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FLNG FACILITY CONDITIONS OF USE

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FLNG FACILITY CONDITIONS OF USE

BETWEEN SHELL AUSTRALIA PTY LTD (ACN 009 663 576) (as agent for and on behalf of the Joint Venturers) and the **VESSEL INTERESTS**

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions.

In these Conditions of Use unless a contrary intention appears evident in the text:

“**Company**” means the operator from time to time of the FLNG Facility under the Prelude JOA.

“**Company Personnel**” means the directors, officers, employees, agents and contractors of the Company, including without limitation the FLNG Facility Representative (but not when acting in his capacity as a pilot).

“**Company Property**” means any plant and equipment owned by or under the care and control of the Company.

“**Condensate**” means a mixture of liquid hydrocarbons extracted from Natural Gas composed principally of pentanes and heavier hydrocarbons.

“**Conditions of Use**” means the terms and conditions of this Agreement.

“**Facility Services**” means permitting access to the FLNG Facility and all and any services (with or without goods or other property) of any description (whether compulsory or voluntary) provided or performed (whether or not for consideration) by or on behalf of the Joint Venturers at or on or about the FLNG Facility and its approaches and/or the Vessel, or in the proximity of the FLNG Facility as such area is defined in the FLNG Facility Regulations, directly or indirectly in connection with the production and loading of LNG, LPG or Condensate from the FLNG Facility, including pilotage, pilot transportation, towage, navigation, berthing, mooring, loading, communications, watch or other services, assistance, direction, advice, instruction or other conduct whatsoever (save that towage, pilotage and pilot transportation are the responsibility of Vessel Interests when those services are being provided to the Vessel).

“**FLNG Facility Regulations**” means such rules, procedures, facilities, guides and/or operations manuals issued from time to time by the Company or any applicable Government relating to or in connection with activities in or around the FLNG Facility.

“**FLNG Facility Representative**” means the loading master (being the person who supervises loading operations at and around the FLNG Facility) and any other person nominated by the Company.

“**FLNG Loading Facilities**” means the LNG, LPG and Condensate loading facilities (or all of them) and all associated loading facilities, cranes and other equipment or facilities, owned or controlled by, and operated on behalf of, the Joint Venturers.

“**Government**” means the government of Australia, Western Australia, and any relevant local government authority in Australia that has legal authority over the parties or all or part of the FLNG Facility.

“**Joint Venturers**” means the relevant joint venturers from time to time having an interest in the FLNG Facility pursuant to the Prelude JOA, as amended, and the successors in interest of those joint venturers or the assignee of any interest of those joint venturers.



“**Joint Venturers’ Personnel**” means the directors, officers, employees, agents and contractors of the Joint Venturers.

“**LNG**” means Natural Gas in a liquid state at or below its point of boiling and at or near atmospheric pressure.

“**Master**” means the person so designated in the ship’s official log book on board the Vessel.

“**Natural Gas**” means a naturally occurring mixture of one or more hydrocarbons which normally exist as a gaseous state at 101.325kPa absolute and at a temperature of 15° Celsius and may naturally contain one or more impurities including mercury, sulphur, hydrogen sulphide, mercaptans, nitrogen, helium, carbon dioxide and other gases.

“**Prelude JOA**” means the agreement entitled Prelude Development Joint Operating Agreement entered into between the parties to that agreement.

“**Third Party**” means any person other than the Vessel Interests, the Vessel Personnel, the Company, the Company Personnel, the Joint Venturers and the Joint Venturers’ Personnel but, does not include the Master, pilot, officers and crew of any Vessel.

“**Vessel**” means any vessel at the FLNG Facility and its approaches for the purpose of loading LNG, LPG or Condensate from the FLNG Facility or otherwise using Facility Services.

“**Vessel Interests**” means, jointly and severally, the Vessel, her owners, charterers (time, voyage, demise or otherwise), operators, managers and Master.

“**Vessel Personnel**” means the respective directors, officers and employees (including Master, pilot, officers and crew), agents and contractors of each of the Vessel Interests, and all persons employed engaged or present on a Vessel authorised by the Company to use the FLNG Facility.

1.2 **Interpretation.**

(A) In the Conditions of Use:

- (1) where the context permits, the singular includes the plural and the plural includes the singular;
- (2) a week is seven (7) consecutive days;
- (3) a Day is twenty-four (24) consecutive hours;
- (4) words importing a gender include every gender;
- (5) direction includes any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which the Company may make, give or issue pursuant to the Conditions of Use;
- (6) month means a calendar month;
- (7) person includes any association of persons either incorporated or unincorporated; and
- (8) reference to the word include or including is to be construed without limitation.



