

**FSRU OPEN SEASON**

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**GENERAL IMPLEMENTATION CONDITIONS**

This document titled FSRU Open Season – General Implementation Conditions (hereinafter referred to as the "**General Implementation Conditions**") sets out the principles applicable to FSRU Open Season Procedure to be carried out by Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A. (hereinafter: "**GAZ-SYSTEM S.A.**" or the "**Operator**") concerning the provision of Regasification Services<sub>FSRU</sub> at the planned Terminal<sub>FSRU</sub>.

These General Implementation Conditions are divided into three parts:

**Part I:** Introduction

**Part II:** Phase 1 of the Procedure (Order to Proceed) and Phase 2 of the Procedure (Binding Allocation)

**Part III:** General provisions

Part I of the General Implementation Conditions provides a general introduction to the FSRU Open Season procedure carried out by GAZ-SYSTEM S.A. It covers in particular the description of the Investment Undertaking involving the construction of a new floating Terminal<sub>FSRU</sub>. With the exception of definitions, this section is presented for information purposes only.

Part II of the General Implementation Conditions contains a detailed description of the FSRU Open Season procedure. It includes a description of Phase 1 and Phase 2 of the FSRU Open Season Procedure, including the allocation mechanism.

Part III of the General Implementation Conditions presents the general provisions, in particular the provisions concerning the communication between the Participants and GAZ-SYSTEM S.A.

In addition, the following documents are enclosed as appendices to these General Implementation Conditions and form an integral part thereof:

## **Appendices**

Appendix 1: Registration Form (template)

Appendix 2: Order Form in Phase 1 of the Procedure (Investment Assurance Order) (template)

Appendix 3: Draft OtP Agreement

Appendix 4: Bank guarantee for Phase 1 of the Procedure (template)

Appendix 5: Offer Form in Phase 2 of the Procedure (template)

Appendix 6: Drafts of Regasification Agreement<sub>FSRU</sub> and Regasification Order<sub>FSRU</sub>

Appendix 7: Bank guarantee for Phase 2 of the Procedure (template)

Appendix 8: FSRU Service Delivery Model

Appendix 9: Tariff calculator

Appendix 10: GDPR clause

## **Part I – Introduction**

### **1. GENERAL INFORMATION**

The project is aimed at the development of a Floating Storage Regasification Unit (FSRU) in the Gdansk area, with the capabilities required for LNG unloading, in-process storage and regasification. The Terminal<sub>FSRU</sub> is to be designed to carry out regasification processes at the level of 6.1 bcm of gaseous fuel per year with the option of increasing its regasification capacity, depending on market development and growth of demand for natural gas in the country and region. For this reason, in the first stage of the Project development, which is covered by the scope of the FSRU Open Season, the plans include infrastructure works, including those related to the Breakwater and the Jetty, to enable further increase

of the regasification capacity, beyond the above-indicated level, at a later development stage of the Terminal<sub>FSRU</sub>, through adding another FSRU or replacing it with a new unit, taking into account the costs of such infrastructure. The commissioning and start of operation of the Terminal<sub>FSRU</sub> in the Gulf of Gdansk are planned for the first half of 2028.

The implementation of the project to build a new Terminal<sub>FSRU</sub> in the Gdansk area fits into the framework of both Polish and European policy to secure access to natural gas. It is an element of many strategies and policies<sup>1</sup> in the area of ensuring security of gas supply, as well as a response to the constantly growing demand for natural gas in Poland and Central and Eastern Europe. The project is one of initiatives geared towards ensuring energy security and is part of the process of the country's energy and economic transformation in transition to less emission-intensive energy sources. According to the Energy Policy of Poland until 2040, the project is one strategic undertakings as regards ensuring Poland's strong position on the European natural gas market by achieving a zero-emission energy system (Pillar II),

In 2019, the Terminal<sub>FSRU</sub> was included by the European Commission in the 4th list of projects of common interest (PCI)<sup>2</sup>.

GAZ-SYSTEM S.A. is taking measures aimed, among other things, at offering the regasification capacity of the new Terminal<sub>FSRU</sub> and its integration with the National Transmission System through a newly created Exit Point.

The detailed parameters of the planned Terminal<sub>FSRU</sub> are presented in Section 6 below.

## **2. ABOUT GAZ-SYSTEM S.A.**

GAZ-SYSTEM S.A. is the owner and operator of the National Transmission System and the Lech Kaczyński LNG Terminal in Świnoujście.

As the operator of the National Transmission System, GAZ-SYSTEM S.A. is responsible for transporting gas via the transmission network in Poland, supplying gas to the distribution network and to final customers connected to the transmission system. The national transmission system also enables gas transmission to/from connected storage facilities and transmission systems in neighbouring countries.

On 6 December 2018, the President of the Energy Regulatory Office issued a decision according to which GAZ-SYSTEM S.A. was granted the status of the operator of the National Transmission System, comprising on the territory of Poland until 6 December 2068.

As the operator of the Lech Kaczyński LNG Terminal in Świnoujście, acting on the basis of a concession for the liquefaction of natural gas and re-gasification of liquefied natural gas in LNG facilities located in Świnoujście, as well as on the decision on designation as the operator of the natural gas liquefaction system effective until 31 December 2030, GAZ-SYSTEM S.A. is proceeding with its expansion increase the Terminal's annual regasification capacity from 5 bcm to 8.3 bcm of natural gas.

## **3. LEGAL BASIS FOR THE PROCEDURE**

3.1 The Procedure is conducted under the provisions of Article 32 of Directive 2009/73/EC of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ EU. L. of 2009, No. 211, item 94 as amended), Article 15(1) and Article 17(1) and 17(2) of the Regulation (EC) No. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005 (OJ EU.L. of 2009, No. 211, item 36 as amended) and the provisions of the Polish Energy Law.

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<sup>1</sup> See Energy Policy of Poland until 2040 (MP of 2021, item 264).

<sup>2</sup> On 12 February 2020, the European Parliament adopted the fourth PCI list. The PCI list was then published in the EU Journal in March 2020.

#### 4. DOCUMENTS GOVERNING THE FSRU OPEN SEASON

- 4.1 This document, including its appendices, governs the FSRU Open Season procedure. By submitting an Order or Offer to GAZ-SYSTEM S.A. under this Procedure the Participant confirms that it accepts the provisions of the General Implementation Conditions and their appendices.
- 4.2 Subject to applicable laws, GAZ-SYSTEM S.A. shall not be held liable for any incorrect interpretation or use of the information contained in this document.
- 4.3 All capitalised terms used in these General Implementation Conditions, unless otherwise defined herein, shall have the meaning given to them in the FSRU Service Delivery Model.

#### 5. DEFINITIONS

<b>Business Day</b>	a day other than a public holiday as defined in the Non-Working Days Act;
<b>Breakwater</b>	a structure providing protection to the Jetty and moored FSRUs and LNGCs from adverse effects hydro-meteorological conditions, and enabling high availability of the Terminal <sub>FSRU</sub> ;
<b>Phase 1 Procedures</b>	the Procedure phase as described in Sections 8 - – 11;
<b>Phase 2 Procedures</b>	the Procedure phase as described in Sections 12 - – 15;
<b>Registration Form</b>	the form referred to in point 8.1.1;
<b>Schedule</b>	the schedule for the Procedure as set out in Section 7;
<b>Information on the allocation of the Regasification Services<sub>FSRU</sub></b>	the information referred to in point 14.4;
<b>Terminal Code</b>	the Terminal Code <sub>FSRU</sub> ;
<b>Investment Undertaking</b>	the undertaking the scope of which covers the activities and works indicated in point 6.1.1;
<b>TNC</b>	the Transmission Network Code applied by the Operator;
<b>National Transmission System</b>	the transmission system together the interconnected equipment and facilities operated by GAZ-SYSTEM S.A.
<b>LNG</b>	liquefied natural gas (light or heavy) conforming to the quality parameters specified in the FSRU Service Delivery Model;
<b>Contracted Capacity</b>	the maximum quantity of Gaseous Fuel conforming to the quality specifications set out in the TNC under Normal Conditions, which can be offtaken at the Exit Point during one hour;
<b>FSRU Service Delivery Model</b>	FSRU Service Delivery Model enclosed as Appendix 8;
<b>Jetty</b>	a berthing structure for the FSRU(s) which enables the unloading of the regasified LNG. The Jetty will consist of a structural component (hydrotechnical structure) and a process component (enabling the unloading and transmission of gas). The Jetty will be provided with ancillary systems required for its operation (navigation markings, piers, etc.);
<b>Offer</b>	the Offer referred to in Section 12;
<b>General Implementation Conditions</b>	the terms and conditions of the FSRU Open Season, i.e. this document;
<b>Final Investment Decision</b>	the decision to start the execution phase of the Project, as referred to in point 15.3;

<b>Gaseous Fuel</b>	high-methane natural gas processed as a result of LNG regasification, with quality parameters specified in the Transmission Network Code;
<b>Energy Law Act</b>	Energy Law Act of 10 April 1997 (Dz.U.2021.716, as amended),
<b>Procedure/FSRU Open Season</b>	a procedure for the execution of the OtP and the Regasification Agreement <sub>FSRU</sub> and Regasification Order <sub>FSRU</sub> in connection with the engineering and development of the Project, as described in the General Implementation Conditions;
<b>Project</b>	the part of the Investment Undertaking comprising the activities and works indicated in points 6.1.1.1- 6.1.1.3;
<b>Exit Point</b>	the place of delivery of the Gaseous Fuel from the Terminal <sub>FSRU</sub> to the National Transmission System, located at the first shut-off valve downstream of the metering station;
<b>PURE</b>	President of the Energy Regulatory Office / President of the ERO
<b>Tariff Regulation</b>	Regulation of the Minister of Energy of 15 March 2018 concerning detailed principles of tariff design and calculation, and settlements in gas trade (Dz.U.2021.280 as amended);
<b>Force Majeure</b>	an event or circumstance which is beyond the control of the party concerned, and which could not have been prevented by that party, despite taking appropriate action expected of the Operator or Participant/ Terminal User <sub>FSRU</sub> , as the case may be, taking into account the professional nature of their activities, as a result of which the affected party is unable to perform one or more of its obligations under the General Implementation Conditions, OtP, Regasification Agreement <sub>FSRU</sub> or Regasification Order <sub>FSRU</sub> . Specifically, Force Majeure shall be understood as natural disasters and catastrophes (e.g. hurricanes, fires, floods, earthquakes), events resulting from any acts of the government, riots, strikes, social unrest, acts of terror, piracy or sabotage, acts of war (including civil war);
<b>Terminal<sub>FSRU</sub></b>	the plant to be located in the Gdansk area, comprising (a) Floating Storage Regasification Unit(s) (FSRU), with the capabilities required for unloading LNG, in-process storage and regasification of LNG as well as for providing additional services;
<b>Participant</b>	anyone who has been registered by GAZ-SYSTEM S.A. as a participant to the Procedure;
<b>Regasification Agreement<sub>FSRU</sub></b>	a framework agreement to provide Regasification Services <sub>FSRU</sub> , pursuant to which the Terminal User <sub>FSRU</sub> and the Operator execute Regasification Orders <sub>FSRU</sub> ;
<b>OtP</b>	the agreement referred to in point 11.2;
<b>Regasification Services<sub>FSRU</sub></b>	services provided by GAZ-SYSTEM S.A. as defined in point 6.3.2;
<b>Non-Working Days Act</b>	the Act of 18 January 1951 on Non-Working days (Dz.U.2020.54.1920, as amended).
<b>Act on Protection of Classified Information</b>	the act of August 2010 on the protection of classified information (Dz.U.2019.742, as amended);
<b>Terminal User<sub>FSRU</sub></b>	the entity with which the Regasification Agreement <sub>FSRU</sub> has been executed;
<b>Normal Conditions</b>	the reference conditions for billing purposes, absolute pressure of 101.325 kPa and temperature of 273.15 K;
<b>Applicant</b>	an entity that has submitted or intends to submit the Registration Form;
<b>Preliminary Investment Decision Order</b>	the decision to proceed with the design phase of the Project, as referred to in point 11.3;
<b>Regasification Order<sub>FSRU</sub></b>	the order referred to in Section 9;
<b>Regasification Order<sub>FSRU</sub></b>	a regasification order executed pursuant to the Regasification Agreement <sub>FSRU</sub> specifying the period of provision, technical parameters and other conditions applicable to Regasification Services <sub>FSRU</sub> .

**6. DESCRIPTION OF THE TERMINAL<sub>FSRU</sub> AND DESCRIPTION OF THE INVESTMENT PROJECT INVOLVING THE DESIGN AND CONSTRUCTION OF THE TERMINAL<sub>FSRU</sub>**

**6.1 DESCRIPTION OF THE INVESTMENT PROJECT INVOLVING THE DESIGN AND CONSTRUCTION OF THE TERMINAL<sub>FSRU</sub>**

6.1.1 The Investment Undertaking shall involve:

6.1.1.1 acquisition of title, installation and preparation for operation of a Floating Storage Regasification Unit (FSRU),

6.1.1.2 engineering and construction of an offshore gas pipeline to connect the Terminal<sub>FSRU</sub> to the National Transmission System,

6.1.1.3 engineering and construction of mooring infrastructure for the FSRU and for receiving gas from the unit, together with the unloading infrastructure and associated systems, including the Breakwater and Jetty,

6.1.1.4 engineering and construction of new onshore infrastructure that will ensure the capability to receive gas from the Terminal<sub>FSRU</sub> and distribute it through the National Transmission System.

**6.2 DESCRIPTION OF THE TERMINAL<sub>FSRU</sub> IN THE GDANSK REGION**

6.2.1 It is assumed that following to the completion of the Project covered by the FSRU Open Season, the regasification capacity to be offered to Terminal Users<sub>FSRU</sub> shall be 8,757,180 kWh/h, but the decision on the final technical regasification capacity of the Terminal<sub>FSRU</sub> will, to a large extent, depend on:

6.2.1.1 the final decision on the size of the Terminal<sub>FSRU</sub> and on the adopted technology solutions which will influence the final regasification capacity;

6.2.1.2 the level of Orders and Offers received under this Procedure.

