

WORKING AREA ACCESS AGREEMENT

THIS AGREEMENT (this "**Agreement**") made as of this ___ day of _____, 2020 (the "**Effective Date**").

BETWEEN:

LNG # CORPORATION NAME, a corporation duly incorporated pursuant to the laws of the Province of Ontario (hereinafter referred to as the "**Corporation**")

-and-

[NAME OF LANDOWNER],
(hereinafter referred to as the "**Owner**")

(each a "**Party**" and collectively, the "**Parties**")

WHEREAS:

- A. The Corporation is in the business of natural gas distribution and intends to construct and install pipes and infrastructure for the distribution of natural and manufactured gas (the "Project") over the property described in Schedule "A" hereto (the "Pipeline Property");
- B. To facilitate the construction of the gas pipeline and other infrastructure over the Pipeline Property, the Corporation requires a wide temporary working area adjacent to the Pipeline Property;
- C. The Owner is the legal and beneficial owner of the lands more particularly set out in Schedule "A" hereto (the "Working Area Property") and has agreed to allow the Corporation the right to use the Working Area Property for the purposes of storing any equipment or infrastructure and/or to access the Pipeline Property including the rights of ingress and egress on the terms and conditions hereinafter set out;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of the payment of the sum of TWO DOLLARS (\$2.00) from each Party to the other and other good and valuable consideration, including the terms, covenants and provisions herein, the receipt and sufficiency of which is hereby acknowledged and agreed, the Parties covenant and agree as follows:

1. Definition and Interpretation

1.1 In this Agreement:

- (a) "**Applicable Law**" means all present or future applicable laws, statutes, regulations, treaties, judgments and decrees and all present or future applicable published directives, rules, policy statements and orders of any Public Authority and all applicable orders and decrees of courts and arbitrators to the extent, in each case, that the same are legally binding on a Party in the context of this Agreement;
- (b) "**Commercial Operation Date**" means the first day that the Project is operational;
- (c) "**Construction Work**" means all Deliveries, storing and hauling of materials and equipment, construction of the Project, and the construction and/or repair and maintenance of Entrances;
- (d) "**Deliveries**" is defined as transporting and delivering materials, components and equipment, across or along the Property to provide for the construction, maintenance, repair, replacement, relocation or removal of equipment in connection with the Project;
- (e) "**Effective Date**" is defined on page 1 above;
- (f) "**Emergency**" shall mean a sudden unexpected occasion or combination of events necessitating immediate action to prevent or mitigate materially adverse consequences to the health and safety of individuals or the integrity and safety of public utilities and infrastructure;
- (g) "**Entrance**" shall mean the point of access, to the Working Area Property from any travelled road or municipal road allowance;
- (h) "**Project**" is defined in the Recitals;
- (i) "**Public Authority**" shall mean any governmental, federal, provincial, regional, municipal or local body having authority over the Owner, the Corporation or the properties;
- (j) "**Repair Work**" shall mean work involving the repair or reconstruction of damage to the Working Area Property;
- (k) "**Secured Party**" or "**Secured Parties**" means Corporation's lenders, from time to time;
- (l) "**Work**" shall mean the Construction Work and the Repair Work.

1.2 The following schedules are attached to this Agreement and form an integral part of this Agreement:

- Schedule "A" – Project Map

1.3 Nothing contained in this Agreement shall abrogate or prejudice any rights held by either Party under Applicable Law including but not limited to the *Ontario Energy Board Act, 1998*, and/or the *Municipal Act, 2001*, as amended.

2. Grant of Use

2.1 The Owner hereby grants and transfers to Corporation for the duration of the Term, the non-exclusive right, privilege, interest, benefit and easement to enter upon and use the Working Area Property with such persons, vehicles, equipment and machinery as may be necessary for the purpose of constructing and maintaining, repairing, replacing, relocating and removing the Project and any components or equipment used in connection thereof, and specifically the right, benefit and licence to:

- (i) ingress and egress to the Pipeline Property over and from the Working Area Property;
- (ii) ingress and egress to and from the Working Area Property;
- (iii) store and handle any materials and equipment used and/or installed in connection with the Project on the Working Area Property;
- (iv) receive Deliveries at the Working Area Property; and
- (v) perform and carry out any and all Repair Work.

