europe GmbH (or its relevant successor) for the purposes of placing any such Sale Transaction and such Unrated User shall issue and maintain any credit support instrument in the required amount as required by Trading Hub Europe for the purposes of effecting any such Sale Transaction.
- (d) An Unrated User shall indemnify and hold Operator harmless from any inaccuracies, and the consequences of any inaccuracies, in a Sale Transaction registered by the Unrated User caused by any action or inaction (including the

provision of any information) by Operator, except to the extent caused by the wilful misconduct (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*) of Operator.

## 7. COMPENSATION EVENTS

### 7.1 Compensation Events

7.1.1 Each of the events set out in Clause 7.2, 7.3, 7.4 and 7.5 (each a "**Compensation Event**") shall entitle a User impacted by such Compensation Event ("**Impacted User**") to compensation from a User whose default gave rise to such Compensation Event ("**Defaulting User**").

7.1.2 The Parties acknowledge that Operator may undertake one or more actions to mitigate a Failed Cargo Event pursuant to GTC 6.3. To the extent that the Sale Transactions, or any other Operator's actions taken pursuant to GTC 6.3, do not successfully or fully mitigate a Failed Cargo Event, such that an Impacted User is not fully compensated in respect of a Compensation Event (including where the relevant User which is a Defaulting User has failed to comply with its obligations pursuant to GTC 6.2), the Impacted User shall be entitled to liquidated damages pursuant to this Clause 7, which shall be payable pursuant to a User Invoice issued in accordance with Clause 5 from an Impacted User to a Defaulting User, detailing the Compensation Event and demanding payment in accordance with the relevant provision of this Clause 7.

### 7.2 Cancelled Gas

7.2.1 If:

- (a) a Failed Cargo Event in respect of a Defaulting User causes a shortfall in another User's Nomination; and
- (b) such shortfall becomes Cancelled Gas for the purposes of the GTCs,

then any affected User shall be considered an Impacted User and shall be entitled to Cancelled Gas Compensation from the Defaulting User in respect of such Nomination.

7.2.2 "**Cancelled Gas Compensation**" shall be calculated as follows for each day on which the User's Nomination is affected:

$$\text{Cancelled Gas Compensation} = \text{CGCP} \times \text{CGV}$$

Where:

CGCP = (in €/MWh) the THE DA Price on the day on which there is a shortfall in the Impacted User's Nomination; and

CGV = (denominated in MWh) the shortfall (in kWh) in the Impacted User's Nomination on the relevant day, *divided by* 1,000,

*provided that* Cancelled Gas Compensation shall not be less than zero (0).

7.2.3 The Cancelled Gas Compensation payable pursuant to this Clause 7.2 is:

- (a) not intended to replace or remove a Defaulting User's obligation to return any outstanding Borrowed Inventory Quantity; and

- (b) shall be in addition to amounts due to one or more Lender Users in relation to failure to return Borrowed Inventory Quantity, including in circumstances where the Cancelled Gas Compensation and the return of Borrowed Inventory Quantity are made to the same Impacted User.

### 7.3 **Deferred Gas**

#### 7.3.1 If:

- (a) a Failed Cargo Event in respect of a Defaulting User causes a shortfall in another User's Nomination; and
- (b) such shortfall becomes Deferred Gas for the purposes of the GTCs,

then any affected User shall be considered an Impacted User and shall be entitled to Deferred Gas Compensation from the Defaulting User.

#### 7.3.2 "**Deferred Gas Compensation**" shall be calculated as follows for each day on which the User's Nomination is affected:

$$\text{Deferred Gas Compensation} = \text{DGCP} \times \text{DGV}$$

Where:

DGCP = (in €/MWh/day) the THE DA Price on the day on which there is a shortfall in the Impacted User's Nomination *less* the THE DA Price on the day on which the corresponding Deferred Gas is delivered; and

DGV = (denominated in MWh) the shortfall (in kWh) in the Impacted User's Nomination on the relevant day, *divided by* 1,000,

provided that Deferred Gas Compensation shall not be less than zero (0).

#### 7.3.3 The Deferred Gas Compensation payable under this Clause 7.3 is intended to reimburse the Impacted User for any costs incurred due to the reduction of the Impacted User's Nomination below the levels set out in the Annual Program.

#### 7.3.4 For the avoidance of doubt, the Deferred Gas shall be debited to both an Impacted User's and Defaulting User's Available Inventory accounts, as the quantity of Regasified LNG delivered to or for the account of each User at the Gas Delivery Point, pursuant to the User's TUA.

### 7.4 **Replenishment of Minimum Inventory**

#### 7.4.1 If:

- (a) a Failed Cargo Event directly caused by a User causes the quantity of LNG in the Terminal to fall below the Minimum Inventory; and
- (b) the quantity of LNG in the Terminal must be replenished from the next Cargo unloaded by another User at the Terminal in order to maintain the Minimum Inventory,

then, if Operator determines, in its sole discretion, that the affected User delivering the next Cargo is an Impacted User, such Impacted User shall be entitled to Replenishment of Minimum Inventory Compensation from the Defaulting User.

- 7.4.2 **"Replenishment of Minimum Inventory Compensation"** (in Euros) shall be calculated as follows:

$$\text{Replenishment of Minimum Inventory Compensation} = \text{RMICP} \times \text{RMIV}$$

Where:

RMICP = (in €/MWh) the applicable THE DA Price on the day on which the Impacted User's Cargo was used for the purpose of providing the RMIV; and

RMIV = (denominated in MWh) the shortfall (in kWh) created in the tank or tanks of the FSRU being the amount by which the quantity of LNG in the FSRU is lower than the Minimum Inventory *divided by* 1,000.

- 7.4.3 Operator shall, as soon as practicable, issue confirmation of the Replenishment of Minimum Inventory Compensation to both the Impacted User and the Defaulting User, following which the Impacted User shall be entitled to immediately issue an invoice in accordance with Clause 7.1.2.
- 7.4.4 The quantity of LNG equivalent to the RMIV (as defined in Clause 7.4.2 above) shall not be credited or debited to the Impacted User's or Defaulting User's Available Inventory accounts.
- 7.4.5 An Impacted User shall be entitled to recover Replenishment of Minimum Inventory Compensation in addition to any applicable Deferred Gas Compensation or Cancelled Gas Compensation.

