

## OBLIGATIONS OF THE PARTIES

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## 1) OBLIGATIONS OF THE PARTIES

### 1.1) Obligations of the Operator

The Terminal Operator, within the terms and conditions set forth herein, shall:

- allocate regasification capacity on the basis of the provisions set out herein;
- verify the User's monthly LNG delivery schedule and provide the elements required to reschedule the unloading operations;
- define and communicate the monthly redelivery schedule of the quantity regasified;
- operate and maintain the Panigaglia Terminal in safe, reliable and efficient conditions;
- define and communicate the maintenance schedule for the facility;
- handle the unloading operations in accordance with the LNG delivery schedule, and the storage and regasification of the quantities of LNG delivered by the User, in accordance with the quality and pressure specifications set out herein;
- according to the specific procedures described herein and the terms of quality and pressure compatible with those required by Snam Rete Gas in its Network Code, make available to Snam Rete Gas, that in turn takes them in charge for redelivery to Users at the Redelivery Point, volumes of regasified LNG that are equivalent in energy terms to the volumes of LNG delivered to the Operator at the Delivery Point, minus consumption and losses related to the regasification service and own consumption of gas for the transport service;
- carry out the bookkeeping activities for the LNG received and the regasified LNG on behalf of the User;
- provide Users with the information needed for proper and efficient access to the Terminal;
- ensure the availability of transport capacity at the Panigaglia plant in line with the commitments made to the Users as a result of the Contract entered into. To do so, GNL Italia shall book, in the manner and timing set out in Chapter 5 of the Network Code, the transport capacity required to provide the Regasification Service;
- carry out the scheduling of transport capacity using data relating to the capacity distribution set out in paragraph 4.1, Chapter 5 and the data related to the regasification scheduling of paragraph 3, Chapter 9.

In order to comply with the above obligations, in accordance with article 13 of the TIRG, GNL Italia shall operate on the basis of information received from its Users.

The delivery of the LNG to GNL Italia by the User does not imply the transfer of ownership of that gas to GNL Italia, which stores the LNG solely to provide the service. In any event, the obligations undertaken by the User with regard to GNL Italia shall remain unaffected by the signing of the Regasification Service Agreement and the consequent allocation of regasification capacity.

### 1.2) Obligations of the User

The User, under the terms and conditions set out herein, agrees to:



- deliver volumes of LNG to the Delivery Point that meet the quality and pressure specifications, using LNG Carriers that comply with the provisions regarding the acceptance thereof, as set out herein, and ensuring compliance with the procedures in use at the Panigaglia Terminal and the port of La Spezia;
- perform all activities necessary for the allocation of regasification capacity, including the provision of the required financial guarantees;
- schedule the unloading slots at the Terminal in accordance with the criteria set out herein;
- provide the Terminal Operator with the information required by the procedures outlined in this document;
- pay the Operator the fees for the regasification service provided at the Terminal and for the network injection at the Panigaglia Entry Point, in addition to any other amounts due, in accordance with the procedures set out herein.

## 2) NON-PERFORMANCE BY THE OPERATOR

Except for cases of Force Majeure and for the specific provisions contained in the chapters entitled "Scheduling of LNG deliveries and of regasification activity" and "Receiving, storage and regasification of the LNG", if the Operator does not provide the service at its own expense under the Regasification Agreement, the User shall be released from the obligation to pay any fee set out in the Regasification Agreement for the period during which such service is not provided.

### **Breaches of Contract**

Being required to pay the fees and compensation set out herein, the Parties mutually agree to consider fully covered the amount of all costs and expenses incurred as a result of their respective failure to comply with the obligations set out herein - the compensation of any further damage, claim or request of one Party to the other being hereby expressly excluded - except as otherwise specified elsewhere in this document and as set out in paragraph 4 below.

## 3) LIMITATION OF LIABILITY

### 3.1) Wilful Misconduct/Gross Negligence

Liability for any damage arising from or in any way related to the execution or non-fulfilment, or partial or late fulfilment of obligations under the Regasification Agreement is expressly limited to cases of wilful misconduct and/or gross negligence.