- (B) In the Conditions of Use, performance of an obligation of any kind by the Vessel Interests must be carried out at the Vessel Interests' cost unless the Conditions of Use state otherwise.
- (C) If the Company makes any payment or incurs any cost of any kind or otherwise incurs any liability in meeting any obligation of the Vessel Interests pursuant to the Conditions of Use, the payment so made or the cost so incurred becomes a debt then due and owing by the Vessel Interests to the Company.
- (D) Where the Conditions of Use, expressly or impliedly:
 - (1) allow the Company a discretion as to whether or not to do any act or thing of any kind, or as to how it may be done; or
 - (2) confer on the Company a power of determination, or a right of opinion, satisfaction, or the like,that discretion, power, or right is absolute unless the Conditions of Use state otherwise.
- (E) The Company enters into the Conditions of Use as agent for and on behalf of each of the Joint Venturers severally and these Conditions of Use will be read and construed accordingly. Notwithstanding the above:
 - (1) the Vessel Interests agree to deal with the Company in relation to the due performance of the Conditions of Use; and
 - (2) the Company is entitled to enforce the Conditions of Use on behalf of all Joint Venturers. For that purpose the Company may commence proceedings in its own name to enforce all obligations and liabilities of the Vessel Interests and to make any claim which any Joint Venturer may have against the Vessel Interests.
- (F) Tug masters, ship pilots and the crews of tugboats used to convey ship pilots to or from the Vessel are considered as Vessel Personnel from the time of their departure from the normal place of berth or place of waiting to provide ship towage services or ship pilotage services or to render assistance to a Vessel until they complete or discontinue providing those services and have returned to their normal place of berth or place of waiting.
- (G) If the Vessel Interests comprise more than one person or body corporate, the Conditions of Use bind each such person or body corporate (together with their respective successors and permitted assigns) jointly and severally and will be read and construed accordingly.

2. PERFORMANCE OF FACILITY SERVICES

- 2.1 The provision of the Facility Services and the performance of any Facility Services is undertaken by the Company (and the Joint Venturers) in consideration of, and accepted by the Vessel Interests, upon and subject to the terms and conditions set out in these Conditions of Use.
- 2.2 The Company must charge the Vessel Interests for the provision of the Facility Services and the performance of the Facility Services. Vessel Interests must pay for the Facility Services charged within thirty (30) days of receipt of an invoice from the Company.



3. CONDITIONS OF USE

- 3.1 The Vessel Interests must, when using the FLNG Facility, conduct all operations safely and expeditiously, and must vacate the FLNG Facility as soon as practicable after the provision of Facility Services are completed. The Vessel Interests must, and must ensure that all Vessel Personnel, observe all statutory requirements and regulations as well as any rules or procedures issued by the Company from time to time, including the FLNG Facility Regulations.
- 3.2 The Company may withhold the commencement of, suspend or terminate the provision of the Facility Services and require the removal of any Vessel from the FLNG Facility, or take any other action the Company considers appropriate (by direction of the FLNG Facility Representative or other authorised representative), where:
- (A) in the opinion of the Company such action is required for the safety of the FLNG Facility, the Vessel, the Company Personnel, the Joint Venturers' Personnel, the Vessel Personnel or any other vessel or Third Party;
 - (B) there is any breach of the Conditions of Use, the FLNG Facility Regulations, or any statutory requirements and regulations;
 - (C) there are defects in the Vessel or the Vessel's equipment, manning or operations which, in the reasonable opinion of the Company, present a hazard to FLNG Facility or operations relating to the FLNG Facility, the Company Personnel, the Joint Venturers' Personnel or any Third Party;
 - (D) the Vessel fails to use satisfactorily the available FLNG Loading Facilities and thereby, in the opinion of the Company, constitutes an unacceptable constraint on the Company's operations; or
 - (E) weather, safety or security conditions are outside, or are likely to be outside, what is in the opinion of the Company normal operating limits.
- 3.3 The Company, the Company Personnel, the Joint Venturers and the Joint Venturers' Personnel (in whatever capacity they may be acting) are not liable for any costs, losses, damage or liability incurred by the Vessel or the Vessel Interests as a result of a refusal to load all or part of a nominated cargo, delay or suspension of loading, or a requirement to vacate the FLNG Facility or other action arising from Section 3.2(A) or Section 3.2(B) of this Conditions of Use, and the Vessel Interests release the Company, the Company Personnel, the Joint Venturers and the Joint Venturers' Personnel from such costs, losses, damage or liability.
- 3.4 In all circumstances the Vessel Interests remain solely responsible for the safety, condition, operations and proper navigation of the Vessel and her appurtenances and cargo, including pilotage, towage, navigation, berthing, mooring and unmooring, manoeuvring, connecting and disconnecting of hoses (including hard loading arms, as applicable), ballasting, prevention and control of pollution or contamination, pollution or contamination remediation, and safety.
- 3.5 All Company Personnel and Joint Venturers' Personnel employed or contracted in connection with the performance of the Facility Services are supplied upon the condition that the presence of those personnel in or about the FLNG Facility or the Vessel and otherwise in connection with the performance of Facility Services in no way relieves the Vessel Interests of any obligation, responsibility or liability in connection with the safety, security, condition, operations or proper navigation of the Vessel or its appurtenances and cargo.



