



Connecter les énergies d'avenir



INTRADAY FLEXIBILITY CONTRACT



**II. GENERAL TERMS AND CONDITIONS
VERSION OF JULY 1ST, 2020**

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CHAPTER 1 PREAMBLE

GRTgaz operates a system of natural gas transmission pipelines across France,

In application of Article L431-3 of Code de l'énergie, GRTgaz is responsible for "maintaining the safety and efficiency of its network and the balance of natural gas flows at all times, having regard to the technical constraints affecting that balance. It is responsible for ensuring the availability and implementation of the services and reserves needed for the operation of the system".

The Code de l'énergie explains that natural gas stocks allows in priority balancing and operations of networks connected to underground natural gas storages. GRTgaz makes optimum use of available intraday flexibility resources in order to maintain the balance of the system over the day.

Therefore, providing system users with intraday flexibility is one of the missions of GRTgaz.

In the [ruling of October 28, 2010](#) proposing to change the tariffs for the use of the natural gas transmission systems, accepted by the French Minister of industry, energy and digital economy, the French Energy Regulatory Commission specified that "any user presenting a modulated volume in excess of 0.8 (zero point eight) GWh/day must subscribe for a specific intraday flexibility service, whatever its gas usage".

In the ruling of January 29th, 2014 proposing to change the tariffs for use of the natural gas transmission systems, the French Energy Regulatory Commission specified the intraday flexibility price is null.

Once its site begins industrial operation, the Customer is eligible for the specific intraday flexibility service. Consequently, the Customer, as a Highly Modulated Site, and GRTgaz, has signed this Contract defining the procedures for implementing the specific intraday flexibility service.

Article 1 Purpose

The purpose of the Contract is to determine the terms and conditions under which GRTgaz delivers to the Customer's Highly Modulated Site, for each Hour H on Day D, the quantities of natural gas that match the Customer's offtakes on that Highly Modulated Site.

Article 2 Obligations of the parties

2.1 Customer's obligations

2.1.1 Connection contract

The Customer must have an active Connection Contract for the Highly Modulated Site concerned.

2.1.2 Delivery capacity

The Customer undertakes to subscribe for or arrange to subscribe for Daily Delivery Capacity and Hourly Delivery Capacity for delivery of natural gas to the Highly Modulated Site.

2.1.3 Obligations with regard to operational procedures

The Customer undertakes to comply with the relevant provisions laid down in the operational terms and conditions of the Contract.

2.2 Obligations of GRTgaz

2.2.1 Obligation to provide the intraday flexibility service

GRTgaz undertakes to provide the intraday flexibility service under the terms and conditions laid down in the Contract.

2.2.2 Obligations with regard to operational procedures

GRTgaz undertakes to comply with the relevant provisions laid down in the operational terms and conditions of the Contract.

2.3 Limitations to the obligations of GRTgaz

GRTgaz is released from its obligations under the Contract when GRTgaz is not bound to fulfil its obligations under the Connection Contract in force for the Highly Modulated Site.

Article 3 Term

The Contract comes into force for an indefinite period on the date of signature of the Contract.

The Parties may put an end to the Contract by sending a registered letter with acknowledgement of receipt, subject to a reasonable period of notice as specified in **Erreur ! Source du renvoi introuvable..**

Article 4 Updates and amendments to the agreement

4.1 Amendments following legislative and regulatory changes

In the event that new legislative or regulatory provisions from any competent authority or a binding decision of the Energy Regulatory Commission under the Energy Code that may apply directly or indirectly to the Contract, should come into force during the period of execution of the Contract, GRTgaz shall adjust the Contract to the new circumstances. GRTgaz shall notify the Customer of these amendments in form and/or substance and publish them on the GRTgaz website www.grtgaz.com. The new contractual terms and conditions shall become legally applicable and shall automatically replace the present terms and conditions on the date when they come into force, without compensation of any kind.

4.2 Other changes

In the event that GRTgaz should be required to amend the Contract for reasons other than those described in the previous clause, GRTgaz undertakes to notify all customers who are signatories to an intraday flexibility agreement. The new conditions proposed by GRTgaz will be considered by the consultation bodies, as defined in the [ruling of the Energy Regulatory Commission of September 18, 2008](#). The new contractual conditions proposed and approved by the consultation bodies will be published on the website www.grtgaz.com. They will become legally applicable and will automatically replace the present terms and conditions on the date when they come into force, without compensation of any kind.

CHAPTER 2 INTRADAY FLEXIBILITY SERVICE

Under the intraday flexibility service, GRTgaz delivers to the Customer's Highly Modulated Site, for each Hour H on Day D, quantities of natural gas that match the Customer's offtakes on that Highly Modulated Site.

The intraday flexibility service is interruptible under the conditions set out in the operational procedures.

In accordance with the [ruling of the Energy Regulatory Commission of October 28, 2010](#), "GRTgaz provides intraday flexibility on the basis of the site's declared next-day hourly consumption profile, which enables GRTgaz to configure its Network and, if necessary, call on External Sources of intraday flexibility. The day before the service is to be supplied, GRTgaz confirms to the site operator the feasibility of the declared hourly operation Profile and provides the conditions for modifying the site's hourly operation Profile.

If the site's hourly consumption is likely to vary by less than $\pm 10\%$ of its subscribed hourly capacity, the site has a Flexibility Tolerance which exempts it from the obligation to notify GRTgaz of its new hourly consumption profile."

CHAPTER 3 GENERAL PROVISIONS

Article 5 Force majeure and similar circumstances

The Parties shall be released from their obligations under the Contract in cases and circumstances below, for the period and to the extent of the effects of the said cases and circumstances on the said obligations:

- A. A case of force majeure, which is defined as any event beyond the control of the Party invoking it, and which cannot be overcome through reasonable efforts that the Party is obliged to make in its capacity as a Prudent and Reasonable Operator, which prevent it from performing all or part of the obligations incumbent upon it under the terms of the Contract;
- B. Strike, when it corresponds to the definition of force majeure provided above;
- C. Circumstances described below, which do not necessarily meet all the criteria stated in clause A above, provided that they affect the Party invoking it and prevents it from executing all or part of the obligations incumbent upon it under the terms of the Contract:
 - (i) Breakage of a machine or operating or equipment accident, which is not the result of a maintenance failure or improper use of facilities,

- (ii) Event for which a third party is responsible, which could not have been reasonably foreseen by the Party acting as a Prudent and Reasonable Operator.
- (iii) Event caused by Government or Public Authorities,
- (iv) War or terrorist act.

The Party invoking an event or circumstance to which this article refers must notify the other Party as quickly as possible, by telephone, fax, e-mail or by any means agreed between the Parties, and, for periods of suspension in excess of 24 (twenty-four) hours, confirm it by registered letter with acknowledgement of receipt.

If its obligations are suspended for periods of more than 24 (twenty-four) hours, the Party concerned shall inform the other Party of the impact of the event or situation on the fulfilment of its obligations, of the measures which it intends to take in order to mitigate its effects on the performance of the Contract, of the progress in the implementation of such measures, of the estimated deadline for the resumption of the normal execution of its contractual obligations and of the date on which the event comes (came) to an end.

Acting as a Prudent and Reasonable Operator, the Party concerned shall take all reasonable measures to mitigate the effects of the event or circumstance to which this article refers, and shall seek to ensure that normal performance of the Contract resumes as quickly as possible.

If GRTgaz invokes an event or circumstance covered by this Article, it shall share the consequences of that event or circumstance equitably across all Network Users, provided that existing legal and regulatory requirements are met.

In the event that an event or circumstance referred to in this clause prevents one of the Parties from carrying out its obligations for a period of more than 30 (thirty) consecutive days, the Parties shall meet on the initiative of the most diligent Party to examine the adjustments to be made to their respective obligations under the Contract in order to take account of this new situation.

The provisions laid down in Article 3 of the operational procedures shall not apply when one of the Parties invokes an event of force majeure or equivalent circumstances.

Article 6 Liability and insurance

6.1 Liability with respect to third parties

GRTgaz and the Customer shall bear all the financial consequences of their respective civil liability under common law for all damage, of any nature whatsoever, caused to third parties in the fulfilment of their respective obligations under the Contract.

6.2 Liability of the Customer towards GRTgaz

The Customer is liable with respect to GRTgaz and/or the latter's insurers for direct physical or nonphysical damage suffered by the latter as a result of a proven failure of the Customer to meet its obligations under the Contract.

6.3 Liability of GRTgaz towards the Customer

GRTgaz is liable with respect to the Customer and/or the latter's insurers for direct physical or nonphysical damage suffered by the latter as a result of a proven failure of GRTgaz to meet its obligations under the Contract.

GRTgaz, acting as a Prudent and Reasonable Operator, may take action at any time to maintain the safety of property and persons and/or the integrity of the network and/or to guarantee the fulfilment of its statutory or regulatory obligations arising from its public service roles, including any action resulting in a suspension of the service provided to the Customer under the Contract, provided that network users are treated equitably in accordance with legal and statutory provisions. The Customer may under no circumstances claim compensation of any kind from GRTgaz or from its insurers for any consequences of a suspension of the intraday flexibility service provided by GRTgaz for the above-mentioned reasons.

6.4 Insurance

The Parties shall take out a "corporate civil liability" insurance policy with a reputable insurance company to cover physical, material and non-material damage, consequential or otherwise, caused to the other Party and/or third parties.

Each of the Party shall bear the premiums and excesses for the insurance policies it has taken out and, at the request of the other Party, shall provide copies of all certificates of insurance associated with the Contract.

Article 7 Taxes and duties

The Parties shall pay, as applicable to each, the duties and taxes incurred by them under existing regulations.

Article 8 Information

The Parties shall keep each other informed, at all times and as soon as possible, of any event or situation or matter of any kind which might significantly affect performance of the Contract.

Article 9 Confidentiality

Unless otherwise expressly agreed by the Parties, each Party undertakes to keep confidential from any third party all information concerning the other Party, and in particular its business, obtained during preparation or execution of the Contract, with the exception of cases where communicating such information is necessary to the execution of the Contract, in which case the information communicated will be restricted to that required for the execution of the said Contract.

The Parties shall not be responsible for the disclosure of information if such information:

- (i) is already in the public domain; or
- (ii) has been obtained in the normal course of events from other sources without restriction on or breach of the present obligation of confidentiality; or
- (iii) must be communicated to third parties because it is required by a law, or by a court ruling or the decision of a competent public authority; or
- (iv) is disclosed to the Parties' respective advisors or statutory auditors.

Notwithstanding the stipulations above, the Customer agrees that GRTgaz may make the Contract available to the French Energy Regulatory Commission.

Article 10 Termination

Each Party may unilaterally terminate the Contract, after giving reasonable notice by registered letter with acknowledgement of receipt, without compensation on either side or legal formality of any kind.

In the event that the Contract should be terminated by the Customer, and from the date of that termination, the Customer undertakes that the site should maintain a Daily Modulated Volume below the threshold specified in the definition of a Highly Modulated Site.

Article 11 Transfer

The Contract is non-transferable without the prior written agreement of GRTgaz.

In the event that any aspect of the legal status of one of the Parties should change (name, capital, head office, company status, etc.), the Party concerned undertakes to notify the other Party of this change.

In the event that the Customer should cease to be a legal entity (merger, absorption, split), the Customer shall so inform GRTgaz, giving notice of 30 (thirty) calendar days, by registered letter with acknowledgement of receipt. The Contract shall be transferred to the absorbing or newly created company if, within 7 (seven) calendar days following receipt of the registered letter of information, GRTgaz does not notify the Customer of its rejection of such a transfer and the reasons for that rejection. In the event that GRTgaz should reject and give reasons for rejecting the transfer of the contract to the absorbing or newly created company, and if the latter so wishes, GRTgaz and the absorbing or newly created company shall meet as quickly as possible.

Article 12 Consultation, disputes and applicable jurisdiction

When the Contract is signed, each Party shall appoint a representative responsible for the proper execution of the Contract.

The Parties shall meet whenever required for proper execution of the Contract.

The Parties shall endeavour to settle amicably any dispute arising over the establishment, performance or interpretation of the Contract. In the absence of an amicable agreement, these disputes will be submitted for arbitration to the Commercial Court of Paris and/or the Energy Regulatory Commission.

In the event of difficulties in interpreting the Contractual Rules or contradictions, the latter are to be understood with the following document prevalence rule:

- 02 - General Conditions
- 04 - Operating Procedures
- 03 - Definitions
- 05 - Overall process and format of IS exchanges

The Contract is subject to French law both in substance and in the applicable procedure. Regardless of any translation that may be made, whether signed or not, the authentic language for the legal interpretation and/or performance of the General Terms and Conditions is French.

Article 13 Miscellaneous provisions

13.1 Tolerance

The Parties mutually agree that the fact that one of the Parties tolerates a situation shall not constitute an agreement to grant acquired rights to the other Party. In addition, such tolerance may not be interpreted as a waiver of the rights in question.

13.2 Non-waiver

The fact that one of the Parties to refrain from invoking the failure by the other Party to fulfil any of the obligations set out in this document may not be interpreted in the future as an exemption from the obligation in question.

13.3 Partial non-validity

If one or more stipulations of the Contract is (are) held or declared to be invalid in application of a law, regulation or a definitive ruling by a competent authority, the other stipulations will retain all their force and scope.

In this case, the Parties shall agree to replace the null or invalid clause with a clause that is as close as possible in content to the original clause.

13.4 Period of application

The provisions of ARTICLE 9 of the Contract shall remain in force until the Contract is terminated or cancelled.

13.5 Period of transition

The Contract, in its present version, applies over a so-called transitional period.

It is agreed between the Parties that the Contract, and the associated terms and conditions, will be reviewed periodically, within the framework of the consultation bodies as defined in the deliberation of the Commission de Régulation de l'Energie (Energy Regulatory Commission) of September 18th 2008, in order

to monitor them or adapt them if necessary, with a view to producing a new version of the Contract, the entry into force of which will end the transitional period and this Contract.

In particular, during this transition period:

- GRTgaz is making its best efforts to bring the Partial Flexibility Indicator into service by June 30, 2020 ;
- The Customer shall make its best efforts to apply the Contract and its operational terms and conditions, which shall apply as of right. During this transitional period, the Customer's liability therefore remains committed under Article 6, with a special tolerance granted to the Customer under Article 3.3.2 of the operational terms and conditions. Indeed, for the obligations associated with this Article, it is agreed that GRTgaz tolerates, for this transitional period, a period of one additional hour for taking into account a change in the value of a Flexibility Indicator. In practice, the Customer's liability will not be incurred if the Customer makes undue changes to its Profile within the Hour following a change in a Flexibility Indicator.
- Commissioning and the values of the Flexibility Indicators, as well as their compliance by Customers, will be monitored, within the framework of the consultation bodies, in order to assess the relevance of the present operational methods.

The transition period will last at least one full sliding year, as representative as possible and validated by the dedicated working group, after which feedback will be provided. Feedback will focus in particular on the feasibility of the operational methods, the effects of the Flexibility Indicators for the gas system and the economic consequences of the Red Flexibility Indicators for the operators of highly modulated sites.