### 3.2) Exclusion of Liability

Except for the cases of wilful misconduct and/or gross negligence identified in paragraph 3.1 above, it is agreed that each of the parties is expressly relieved of all liability towards the other for:



- indirect damages, including but not limited to, termination of contracts with its customers and/or suppliers or any consideration, disbursement, damage compensation or payment for any reason that a Party must pay in accordance with its contracts or relationships with customers and/or suppliers and/or third parties and/or competent authorities;
- loss of earnings, including but not limited to, loss of profit or income;
- non-pecuniary damage, including but not limited to, the loss of image.

Each Party is expressly indemnified by the other with regard to any claims for compensation made by third parties for any reason.

#### 4) EARLY TERMINATION OF THE REGASIFICATION AGREEMENT

##### 4.1) Causes

Other than for the reasons envisaged by law, the Regasification Agreement can be terminated by the Terminal Operator in advance of its natural expiration by sending a written notice to the User, under Article 1456 of the Italian Civil Code, with a copy to the Authority for information, under the following circumstances:

- 1) loss of the User's eligibility to participate in the regasification capacity allocation processes set out in the chapter entitled "Allocation of regasification capacity";
- 2) bankruptcy proceedings against the User;
- 3) non-payment;
- 4) improper use of the IT system;
- 5) all the other cases, including the cases specified in this Code, in which the Regasification Agreement may be terminated as a result of the User failing to comply with any of the commitments undertaken by signing the Regasification Agreement.

##### 4.1.1) *Loss of access requirements*

Without prejudice to the specific provisions otherwise set out in the Regasification Code, if a User ceases to meet, for any reason, one or more of the requirements to participate in the regasification capacity allocation process, and is unable to restore such requirements within seven calendar days following the date on which GNL Italia has notified the User that it has lost the requirements, sent by fax to it in advance, the party in question shall lose its status of User and accordingly the entitlement to access the regasification service.

##### 4.1.2) *Bankruptcy procedure*

If a User is subject to bankruptcy proceedings – whether judicial, administrative or voluntary – the Terminal Operator shall be entitled to terminate the agreement, except in situations where the Regasification Agreement is taken over by the bankruptcy administrator.

##### 4.1.3) *Non-payment*

Failure by the User to pay the amounts due for any reason to the Terminal Operator in relation to the performance of the Regasification Agreement, even for a single invoice, shall entitle the Terminal Operator, without prejudice to any other remedy permitted

by law and by the Regasification Agreement, to terminate the Regasification Agreement early.

*4.1.4) Improper use of the IT system*

Protracted improper use of the IT system by the User, which is seriously detrimental to the correct operation of the IT system or of the Terminal, shall constitute grounds for early termination of the Regasification Agreement, with obligation to pay compensation for all damage caused to the Terminal Operator and to other Users.

**4.2) Payments Due**

In all cases of contractual termination set out in paragraph 4.1 above, the User concerned must pay the Terminal Operator, in addition to the amounts due, for whatever reason and relating to the period up until the termination date of the Regasification Agreement, an amount equivalent to the discounted value – due at the termination date and at a discount rate equal to the annual average rate of return of 10 year Treasury Bonds for the last available year, plus 0.75% – of the estimated payments due in respect of the regasification capacity fees owed by the User for the period from the date of the early termination date and the natural expiration date of the Regasification Agreement.

**4.3) Enforcement of Guarantees Provided**

In the event of early termination of the Regasification Agreement or failure to pay invoices, GNL Italia shall enforce the guarantees provided in relation to all unpaid amounts. The enforcement of the guarantees shall be communicated by GNL Italia to the User in writing.

GNL Italia shall enforce the guarantees provided in the following order of priority:

- (i) Non-interest-bearing security deposit;
- (ii) Bank guarantee;

The User expressly agrees that in all cases of termination of the Regasification Agreement or non-payment of invoices for the regasification service, GNL Italia shall, after sending a reminder, immediately enforce the guarantee provided by that User, to limit the charges on the natural gas system.

**4.4) Termination by the User**

If circumstances prevent the User from delivering LNG to the Delivery Point for a continuous period of over 6 months, starting from the date the event occurs, the User may request the early termination of the Regasification Agreement – by sending a written notice to the Terminal Operator including objective evidence of said circumstances – in relation to the services prevented by the event in question.