## 7.5 **Rescheduled Cargo**

- 7.5.1 If due to a Failed Cargo Event:

- (a) Operator requests a User to reschedule one or more Cargoes; and
- (b) a User is able to reschedule such Cargo(es) (such User being a "**Rescheduling User**"),

then the Defaulting User shall reimburse the Rescheduling User for all reasonable and documented direct costs incurred by the Rescheduling User, to the extent such costs have been pre-approved by Operator, such approval not to be unreasonably withheld, conditioned or delayed, in relation to such rescheduled Cargo ("**Rescheduled Cargo Compensation**").

- 7.5.2 The Rescheduling User shall provide Operator with documents and calculations in support of any amount claimed under Clause 7.5.1, and Operator shall, acting as a Reasonable and Prudent Operator, confirm such amounts and issue a Rescheduled Cargo Compensation Notification to the Defaulting User and each Rescheduling User, which shall include the costs payable to each Rescheduling User by the Defaulting User.

## 8. **LIABILITIES AND INDEMNITIES**

### 8.1 **Inter-User Indemnities**

- 8.1.1 To the extent not compensated pursuant to Clause 7, a User shall indemnify each other User from and against any and all liabilities arising out of a Failed Cargo Event



(including for liabilities arising out of a Mitigation Action taken by Operator under GTC 6.4.2) or a TIUA Event of Default caused by such indemnifying User, provided that the indemnified User has taken all reasonable steps to mitigate such costs.

- 8.1.2 The indemnification by any User of any other User hereunder shall not be limited or reduced in any way by any quantitative limitation on the liability of Operator under the terms of the indemnified User's TUA, nor any quantitative limitation on the liability of the indemnifying User under the terms of its TUA with Operator.
- 8.1.3 Nothing in this Clause 8.1 shall prejudice any right of recourse of any Party, or any defences or rights to limit liability under any Applicable Law. All exclusions and indemnities given under this Clause 8.1 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (statutory or otherwise) of the indemnified Party or any other Person and shall apply irrespective of any claim in tort, under contract or otherwise at law.
- 8.1.4 The rights of each User under this Clause 8.1 shall extend to and include an indemnity in respect of any reasonable legal costs and/or other reasonable costs and expenses incurred by or awarded against them in respect of any claim made or any proceedings instituted against them in respect of any liability hereunder, including any criminal fine or civil penalty, irrespective of whether any such liability is actually incurred or imposed.

## 8.2 **Inter-User Liabilities**

8.2.1 Save in respect of Cancelled Gas Compensation, Deferred Gas Compensation, Replenishment of Minimum Inventory Compensation, Rescheduled Cargo Compensation, or the indemnity pursuant to Clause 8.1.1, a User's liability for Costs or losses to any other User pursuant to this Agreement shall be limited to:

- (a) one million five hundred thousand Euros (€1,500,000) in respect of any event or circumstance or series of related events or circumstances; and
- (b) six million Euros (€6,000,000) in aggregate,

excluding any amount under this Agreement for which the User has already made payment and excluding physical injury and damage to health, body and life.

## 8.3 **No Operator Liability under this Agreement**

8.3.1 Without prejudice to Clause 8.3.2, Operator's rights and obligations under this Agreement are administrative in nature and are intended to ensure the safety and operability of the Terminal. Except to the extent specified under Clauses 3.2, and 6.1.1(a), Operator does not act as agent for and on behalf of any User in exercising its rights and obligations under this Agreement.

8.3.2 Operator's liabilities to a User are exclusively and exhaustively set forth in such User's TUA, and Operator shall have no liability to any User pursuant to this Agreement, including with respect to any amounts owed by one User to another User pursuant to this Agreement except to the extent caused by the wilful misconduct (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*) of Operator and except physical injury and damage to health, body and life.

#### **8.4 Consequential Loss and Relief**

8.4.1 To the greatest extent permitted by Applicable Laws, no Party shall have any liability pursuant to this Agreement for any Consequential Loss, howsoever arising.

8.4.2 Where one Party is required to make payment to the other Parties under this Agreement (including by way of indemnification) such Costs shall exclude any Consequential Loss excluded pursuant to Clause 8.4.1.

#### **8.5 Wilful Misconduct and Gross Negligence**

Notwithstanding anything to the contrary in this Agreement, the limitations on liability in this Agreement shall not apply in the case of wilful misconduct (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*) of the Party relying on the limitation.

#### **8.6 Liquidated Damages**

8.6.1 The Parties acknowledge and agree that it would be impracticable to accurately determine the extent of the loss, damage and expenditure that any Party would have in certain circumstances described in Clause 7 and this Clause 8.

8.6.2 To the extent that any damages required to be paid under this Agreement are liquidated, the Parties acknowledge and agree that such amount represents a good faith genuine pre-estimate of loss and are proportionate to, and fairly reflect, the relevant Party's legitimate interest in enforcing its rights under this Agreement and the extent of the loss or liability which would likely be suffered by the relevant Party because of the other Parties' failure to meet its relevant obligation under this Agreement, including the Federal Republic of Germany's energy demand requirements and the requirement for LNG to be imported into the Federal Republic of Germany for the purposes of energy security.

8.6.3 Accordingly, the Parties have agreed in advance that the payment of such amounts pursuant to Clause 7 and this Clause 8 are a sole and exclusive remedy, and the relevant Party's sole liability for such circumstances.

8.6.4 Each Party acknowledges and agrees that such damages are not a penalty or deterrent, are not unfair, and do not unreasonably disadvantage any Party, and each Party irrevocably waives any right to claim against the other Parties that such damages are not enforceable or to contest the payment of such damages or to claim that such damages constitute a penalty.

#### **8.7 No Double Recovery**

No User shall be entitled to recover more than once in respect of the same loss pursuant to Clauses 7 and/or 8 of this Agreement and/or GTC 6.

### **9. TAXES AND DUTIES**

#### **9.1 Value Added Tax**

The amounts stated to be payable by a Party in this Agreement are exclusive of VAT and sales tax which may be payable. If VAT or sales tax is chargeable on any supply made by a Party in connection with this Agreement, then the Party making the payment for such supply shall pay to the Party receiving the payment, in addition to payment of the amount due, an amount equal to the VAT or sales tax. Any amount of VAT or sales tax payable shall be paid upon

presentation of a valid VAT invoice. For the avoidance of doubt, all supplies made by one Party to the other Parties and which are the subject of VAT or sales tax are invoiced for their full value by the Party making the supply to the Party receiving the supply.

## 9.2 **No Deduction or Withholding**

Each Party shall pay all sums payable by it under this Agreement free and clear of all deductions or withholdings in respect of Withholding Tax unless any applicable tax law requires such a deduction or withholding. If a deduction or withholding of Withholding Tax is so required, then the Party liable to make such payment will pay such additional amount to the other Parties as will ensure that the net amount the other Parties receives equals the full amount which it would have received had the deduction or withholding of Withholding Tax not been required.

