

## CONFIDENTIALITY AGREEMENT (MUTUAL DISCLOSURE)

**THIS AGREEMENT** is made on xxxx

### **BETWEEN:**

- (1) **Grain LNG Limited** (Registered No. 04463679) whose registered office is at: 1- 3 Strand, London, WC2N 5EH ("**GLNG**")
- (2) **XXXX** (Registered number **XXX**) whose registered office is at: XXXX ("**the Counterparty**").

### **WHEREAS:-**

- (A) The Parties may have disclosed and may wish further to use, disclose to and/or create for each other sensitive information (including but not limited to trade secrets and proprietary know-how) in connection with [the proposed negotiation of a transaction involving the proposed purchase by the Counterparty of access rights or any other form of interest in or services from the National Grid LNG importation terminal at the Isle of Grain, Rochester, Kent, United Kingdom, or any future LNG importation terminal developed by GLNG at the site, to include all related documents and ancillary agreements] (the "**Proposed Project**").
- (B) The Parties wish to enter into this agreement to safeguard their rights and define their respective obligations with respect to that information and to protect the confidentiality of, and proprietary features contained in that information.

### **IT IS AGREED AS FOLLOWS:**

#### **1. DEFINITIONS**

- 1.1 In this agreement, the following expressions shall have the following meanings unless the context otherwise requires:

**"Agreement"** shall mean this written confidentiality agreement and includes the recitals to it;

**"Confidential Information"** shall mean any and all information or data disclosed (whether in writing, orally, by demonstration or by any other means) to, or obtained (whether directly or indirectly) by the Receiving Party or any third party acting on the Receiving Party's behalf, from the Disclosing Party, any of the Disclosing Party's Group Companies or its or their respective Representatives [and whether before,] on or after the date of this Agreement, which:

- (i) relates (whether directly or indirectly) to the Proposed Project or to any discussions or negotiations relating to it; or
- (ii) is disclosed or obtained in the course of or in connection with any discussions or negotiations relating to the Proposed Project or otherwise in connection with the Proposed Project.

Without prejudice to the generality of the foregoing definition, Confidential Information shall include but not be limited to any information or

data relating to the Disclosing Party's (or any of the Disclosing Party's Group Company's) operations, processes, plans, intentions, financial performance, investment requirements, product information, know-how, designs, trade secrets, software, market opportunities, customers, competitors and/or business affairs;

**"Disclosing Party"** means the party disclosing Confidential Information or from whom Confidential Information is obtained, whether directly or indirectly and for the purposes of this Agreement, a Party shall be treated as the Disclosing Party of any Confidential Information that that Party's Representatives disclose or make available;

**"EIR"** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

**"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

**"Group Company"** means in respect of a Party, any entity which is, at the relevant time, a subsidiary undertaking, parent undertaking, or a subsidiary undertaking of a parent undertaking of that Party, where "subsidiary undertaking" and "parent undertaking" have the meanings given to them in Section 1162 of the Companies Act 2006 except that references in that section to "majority" shall be replaced by reference to "25% or more". A company shall be treated, for the purposes only of the membership requirement contained in subsections 1162 (2) and (3), as a member of another company even if its shares in that other company are registered in the name of: (a) another Person (or its nominee) by way of security or in connection with the taking of security; or (b) its nominee;

**"Information"** has the meaning given under section 84 of the FOIA;

**"Party"** means a party to this Agreement and **"Parties"** shall be construed accordingly;

**"Permitted Purpose"** shall mean the use of the Confidential Information by the Receiving Party for the purposes of its consideration of, and discussions and negotiations with the Disclosing Party in relation to the Proposed Project but not for the purpose of discussing or developing opportunities with any other Person or for any other purpose whatsoever;

**"Person"** includes, without limitation, individuals, partnerships, unincorporated associations, incorporated companies, limited liability partnerships, joint ventures, trusts, and any other bodies of persons, legal or commercial entities (whether incorporated or unincorporated and

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whether resident or established in the UK or otherwise);

**"Representative"** means in respect of a Party, the officers, employees, contractors, consultants and other representatives of that Party and/or of that Party's Group Companies and/or of its or their professional advisers, agents or third party contractors; and

**"Receiving Party"** means the party receiving or obtaining Confidential Information under this Agreement, except that for the purposes of this Agreement, a Party shall be treated as the Receiving Party in respect of Confidential Information that is received by that Party's Representatives.

1.2 In this Agreement, reference to a statute, statutory provision or subordinate legislation shall be construed as referring to that statute, statutory provision or subordinate legislation as amended, modified, consolidated, re-enacted or replaced and in force from time to time.

1.3 Any obligation on a Party under this Agreement shall be deemed to include an obligation on that Person to procure that its Group Companies and its Representatives comply with that obligation.

## 2. HANDLING OF CONFIDENTIAL INFORMATION

2.1 In consideration of the mutual exchange and disclosure of Confidential Information, the Receiving Party undertakes to the Disclosing Party in respect of the Disclosing Party's Confidential Information and the existence of this Agreement and the Proposed Project:

- (a) to maintain the same in confidence;
- (b) to use it only for the Permitted Purpose and for no other purpose whatsoever and in particular, but without prejudice to the generality of the foregoing:
  - (i) not to make any commercial use of it; and
  - (ii) not to use or exploit the same for the benefit of itself, or any third party;

other than pursuant to this Agreement or any further written agreement(s) that the Parties may enter into relating to the Proposed Project;

- (c) not to copy, reproduce or reduce to writing any part of the Confidential Information except as may be reasonably necessary for the Permitted Purpose and for the avoidance of doubt, any copies, reproductions or reductions to writing so made shall be the property of the Disclosing Party;

- (d) not to incorporate any of the Confidential Information into any of its/his own documentation or records except as may be necessary for the Permitted Purpose;

- (e) not to disclose it to any other Person except:

- (i) to such of its Group Companies and its and their Representatives in so far as they have a reasonable need to know or see the same for the Permitted Purposes; or

- (ii) with the prior written consent of the Disclosing Party;

provided that, in each case, the Receiving Party shall procure that such Persons are bound by confidentiality obligations with the Receiving Party at least as protective of the Confidential Information as those set out in this Agreement and shall enforce such obligations (at the Receiving Party's cost) for the Disclosing Party's benefit;

- (f) to apply to the Confidential Information no lesser security measures and degree of care than those which the Receiving Party applies to its own confidential or proprietary information (and shall treat the Confidential Information with a reasonable degree of care and maintain reasonable security measures against theft, and unauthorised access or use of the Confidential Information even if it applies a lower standard to its own confidential information). For these purposes the Receiving Party undertakes not to use, transfer or store any part of the Confidential Information in an externally accessible computer or electronic information retrieval system or to transmit the Confidential Information outside the Receiving Party's usual place of business, however this shall not prevent the use of secure remote access to its systems that contain Confidential Information;

- (g) in relation to the compliance with sub-clauses (a) to (f) above inclusive, to be liable to the Disclosing Party for the acts and omissions of any Persons to whom Confidential information is disclosed pursuant to sub-clause (e), as if the acts and omissions of such Persons were the acts and omissions of the Receiving Party.

## 3. EXEMPTIONS

The obligations of confidentiality under this Agreement shall not apply to any information, data or material which the Receiving Party can prove:

- (a) is in or becomes part of the public domain or is or otherwise becomes public knowledge by any means other than by breach of the provisions of this Agreement

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or of any other obligation of confidence owed to the Disclosing Party by the Receiving Party or by any person for whom the Receiving Party is responsible pursuant to the terms of this Agreement. Information, data or material shall not be considered to be in the public domain by reason only of it having been disclosed pursuant to a request for information under the FOIA or EIR;

- (b) was previously or is at any time hereafter disclosed to the Receiving Party by any third party having the right to disclose the same provided that such source is not known to you to be bound by a confidentiality agreement with or other obligation of secrecy to GLNG; or
- (c) is released from the provisions of this letter by specific written consent given by the Disclosing Party; or
- (d) was, or in the future is, developed independently by the Receiving Party without reference to Confidential Information.

#### 4. RETURN OF CONFIDENTIAL INFORMATION

The Receiving Party shall within one month of completion of the Permitted Purpose, or (if earlier) within 7 days after receipt of a written request from the Disclosing Party:

- (a) return to the Disclosing Party or, at the Disclosing Party's option, destroy, all documents and materials containing the Disclosing Party's Confidential Information (and all copies of such documents and materials) and procure that any Person to whom such Confidential Information has been disclosed as permitted in this Agreement does likewise;
- (b) where any of the Disclosing Party's Confidential Information is held electronically and/or has been incorporated into any other document or record, irrevocably expunge all and any of the Disclosing Party's Confidential Information from that system, document or record unless the Receiving Party is not able to do so either by reason of law, its own reasonable internal record keeping regulations or because such Confidential Information incorporated forms part of automatically archived computer back-up records, in which case the Receiving Party may retain such Confidential Information but always upon and subject to the terms and conditions of this Agreement; and
- (c) certify in writing to the Disclosing Party's, by a duly authorised officer, that it has complied with the requirements of this clause.

#### 5. NON-DISCRETIONARY PUBLICATION

5.1 Notwithstanding any of the foregoing provisions, a Party shall be entitled to make such disclosure, announcement, statement or communication which is required by law (other than pursuant to any contract), by court or by any governmental or other regulatory authority (including without limitation the Stock Exchange or the Office of Gas and Electricity Markets) provided that it/he first gives to the other Party, if affected by the same, such advance notice of such disclosure, announcement, statement or communication as is reasonably practicable in all the circumstances and provided that it/he uses all reasonable endeavours to:

- (a) comply with all reasonable directions of the other Party regarding (a) the manner of such disclosure, announcement, statement or communication and (b) any action which the other Party may wish to be taken to challenge legally the validity of such requirement; and
- (b) minimise the extent and effect of such disclosure, announcement, statement or communication.

5.2 The Counterparty acknowledges that GLNG is subject to requests from other parties that are required to comply with the requirements of the FOIA and EIR. Accordingly, the Counterparty shall provide GLNG with such assistance as it reasonably requires to enable GLNG to respond to such requests in respect of the Confidential Information. Without limiting the generality of the foregoing the Counterparty shall:

- (a) transfer to GLNG all such requests that it receives in respect of the Confidential Information as soon as practicable and in any event within three days of receiving such a request; and
- (b) not respond directly to such a request without having provided GLNG with a reasonable opportunity to consider such disclosure.

#### 6. INTELLECTUAL PROPERTY

6.1 Each party reserves all rights in its Confidential Information. No rights, obligations or licences other than those expressly contained in this Agreement are granted by or to be implied from this Agreement or disclosure of the Confidential Information.

6.2 For the avoidance of doubt nothing in this Agreement or its operation shall preclude or in any way impair or restrict any Party from continuing to engage in its business otherwise than in the breach of the terms of this Agreement.

#### 7. DILIGENCE

Each Party acknowledges that:

- (a) any Confidential Information made available to that Party under this

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Agreement shall not have been independently verified, and may refer to matters which are under development or not yet complete;

- (b) each Party makes no express or implied, warranty or representation concerning its confidential information, including but not limited to the accuracy or completeness of the Confidential Information supplied under this Agreement.

### **8. GENERAL**

8.1 If at any time any part of this Agreement (including any one or more of the clauses of this Agreement or any sub-clause or paragraph or any part of one or more of these clauses) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

8.2 The rights and remedies of any Party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such Party nor by any failure of, or delay by the said Party in ascertaining or exercising any such rights or remedies. Any waiver of any breach of this Agreement shall be in writing. The waiver by any Party of any breach of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

8.3 No purported alteration or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each of the Parties.

8.4 This Agreement represents the entire agreement between the Parties relating to the Confidential Information and supersedes all prior agreements, arrangements and understandings between the Parties relating to the Confidential Information and each Party agrees that it will have no remedy in respect of any untrue statement innocently or negligently made by or on behalf of the other Party prior to signing this Agreement which such Party relied upon in entering into this Agreement whether such statement was made orally or in writing. However, nothing in this clause shall operate to exclude or limit any liability in respect of fraudulent misrepresentations.

### **9. TERMINATION**

9.1 This Agreement shall start on the date of this Agreement and continue in force (subject to earlier termination in accordance with clause 9.2) for 2 years from the date of this Agreement Agreement.

9.2 Either Party may terminate this Agreement at any time by giving the other party not less than 30 days' prior written notice.

9.3 Notwithstanding the expiry or termination of this Agreement (for whatever reason), the terms of this Agreement (including without limitation the confidentiality obligations in it) shall continue to apply in respect of any Confidential Information disclosed or obtained prior to such expiry or termination. Such obligations shall continue in force until the later of: i) 5 years after the termination of this Agreement; and ii) the date on which the last element of Confidential Information to which it applies has come into the public domain.

### **10. NON-ASSIGNMENT**

This Agreement is personal to each Party. No Party shall assign, novate, delegate or otherwise transfer or hold on trust the rights and responsibilities under this Agreement to any other Person without the prior written consent of the other Party (such consent (not to be unreasonably withheld or delayed).

### **11. NOTICES**

11.1 Any notice sent under this Agreement must be in writing and may be served by personal delivery or by sending the notice by registered post to the address given above or to such other address as the relevant Party may give for the purpose of service of notices under this Agreement and every such notice shall be deemed to have been served upon delivery if served by hand or two business days after despatch of the same if delivered by registered post.

11.2 To prove service of any notice it shall be sufficient to show in the case of notice delivered by hand that the same was duly addressed and delivered by hand and in the case of a notice served by post that the a same was duly addressed, prepaid and posted in the manner set out above.

### **12. THIRD PARTY RIGHTS**

12.1 Wherever the context so requires in this Agreement, the provisions of this Agreement shall be intended to be for the benefit of each GLNG Group Company. Any Group Company of GLNG may, with the written consent of GLNG, enforce the terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999 as if reference to GLNG included a reference to them. No consent is necessary from any Group Company of GLNG (other than GLNG and its own permitted successors and assigns) to vary (including, any release or compromises in whole or in part of any liability) or terminate this Agreement.

12.2 Except as otherwise provided in clause 12.1, this Agreement does not create any right enforceable by any person who is not a Party under the Contracts (Rights of Third Parties) Act 1999.

### **13. JURISDICTION**

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This Agreement and any non-contractual obligations arising in connection with it shall be subject to the laws of England and the Parties submit to the exclusive jurisdiction of the English courts in respect of all disputes or differences arising out of or in connection with it or any such non-contractual obligations.

**14. COUNTERPARTS**

- 14.1 This Agreement may be executed in any number of counterparts, each of which constitutes a duplicate original, but all the counterparts together constitute the one agreement.
- 14.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) takes effect as the transmission of an executed "wet-ink" counterpart of this agreement.
- 14.3 No counterpart shall be effective until each party has provided to the other[s] at least one executed counterpart.

**IN WITNESS** of which the parties have signed this Agreement on the date set out above.

**SIGNED for and on behalf of Grain LNG Limited**

Signature: .....

**SIGNED for and on behalf of [COMPANY]**

Signature: .....