Before the start of Phase 2 of the Procedure, the Operator shall inform market participants of its final decision regarding the size of the Terminal<sub>FSRU</sub> and the parameters of the Project and, if necessary, update the data provided in the tariff calculator.

6.2.2 The technology processes to be supported by the Terminal<sub>FSRU</sub> shall include the unloading of LNG from a carrier at the unloading berth, in-process storage of LNG in tanks, regasification of LNG and sendout of Gaseous Fuel to the National Transmission System. At further stages of the Project, the processes may also include other services.

6.2.3 The Terminal<sub>FSRU</sub> shall include installations and equipment making part of the unloading berth, LNG tanks, a regasification plant.

**6.3 GENERAL DESCRIPTION OF THE SERVICES**

6.3.1 Regasification Services<sub>FSRU</sub> shall be provided to the extent resulting from the technical capacity of the Terminal<sub>FSRU</sub>, taking into account the technical parameters of the plant, in compliance with the provisions of the Terminal Code prevailing at that time and the contents of the Regasification Agreements<sub>FSRU</sub> and Regasification Orders<sub>FSRU</sub> entered into with the Terminal Users<sub>FSRU</sub>. The services offered are related to the capacity of the new Terminal<sub>FSRU</sub>, which will become available upon its commissioning.

**6.3.2 REGASIFICATION SERVICES<sub>FSRU</sub>**

- 6.3.2.1 Regasification Services<sub>FSRU</sub> are offered in a bundled form and comprise:
- (a) unloading of LNG from the Carrier into the tanks at the Terminal<sub>FSRU</sub>,
  - (b) In-Process Storage of the Unloaded LNG Quantity in the tanks of the Terminal<sub>FSRU</sub>,
  - (c) regasification of LNG,
  - (d) delivery of Gaseous Fuel to the Exit Point.
- 6.3.2.2 Regasification Services<sub>FSRU</sub> shall be provided within the Slots, with a regasification rate of at least sixty thousand (60,000) Nm<sup>3</sup>/h, corresponding to at least six-hundred and seventy thousand six-hundred and twenty (670 620) kWh/h.
- 6.3.2.3 A Slot includes the right of the Terminal User<sub>FSRU</sub> to:
- (a) unloading of one (1) LNG cargo from a Carrier approved by the Operator,
  - (b) In-Process Storage, in accordance with the In-Process Storage Program, for the duration of the Slot,
  - (c) regasification at a rate ranging between the Minimum Regasification Capacity and the Contractual and the Contracted Capacity available in the Slot (i.e. at the level of up to eight million seven hundred fifty one hundred eighty (8 757 180) kWh/h corresponding to seven hundred eighty three thousand five hundred (783,500) Nm<sup>3</sup>/h, subject to point 6.2.1) and the delivery of Gaseous Fuel to the Exit Point.
- 6.3.2.4 The duration of the Slot is six (6) Gas Days with regasification rate ranging between the Minimum Regasification Capacity and the Contracted Capacity, and in accordance with the In-Process Storage Program.
- 6.3.2.5 In a single Slot, the Unloaded LNG Quantities must not exceed one billion one hundred and sixty-six million eight hundred and seventy-eight thousand eight hundred (1,166,878,800) kWh nor one hundred and eighty thousand (180,000) m<sup>3</sup> of LNG.

#### 6.4 SERVICES MADE AVAILABLE IN PHASE 2 OF THE PROCEDURE

- 6.4.1 In Phase 2 of the Procedure, the Users will be able to acquire the right to Regasification Services<sub>FSRU</sub> for a period ranging from one (1) year to fifteen (15) years within the allocated Slots; with a maximum of fifty-eight (58) Slots within each Gas Year (or proportionally less when the periods the Operator makes available under the Procedure are shorter than a full Gas Year).
- 6.4.2 Subject to a positive Final Investment Decision being taken by GAZ-SYSTEM S.A. and timely completion of the Investment Undertaking, the Regasification Services<sub>FSRU</sub> shall be made available as of 1 January 2028.
- 6.4.3 In case when the Investment Undertaking is completed at an earlier date, and as a result it will be possible to provide the Regasification Services<sub>FSRU</sub> before the date specified in accordance with point 6.4.2, then GAZ-SYSTEM S.A. shall offer the Terminal User<sub>FSRU</sub> that has executed the Regasification Agreement<sub>FSRU</sub> and the Regasification Order<sub>FSRU</sub> in respect of the Regasification Services<sub>FSRU</sub> to be provided as of the aforementioned date, the option of an earlier commencement of the provision of the Regasification Services<sub>FSRU</sub> and an appropriate adjustment of the termination date of the provision of

the Regasification Services<sub>FSRU</sub>. In the event when the Terminal User<sub>FSRU</sub> accepts the above modification of the term of provision of the Regasification Services<sub>FSRU</sub>, the Parties shall execute an annex to the Regasification Order<sub>FSRU</sub>.

## 7. SCHEDULE OF THE PROCEDURE

7.1 Table 1 shows the time schedule for Phase 1 of the Procedure.

Table 1

<b>ACTION IN PHASE 1 OF THE PROCEDURE</b>	<b>EXPECTED DATE</b>
Registration	Four (4) weeks after the start of the Procedure
Deadline for placing Orders	Four (4) weeks after end of the Registration
Announcement of results of Phase 1 of the Procedure	Three (3) weeks after the closing date for placing Orders
OtP execution	Ten (10) Business Days of receiving the OtP from GAZ-SYSTEM S.A.
Preliminary Investment Decision (PID)	Up to twelve (12) months after signing the OtPs

7.2 Table 2 shows the time schedule for Phase 2 of the Procedure.

Table 2

<b>ACTION IN PHASE 2 OF THE PROCEDURE</b>	<b>EXPECTED DATE</b>
Invitation to submit Offers and execute Regasification Agreements <sub>FSRU</sub> and Regasification Orders <sub>FSRU</sub> by Participants of Phase 1 of the Procedure in the case described in point 12.2.	Q2 2023
Commencement of the registration for Phase 2 of the Procedure or announcement of the execution of Regasification Agreements <sub>FSRU</sub> and Regasification Orders <sub>FSRU</sub> by the Participants of Phase 1 of the Procedure in respect of 100% of the Regasification Services <sub>FSRU</sub> made available by GAZ-SYSTEM S.A. under the Procedure	Q2 2023
Registration	Four (4) weeks from the start of Phase 2 of the Procedure
Deadline for Offer submission	Four (4) weeks after end of the Registration



Announcement of the results of the allocation process	Three (3) weeks after the closing date for placing Offers
Execution of the Regasification Agreements <sub>FSRU</sub> and Regasification Orders <sub>FSRU</sub>	Ten (10) Business Days of receiving the Regasification Agreements <sub>FSRU</sub> and Regasification Orders <sub>FSRU</sub> from GAZ-SYSTEM S.A.
Final Investment Decision	Up to twelve (12) months after signing the Regasification Agreements <sub>FSRU</sub> and Regasification Orders <sub>FSRU</sub>

### 7.3 Amendments to the Schedule

- 7.3.1 GAZ-SYSTEM S.A. reserves the right to extend any deadline set out in the Schedule, for any reason, up to five (5) Business Days before its expiry, unless the Participants give their consent at a shorter notice.
- 7.3.2 Notwithstanding the foregoing, GAZ-SYSTEM S.A. may, at any time before the lapse of the applicable deadline, extend the deadline in the event of extraordinary circumstances such as Force Majeure, power outage, failure of GAZ-SYSTEM S.A. website, etc. The extension referred to above may not exceed three (3) months.
- 7.3.3 Information on each change of a deadline shall be published immediately in accordance with point 19.3. In addition, the Participants shall be informed of the change to the Schedule in a separate communication to be sent via email to the email address provided in the Registration Form.

## Part II - Phase 1 and Phase 2 of the Procedure

### INTRODUCTION TO THE PROCEDURE

The Procedure consists of two phases. The purpose of Phase 1 is to obtain binding Orders from the Participants to assess the expected scale of the Investment Undertaking and to oblige the Participants to book the Regasification Services<sub>FSRU</sub> at an appropriate level in Phase 2 of the Procedure, which will be a precondition to a positive Preliminary Investment Decision of GAZ-SYSTEM S.A. to proceed with the design stage of the Project. The purpose of Phase 2 of the Procedure is to obtain binding Offers from the Participants for the booking of Regasification Services<sub>FSRU</sub> at the Terminal<sub>FSRU</sub>, which will enable GAZ-SYSTEM S.A. to take a positive Final Investment Decision and for GAZ-SYSTEM S.A. to proceed with the construction of the Project.

At the end of Phase 1 of the Procedure, GAZ-SYSTEM S.A. shall assess whether the total level of Regasification Services<sub>FSRU</sub> requested in the Orders submitted in Phase 1 of the Procedure is sufficient for GAZ-SYSTEM S.A. to proceed with the first stage of the Project, i.e. to start its engineering design. In its analysis, GAZ-SYSTEM S.A. will take into account the level of Regasification Services<sub>FSRU</sub> indicated in submitted Orders and the planned costs of Project implementation. The assessment of the competitiveness of the Terminal<sub>FSRU</sub> shall be carried out by GAZ-SYSTEM S.A. and shall be a basis for taking appropriate investment decisions with regard to the implementation of the Project and its expected parameters.

If the level of Regasification Services<sub>FSRU</sub> resulting from Orders submitted in Phase 1 of the Procedure is too low to confirm the profitability of the Project, including its competitiveness, **GAZ-SYSTEM S.A. may decide to withdraw from the implementation of the Project and terminate the Procedure.**

In the event that the level of Regasification Services<sub>FSRU</sub> resulting from the Orders submitted in Phase 1 of the Procedure is sufficient to confirm the profitability of the Project, after GAZ-SYSTEM S.A. has

announced the results of Phase 1 of the Procedure, the Participants that submitted complete Orders within Phase 1 of the Procedure shall be obliged to execute an OtP with GAZ-SYSTEM S.A. The OtP shall set forth the rights and obligations of the Parties arising from a Participant's submission of an Order in Phase 1 of the Procedure. The draft OtP Agreement is attached as Appendix 3 to these General Implementation Conditions.

In parallel to the implementation of Phase 1 of the Procedure, GAZ-SYSTEM S.A. shall take necessary steps to prepare for the design phase of the Project. On the basis of Phase 1 of the Procedure and the above-mentioned preparatory works, GAZ-SYSTEM S.A. shall take the Preliminary Investment Decision. A positive Preliminary Investment Decision shall trigger the design phase of the Project. If the Preliminary Investment Decision is negative, GAZ-SYSTEM S.A. shall discontinue the implementation of the Project and withdraw from the executed OtPs.

The allocation of Regasification Services<sub>F<sub>SRU</sub></sub> shall be based on Offers to be submitted in Phase 2 of the Procedure, with priority given to Participants who participated in Phase 1 of the Procedure. In the event that Orders in Phase 1 of the Procedure are effectively submitted by more than one Participant, then, in line with the priority given to the Participants of Phase 1 of the Procedure, the Operator guarantees that the allocation of the Regasification Services<sub>F<sub>SRU</sub></sub> to those Participants shall take place on a pro rata basis, i.e. shall correspond to the product of the ratio of the regasification capacity of the Terminal<sub>F<sub>SRU</sub></sub> offered by the Operator to the total regasification capacity requested in the Participants' Orders and the level of regasification capacity covered by the Order submitted by the given Participant.

After receiving all the Offers in Phase 2 of the Procedure, GAZ-SYSTEM S.A. shall assess whether the level of Regasification Services<sub>F<sub>SRU</sub></sub> allocated within Phase 2 of the Procedure to the Participants who submitted Offers enables the implementation of a competitive Project. In its analysis, GAZ-SYSTEM S.A. shall take into account the parameters which were the basis for the analysis carried out following Phase 1 of the Procedure, subject to update, and the level of Regasification Services<sub>F<sub>SRU</sub></sub> allocated on the basis of the submitted Offers. If the level of bookings of the Regasification Services<sub>F<sub>SRU</sub></sub> allocated to the Participants who submitted their Offers in Phase 2 of the Procedure does not, in the opinion of GAZ-SYSTEM S.A., support the implementation of the Project while maintaining its competitiveness, GAZ-SYSTEM S.A. shall have the right to take a decision to discontinue the implementation of the Project and terminate the Procedure.

The Participants to which the Regasification Services<sub>F<sub>SRU</sub></sub> are allocated as a result of the allocation process shall be obliged to execute Regasification Agreements<sub>F<sub>SRU</sub></sub> and Regasification Orders<sub>F<sub>SRU</sub></sub> with GAZ-SYSTEM S.A. to set forth the terms and conditions of their use of the Regasification Services<sub>F<sub>SRU</sub></sub>. The drafts of the Regasification Agreement<sub>F<sub>SRU</sub></sub> and Regasification Order<sub>F<sub>SRU</sub></sub> are enclosed as Appendices to these General Implementation Conditions. GAZ-SYSTEM S.A. emphasizes that some of the provisions contained in the draft Regasification Order<sub>F<sub>SRU</sub></sub> shall only be applicable to Regasification Orders<sub>F<sub>SRU</sub></sub> executed with Participants that participated in both Phases of the Procedure, i.e. executed the OtP in Phase 1 of the Procedure and the Regasification Agreement<sub>F<sub>SRU</sub></sub> and the Regasification Order<sub>F<sub>SRU</sub></sub> in Phase 2 of the Procedure. Such provisions have been marked in the draft of the Regasification Order<sub>F<sub>SRU</sub></sub>.

In parallel to the implementation of Phase 2 of the Procedure, GAZ-SYSTEM S.A. shall take steps to prepare for the execution of the Project. On the basis of Phase 2 of the Procedure, specifically the allocation of Regasification Services<sub>F<sub>SRU</sub></sub>, and following to the completion of the above-mentioned preparatory works, GAZ-SYSTEM S.A. shall take the Final Investment Decision. A positive Final Investment Decision shall be tantamount to the commencement of the execution phase of the Project. In case of a negative Final Investment Decision, GAZ-SYSTEM S.A. shall discontinue the implementation of the Project and withdraw from the executed Regasification Agreements<sub>F<sub>SRU</sub></sub> and Regasification Orders<sub>F<sub>SRU</sub></sub>.

The commencement of the provision of Regasification Services<sub>F<sub>SRU</sub></sub> under the Regasification Agreements<sub>F<sub>SRU</sub></sub> and Regasification Orders<sub>F<sub>SRU</sub></sub> executed in Phase 2 of the Procedure shall be subject to the fulfilment of further prerequisites set forth in such agreements.

## PHASE 1 OF THE PROCEDURE

### 8. REGISTRATION

#### 8.1 SUBMISSION OF THE FORM

8.1.1 In order to participate in the Procedure, interested users have to be registered as Participants by GAZ-SYSTEM S.A. following to the submission of a correctly filled in and complete Registration Form, the specimen of which constitutes Appendix No. 1 hereto.

8.1.2 The deadlines for the submission of Registration Forms for participation in the Procedure, including any documents required, for Phase 1 of the Procedure and Phase 2 of the Procedure, respectively, are set out in the Schedule.

8.1.3 Applicants interested in participating in the Procedure should, by the date specified in the Schedule, submit the following documents to GAZ-SYSTEM S.A., at the address:

Mszczonowska 4, Building A, 02-337 Warsaw.

duly completed Registration Form, together with the documents indicated in point 8.1.6, in writing, and, by the same deadline, send a scan of the submitted documents by e-mail to the following address: [openseason@gaz-system.pl](mailto:openseason@gaz-system.pl).

Alternatively, Applicants interested in participating in the Procedure may, within the deadline specified in the Schedule, send the completed Registration Form together with the documents indicated in point 8.1.6 to [openseason@gaz-system.pl](mailto:openseason@gaz-system.pl) in electronic form signed with a qualified electronic signature.

8.1.4 Only one registration is required. If a Participant has been registered in Phase 1 of the Procedure, it is no longer subject to registration in Phase 2 of the Procedure (provided that the submitted documentation remains up-to-date).

8.1.5 Participation in Phase 1 of the Procedure is not a condition for participation in Phase 2 of the Procedure.

8.1.6 Together with the Registration Form, the Applicant should submit:

8.1.6.1 documents confirming the legal form of business activity, including in particular a current extract from the National Court Register (KRS) or a computer printout of information about an entry to the KRS, and in case of an Applicant who does not have a registered office in the territory of the Republic of Poland – a current, i.e. issued not earlier than thirty (30) days before the deadline for submission of the Registration Form, excerpt from the appropriate register of entrepreneurs obtained in accordance with the rules set forth in the regulations of the country where the Applicant has its registered office;

8.1.6.2 if the Registration Form is not signed by authorised representations in accordance with the documents indicated in point 8.1.6.1, the original or a copy certified in accordance with point 8.1.7 (with an apostille attached if appropriate) of a power of attorney granted to the person signing the Registration Form, or another document confirming the right of the person signing the Registration Form to represent the Applicant, containing the authorisation to sign the Registration Form and all related documents on behalf of the Applicant;

- 8.1.6.3 a copy of a framework transmission contract with GAZ-SYSTEM S.A. and a declaration that the Applicant will enter into and maintain the framework transmission contract throughout the duration of the Procedure, or an application for the conclusion of a framework transmission contract with GAZ-SYSTEM S.A. and a declaration that the Applicant will enter into and maintain the framework transmission contract throughout the duration of the Procedure;
  - 8.1.6.4 a licence, a promise of a licence or a declaration that the licence shall be presented thirty (30) days prior to the commencement of the provision of Regasification Services<sub>F<sub>SRU</sub></sub>, or a declaration that the activity carried out by the Applicant does not require a licence, signed by the management board (authorised representatives) of the Applicant;
  - 8.1.6.5 a document confirming that the Applicant has been assigned a tax identification number (NIP) or an equivalent identification number required for entities established in another Member State if this information does not result from the contents of the document referred to in point 8.1.6.1;
  - 8.1.6.6 a certificate confirming the assignment of the REGON statistical number (Applicants conducting business activity in Poland), if this information does not result from the contents of the document referred to in point 8.1.6.1;
  - 8.1.6.7 a declaration, signed by authorised representatives of the Applicant in accordance with the documents referred to in point 8.1.6.1 or point 8.1.6.2, indicating whether: (i) any bankruptcy, restructuring or liquidation proceedings are pending against the Applicant; (ii) any steps have been taken to declare the Applicant bankrupt or to open any restructuring or liquidation proceedings against the Applicant, in particular, whether any restructuring or bankruptcy petition has been filed against the Applicant; (iii) any proceedings for the establishment of a receivership are pending against the Applicant, or whether the Applicant's assets have been secured in any way, e.g. by the appointment of a temporary court supervisor or provisional administrator. In case when the Applicant's registered office is not located on the territory of the Republic of Poland, the declaration should indicate whether any analogous proceedings are pending against the Application, or whether any analogous action has been taken, in accordance with the regulations applicable to the Applicant's registered office;
  - 8.1.6.8 a declaration, signed by authorised representatives of the Applicant in accordance with the documents referred to in point 8.1.6.1 or point 8.1.6.2, confirming that the Applicant has sufficient funds to meet the obligations arising from participation in the Procedure, and that these funds do not come from any undisclosed or illegal sources within the meaning of the Act of 1 March 2018 on counteracting money laundering and terrorism financing (for consolidated text see Dz.U.2021.1132, as amended).
- 8.1.7 The documents indicated in points 8.1.6.1 - 8.1.6.8 may be submitted as originals or as copies certified by the Applicant as true to the original (in accordance with the representation authority). If the Registration Form, Order or Offer is submitted in an electronic form, documents or statements which were not originally drawn up in the form of an electronic document must be submitted as electronic copies of the documents (scans) bearing a qualified electronic signature of the Applicant. Such signature is tantamount to certifying the electronic copy of the document or statement as being true to the original.
- 8.1.8 All documents, letters and statements attached to the Registration Form should be submitted to GAZ-SYSTEM S.A. in the Polish language. In the case documents in a language other than Polish, their sworn translation into Polish must be provided.

- 8.1.9 By signing the Registration Form, the Applicant undertakes to comply with and accepts the conditions of participation in the Procedure, specifically with regard to the following:
- 8.1.9.1 rules set out in the Procedure;
  - 8.1.9.2 amendments that may be made by GAZ-SYSTEM S.A. to the documentation constituting the basis for carrying out the Procedure, in particular to the FSRU Service Delivery Model, the Terminal Code and the drafts of the OtP, Regasification Agreement<sub>FSRU</sub>, Regasification Order<sub>FSRU</sub> and appendices thereto;
  - 8.1.9.3 confidentiality;
  - 8.1.9.4 processing of personal data;
  - 8.1.9.5 allocation of regasification capacity;
  - 8.1.9.6 execution of the OtP and its provisions;
  - 8.1.9.7 execution of the Regasification Agreement<sub>FSRU</sub> and the Regasification Order<sub>FSRU</sub> and their provisions.
- 8.1.10 Registration Forms with accompanying documents which have not been submitted in accordance with 8.1.3, 8.1.7 and 8.1.8, or within the deadline indicated in the Schedule, shall be rejected. Wherever these General Implementation Conditions refer to the rejection of a Registration Form, such form shall be deemed not to have been submitted.
- 8.1.11 GAZ-SYSTEM S.A. may reject the Registration Form of an Applicant against whom: (i) bankruptcy, restructuring or liquidation proceedings are pending; (ii) steps have been taken to declare them bankrupt or to open any restructuring or liquidation proceedings, in particular, when a restructuring or bankruptcy petition has been filed; (iii) proceedings for the establishment of a receivership are pending, or whose assets have been secured in any way, e.g. by the appointment of a temporary court supervisor or provisional administrator. GAZ-SYSTEM S.A. may reject a Registration Form from an Applicant that is not based in the territory of the Republic of Poland if analogous proceedings are pending against it, or analogous actions have been taken in accordance with the regulations applicable to the Applicant's registered office.
- 8.1.12 Within five (5) Business Days of the receipt of the Registration Form, GAZ-SYSTEM S.A. shall assess the documents submitted by the Applicant for their compliance with the provisions of points 8.1.1 - 8.1.8. When the Registration Form or any of the documents submitted together with the Registration Form is incomplete or incorrect or raises other doubts, GAZ-SYSTEM S.A. Will request the Applicant to complete or correct the document or to provide clarification within three (3) Business Days. Failure to complete or correct a given Registration Form or to provide sufficient clarification within the prescribed time limit shall result in rejection of the Registration Form by GAZ-SYSTEM S.A. The provisions of points 8.1.3 and 8.1.7 apply accordingly.
- 8.1.13 GAZ-SYSTEM S.A. shall send a confirmation of the receipt of the Registration Form to the e-mail address indicated by the Applicant in the Registration Form. Within five (5) Business Days from the date of receipt of a correctly completed Registration Form accompanied by the required documents, GAZ-SYSTEM S.A. shall either register the Applicant as a Participant or reject the Registration Form due to the provisions of points 8.1.9 - 8.1.12, of which it shall inform the Applicant by e-mail sent to the address indicated in the Registration Form.
- 8.1.14 In case the statements of the Applicant referred to in point 8.1.6.7 or point 8.1.6.8 prove untrue, GAZ-SYSTEM S.A. may exclude the Applicant from the Procedure at any stage. In the event that the OtP, Regasification Agreement<sub>FSRU</sub> or Regasification Order<sub>FSRU</sub> have been executed with a Participant whose declaration referred to in point 8.1.6.7 or

point 8.1.6.8 proved to be untrue, GAZ-SYSTEM S.A. may withdraw from such OtP, Regasification Agreement<sub>FSRU</sub> or Regasification Order<sub>FSRU</sub> within thirty (30) days of becoming aware of the same. In such a case, GAZ-SYSTEM S.A. may claim the costs indicated in the OtP Agreement or the Regasification Order<sub>FSRU</sub>. GAZ-SYSTEM S.A. may exercise the right to withdraw from the OtP, Regasification Agreement<sub>FSRU</sub> or Regasification Order<sub>FSRU</sub> until 31 December 2038.

8.1.15 GAZ-SYSTEM S.A. shall have the right to exclude a Participant from the Procedure at any stage if, due to legal regulations applicable to that Participant, there is no possibility of executing an effective OtP, Regasification Agreement<sub>FSRU</sub> or Regasification Order<sub>FSRU</sub> with such Participant on terms specified in the Procedure, FSRU Service Delivery Model or the Terminal Code. In such a case, GAZ-SYSTEM S.A. and the excluded Participant shall not bear the costs payable under these General Implementation Conditions in case of a failure to enter into the OtP or the Regasification Agreement<sub>FSRU</sub> or the Regasification Order<sub>FSRU</sub>, as applicable, irrespective of the stage of the Procedure at which the exclusion was made, unless the legal regulations referred to in the previous sentence provide otherwise. The provisions of points 11.1.9 and 15.2.4 shall apply *mutatis mutandis*.

## **9. OTP – ORDER TO ENSURE THE IMPLEMENTATION OF THE PROJECT**

9.1 Participants interested in placing an Order should follow the procedure below: by the date specified in the Schedule, submit an Order in writing to GAZ-SYSTEM S.A., using the form constituting Attachment No. 2 to these General Implementation Conditions, to be sent to the following address:

Mszczonowska 4, Building A, 02-337 Warsaw

and send a scan of the filled in Order, by the same date, by e-mail to the following address: [openseason@gaz-system.pl](mailto:openseason@gaz-system.pl).

Alternatively, Participants interested in placing an Order may, by the deadline specified in the Schedule, send the Order in electronic form signed with a qualified electronic signature, using the form attached as Appendix 2 to these General Implementation Conditions, to the following address: [openseason@gaz-system.pl](mailto:openseason@gaz-system.pl).

9.2 The provisions of point 8.1.7 and point 8.1.8 apply as appropriate.

9.3 Attached to the Order should be the bank guarantee referred to in Section 10.

9.4 Only an Order submitted in accordance with the requirements set out in points 9.1 - 9.3, signed by authorised representatives of the Participant, shall have the effects referred to in points 9.5 - 9.6. The right of the persons signing the Order to represent the Participant, in particular the authorisation to submit the Order on behalf of and for the Participant, must be demonstrated by enclosing an extract from the relevant register, a power of attorney or any other document indicating the relevant authorisation, unless the right to represent had been demonstrated upon the Participant's registration.

9.5 By submitting an Order to GAZ-SYSTEM S.A. In Phase 1 of the Procedure, the Participant:

9.5.1 undertakes to execute an OtP with GAZ-SYSTEM S.A., in accordance with the draft enclosed as Appendix No. 3 to these General Implementation Conditions;

9.5.2 undertakes to submit an Offer in Phase 2 of the Procedure for at least the same level of the Regasification Services<sub>FSRU</sub> and for the same period, i.e. Gas Year(s), as indicated in the Order, and to execute a Regasification Agreement<sub>FSRU</sub> and a Regasification Order<sub>FSRU</sub> with the Operator, providing for an obligation to use Regasification

Services<sub>FSRU</sub> according to the specifications set out in the with the parameters specified in the Information on the allocation of Regasification Services<sub>FSRU</sub>;

- 9.5.3 declares that it accepts liability towards GAZ-SYSTEM S.A. on the terms set forth in point 12.14, in case when the Participant fails to submit an Offer in Phase 2 of the Procedure or reduces the level of the Regasification Services<sub>FSRU</sub> requested in the Offer in Phase 2 of the Procedure in comparison with the Order, and when the Participant fails to execute a Regasification Agreement<sub>FSRU</sub> or a Regasification Order<sub>FSRU</sub> with the Operator, providing for an obligation to use the Regasification Services<sub>FSRU</sub> according to the specifications set out in the Information on the allocation of the Regasification Services<sub>FSRU</sub>.
- 9.6 The Order should include specifically the following:
- 9.6.1 an order to provide Regasification Services<sub>FSRU</sub> for any number of years, not exceeding fifteen (15), counting from the date to be determined by GAZ-SYSTEM S.A. in accordance with the provisions of point 6.4.2. The Order should include:
- 9.6.1.1 an order for the number of Slots in which GAZ-SYSTEM S.A. is to provide the Regasification Services<sub>FSRU</sub>, for each Gas Year (maximum fifty eight (58) Slots (or proportionally less in case when periods shorter than a full Gas Year are made available by the Operator under the Procedure) during the term of the Regasification Order<sub>FSRU</sub>, in which the Participant intends to deliver LNG to the Terminal<sub>FSRU</sub>, where the Participant undertakes to conform to the parameters of the Slot, i.e.:
- (a) For a single Slot, the Unloaded LNG Quantities must not exceed 1,166,878,800 kWh nor 180,000 m<sup>3</sup> of LNG.
  - (b) the duration of the Slot is six (6) Gas Days, with regasification rate ranging between the Minimum Regasification Capacity (i.e. at least 670,620 kWh/h or 60 000 Nm<sup>3</sup>/h) and the Contracted Capacity (i.e. at a level of up to 8,757,180 kWh/h i.e. 783 500 Nm<sup>3</sup>/h, subject to the provisions of point 6.2.1) and in accordance with the In-Process Storage Program;
- 9.6.1.2 an undertaking that the quality specifications of the LNG being subject of the Order shall conform to the FSRU Service Delivery Model;
- 9.6.1.3 the minimum Order level expressed as the number of Slots in each Gas Year of the term of the Regasification Order<sub>FSRU</sub>, which the Participant would accept in case of reduction of its Order when the allocation referred to in Section 14 is required.
- 9.7 An Order which has not been submitted in accordance with point 9.1, by the deadline specified in the Schedule, or has been filled in an incorrect manner (e.g. contains errors or is incomplete), in particular inconsistent with the provisions of point 9.2, or contains data contrary to the provisions of point 9.6, or has been submitted without attaching a correctly issued bank guarantee referred to in point 9.3, shall be rejected, subject to point 9.8. Wherever these General Implementation Conditions refer to the rejection of an Order, such order shall be deemed not to have been submitted.
- 9.8 GAZ-SYSTEM S.A. shall send a confirmation of receipt of the Order to the e-mail address specified by the Participant in the Registration Form. When the Order is incomplete or contains errors, in particular when not all of the necessary information is indicated or when the bank guarantee referred to in point 9.3 is not attached, GAZ-SYSTEM S.A. shall call upon the Participant concerned to supplement the deficiencies within five (5) Business Days of being notified thereof. The deficiencies shall be deemed supplemented when a response to the notification of GAZ-SYSTEM S.A. is received within the aforementioned time limit and contains all requested information and documents. Otherwise, GAZ-SYSTEM S.A. shall consider that the

Order has been rejected. The provisions of point 9.1, point 8.1.7 and point 8.1.8 apply accordingly.

- 9.9 Until the time limit indicated in the Schedule as the deadline for placing Orders expires, the Participant may submit a new Order. The new Order shall replace the previous Order and all information contained in the previous Order shall be disregarded. The new Order should conform to the requirements referred to in points 9.1 - 9.6.
- 9.10 The Participant shall remain to be bound by the Order until the date when GAZ-SYSTEM S.A. announces the completion of Phase 1 of the Procedure and the OtP is signed, however no longer than until 30 June 2022. In the event of failing to conclude the OtP with the Participant within the time limit indicated in the previous sentence for reasons attributable to GAZ-SYSTEM S.A., the Operator shall reimburse the Participant concerned for the costs incurred in maintaining the bank guarantee presented as part of participation in Phase 1 of the Procedure, however no more than PLN 300,000 excl. VAT per year, as prorated according to the time for which the guarantee was maintained in a given year, and no more than PLN 450,000 excl. VAT in total.

## **10. FINANCIAL SECURITY IN RESPECT OF PHASE 1 OF THE PROCEDURE**

- 10.1 The participation in Phase 1 of the Procedure and the execution of the OtP is conditional on the presentation and continued validity of a financial security, in the form and amount specified in these General Implementation Conditions.
- 10.2 The amount of the financial security required by GAZ-SYSTEM S.A. shall be equal to the value of the expected costs that GAZ-SYSTEM S.A. expects to incur in the engineering design of the Project, i.e. the amount of one hundred and sixty-five million (165,000,000.00) PLN, regardless of the actual design costs.
- 10.3 The financial security should be established in the form of an irrevocable, transferable, unconditional bank guarantee payable on first demand, the specimen of which is enclosed as Appendix No. 4 to these General Implementation Conditions, or in other form substantially with this specimen, provided that the wording of a bank guarantee different than the specimen is pre-approved by GAZ-SYSTEM S.A. The bank guarantee shall be issued by a bank with a current rating of not less than Baa2, BBB, BBB as appropriate for the respective Agency: Moody's (*LT Issuer Rating*), Standard & Poor's (*LT Issuer Rating*) or Fitch (*LT IDR Rating*). In case when the relevant bank has acquired ratings from more than one rating agency, the lower rating shall apply. The bank guarantee shall be drawn up and interpreted according to the Polish law. If the bank guarantee had not been issued in Polish, it should be presented to GAZ-SYSTEM S.A. along with a sworn translation into Polish. The bank guarantee should be denominated in PLN. The guarantee shall be valid from the date of submitting the Order throughout the entire term of the OtP, until the date of the execution of the Regasification Agreement<sub>FSRU</sub> and the Regasification Order<sub>FSRU</sub>. In the event that the Participant provides security for a shorter period, the Participant shall be required, at least thirty (30) days prior to the expiry of the relevant guarantee, provide a new bank guarantee in line with the requirements set out herein, provided that the guarantee may not be issued for a period shorter than one (1) year. In the event of failure to submit a new bank guarantee by the indicated date, GAZ-SYSTEM S.A. shall have the right to draw down the existing bank guarantee up to its full amount, and the amount thus received will constitute an interest-free cash deposit.
- 10.4 When providing the Operator with a bank guarantee, the Participant shall also provide a document confirming the cost of establishing such guarantee. Otherwise, the Participant shall not be entitled to receive reimbursement of the costs of maintaining the financial security submitted under the Procedure in the cases specified in these General Implementation Conditions.
- 10.5 In the event of a Participant's failure to comply with its obligations arising from an Order in respect of the Procedure or the OtP, and specifically when:



10.5.1 the Participant fails to submit an Offer in Phase 2 of the Procedure, with parameters at least equal to those specified in the Order, in accordance with the provisions of section 12.14,

10.5.2 the Regasification Agreement<sub>FSRU</sub> or the Regasification Order<sub>FSRU</sub> providing for an obligation to use the Regasification Services<sub>FSRU</sub> according to the specifications set out in the Information on the allocation of the Regasification Services<sub>FSRU</sub> is not executed with the Operator, for reasons attributable to the Participant,

10.5.3 the OtP is terminated by the Participant in breach of its provisions,

GAZ-SYSTEM S.A. shall be entitled to demand that the Participant pays and the Participant shall be obliged to pay the Project execution costs incurred by GAZ-SYSTEM S.A., including:

10.5.4 documented and total costs of Project implementation, including engineering costs, incurred up to that point by GAZ-SYSTEM S.A,

10.5.5 costs related to the reimbursement by the Operator of the costs of maintaining the financial security presented by other Participants under the Procedure,

10.5.6 documented and total costs to be borne by GAZ-SYSTEM S.A. that may arise in connection with the amendment or termination of or withdrawal from contracts concluded until that moment with contractors acting on behalf of GAZ-SYSTEM S.A. for the purposes of Project implementation, including those related to Project engineering, as a result of circumstances specified in point 10.5 above,

and to draw, up to its full amount, on the bank guarantee presented by that Participant to cover its financial claims against the Participant. Detailed rules for the Participant's liability are set out in the OtP.

10.6 The financial security shall be returned to the Participant within fourteen (14) Business Days in the following cases:

10.6.1 GAZ-SYSTEM S.A., in accordance with the provisions of point 11.1.6, point 11.1.8 or point 11.2.4 decides to discontinue the implementation of the Project and terminate the Procedure without concluding the OtPs,

10.6.2 In Phase 2 of the Procedure, the Participant executes the Regasification Agreement<sub>FSRU</sub> and the Regasification Order<sub>FSRU</sub>,

10.6.3 GAZ-SYSTEM S.A. decides to discontinue the Procedure, in accordance with point 20.6,

10.6.4 in accordance with the provisions of the OtP.

10.7 Detailed provisions on the obligations relating to the provision of financial security after the conclusion of the OtP are set out in the OtP.

## **11. CONCLUSION OF OTP AGREEMENTS AND PRELIMINARY INVESTMENT DECISION**

11.1 Assessment of Orders (analysis of competitiveness):

11.1.1 By the deadline set forth in the Schedule, pursuant to the provisions of point 11.1.2, GAZ-SYSTEM S.A. shall assess whether the level of the Regasification Services<sub>FSRU</sub> requested in the Orders submitted in Phase 1 of the Procedure is sufficient for GAZ-SYSTEM S.A. to proceed with the execution of the first stage of the Project, i.e. the design of the Project (subject to a positive Preliminary Investment Decision).

- 11.1.2 In its analysis of the competitiveness of the Terminal<sub>F<sub>SRU</sub></sub>, GAZ-SYSTEM S.A. shall take into account the level of the Regasification Services<sub>F<sub>SRU</sub></sub> specified in the submitted Orders and regulatory value of assets used to estimate the return on capital, which will be included in the tariff for services provided with the use of the Terminal<sub>F<sub>SRU</sub></sub>, as published in accordance with the provisions of point 16.2.1.
- 11.1.3 In order for GAZ-SYSTEM S.A. to conclude that the total level of the Regasification Services<sub>F<sub>SRU</sub></sub> demanded in the Orders is sufficient for GAZ-SYSTEM S.A. to proceed with the first stage of the Project, i.e. the design of the Project (subject to a positive Preliminary Investment Decision), the total level of Regasification Services<sub>F<sub>SRU</sub></sub> should equal at least forty (40) Slots for each Gas Year offered under the FSRU Open Season, and in the event that periods shorter than a full Gas Year are made available by the Operator under the Procedure - proportionally less than forty (40) Slots, rounded up to full Slots.
- 11.1.4 If the condition set out in point 11.1.3 is fulfilled, the Participants who submitted their Order in Phase 1 of the Procedure shall be obliged to conclude OtPs in accordance with the provisions of point 11.2 and, subject to a positive Preliminary Investment Decision of GAZ-SYSTEM S.A., to submit their Offers in Phase 2 of the Procedure on the terms set out in these General Implementation Conditions.
- 11.1.5 If the condition set out in point 11.1.3 is not fulfilled, GAZ-SYSTEM S.A. shall have right to decide to discontinue the implementation of the Project. Orders placed in Phase 1 of the Procedure shall automatically expire when the decision to discontinue the implementation of the Project is taken. Neither GAZ-SYSTEM S.A. nor the Participants who successfully submitted Orders in Phase 1 of the Procedure shall be obliged to execute OtPs, and therefore the Participants shall not be obliged to submit Offers in Phase 2 of the Procedure.
- 11.1.6 GAZ-SYSTEM S.A., at its own discretion, after carrying out further analyses with respect to the Project feasibility, may decide to proceed with the implementation of the first stage of the Project, i.e. design of the Project (subject to a positive Preliminary Investment Decision), despite the failure to meet the condition specified in point 11.1.3. In this case, Participants who have placed Orders in Phase 1 of the Procedure shall be obliged to execute an OtP in accordance with the provisions of point 11.2.
- 11.1.7 Following to the review of the Orders in Phase 1 of the Procedure by GAZ-SYSTEM S.A., each of the Participants that submitted Orders during Phase 1 of the Procedure shall be informed by GAZ-SYSTEM S.A. about the results of the competitiveness assessment and on the decision to proceed with the first stage of the Project, i.e. the design of the Project (subject to a positive Preliminary Investment Decision). In case that the situation described in point 11.1.6 occurs, GAZ-SYSTEM S.A. will also indicate the number of Slots at which GAZ-SYSTEM S.A. made the decision to proceed with the Project.
- 11.1.8 GAZ-SYSTEM S.A. has the right, at any moment of Phase 1 of the Procedure, to decide to discontinue the implementation of the Project, even despite the fulfilment of the condition specified in point 11.1.3. The above does not give rise to any claims by the Participant against GAZ-SYSTEM S.A.
- 11.1.9 In the event that the condition referred to in point 11.1.3 is not fulfilled and the indicated minimum level of the Regasification Services<sub>F<sub>SRU</sub></sub> is not reached in the received Orders, the Operator may repeat the process of submitting Orders in Phase 1 of the Procedure, limited to the Participants that submitted binding Orders in Phase 1 of the Procedure. GAZ-SYSTEM S.A. shall inform these Participants about:
- 11.1.9.1 the decision to repeat the process of Order submission;
- 11.1.9.2 the shortfall volume of the Regasification Services<sub>F<sub>SRU</sub></sub>, relative to the level referred to in point 11.1.3;

11.1.9.3 the new deadline for the submission of Orders;

11.1.9.4 documents to be delivered to GAZ-SYSTEM S.A.

11.1.10 As of the date on which the Participant places an Order under the repeated Order submission process, his/her previous Order shall cease to be valid. In case when no Order is submitted during the repeated Order submission process, or when the submitted Order is lower than the previous one, the Participant's previous Order shall be deemed sustained.

11.1.11 When the Order submission process is repeated in accordance with the provisions of 11.1.9, the provisions of 11.1.1 - 11.1.8 apply as appropriate.

## 11.2 OtP execution:

11.2.1 In the event that GAZ-SYSTEM S.A. decides that the total demand for the Regasification Services<sub>FSRU</sub> resulting from the Orders is sufficient to proceed with the implementation of the first stage of the Project, i.e. the design of the Project, together with the information referred to in point 11.1.7, GAZ-SYSTEM S.A. shall send a draft OtP to the Participants who successfully submitted Orders in Phase 1 of the Procedure, by the date set out in the Schedule.

11.2.2 The OtP Agreement shall be in accordance with the specimen attached as Appendix No. 3 to these General Implementation Conditions.

11.2.3 Each Participant that has received the draft OtP from GAZ-SYSTEM S.A. shall be obliged to deliver the signed draft OtP in writing to GAZ-SYSTEM S.A. at its registered office address indicated in point 9.1 within ten (10) Business Days of receiving such draft. In the event that the draft OtP signed by the Participant is not received by the aforementioned deadline, GAZ-SYSTEM S.A. shall deem that such Participant decided not to enter into the OtP. GAZ-SYSTEM S.A. shall send the signed OtP in writing to the Participant within ten (10) Business Days of the date of delivery of the draft OtP signed by the Participant to GAZ-SYSTEM S.A., to the mailing address indicated in the Registration Form. Alternatively, the Participant may, within the time limit specified above, send the OtP to [openseason@gaz-system.pl](mailto:openseason@gaz-system.pl) in electronic form signed with a qualified electronic signature. In such a situation, GAZ-SYSTEM S.A. shall send the OtP signed with a qualified electronic signature to the Participant.

11.2.4 In the event that the Participant fails to submit, in accordance with point 11.2.3, the signed draft OtP and GAZ-SYSTEM S.A. deems, in accordance with point 11.2.3, that the Participant decided not to enter into the OtP, then GAZ-SYSTEM S.A. shall verify again whether the total level of the Regasification Services<sub>FSRU</sub> demanded in the remaining Orders is sufficient for GAZ-SYSTEM S.A. to proceed with the Project. If the condition set out in point 11.1.3 is fulfilled also in case when the Order of the Participant that failed to submit the signed draft OtP is excluded, then GAZ-SYSTEM S.A. shall continue the procedure of executing OtPs and shall take the actions described in point 11.3. If, on the other hand, the condition stipulated in point 11.1.3 is not fulfilled in the case of exclusion of the Order of the Participant who failed to submit the signed draft OtP and GAZ-SYSTEM S.A. does not take the decision in accordance with point 11.1.6, then GAZ-SYSTEM S.A. shall take the decision to discontinue the implementation of the Project. In such a situation, the provisions of point 11.1.5 and point 11.1.8 shall apply *mutatis mutandis* and the OtPs executed until that moment shall expire.

11.2.5 GAZ-SYSTEM S.A. may refuse to execute an OtP with a Participant against whom: (i) bankruptcy, restructuring or liquidation proceedings are pending; (ii) steps have been taken to declare them bankrupt or to open any restructuring or liquidation proceedings, in particular, when a restructuring or bankruptcy petition has been filed; (iii) proceedings for the establishment of a receivership are pending, or whose assets have been secured in any way, e.g. by the appointment of a temporary court supervisor or provisional administrator. GAZ-SYSTEM S.A. may refuse to sign an OtP with a Participant that is

not based in the territory of the Republic of Poland, if analogous proceedings are pending against it, or analogous actions have been taken in accordance with the regulations applicable to the Participant's registered office.

### 11.3 Preliminary Investment Decision

- 11.3.1 If the conditions set out in the OtP are fulfilled, specifically when Orders are received and OtPs are executed at a sufficient level of demand for Regasification Services<sub>FSRU</sub>, and provided that the procedure to select the contractor(s) for the design of the Project is completed and the related contract is negotiated for a value not exceeding the estimated contract costs, within the time limit specified in the Schedule, GAZ-SYSTEM S.A. may take a positive Preliminary Investment Decision.
- 11.3.2 When the conditions stipulated in the OtP, in particular when GAZ-SYSTEM S.A. fails to conclude a contract for Project engineering within the time frame set out in the Schedule, GAZ-SYSTEM S.A. shall have the right to take a negative Preliminary Investment Decision and consequently to discontinue the implementation of the Project. If the Preliminary Investment Decision is negative, GAZ-SYSTEM S.A. shall exercise its right to withdraw from the OtP. The consequences of such withdrawal shall be governed by the OtP.
- 11.3.3 GAZ-SYSTEM S.A. may take a positive Preliminary Investment Decision despite that the conditions set out in the OtP have not been fulfilled.
- 11.3.4 No later than by the date indicated in the Schedule for taking the Preliminary Investment Decision, GAZ-SYSTEM S.A. shall immediately inform the Participants with whom it concluded OtPs about the Preliminary Investment Decision. The provisions of point 11.1.8 shall apply *mutatis mutandis*.

## PHASE 2 OF THE PROCEDURE

### 12. SUBMISSION OF AN OFFER

#### **Submission of Offers in case of a full Order for Regasification Services<sub>FSRU</sub> in Phase 1 of the Procedure**

- 12.1 In case when, in Phase 1 of the Procedure, an OtP has been executed with a Participant that submitted a binding Order corresponding to 100% of the Regasification Services<sub>FSRU</sub> made available by GAZ-SYSTEM S.A. in the Procedure, the beginning of the registration for Phase 2 of the Procedure shall be conditional on that Participant's submission of an Offer for the same level of Regasification Services<sub>FSRU</sub> and the same period of providing the Regasification Services<sub>FSRU</sub>, i.e. the same Gas Years as indicated in the Order, and on the execution a Regasification Agreement<sub>FSRU</sub> and a Regasification Order<sub>FSRU</sub> with that Participant for the indicated level of the Regasification Services<sub>FSRU</sub>.
- 12.2 In the case referred to in point 12.1 above, GAZ-SYSTEM S.A., acting in accordance with the deadline specified in the Schedule, shall first call upon such Participant to submit an appropriate Offer, and to execute the Regasification Agreement<sub>FSRU</sub> and the Regasification Order<sub>FSRU</sub>. The provisions of Sections 12 - 15 apply as appropriate. In the call, GAZ-SYSTEM S.A. shall indicate the date of submitting the Offer and the date of the execution of the Regasification Agreement<sub>FSRU</sub> and the Regasification Order<sub>FSRU</sub>. GAZ-SYSTEM S.A. shall carry out further steps of Phase 2 of the Procedure and shall offer any Regasification Services<sub>FSRU</sub> that have not been booked to interested entities, applying the provisions of Sections 12 - 15, only in the event of failure to execute the Regasification Agreement<sub>FSRU</sub> and the Regasification Order<sub>FSRU</sub> with the Participant referred to in point 12.1 for 100% of the Regasification Services<sub>FSRU</sub> made available

by GAZ-SYSTEM S.A. under the Procedure. The details of the steps taken shall be communicated by GAZ-SYSTEM S.A. sufficiently in advance.

- 12.3 The provisions of point 12.1 and point 12.2 shall apply as appropriate in the event that, in Phase 1 of the Procedure, OtPs are concluded with multiple Participants that have submitted binding Orders jointly covering at least 100% of the Regasification Services<sub>FSRU</sub> made available by GAZ-SYSTEM S.A. under the Procedure.

#### **Submission of Offers in subsequent stages of Phase 2 of the Procedure**

- 12.4 In order to participate in Phase 2 of the Procedure, those interested in participating must undergo a registration procedure in accordance with the provisions of Section 8.
- 12.5 Participants interested in submitting a Offer should follow the procedure below: by the date specified in the Schedule submit to a Offer to GAZ-SYSTEM S.A., using the form enclosed as Appendix No. 5 to these General Implementation Conditions, in writing, to the following address:

*Mszczonowska 4, Building A, 02-337 Warsaw*

and, by the same deadline, send a scan of the filled in Offer by e-mail to the following address: [openseason@gaz-system.pl](mailto:openseason@gaz-system.pl).

Alternatively, Participants interested in submitting an Offer may, by the deadline specified in the Schedule, send an Offer using the form attached as Appendix No. 5 hereto in electronic form, signed with a qualified electronic signature, to the following address: [openseason@gaz-system.pl](mailto:openseason@gaz-system.pl).

- 12.6 The provisions of point 8.1.7 and point 8.1.8 apply as appropriate.
- 12.7 Attached to the Offer should be the bank guarantee referred to in Section 13.
- 12.8 Only an Offer submitted in accordance with the requirements set out in points 12.4 - 12.7, signed by authorised representatives of the Participant, shall have the effects referred to in points 12.9 - 12.10. The right of the persons signing the Offer to represent the Participant, in particular the authority to submit the Offer for and on behalf of the Participant, should be demonstrated by attaching an extract from the appropriate register, a power of attorney or another document evidencing the relevant authority, unless the right to represent has been demonstrated upon the registration.
- 12.9 By placing the Offer, the Participant shall undertake to enter into a Regasification Agreement<sub>FSRU</sub> and a Regasification Order<sub>FSRU</sub> for the use of Regasification Services<sub>FSRU</sub> according to the parameters specified in the Offer, subject to any changes resulting from the allocation procedure regulated in these General Implementation Conditions.
- 12.10 The Offer should include specifically the following:
- 12.10.1 an order to provide Regasification Services<sub>FSRU</sub> for any number of years, not exceeding fifteen (15) counting from the date to be determined by GAZ-SYSTEM S.A. in accordance with the provisions of point 6.4.2 second sentence. The Offer should include:
- 12.10.1.1 an order for the number of Slots in which GAZ-SYSTEM S.A. is to provide the Regasification Services<sub>FSRU</sub>, for each Gas Year (maximum fifty eight (58) Slots (or proportionally less in case when periods shorter than a full Gas Year are made available by the Operator under the Procedure)) covered by the Regasification Order<sub>FSRU</sub>, in which the Participant intends to deliver LNG to the Terminal<sub>FSRU</sub>, provided that:
- (a) for one (1) Slot, the Unloaded LNG Quantities must not exceed 1,166,878,800 kWh or 180,000 m<sup>3</sup>.

- (b) the duration of the Slot is six (6) Gas Days, with regasification rate ranging between the Minimum Regasification Capacity (i.e. at least 670,620 kWh/h or 60 000 Nm<sup>3</sup>/h) and the Contracted Capacity (i.e. at a level of up to 8,757,180 kWh/h i.e. 783 500 Nm<sup>3</sup>/h, subject to the provisions of point 6.2.1) and in accordance with the In-Process Storage Program;
  - 12.10.1.2 an undertaking that the quality specifications of the LNG being subject of the order will conform to the Terminal Code;
  - 12.10.1.3 the minimum order level expressed as the number of Slots in each Gas Year of the term of the Regasification Order<sub>F<sub>SRU</sub></sub>, which the Participant would accept in case of reduction of its order when the allocation referred to in Section 14 is required.
- 12.11 An Offer which has not been submitted in accordance with point 12.5, by the deadline specified in the Schedule, or has been filled in an incorrect manner (e.g. contains errors or is incomplete), in particular inconsistent with the provisions of point 12.5, or contains data contrary to the provisions of point 12.10, or has been submitted without attaching a correctly issued bank guarantee referred to in point 12.7, shall be rejected, subject to point 12.12. Wherever these General Implementation Conditions refer to the rejection of an Offer, such Offer shall be deemed not to have been submitted.
- 12.12 GAZ-SYSTEM S.A. shall send a confirmation of the receipt of the Offer to the e-mail address indicated by the Participant in the Registration Form. When the Offer is incomplete or contains errors, in particular when not all the necessary information is provided or the bank guarantee referred to in Section 13 is not attached, GAZ-SYSTEM S.A. shall call upon the Participant concerned to supplement the deficiencies within three (3) Business Days of being notified thereof. The deficiencies shall be deemed supplemented when a response to the notification of GAZ-SYSTEM S.A. is delivered, in one of the forms described in point 12.5, within the aforementioned time limit and contains all requested information and documents. Otherwise, the Offer will be rejected by GAZ-SYSTEM S.A. The provisions of point 8.1.7 and point 8.1.8 apply as appropriate.
- 12.13 Until the time limit indicated in the Schedule as the deadline for submitting Offers expires, the Participant may submit a new Offer. The new Offer replaces the previous Offer and all information contained in the previous Offer shall be disregarded. The new Offer should conform to the requirements referred to in points 12.5 - 12.10.
- 12.14 The Offer submitted by a Participant that has successfully submitted an Order in Phase 1 of the Procedure should cover at least the same level of Regasification Services<sub>F<sub>SRU</sub></sub> and the same period of provision of Regasification Services<sub>F<sub>SRU</sub></sub>, i.e. the same Gas Year(s), as those indicated in the Order. In the event that the level of Regasification Services<sub>F<sub>SRU</sub></sub> for each Gas Year indicated in the Offer is lower than the level indicated in the Order submitted by the relevant Participant, or the relevant Participant does not submit an Offer at all under Phase 2 of the Procedure, then:
  - 12.14.1 if, due to the submission of a lower Offer by a given Participant or lack of effective submission of an Offer in Phase 2 of the Procedure, the condition stipulated in point 15.1.3 is not be met, then GAZ-SYSTEM S.A. may decide to discontinue the implementation of the Project. In such case GAZ-SYSTEM S.A. will reimburse other Participants in Phase 1 of the Procedure that submitted Offers conforming to the requirements set out in these General Implementation Conditions, the costs incurred by them to maintain the bank guarantees presented in Phase 1 of the Procedure up to the amount specified in point 9.10;
  - 12.14.2 GAZ-SYSTEM S.A. shall have the right to claim from the Participant the Project execution costs incurred by GAZ-SYSTEM S.A., including:

- (a) documented and total costs of Project implementation, including engineering costs, incurred up to that point by GAZ-SYSTEM S.A,
- (b) costs related to the reimbursement by the Operator of the costs of maintaining the financial security presented by other Participants under the Procedure,
- (c) documented and total costs to be borne by GAZ-SYSTEM S.A. that may arise in connection with the amendment or termination of, or withdrawal from, any contracts concluded until that date with contractors acting on behalf of GAZ-SYSTEM S.A. with a view to implementing the Project, including those related to its engineering, as a result of the circumstances described in point 12.14.1 above,

and to draw on the bank guarantee presented by that Participant during in Phase 1 of the Procedure up to its full amount. Detailed rules for the Participant's liability are set out in the OtP.

12.14.2.2 The provisions of point 15.1.5 apply as appropriate.

12.14.3 The decision of GAZ-SYSTEM S.A. to proceed with the construction phase of the Project, and thus to conclude the construction contract for the Project, despite the fact that the condition stipulated in point 15.1.3 has not been met, does not exclude the Participant's liability referred to in point 12.14.2, although the Participant may be released from such liability, in particular GAZ-SYSTEM S.A. may refrain from drawing on the bank guarantee presented by the Participant in Phase 1 of the Procedure.

12.14.4 In the event that the situation described in point 12.14 second sentence concerns more than one Participant, then they shall be obliged to cover its portion (as determined on a pro rata basis according to the level of Regasification Services<sub>FSRU</sub> requested by them in the Orders) the Project implementation costs incurred by GAZ-SYSTEM S.A. until that moment, including the reimbursement of the costs of maintaining financial security by the remaining Participants, and for this purpose GAZ-SYSTEM S.A. shall have the right to draw on the bank guarantees presented by such liable Participants in Phase 1 of the Procedure.

12.15 The Participant shall remain to be bound by the Offer until the date when GAZ-SYSTEM S.A. announces the completion of Phase 2 of the Procedure and the Regasification Agreement<sub>FSRU</sub> and Regasification Order<sub>FSRU</sub> are signed, however no longer than until 31 March 2024. In case when the Regasification Order<sub>FSRU</sub> is not executed with the Participant within the period indicated in the previous sentence for reasons beyond the Participant's control, the Operator shall reimburse the Participant for the cost of maintaining the bank guarantee presented as part of participation in Phase 2 of the Procedure, but no more than five hundred thousand (500,000) PLN excl. VAT per year, as prorated according to the time for which the guarantee was maintained in a given year, and no more than three million five hundred thousand (3,500,000) PLN excl. VAT in total, and in case when the Participant executed an OtP in Phase 1 of the Procedure – also the costs of maintaining the bank guarantee presented as part of the participation in that phase of the Procedure, but not more than three hundred thousand (300,000) PLN excl. VAT per year, as prorated according to the time for which the guarantee was maintained in a given year, and no more than four hundred fifty thousand (450,000) PLN excl. VAT in total.

### **13. FINANCIAL SECURITY IN PHASE 2 OF THE PROCEDURE**

13.1 Participation in Phase 2 of the Procedure and of entering into the Regasification Agreement<sub>FSRU</sub> and the Regasification Order<sub>FSRU</sub> is conditional on the presentation and continued validity of a financial security, in the form and amount specified in these General Implementation Conditions.

- 13.2 The amount of the financial security required by the Operator shall be equal to the value of the Regasification Services<sub>F<sub>SRU</sub></sub> covered by the Participant's Offer for the period of one (1) Gas Year during which the value of such Regasification Services<sub>F<sub>SRU</sub></sub> is the highest, as determined on the basis of indicative tariff rates for the Regasification Services<sub>F<sub>SRU</sub></sub> and calculated in accordance with the tariff calculator enclosed as Appendix No. 9 prevailing as at the date of the commencement of Phase 2 of the Procedure.
- 13.3 The financial security should be established in the form of an irrevocable, transferable, unconditional bank guarantee payable on first demand, the specimen of which is enclosed as Appendix No. 7 to these General Implementation Conditions, or in other form substantially with this specimen, provided that the wording of a bank guarantee different than the specimen is pre-approved by GAZ-SYSTEM S.A. The bank guarantee shall be issued by a bank with a current rating of not less than Baa2, BBB, BBB, respectively, depending on of the Agency: Moody's (*LT Rating*), Standard & Poor's (*LT Issuer Rating*) or Fitch (*LT IDR Rating*). In case when the relevant bank has acquired ratings from more than one rating agency, the lower rating shall apply. The bank guarantee shall be drawn up and interpreted according to the Polish law. If the bank guarantee had not been issued in Polish, it should be presented to GAZ-SYSTEM S.A. along with a sworn translation into Polish. The bank guarantee should be denominated in PLN. The guarantee shall be valid throughout the term of the Regasification Order<sub>F<sub>SRU</sub></sub>. In the event that the Participant provides security for a shorter period, the Participant shall be required, at least thirty (30) days prior to the expiry of the relevant guarantee, provide a new bank guarantee in line with the requirements set out herein, provided that the guarantee may not be issued for a period shorter than one (1) year. In the event of failure to submit a new bank guarantee by the indicated date, GAZ-SYSTEM S.A. shall have the right to draw on the existing guarantee, and the amount thus received will constitute an interest-free cash deposit.
- 13.4 When providing the Operator with a bank guarantee, the Participant shall also provide a document confirming the cost of establishing such guarantee. Otherwise, the Participant shall not be entitled to receive reimbursement of the costs of maintaining the financial bank guarantee presented under the Procedure in the cases specified in these General Implementation Conditions.
- 13.5 In the event of a Participant's failure to fulfil its obligations under the OtP, the Regasification Agreement<sub>F<sub>SRU</sub></sub> or the Regasification Order<sub>F<sub>SRU</sub></sub>, in particular in the event of:
- 13.5.1 the Participant's failure to execute a Regasification Agreement<sub>F<sub>SRU</sub></sub> or a Regasification Order<sub>F<sub>SRU</sub></sub> in accordance with the provisions of point 15.2.4.2,
  - 13.5.2 failure to fulfil obligations pursuant to the provisions of the Regasification Agreement<sub>F<sub>SRU</sub></sub> or the Regasification Order<sub>F<sub>SRU</sub></sub>,
  - 13.5.3 termination of the Regasification Agreement<sub>F<sub>SRU</sub></sub> or the Regasification Order<sub>F<sub>SRU</sub></sub> by the Participant in breach of their provisions
- GAZ-SYSTEM S.A. shall be entitled to demand that the Participant pays and the Participant shall be will obliged to pay the Project execution costs incurred by GAZ-SYSTEM S.A., including:
- 13.5.4 the Project implementation costs, according to the provisions of the Regasification Order<sub>F<sub>SRU</sub></sub>,
  - 13.5.5 the costs of maintaining financial security instruments submitted within Phase 1 of the Procedure or Phase 2 of the Procedure by other Participants, which GAZ-SYSTEM S.A. was obliged to reimburse for in accordance with the provisions of these General Implementation Conditions,
- and to draw on the bank guarantee, including the guarantee established in accordance with point 15.2.7, up to its full amount.



- 13.6 The financial security shall be returned to the Participant within fourteen (14) Business Days in the following cases:
- 13.6.1 in accordance with the provisions of point 15.1.5 or point 15.2.4.2, GAZ-SYSTEM S.A. decides to discontinue the implementation of the Project and terminate the Procedure without executing the Regasification Agreements<sub>FSRU</sub> and Regasification Orders<sub>FSRU</sub>, unless the financial security is used by GAZ-SYSTEM S.A. to cover claims against the Participant that failed to conclude the Regasification Agreement<sub>FSRU</sub> or Regasification Order<sub>FSRU</sub>,
  - 13.6.2 as a result of the allocation procedure in Phase 2 of the Procedure, no Regasification Services<sub>FSRU</sub> are allocated to the Participant,
  - 13.6.3 GAZ-SYSTEM S.A. decides to discontinue the Procedure, in accordance with point 20.8,
  - 13.6.4 in accordance with the provisions of the Regasification Agreement<sub>FSRU</sub> or the Regasification Order<sub>FSRU</sub>.
- 13.7 Detailed provisions on the obligations relating to the provision of a financial security after the execution of the Regasification Agreement<sub>FSRU</sub> and the Regasification Order<sub>FSRU</sub> have been included in the contents of the Regasification Agreement<sub>FSRU</sub> and the Regasification Order<sub>FSRU</sub>.
- 13.8 The guarantee amount may be subject to revision in the circumstances indicated in the Regasification Agreement<sub>FSRU</sub> or the Regasification Order<sub>FSRU</sub>.

#### **14. ALLOCATION OF REGASIFICATION SERVICES<sub>FSRU</sub>**

- 14.1 GAZ-SYSTEM S.A. shall analyse the Offers received in Phase 2 of the Procedure, taking into account only correctly submitted and complete Offers that meet the requirements specified in Section 12.
- 14.2 If the total number of Slots requested in the submitted Offers does not exceed the number of Slots made available under this Procedure, i.e. fifty-eight (58) for the Gas Year (or proportionally less in case when shorter periods are made available under the Procedure), then each of the Participants, as a result of the allocation process, shall obtain the Regasification Services<sub>FSRU</sub> at the level applied for in its submitted Offer.
- 14.3 If the total number of Slots requested in the submitted Offers exceeds the number of Slots made available under this Procedure (cf. point 14.2), then the following allocation rules shall apply:
- 14.3.1 Priority in the allocation of the Regasification Services<sub>FSRU</sub> for a given Gas Year shall be given to those Participants that submitted their Orders in Phase 1 of the Procedure and executed OtPs, and then, in Phase 2 of the Procedure, submitted Offers in which they applied for the allocation of the number of Slots at the level at least equal to the level resulting from the submitted Order, with the reservation that the priority shall apply only to the number of Slots requested by the Participant in submitted Order to be allocated for a given Gas Year. In the event that the number of Slots requested in the Offers submitted by such Participants for a given Gas Year exceeds the number of available Slots, the provisions of point 14.3.3 shall apply *mutatis mutandis*, to the allocation of slots in such Gas Year.
  - 14.3.2 In the event that after the allocation in accordance with point 14.3.1, there are still unallocated Slots, they shall be allocated to those Participants that submitted their Offers only in Phase 2 of the Procedure, or in Phase 1 of the Procedure submitted an Order smaller than their Offer in Phase 2 of the Procedure, to the extent that they exceed the Order.

- 14.3.3 When the number of Slots requested in the Participants' Offers, as determined in accordance with point 14.3.2 for a given Gas Year exceeds the number of unallocated Slots remaining after the allocation in accordance with point 14.3.1, then the vacant Slots in a given Gas Year shall be allocated to the Participants on a pro rata basis, according to the ratio of the number of Slots requested by each Participant in an Offer (in the case of a Participant that in Phase 1 of the Procedure submitted an Order lower than its Offer in Phase 2 of the Procedure, to the extent that they exceed the Order) to the sum of all Slots requested in Offers for a given Gas Year participating in that part of the allocation process, where the subsequent Slot shall be allocated to the Participant for whom the resulting allocation, after applying the proportion, exceeds 0.5 Slots.
- 14.3.4 No consideration shall be given to Offers which, as a result of the pro rata allocation of the number of Slots, would lead to the reduction in the requested number of Slots in a given Gas Year below the minimum order level in terms of the number of Slots that the Participant accepts following the reduction in its order in view of the need for allocation with respect to any Gas Year during the term of the Regasification Order<sub>FSRU</sub>, as indicated in the Participant's Offer in accordance with point 12.10.1.3.
- 14.3.5 If, as a result of the pro rata allocation of the number of Slots, it is not possible to select an Offer which would meet the requirements referred to in point 14.3.4, GAZ-SYSTEM S.A. shall allocate the remaining offered number of Slots to one of the Participants up to the level of its order and GAZ-SYSTEM shall select the Participant taking into account the criterion of ensuring the highest possible level of diversification of LNG supply sources.
- 14.3.6 In such a situation, GAZ-SYSTEM S.A. may ask additional questions to the Participants indicating the deadline for response under pain of exclusion of the Offer.
- 14.3.7 In the event that the Procedure does lead to the allocation of the entire quantity of offered Slots to the Participants, GAZ-SYSTEM S.A. shall offer the provision of the remaining Regasification Services<sub>FSRU</sub> in a procedure stipulated in the prevailing Terminal Code of GAZ-SYSTEM S.A.
- 14.4 GAZ-SYSTEM S.A. shall provide each of the Participants with information in writing on the allocation of the Regasification Services<sub>FSRU</sub>, on the number of Slots allocated to a given Participant for each Gas Year for which the Regasification Services<sub>FSRU</sub> have been made available under the Procedure, and such information shall be enclosed as an attachment to the Regasification Order<sub>FSRU</sub>.

## **15. EXECUTION OF THE REGASIFICATION AGREEMENTS<sub>FSRU</sub>, THE REGASIFICATION ORDER<sub>FSRU</sub> AND THE FINAL INVESTMENT DECISION**

- 15.1 Assessment of allocation results (analysis of competitiveness)
- 15.1.1 Within the time frame specified in the Schedule, and according to the level specified in point 15.1.3, GAZ-SYSTEM S.A. shall assess whether the level of the Regasification Services<sub>FSRU</sub> allocated in Phase 2 of the Procedure to the Participants that submitted Offers is sufficient for GAZ-SYSTEM S.A. to continue its activities with a view to preparing the execution of the Project (subject to a positive Final Investment Decision).
- 15.1.2 As part of the analysis of the competitiveness of the Terminal<sub>FSRU</sub>, GAZ-SYSTEM S.A. shall take into account the level of Regasification Services<sub>FSRU</sub> allocated on the basis of submitted Offers and the expected (and revised at the time of commencing Phase 2 of the Procedure in accordance with point 16.2.1) regulatory value of assets adopted for estimating the return on capital, which will be included in the tariff for services provided using the Terminal<sub>FSRU</sub> Project Implementation.

- 15.1.3 In order for GAZ-SYSTEM S.A. to conclude that the total level of the Regasification Services<sub>F<sub>SRU</sub></sub> demanded in the Offers is sufficient for GAZ-SYSTEM S.A. to continue its activities with a view to preparing the execution of the Project, i.e. the design of the Project, the total level of Regasification Services<sub>F<sub>SRU</sub></sub> should equal at least forty (40) Slots for each Gas Year offered under the Open Season, and in the event that periods shorter than a full Gas Year are made available by the Operator under the Procedure – proportionally less than forty (40) Slots, or should be reduced accordingly based on the information provided pursuant to point 11.1.7 in case of the occurrence of the situation described in point 11.1.6, each time rounded up to full Slots.
- 15.1.4 If the condition stipulated in point 15.1.3 is fulfilled, GAZ-SYSTEM S.A. shall continue its activities with a view to preparing the execution of the Project, and the Participants to which Slots have been allocated as a result of the allocation carried out in Phase 2 of the Procedure shall be obliged to execute Regasification Agreements<sub>F<sub>SRU</sub></sub> and Regasification Orders<sub>F<sub>SRU</sub></sub> according to the provisions of point 15.2.
- 15.1.5 If the condition set out in point 15.1.3 is not fulfilled, GAZ-SYSTEM S.A. shall have right to decide to discontinue the implementation of the Project. Offers submitted in Phase 2 of the Procedure shall automatically expire upon decision to discontinue the implementation of the Project. Neither GAZ-SYSTEM S.A. nor the Participants that have effectively submitted their Offers in Phase 2 of the Procedure shall be obliged to execute the Regasification Agreements<sub>F<sub>SRU</sub></sub> or Regasification Orders<sub>F<sub>SRU</sub></sub>.
- 15.1.6 GAZ-SYSTEM S.A., at its own discretion, after further analysis of the feasibility of the Project, may decide to continue its activities with a view to preparing the execution of the Project despite the fact that the condition specified in point 15.1.3 has not been met. In such a case, the Participants that have been allocated Slots as a result of the allocation procedure conducted in Phase 2 of the Procedure shall be obliged to execute Regasification Agreements<sub>F<sub>SRU</sub></sub> and Regasification Orders<sub>F<sub>SRU</sub></sub> in accordance with the provisions of point 15.2.
- 15.1.7 Following to the review of the Offers in Phase 2 of the Procedure by GAZ-SYSTEM S.A. each of the Participants that submitted Offers in Phase 2 of the Procedure shall be informed about the results of the analysis of competitiveness and about the decision taken by GAZ-SYSTEM S.A. as to the continuation of its activities with a view to preparing the execution of the Project.
- 15.1.8 The decision to discontinue the implementation of the Project shall not give rise to any claims against GAZ-SYSTEM S.A. on the part of the Participant.
- 15.1.9 If the condition referred to in point 15.1.3 is not fulfilled and the indicated minimum level of Regasification Services<sub>F<sub>SRU</sub></sub> is not achieved based on the received Offers, the Operator may repeat the process of submitting Offers in Phase 2 of the Procedure, limited to those Participants that submitted binding Offers in Phase 2 of the Procedure. At the same time, GAZ-SYSTEM S.A. shall inform the current Participants about:
- 15.1.9.1 the decision to repeat the Offer submission process;
  - 15.1.9.2 the shortfall volume of the Regasification Services<sub>F<sub>SRU</sub></sub>, relative to the level referred to in point 15.1.3;
  - 15.1.9.3 the new deadline for submission of Offers;
  - 15.1.9.4 the documents to be provided to the Operator.
- 15.1.10 As of the date on which the Participant submits an Offer under the repeated Offer submission process, its prior Offer shall cease to be valid. In case when no Offer is submitted during the repeated Offer submission process, or when the submitted Offer is lower than the previous one, the Participant's previous Offer is shall be deemed sustained.

15.1.11 When the Offer submission process is repeated in accordance with the provisions of point 15.1.9, the provisions of Section 14 and of points 15.1.1 - 15.1.8 apply as appropriate.

## 15.2 Execution of the Regasification Agreements<sub>FSRU</sub> and Regasification Orders<sub>FSRU</sub>

15.2.1 In the event that GAZ-SYSTEM S.A. decides that the total demand for the Regasification Services<sub>FSRU</sub> resulting from the Offers is sufficient to continue its activities with a view to preparing the execution of the Project, together with the information referred to in point 15.1.7, GAZ-SYSTEM S.A. shall send drafts of the Regasification Agreement<sub>FSRU</sub> and Regasification Order<sub>FSRU</sub> to the Participants that effectively submitted Offers in Phase 2 of the Procedure and were allocated Slots as a result of the allocation procedure, by the date set out in the Schedule.

15.2.2 The Regasification Agreement<sub>FSRU</sub> and the Regasification Order<sub>FSRU</sub> shall be consistent with the contents of the drafts enclosed as Appendix No. 6 to these General Implementation Conditions.

15.2.3 Each Participant that has received the drafts of the Regasification Agreement<sub>FSRU</sub> and Regasification Order<sub>FSRU</sub> from GAZ-SYSTEM S.A. shall be obliged to deliver the signed drafts of the Regasification Agreement<sub>FSRU</sub> and Regasification Order<sub>FSRU</sub> in writing to GAZ-SYSTEM S.A. at its registered office address indicated in point 12.5, within ten (10) Business Days of receiving such drafts. In the event that the draft of the Regasification Agreement<sub>FSRU</sub> and the draft of the Regasification Order<sub>FSRU</sub> signed by the Participant are not received within the aforementioned deadline, GAZ-SYSTEM S.A. shall consider that such Participant decided not to enter into the Regasification Agreement<sub>FSRU</sub> and Regasification Order<sub>FSRU</sub>. GAZ-SYSTEM S.A. shall send the signed drafts of the Regasification Agreement<sub>FSRU</sub> and Regasification Order<sub>FSRU</sub> in writing to the Participant within ten (10) Business Days from the date of delivery to GAZ-SYSTEM S.A. of the drafts of the Regasification Agreement<sub>FSRU</sub> and Regasification Order<sub>FSRU</sub> signed by the Participant, to the mailing address indicated in the Registration Form. Alternatively, within the deadline specified above, the Participant may send the Regasification Agreement<sub>FSRU</sub> and Regasification Order<sub>FSRU</sub> to [openseason@gaz-system.pl](mailto:openseason@gaz-system.pl) in electronic form, signed with a qualified electronic signature. In such case GAZ-SYSTEM S.A. shall send the Regasification Agreement<sub>FSRU</sub> and Regasification Order<sub>FSRU</sub> signed with a qualified electronic signature to the Participant.

15.2.4 In the event that the Participant fails to submit the signed draft of the Regasification Agreement<sub>FSRU</sub> or the draft of the Regasification Order<sub>FSRU</sub>, and GAZ-SYSTEM S.A. deems, in accordance with point 15.2.3, that the Participant has decided not to enter into the Regasification Agreement<sub>FSRU</sub> and the Regasification Order<sub>FSRU</sub>, then GAZ-SYSTEM S.A. shall verify again whether the level of demand for the Regasification Services<sub>FSRU</sub> resulting from the remaining Offers is sufficient for GAZ-SYSTEM S.A. to continue its activities with a view to preparing the execution of proceed with the Project:

15.2.4.1 if the condition stipulated in point 15.1.3 is also fulfilled in case when the Offer of the Participant that who has failed to submit the signed draft Regasification Agreement<sub>FSRU</sub> or draft Regasification Order<sub>FSRU</sub> is excluded, then GAZ-SYSTEM S.A. shall carry on with the execution of the Regasification Agreements<sub>FSRU</sub> and Regasification Orders<sub>FSRU</sub> and then take the steps described in point 15.3,

15.2.4.2 however, if the condition stipulated in point 15.1.3 is not satisfied in the case when the Offer of the Participant that failed to submit the signed draft Regasification Agreement<sub>FSRU</sub> or draft Regasification Order<sub>FSRU</sub> is excluded, then GAZ-SYSTEM S.A. shall have the right to discontinue the implementation of the implementation of the Project. In the event of such a decision being made, the provisions of points 15.1.5 - 15.1.8 shall apply as appropriate, and the Regasification Agreements<sub>FSRU</sub> and Regasification Orders<sub>FSRU</sub> executed until that moment shall expire.

- 15.2.5 When the Participant that failed to submit the signed draft of the Regasification Agreement<sub>FSRU</sub> or draft Regasification Order<sub>FSRU</sub> had executed an OtP with GAZ-SYSTEM S.A. as a result of Phase 1 of the Procedure, then GAZ-SYSTEM S.A. shall have the right to claim from such Participant the Project execution costs, in accordance with the provisions of point 12.14.2 and point 12.14.4.
- 15.2.6 If the Contracted Capacity to be provided as part of the Slots has been allocated to a given Participant in accordance with the provisions of point 14.3.1 sentence 2 or point 14.3.3, then GAZ-SYSTEM S.A., before undertaking repeated verification in accordance with point 15.2.4, shall repeat the procedure for the allocation of Contracted Capacity to be provided as part of the Slots among the remaining Participants. Those Participants that, as a result of the reallocation, obtain more Contracted Capacity due to the allocation of a greater number of Slots than had been originally allocated to them, will be offered by GAZ-SYSTEM S.A. the option to execute an appropriate amendment to the Regasification Order<sub>FSRU</sub>. The provisions of point 15.2.3 shall apply accordingly to the execution of the amendment. In such a situation, the Participant shall be obliged to present, at the time of the execution of the amendment, a bank guarantee for an amount increased, as appropriate, to fulfil the conditions set out in Section 13. A failure to present such a guarantee shall give GAZ-SYSTEM S.A. the right to draw on the existing bank guarantee to the extent that it is necessary to increase its amount and the amount thus obtained shall constitute an interest-free cash deposit.
- 15.2.7 GAZ-SYSTEM S.A. may refuse to sign the Regasification Agreement<sub>FSRU</sub> or the Regasification Order<sub>FSRU</sub> with the Participant against whom: (i) bankruptcy, restructuring or liquidation proceedings are pending; (ii) steps have been taken to declare them bankrupt or to open any restructuring or liquidation proceedings, in particular, when a restructuring or bankruptcy petition has been filed; (iii) proceedings for the establishment of a receivership are pending, or whose assets have been secured in any way, e.g. by the appointment of a temporary court supervisor or provisional administrator. GAZ-SYSTEM S.A. may refuse to sign a Regasification Agreement<sub>FSRU</sub> or Regasification Order<sub>FSRU</sub> with a Participant that is not based in the territory of the Republic of Poland, if analogous proceedings are pending against it, or analogous actions have been taken in accordance with the regulations applicable to the Participant's registered office.
- 15.2.8 Due to the technical parameters of the Terminal<sub>FSRU</sub>, in particular the results of final equipment tests after the completion of the Project, GAZ-SYSTEM S.A. reserves the right to unilaterally reduce the number of Slots or the Contracted Capacity available within the Slots agreed in all the Regasification Agreements<sub>FSRU</sub> and the Regasification Orders<sub>FSRU</sub> executed as a result of the Procedure by no more than 3 Slots or 5% of Contracted Capacity, which Participants accept without reservation. The reduction shall be effective provided that it applies to the same extent to all Regasification Agreements<sub>FSRU</sub> and Regasification Orders<sub>FSRU</sub> executed as a result of the Procedure. GAZ-SYSTEM S.A. shall exercise the right referred to above by way of a written notice addressed to the Participant. The notice referred to in the first sentence may be submitted by GAZ-SYSTEM S.A. within six (6) months of the date of the commissioning of the Terminal<sub>FSRU</sub>.

### 15.3 Final Investment Decision

- 15.3.1 If the conditions set forth in the Regasification Order<sub>FSRU</sub> for GAZ-SYSTEM S.A. to take a positive Final Investment Decision are met, including e.g. the decision as to the FSRU procurement model and the conclusion of an appropriate agreement (construction/adaptation/lease of a FSRU), GAZ-SYSTEM S.A. shall have the right to take a positive Final Investment Decision.
- 15.3.2 In case when any of the conditions specified in point 15.3.1 is not fulfilled by the deadline specified in the Schedule, GAZ-SYSTEM S.A. shall have the right to take a negative Final Investment Decision and thus to discontinue the implementation of the Project. In case when a negative Final Investment Decision is taken, GAZ-SYSTEM S.A. shall

exercise its right to withdraw from the Regasification Agreement<sub>F<sub>SRU</sub></sub> and the Regasification Order<sub>F<sub>SRU</sub></sub>. The consequences of such withdrawal shall be governed by the Regasification Order<sub>F<sub>SRU</sub></sub>.

15.3.3 GAZ-SYSTEM S.A. shall have the right to take a positive Final Investment Decision despite the non-fulfilment of any of the conditions set forth in the Regasification Order<sub>F<sub>SRU</sub></sub>.

15.3.4 GAZ-SYSTEM S.A. shall inform the Participants with whom it executed Regasification Agreements<sub>F<sub>SRU</sub></sub> and Regasification Orders<sub>F<sub>SRU</sub></sub> of the Final Investment Decision by the date indicated in the Schedule as the deadline for taking the Final Investment Decision. The provisions of point 15.1.8 shall apply *mutatis mutandis*.

## Part III: GENERAL PROVISIONS

### 16. FEES

#### 16.1 TARIFFS AND COSTS RELATED TO REGASIFICATION SERVICES<sub>F<sub>SRU</sub></sub>

16.1.1 Fees for the Regasification Services<sub>F<sub>SRU</sub></sub> provided under Regasification Agreements<sub>F<sub>SRU</sub></sub> and Regasification Orders<sub>F<sub>SRU</sub></sub> executed under the Procedure shall be calculated in accordance with then effective tariff and the Terminal Code.

16.1.2 Tariff rates shall be determined in accordance with the legislation in force at the time.

16.1.3 In case when no legal regulations applicable to tariff setting are in force, the tariffs for the Regasification Services<sub>F<sub>SRU</sub></sub> shall be determined taking into account the provisions of the Energy Law and the Tariff Regulation according to the wording prevailing at the date of the execution of the Regasification Order<sub>F<sub>SRU</sub></sub>.

16.1.4 The Participants of the Procedure accept that the tariff for the Regasification Services<sub>F<sub>SRU</sub></sub> may be set by GAZ-SYSTEM S.A. in accordance with the principles set forth in legal regulations being in force as at the date of setting the tariffs.

16.1.5 The tariff rates presented by GAZ-SYSTEM S.A. in the Procedure are indicative only and are intended solely to make possible the calculation of approximate costs of using the Regasification Services<sub>F<sub>SRU</sub></sub>.

16.1.6 In case when the Regasification Agreement<sub>F<sub>SRU</sub></sub> and the Regasification Orders<sub>F<sub>SRU</sub></sub> have been executed but the Terminal User<sub>F<sub>SRU</sub></sub> does not use the services provided by Terminal<sub>F<sub>SRU</sub></sub> for reasons attributable to the Terminal User<sub>F<sub>SRU</sub></sub>, the Terminal User<sub>F<sub>SRU</sub></sub> shall be obliged to pay the fees in accordance with the tariff.

#### 16.2 TARRIF CALCULATION METHODOLOGY

16.2.1 Upon the commencement of each Phase of the Procedure, GAZ-SYSTEM S.A. shall publish a tariff calculator which will enable each of the Participants to calculate the indicative tariff rate for the provision of Regasification Services<sub>F<sub>SRU</sub></sub>, which a given Participant would be obliged to pay on the basis of its Order or Offer. As part of the publication of the tariff calculator, GAZ-SYSTEM S.A. will inform the Participants of the estimated amount of the regulatory asset value used for the estimation of the return on capital that was taken as the basis for the estimation of the tariff for services to be provided in the Terminal<sub>F<sub>SRU</sub></sub>.

- 16.2.2 The indicative tariff rates presented by GAZ-SYSTEM S.A. in the tariff calculator enclosed as Appendix No. 9 are not binding in any way and serve only for information purposes. GAZ-SYSTEM S.A. reserves the right to define and publish tariffs independently of the data presented in the tariff calculator.
- 16.2.3 The rates quoted in the Procedure have been calculated in accordance with applicable law and the principles set out in these General Implementation Conditions. The tariff rates have been calculated with the utmost care, on the basis of the knowledge available to GAZ-SYSTEM S.A., but may and probably will differ from the actual rates calculated after the completion of the Project.
- 16.2.4 Together with the calculation of indicative tariff rates, GAZ-SYSTEM S.A. shall provide comprehensive and complete information on the assumptions used for their calculation as well as on the drivers of their potential change. GAZ-SYSTEM S.A. reserves, however, that the costs assumed for the calculation of tariff rates may differ from the final investment costs.
- 16.2.5 Before the beginning of Phase 2 of the Procedure, GAZ-SYSTEM S.A. Shall update the indicative tariff rates presented in the tariff calculator. The provisions of point 16.2.4 shall apply *mutatis mutandis*.

## **17. CONFIDENTIALITY**

- 17.1 All information obtained by GAZ-SYSTEM S.A. from Participants and marked as confidential shall be treated as confidential and shall not be shared with third parties. However, GAZ-SYSTEM S.A. shall have the right to disclose the confidential information obtained in the course of the Procedure to:
- 17.1.1 corporate bodies of GAZ-SYSTEM S.A. and supervising public administration authorities;
- 17.1.2 President of the ERO;
- 17.1.3 entities providing funding to the Project;
- 17.1.4 legal, technical and business advisors whose services are used by GAZ-SYSTEM S.A. for the purpose implementing the investment project;
- 17.1.5 other authorities or bodies authorised to obtain such information on the basis of legal regulations.
- 17.2 When implementation of the Procedure involves access to classified information or trade secrets of GAZ-SYSTEM S.A., the provisions of the Act on Protection of Classified Information or the Act on Combating Unfair Competition of 16 April 1993 (Dz.U.2020.1913, as amended) shall apply to the proceedings under the Procedure, as appropriate.
- 17.3 The trade secret of GAZ-SYSTEM S.A. means any information that has not been made public, including any information of GAZ-SYSTEM S.A. related to technical aspects, technology or organisation, or other information of economic value, which, either in its entirety or as a specific selection and collection of its components, is not generally known to persons usually concerned with this type of information, or is not easily accessible to such persons, and has been marked as the "Secret of GAZ-SYSTEM" or "Trade's secret" or other, in respect of which GAZ-SYSTEM S.A. has taken necessary measures to ensure its confidentiality, as well as information and documents containing trade secret of entities other than GAZ-SYSTEM S.A, which is in the possession of GAZ-SYSTEM S.A. or its employees and with respect to which those entities have expressly taken necessary measures to ensure its confidentiality.

- 17.4 Materials, documents and information constituting trade secret of GAZ-SYSTEM S.A. shall only be made available to an addressee indicated by name in writing by GAZ-SYSTEM S.A., and the addressee shall be responsible for their appropriate protection to prevent third party access, loss or disclosure by that addressee. Copying the above materials, making handwritten copies and sharing them with further recipients shall each time require a written consent of the GAZ-SYSTEM S.A.
- 17.5 In particularly justified cases, GAZ-SYSTEM S.A. reserves the right to make certain materials available to the entities participating in the Procedure only for inspection at the premises of GAZ-SYSTEM S.A., without the possibility of making copies. Materials and documents constituting a trade secret or classified information within the meaning of the Act on Protection of Classified Information shall be made available only to persons who have been granted appropriate authorisation or security clearance, and have undergone the necessary training in this respect.
- 17.6 Notwithstanding the provisions of points 17.1 - 17.5, GAZ-SYSTEM S.A. shall publish information to the extent required by the applicable laws.

## **18. COOPERATION WITH OTHER ENTITIES AND INTEROPERABILITY WITH THE TRANSMISSION SYSTEM**

- 18.1 GAZ-SYSTEM S.A. shall be responsible only for the planned construction of the Terminal<sub>FSRU</sub> and shall seek to minimise any potential disruptions to the investment process. GAZ-SYSTEM S.A. shall not be responsible for the completion of investments other than those specified in the OtP and the Regasification Agreement<sub>FSRU</sub> and Regasification Order<sub>FSRU</sub>.
- 18.2 In order to enable the Participant that executed the Regasification Agreement<sub>FSRU</sub> and the Regasification Order<sub>FSRU</sub> to obtain access to the capacity of the physical entry point to be created as a result of the completion of the Investment Undertaking at the connection with the Terminal<sub>FSRU</sub>, GAZ-SYSTEM S.A. shall undertake efforts in due time to adapt the Transmission Network Code as required.

## **19. COMMUNICATION**

- 19.1 All materials concerning the FSRU Open Season shall be available on the website: <https://www.gaz-system.pl>
- 19.2 An entity interested in participating in the Procedure and the Participant shall be fully responsible for obtaining the relevant information and documents governing the Procedure, as well as for becoming familiar with all relevant information and documents and amendments or corrections made to such documents and announced on the website indicated at 19.1.
- 19.3 All announcements of GAZ-SYSTEM S.A. connected with the implementation of the Procedure shall be published on the website indicated in point 19.1. In the event of publication of new documents or information concerning the Procedure, all Participants shall automatically receive an email from GAZ-SYSTEM S.A. sent to the address provided in the Registration Form.
- 19.4 All communication with GAZ-SYSTEM S.A. concerning the FSRU Open Season shall be conducted in Polish. Additionally, GAZ-SYSTEM S.A. shall provide for the possibility of communicating in English with regard to the FSRU Open Season. In case of any inconsistencies between the Polish and English language version, the Polish language version shall prevail.



## 20. FINAL PROVISIONS

- 20.1 The commencement of the Procedure shall not constitute an obligation on the part of GAZ-SYSTEM S.A. to implement the Project or to provide the Regasification Services<sub>FSRU</sub> specified in these General Implementation Conditions.
- 20.2 All costs and expenses of the Participant arising from or incurred in connection with participation in the Procedure shall be borne by the Participant and shall not be reimbursable by GAZ-SYSTEM S.A. The rule set forth in the previous sentence refers in particular to the costs of obtaining and maintaining by the Participant a financial security, i.e. a bank guarantee, in accordance with, respectively, point 10.1 and point 13.2, unless the provisions of the General Implementation Conditions, the OtP, the Regasification Agreement<sub>FSRU</sub> or the Regasification Order<sub>FSRU</sub> provide otherwise.
- 20.3 These General Implementation Conditions do not constitute an offer to execute the OtP, the Regasification Agreement<sub>FSRU</sub> or the Regasification Order<sub>FSRU</sub>, but only outline the terms and conditions on which the OtP, the Regasification Agreement<sub>FSRU</sub> and the Regasification Order<sub>FSRU</sub> shall be executed and performed.
- 20.4 In case when one of the provisions of these General Implementation Conditions is deemed inadmissible or unenforceable, that provision shall be deemed excluded from the General Implementation Conditions and all other provisions shall remain in full force and effect, and a provision of similar content reflecting the original intent shall replace the provision deemed inadmissible or unenforceable to the extent consistent with applicable law.
- 20.5 GAZ-SYSTEM S.A. reserves the right to amend or supplement the rules of the Procedure, General Implementation Conditions or Appendices, including the extension of deadlines for the performance of individual activities described in the Procedure, in particular those contained in the Schedule. Such changes or additions shall be announced on the GAZ-SYSTEM S.A.'s website and the Participants shall be notified of them in writing. The change or addition referred to in this section shall not give rise to any claims on the part of the Participant or any other entity interested in participating in the Procedure, against GAZ-SYSTEM S.A. The Operator undertakes not to make any changes or additions to the draft OtP after the Participants have submitted their Orders nor to the draft Regasification Order<sub>FSRU</sub> after Participants have submitted their Offers.
- 20.6 GAZ-SYSTEM S.A. shall prepare the Terminal Code in the course of the implementation of this Procedure. The provisions of the FSRU Service Delivery Model shall form the basis for the drafting of the Terminal Code. Upon the entry into force of the Terminal Code within the meaning of the Energy Law, all references in this Procedure to the provisions of the FSRU Service Delivery Model shall be deemed to be references to the relevant provisions of the Terminal Code within the meaning of the Energy Law.
- 20.7 The code applicable to the operation and maintenance of the natural gas liquefaction system at the Terminal<sub>FSRU</sub> within the meaning of the Energy Law and corresponding to the maximum extent to the Terminal Code shall be presented by GAZ-SYSTEM S.A. to the President of the ERO for approval, in accordance with an appropriate procedure pursuant to the provisions of the applicable legal regulations. The Terminal Code shall be binding on Participants to the extent that it does not conflict with the code applicable to the operation and maintenance of the FSRU natural gas liquefaction system, as approved by PURE.
- 20.8 GAZ-SYSTEM S.A. reserves the right to discontinue the Procedure at any stage, i.e. until the moment when GAZ-SYSTEM S.A. informs the Participants with whom it has entered into the Regasification Agreements<sub>FSRU</sub> and Regasification Orders<sub>FSRU</sub> on the Final Investment Decision in accordance with point 15.3.4. In such a case, GAZ-SYSTEM S.A. shall inform the Participants of the cancellation of the FSRU Open Season and the withdrawal from the Project, specify the reasons for such cancellation and, if applicable, indicate when it expects to repeat the Procedure. The OtPs or Regasification Agreements<sub>FSRU</sub> and Regasification Orders<sub>FSRU</sub> concluded until that moment shall expire and GAZ-SYSTEM S.A. shall reimburse the Participants for the costs incurred by them in maintaining the bank guarantees presented as

part of the participation in the Procedure, in the amount specified for Phase 1 of the Procedure in point 9.10 or in the amount specified for Phase 2 of the Procedure in point 12.15. Detailed rules in this respect shall be set forth in the provisions of the OtP and the Regasification Agreement<sub>FSRU</sub> and the Regasification Order<sub>FSRU</sub>.

- 20.9 Neither GAZ-SYSTEM S.A. nor the Participant shall be liable for damage suffered by the other party in connection with the performance of the Procedure, unless the damage results from a wilful misconduct of the other party.
- 20.10 The Parties shall endeavour to resolve amicably any disputes arising in connection with the Procedure or its interpretation. Should the efforts to arrive at an amicable solution fail, any disputes arising out of or in connection with the participation in the Procedure, the OtP and the Regasification Agreement<sub>FSRU</sub> or the Regasification Order<sub>FSRU</sub> shall be settled by a competent court having jurisdiction over the Śródmieście district of the City of Warsaw.
- 20.11 These General Implementation Conditions and the appendices hereto have been drawn up in Polish and English language versions, with the Polish language version prevailing in the event of any inconsistencies.
- 20.12 The privacy notice required under Articles 13 and 14 of the GDPR is attached as Appendix No. 10 to these General Implementation Conditions. The entities participating in the Procedure undertake to familiarise themselves with its content and to make it available to entities whose personal data will be disclosed to GAZ-SYSTEM S.A. in connection with the Procedure. Information on the principles of personal data processing by GAZ-SYSTEM S.A. can be found at: <https://en.gaz-system.pl/stopka/polityka-prywatnosci/>.