2.2 This Agreement shall become effective as of the Effective Date and, unless earlier terminated, shall remain in effect until the later of: (a) the date which is twenty-four (24) months after the Commercial Operation Date, save and except for any specific tasks or obligations of which the Owner, acting reasonably, has provided specific written notice to Corporation prior to such date; or (b) the date which is twelve (12) months after all Repair Work has been completed pursuant to this Agreement, save and except for any specific tasks or obligations of which the Owner, acting reasonably, has provided specific written notice to Corporation prior to such date (the "**Term**").

2.3 Corporation acknowledges and agrees that, should access for major decommissioning be required after the expiry or termination of this Agreement, then Corporation shall be required to enter into a new agreement in a form acceptable to the Owner at that time.

- 2.4 The Owner reserves its right to enter upon and use the Working Area Property without notice to Corporation and to grant and transfer rights to third parties to enter upon and use the Working Area Property; provided that, such entry, use, grant or transfer will not adversely affect the Work, the Project or the exercise of Corporation's rights under this Agreement.
- 2.5 The Owner represents and warrants that:
- (a) it has legal and beneficial title to the Working Area Property and full power and authority to grant the rights over the Working Area Property in the manner set out in this Agreement;
 - (b) the execution and delivery of this Agreement by the Owner will not result in a material breach of any other agreement to which the Owner is a party and no rights, interests or privileges have been granted in respect of the Working Area Property by the Owner which will or could adversely affect the rights, interests or privileges granted to Corporation hereunder;
 - (c) it has obtained the full and unconditional due authorization for the execution and delivery of this Agreement by all required resolutions; and
 - (d) it shall defend its title to the Working Area Property against any person or entity claiming any interest adverse to the Owner in the Working Area Property during the term of this Agreement, save and except where such adverse interest arises as a result of the act, omission, negligence or willful misconduct of Corporation or those for whom it is in law responsible.

3. Access Fees and Disbursements

- 3.1 The Corporation shall pay to the Owner a fee (the "Access Fee") in consideration for the use granted herein, of INFO (\$INFO) Dollars per annum, payable on the first calendar day of the year. Upon the execution of this Agreement, the Corporation shall pay to the Owner the proportionate amount of the Access Fee based upon the number of days remaining in the calendar year.
- 3.2 In addition to the Access Fee, the Corporation shall, upon receipt of an invoice issued to the Owner by its legal counsel in connection with the review of this Agreement, reimburse the Owner in respect of such costs, up to a maximum of One Thousand (\$1,000.00) Dollars.
- 3.3 The Corporation shall also pay, in addition to the amounts due to Owner under Sections 3.1 and 3.2 hereof, all applicable harmonized sales taxes or other value added taxes that may be levied or imposed on the amounts payable to the Owner herein.

4. Conditions Precedent to Commencement of Work

4.1 Prior to the commencement of any Work, Corporation shall arrange for and maintain, and shall cause its general contractor to arrange for and maintain, commercial general liability insurance for the joint benefit of Corporation and the Owner as an additional insured which policy shall, at a minimum provide:

- (a) limits of liability not less than Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate at the commencement of the term hereof;
- (b) a cross liability and severability of interest clause; and
- (c) provide for a minimum of thirty (30) days' notice of cancellation of said policy.

Corporation shall provide the Owner with a certificate of insurance evidencing the required insurance immediately following the execution of this agreement, and thereafter from time to time, upon reasonable request by the Owner provide confirmation that the premiums of such insurance have been paid and that such insurance is in full force and effect.

4.2 Corporation will indemnify and hold harmless the Owner from and against all claims, liabilities, losses, costs, damages or other expenses of every kind that the Owner may incur or suffer as a consequence of personal injury, including death, and property damages arising out of the use and enjoyment of the Working Area Property by Corporation or any of its contractors, subcontractors, agents, servants, employees or invitees, or the negligent performance of the Work or the willful misconduct of Corporation or those for whom it is in law responsible.

4.3 Prior to the commencement of any Work, Corporation shall obtain all necessary permits and approvals from all Public Authorities having jurisdiction over the Work, to the extent that Applicable Law requires such approval prior to the commencement of the Work.

5. Work Generally

5.1 Notwithstanding and without limiting any other term hereof, Corporation agrees and undertakes that it will perform the Work at its own expense in accordance with and compliance with good engineering practices, any applicable plans approved by the Owner, this Agreement and Applicable Law.