## 9.3 **Payment of Tax**

9.3.1 A User shall pay or reimburse Operator for payments made by Operator and shall indemnify, defend and hold harmless Operator from and against, all Taxes (including customs and import duties) levied or imposed by any Governmental Authority, on the User's LNG and Available Inventory, and on the handling, transportation or use of the User's LNG and Available Inventory, which Operator is required to pay or collect under any applicable tax law (other than any fines levied against Operator as a result of Operator's failure to timely pay any amount, to comply with any applicable tax law, or to perform its obligations under this Agreement).

9.3.2 A User shall pay or reimburse other User(s) for payments made by such other User(s) and shall indemnify, defend and hold harmless such other User(s) from and against, all Taxes (including customs and import duties) levied or imposed by any Governmental Authority, on the User's LNG and Available Inventory, and on the handling, transportation or use of the User's LNG and Available Inventory, which such other User(s) is required to pay or collect under any applicable tax law (other than any fines levied against Operator as a result of such other User(s)' failure to timely pay any amount, to comply with any applicable tax law, or to perform its obligations under this Agreement).

9.3.3 Where a Party has been reimbursed under this Agreement by another Party (or Parties) for payments of any Taxes made and the recipient of such reimbursement receives or is entitled to receive a refund in respect of the same Taxes (whether by way of actual receipt, credit, set-off or otherwise), the recipient of such reimbursement shall, within thirty (30) days of receiving such refund, repay, or cause to be repaid, to the other Party (or Parties) a part of the reimbursement of such Taxes equal to the amount of the refund in respect of the same Taxes effectively received or enjoyed, less any reasonable Costs incurred in obtaining the refund, and less any Taxes levied or leviable in respect of that refund and, if such refunds are held by the recipient, plus any interest at the Interest Rate for the time it is held in this way.

## 10. **TIUA EVENTS OF DEFAULT AND TERMINATION**

### 10.1 **TIUA Events of Default**

10.1.1 A non-defaulting Party may notify Operator, and Operator may notify a User, under Clause 10.2.1 of this Agreement upon the occurrence of any of the following events in respect of a User (each a "**TIUA Event of Default**"):

- (a) a User fails to pay any amounts that are due to Operator or any other User and such failure to pay is not cured in full within thirty (30) Business Days after the defaulting User receives notice of such failure;
- (b) a User's aggregate liability under this Agreement has exceeded the relevant amount set out in Clause 8.2.1(b);
- (c) a User commits a material breach of its obligations under this Agreement (including a breach of Applicable Law) and such breach is not capable of being cured;
- (d) an Unrated User fails to comply in any respect with any of the requirements of Clause 6;
- (e) a User commits a material breach of its obligations under this Agreement which is capable of being cured and either:
  - (i) such User has not commenced endeavours to cure such breach within ten (10) Business Days after it receives notice of such breach; or
  - (ii) such breach has not been cured thirty (30) days after the non-defaulting Party gives such User notice of such breach or breaches;
- (f) a User or User's Guarantor:
  - (i) suspends payment of its debts or is generally unable to pay its debts as they fall due;
  - (ii) passes a resolution, commences proceedings or has proceedings commenced against it (which proceedings commenced against it are not stayed within twenty-eight (28) days of service thereof on such User or the User's Guarantor (as applicable)) in the nature of bankruptcy or reorganisation resulting from insolvency, or for its liquidation or for the appointment of a receiver, administrator, trustee in bankruptcy or liquidator of its undertakings or assets;
  - (iii) enters into any composition or scheme or arrangement with its creditors for the forgiveness or forbearance of all or substantially all of its debts;
  - (iv) ceases to carry on its business;
  - (v) enters into any arrangement or composition with creditors generally or any class thereof save in the course of a reconstruction or amalgamation previously approved in writing by Operator;
  - (vi) is placed under official management or the equivalent procedure in its place of organisation; or
  - (vii) is unable or admits inability to pay its debts within the meaning of that expression within the provisions of any enactment governing insolvency in the place where it carries on business;
- (g) a petition is presented or an order is made by any court of competent jurisdiction or other appropriate authority or a resolution is passed for

bankruptcy, dissolution or winding up of a User or User's Guarantor, unless such petition, order or resolution is contested by such User or the User's Guarantor (as applicable) in good faith by appropriate proceedings and is stayed or released within thirty (30) days; and/or

- (h) a liquidator, manager, administrator, receiver or trustee is appointed or the holder of any encumbrance takes possession of all of the undertakings or property of a User or the User's Guarantor (as applicable) or any material part of the undertakings or property of the User or the User's Guarantor (as applicable) and is not paid out or discharged within twenty-eight (28) days unless such appointment or possession is being contested by the User or the User's Guarantor (as applicable) in good faith by appropriate proceedings and is paid out or discharged within forty-five (45) days.

10.1.2 Operator shall promptly notify all Users if a TIUA Event of Default occurs in respect of any User and shall provide reasonable supporting information, to the extent available to Operator, in respect of such TIUA Event of Default.

## 10.2 Termination Notice

10.2.1 If Operator is notified by a non-defaulting Party that a TIUA Event of Default has occurred, or becomes aware of the occurrence of a TIUA Event of Default, in respect of a User, and such TIUA Event of Default (in Operator's sole discretion):

- (a) is not capable of being remedied; or
- (b) has not been remedied within five (5) Business Days of such TIUA Event of Default occurring,

then Operator shall deliver a termination notice to the User in respect of which such TIUA Event of Default has occurred. The termination notice shall specify in reasonable detail the TIUA Event of Default giving rise to the termination notice.

## 10.3 Automatic Termination

10.3.1 This Agreement shall automatically terminate on the earlier to occur of:

- (a) in respect of a User in respect of which a TIUA Event of Default has occurred, the effective date of Operator's termination notice given pursuant to Clause 10.2.1; or
- (b) the date on which a User's TUA expires or is terminated, as applicable, in accordance with the terms of the applicable TUA,

and, as a consequence of such termination, such User's right and obligation to be a Party to this Agreement shall be automatically terminated (without the requirement for notice or any other action by any Party), except for such User's obligation to mandatorily lend its remaining inventory.

