

## **Annex 4: Capacity Agreement form**

### **CAPACITY AGREEMENT**

This regasification capacity agreement (“**Capacity Agreement**”) is executed by **OLT Offshore LNG Toscana S.p.A.**, tax registration no. and VAT no. 07197231009, registered in the companies’ register of Milan and having registered office in via Passione 8, 20122 Milan (“**Operating Company**”) and [•], tax registration no. [•], VAT no. [•], registered in the companies’ register of [•] and having registered office in [•] (“**User**”), hereinafter collectively referred to as the “**Parties**”.

#### **Whereas**

- a) On March 24<sup>th</sup> the Regasification Code was approved by the Italian Regulatory Authority for Energy Networks and the Environment (“ARERA”) by resolution 85/2020//R/gas;
- b) In relation to the regasification capacity which will be offered by the Operating Company, the User intends to (i) submit one or more regasification capacity requests pursuant to Clauses 2.5.1, 2.1.8 and/or 2.1.9 of the Regasification Code or (ii) submit a regasification capacity Transfer request as a Transferee pursuant to Clause 3.2.2 of the Regasification Code;
- c) The User intends to acquire the rights and obligations of a User of the Regasification Service envisaged by this Capacity Agreement and by the Regasification Code, in the event that it is awarded regasification capacity or following the Transfer of such capacity;

**Now, therefore,** the User and the Operating Company declare that they have agreed as follows:

#### **1. Definitions and interpreting criteria**

- 1.1. Unless defined otherwise, the capitalised terms contained in this Capacity Agreement shall have the meaning indicated in Clause 1.1.1 of the Regasification Code.
- 1.2. This Capacity Agreement will be interpreted in accordance with the provisions of Clause 1.1.2 of the Regasification Code.

#### **2. Subject matter and effectiveness of this Capacity Agreement**

- 2.1. The Parties hereby intend to regulate the terms of the future provision of the Regasification Service by the Operating Company to the User in relation to any regasification capacity that will be assigned following the allocation processes envisaged by Clauses 2.1.5, 2.1.8 and/or 2.1.9 of the Regasification Code or transferred pursuant to Clause 3.2.2, expressed in m<sup>3</sup><sub>liq</sub>/year, and for the maximum number of Berthing Slots that may be allocated for access to the Regasification Service.
- 2.2. This Capacity Agreement will be valid from its date of execution by the User and the Operating Company until the Operating Company or the User exercise their right of withdrawal envisaged by article 2.6, it being understood that as a result of its execution the User will not be obliged to take part in the capacity allocation processes envisaged by Clauses 2.1.5, 2.1.8 and/or 2.1.9 of the Regasification Code.

- 2.3. This Agreement will be valid from the date on which regasification capacity is awarded following the processes envisaged by Clauses 2.1.5, 2.1.8 and/or 2.1.9 of the Regasification Code or the Operating Company's acceptance of the regasification capacity transfer request in accordance with the provisions of Clause 3.2.2 until the usage of the assigned capacity is completed or the loss of such right in accordance with the Regasification Code. Where there is an uninterrupted sequence of allocations, the Agreement will remain valid until completion of the usage of the assigned capacity with the longest expiry date or the loss of such right in accordance with the Regasification Code. Every allocation or transfer of regasification capacity will also determine the Regasification Capacity regulated by the Agreement which will be equal to the capacity allocated or transferred from time to time and to the sum of the allocated or transferred capacities that have not been or cannot be used in the case of an uninterrupted sequence of allocations or transfers.
- 2.4. The regasification obligation does not imply an obligation to redeliver the delivered LNG in the form of regasified gas but will consist of an obligation to redeliver quantities of gas equivalent in terms of energy, minus Consumption and Losses, at the Redelivery Point.
- 2.5. Each of the Parties may give notice to the other of its withdrawal from this Capacity Agreement at any time, without prejudice to any rights and obligations that have been acquired hereunder.

### **3. Service Conditions**

- 3.1. The User is aware and expressly accepts that the regasification capacity envisaged by article 2.3 above may be adjusted during the validity of this Capacity Agreement in accordance with the provisions of the Regasification Code.
- 3.2. The Regasification Service relating to the regasification capacity envisaged by article 2.3 is regulated by the Capacity Agreement and the Regasification Code: therefore, the User and the Operating Company declare that they are fully aware of the contents of the Regasification Code and they agree to apply it and to comply with it. In particular, the User declares that it has read, accepted and approves the Clauses indicated in this Capacity Agreement.
- 3.3. The User declares that it is aware and accepts that any amendments to the Regasification Code made subsequent to the execution of this Capacity Agreement will automatically apply to the Capacity Agreement itself, even where they have not been expressly accepted by the User.
- 3.4. For the entire duration of the Capacity Agreement, and in any case pursuant to Clauses 2.1.1 and 1.2.2 of the Regasification Code, the User shall comply with all the Service Conditions.