5.2 Corporation further agrees to use commercially reasonable efforts to undertake and complete all Work so as to avoid unnecessary adverse impacts on any other use of the Working Area Property.

- 5.3 Corporation shall be responsible at all times for the reimbursement to the Owner of all costs and expenses associated with the repair of any damage to any portion of Working Area Property caused by Corporation's use. Any repairs undertaken shall restore the Working Area Property to the same or better condition than that which existed immediately prior to Corporation's use of the Working Area Property.
- 5.4 Corporation shall be responsible for any damage caused to the Working Area Property during the Term by itself, its contractors, subcontractors, agents, servants, employees or invitees and for removing all debris from the Working Area Property following the undertaking of any Work contemplated herein.
- 5.5 Corporation shall make commercially reasonable efforts to protect the integrity and security of all existing equipment, installations, utilities, and other facilities within the Working Area Property or which might otherwise be located in, on, or under the Working Area Property or any adjacent lands.
- 5.6 Notwithstanding any other provision of this Agreement, in the event of any Emergency involving the Work, Corporation shall notify the appropriate emergency services immediately upon becoming aware of the situation and shall do all that is necessary and desirable to control the Emergency as may be required. Corporation shall be responsible for any work associated with such Emergencies howsoever caused, without prejudice to its right to claim indemnity from the Owner or from any third party for costs and expenses incurred in connection therewith by reason of the fault or negligence of the Owner or any third party, as the case may be.
- 5.7 Notwithstanding the foregoing, Corporation shall not be required to carry out and shall not be responsible for any costs associated with any maintenance, repairs or restoration of the Working Area Property other than as set out in this Agreement.
- 5.8 In the event that the standard, condition or maintenance of any of the Entrance, road or access point (the "Access Corridor") or the Working Area Property is not sufficient to permit Corporation to carry out its desired operations, Corporation shall be solely responsible for carrying out any work or maintenance required to upgrade the Access Corridor, at its own expense. Corporation shall, upon reasonable prior notice to the Owner, have the right to: (a) temporarily reconstruct or realign certain portions of the Access Corridor in order to permit the delivery or movement of oversized Project components; and (b) connect access roads located on other land and running from the Project to the Access Corridor to permit ongoing access to Project during the period of commercial operation of the Project.

- 5.9 Corporation shall be solely responsible for all costs and expenses, and shall forthwith reimburse the Owner for any and all expenses incurred by the Owner in connection with:
- (a) all modifications, alterations, construction, or repairs to the Access Corridor or any portion thereof in order to ensure the road is safe for the increased traffic volume caused by the rights granted herein;
 - (b) all repairs to the Access Corridor arising out of or resulting from Corporation's use of the Access Corridor.

6. Construction Working Area Property Condition Inspection

- 6.1 Within six (6) months following the Commercial Operation Date, Corporation shall carry out a post-construction property inspection and both Parties shall receive a complete copy of such document. If the post-construction inspection concludes that Corporation has caused damage to the Working Area Property as a result of its construction activities in relation to the Project, Corporation will restore the Working Area Property, at its sole expense, to the same or better condition as existed immediately prior to the execution of this Agreement.
- 6.2 The post construction condition inspection report shall identify the location(s), type, and extent of the damages as well as the proposed methods of the repair work to restore the Working Area Property to its pre-construction condition. Within thirty (30) days of the Owner's receipt of the above post construction inspection report, the Owner shall review the identified location(s), type and extent of damages reported as well as the proposed methods of the repair work and shall approve of the proposed repair work or require modifications to the location(s), and/or the type and/or the extent and/or the methods of the repair work at its sole discretion, acting reasonably.

7. Entrances and Entrance Work

- 7.1 If required, Corporation shall apply for and obtain prior written authorization for the construction of any Entrance to the Project or the Working Area Property, and shall construct, use and maintain the entrance in accordance with all conditions contained in such authorization.

8. Liability

- 8.1 Corporation hereby acknowledges that its access and use of the Working Area Property, its performance of the Work and the operation of the Project is entirely at its own risk and the Owner shall in no way and in no circumstances be responsible or liable to Corporation, its contractors, agents, or customers for any damage or losses in consequence thereof, regardless of how such damage or loss was suffered or incurred,

other than damage or loss arising out of the negligence of, intentional misconduct of, or a breach of this Agreement by the Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner is in law responsible.

- 8.2 Corporation will indemnify and hold harmless the Owner, its officers, directors, employees, legal counsel, agents and contractors from and against any and all claims, suits, demands, liabilities, losses, costs, damages, and other expenses of every kind that the Owner may incur or suffer as a direct consequence of the rights granted by the Owner to Corporation hereunder, except where such claims, suits, demands, liabilities, losses, costs, damages, and other expenses result from the negligence or intentional acts of the Owner, its officers, directors, employees, legal counsel, agents or contractors.
- 8.3 Notwithstanding any provision in this Agreement to the contrary, in no event shall any Party or its affiliates, or its respective officers, directors, employees or representatives, be liable hereunder at any time for punitive, consequential, special, or indirect loss or damage of any other Party or any of such Party's affiliates, including loss of profit, loss of revenue, loss of customers, loss of goodwill or any other special or incidental damages, whether in contract, tort (including negligence), strict liability or otherwise, and each Party hereby expressly releases the other Parties, their affiliates, and their respective officers, directors, employees and representatives therefrom.

9. Assignment

- 9.1 Corporation may not assign this Agreement without the written consent of the Owner, which shall not be unreasonably withheld, except that no consent shall be required for Corporation to assign this Agreement to an affiliated or successor entity, or for purposes of securing indebtedness or other obligations respecting the Project. The Owner acknowledges that a change in control of Corporation shall not be considered an assignment by Corporation of this Agreement or of any of Corporation's rights and obligations under this Agreement.
- 9.2 For greater certainty, Corporation shall from time to time during the term of this Agreement be entitled to assign this Agreement and all of its rights hereunder without the consent of the Owner to any Secured Party as security for Corporation's obligations to such Secured Party, which shall be further entitled to assign this Agreement and Corporation's rights thereunder in connection with an enforcement of their security. The Owner hereby agrees to execute and deliver an acknowledgement and consent agreement in favour of any applicable Secured Party or assignee thereof, in a form acceptable to the Owner, acting reasonably.

9.3 Corporation shall be entitled, with the written consent of the Owner, which may not be unreasonably delayed, withheld or conditioned, to assign this Agreement to a transferee of the Project other than an affiliated or successor company, and Corporation shall thereupon be released from any and all obligations under this Agreement from and after the date of such assignment, provided that such assignee has agreed in writing with the Owner, in a form acceptable to the assignee and the Owner, both acting reasonably, to be bound by the provisions of this Agreement from and after the date of the assignment.

10. Default

10.1 If a Party commits a breach of or omits to comply with any of the provisions of this Agreement (the "**Defaulting Party**"), the other Party (the "**Complainant**") may give the Defaulting Party notice in writing specifying the breach complained of and indicating the intention of the Complainant to terminate this Agreement unless the Defaulting Party shall have remedied the breach within the period mentioned in the notice, which period shall be not less than sixty (60) days. If the Defaulting Party shall have within such notice period commenced to remedy the breach and has diligently pursued the remedying thereof, the Defaulting Party shall be allowed one hundred and fifty (150) days after the expiry of the original notice period to remedy the breach. After the expiration of the later of the applicable periods, the Complainant may elect to terminate the rights granted under this Agreement to the Defaulting Party or to remedy the breach, in which case the Defaulting Party shall be liable for reimbursing to the Complainant the reasonable costs of completing said remedy.

10.2 Notwithstanding any expiry or termination of this Agreement in accordance with Section 2.2 or otherwise, such expiry or termination shall not derogate from Corporation's rights under Applicable Law.

10.3 Whenever, and to the extent that a Party will be unable to fulfil or will be delayed or restricted in the fulfillment of any obligation under any provision of this Agreement by reason of:

- strikes;
- lock-outs;
- war or acts of military authority;
- rebellion or civil commotion;
- material or labour shortage not within the control of the affected Party;
- fire or explosion;
- flood, wind, water, earthquake, or other casualty;
- changes in Applicable Law not wholly or mainly within the control of the

affected Party, including the revocation by any Public Authority of any permit, privilege, right, approval, license or similar permission granted to Corporation or the Project;

- any event or matter not wholly or mainly within the control of the affected Party (other than lack of funds or the financial condition of the affected Party); or,
- acts of God,

(in each case a "**Force Majeure**")

not caused by the default or act of or omission by that Party and not avoidable by the exercise of reasonable effort or foresight by it, then, so long as any such impediment exists, that Party will be relieved from the fulfillment of such obligation and the other Party will not be entitled to compensation for any damage, inconvenience, nuisance or discomfort thereby occasioned. A Party shall promptly notify the other Party of the occurrence of any Force Majeure, which might prevent or delay the doing or performance of acts or things required to be done or performed.

11. Dispute Resolution

- 11.1 In the event that either Party provides the other Party with written notice of a dispute regarding the interpretation or implementation of this Agreement (a "**Dispute**") then both Parties shall use their best efforts to settle the Dispute by consulting and negotiating with each other in good faith to reach a solution satisfactory to both Parties. However, if the Parties do not resolve the Dispute within thirty (30) days following receipt of such notice, then either Party may provide written notice to the other Party (the "**Arbitration Notice**") requiring resolution by arbitration and thereafter the Dispute shall be referred to arbitration in accordance with the provisions of the *Arbitration Act, 1991*.
- 11.2 The arbitration tribunal shall consist of a single arbitrator to be mutually selected by the Parties, and failing which, either party may apply to a Judge of the Ontario Superior Court of Justice for an Order appointing such arbitrator.
- 11.3 The arbitration shall be conducted in English and shall take place in the City of Thunder Bay or another place mutually agreed upon by the Parties.
- 11.4 The arbitration award shall be given in writing and shall address the question of costs of the arbitration and all related matters. The arbitration award shall be final and binding on the Parties as to all questions of fact and shall be subject to appeal only with respect to matters of law or jurisdiction.

11.5 Except to the extent that a matter is specifically the subject of a Dispute, both Parties shall continue to observe and perform the terms and conditions of this Agreement pending the resolution of a Dispute.

12. Further Assurances

12.1 Each of the Parties covenants and agrees with the other that it will at all times hereafter execute and deliver, at the request of the other, all such further documents, agreements, deeds and instruments, and will do and perform all such acts as may be necessary to give full effect to the intent and meaning of this Agreement.

13. Notice

13.1 All notices, communications and requests for approval which may be or are required to be given by either party to the other herein shall be in writing and shall be given by delivery by courier or by facsimile or electronic (email) delivery addressed or sent as set out below or to such other address, facsimile number, or email address as may from time to time be the subject of a notice:

To the Owner:

INFO

Attention:

Telephone:

Facsimile:

E-mail:

To Corporation:

INFO

Attention: Project Director

Telephone:

Facsimile:

E-mail:

13.2 Any notice, if delivered by courier, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by facsimile or electronic transmission with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the day it was received, whether or not such day is a business day.

14. Governing Law

14.1 This Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of Ontario and the federal laws of Canada applicable in Ontario.

15. Miscellaneous

15.1 This Agreement may be executed by facsimile or PDF transmission and in one or more counterparts, all of which shall be considered one and the same agreement.

15.2 This Agreement and the rights granted hereunder are and shall be of the same force and effect, to all intents and purposes, as a covenant running with the Road Allowances and these presents, including all of the covenants and conditions herein contained, shall extend, be binding upon and ensure to the benefit of the Owner and Corporation, and their respective successors and permitted assigns, as the case may be.

15.3 Each obligation of the Parties contained in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

15.4 The invalidity or unenforceability of any provision or covenant contained in this Agreement shall affect the validity or enforceability of such provision or covenant only and any such invalid provision or covenant shall be deemed to be severable from the balance of this Agreement, which shall be enforced to the greatest extent permitted by law.

15.5 Each covenant in this Agreement is a separate and independent covenant and a breach of covenant by either Party will not relieve the other Party from its obligation to perform each of its covenants, except as otherwise provided herein.

15.6 No supplement, modification, amendment or waiver of this Agreement shall be binding unless executed in writing by the Parties.

15.7 The Owner shall cooperate with other Public Authorities and with affiliates of or contractors retained by Corporation that may require the approval of the Owner for any work associated with the Project.

15.8 The Parties hereby acknowledge and agree that this Agreement is solely a road use agreement and that no relationship is formed between the Parties in the nature of a joint venture, partnership co-ownership arrangement or other similar relationship.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives to be effective as of the Effective Date.

[INFO CORPORATION]

Per: _____

Name:

Title:

I have authority to bind the Corporation.

[OWNER]

Per: _____

Name:

Title:

I have authority to bind the Corporation.