10.3.2 Promptly following termination of this Agreement in respect of a User, Operator shall notify the existing Users listed in Schedule 2 (*List of Users*) in writing of such termination; *provided that* any delay or failure by Operator in delivering such notice shall have no effect on the effectiveness or time of such expiry or termination, as applicable, as set forth in this Clause 10.3, and Operator shall have no liability to any User arising out of or relating to any such delay or failure in delivering such

notification, unless such delay or failure was the result of Operator's wilful misconduct (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*).

#### 10.4 **Consequences of Termination**

10.4.1 Following termination of this Agreement in respect of a Defaulting User, the Defaulting User:

- (a) shall remain obligated pursuant to its TUA to make any required payments to Operator;
- (b) shall remain obligated pursuant to this Agreement to make any requirement payments to other Users pursuant to any invoices issued under Clause 5, and shall remain liable for any accrued obligations and liabilities (including obligations to pay damages and indemnification obligations) which have accrued prior to the date of, or which accrue as a result of, such termination; and
- (c) shall remain obligated pursuant to this Agreement:
  - (i) to make its Available Inventory available for borrowing by Impacted Users; and
  - (ii) to timely return any Borrowed Inventory Quantity.

10.4.2 Termination of this Agreement in respect of a User under Clause 10.2 or Clause 10.3 shall not affect the continuing validity of this Agreement as between Operator and each other User.

#### 10.5 **List of Users**

After any User ceases to be a Party to this Agreement (including in the event of any automatic termination pursuant to Clause 10.3.1 or 10.3), Operator shall promptly thereafter issue remove such withdrawing User from the list of Users set out in Schedule 2 (*List of Users*) and issue a revised list of Users set out in Schedule 2 (*List of Users*) to the remaining Users.

#### 10.6 **Events of Default**

Each Party acknowledges and agrees that the TIUA Events of Default do not unreasonably disadvantage any Party, and each Party irrevocably waives any right to bring a claim against the other Parties to contest the effectiveness of any TIUA Event of Default.

#### 10.7 **Survival**

Termination or expiry of this Agreement (including automatic termination pursuant to Clause 10.3) shall be without prejudice to the rights and obligations of the Parties that have accrued on or prior to the date of, or arise in consequence of, such termination or expiry and any rights that are expressed to survive termination.

### 11. **CONFIDENTIALITY AND PUBLIC ANNOUNCEMENTS**

#### 11.1 **Confidentiality**

11.1.1 For the purposes of this Clause 11, whichever of Operator or User(s) is disclosing Confidential Information shall be referred to as the "**Disclosing Party**" and whichever of Operator or User(s) is receiving Confidential Information as the "**Receiving Party**".

- 11.1.2 The Receiving Party agrees to keep the Confidential Information strictly confidential and shall not sell, trade, publish or otherwise disclose the Confidential Information to any Person in any manner whatsoever, including, but not limited to, by means of photocopy or reproduction without the prior consent of the Disclosing Party (such consent not to be unreasonably withheld).
- 11.1.3 The Confidential Information shall not be used by the Receiving Party for any purpose except in connection with the performance of its obligations pursuant to or for the purposes of this Agreement.
- 11.1.4 The Parties acknowledge that Confidential Information is or might be share price-sensitive information and that the use of such information may be regulated or prohibited by Applicable Law including securities laws related to insider dealings and market abuse. Each Party undertakes not to use any Confidential Information for any unlawful purpose.

## 11.2 Permitted disclosures

- 11.2.1 The provisions of this Clause 11 shall not apply to Confidential Information which:
- (a) at the date of this Agreement is or any time thereafter becomes publicly known or available to the public other than through the act or omission of the Receiving Party in breach of this Agreement;
  - (b) is acquired independently by the Receiving Party from a third party that, to the knowledge of the Receiving Party, has the right to disclose such information at the time it is acquired by the Receiving Party (without any obligations of confidentiality);
  - (c) is developed independently by the Receiving Party without reliance on the Confidential Information disclosed by the Disclosing Party and such fact can be reasonably demonstrated by the Receiving Party;
  - (d) is required to be disclosed to any arbitrator or Expert appointed in accordance with Clause 12;
  - (e) is required to be disclosed:
    - (i) by any order of any court of competent jurisdiction or any competent judicial, governmental, regulatory or supervisory body;
    - (ii) in order to comply with the requirements of any Applicable Law; or
    - (iii) by the rules of any relevant stock exchange, the U.S. Securities Exchange Commission, listing authority or any regulatory supervisory body with which the Receiving Party is bound to comply,

*provided* that the Receiving Party shall give notice to the Disclosing Party prior to such disclosure (unless restricted from doing so by any Applicable Law or requirement); or
  - (f) where Operator is the Receiving Party, relates to the identity and details of a User and is required to be disclosed by Operator to other User(s) for purposes of and to the extent required under this Agreement.

11.2.2 Notwithstanding Clause 11.1.2, Confidential Information may, without the Disclosing Party's prior consent, be disclosed by the Receiving Party to the following permitted recipients ("**Permitted Recipients**"):

- (a) the Receiving Party's Affiliates, and its and their directors, officers and employees who have a specific need to know such Confidential Information in order to perform the obligations set forth under this Agreement or to carry out management oversight and corporate governance obligations in relation to the Receiving Party, *provided that*:
  - (i) the Receiving Party shall inform such individuals of the confidential nature of the Confidential Information; and
  - (ii) the Receiving Party's Affiliates, and they and their directors, officers or employees (as applicable), undertake to maintain the confidentiality of such Confidential Information;
- (b) advisors and consultants, including counsel, accountants and other agents, of the Receiving Party and the Receiving Party's Affiliates who have a specific need to know such Confidential Information in order to:
  - (i) assist the Receiving Party to perform the obligations set forth under this Agreement; or
  - (ii) advise management in relation to oversight and corporate governance obligations in relation to the Receiving Party, or otherwise to advise on the rights and obligations of the Receiving Party under this Agreement,  
*provided that* the Receiving Party shall inform such individuals of the confidential nature of the Confidential Information;
- (c) third parties on an aggregated basis to the extent such information is delivered to any such third party for the sole purpose of calculating a published index;
- (d) any bona fide intended assignees of the Receiving Party's interests under this Agreement, *provided that*:
  - (i) such intended assignee has entered into a written confidentiality agreement with the Receiving Party on terms substantially equivalent to those set out in this Clause 11, or otherwise reasonably acceptable to the Disclosing Party;
  - (ii) a copy of that confidentiality agreement has been provided to the Disclosing Party; and
  - (iii) such confidentiality agreement expressly states that the Disclosing Party is an intended third party beneficiary of such agreement with respect to disclosure of Confidential Information, capable of independently enforcing the provisions therein protecting disclosure of such Confidential Information;
- (e) prospective LNG suppliers for the Terminal and potential equity and debt investors in the Terminal, subject to a written confidentiality agreement on



terms substantially equivalent to those set out in this Clause 11, or otherwise reasonably acceptable to the Disclosing Party;

- (f) banks or other credit institutions that are providing or intend to provide financing to either of the Parties or their Affiliates in connection with the Terminal or the FSRU, and advisors of such banks or other credit institutions; and
- (g) competent federal ministries (in particular the Federal Chancellery, the Federal Ministry of Economics and Climate Action and the Federal Ministry of Finance) and their subordinate authorities as well as to parliamentary supervisory bodies or supervisory bodies established by federal law (e.g., the Federal Audit Office).

