

## SEABROOK DOCK CAPACITY ALLOCATION CONTRACT

This Dock Capacity Allocation Contract (“Agreement”) is executed \_\_\_\_\_, 20\_\_ (the “Effective Date”) between Magellan Crude Oil Pipeline Company, L.P., a Delaware limited partnership (“Magellan”), and \_\_\_\_\_ (“Customer”). Customer and Magellan hereinafter are referred to individually as a “Party” or collectively as the “Parties”.

WHEREAS, Customer was a successful bidder at the auction conducted on the ICE OTC Commodity Markets, LLC electronic platform (the “Auction”) on \_\_\_\_\_, 20\_\_ (the “Auction Date”) for the services described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, the Parties agree as follows:

**I. Term.** The term of the Agreement is for one month beginning on the first day of the month following the Auction Date and ending on the last day of such month (“Term”).

**II. Load Volume.** The volume of Product handled under this Agreement is 650,000 Barrels (the “Load Volume”).

**III. Auction Price.** Customer will pay Magellan in advance for the Services \$\_\_\_\_\_ (the “Service Fee”), calculated at \$\_\_\_ per Barrel (the “Auction Price”) of the Load Volume, which is the per Barrel price determined by the Auction. If Customer has not paid the Service Fee prior to Magellan’s execution of this Agreement, Customer will pay the Service Fee to Magellan immediately upon demand by Magellan. The Service Fee will be owed and paid even if Customer does not make the entire Load Volume of Product available to Magellan in the System or does not provide a Vessel that can load the entire Load Volume.

**IV. Product.** Magellan will only perform the Services with respect to Customer’s crude petroleum in the System that meets the definition of either WTL or WTI, as such terms are defined in Magellan’s Texas Local Pipeline Tariff R.C.T. No. 5.3.0, as amended, replaced or supplemented from time to time (“Product”).

**V. Additional Fees.** Customer will pay Magellan the following additional fees as applicable (“Additional Fees”):

- (a) **Marine Delays.** In addition to time spent actually loading, there will be a four (4) hour period at no charge per Vessel visit. All customer testing/sampling, line flushing, etc., must be completed during this time. All other third-party delays will be included in this time (e.g. surveyor delaying product flow). Any time in excess of the foregoing periods will be charged as follows: Ships at \$699.00 per hour; Barges at \$352.00 per hour.
- (b) **Delivery Imbalance.** If the volume of Product loaded onto Customer’s Vessel exceeds the volume of Product Customer delivers into the System (such excess volume, the “Overage Volume”), Customer will deliver the Overage Volume to Magellan at MEH in the month following the Term. If Customer fails to so deliver the Overage Volume, Magellan will purchase Product to cover the Overage

Volume and Customer will pay Magellan an amount equal to Magellan's actual cost to purchase the Overage Volume plus an administration fee equal to 15% of such purchase cost.

- (c) Additional Volume. Customer will pay the Auction Price for each Barrel of Product in excess of the Load Volume that Customer has in the System and loads onto Customer's Vessel, provided that any such additional Barrels will be loaded only at Magellan's discretion based on available capacity.

**VI. Notices.** Any notice made under this Agreement will be in email to the relevant address set forth below.

Magellan: One Williams Center, Suite 3000  
Tulsa, OK 74172  
Attention: Director, Crude Oil Commercial  
Email: CrudeStorage@magellanlp.com

Customer: The email address set forth below Customer's signature block to this Agreement.

**VII. Schedules.** The following schedules are attached hereto and incorporated herein as part of this Agreement:

Schedule "A" – General Terms & Conditions

Schedule "B" – Marine Nomination & Scheduling

Schedule "C" – Marine Dock Information, Requirements and Restrictions

Schedule "D" – Seabrook Terminals Measurement Procedures

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**CUSTOMER:** \_\_\_\_\_

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

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

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

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**MAGELLAN:** Magellan Crude Oil Pipeline Company, L.P.  
By: Magellan Pipeline GP, LLC, its general partner

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

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

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

## Schedule "A"

(to Seabrook Dock Capacity Allocation Contract)

### General Terms and Conditions

1. Definitions. In addition to the definitions provided elsewhere in this Agreement, the following definitions will apply:

- 1.1. "Affiliate" means, in relation to a Party, any entity that (i) directly or indirectly controls such Party; (ii) is directly or indirectly controlled by such Party; or (iii) is directly or indirectly controlled by an entity that directly or indirectly controls such Party. The term "control", including the terms "controlled by", means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity.
- 1.2. "Barrel" means forty-two (42) United States gallons at 231 cubic inches per gallon at 60 degrees Fahrenheit.
- 1.3. "Contractor" means any contractor requesting access to the System or the Docks in connection with this Agreement on behalf of, at the request of, or for the benefit of Customer, including any Vessels.
- 1.4. "Docks" means Ship Dock 4 at the Seabrook Terminal.
- 1.5. "Environmental Law" means any and all applicable laws, policy, permit, judicial or administrative interpretation thereof, or any legally binding requirement that governs or purports to govern the protection of persons, natural resources or the environment (including the protection of ambient air, surface water, ground water, land surface or subsurface strata, endangered species or wetlands), occupational health and safety, and the manufacture, processing, distribution, use, generation, handling, treatment, storage, disposal, transportation, release or management of solid waste, industrial waste or hazardous substances or materials.
- 1.6. "Force Majeure Event" means an event beyond a Party's reasonable control, including acts of God, acts of government, acts of public enemies, acts of terrorists, accidents, explosions, fire, flood, hurricanes, storms, abnormal heat or cold, strikes, labor disputes, civil unrest, war, compliance with Laws, breakdowns of machinery, or shortages of power.
- 1.7. "ICE" means Intercontinental Exchange, Inc., and its subsidiaries.
- 1.8. "Law" means any and all applicable laws (including Environmental Law), regulations, rules, ordinances, codes, permits, orders and decrees of any local, state, and federal governmental authority having jurisdiction.
- 1.9. "Liabilities" means any claims, actions, judgments, liabilities, losses, costs, damages, fines, penalties and expenses of any kind related to or that arise out of this Agreement (including reasonable attorneys' fees, expert fees and court costs).