The User concerned shall, however, be obliged to pay the Terminal Operator the amounts set out in paragraph 4.2 above. If the regasification capacity allocated to the User in accordance with the terminated Agreement, is totally or partially reallocated by

the Terminal Operator to another User, the fees associated with the allocated capacity shall be credited to the terminated User.

## 5) FORCE MAJEURE

### 5.1) Definition

The expression "Force Majeure" means any event, act, fact or circumstance occurring at the Regasification Terminal which is not attributable to the Operator that invokes it but which makes it totally or partially impossible for the Operator to fulfil its obligations as specified in the Regasification Agreement for as long as the Force Majeure conditions persist, and which is unavoidable notwithstanding the ongoing diligence due by reasonable and prudent operator.

By way of example and without limitation, and provided that they meet the above requirements, the following events, facts, acts and circumstances shall constitute Force Majeure:

- wars, terrorist actions, sabotage, acts of vandalism, riots;
- adverse natural phenomena such as storms, tidal waves, lightning, earthquakes, landslides and floods;
- fires and explosions;
- strikes, lockouts and other forms of industrial unrest, excluding corporate conflict, declared on occasions other than collective bargaining;
- unanticipated breakdown or accidents relating to plants or equipment used for the unloading, storage and regasification of LNG delivered by the User to the Delivery Point, provided that such events are not due to the wilful misconduct or negligence of the Terminal Operator.

The Parties expressly agree that any event, fact or circumstance that occurs outside the Regasification Terminal does not constitute Force Majeure.

### 5.2) Effects

The Operator shall not be held liable for the failure to fulfil the obligations specified in Regasification Agreement, nor for any damage or loss incurred by the other Party, to the extent and for the duration that both Parties are affected by Force Majeure.

If a Force Majeure event occurs, the Operator must use its best efforts to limit the negative effects of the event in order to allow normal operations to be resumed in the shortest possible time, thereby allowing contractual obligations to be fulfilled.

A Party's inability to meet its payment obligation shall not be considered a Force Majeure event.

### 5.3) Notification

The Operator must notify the User, in a timely manner, of the following:

- a) the occurrence of an event, fact or circumstance that prevents the total or partial fulfilment of its obligations in respect of the Regasification Agreement, providing a clear indication of the nature of the event and also identifying – if a reasonable assessment is possible – the likely time required for its resolution;
- b) a progress report of the event, providing regular updates on its expected duration;
- c) when the Force Majeure event ceases to exist.

#### 5.4) Impact on the Regasification Fees

In the event of a Force Majeure event, and for as long as such an event continues, the regasification capacity fee payable by the User shall apply proportionally to the actual decrease in the regasification service.

If the Force Majeure event results in the total interruption of the regasification service, the User shall be exempt from payment, pro rata temporis, of the related regasification fees.

### 6) RESOLUTION OF DISPUTES

#### 6.1) Jurisdiction of the Authority

In the event of disputes on the interpretation and application of the Regasification Agreement, Article 2.24(b) of Law No. 481 of 14 November 1995 states that the criteria, conditions, timing, and procedures for conducting arbitration procedures in an adversarial procedure before the Authority shall be set by a government regulation, issued under Article 17(1) of Law No. 400 of 23 August 1988.

#### 6.2) Temporary Provisions

Until the issue of the regulation set out in the foregoing paragraph, any disputes shall be settled in accordance with the procedures set forth below.

##### 6.2.1) Preventive investigation

Except in cases in which, according to one Party, urgent precautionary measures are required, any disputes that arise on the interpretation and application of the Regasification Agreement shall be submitted, by initiative of either Party and subject to formal notice sent to the other Party, to the prior joint examination with the parties appointed for such purpose by the Parties themselves and selected among first line managers, in an attempt to reach a satisfactory agreement.

##### 6.2.2) Arbitration proceedings or judicial settlement

If the settlement attempt is not successful within 60 days from the notification date specified in the preceding paragraph, the decision on the dispute may alternatively:

- a) be referred – subject to agreement between the Parties – to the competence of the Authority in accordance with the procedures set out in the Authority's Resolution No. 42/05, as amended, which the Parties acknowledge and accept, using the



"Arbitration Agreement Framework" provided in Annex A of the aforementioned Resolution and attached to this document;

- b) be submitted by either Party to the Judicial Authorities. In such a case, the Parties shall confer exclusive jurisdiction on the Court of Milan.