11.2.3 The Receiving Party shall be responsible for ensuring that all of its Permitted Recipients to whom the Confidential Information is disclosed under this Agreement shall keep such information confidential in accordance with the terms of this Agreement and shall not disclose, divulge or use such Confidential Information in violation of this Agreement. The Receiving Party shall be liable to the Disclosing Party for any breach of this Agreement by the Permitted Recipients of the Receiving Party.

11.2.4 The Disclosing Party warrants that it has the right and authority to disclose the Confidential Information to the Receiving Party. The Disclosing Party, however, makes no representations or warranties, express or implied, as to the quality, accuracy and completeness of the Confidential Information disclosed. The Receiving Party acknowledges that it shall be responsible for the verification of the completeness and/or accuracy of the Confidential Information to its own satisfaction. The Disclosing Party, its Affiliates, and their officers, directors and employees shall have no liability whatsoever with respect to the use of or reliance upon the Confidential Information by the Receiving Party.

### **11.3 Injunction and Equitable Remedies**

The Parties acknowledge that monetary damages may not be a sufficient remedy for any breach of this Clause 11 and that the other Parties may suffer irreparable harm as a result of any such breach. Accordingly, the Parties may seek equitable relief, including injunction and specific performance, as a remedy for any breach or threatened breach of this Clause 11.

### **11.4 Duration**

11.4.1 The Parties shall take, and shall ensure that their respective officers, employees and agents (and those of their Affiliates) take, all reasonable measures to protect Confidential Information concerning or arising from this Agreement after the date of termination or expiry of this Agreement.

11.4.2 The provisions of this Clause 11 shall survive for a period of three (3) years after the termination or expiry of this Agreement.

### **11.5 Press Release**

Any public announcement (including any press release) by a Party directly relating to this Agreement shall only be made with the prior consent of the other Parties. Subject to giving prior notice and, where reasonably practicable, undertaking reasonable consultation with the other Parties, this Clause 11.5 will not prohibit or restrict a Party from making such reference,

comment, disclosure, statements or other announcements as may be required by any relevant stock exchange or by Applicable Law.

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

### **12.1 Governing Law**

This Agreement (including Clause 12.3) and any non-contractual obligation arising out of or in connection with it will be governed by and construed in accordance with the laws of Germany, without reference to any conflict of laws rules or principles. For the avoidance of doubt, the application of the Convention on the International Purchase of Goods and the Conclusion of International Purchase Contracts is explicitly excluded.

### **12.2 Expert Determination**

12.2.1 In the event of a Dispute between any Disputing Parties regarding any technical matter, including matters relating to metering and measurement, the Disputing Parties hereby agree that, upon the request of any Disputing Party, such Dispute shall be submitted to an Expert pursuant to this Clause 12.2.

12.2.2 The Disputing Party desiring the Expert appointment to be made shall notify the other Disputing Parties in writing, specifying details of the matter proposed to be resolved.

12.2.3 The Disputing Parties shall meet in an effort to agree upon a single Expert to whom the matter in dispute shall be referred for determination. If within twenty-one (21) days from the service of such notice the Disputing Parties have either failed to meet or failed to agree upon an Expert, then the matter may be referred forthwith by the Disputing Party desiring the appointment to be made to the DIS which shall be requested to appoint the Expert within thirty (30) days and in so doing may take such independent advice as it deems fit.

12.2.4 Upon an Expert being agreed or selected, the Disputing Parties shall forthwith notify such Expert of his selection and shall request him within fourteen (14) days to state whether or not he is willing and able to accept the appointment.

12.2.5 If such Expert is unwilling or unable to accept such appointment or has not stated his willingness and ability to accept such appointment within the fourteen (14) day period, then (unless the Disputing Parties are able to agree upon the appointment of another Expert) the matter shall again be referred (by any Disputing Party) in the aforesaid manner to the DIS which shall be requested to make a further appointment and the process shall be repeated until an Expert is found who accepts appointment.

12.2.6 No Person shall be appointed to act as the Expert under this Clause 12.2 unless qualified by education, experience and training to determine the matter in dispute.

12.2.7 Any Person appointed as the Expert shall be entitled to act as such Expert, provided that before accepting such appointment he fully discloses to the Disputing Parties any interest or duty and any conflict of interest or potential conflict of interest, including all particulars thereof. If such disclosure has been made, any Disputing Party may require within five (5) Business Days from such disclosure removal of the Expert, stating the reasons for such removal, and such Expert shall be replaced in accordance with this Clause 12.2.

12.2.8 If, at any time prior to the Expert rendering a decision on any matter, a conflict or potential conflict of interest arises, then the Expert will fully disclose the particulars of

such facts to the Disputing Parties. In that event, any Disputing Party may within five (5) Business Days from such disclosure require the removal of the Expert, and a new Expert shall be appointed in accordance with the terms of this Clause 12.2. No Person shall be appointed as an Expert who at the time of appointment is an employee of any Party or of any Affiliate of a Party.

- 12.2.9 The Expert appointed shall make his decision based on data, information and submissions supplied and made to him by the Disputing Parties not later than thirty (30) days after his acceptance of appointment, and he shall ignore data, information and submissions supplied and made after such thirty (30) days unless the same are furnished in response to a specific request from him.
- 12.2.10 If, within a reasonable period (which shall not exceed ninety (90) days after the acceptance by the Expert of his appointment), the Expert has not rendered a decision, then (at the request of any Disputing Party) a new Expert shall be appointed under the provisions of this Clause 12.2 and, upon the acceptance by such new Expert of his appointment, the appointment of the previous Expert shall cease.
- 12.2.11 However, if the previous Expert shall have rendered a decision prior to the date upon which the new Expert accepts his appointment, such decision shall be binding upon the Disputing Parties and the instructions to the new Expert shall be withdrawn.
- 12.2.12 The Expert shall be deemed not to be an arbitrator but shall render his decision as an Expert and the law or legislation relating to arbitrations shall not apply to such Expert or his determinations or the procedure by which he reaches his determination.
- 12.2.13 The determination of the Expert shall be final and binding upon the Disputing Parties, save in the event of fraud, manifest material error or failure by the Expert to disclose any relevant interest or duty in accordance with this Clause 12.2.
- 12.2.14 Each Disputing Party shall bear the costs and expenses of all counsel, witnesses and employees retained by it in connection with the Expert procedure, but the costs and expenses of the Expert shall be apportioned equally between the Disputing Parties.