### **4. Charges**

- 4.1. The charge for the Regasification Service is determined following the regasification capacity allocation processes envisaged by the Regasification Code and in accordance with the provisions of Clause 5.2.1 thereof. Therefore, where there is an uninterrupted sequence of allocations, the charges for the service may be different from the results of the processes pursuant to which each different capacity was assigned. In the case of transfer of regasification capacity, the charges payable for the Regasification Service by the Transferee for the transferred regasification capacity will be those envisaged by the Transferring User's Capacity Agreement for such capacity.

- 4.2. The charge for the Snam Rete Gas S.p.A. transportation service is determined in accordance with the procedure established by the Regasification Code, applying the transportation tariffs approved by the ARERA.
- 4.3. The User also agrees to pay the Operating Company its share of the quantities payable in kind by the Operating Company to Snam Rete Gas S.p.A. to cover the consumption associated with the transportation service in accordance with the provisions of resolutions ARG/gas 184/09, ARG/gas 192/09, ARG/gas 198/09 as subsequently amended.

## **5. Administrative liability**

The User declares that it is aware of the applicable legislation on the administrative liability of legal persons, with particular regard to Legislative Decree no. 231 of 8 June 2001, and that it has viewed the document entitled “Model 231”, which also includes the Code of Ethics which the Operating Company drafted with reference to the applicable legislation on administrative wrongdoings by legal persons arising from crimes committed by directors, employees and/or collaborators. Model 231 is available on the website of the Operating Company. Moreover, the User may ask the Operating Company to provide it with a hard copy at any time.

## **6. Money laundering**

The Operating Company declares that it complies with the principles envisaged by the Legislative Decree no. 231 of 21 November 2007 and that it agrees with the general obligation of “active collaboration” (reporting suspect transactions, storing documents, internal control), which is intended to prevent and impede money laundering and terrorist financing.

In accordance with the provisions of article 648 bis Italian Criminal Code, and with the provision of article 2 of Legislative Decree no. 231/2007, money laundering refers to: the conversion, transfer, concealment or the purchase, possession or use of assets in the knowledge that they arise from criminal activity or from participation in criminal activity. Terrorist financing is defined Legislative Decree no. 109 of 22 June 2007.

The User declares that it is aware of the applicable legislation on the prevention of money laundering and terrorist financing envisaged by the Legislative Decree no. 231 of 21 November 2007.

The User declares, and accepts all liability associated with such declaration, that it is not aware of any criminal origin of any money, goods or other assets transferred for the purposes of this Capacity Agreement.

The Parties agree that any failure to comply with the provisions of this contractual clause or the failure to disclose any factual circumstances that entail a modification of the declarations issued by the User constitute a breach of this Capacity Agreement.

Consequently, the Operating Company may early terminate the Capacity Agreement in the event that the User is convicted, including in the first instance or following a plea bargain pursuant to article 444 Italian Code of Criminal Procedure, of one of the money-laundering or terrorist-financing crimes envisaged by the Legislative Decree no. 231 of 21 November 2007.



[Postcode][City/town]

Fax [Fax]

email [email]

Certified email [Certified email]

For the attention of [For the attention of]

[Place], [DD/MM/YYYY]

OLT Offshore LNG Toscana

[User]

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The User declares that it consents to and has read and accepted all the applicable provisions of the Regasification Code and, in particular, pursuant to articles 1341 and 1342 Italian Civil Code, the User declares that it has examined the above terms and conditions and that it is aware of and specifically approves the following Clauses of the Regasification Code: 1.4.1.2b (*“Interruptible Redelivery Service”*), 1.4.1.6 (*“Waiver of Regasification Service”*), 1.4.3 (*“Assignment to Terminal Lenders”*), 2.1.3 (*“Consequences of failure to meet the Service Conditions”*), 3.1.1 (*“Credit Requirements for the Continuous Regasification Service”*), 3.1.3 (*“Variation of the Credit Requirements”*), 3.1.5 (*“Replacement and enforcement of the financial guarantees”*), 3.1.8 (*“Insurance Requirements”*), 3.2.1 (*“No assignment”*), 3.2.3 (*“Release of regasification capacity”*) 3.3.3 (*“User’s Changes to Ninety Day Unloading Schedule”*), 3.3.4 (*“Operating Company Changes to Annual Unloading Schedule and to Ninety Day Unloading Schedule”*), 3.3.5 and 3.3.6 (*“Charge variance”*) Chapter 3.8 (*“Variations of the Regasification Service”*), 5.2.2.6 (*“Invoicing disputes”*), 5.2.2.7 (*“Late payment”*), 5.3.1.1 (*“The User’s liability in respect of the Operating Company”*), 5.3.1.2 (*“Liability for loss of revenue”*), 5.3.1.3 (*“The Operating Company’s liability in respect of the User”*), 5.3.1.4 (*“Liability to third party owners of LNG”*), 5.3.1.6 (*“Limitations of Liability”*), 5.3.3.1 (*“Withdrawal by User”*), 5.3.3.3 (*“Waiver of Italian Civil Code rights”*), 5.3.4.4 (*“User’s rights and obligations”*), 5.4.2.8 (*“Time limits”*).

[Place], [DD/MM/YYYY]

As a sign of acceptance

[User]

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*Attachment: photocopy of the signatories’ identity documents*