- 1.10. “MEH” means Magellan’s East Houston Terminal.
  - 1.11. “ppm” means parts per million.
  - 1.12. “Product” has the meaning set forth in Section IV of this Agreement.
  - 1.13. “RVP” means Reid vapor pressure.
  - 1.14. “Seabrook” means Seabrook Terminal, LLC, a Delaware limited liability company.
  - 1.15. “Seabrook Terminal” means the terminal located at 11666 Port Road, Seabrook, Texas, operated by Seabrook, which includes crude oil storage tanks and the Docks.
  - 1.16. “Services” has the meaning set forth in Section 2.2 of this Schedule “A”.
  - 1.17. “System” means Magellan’s rights to tankage at MEH, Magellan’s rights to commingled tankage at the Seabrook Terminal, and the pipelines connecting the foregoing tankage.
  - 1.18. “Vessel” means the ship that receives Product at the Terminal on behalf of, at the request of, or for the benefit of, Customer.
  - 1.19. “VOC” means volatile organic compound.
2. Services; Product.
    - 2.1. Logistics.
      - 2.1.1. Customer’s movement of Product into the System and, except for Product loaded onto a Vessel at Seabrook Terminal, out of the System is subject to the applicable tariffs. For determining origins and destinations under such tariffs, the Storage Volume will be deemed to be held at MEH.
      - 2.1.2. Magellan may physically hold Customer’s Product anywhere within the System and may commingle Customer’s Product with like-kind Product in tanks and line space within the System and the Product delivered back to Customer will have similar specifications, but may not be the same Barrels of Product delivered by Customer.
      - 2.1.3. If, at the end of the Term, the volume of Customer’s Product received in the System exceeds the volume of Product loaded onto Customer’s Vessel and any such volume remains in Customer’s inventory account without a valid storage agreement (“Excess Volume”), then the following provisions apply:
        - (a) If Magellan does not cause the Excess Volume, Customer will pay to Magellan an additional monthly storage fee equal to \$2.50 per Barrel of Excess Volume. If Customer does not nominate and remove such Excess Volume prior to the end of the month following

the end of the Term, then Magellan may, in its sole discretion, either: (1) sell the Excess Volume in accordance with the procedure set out in Section 2.6 below, or (2) allow Customer to store the Excess Volume on a month-to-month basis (terminable by Magellan with 15 days' notice) under the terms of this Agreement in which case Customer will pay to Magellan an additional monthly fee equal to \$2.50 per Barrel of Excess Volume.

- (b) If Magellan causes the Excess Volume, then Customer will have until the end of the month following the end of the Term to nominate and remove such Excess Volume, after which time, Magellan may, in its sole discretion, either: (1) sell the Excess Volume in accordance with the procedure set out in Section 2.6 below, or (2) allow Customer to store the Excess Volume on a month-to-month basis (terminable by Magellan with 15 days' notice) under the terms of this Agreement in which case Customer will pay to Magellan an additional monthly fee equal to \$2.50 per Barrel of Excess Volume.

2.2. Vessel Loading. Subject to the terms of this Agreement, during the Term, Magellan will deliver Customer's Product from the System to Customer's Vessel at the Docks (the "Services") in accordance with the following procedures:

- 2.2.1. All loading of Vessels will be made in accordance with Schedule "B" and the operating procedures for Seabrook Terminal, provided that loading may not occur until supply nominations for the Load Volume have been confirmed and Product is available for loading. Customer may not unload Vessels under this Agreement. Customer will consult with Magellan regarding scheduling Customer's Vessel at the Docks.
- 2.2.2. Using Magellan's electronic nominations system, Customer will nominate the volume Customer desires to load onto a Vessel to a destination in the System of "ICE Seabrook OFL".
- 2.2.3. Customer's Vessels and Contractors must comply with the rules and procedures of Seabrook Terminal, as amended from time to time. The current form of such rules and procedures is set forth at Schedule "B" and Schedule "C".
- 2.2.4. Customer must provide a Vessel that is capable of receiving the entire Load Volume (plus any additional volume nominated by Customer) and receiving Product at an average flow rate greater than or equal to 25,000 barrels an hour. If the Vessel receives Product at an average flow rate less than 25,000 barrels per hour due to restrictions caused by the Vessel and not caused by Magellan or Seabrook, then Customer will pay an additional fee equal to \$0.05 per barrel loaded onto the Vessel.

- 2.2.5. If Customer's Vessel is qualified and ready to receive the Load Volume during the Term but is not loaded during the Term for a reason not attributable to Customer or Customer's Vessel, then Customer may load its Vessel in the following month.
- 2.3. Quantity. Quantity determination will be made in accordance with American Petroleum Institute ("API") or other industry accepted standards. The quantity of Product delivered to the System will be determined by the product transfer order volume in the System, or by the applicable meter if Customer is physically delivering Product from outside the System. The quantity of Product delivered to Vessels will be determined by Seabrook Terminal's custody transfer meter readings in accordance with the procedures between Seabrook and Magellan set forth at Schedule "D". Quantity determinations will be binding on both Parties absent fraud or manifest error. Customer may appoint, at Customer's sole cost, an independent inspector acceptable to Magellan to verify Magellan's measurement of the Product quantity.
- 2.4. Quality Testing.
- 2.4.1. Magellan reserves the right to perform quality control testing. Any quality testing performed will be made in accordance with American Society for Testing and Materials (ASTM) standards or other industry accepted testing methods as found in industry standards, recommended practices, guides and manuals. The results of tests made by Magellan will be conclusive and binding on both Parties, except in the event of fraud or manifest error.
- 2.4.2. Customer may test the quality of the Product, at Customer's sole expense, prior to such Product being delivered to a Vessel and Customer will provide a copy of such test results to Magellan within one business day after the date the sample was taken. If Customer fails to test the quality of any Product prior to loading onto a Vessel or fails to provide notice of any claim on or before the 5th day after the Product has been loaded onto a Vessel, any claim against Magellan for degradation or contamination of that Product will be deemed waived.
- 2.5. Compliance with Law. Each Party will comply with Law in all material respects in the performance of this Agreement. Customer will provide Magellan any information, documentation, or other materials as required by Law for the receipt, storage, and handling of Product. Customer acknowledges that there may be an obligation under Law to disclose information regarding Product to governmental authorities, parties handling Product, parties exposed to Product, and to the general public, and Customer will promptly provide Magellan any information required by Law for such disclosures.
- 2.6. Sale of Product. If Customer fails to nominate for removal or remove its Product in accordance with the terms of this Agreement, or if Customer fails to pay any amount owing to Magellan hereunder when due, then Customer authorizes

Magellan to sell Customer's Product in Magellan's possession by private sale on terms that are commercially reasonable under the circumstances. If such a sale is effected, Magellan will withhold from the proceeds therefrom all amounts owed to it hereunder and all expenses of sale including, but not limited to, reasonable attorneys' fees and any amount necessary to discharge all liens against said Product, and the balance of the proceeds, if any, shall be remitted to Customer.

- 2.7. Title; Taxes. Customer warrants that Customer has good title to and the right to possess the Product. Customer shall continuously hold title to all Product in the System and Magellan shall not be liable as an insurer of the Product. Customer shall pay any taxes, including ad valorem taxes, assessments or charges, which may be assessed against the Product stored by Customer under this Agreement. Customer agrees to reimburse Magellan for any such taxes, assessments or charges paid by Magellan for the benefit of Customer or as required by law on behalf of Customer, within thirty (30) days of Magellan's demand therefor.
- 2.8. Custody. Magellan has care, custody and control of Customer's Product only from the time it passes the inlet flange of the System until it passes the outlet flange of the System.

3. Payment.

- 3.1. Invoicing & Payment. Magellan will invoice Customer monthly, in arrears, for any Additional Fees, any amounts due under Section 2.1.3, and any other amounts owed by Customer to Magellan. Customer will pay the undisputed amount of each invoice without setoff or deduction within ten (10) days after the date of electronic posting of the invoice. Customer will be assessed a late charge at the annual Prime Rate as published in the Wall Street Journal, plus ten percent (10%) (or the highest rate permitted by Law, whichever is less) for the undisputed amount of any invoice not paid within ten (10) days of the date of electronic posting of the invoice. Customer's payment obligations for services performed will survive the expiration or termination of this Agreement. If Customer disputes any portion of any invoice, Customer shall promptly, but in no event later than the due date, notify Magellan in writing of the disputed portion and pay the undisputed amount of such invoice. After receipt of such notice, Magellan and Customer will work to resolve the dispute. If the Parties are unable to resolve such dispute within thirty (30) days after receipt of such notice, the Parties will resolve such dispute pursuant to the terms of Section 8.7 of this Schedule "A".
- 3.2. Warehouseman's Lien. Magellan shall have a warehouseman's lien upon any Product in the Terminal in accordance with Texas law for any amounts owed to Magellan hereunder which have not been paid when due (whether incident to the Product then in the Terminal or otherwise). If a warehouse receipt is required under Law for such a lien to arise, this Agreement shall be deemed to be the warehouse receipt for all Product at the Terminal.

4. Default. A Party will be in default (“Default”) if it: (a) breaches its payment obligations under this Agreement and fails to cure such breach within ten (10) days of a written notice from the non-defaulting Party; (b) breaches its material, non-payment obligations under this Agreement and fails to cure such breach (if such breach is curable) within thirty (30) days of a written notice from the non-defaulting Party (or such longer period of time, not to exceed one hundred eighty (180) additional days, as is necessary for the defaulting Party to cure such breach, if the defaulting Party commences efforts to cure such breach within such thirty (30) day period and thereafter diligently seeks to cure such breach); (c) becomes insolvent; or (d) files or has filed against it a petition in bankruptcy, for reorganization, or for appointment of a receiver or trustee. In the event of Default, the non-defaulting Party has the right to pursue any or all rights and remedies available under this Agreement or applicable Law and/or to terminate this Agreement by written notice to the other party. Upon termination of this Agreement pursuant to this Section 4, all rights and obligations under this Agreement will terminate except that the accrued rights and obligations of the Parties under this Agreement, including in relation to payments due but not paid, and any continuing obligations which this Agreement provides, either expressly or by necessary implication, will survive the expiration or termination of this Agreement.

5. Adequate Assurance. “Adequate Assurance” means security in the form, amount and for the term reasonably specified by Magellan, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset acceptable to Magellan or a guarantee by an entity deemed creditworthy at the sole discretion of Magellan. Magellan may demand Adequate Assurance from Customer when Magellan determines that it has reasonable grounds for insecurity (as such term is interpreted and applied under Article 2 of the Uniform Commercial Code, as if it applied to this Agreement) with respect to Customer’s ability to fulfill its obligations under this Agreement. Magellan shall make demand for Adequate Assurance by providing Customer with notice. If Customer fails to provide Adequate Assurance within two (2) Business Days from the date of such demand, Magellan may, without limitation of its other rights and remedies, terminate this Agreement or refuse further services or release of product pending receipt of such Adequate Assurance.

6. Liability.

6.1. Force Majeure. If Magellan is rendered unable, by a Force Majeure Event, to carry out, in whole or part, its obligations hereunder, then: (a) during such Force Majeure Event, the obligations of Magellan affected by the Force Majeure Event shall be canceled or suspended, as applicable, to the extent applicable, (b) during the pendency of such Force Majeure Event, Magellan will use reasonable dispatch and efforts to mitigate and remedy the effects or duration of such Force Majeure Event, and (c) promptly upon the conclusion of the Force Majeure Event, Magellan will resume performance of any excused obligation.

6.2. Loss or damage to the Product caused by Magellan.

6.2.1. Except as expressly provided in this Section 5.2, Magellan shall not be liable for any loss or damage of any nature directly or indirectly caused (i) to the Product or (ii) by the Product.

- 6.2.2. Subject to Sections 5.2.3 and 5.2.4 below, Magellan shall be liable for all physical loss of the Product and physical damage to the Product only to the extent that such loss or damage is directly caused by the negligence or willful misconduct of Magellan while the Product is in the System.
- 6.2.3. Magellan and Customer agree that Magellan shall have no liability of any nature and howsoever arising under Section 5.2.2 above for:
- (a) any physical loss of the Product and physical damage caused to the Product that results from Magellan acting in accordance with any instructions or directions given or provided by Customer; or
  - (b) any loss of Product which is less than 0.25% of the greater of the Load Volume or the amount loaded onto Customer's Vessel under this Agreement; or
  - (c) any liabilities that Customer incurs to any third parties.
- 6.2.4. Magellan's liability pursuant to Section 5.2.2 above is limited to the lower of:
- (a) the actual cost of the lost or damaged Product; or
  - (b) the cost of making good the Product, including, without limitation, by treating, cleaning or processing to remove or rectify the damage Magellan caused; or
  - (c) the sum of: (i) the decrease in value of the Product as a result of the damage to the Product Magellan caused; plus (ii) the reasonable costs to sell or otherwise dispose of the damaged Product to the extent that exceeds the costs that would have been incurred in selling or disposing of the Product before the damage to the Product.
- 6.3. Special Damages. Neither Party will be liable for the other Party's lost profits, lost business opportunities, or other indirect, special, incidental, punitive, or consequential damages in connection with this Agreement, except that this provision does not release a Party from such damages incurred by a third party (other than an Affiliate of a Party) for which that Party has assumed liability under the indemnities provided in this Agreement.
- 6.4. No Warranties. Except as expressly provided in this Agreement, Magellan makes no representations or warranties, express or implied, including, without limitation, any implied warranty of merchantability or fitness for a particular purpose.
- 6.5. Insurance.
- 6.5.1. Magellan will not insure the Product. If Customer desires to insure the Product while it is in Magellan's custody, Customer will bear the cost of

such insurance, such insurance policies will waive subrogation rights against Magellan, and Customer will provide Magellan with evidence of such waiver of subrogation.

- 6.5.2. Customer will obtain and maintain in full force and effect the following, and with insurance companies licensed to do business in the United States and maintaining an A.M. Best Rating of A- X or better: (1) commercial automobile liability insurance coverage with a combined single limit of \$5,000,000; and (2) commercial general liability insurance on an occurrence form with a combined single limit of \$10,000,000 each occurrence, and annual aggregates of \$10,000,000, for bodily injury and property damage, including coverage for blanket contractual liability, broad form property damage, personal injury liability, independent contractors, products/completed operations, and sudden and accidental pollution, with the explosion, collapse, and underground exclusion deleted. Any combination of primary and excess policies may be used to meet these requirements.
- 6.5.3. Customer's Vessel must carry Charterer's Liability insurance to cover the Customer's legal liability as Charterer of Vessels calling at the Seabrook Terminal. Such liability will be placed with a P&I Club which is a member of the International Group of P&I clubs, or equivalent, with limits no less than \$20,000,000 protection and indemnity inclusive of Charterer's Pollution Liability.
- 6.5.4. Customer will require its Contractors and Vessels to retain adequate and reasonable insurance satisfactory to Customer for any activity at the Seabrook Terminal. Any deficiency in the coverage, policy limits, or endorsements of said Contractors or Vessels will be the sole responsibility of Customer.
- 6.5.5. Only with respect to and to the extent of the liabilities and obligations assumed under this contract, the required policies will: (a) waive subrogation rights against Magellan and its parent, subsidiary, and affiliated companies; (b) name Magellan, its parent, subsidiary and affiliated companies as additional insureds; and (c) include an amendment stating the insurance is primary insurance with respect to Magellan, its parent, subsidiary and affiliated companies, and any other insurance maintained by Magellan, its parent, subsidiary or affiliated companies is excess and not contributory with this insurance. Customer will provide Magellan certificates showing evidence of the required insurance coverage as of the Commencement Date of this Agreement. The required limit is a minimum limit and will not be construed to limit Customer's liability. The cost of the required insurance will be borne by Customer.

7. Indemnification.

- 7.1. By Magellan. Subject to Sections 5.2 and 5.3 of this Schedule “A”, Magellan will indemnify, defend and hold harmless Customer, its Affiliates, and its and their respective general partners, officers, directors, employees, agents and other representatives from and against any Liabilities in connection with this Agreement to the extent arising from: (a) the negligence or willful misconduct of Magellan, its employees, agents, contractors, and other representatives; or (b) the failure of Magellan to comply with the terms and conditions of this Agreement.
- 7.2. By Customer. Subject to Section 5.3 of this Schedule “A”, Customer will indemnify, defend, and hold harmless Magellan, its Affiliates, and its and their respective general partners, officers, directors, employees, agents, and other representatives from and against any Liabilities in connection with this Agreement to the extent arising from: (a) the negligence or willful misconduct of Customer or Customer’s employees, agents, customers, Contractors, Vessels and other representatives; or (b) the failure of Customer to comply with the terms and conditions of this Agreement.
- 7.3. Survival. The indemnities expressed in this Agreement will survive the expiration or termination of this Agreement.

8. Confidentiality. The Parties understand and agree that the terms and conditions of this Agreement (collectively “Confidential Information”) are confidential as between Magellan and Customer, and each Party agrees not to disclose Confidential Information to any third party or entity without the other Party’s prior written consent. In the event that either Magellan or Customer is requested or required to disclose any Confidential Information pursuant to this Agreement, such Party shall provide the other Party prompt notice of such request(s), if allowed by law, so that an appropriate protective order may be sought and/or waiver of compliance with the provisions of the Agreement granted. It is understood that the Party requesting a protective order will bear all costs related thereto. The confidentiality obligations of the parties as set forth in this Section 7 survive the expiration or termination of this Agreement for a period of one (1) year. Notwithstanding the foregoing, the Parties may share Confidential Information with Seabrook or ICE to the extent necessary in connection with the performance of this Agreement.

9. Miscellaneous.

- 9.1. No Waiver. No waiver by either Party of any right hereunder at any time will serve to waive the same right at any future date.
- 9.2. Remedies. Except as otherwise provided herein, the remedies provided in this Agreement are cumulative, not exclusive, and in addition to all other remedies in either Party’s favor at law or in equity.
- 9.3. Amendment. No amendment to this Agreement will be effective unless made in writing and signed by both Parties.

- 9.4. Severability. If any provision of this Agreement is partially or completely unenforceable pursuant to Law, that provision will be deemed amended to the extent necessary to make it enforceable, if possible. If not possible, then that provision will be deemed deleted. If any provision is so deleted, then the remaining provisions will remain in full force and effect.
- 9.5. Assignment. Neither Party shall assign or transfer this Agreement, in whole or in part, without the prior written consent of the other Party, and any assignment made in violation of this provision will be void.
- 9.6. Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Texas, without reference to the choice of law principles thereof.
- 9.7. Consent to Jurisdiction; Venue. Any dispute between the Parties relating to this Agreement shall be submitted by either Party to the exclusive jurisdiction and venue of the state and federal courts situated in Harris County, Texas, with each Party expressly consenting to such jurisdiction and venue and waiving any challenges to such jurisdiction and venue, including any challenge relating to the alleged inconvenience of the forum. **The Parties irrevocably and voluntarily waive any right they may have to a trial by jury.**
- 9.8. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and part of one and the same document. A facsimile or other electronic transmission of a signed copy of this Agreement will be deemed an original.
- 9.9. Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the matters addressed herein.
- 9.10. Survival. The Parties acknowledge and agree that any rights of a Party arising under this Agreement prior to its termination or expiration will survive the termination or expiration of this Agreement.

## Schedule "B"

### Marine Nomination & Scheduling

#### 1. LOADING.

- 1.1. General. All deliveries to a Vessel shall be arranged by Customer, and Magellan shall be responsible only to load the Product onto Vessels at the Seabrook Terminal in accordance with this Agreement. Seabrook shall have safety control and authority regarding docking of Vessels and loading of Product, and any delay resulting from the enforcement of such safety requirements or authority, shall not be cause for liability or damages against Magellan unless caused by the fault of negligence of Magellan and/or Seabrook. Unless otherwise mutually agreed between the Parties, the provisions in this Schedule "B" do not provide for loading of Product by any means or under any conditions other than those set forth in this Agreement.
- 1.2. Marine Vessels. Customer shall notify Seabrook (during office hours) at least five (5) days in advance of the arrival of any Vessel for the loading of Product. Vessels are received at the Docks in the order of their arrival as described in Section 1.6 below, with ocean-going ships being given priority over barges, subject to proper advance notice and the availability of the Docks, and subject to the Ship Dock Priority Berthing Sequence defined in Section 1.7 below. Magellan shall not be responsible for delays to marine Vessels due to the unavailability of the Docks. Vessels shall promptly vacate the Docks upon completion of loading of Product. Failing to do so may result in Customer's responsibility for dock delay, layberth charges, or Marine Delay fees. **Customer must vet all Vessels with Seabrook's Marine Traffic Coordinator by email to cshou@lbctt.com, or by phone (281) 291-3427 to confirm Vessel design (LOA, Beam, Draft and other requirements as defined in Schedule "C") for acceptance prior to nomination and arrival of Vessel at the Terminal.**

Any notice to Seabrook under this Agreement will be in writing either delivered personally by overnight courier to the relevant address set forth below or faxed with uninterrupted transmission confirmed by transmission report to the number set forth below or emailed to the email addresses set forth below which may be changed on 7 days' notice to Customer:

Seabrook Terminal, LLC  
Attn: Jeff Dewar and Bruce Moore, Managers  
11666 Port Road  
Seabrook, TX 77586  
Phone: +1 281 474 4433  
Fax: +1 281 291 3428  
Email: j-dewar@lbctt.com and b-moore@lbctt.com

E-mail notices shall be deemed properly given when received by the other Party.

- 1.3. Dock Facilities. The Seabrook Terminal facilities are capable of receiving industry standard Aframax, Panamax and MR sized tankers, oceangoing barges and inland barges with an overall length of up to 850 feet, a beam of up to 145 feet, an arrival draft of up to 45 feet and a displacement of up to 140,000 DWT for Ship Dock #4, subject to applicable laws and regulations and to Port of Houston Authority maintaining 45 feet depth in approach to Seabrook Terminal's dock. Berthing facilities, turning basin and approaches are subject to approval by the Houston Pilots Association. Draft restrictions are based on brackish water. The Docks will provide reasonable compatibility of the ship and berth facilities including adequate number of loading arm or hose connections (as applicable), manifolds, gangway and landing, fendering and flat of side, mooring lines and mooring hooks, ship to shore communications and emergency shut-down systems.
- 1.4. Loading Marine Vessels. Loading of Vessels at the Docks is subject to this Schedule "B" and Schedule "C". Seabrook will designate a berth for the Vessel. Notwithstanding any other provision in this Agreement, neither Seabrook nor Magellan warrants the safety of any channel, anchorage or other waterway used in approaching or departing from the designated berth, and neither Seabrook nor Magellan will be liable for any loss, damage, injury or delay to the Vessel resulting from the Vessel's use of such channel, anchorage or waterway. All Vessels will be dimensionally acceptable and meet all requirements of the Terminal's wharf facilities and governmental agencies. Available draft for Vessels at the Terminal Docks can vary significantly due to tides and weather conditions. Magellan will incur no liability for inadequate draft being available for a particular Vessel at a particular time as a result of natural causes.
- 1.5. Access. Customer, its employees and any Contractors or other persons duly authorized by Customer who reasonably require access in order to effect Customer's rights and obligations under the Agreement may enter Seabrook Terminal and MEH, provided however, that all such persons who are at Seabrook Terminal or MEH, including the personnel of the Vessels and vehicles that have arrived alongside or at Seabrook Terminal or MEH, must strictly observe and adhere to the rules, regulations, measures and directions given by or on behalf of Seabrook Terminal's Operator, LBC Houston, as well as applicable law of governmental regulations. Such authorized persons will be required to provide verification of their identity by providing a valid TWIC Card (at Seabrook Terminal) or Driver's License and also indicate the purpose of the visit. Visitors that do not possess a valid TWIC Card will be required to be escorted to/from Restricted Areas.
  - 1.5.1. All persons who enter Seabrook Terminal and/or go on board the Vessels moored alongside Seabrook Terminal do so entirely at their own risk. This shall apply equally to vehicles with which persons enter the premises.
  - 1.5.2. Seabrook or Magellan may deny admittance to Seabrook Terminal and MEH to any person that Seabrook or Magellan considers in its absolute discretion may cause harm to Seabrook Terminal or MEH or to any person

on Seabrook Terminal or MEH property, and to remove such persons from Seabrook Terminal or MEH.

- 1.5.3. Customer shall indemnify Magellan against all losses, liabilities and costs of any nature arising out of, or contributed to in any way by any failure on the part of any such Customer authorized person to comply with the Seabrook Terminal rules or the directions of Magellan, Seabrook or LBC Houston, or in respect of any act or omission of any Customer authorized person while present at the Terminal.
- 1.6. “First come, first served” Principle. Vessels arriving at Seabrook Terminal shall be discharged and loaded in the order of their arrival in accordance with the “first come, first served” principle as outlined in Schedule “C”, except where changes to this principle are required due to applicable Law, an emergency safety situation (or to prevent an emergency safety situation), or where reasonably required for the smooth operation of the Terminal.
- 1.7. Dock Priority Berthing Sequence. In addition to the foregoing, Ship Dock #4 and Ship Dock #5 (upon completion) are first come, first served docks with the exception of the following priority berthing sequence (the “Ship Dock Priority Berthing Sequence”):
  - 1) Suezmax-size vessels take priority over all vessels (Suezmax-size vessels are only allowed to berth at Ship Dock #5).
  - 2) Aframax-size vessels are second priority; provided that on Ship Dock #4 only, Aframax-size vessels nominated to discharge take priority over Aframax-size vessels nominated to load.
  - 3) Panamax-size and MR-size vessels are third priority.
  - 4) Ocean-going barges will be worked as the lesser priority behind all other vessels.
- 1.7.1. The Ship Dock Priority Berthing Sequence allows Vessels with a higher priority to be worked by Seabrook before existing tendered Vessels of lesser priority as set forth in sequence above.
- 1.7.2. Vessels with higher priority do not require an already docked vessel to vacate the dock before finishing operations.
- 1.7.3. Two Vessels of the same priority which have tendered will be handled on a first come, first served basis as defined by Seabrook’s Schedule “C”.

2. Demurrage.

- 2.1. Customer may claim demurrage from Magellan for any delays in loading a Vessel at the Terminal at the prevailing rate of the relevant Vessel if such delays were caused by Magellan's or its agent's or contractor's gross negligence or willful misconduct.
- 2.2. Magellan may claim demurrage from Customer for any delays in loading a Vessel at the prevailing rate of the relevant Vessel, if such delays were caused by Customer or Customer's agent's or contractor's gross negligence or willful misconduct.

## Schedule “C”

### Marine Dock Information, Requirements and Restrictions

#### Contact Information

	Email	Phone	Fax
Marine Desk / Customer Service	<a href="mailto:cshou@lbctt.com">cshou@lbctt.com</a>	281-291-3427	
Security	<a href="mailto:Hou-security@lbctt.com">Hou-security@lbctt.com</a>	281-291-3419	281-291-3430
Tender – Business Hours	<a href="mailto:cshou@lbctt.com">cshou@lbctt.com</a>	281-291-3427	
Tender – After Hours		281-291-3420	

#### Agent Requirements

- Agents should forward Customs Entry paperwork prior to vessel's arrival to Customer Service
- Agents must provide a Vessel and Company Gate List prior to arrival to Security
- Agents must provide information regarding any "Certain Dangerous Cargo" on board
- Tenders are accepted via telephone on a first come, first serve basis with a valid order. A Tender Reference Number will be provided as confirmation of accepted tender
- Vessels and barges should be vetted and accepted prior to tender and will not be called in until they are accepted. Vetting includes a review of the Q88; confirmation of compatibility at dock; current certifications including COC, COI or LOC; and vapor tightness certificate and vapor recovery information if required. Information should be sent to the Marine Desk for determination of acceptability to call on LBC Houston.
- In the event of a port or facility MARSEC level change, LBC will notify all vessel and tow-boat owners/agents and operators that are moored at the facility or scheduled to berth within 96 hours

#### Tugboat Requirements

- Minimum of two (2) tugboats are required for docking tankers and one (1) tugboat is required for sailing tankers

#### Seafarer/Visitor Access

- All gate lists must be submitted directly to Security via email or fax on agent's company letterhead prior to vessel arrival
- All gate lists must include names as it appears on their personal ID. No personal information
- All visitors must check in and out with Security and have proper PPE, including crew members transiting operational areas

#### Vessel Gate List (for crew changes, shore leaves, and deliveries)

- Vessel agents shall provide names of seafarers approved for shore-leave and on/off signers
- Vessel agents shall forward a written list of all crucial service personnel or companies who are to access the ship including agents and surveyors; list visiting companies; include TWIC escort trained transportation company(s)
- Vessel agents shall submit request for deliveries prior to vessel arrival to Security (hand-carry only). Upon receipt of request for delivery, further instructions will be provided
- The agent must have transportation waiting for the crew at the time of their departure from the vessel
- The crew must proceed immediately to the provided transportation upon departure. The crews must proceed immediately to the ship upon return. No loitering will be allowed in or around the facility

#### Company Gate List (for vessel services and visitors, including agents, and surveyors)

- Must be provided by the company listed and be provided on company letterhead (including owners/agents)
- Provide a 24/7 company contact and phone number
- Maintain current, especially if someone is no longer an employee

#### Other Services

- All deliveries must be approved by the Facility Security Officer (FSO) prior to vessel/supplier arrival.
- Services not directly associated with the contractual requirements of the product movement must be pre-approved by Customer Service prior to arrival, including, but not limited to, nitrogen pre-purging, layberth, steam, and MARPOL truck handling
- Bunker services are available via shore loop only with prior approval
- **Services not available at any dock:**
  - Lightering services
  - Fresh water
  - Lubes or bunkers by barge to vessel

#### Mooring

Vessel owners/operators must ensure that the contracted mooring companies provide safe and proper mooring services

### Dock Capabilities

Dock	Draft	Type of Vessel	Max # of Simultaneous Operations	MAX # of Ships or Barges	Max LOA	Max Beam	Min Load BPH	Max Load BPH	Min Discharge BPH
SD #4	-45' MLT	Ship	1 multi or single grade vessel	1	850'	145'	18,000	30,000	18,000
		Barge	1 oceangoing	1	850'	145'	18,000	30,000	18,000

### Seabrook H2S Limits

Maximum Hydrogen Sulfide (H2S)*	
Content in Product in Tankage	<10 PPM
Content in Vapor Space in Tankage	<500 PPM

**Schedule “D”**  
**Seabrook Terminals Measurement Procedures**

**Article 1**  
**GENERAL**

- 11** Custody Transfer Meter. All Custody Transfer Meters shall comply with, and shall be operated and maintained in accordance with the recommendation of the American Petroleum Institute Manual of Petroleum Measurement Standards (“API MPMS”).
- 12** Measurement Point. The point of custody transfer shall be at the point that Product leaves Seabrook Terminal, LLC’s (“Seabrook”) fixed dock flange, pipeline delivery flange, loading arm or delivery hose, as the case may be (“Custody Transfer Point”); however, volume and quality measurements shall be determined at the Seabrook meter stations (each, a “Custody Transfer Meter”) for Product received or delivered to vessels or pipeline.
- 13** Meter Skid Operation. The Seabrook meter shall be operated and maintained in accordance with the standards specified in the latest edition of the API MPMS, or as otherwise agreed to in writing by the Parties. All crude oil passing through the Custody Transfer Point shall be sampled in accordance with API MPMS Chapter 8.2. The Parties shall abide by the specifications for operations as outlined in this Agreement.

**Article 2**  
**QUANTITY TRANSACTION RECORDS (“TICKETS”)**

- 21** Reporting Frequency and Content. Meter tickets shall be generated by Seabrook for each batch or cargo (in this Schedule “D”, the word “batch” includes a batch or a cargo, as applicable) delivered through the Seabrook meter station. The data provided for each ticket shall include the following data to allow for calculations as specified in API MPMS Chapter 12.2 to verify the accuracy:
- a. Opening and Closing date and time of the current ticket operations
  - b. Gross indicated volume, in whole barrels
  - c. Average temperature of product during the batch, reported to the nearest 0.1°F
  - d. Average pressure of product during the batch, reported to the nearest 1.0 psig
  - e. Average gravity from the sample container at the observed temperature, reported in 0.1°API and 0.5°F
  - f. Meter factor
  - g. Percent sediment and water (“S&W”) as derived from the contents of the sample container

Seabrook shall provide Magellan a copy of each meter ticket within two (2) business days upon completion of batch.

- 22** Units of Measure. Meter tickets shall report the gross standard volumes (GSV) and net standard volumes (NSV) in hundredths of a barrel.
- 23** Business Transaction Times. All current month’s business shall open on the first day of the month at 07:00:01 a.m. and shall close at 07:00:00 a.m. on the first day of the following month.
- 24** Custody Transfer Meter Failure. If the Custody Transfer Meter malfunctions during a delivery, Seabrook shall end the meter ticket as soon as possible and the volume shall be derived, consistent with accepted industry practice, in a manner mutually agreeable to the Parties depending upon the nature of the failure. In the event the Custody Transfer Meter cannot be returned to service in a safe and timely manner, all deliveries into or out of the

Terminal shall be stopped until the repairs are made or alternative measurement procedures are agreed upon by the Parties.

- 25 Handling of Correction Tickets. After an event resulting in a measurement error, the volumes reflected by the meter tickets shall continue to be used as the measure of the volume. The final measurement resolution shall be determined by providing supporting documentation with an explanation as to what caused the measurement error. The supporting documentation for the requested adjustment shall be sent for approval to Magellan.

### **Article 3 BACKUP MEASUREMENT**

- 31 Method. Backup measurement shall be determined as outlined in Section 3.2 below or in a manner mutually agreed upon by the Parties in the event of a failure of the Seabrook meter station.
- 32 Standard Method. The quantity of Product received by or delivered to a Vessel shall be determined by gauging tankage before and after unloading or loading the Vessel.
- a. A minimum settling period of four (4) hours (the “Required Settling Period”) shall be required unless mutually waived by the Parties hereto in writing prior to unloading or loading the Vessel.
  - b. However, if Magellan chooses, Magellan or its agent shall be permitted to take gauge the shore tanks prior to the expiration of the Required Settling Period. For the avoidance of doubt, only the measurements taken after the Required Settling Period will be considered valid for the purposes of custody transfer and measurement.

### **Article 4 METER PROVING AND INSTRUMENT CALIBRATION**

- 41 Proving - Condition & Frequency. Seabrook shall calibrate the Custody Transfer Meter with a National Institute of Standard and Technology (NIST) traceable certified prover a minimum of once per product grade batch or when circumstances warrant a verification of the previously applied meter factor. The Custody Transfer Meter shall be proven only after line conditions have stabilized.
- 42 Proving - Right to Witness. Magellan and Magellan’s customers shall have the option to witness all calibrations of the Custody Transfer Meter upon request.
- 43 Proving - Reporting. Seabrook shall provide Magellan a copy of each proving report upon completion of proving. The proving report shall contain sufficient data to allow manual calculations to verify accuracy.
- 44 Proving - Meter Factor Validity. A meter’s individual run repeatability shall fall within  $\pm 0.05\%$  for five (5) consecutive runs. Meter factor shift from one proving to the next, assuming similar temperatures, pressures, flow rates and crude characteristics, shall not exceed 0.25% from the previously applied meter factor.
- 45 Proving - Meter Factor Application. The calculated meter factor shall be applied retroactively to the beginning of the batch in which it was proved.
- 46 Proving - Prover Sphere. The prover sphere shall be inspected annually, and if necessary, resized or replaced with like kind per the reference from the most recent waterdraw certification.
- 47 Prover Calibration. Seabrook’s stationary prover shall be waterdrawn a minimum of once every five (5) years or upon maintenance of the provers calibrated section (i.e. switch element

removal, breaking flanges in calibrated section, etc.) with a NIST certified or NIST traceable test measures per API MPMS Chapter 4 standards. Magellan may request a waterdraw at any time. However, if the calibration does not reveal a change of more than  $\pm 0.020\%$  of the current volume, Magellan shall be responsible for any and all cost associated with the waterdraw calibration.

- 48** Batch sampling. The sample receiver on the automatic sampling system shall be set to sample proportional to flow for a target of 75% depending on batch size of any deliveries to Magellan.
- a. Magellan shall have the right to witness and be provided sufficient notice to witness the S&W determination procedure as specified in API MPMS Chapter 10. S&W will be calculated using the centrifuge method.
  - b. Seabrook shall establish a policy to retain samples of Product for a minimum of sixty (60) days.
  - c. Magellan shall be allowed to acquire up to a gallon sample of the current batch from the composite sample receiver for Magellan's own use.
  - d. The sample probe shall be paced on a volumetric basis.
  - e. Sampling must be performed so as not to breach the integrity of the current batch's sample, but must also be performed so the next batch in queue is accurately represented.
- 49** Sampling System Certification. The entire sampling system shall pass all associated testing as specified in API MPMS Chapter 8.2 and Chapter 8.3 If the flow rates change outside the design limits of the sample system, Seabrook shall conduct certification to insure the integrity of the sampling system.
- 410** Temperature Transmitter Verification. The temperature transmitter associated custody transfer transmitters and connected periphery devices meter shall be checked by Seabrook against a NIST traceable, certified instrument, at a minimum monthly, in accordance with API MPMS Chapter 7 industry standards. All documentation regarding the verification and supporting documents for the verification equipment shall be the provided to Magellan by Seabrook upon request.
- 411** Pressure Transmitter Verification. The pressure transmitter associated custody transfer meter shall be checked by Seabrook against a NIST traceable, certified instrument, at a minimum monthly in accordance with API MPMS Chapter 21 industry standards. All documentation regarding the verification and supporting documents for the verification equipment shall be the provided to Magellan by Seabrook upon request.