### 12.3 **Arbitration**

- 12.3.1 Subject to Clause 12.2, any Dispute shall be referred to and finally resolved by arbitration under the DIS Rules (DIS SchO). The DIS Rules are deemed to be incorporated by reference into this Clause 12.3.
- 12.3.2 The number of arbitrators shall be three (3) and shall be appointed in accordance with the DIS Rules and who shall each be fluent in English, familiar with the general principles of German law, and the presiding arbitrator should be experienced in arbitrations conducted under the DIS Rules. The seat, or legal place, of arbitration shall be Wilhelmshaven, and the language to be used in the arbitral proceedings shall be English.
- 12.3.3 The arbitral panel shall issue its reasoned award in writing and is authorised to award costs, legal fees and expenses to the prevailing Disputing Party as part of its award.
- 12.3.4 Any award shall be final, binding and enforceable against the Disputing Parties in any court of competent jurisdiction, and, to the extent permitted by law, the Disputing Parties hereby waive all rights to appeal such award.

12.3.5 If Operator and/or one or more User(s), initiate multiple arbitration proceedings, the subject matters of which are related by common questions of law or fact and that could result in conflicting awards or obligations, then all such proceedings may, subject to the DIS Rules, be consolidated into a single arbitral proceeding.

#### 12.4 **Continued Performance**

Notwithstanding the reference of a Dispute for resolution under the provisions of Clause 12.2 or 12.3, the Parties shall continue diligently to observe and perform their respective obligations and duties under this Agreement as if no Dispute had arisen, except in respect of a Party which has given notice to terminate this Agreement. This Clause 12.4 shall survive termination of this Agreement.

### 13. **REPRESENTATIONS AND WARRANTIES**

#### 13.1 **Representations and Warranties of Users**

13.1.1 As of the Effective Date and until the termination or expiration of this Agreement, each User represents, undertakes and warrants that:

- (a) such User is and shall remain duly formed and in good standing under the laws of its jurisdiction of incorporation and is and shall remain duly qualified to do business in Germany;
- (b) such User has the requisite power, authority and legal right to execute and deliver, and to perform its obligations under, this Agreement;
- (c) such User has not incurred any liability to any financial advisor, broker or finder for any financial advisory, brokerage, finder's or similar fee or commission in connection with the transactions contemplated by this Agreement for which Operator or any of its Affiliates could be liable; and
- (d) neither the execution, delivery nor performance of this Agreement, violates or will violate, results or will result in a breach of; or constitutes or will constitute a default under, any provision of such User organisational documents, any law, judgment, order, decree, rule or regulation of any court, administrative agency or other instrumentality of any Governmental Authority or of any other material agreement or instrument to which such User is a party.

#### 13.2 **Representations and Warranties of Operator**

13.2.1 As of the Effective Date and until the expiration of this Agreement, Operator represents, undertakes and warrants that:

- (a) Operator is and shall remain duly formed and in good standing under the laws of Germany and is and shall remain duly qualified to do business in Germany;
- (b) Operator has the requisite power, authority and legal right to execute and deliver, and to perform its obligations under this Agreement;
- (c) Operator has not incurred any liability to any financial advisor, broker or finder for any financial advisory, brokerage, finder's or similar fee or commission in connection with the transactions contemplated by this Agreement for which User or any of its Affiliates could be liable; and

- (d) neither the execution, delivery nor performance of this Agreement, violates or will violate, results or will result in a breach of, or constitutes or will constitute a default under, any provision of Operator's memorandum and articles of association, any law, judgment, order, decree, rule or regulation of any court, administrative agency or other instrumentality of any Governmental Authority or of any other material agreement or instrument to which Operator is a party.

## 14. MISCELLANEOUS

### 14.1 Notices

14.1.1 Any notice to be given by one Party to the other Parties under or in connection with this Agreement shall be in writing.

14.1.2 Such notice may be served by sending it by e-mail or by delivering it by hand to the following addresses:

**Operator:**

Address: Breite Strasse 3, 40213 Düsseldorf, Germany

Tel No: +49 173 4717 427

E-mail: office@energy-terminal.de

Representative: [●]

And copy to:

PricewaterhouseCoopers Legal AG Rechtsanwaltsgesellschaft  
Alsterufer 1, 20354 Hamburg Germany

E-mail: [●]

**Users:**

As shown for the relevant User in Schedule 2 (*List of Users*).

14.1.3 Any notice so served by hand e-mail or post shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered; and
- (b) in the case of e-mail, when sent to the correct address and no delivery failure notice is received.

14.1.4 A Party may notify the other Parties of a change to its name, relevant addressee, address, or e-mail address and such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five (5) Business Days after the date on which notice is given, the date following five (5) Business Days after notice of any change has been given.

14.1.5 All notices and other documents delivered under or in connection with this Agreement shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

## 14.2 Assignments

14.2.1 No Party shall assign, novate, transfer, or dispose of any of its rights or obligations under this Agreement:

- (a) in the case of a User, without a corresponding assignment, novation, transfer, or disposal of the User's corresponding rights and/or obligations under such User's TUA.
- (b) unless the Person to whom such rights or obligations are to be assigned, novated, transferred, or disposed of has entered into a valid TIUA Accession Agreement, under which it agrees to be bound by the provisions of this Agreement and has delivered (or caused to be delivered) an executed copy of such executed TIUA Accession Agreement to each existing Party to this Agreement.

14.2.2 No transfer of rights and obligations arising under this Agreement shall be effective unless and until:

- (a) the Party transferring its rights and obligations under this Agreement has transferred to the proposed transferee its rights and obligations arising under its TUA, in accordance with the provisions of its TUA; and
- (b) the transfer of this Agreement and the relevant Party's TUA are effective at the same time.