*6.2.3) Technical arbitration*

In the event of a dispute on a technical matter the solution to which requires an exclusively technical assessment, the Parties shall agree to submit the dispute to the decision of an independent expert appointed by them.

If the Terminal Operator and the User fail to agree on the appointment of the technical expert within 15 days of notification by the requesting Party, either Party may request the Dean of the Politecnico di Milano (Engineering University of Milan) to appoint the expert. The expert thus appointed shall set the procedural rules to settle the dispute, taking into account the opinions of both parties involved.

The expert's decision shall be final and binding on all Parties, who shall thereafter comply with said decision.



**ANNEX: ARBITRATION AGREEMENT FRAMEWORK**

The undersigned:

A. ....

and

B. ....

engaged in a dispute in relation to the following:

AGREE

to submit the settlement of the dispute to an Arbitration committee as described below.

1.1 The Arbitration committee is composed as follows:

(a) arbitrator appointed by party A:

(b) arbitrator appointed by party B:

(c) chairman of the Arbitration committee whose appointment shall be jointly delegated by both parties to the Authority upon the proposal of the General Manager of the Authority;

2.1 The Arbitration Committee shall decide by means of an award issued in accordance with the law, following completion of a procedure governed by the rules contained in Title VIII of Book IV of the Italian Code of Civil Procedure.

2.2 The deadline for issuing the arbitration award, set out in article 820(1) of the Italian Code of Civil Procedure, is set at the following number of days: ...

2.3 The language used in the arbitration proceedings is Italian;



2.4 The arbitration takes place in the Authority's offices.

3.1 The role of Secretary of the Arbitration Committee is carried out by an employee of the Legal Department, appointed for this purpose by its Manager;

3.2 The Secretary, in particular:

- assists the Arbitration Committee throughout the proceedings;
- drafts and retains the official file;
- assigns a unique year-based serial number to each file, keeping record of the details of the arbitration proceedings in chronological order in a specific register;
- draws up the minutes;
- communicates the statements prepared by the Arbitration Committee;
- files the deeds and documents of the arbitration proceedings;
- informs the parties of the dates of the hearings;
- delivers the arbitration award to the parties;
- closes the proceedings, following communication of the amicable settlement of the dispute;

3.3 On the basis of the regulations in force, the Secretary allows only the contending parties to view and copy the deeds and documents of the arbitration proceedings, whether they are constituted or not. Except when access is granted to the parties, the Secretary is bound by official secrecy.

4.1 The Arbitration committee and the Secretary may use the personnel and facilities made available by the Manager of the Legislative and Legal Department to carry out administrative tasks.

5.1 For the purpose of carrying out document-based investigations and providing technical advice, the Arbitration committee may use a resource from the office of the Authority concerned, duly appointed by the Manager thereof.

6.1 All communication required during arbitration proceedings shall be handled by the Secretary by registered letter with proof of delivery, unless the Arbitration Committee decides otherwise; and such communication is delivered to the parties at their registered offices or at the following addresses:

(a) for party A:

(b) for party B:

- 6.2 The deeds shall be produced and deposited in as many copies as there are other parties to the proceedings and members of the Arbitration Committee, plus a further copy for the official file. This activity must be carried out at the registered office of the arbitration;
- 6.3 As an alternative to hard copies, the communication, productions and deposits set out in paragraphs 6.1 and 6.2 above may also be made in digitally signed electronic format, per Decree No. 445 of the President of the Republic of 28 December 2000, and sent to the email addresses of the parties or the defence attorneys whose offices they have elected as domicile, or for communications, productions and deposits addressed to the Secretary of the Arbitration Committee.
- 6.4 The notifications are made in accordance with the rules for notifying court proceedings.
- 6.5 The notifications set out in paragraph 6.4 above may also be made by email as long as the deed is represented on a computer medium, with a digital signature. The notification must be sent to the email address of the parties or of defence attorneys whose law offices they have elected as domicile.

The original copy of this agreement has been communicated to the Manager of the Authority's Legislative and Legal Department at piazza Cavour 5, 20121 Milan, for subsequent action to be taken.

Place and date:

Party A:

Party B: