

SECTION 3: REQUIREMENTS FOR PROVIDING THE SERVICE - SCHEDULING AND PROVISION OF THE REGASIFICATION SERVICE

Chapter 3.1 - CREDIT AND INSURANCE REQUIREMENTS

3.1.1 Credit Requirements for the Continuous Regasification Service

3.1.1.1 Financial guarantees to secure the obligations of Users with Capacity Agreement for the allocation of Continuous Capacity

a) Subject to the Applicant's obligation to submit the financial guarantee envisaged by Clauses 2.1.5.2 and 2.1.5.3 to secure the obligations arising from the Capacity Agreement for the allocation of Continuous Capacity, the Operating Company will provide the Continuous Regasification Service exclusively to the Users that provide and maintain adequate financial guarantees to secure the payment obligations arising from the execution of a Capacity Agreement for the allocation of Continuous Capacity. For the entire duration of the Capacity Agreement and until the sixth (6th) Month following the expiry of the latter or subsequent to such period while the User's payment obligations in respect of the Operating Company are suspended, the User is required to have:

- (i) a credit rating as per Clause 3.1.1.1b) or, failing that
- (ii) a financial guarantee as specified in Clause 3.1.1.1c) or 3.1.1.1d) or, failing that
- (iii) a non-interest-bearing security deposit in a bank account held by the Operating Company to be created through wire transfer stating clearly in the description the purpose pursued by the transfer itself. Such deposit will be returned to the Applicant within ten (10) Business Days of its request. In the event that the request is made by a User, the deposit will be returned within the same period of ten (10) Business Days of the request and in any case only if and insofar as the obligations guaranteed by such deposit have been fulfilled.

b) The Applicant shall provide the Operating Company with written evidence, in a form and with a content deemed satisfactory by the Operating Company, that its rating for unsecured long-term debt is equal to or higher than:

- i) Baa3 if given by Moody's; or
- ii) BBB- if given by Standard&Poor's; or
- iii) BBB if given by Fitch.

c) If the requirement envisaged by Clause 3.1.1.1b) is not fulfilled by the Applicant, but is fulfilled by an Affiliate of the User, the Applicant may provide the Operating Company with a Guarantee of the Company of the User's Group which expresses the Guarantor's undertaking to meet all the obligations envisaged for the Applicant under the Capacity Agreement. The template for the letter of guarantee signed by the Affiliate of the User is contained in Annex 7A2.

d) If the requirements envisaged by Clause 3.1.1.1b) and 3.1.1.1c) are not fulfilled, the Applicant shall present a special Bank Guarantee issued by an Approved Credit Institution for one third (1/3) of the maximum annual commitment fee payable under the Capacity Agreement and paid to the Operating Company in accordance with the provisions of Clauses 5.2.1.3 and 5.2.1.5. It being understood that for the entire duration of the Capacity Agreement the amount of the Bank Guarantee must be, in each Month M, at least equal to the total amount of the monthly sums payable by the User until the end of the fifth (5th) month after Month M. The template for the Bank Guarantee is contained in Annex 7A1. The guarantee will continue to have effect for 120 days subsequent to the end of the last Gas Year in which regasification capacity will be allocated.

e) The User shall provide the Operating Company with that which is envisaged by Clause 3.1.1.1a) together with the Capacity Agreement, duly signed pursuant to Clause 2.1.7 and by the deadline envisaged by Clauses 2.1.5.2 and 2.1.5.3.

3.1.1.2 Financial guarantees to secure the obligations of Users with a Capacity Agreement for the allocation of Interim Capacity

a) Subject to the Applicant's obligation to submit the financial guarantee envisaged by Clauses 2.1.8.1, 2.1.9.1, and 2.1.9.2 to secure the obligations arising from the Capacity Agreement(s) for the allocation of Interim Capacity, the Operating Company will provide the Continuous Regasification Service exclusively to Users that provide and maintain adequate financial guarantees to secure the payment obligations arising from the execution of a Capacity Agreement(s). For the entire duration of

the Capacity Agreement and until the sixth (6th) Month following the expiry of the latter or subsequent to such period while the User's payment obligations in respect of the Operating Company are suspended, the User is required to have:

- (i) a credit rating as per Clause 3.1.1.2b) or, failing that
 - (ii) a financial guarantee as specified in Clause 3.1.1.1c) or 3.1.1.1d) or, failing that
 - (iii) a non-interest-bearing security deposit in a bank account held by the Operating Company to be created through wire transfer stating clearly in the description the purpose pursued by the transfer itself. Such deposit will be returned to the Applicant within ten (10) Business Days of its request. In the event that the request is made by a User, the deposit will be returned within the same period of ten (10) Business Days of the request and in any case only if and insofar as the obligations guaranteed by such deposit have been fulfilled.
- b) The Applicant shall provide the Operating Company with written evidence, in a form and with a content deemed satisfactory by the Operating Company, that its rating for unsecured long-term debt is equal to or higher than:
- i) Baa3 if given by Moody's; or
 - ii) BBB- if given by Standard & Poor's; or
 - iii) BBB if given by Fitch.
- c) If the requirement envisaged by Clause 3.1.1.1b) is not fulfilled by the Applicant, but is fulfilled by an Affiliate of the User, the Applicant may provide the Operating Company with a Guarantee of the Company of the User's Group which expresses the Guarantor's undertaking to meet all the obligations envisaged for the Applicant under the Capacity Agreement. The template for the letter of guarantee signed by the Affiliate of the User is contained in Annex 7A2
- d) If the requirements envisaged by Clause 3.1.1.1b) and 3.1.1.1c) are not fulfilled, the Applicant shall present a special Bank Guarantee issued by an Approved Credit Institution for an amount that must be, in each Month M, at least equal to the total amount of the monthly sums payable by the User until the end of the fifth (5th) month following Month M. The template for the Bank Guarantee is contained in Annex 7A1
- e) The Applicant shall provide the Operating Company with that which is envisaged by Clause 3.1.1.1a) together with the Capacity Agreement, duly signed pursuant to Clause 2.1.10 and by the deadline envisaged by Clauses 2.1.8.1, 2.1.9.1, and 2.1.9.2

3.1.2 Scope of the financial guarantees

- a) The financial guarantees envisaged by Clauses 3.1.1.1 and 3.1.1.2 shall, in addition to the foregoing, also cover any amounts invoiced to the User and still outstanding in Month M;
- b) It being understood that the Operating Company may prevent parties from participating in the regasification capacity allocation processes if the financial guarantees are not issued by the deadlines envisaged by Chapter 2.1 or if the financial guarantees issued are insufficient in respect of the relevant obligations, including the payment obligation envisaged by Clause 3.1.2a).

3.1.3 Variation of the Credit Requirements

3.1.3.1 Variation of the User's Credit Requirements

- a) In the event that a User meets the requirements envisaged by Clauses 3.1.1.1b) or 3.1.1.2b), but at any point during the Capacity Agreement such User no longer meets the aforementioned requirements, the User itself shall provide the Operating Company with a Bank Guarantee within ten (10) Business Days of when it ceased to meet such requirements or, if the requirement envisaged by Clause 3.1.1.1b) or 3.1.1.2b) is met by an Affiliate of the User, a User's Group Guarantee. Until such time as the User provides such guarantees the Operating Company may prevent it from taking part in any further regasification capacity allocation processes.
- b) In the event that a User has provided a Bank Guarantee or a User's Group Guarantee and, at any time during the Capacity Agreement, such User meets the requirement envisaged by Clause 3.1.1.1b) or 3.1.1.2b), once the User has provided the Operating Company with written evidence, in a form and with a content deemed satisfactory by the Operating Company, the latter will promptly release the Guarantor from its obligations under the Bank Guarantee or the User's Group Guarantee and will promptly return the original of the latter to the Guarantor.

c) In the event that a User has provided a User's Group Guarantee and, at any time during the Capacity Agreement, the Guarantor ceases to be an Affiliate of the User, the User itself shall provide the Operating Company with a Bank Guarantee within ten (10) Business Days from when it ceases to be an Affiliate or if the requirement envisaged by Clause 3.1.1.1b) or 3.1.1.2b) is met by an Affiliate of the User, a User's Group Guarantee. Until such time as the User provides such guarantees the Operating Company may prevent it from taking part in any further regasification capacity allocation processes.

3.1.3.2 Variation of the Guarantor's Credit Requirements

a) In the event that a User has provided a User's Group Guarantee and, at any time during the Capacity Agreement, the Guarantor ceases to meet the requirement envisaged by Clause 3.1.1.1b) or 3.1.1.2b) the User shall provide the Operating Company with a Bank Guarantee within ten (10) Business Days of when it ceased to meet such requirements. Until such time as the User provides such guarantees the Operating Company may prevent it from taking part in any further regasification capacity allocation processes.

b) In the event that a User has provided a Bank Guarantee and, at any time during the Capacity Agreement, the Guarantor loses its status as an Approved Credit Institution, the User shall provide the Operating Company with a Bank Guarantee issued by another Approved Credit Institution within ten (10) Business Days of when it ceased to meet such requirements or, if the requirement envisaged by Clause 3.1.1.1b) or 3.1.1.2b) is met by an Affiliate of the User, a User's Group Guarantee. Until such time as the User provides such guarantees the Operating Company may prevent it from taking part in any further regasification capacity allocation processes.

3.1.4 Peak Shaving Guarantee

The Peak Shaving Guarantee is issued in order to cover the possible risks related to the obligations the Operating Company undertook towards the Peak Shaving Service Supplier in the event the User fails to deliver a Confirmed Cargo during the Peak Shaving Service and:

(a) shall be issued by the User in the event the Peak Shaving Service has been awarded to a third party following the relevant tender procedure published by the Operating Company;

(b) in each month M-1, in relation to the Month M and for the whole duration of the Peak Shaving Service, the User shall maintain the Peak Shaving Guarantee, otherwise the provisions of Clause 2.1.3 shall apply;

(c) the Peak Shaving Guarantee shall be valid from the issuing date until the completion of the unloading in accordance with the wording of the Bank Guarantee and for the Guarantee of the Company of the User's Group contained in Annex 7B1/2;

(d) the Operating Company communicates to the User its obligation in providing the Peak Shaving Guarantee and the amount of the latter only in the event of Peak Shaving Service has been awarded. The amount will be equal to the fee to be paid to the Peak Shaving Service Supplier.

Without prejudice to Clauses 2.1.3, 5.3.2 and 5.3.3.2, the Operating Company has the right to enforce the Peak Shaving Guarantee and any other credit guarantee provided or procured by the User under Clause 3.1.1 in the event the User, despite being the LNG volumes for Peak Shaving Service redelivered at Redelivery Point to the User before the Discharge, it does not afterwards proceed in Discharging the scheduled volumes.

3.1.5 Replacement and enforcement of the financial guarantees

3.1.5.1 In the event that a User has provided a Bank Guarantee, a Guarantee of the Company of the User's Group or a security deposit and at any time during the Capacity Agreement, such financial guarantees become invalid or ineffective or they expire within fifteen (15) Business Days, the User shall, within ten (10) Business Days of the occurrence of the aforementioned events, replace the financial guarantee with an equivalent financial guarantee for the same amount. Until such time as the User provides such guarantees the Operating Company may prevent it from taking part in any further regasification capacity allocation processes.

3.1.5.2 Subject to the provisions of Clauses 2.1.3, 5.3.2 and 5.3.3.2 the Operating Company may enforce the financial guarantees envisaged by Clauses 3.1.1.1 and 3.1.1.2 in any of the following circumstances:

- a) the User does not pay or ensures the non-payment of any sum owed to the Operating Company under the Capacity Agreement; or
- b) the User has not, in the case envisaged by Clause 3.1.3.2a), replaced the Bank Guarantee by the deadline envisaged by the latter; or
- c) as otherwise expressly authorised by the terms and conditions of the Bank Guarantee or the User's Group Guarantee, respectively.

It being understood that if the Operating Company enforces, in whole or in part, the Bank Guarantee, the Guarantee of the Company of the User's Group or the security deposit within ten (10) Business Days of such enforcement the User shall restore such financial guarantees to the original amount even by replacing them with other equivalent financial guarantees with the same amount of the occurred enforcement. Until such time as the User provides such guarantees the Operating Company may prevent it from taking part in any further regasification capacity allocation processes.

Subject to the provisions of Clauses 5.3.2 and 5.3.3.2, if the User does not meet the requirements envisaged by Clauses 3.1.1, 3.1.2, 3.1.3 and 3.1.4, the provisions of Clause 2.1.3 will apply.

3.1.6 Reduction of the amount of the financial guarantees

Following a transfer and/or release and/or exchange of regasification capacity pursuant to Clauses 3.2.2, 3.2.3 and 3.2.4, the obligations envisaged Clauses 3.1.1, 3.1.2, 3.1.3 and 3.1.4 shall not be deemed to have been amended or otherwise rendered conditional upon the transfer and/or release and/or exchange processes. However, the User whose commitments under the Capacity Agreement have been appropriately adjusted following such transfer and/or release and/or exchange, may consequently adjust the amount envisaged by the previously-issued financial guarantees.

3.1.7 Guarantee against non-compliance with the Ninety Day Unloading Schedule

- a) For the purposes of Clause 3.3.2.2d), in order to guarantee compliance with the Ninety Day Unloading Schedule for Month M as defined by Clause 3.3.2 as well as the Default Redelivery Profiles envisaged by Clause 3.4.1.1, of the Creditor Users, each Debtor User shall register a sales transaction at the Virtual Exchange Point in favour of the Creditor User(s).
- b) The sales transaction at the Virtual Exchange Point shall be of a multi-day type starting on the third (3rd) Gas Day subsequent to the Scheduled Arrival Window for each Delivery Slot scheduled by the Debtor User in Month M and ending, respectively, on:
 - (i) the last Gas Day of Month M, or
 - (ii) the last Gas Day of the relevant Delivery Period for the last Delivery Slot scheduled for Month M.
- c) The quantity involved in each of the sales transactions at the Virtual Exchange Point will be equal to the debt position of the Debtor User in respect of the Creditor User(s) at the arrival of each Confirmed Cargo scheduled by the Debtor User itself. Each User may monitor its overall debt position through the Electronic Communications System.
- d) The Operating Company is consequently authorised by each Debtor User to register the relevant sales transactions at the Virtual Exchange Point in the name and on behalf of the User in accordance with the following timing:
 - i) by the deadline envisaged by Clause 3.3.2.2e) in relation to the Continuous Regasification Service; and
 - ii) within two (2) Business Days of the award of the regasification capacity following the auctions envisaged by Clauses 2.1.9.1 and 2.1.9.2 in relation to the Spot Regasification Service;

In the event the Debtor User has indicated the identity of the transportation User and the regasified quantities allocation rules of its competence by signing, together with transportation User, the form contained in Annex 5, the sales transaction may be registered by the Operating Company at the Virtual Exchange Point, prior communication of the Debtor User, also on behalf of the transportation User to the extent corresponding to the allocation of the regasified quantities. It being understood that the Debtor User shall remain liable *vis-à-vis* the Operating Company, as well as *vis-à-vis* the other Creditor Users, for the failure, delay, or otherwise incorrect fulfilment by the transportation User, authorizing since now the Operating Company to include the transaction in the Virtual Exchange Point on behalf of the Debtor

User where the Operating Company could not, for any reason, include it on behalf of the transportation User.

- e) Each Debtor User will be required to maintain the necessary amounts of its financial guarantees that cover the system as envisaged by Chapter 5 of Network Code and to replenish them promptly if they are not sufficient to effect the aforementioned sale transaction.
- f) In the event that the delivery of the Confirmed Cargo takes place in accordance with the Ninety Day Unloading Schedule, the Operating Company will cancel the previously-registered transaction by the date of expiry of the latter. Failing that, or in the event that the provisions of Clause 3.3.7c) apply and subject in any case to the case envisaged by Clause 3.7.2, the Operating Company will activate the previously-registered transaction, unless otherwise agreed by all the Users involved (Debtor User and Creditor User(s)) and duly notified to the Operating Company by the aforementioned deadline. It being understood that the transaction at the Virtual Exchange Point for which the Debtor User is responsible may be activated, in whole or in part, by the Operating Company even in the case of a Late LNG Carrier for each day's delay (or in the case of non-delivery of the cargo) and for the purposes of guaranteeing the redelivery profile to the Creditor Users during the days of delay.
- g) The Users expressly agree that the Operating Company may register, cancel or amend the transactions envisaged by this Clause according to the procedures and the cases envisaged herein and they agree to inform the Operating Company as soon as possible of any errors and to indemnify and hold the latter harmless from and against any adverse consequences arising from any registration errors.
- h) For the purposes of this Clause 3.1.7, the Operating Company may act as a Creditor User and, in such case, the sales transactions at the Virtual Exchange Point envisaged by Clause 3.1.7b) will be issued in favour of the Operating Company itself.
- i) In the event that the User is provided in advance with the quantities involved in the Peak Shaving Service, the Operating Company, which in such case will act as a Creditor User, may charge to the User the sales transaction at the Virtual Exchange Point envisaged by Clause 3.1.7.b) as security in the event of non-delivery or reduced delivery of the Confirmed Cargo. Such transactions will be cancelled by the Operating Company upon delivery of the Confirmed Cargo to an extent corresponding to the volumes of LNG intended for the Peak Shaving Service that have been reconstituted by the Unloading.

3.1.8 Insurance Requirements

3.1.8.1 Operating Company's insurance policies

The Operating Company has taken out insurance policies against third-party damage arising from the performance of its commercial activities for an amount of not less than twenty-five million Euro (€ 25,000,000.00).

3.1.8.2 User's insurance policies

- a) The User shall procure and maintain for the entire duration of the Capacity Agreement, at no expense to the Operating Company, comprehensive general liability insurance in an amount not less than twenty-five million Euros (€ 25,000,000), providing coverage for personal injury, death and/or property damage resulting from each occurrence or related series of occurrences caused by the User and/or by the User's Group.
- b) The User shall procure that the following insurances are effective and maintained by the Ship Owner of each LNG Carrier which is used at any time by the User to transport the corresponding Cargo to the Terminal:
 - (i) marine risks and war risks insurance (including war P&I) in respect of each LNG Carrier for an amount not less than the market value of the LNG Carrier;
 - (ii) marine protection and indemnity insurance for each LNG Carrier including collision liability and damage to fixed and floating objects and personal injury coverage, with a P&I club that is a member of the international group of P&I clubs in the maximum amount available with the relevant P&I club (including coverage for the LNG Carrier's legal liabilities for damage to the Terminal, spills/pollution and other third party injury and property damage); and
 - (iii) any other insurance required by Applicable Law.

- c) If the Operating Company so requests, the User shall as soon as reasonably practicable, provide to the Operating Company insurance policies demonstrating compliance with the requirements referred to in Clauses 3.1.8.2a) and/or 3.1.8.2b).
- d) If the insurance policies are not provided to the Operating Company as soon as reasonably practicable following a request under Clause 3.1.8.2c) or such insurance policies fail to demonstrate compliance with the requirements of Clauses 3.1.8.2a) and/or 3.1.8.2b), or if the User is in breach of its obligations under Clauses 3.1.8.2a) and/or 3.1.8.2b), the Operating Company may suspend or discontinue the provision of the Regasification Service to the User in accordance with Clause 2.1.3.
- e) If the Ship Owner of any LNG Carrier which is being used by the User to transport a Cargo to the Terminal has not effective and maintained the insurances required by Clause 3.1.8.2b), then any prior acceptance of the LNG Carrier shall be deemed automatically revoked by the Operating Company.

3.1.8.3 Proceeds of Protection and Indemnity and Comprehensive General Liability Insurance

The User's Group and the Operating Company's Group agree to ensure that the proceeds of any protection and indemnity and comprehensive general liability insurance which the User's Group and the Operating Company's Group have taken out or are required to take out (as applicable) under Clauses 3.1.8.1 or 3.1.8.2 shall, where applicable, be paid directly to the third party whose claim has caused such proceeds to have been paid. In the event that any proceeds of any liability insurance (including protection and indemnity and comprehensive general liability insurance) are paid to the User's Group or to the Operating Company's Group, the latter will promptly transfer such indemnity to the injured party to discharge the relevant claims.