14.2.3 Except as permitted in this Agreement, and except to the extent the same cannot be prohibited pursuant to Applicable Laws, no Party may assign, transfer, charge, encumber or otherwise deal with all or any of its rights and/or obligations under this Agreement, nor grant, declare, create or dispose of any right or interest in it to any person without the prior written consent of the other Parties, such approval not to be unreasonably withheld or delayed. Without this consent, no assignment or encumbrance is effected.

14.2.4 Operator may assign or novate this Agreement without the Users' prior consent to:

- (a) any entity that is controlled by the Federal Republic of Germany, *provided* that if such entity is not wholly owned by the Federal Republic of Germany then User's standard compliance checks which it requires to meet its obligations under Applicable Law (or regulation, or established internal requirement or policy adopted in accordance with these Applicable Laws) of general application to its contractual counterparties shall apply to such entity and its other shareholder; or
- (b) any replacement owner or operator of the Terminal who assumes and undertakes in writing to be bound by Operator's obligations under this Agreement, has the financial resources and technical capability reasonably necessary to operate and maintain the Terminal and perform Operator's obligations under this Agreement, and holds all Authorisations required to be held by Operator under this Agreement which are necessary for the operation

of the Terminal and the provision of services under the TUA when such assignment or novation takes effect.

#### 14.3 **Third Party Rights**

14.3.1 Except as provided in this Clause 14.3, no Person other than the Parties shall have any right to enforce the terms and conditions of this Agreement.

14.3.2 Each Operator Party and User Party may enforce its rights under Clause 8, provided that its rights thereunder may be terminated, amended, supplemented or waived (in each case either in its entirety or in part) without its consent.

#### 14.4 **Costs**

Each Party shall pay its own costs, charges and expenses incurred in connection with the negotiation, preparation and completion of this Agreement.

#### 14.5 **Waivers**

No failure or delay by any Party in exercising any right or remedy provided by any Applicable Law under or pursuant to this Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

#### 14.6 **Amendments**

The provisions of GTC 2.4 shall be deemed to be incorporated by reference into this Agreement, *mutatis mutandis*, and shall apply to any amendments to this Agreement (including if required to comply with a Change in Law or a Change in Tax, or a proposed Change in Law or Change in Tax).

#### 14.7 **Independent Legal Advice**

Each Party confirms that it has received independent legal advice relating to all the matters provided for in this Agreement.

#### 14.8 **Severability**

If and to the extent that any provision (or part of any provision) of this Agreement is held to be illegal, void or unenforceable, such provision (or part of such provision, as applicable) shall be given no effect and shall be deemed not to be included in this Agreement without invalidating any of the remaining provisions of this Agreement. The Parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Agreement not so affected) so as to re-establish an appropriate balance of the commercial interests of the Parties.

#### 14.9 **Entire Agreement**

This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes and extinguishes any agreements, understandings or representations previously given or made with respect thereto. Each Party acknowledges and confirms that it does not enter into this Agreement in reliance on any representations, warranties or other undertaking not fully reflected in this Agreement.

14.10 **Legal relationship**

Nothing in this Agreement constitutes any type of partnership, joint venture or other similar relationship between the Parties.

14.11 **No rescission**

No Party may fully or partly rescind (*zurücktreten*) this Agreement.

14.12 **Further assurance**

Each of the Parties agrees to perform or procure the performance of all further acts and things, and to execute and deliver or procure the execution and delivery of such further documents, (in each case, at their own expense, except as otherwise provided in this Agreement) as may be required by any Applicable Law or as may be necessary to implement and/or give effect to this Agreement and the transactions contemplated by it.

14.13 **Waiver of Sovereign Immunity**

14.13.1 Each Party irrevocably consents generally to relief being given against it in any jurisdiction by way of injunction or order for specific performance or for the recovery of any property whatsoever or other provisional or protective measures and to its property being subject to any process for the enforcement of a judgment or any process effected in the course or as a result of any action in rem.

14.13.2 Each Party irrevocably waives and agrees not to claim any immunity from suits and proceedings (including actions *in rem*) in any jurisdiction and from all forms of execution, enforcement or attachment to which it or its property is now or may hereafter become entitled under the laws of any jurisdiction and declares that such waiver shall be effective to the fullest extent permitted by such laws.



EXECUTED by the Parties:

Signed by  
duly authorised representative  
of / for and on behalf of  
**DEUTSCHE ENERGY TERMINAL GMBH**

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Signed by [●]  
duly authorised representative  
of / for and on behalf of

[●]

---

**SCHEDULE 1**  
**FORM OF TIUA ACCESSION AGREEMENT**

**THIS TIUA ACCESSION AGREEMENT ("TIUA Accession Agreement")** is made on the [●] day of [●], 20[●], by and among:

- (A) **DEUTSCHE ENERGY TERMINAL GMBH**, a company incorporated under the laws of Germany whose registered office is at Breite Strasse. 3, 40213 Düsseldorf, Germany ("**Operator**"), acting in its own capacity and on behalf of each of the other parties to that certain TIUA dated as of \_\_\_\_\_ 2024 by and between itself and the users of the LNG terminal at [●] ("**Users**"); and
- (B) [**NAME OF ACCEEDING PARTY**] ("**Acceding Party**").

This TIUA Accession Agreement is supplemental to the Terminal Inter-User Agreement dated as of [●] by and between Operator and the Users (the "**TIUA**").

Capitalised terms used but not defined in this TIUA Accession Agreement shall have the same meanings as in the TIUA.

For the consideration made and received among the parties and the mutual promises contained in the TIUA, Acceding Party agrees as follows with effect on and from the date of [**insert date of Acceding Party's TUA with Operator**] (notwithstanding that this TIUA Accession Agreement may have been executed at a later date):

1. Acceding Party will be bound by, and have the benefit of, the TIUA (including, for the avoidance of doubt, the arbitration agreement in Clause 12.3 of the TIUA) as a party under the TIUA.
2. By signing this TIUA Accession Agreement:
  - (a) all existing Users expressly agree to perform their respective obligations under the TIUA and be liable to the Acceding Party for any breaches of the TIUA and be bound by the terms of the TIUA; and
  - (b) the Acceding Party expressly agrees to perform all obligations expressed under the TIUA to be assumed by a User (as defined in the TIUA) and be liable to the other Users for any breaches of the TIUA and be bound by the terms of the TIUA.
3. Operator shall provide a copy of this TIUA Accession Agreement promptly to all such other parties to the TIUA.
4. This TIUA Accession Agreement is governed by German law.
5. Any dispute arising out of or in connection with this TIUA Accession Agreement shall be submitted to arbitration in accordance with the terms of Clause 12.3 of the TIUA.

**IN WITNESS WHEREOF**, each of the parties has caused this TIUA Accession Agreement to be duly executed as of the day and year first before written.

**[NAME OF ACCEDING PARTY]**

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

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

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

**DEUTSCHE ENERGY TERMINAL GMBH**, acting in its individual capacity and on behalf of the Users.

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

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

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

**SCHEDULE 2  
LIST OF USERS**

<b>User</b>	<b>Notice Details for the purposes of Clause 14.1.2</b>
[•]	[•]
[•]	[•]
[•]	[•]

**SCHEDULE 3**  
**FORM OF LETTER OF CREDIT**

To: [●]

[Address]

Attention: [●]

Dear Sir/Madam,

1. By order of and for account of [*insert name of applicant*] ("**Applicant**"), we (the "**Issuing Bank**") herewith issue our irrevocable, unconditional Standby Letter of Credit No. [●] (this "**Letter of Credit**") in favour of Operator (acting on behalf of itself and as agent for and on behalf of each other User) ("**Beneficiary**") for an amount of [●] Euros (€[●]) ("**Maximum Amount**"), and for the period commencing on the date of this Letter of Credit and expiring on [●] in Germany ("**Expiry Date**").
2. This Letter of Credit is issued in connection with the Terminal Inter-User Agreement for the Floating LNG Import Terminal in the Port of Wilhelmshaven entered into between Applicant as User and Beneficiary (acting as agent for and on behalf of each other User) dated [insert date] (as amended, modified and supplemented from time to time) ("**TIUA**").
3. We hereby irrevocably authorise you to draw on us from time to time, in accordance with the terms and conditions herein set forth, an amount not to exceed the Maximum Amount less the aggregate amount of all prior payments actually made by us in respect of prior Demand(s) made hereunder (the "**Maximum Available Amount**"). Multiple and partial drawings are allowed under this Letter of Credit.
4. Drawings hereunder shall be made by you by providing to us a notice by courier on your letterhead, signed by your authorised officer to \_\_\_\_\_, Attention: \_\_\_\_\_, Address \_\_\_\_\_, or by authenticated SWIFT to \_\_\_\_\_, Attention: \_\_\_\_\_, SWIFT \_\_\_\_\_, in each case in the form of Annex 1 hereto (the "**Demand**"), with the blanks appropriately completed.
5. Our obligations under this Letter of Credit shall be to pay within three (3) Business Days (as defined below) following the date of the receipt by the Issuing Bank of such Demand, by transferring to the bank account nominated in the Demand, the amount specified in the Demand in immediately available funds, free and clear of any withholding or deduction on account of tax, set-off or counterclaim.
6. Drawings hereunder may be made during the period from the date of this Letter of Credit until the close of business in Wilhelmshaven, Germany on the Expiry Date.
7. As used herein, Business Day means any day other than a Saturday, Sunday or federal public holiday in Germany.
8. This Letter of Credit shall take effect in accordance with its terms, but such terms shall not alter, add to or in any way affect the TIUA to which this Letter of Credit relates. The obligations of the Issuing Bank hereunder shall not be discharged or impaired by reason of any time or other indulgence granted to any party under the TIUA or any other document or by any amendment to, or variation or waiver of, any of the terms of the TIUA or any other document and will be

honoured notwithstanding the winding-up, dissolution, or administration of the Applicant or any other person and irrespective of any invalidity, illegality or unenforceability affecting the TIUA or any other document.

9. This Letter of Credit is transferable to any party certified by us as the successor Operator under the TIUA.
10. This Letter of Credit and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of Germany. The Issuing Bank and the Beneficiary hereby irrevocably agree to settle any disputes which may arise in connection with the creation, validity, effect, interpretation or performance of, or legal relationship established by this Letter of Credit by arbitration on the following terms:
  - (a) the arbitration shall be conducted in accordance with the DIS Rules (DIS SchO) in force at the time of the dispute;
  - (b) the number of arbitrators shall be three (3), and shall be appointed in accordance with the DIS Rules and who shall each be fluent in English, familiar with the general principles of German law, and the presiding arbitrator should be experienced in arbitrations conducted under the DIS Rules;
  - (c) the seat of arbitration shall be Wilhelmshaven, Germany; and
  - (d) the arbitration proceedings shall be conducted, and the award shall be rendered in the English language.
11. The arbitration award shall be final, binding and enforceable upon the Issuing Bank and the Beneficiary and, to the extent permitted by law, the parties hereby waive all rights to appeal such award. The arbitral panel is authorised to award costs, legal fees and expenses to the prevailing party as part of its award.
12. This Letter of Credit is subject to the International Standby Practices 1998 (the "**ISP**"). In the event of any conflict between the laws of Germany and the ISP, the ISP shall prevail.
13. All bank charges and commissions incurred by the Issuing Bank in connection with the issuance or administration of this Letter of Credit (including any drawing hereunder) shall be for the account of Applicant.
14. Communications with respect to this Letter of Credit shall be addressed to us at the above address, specifically referring to the number of this Letter of Credit.
15. This document is the full operative credit instrument and no other advice is required.

By: [\_\_\_\_\_]

[INSERT NAME OF THE ISSUING BANK]

**ANNEX 1 TO Schedule 3**  
**DEMAND UNDER LETTER OF CREDIT NO. [●]**

To: [Issuing Bank]  
Attention: [●]

Dear Sir/Madam,

Reference is made to the Standby Letter of Credit No. [●] dated \_\_\_\_\_ issued by order and for the account of the Applicant in favour of [●], as Beneficiary (the "**Letter of Credit**").

Unless otherwise indicated, all terms used herein which are defined in the Letter of Credit shall bear the same meanings when used herein.

1. We hereby request payment under the Letter of Credit as follows:

[The Applicant has not paid sums owed by it to the Beneficiary (including other users) under the terms of the TIUA and the amount being drawn under the Letter of Credit is € \_\_\_\_\_.]

[The Issuing Bank is not an Acceptable Financial Institution as defined under the TIUA and, as a result, the amount being drawn under the Letter of Credit is €[insert amount up to the Maximum Available Amount].]

2. The amount specified does not exceed the Maximum Available Amount.

3. Please make payment of Euro (€) [●] by transfer to:

Bank [insert relevant details]  
Address [insert relevant details]  
Sort Code [insert relevant details]  
Account Name [insert relevant details]  
Account Number [insert relevant details]

[●]  
By: \_\_\_\_\_  
Name:  
Title: