

## **GALENA PARK 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 400,000 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. The fees set forth in Section 6 of Schedule B.
- (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

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 Galena Park 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” mean loading docks at the Galena Park 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. “Galena Park Terminal” means the terminal located at 12901 American Petroleum Rd., Galena Park, Texas 77547.
- 1.8. “ICE” means Intercontinental Exchange, Inc., and its subsidiaries.
- 1.9. “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.

- 1.10. “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).
- 1.11. “MEH” means Magellan’s East Houston Terminal.
- 1.12. “ppm” means parts per million.
- 1.13. “Product” has the meaning set forth in Section IV of this Agreement.
- 1.14. “RVP” means Reid vapor pressure.
- 1.15. “Services” has the meaning set forth in Section 2.2 of this Schedule “A”.
- 1.16. “System” means Magellan’s rights to tankage at MEH and Galena Park Terminal, and the pipelines connecting the foregoing tankage.
- 1.17. “Vessel” means the ship that receives Product at the Terminal on behalf of, at the request of, or for the benefit of, Customer.
- 1.18. “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 Galena Park 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 2.7 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 2.7 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 Galena Park 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 Galena OFL".
- 2.2.3. Customer's Vessels and Contractors must comply with the rules and procedures of Galena Park Terminal, as amended from time to time.
- 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 10,000 barrels an hour. If the Vessel receives Product at an average flow rate less than 10,000 barrels per hour due to restrictions caused by the Vessel and not caused by Magellan, 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 hand line or any future custody quantity measurement that Magellan determines necessary, at its sole discretion. Quantity determinations will be binding on both Parties absent fraud or manifest error.
- 2.4. **Inspector.** Customer may appoint, at Customer’s sole cost, an independent inspector acceptable to Magellan (“Inspector”) to verify Magellan’s measurement of the Product quantity. Customer must ensure that any Inspector is aware of and complies with the following requirements while working at the Galena Park Terminal:
- 2.4.1. On-site officed Inspector personnel shall complete access security request forms to gain automated access for the front entrance gate, which gate is controlled by a third party. Lost or stolen tags must be reported immediately to the Magellan Facility Security Officer and replacement value is strictly the responsibility of the Inspector.
  - 2.4.2. The Inspector must sign in at Magellan’s main gate for verification of the time of arrival.
  - 2.4.3. Upon arrival, the Inspector must sign in at Magellan’s Operations desk for verification of the time of arrival. The Inspector must also sign out at Magellan’s Operation’s desk for verification of departure time.
  - 2.4.4. The Inspector must come to Magellan’s Operations desk prior to any movement within the facility. Unescorted access is not permitted.
  - 2.4.5. Desk Operator, or designee, will communicate daily order expectations to each on-site officed Inspector’s designated point of contact at the beginning of each shift. Magellan will communicate order expectations to each off-site officed Inspector’s designated point of contact a minimum of sixty (60) minutes prior to requested movement.
  - 2.4.6. The Inspector will share all orders from the customer prior to scheduled product movement to determine the most efficient manner to complete the task(s).
  - 2.4.7. Magellan and the Inspector will perform their respective duties, compare and agree on the results (handline, temperature and water content).
  - 2.4.8. The Inspector will supply Magellan Operations gravity results for netting purposes.

- 2.4.9. Magellan, with input from the Inspector, will enter the detail into Magellan's inventory management system to determine a net volume for the movement.
- 2.4.10. Magellan and the Inspector will each execute documentation related to such task(s) and deliver copies of such to Customer.
- 2.5. Quality Testing.
- 2.5.1. 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.
- 2.5.2. 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.
- 2.6. 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.
- 2.7. 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.
- 2.8. 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.

2.9. 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. Liability.

5.1. 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.

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

5.2.1. 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.

5.2.2. 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.

5.2.3. 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.

5.2.4. 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.
- 5.3. 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.
- 5.4. 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.
- 5.5. Insurance.
  - 5.5.1. 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.
  - 5.5.2. 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.
  - 5.5.3. 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.

- 5.5.4. 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.
- 5.5.5. 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.

6. Indemnification.

- 6.1. 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.
- 6.2. 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.
- 6.3. Survival. The indemnities expressed in this Agreement will survive the expiration or termination of this Agreement.

7. 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.