- 3.6 The Company and the Joint Venturers make no warranty or representation (express or implied) as to the safety or suitability or otherwise of the FLNG Facility or its approaches or the Facility Services.
- 3.7 If the Vessel or part of the Vessel sinks, becomes a constructive loss, or otherwise becomes, in the opinion of the Company, an obstruction or danger to any part of the FLNG Facility, the approaches to it, or any subsea installations related or connected to it, and the Vessel Interests fail for any reason to remove that obstruction or danger within the time required by the Company or a competent authority, the Company or such competent authority may take all necessary action to remove the obstruction or danger at the sole risk, cost and expense of the Vessel Interests and that cost and expense, and any loss or damage suffered by the Joint Venturers, will be recoverable from the Vessel Interests by the Company as a debt presently due, owing and payable to the Joint Venturers.

4. RIGHT TO BOARD

- 4.1 The FLNG Facility Representative has the right at any time to board and remain on board any Vessel using the FLNG Facility to ensure the Conditions of Use and the FLNG Facility Regulations are being observed. The Master must, on request, immediately produce any certificate or other documents reasonably requested by the Facility Representative for inspection for the purposes of this Section 4.1.

5. LIABILITIES AND INDEMNITIES

- 5.1 In this Section 5, claim means any claim, right, action, proceeding, demand or entitlement of any kind and includes a right, proceeding, demand or entitlement to be compensated or indemnified (in whole or in part) for or by way of loss, obligation of indemnity or contribution, damage, expense or liability however arising (whether in contract, tort, under statute or otherwise).
- 5.2 In consideration of the provision of the Facility Services, the Vessel Interests: (i) release each of the Company and the Joint Venturers from, and indemnify each of the Company and the Joint Venturers against, any claim arising out of or in connection with the performance of the Facility Services; and (ii) indemnify the Company and the Joint Venturers in respect of any loss, damage, expense or liability suffered or incurred by the Company or the Joint Venturers however arising out of or in connection with the performance of the Facility Services, for:
- (A) loss of or damage to the FLNG Facility and its approaches and any property of the Company or the Joint Venturers, except where caused by the sole fault of the Company or the Joint Venturers;
 - (B) loss of or damage to the Vessel (including its appurtenances) irrespective of cause including negligence and breach of duty (whether statutory, contractual or otherwise) of the Company or the Joint Venturers and including removal of wreckage;
 - (C) loss of or damage to any property or cargo on board the Vessel, except where caused by the sole fault of the Company or the Joint Venturers;
 - (D) personal injury (including death or disease) to, or loss or damage to the property of any Third Party, except where caused by the sole fault of the Company or the Joint Venturers;
 - (E) breach of or non-compliance by the Vessel Interests or Vessel Personnel with any statute, regulation, by-law or order or other lawful requirement of any public, municipal or other government authority, except where caused by the sole fault of the Company or the Joint Venturers; and



- (F) the escape of any liquid or non-liquid pollutant, toxic or waste material that is or has been disposed of, charged, seeped, spilled, blown out or leaked during the performance of the Facility Services:
 - (1) from the FLNG Facility or any Company Property or property of the Joint Venturers, to the extent caused by the Vessel Interests or Vessel Personnel; or
 - (2) from the Vessel, except where caused by the sole fault of the Company or the Joint Venturers.

- 5.3 The Company and the Joint Venturers are solely responsible for claims brought by the Company Personnel or the Joint Venturers' Personnel, or any member of the family or dependents of the Company Personnel or the Joint Venturers' Personnel arising out of or consequent upon the personal injury, loss of or damage to property of, or death of, the Company Personnel or the Joint Venturers' Personnel, or their family members or dependents regardless of any fault on the part of the Vessel Interests or the Vessel Personnel, and the Company and the Joint Venturers must indemnify and hold the Vessel Interests and the Vessel Personnel harmless if any Company Personnel, Joint Venturers' Personnel, or any family member or their dependents or the executor, administrator or personal representative of any of them, brings such a claim against the Vessel Interests or Vessel Personnel.

- 5.4 The Vessel Interests are solely responsible for claims brought by the Vessel Personnel or any member of the family or dependents of the Vessel Personnel arising out of or consequent upon the personal injury, loss of or damage to property of, or death of, the Vessel Personnel or their family members or dependents regardless of any fault on the part of the Company, the Joint Venturers, the Company Personnel or the Joint Venturers Personnel, and the Vessel Interests must indemnify and hold the Company, the Joint Venturers, the Company Personnel and the Joint Venturers' Personnel harmless if any Vessel Personnel or any family member or their dependents or the executor, administrator or personal representative of any of them, brings such a claim against the Company, Joint Venturers, Company Personnel or Joint Venturers' Personnel.

- 5.5 No amount will be recoverable by the Company or the Joint Venturers from the Vessel Interests under Section 5.2 of this Conditions of Use if an incident which was the proximate cause of the damage or loss concerned resulted from an act of war, hostilities, civil war insurrection (which expressions will not include unconnected acts of sabotage) or act of God including earthquake, volcanic eruption, tidal wave, lightning or cyclone (provided the proximate cause of the damage did not result from an accident, breakdown or loss of or damage to a Vessel, or its plant, equipment, material or facilities), and provided in any such case the Vessel Interests acted reasonably in the circumstances to protect the Company Property or the property of the Joint Venturers, from damage or loss.

- 5.6 The Vessel Interests must, upon request, provide to the Company at all times sufficient evidence that the Vessel's P&I Club has agreed to cover the Vessel Interests as a member of the P&I Club against the liabilities and responsibilities provided for in this Section 5 of this Conditions of Use in accordance with its rules including waivers of subrogation.

- 5.7
 - (A) Company's and Joint Venturers' total aggregate liability to the Vessel Interests in respect of an incident giving rise to a claim under this Section 5 of this Conditions of Use is limited to US\$150,000,000.00; and
 - (B) the Vessel Interests' waive their rights under the Convention on Limitations of Liability for Maritime Claims, 1976 and under Australian law. The Vessel Interests' total aggregate liability to the Company and the Joint Venturers in respect



of an incident giving rise to a claim under this Section 5 of this Conditions of Use is limited to the higher of the following:

- (1) US\$150,000,000.00;
- (2) such limitation of liability amount provided for under any new law or convention applicable to LNG carrying Vessels; or
- (3) such amount as is available under the conditions applicable for P&I Clubs, which are members of the International Group of P&I Clubs for the time being in respect of LNG conditions of use.

6. LIEN

6.1 The Company will have a lien on a Vessel, and her cargo, freight and appurtenances for all salvage, debts, losses or damages or other claims arising out of Vessel’s use of Facility Services.

7. APPLICABLE LAW

7.1 The Conditions of Use are governed by and will be construed according to the law in force in the State of Western Australia, Australia and the parties unconditionally submit to the exclusive jurisdiction of the courts of that State and courts competent to hear appeals from those courts, provided that the Company or the Joint Venturers may enforce or seek security in any court of competent jurisdiction. Part 1F of the *Civil Liability Act 2002 (WA)* is excluded from operation with respect to any dispute, claim, action or other matter whatsoever brought by any party against another arising out of or in connection with the Conditions of Use.

8. AUTHORITY AND EXECUTION

8.1 The signatory to this document on behalf of the Vessel Interests warrants that it has the authority to bind each of the Vessel Interests and the Vessel Personnel and must notify these Conditions of Use to those persons.

The Vessel Interests signify their acceptance of these Conditions of Use by execution of this document (and if so may be by execution in counterparts, which when taken together will constitute the whole document) or by acceptance of the Facility Services or by causing the Vessel to enter the FLNG Facility and its approaches.

Dated DD – Month - YYYY

Issued by authority of the Company by (Original signed – sent electronically):

Name

Title

Signed for and on behalf of the vessel. Interests by:

Name

Title