8. Miscellaneous.

- 8.1. 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.
- 8.2. 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.
- 8.3. Amendment. No amendment to this Agreement will be effective unless made in writing and signed by both Parties.
- 8.4. 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.
- 8.5. 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.
- 8.6. 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.
- 8.7. 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.**
- 8.8. 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.

- 8.9. Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the matters addressed herein.
- 8.10. 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. **Vessel Notification.** To request a berth at Galena Park Terminal, Customer will give Magellan written notice that: (a) proposes a one (1) to three (3) day date range for loading or discharge of a specific Vessel at the Galena Park Terminal; (b) specifies the proposed Vessel's name, flag, deadweight tonnage, length, beam and draft and the volume and nature of cargo Customer intends to load or discharge; and (c) provides any additional information or documentation that Magellan reasonably requests. Magellan has the right to refuse approval of a proposed notice for reasons including the Vessel and the proposed date range; provided, however, that (y) Magellan's approval will not be unreasonably withheld, and (z) if Magellan responds with a refusal of the proposed date range, Magellan will use commercially reasonable efforts to include within the response one or more alternative date ranges within thirty (30) days of Customer's original proposed date ranges for loading of the cargo that Customer intended to load pursuant to Customer's original notice, but, subject, in any event, to Magellan's standard practices and procedures for Vessel nominations. Magellan's response to a notice will be communicated to Customer within one (1) business day. Magellan's approval of any Vessel will not constitute a continuing approval of that Vessel for any subsequent loading or discharge.

2. **Estimated Time of Arrival to anchor point at Houston Ship Channel.** Customer will notify Magellan of the estimated date and time of arrival at the anchor point of each Vessel with an approved notice as soon as this information is available, but no later than five (5) days in advance of the estimated time of arrival.

3. **Notice of Readiness.** After a Vessel has arrived at the customary anchorage or place of waiting, received all required clearances from governmental authorities and is otherwise in all respects ready to proceed to berth and commence loading or discharging cargo, it will tender a notice of readiness, along with a valid Certificate of Compliance or Cargo Transfer Operations Authorization Receipt, to Magellan in writing or via other available means acceptable to Magellan. The notice of readiness will state the estimated time the Vessel will arrive at the Galena Park Terminal wharf given any tidal or other constraints including written orders specifying Customer's intent upon arrival at the dock (including all Tankage numbers, Tankage volumes, Products and expected Product movements). Magellan shall receive all written orders affecting Galena Park Terminal and Vessel movements no less than twelve (12) hours prior to arrival at the dock for Magellan's consideration of approval. Magellan handles notices of readiness on a first-come-first-served basis once both Parties agree on the written orders to accommodate the specific Vessel. Magellan reserves the right to authorize or deny a request to change a written order within twelve (12) hours of arrival at the dock, depending on the nature of the change(s) and the resulting impact to the dock schedule. A notice of readiness will not be considered valid if at the time it is tendered Customer has failed to timely comply with anticipated written orders to the Galena Park Terminal, any financial, insurance, financial responsibility conditions, or any other provisions of this Agreement.

4. **Vessel Berth.** Magellan will designate a berth for the Vessel. Notwithstanding any other provision in this Agreement, Magellan will not be deemed to warrant the safety of any channel, anchorage or other waterway used in approaching or departing from the designated berth, and

Magellan will not be liable for any loss, damage, injury or delay to the Vessel resulting from such Vessel's use of such channel, anchorage or waterway. All Vessels will be dimensionally acceptable and meet all requirements of the wharf at Galena Park Terminal and governmental agencies.

5. **Berthing Order.** Vessels arriving and issuing valid notices of readiness within the date range approved by Magellan (the "approved laydays") will be berthed at the Facilities dock in the order of their tendering of valid notices of readiness and will have priority over early or late vessels. A Vessel arriving before its approved laydays will, at the sole discretion of Magellan, either be scheduled into the next available time slot on the Galena Park Terminal dock schedule or required to wait for its approved laydays. A Vessel arriving after its approved laydays will be allocated available time slots on the dock schedule. Magellan may, in its sole discretion, give priority to ocean-going vessels and require other Vessels to vacate a berth in favor of an ocean-going vessel without incurring any liability for laytime or demurrage charges. The foregoing notwithstanding, Magellan will be entitled to make exceptions to the above set forth berthing priority rules if, in Magellan's sole discretion, the safe operation of the Facilities requires such action. A Vessel will be deemed to have arrived at such time as it has given a valid notice of readiness to Magellan.

6. **Dock Event Window.** Prior to being berthed at the Terminal dock, Magellan will establish a dock event window that will designate a timeframe for a Vessel arriving and departing from the dock ("Dock Event Window"). The Dock Event Window will be calculated by Magellan's Traffic and Inventory team based on the Customer's written orders (e.g. tank(s), pipeline(s), Product(s), volume). An additional six (6) hours ("Buffer Period") will be added to the Dock Event Window for purposes of calculating the service fee below to allow for Customer's inspection and connection/disconnection activities. The time associated with any work required by Magellan not requested by Customer, other than routine connection/disconnection activities, will be added to the Buffer Period. The time calculation for determining whether a Vessel exceeds its Dock Event Window plus Buffer Period will begin when such Vessel has been made all-fast at a berth, and end when such Vessel's gangway is released; except that, in the event a regulatory agency (e.g. Coast Guard, EPA, TCEQ) inspection is required and creates a dock delay, the time associated with the inspection delay will not count towards the Dock Event Window for such Vessel. If a Vessel exceeds the Dock Event Window by more than the Buffer Period, Magellan will charge the Customer a service fee associated with the dock delay. The following table establishes the service fee, based on the current wait time at the anchor point at the time the Dock Event Window is exceeded:

<b>Current Wait Time at Anchorage (Days)</b>	<b>Fee (\$/Hr in Excess of the Dock Event Window + Buffer Period)<sup>1</sup></b>
<b>1-3</b>	<b>\$7,500</b>
<b>4-6</b>	<b>\$10,000</b>
<b>7-9</b>	<b>\$12,500</b>
<b>10+</b>	<b>\$15,000</b>

**<sup>1</sup>Any partial hour will be rounded up to the next whole hour.**

Magellan will be responsible for tracking all time associated with each Dock Event Window. Upon request, Magellan will provide Customer an event log summarizing the Dock Event Window.

Magellan reserves the right to request a Vessel to vacate its berth if a dock delay associated with such Vessel is deemed, by Magellan's sole discretion, to be excessive. If a Vessel is required to so vacate its berth, such Vessel, after tendering notice of readiness to recommence loading or discharging, will be reberthed in the next open time slot on the Terminal dock schedule.

7. **Berth Shifting & Vacating.** Magellan may require any Vessel to shift from one berth to another at the Galena Park Terminal. Magellan may require any Vessel to vacate its berth if such action is required, in Magellan's sole discretion, for the safe operation of the Galena Park Terminal. If the Vessel is required to so vacate its berth, the Vessel, after tendering notice of readiness to recommence loading or discharging, will be reberthed in the next open time slot on the Galena Park Terminal dock schedule.

8. **Pollution, Prevention and Responsibility.** Customer will require all Vessels promptly and diligently to prevent, mitigate and remediate all pollution emanating from the Vessel. Customer will require all Vessels to participate in the International Tankers Owners Pollution Federation (ITOPF), or in the case of barges, to have secured and to carry a current U.S. Coast Guard Certificate of Financial Responsibility (Water Pollution). Customer will require all Vessels to comply with all applicable Law and to carry all liability and pollution insurance required by such Laws.

9. **Marine Vapor Recovery and Emissions Reduction.** All Vessels loading Product requiring emissions control will comply with emissions limits established by the Galena Park Terminal and will perform, provide, possess and utilize all tests, test results, and other equipment necessary in Magellan's reasonable opinion to: (a) meet all requirements of applicable Laws and Galena Park Terminal rules, as amended; and (b) properly utilize Magellan's vapor recovery unit and emission reduction systems, if available at the Galena Park Terminal. All Vessels loading Product will have vapor recovery manifolding, connections and controls compatible with the Facility's vapor recovery equipment, and designed and operated to ensure that all vapors evolved or displaced by loading operations are safely contained.

10. **Laytime and Demurrage.** *Except as otherwise specifically provided in this schedule and except to the proportionate extent of the gross negligence or willful misconduct of Magellan, in no event will Magellan have any liability to Customer for laytime or demurrage.*

11. **Taxable Fuel.** Prior to the delivery of taxable Product to a Vessel, the Terminal must have on file at the Terminal a "Notification Certificate of Taxable Fuel Registrant" from such Vessel. Magellan may refuse to deliver taxable Product to any Vessel failing to provide the appropriate documentation of registration. The Notification Certificate of Taxable Fuel Registrant is not required to be supplied by foreign ocean-going vessels.