



**General terms and conditions of OPAL Gastransport GmbH & Co. KG
for non-regulated OGT OPAL Transit Capacities
applicable as of 1 September 2015**

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The following General terms and conditions shall apply between the Shipper and OGT for the usage of non-regulated OGT OPAL Transit Capacities as set out in the Contract Data Sheet.

§ 1 DEFINITION OF TERMS

- (1) Unless otherwise expressly provided herein, the following terms used in these General terms and conditions shall have the following meanings:

"Affiliate" shall mean any legal entity which controls a Party, is controlled by a Party or is controlled by another legal entity which also controls such Party, whereby control means the direct or indirect ownership of fifty per cent or more of the issued share capital or voting capital of that respective legal entity;

"Banking Day" / "Business Day" means a day (other than a Saturday or a Sunday) on which banks are generally open for business in Kassel, Germany and in the country in which the registered office of the Shipper is located (other than Germany);

"Booked Shipper Capacities" shall mean the Entry Capacities and Exit Capacities booked by the Shipper in kWh as specified in in the Contract Data Sheet;

"Booking Limitation" shall have the meaning ascribed to it in the definition of TPA Exemption;

"Capacity Booking Period" shall mean the period for which the Entry and Exit Capacities are booked by the Shipper as specified in the Contract Data Sheet;

"Capacity Charge" means the charge payable to OGT by the Shipper derived from the Capacity Tariff in consideration for the Capacity Services and calculated in accordance with § 11 (*Capacity Tariff and Capacity Charge*);

"Capacity Hoarding Event" means each of Short Term UIOLI and Long Term UIOLI as described in § 18 (*Use-it-or-lose-it-Principle*);

"Capacity Services" means all services performed by OGT to the Shipper, in particular to offtake Natural Gas at the Entry Point and to simultaneously make available Natural Gas in kWh at the Exit Point with the same quantity in kWh via OPAL as further defined under § 4 (1) (*Capacity Services*);

"Change in Law" means any of the following events after the date of the execution of the Contract Data Sheet:

- (a) the adoption, introduction, enactment, promulgation, implementation, making of or coming into effect of any new applicable law, regulation, decree, treaty, court order, permit or consent or equivalent;
- (b) the modification, repeal, revocation or re-enactment of any applicable law, regulation, decree, treaty, permit (including the TPA Exemption), court order or consent (or equivalent);
- (c) a change (by reason of judicial or arbitral decision or otherwise) in the interpretation or application of any applicable law, regulation, decree, treaty, court order, permit (including the TPA Exemption) or consent (or equivalent);

- (d) the imposition of a requirement for any new permit or consent (or equivalent) not required as at the date of execution of the Contract Data Sheet; or
- (e) the revocation, cancellation or non-renewal on a timely basis of any permit (including the TPA Exemption) or consent (or equivalent) or a change in the terms and conditions or in the interpretation of the terms and conditions by the issuer of any permit or consent (or equivalent) or the attachment of new terms and conditions to any permit or consent (or equivalent),

in each case:

- (i) where the action taken is an action of the government of any state (or the European Union) or any state, regional or municipal authority within such state, including any ministry or department thereof (including FRO) and any federal, state, regional or municipal court or other judicial body; and
- (ii) (in the case of (c), (d) and (e) only) other than by reason of breach by Shipper or OGT of the terms or conditions of any permit or consent or any applicable law, regulation, decree or treaty or court order (or equivalent);

“Contract Data Sheet” shall mean a separate document duly signed by both Parties and evidencing the Parties’ agreement for the usage of non-regulated OGT OPAL Transit Capacities in accordance with these General terms and conditions;

“Contract” means both the Contract Data Sheet and the General terms and conditions, which form the basis for the provision of the Capacity Services;

"Day" means the period beginning at 06:00 hours CET on each day and ending at 06:00 hours CET on the following day, and the date of any Day shall be the date of its commencement as herein defined;

"Daily Nomination" means the nomination by the Shipper of the quantities of Natural Gas to be injected and offtaken for each hour in respect of each Day in kWh/h as described in § 8 (*Nomination and Renomination*);

“Declaration” means a declaration in the form specified by OGT and duly signed by the Shipper for the purpose of confirming the fulfilment of the Booking Limitation, a model form of the Declaration is attached as Annex 1 to these General terms and conditions;

“Determination of the Compensation Balancing Costs” means the compensation of the Balancing Account based on the multiplication of the difference between Entry Point nomination and Exit Point nomination with the GASPOOL market area “Natural Gas Daily Reference Price” of the European Energy Exchange AG, Leipzig;

"Downstream Facilities" means the Czech gas transportation system (currently operated by Net4Gas s.r.o.) connected with OPAL at the Exit Point;

“DVGW” means German Technical and Scientific Association for Gas and Water;

"Emergency Works" means any Maintenance and Repair Works which are unplanned and unforeseeable and which are necessary to be undertaken as promptly as possible by a reasonable and prudent operator to prevent or mitigate an imminent threat to persons or the OPAL (including, without limitation, any Maintenance and Repair Works which are necessary to be undertaken by OGT as promptly as possible to avoid violating any applicable law, regulation, decree, treaty, court order, permit or consent

(or equivalent) of any state, regional or municipal authority within such state, including any ministry or department thereof and any federal, state, regional or municipal court or other judicial body);

“Entry Capacities” shall mean the Entry Capacities booked by the Shipper as specified in in the Contract Data Sheet;

“Entry Point” means the grid connection point Greifswald OPAL;

“EURIBOR” means the percentage rate per annum equal to the rate for deposits in Euros for a period equal to 1 (one) month which appears on the page of the Reuters Screen which displays for spot value (D+2) and on an actual/360 day-count convention basis the average EURIBOR rate as agreed with EURIBOR FBE (presently (at the date of these General terms and conditions) page EURIBOR 014 on the Reuters Screen at or about 11:00 a.m. Brussels time);

“Euro” or **“EUR”** or **“€”** means the lawful currency of the participating Member states of the European Monetary Union;

“Exemption Event” means the events specified under § 12 (1) (*Suspension of obligations*);

“Exit Capacities” shall mean the Exit Capacities booked by the Shipper as specified in the Contract Data Sheet;

“Exit Point” means the grid connection point Brandov;

“FRO” means the German Federal Regulatory Office (“Bundesnetzagentur” or “BNetzA”);

“Gas Access Regulation” means the German Ordinance of the Access to Gas Supply Networks (“Gasnetzzugangsverordnung” – “GasNZV”) as amended from time to time;

“Gas Specification Dispute” means any dispute specified under § 7 (2) (*Specification / Gas Specification Dispute*);

“Gas Specification Expert” means a person appointed pursuant to § 7 (2) (*Specification / Gas Specification Dispute*) who shall be wholly independent from the Parties with appropriate qualifications and experience to determine the relevant Gas Specification Dispute;

“Gas Year” means the period beginning at 06:00 hours CET on 1 October in any year and ending at 06:00 hours CET on 1 October in the next succeeding year;

“General terms and conditions” mean these terms and conditions governing the provision of Capacity Services by OGT for OGT OPAL Transit Capacities;

“German Energy Industry Act” means the German Energiewirtschaftsgesetz – “EnWG” as amended from time to time;

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight which could reasonably and ordinarily be expected from a skilled and experienced operator under the same or similar circumstances or conditions and in so doing and in the general conduct of its undertaking seeking, in good faith, to perform its contractual obligations in compliance with all applicable laws;

"Gross Calorific Value (GCV)" means that quantity of heat measured in kWh produced by the complete combustion of 1 (one) Cubic Metre (1m³) of Natural Gas at 0°C (zero degrees Celsius) and an absolute pressure of 1.01325 (one decimal zero one three two five) bar with excess air at the temperature of 25°C (twenty-five degrees Celsius) and a pressure of 1.01325 (one decimal zero one three two five) bar when the products of combustion are cooled at 25°C (twenty-five degrees Celsius) and when the water formed by combustion is condensed to the liquid state and the products of combustion contain the same total mass of water vapour as the Natural Gas and air before combustion;

"Imbalance" means the physical difference between the hourly quantities of Natural Gas offtaken at the Entry Point and hourly quantities of Natural Gas offtaken at the Exit Point, to be accrued to the Balancing Account in accordance with § 10 (*Imbalances*);

"Kilowatt hour or kWh" means the unit used to express the energy contained in the Natural gas on the basis of the Gross Calorific Value;

"Landfall Point" means the landfall point of the Nord Stream Pipeline at the German shore of the Baltic Sea in the area of Greifswald, Germany;

"Maintenance and Repair Works" means all activities and works necessary in order to ensure that the OPAL is fit for purpose and functioning in a safe manner in accordance with Good Industry Practice;

"Minor Extent" means an average nomination of Booked Shipper Capacities according to § 8 (*Nomination and Renomination*) of 10 % (ten per cent.) or less during a Quarter, but excluding any periods of suspension of Capacity Services due to (but not limited to) *Unscheduled Maintenance, Scheduled Maintenance, Emergency Works* or any similar event (in which the Booked Shipper Capacities are deemed to be fully nominated);

"Month" means the period beginning at 06:00 hours CET on the 1st (first) Day of any calendar month and ending at 06:00 hours CET on the 1st (first) Day of the next succeeding calendar month;

"Monthly Invoice" means the invoice issued each Month by OGT to the Shipper for the Capacity Services rendered during the preceding Month;

"Natural Gas" or **"Gas"** means any hydrocarbons or mixture of hydrocarbons and non-combustible gases, which, when extracted from the subsoil of the earth in its natural state, separately or together with liquid hydrocarbons, are predominantly in the gaseous state;

"Nord Stream Pipeline" means the offshore pipeline from a point near Vyborg, Russian Federation, to the Landfall Point in Germany;

"OGT" means OPAL Gastransport GmbH & Co. KG, the transmission system operator of OPAL;

"OPAL" or **"Ostseepipeline Anbindungsleitung"** means the pipeline for further onshore transportation of gas made available by the Nord Stream Pipeline on the route from Greifswald OPAL [ID-Point 92200] to Brandov OPAL (Czech Republic) [ID-Point 92IEA];

"OGT OPAL Transit Capacities" shall mean the non-regulated capacities offered by OGT for Natural Gas transportation from the Entry Point to the Exit Point;

“**Party**” means each OGT or the Shipper;

"**Quantities rejected by Shipper**" has the meaning given to such term in § 6 (2) (*Exit Point*);

"**Quarter**" means each quarter of a Gas Year:

- (a) beginning from 1 October, 06:00 hours CET until 1 January, 06:00 hours CET;
- (b) beginning from 1 January, 06:00 hours CET until 1 April, 06:00 hours CET;
- (c) beginning from 1 April, 06:00 hours CET until 1 July, 06:00 hours CET; and
- (d) beginning from 1 July, 06:00 hours CET until 1 October, 06:00 hours CET;

“**Shipper**” means an undertaking who booked the non-regulated OGT OPAL Transit Capacities subject to the Contract Data Sheet and these General terms and conditions;

"**Specification**" means the quality and pressure requirements for Natural Gas to be made available by the Shipper at the Entry Point and, as the case may be, for Natural Gas made available by OGT at the Exit Point, in each case, as set out in § 7 (*Specification / Gas Specification Dispute*);

"**TPA Exemption**" means the decision of FRO dated 25 February 2009 (ref. BK7-08-009), as amended by decision of FRO dated 7 July 2009 (ref. BK7-08-009), according to § 28a German Energy Industry Act granting an exemption from the application of the provisions of regulated network access for OGT OPAL Transit Capacities under certain conditions. These conditions include i.a.:

- (a) capacities to be bundled between the Entry Point and the Exit Point;
- (b) a limitation for a market dominating company group (as defined in the TPA Exemption) to contract only up to 50 % (fifty per cent) of the total physical capacities at the Exit Point (the “**Booking Limitation**”);

(each a “**TPA Exemption Condition**”);

"**Upstream Facilities**" means the Nord Stream Pipeline connected with OPAL at the Entry Point;

- (2) Words denoting the singular shall include the plural and vice versa, unless the context requires otherwise.
- (3) Words "**include**" and "**including**" shall be deemed to be qualified by a reference to "without limitation".

§ 2 PREQUALIFICATION REQUIREMENTS

- (1) The validity of each Contract shall be subject to the fulfilment of the following prequalification requirements:
 - (a) the Shipper is the responsible party to book and nominate the capacities at Greifswald OPAL and Brandov.
 - (b) the Shipper has provided evidence of a reasonable financial creditworthiness.

The financial creditworthiness shall be deemed verified if and when an evaluation from one of the following credit ratings is available with the shown index as a minimum:

- long-term Moody's rating of Baa3
- long-term Standard & Poors rating of BBB-
- a long-term Fitch rating of BBB-
- a Creditreform rating (Bonitätsindex 2.0), Risikoklasse II (according to Creditreform Rating Map, as of December 2013),

or when the Shipper is able to evidence a comparable rating of another accepted rating agency.

In the case the Shipper is unable to provide the evidence of financial creditworthiness the Shipper is obliged to fulfil the requirements of § 3 (*Deposit*).

- (c) The Shipper fulfilling the requirements of the Booking Limitation and has for that purpose provided a duly signed copy of the Declaration.
- (2) The Shipper shall deliver any necessary prequalification information and documents prior to the conclusion of the Contract. It may request OGT to issue a written confirmation to the Shipper stating that the prequalification requirements under this § 2 (*Prequalification Requirements*) have been fulfilled.
- (3) OGT reserves the right to request resubmission of proof of qualification in accordance with section 1 above at any time. The Shipper shall be obliged to notify OGT in the event of any change in relation to its prequalification information and/or documents.
- (4) OGT may request the Shipper to provide sufficient evidence of the authority to act on behalf of the Shipper in relation each of its representatives.

§ 3 DEPOSIT

- (1) Deposit types to be provided by the Shipper in case of lack of the financial creditworthiness according to § 2 (*Prequalification requirements*) include irrevocable, unconditional bank guarantees, irrevocable unconditional corporate guarantees (binding letters of comfort and affiliate guarantees), irrevocable, unconditional, abstract guarantees of a bank authorised to do business in the Federal Republic of Germany and deposits of cash or fixed-interest securities. The type of deposit shall be determined at the discretion of the Shipper. OGT may also accept cash or assignments of receivables.
- (2) The requirements for individual deposit types are as follows:
- (a) Bank securities must be provided in the form of an unconditional, irrevocable and abstract indemnity letter or guarantee of a bank authorised to do business in the Federal Republic of Germany. The bank issuing the deposit shall have a Standard & Poor's long-term rating of A- or better, a Moody's long-term rating of A3 or better, or be part of the German savings and cooperative bank sector.
- (b) For corporate guarantees and indemnity letters, the issuing company providing the deposit shall have a Standard & Poor's long-term rating of BBB- or better, a Fitch rating of BBB- or better, a Moody's long-term rating of Baa3 or better or a Creditreform credit index score (credit index score 2.0) of risk class II or better (in

accordance with Creditreform Rating Map Germany as of 30 June 2014). The corporate guarantee or indemnity amount shall not exceed 10% of liable equity capital of the company providing the deposit. The Shipper shall document compliance with this requirement to OGT upon providing the deposit.

- (3) Any cash deposit provided shall be deposited to an account specified by OGT. Interest shall be payable on such amounts at the base rate published by Deutsche Bundesbank on the first bank business day of the month. The Shipper may also pledge the credit balance of an account held with a bank authorised to do business in the Federal Republic of Germany to OGT.
- (4) The indemnity or guarantee amount shall be payable and shall include a general waiver of the right to insist on prior failed attempt at direct enforcement, waiver of contestability and waiver of offset against claims unless undisputed or upheld by legal judgment. An abstract indemnity or guarantee letter shall be valid for at least 12 calendar months, and shall expire no later than two months after the end of the Contract term.
- (5) The deposit amount shall be in the amount of the Capacity Charge receivable from the Shipper for the two following Months.
- (6) OGT may have recourse to the deposit provided that it has issued a payment due notice for overdue amounts after payment has been delayed and the reasonable deadline set for making payment has not been met. In such a case OGT may request that another deposit be made under the conditions specified in this paragraph. The Shipper shall make said deposit within 7 (seven) Days of the request.
- (7) Deposits provided shall be returned promptly in the event that the Shipper provides an evidence of the financial creditworthiness in accordance with § 2 (*Prequalification Requirements*) above. OGT shall periodically review the reasons justifying the requirement for a deposit. During such review OGT shall verify whether the deposit amount meets the requirements of the present paragraph. In the event that such review reveals that the realisable value of the deposits provided exceeds the amount of the applicable value in accordance with § 3 (5) above, OGT shall return the corresponding portion of the deposit. If several deposits have been provided, OGT may choose at its discretion which deposits to return. In the event that the realisable value of all deposits provided falls below the amount of the applicable value by a more than insignificant amount, OGT may require the Shipper to adjust the amount of such deposit accordingly.

§ 4 CAPACITY SERVICES

- (1) Subject to the terms of the Contract Data Sheet and these General terms and conditions, OGT shall during the Capacity Booking Period:
 - (a) offtake the nominated quantities in kWh of Natural Gas made available for transportation by the Shipper at the Entry Point within the Booked Shipper Capacities in kWh and
 - (b) simultaneously make available to the Shipper at the Exit Point Natural Gas with the same quantity in kWh as the Natural Gas offtaken at the Entry Point according to § 5 (2) (*Entry Point*)

(together the "Capacity Services").

- (2) During the Capacity Booking Period the Shipper shall:
 - (a) subject to § 6 (1) (*Exit Point*), offtake at the Exit Point such quantities of Natural Gas in kWh made available by OGT, and
 - (b) pay the Capacity Charge derived from the Capacity Tariff for the Capacity Services determined in the Contract Data Sheet multiplied with the Booked Shipper Capacities on a ship-or-pay basis calculated pursuant to § 11 (*Capacity Tariff and Capacity Charge*).

§ 5 ENTRY POINT

- (1) The Shipper shall make available at the Entry Point Natural Gas that conforms to the Specification.
- (2) OGT shall at all times be entitled to reject all or part of the Natural Gas at the Entry Point, if it does not conform to the Specification and to request in writing for the Shipper to refrain, either fully or in part, from making available Natural Gas at the Entry Point that does not conform to the Specification. To the extent OGT intends to reject all or part of the Natural Gas at the Entry point pursuant to this section it shall notify the Shipper of its intention to do so.
- (3) In the event of a dispute concerning whether any Natural Gas made available at the Entry Point by the Shipper conforms to the Specifications, the actual specification of such Natural Gas shall, upon the written request of either Party, be examined by a Gas Specification Expert appointed by the Parties in accordance with § 7 (*Specification / Gas Specification Dispute*). The cost of such examination shall be borne by the Party that requested the appointment of the Gas Specification Expert, unless the examination shows that such Natural Gas did not conform with the Specifications, whereupon the cost of the examination shall be borne by the Party having delivered such non-conforming Natural Gas.
- (4) If, and to the extent that, OGT exercises its right to reject at the Entry Point the Natural Gas that does not conform to the Specifications, it shall be released from its obligations under § 4 (1) with respect to such non-conforming Natural Gas.
- (5) If OGT, provided it is acting in accordance with Good Industry Practice, accepts any Natural Gas made available by the Shipper at the Entry Point which does not conform with the Specification, then the Shipper shall, regardless of fault:
 - (a) compensate OGT for all costs, expenses and damages reasonably and directly incurred by OGT as a result of making available such non conforming Natural Gas to the Exit Point; and
 - (b) offtake such Natural Gas at the Exit Point.

§ 6 EXIT POINT

- (1) OGT shall make available to the Shipper Natural Gas at the Exit Point that conforms to the Specification subject to the Shipper having made available Natural Gas at the Entry Point that conforms to the Specification. If OGT accepts Natural Gas from other shippers for injection into OPAL which does not comply with the Specifications at the Entry Point, then OGT shall ensure that this Natural Gas will not affect the commercial value of the Natural Gas made available for the Shipper at the Exit Point.
- (2) Without prejudice to the provisions of § 6 (1) (*Exit Point*), the Shipper shall, at any time but always subject to § 5 (5) (b) (*Entry Point*), be entitled to reject all or part of the Natural Gas at the Exit Point, if it does not conform to the Specification, provided that Natural Gas conforming to the Specification has been made available by the Shipper at the Entry Point. Any quantities of Natural Gas rejected by the Shipper under this § 6 (2) (*Exit Point*) shall be considered to be the "Quantities Rejected by Shipper".
- (3) In the event of a dispute concerning whether any Natural Gas made available by OGT at the Exit Point conforms to the Specification, the actual specification of such Natural Gas shall, upon the written request of either Party, be examined by a Gas Specification Expert appointed by the Parties in accordance with § 7 (*Specification / Gas Specification Dispute*).

The costs of such examination shall be borne by the Party that requested the appointment of the Expert, unless the examination shows that such Natural Gas did not conform with the Specification, whereupon the cost of the examination shall be borne by the Party having delivered such non-conforming Natural Gas.

§ 7 SPECIFICATION / GAS SPECIFICATION DESPUTE

- (1) OGT shall publish on its website the technical requirements, including gas quality and pressure specification, for the gas to be fed in and, respectively, fed out at the respective Entry or Exit Points ("Specification"). Aforementioned published Specification shall form an integral part of the Contract.
- (2) Notwithstanding § 28 (*Arbitration*), if the Parties are unable to settle any dispute between the Parties concerning whether any Natural Gas conforms to the Specification at the Entry Point pursuant to § 5 (3) (*Entry Point*) or the Exit Point pursuant to § 6 (3) (*Exit Point*) (a "Gas Specification Dispute") within 21 (twenty-one) Days of one Party notifying the other of the existence of the Gas Specification Dispute then either Party may by written notice to the other Party state its intention to refer the Gas Specification Dispute to a person who shall be wholly independent from both Parties with appropriate qualifications and experience to determine the relevant Gas Specification Dispute (the "Gas Specification Expert").

If a Gas Specification Dispute occurs and the Parties are unable to agree on the identity of a Gas Specification Expert within fifteen (15) Days of either Party notifying the other in writing of its decision to seek the opinion of a Gas Specification Expert, then either Party may request in writing that the President of the International Chamber of Commerce ("ICC") shall appoint a Gas Specification Expert on behalf of the Parties.

- (3) The procedure for the settlement of a Gas Specification Dispute is the following:

- (a) The Gas Specification Expert shall be instructed jointly by the Parties or by the President of the ICC and shall be instructed to notify the Parties of its determination within twenty-one (21) Days of the referral; and
- (b) the Parties may each within seven (7) Days of the referral make written submissions to the Gas Specification Expert in relation to the Gas Specification Dispute and, if so directed by the Gas Specification Expert, shall attend any hearings before him and make such oral submissions as may be required by him;
- (c) the Gas Specification Expert shall act as an expert and not an arbitrator;
- (d) each Party shall be responsible for the costs of its own advisers; and
- (e) each Party shall provide the Gas Specification Expert with reasonable access to any books, records and computer files within its control which relates to the relevant Gas Specification Dispute and provide the Gas Specification Expert with such other information and assistance as he may reasonably request.
- (f) The Gas Specification Expert's decision shall be made in writing, contain the reasons for such a decision and shall in the absence of fraud or manifest error be final and binding on the Parties.

(4)

- (a) OGT shall notify the Shipper, as promptly as possible given the circumstances, of any changes in the Specification which may be necessary as a result of statutes or official regulations or changes to technical rules of the DVGW.
- (b) OGT shall amend the Specification with effect from the effective date of the amendments in accordance with § 7 (4) (a). In the event that a change in Specification is necessary to fulfil the OGT's legal obligations to cooperate, OGT shall be entitled to make such changes four (4) months after notifying the Shipper thereof. If the change affects the Shipper's use of Capacity Services, the Shipper shall be entitled to terminate the Contract as of the effective date of the change with three (3) months' notice. If OGT provides notice under § 7 (4) (a) less than four (4) months in advance of the effective date of the change, the Shipper shall be entitled to terminate the Contract without notice as of the effective date of the change.
- (c) In deviation from the above, OGT shall be entitled to change the Specification without the Shipper's consent by giving advance notice of three (3) years before the effective date of the change.

OGT may, with the Shipper's consent, change the Specification subject to a shorter period of notice.

- (d) If a new Contract begins during the notice periods after OGT has announced a change, the notice periods already applicable shall also apply to that Contract. The Contract affected by the change shall be amended with effect from the effective date of the change in Specification. In the event that OGT changes the Specification in accordance with this § 7(4) without the Shipper's consent, the Shipper shall be entitled to terminate the respective Contract with one year's notice as of the effective date of the change in the Specification.

§ 8 NOMINATION AND RENOMINATION

- (1) The Daily Nomination shall be submitted by the Shipper to OGT in compliance with the Festlegung "Kapazitätsregelungen und Auktionsverfahren im Gassektor" (No. BK7-10-001) issued by the FRO on 24 February 2011 (as amended from time to time);
- (2) Each Daily Nomination shall contain hourly quantity information on the quantities of Natural Gas to be injected and offtaken for each hour in respect of each Day in kWh/h.
- (3) In case a Daily Nomination was not issued by the Shipper for any Day, the quantities nominated for the corresponding Day the quantities will be zero.
- (4) Transmission of the nominations shall be in accordance to the current valid version of EASEE-gas-CBP ("Harmonisation of the nomination and matching process") and using EDIG@S.
- (5) The nomination shall be provided on a shippercode-pair-base. The shippercode for OGT will be communicated by OGT after the conclusion of the Contract.
- (6) Without prejudice to § 18 (3) (*Use-it-or-lose-it-Principle*), the Shipper has the right to make an intra-day renomination in respect of any hour in any Day provided that such intra-day renomination is notified to OGT no later than 2 (two) hours immediately preceding the beginning of the hour which is subject to the renomination.
- (7) The Shipper may nominate or renominate only corresponding hourly quantities at the Entry Point to be injected and at the Exit Point to be offtaken. To the extent there exist, in respect of any hourly quantities, any deviations between the nomination at the Entry Point and the nomination at the Exit Point OGT shall be entitled but not obliged to reduce the higher nomination of the corresponding connection point to the lower nomination.
- (8) Any nomination or renomination according to this § 8 (*Nomination and Renomination*) exceeding the Booked Shipper Capacities (taking into account any sub-let of Booked Shipper Capacities according to § 19 (*Sub-let of Booked Shipper Capacities*)) shall be automatically deemed amended so that they do not exceed the Booked Shipper Capacities.
- (9) If the Booked Shipper Capacities are not fully available (including for reasons of Force Majeure), any submitted nomination or renomination pursuant to this § 8 (*Nomination and Renomination*) will be accepted but will be reduced accordingly *pro rata* as between the Shipper and any third party shippers. If any nominated quantity is not made available by the Shipper at the Entry Point or offtaken at the Exit Point (as the case may be), the quantity actually injected (as determined according to § 9 (*Allocation of Natural Gas Quantities*)) shall be deemed to be the nominated quantity; § 8 (7) (*Nomination and Renomination*) shall apply accordingly.
- (10) The right of the OGT to reduce any nomination or renomination according to § 10 (2) (*Imbalances*) shall remain unaffected.

§ 9 ALLOCATION OF NATURAL GAS QUANTITIES

The allocation rule is allocated as confirmed.

§ 10 IMBALANCES

- (1) The Shipper shall ensure that the hourly quantities of Natural Gas injected at the Entry Point and hourly quantities of Natural Gas offtaken, but taking into account any Quantities Rejected by Shipper which for this purpose are deemed to be offtaken by the Shipper at the Exit Point, are balanced. Any Imbalances pursuant to the preceding sentence shall be accrued on an account (the "**Balancing Account**") by the OGT. The Shipper agrees that OGT may carry out the Balancing Account to zero.
- (2) In the event the Balancing Account is not balanced, OGT shall be entitled but not obliged to reduce the Shipper's nomination or renomination at the Entry Point or at the Exit Point (as the case may be) in order to settle the Balancing Account. OGT shall notify the Shipper timely prior to such reduction of nomination or renomination.
- (3) The Shipper shall compensate the Imbalance by the use of nomination procedure described under § 8 (*Nomination and Renomination*). In the case of non-fulfilment of the compensation of the Imbalance by the Shipper, OGT is entitled to compensate the Imbalance at the costs of the Shipper based on the Determination of the Compensation Balancing Costs.

§ 11 CAPACITY TARIFF AND CAPACITY CHARGE

- (1) The tariff for the Capacity Services (the "**Capacity Tariff**") shall be specified in the Contract Data Sheet.
- (2) The Capacity Tariff shall be subdivided into a tariff applicable for the Entry Point ("**Entry Capacity Tariff**") and a tariff applicable for the Exit Point ("**Exit Capacity Tariff**") at a ratio of fifty to fifty (50:50) and to be reflected in EUR/(kWh/h)/a. The Entry Capacity Tariff and the Exit Capacity Tariff shall be specified in the Contract Data Sheet.
- (3) The Capacity Charge payable by the Shipper (the "**Capacity Charge**") shall be calculated by the multiplication of the Entry Capacity Tariff with the amount of booked Entry Capacities and the multiplication of the Exit Capacity Tariff with the amount of booked Exit Capacities.
- (4) OGT shall be entitled to adjust the Capacity Tariff. In case of an adjustment OGT shall notify the Shipper promptly in text form of the adjusted Capacity Tariff.
- (5) In the event of an increase in the Capacity Tariff, the Shipper may terminate the Contract either in whole as a flat band of capacity, with reference to the amount of the Booked Shipper Capacity, by 10(ten) Business Days' notice in writing with effect from the effective date of the adjustment. If the Shipper does not receive the information in accordance with this paragraph at least 20 (twenty) Business Days prior to the effective date of the adjustment, the Shipper shall in deviation from sentence 1 of this § 11(5) be entitled to terminate the Contract in whole or partially, with reference to the amount of Booked Shipper Capacity, within 10 (ten) Business Days after receiving such information with 5 (five) Business Days' notice in writing, with effect from the effective date of the adjustment at the earliest. Partial termination under this § 11(5) shall only be permitted if the capacity is reduced consistently for the whole remaining term of the Contract.

- (6) The Shipper shall not have any termination right under this § 11 (5) if the increase in the Capacity Tariff is lower or equal to the increase in the consumer price index for Germany (VPI) as published by the Federal Statistical Office (“Statistisches Bundesamt”). For this purpose, the relevant increase shall be the increase in the annual average of the VPI compared to the preceding year last published by the Federal Statistical Office before the date of the announcement of the adjustment of the Capacity Tariff.

§ 12 SUSPENSION OF OBLIGATIONS

- (1) The Shipper shall only be exempted from its ship-or-pay obligation and obligation to pay the Capacity Charge if, and to the extent that, at any time during the Capacity Booking Period OGT is unable for any reason (including Force Majeure) to offtake at the Entry Point Natural Gas delivered by the Shipper or make available Natural Gas at the Exit Point offtaken from the Shipper at the Entry Point of the OPAL ("**Exemption Event**"), provided that the Shipper shall not be exempted from its ship-or-pay obligation to the extent that the OGT's inability to offtake or make available Natural Gas hereunder arises as a direct consequence of either (i) a default by the Shipper of its obligations hereunder or (ii) Scheduled Maintenance and Unscheduled Maintenance or scheduled maintenance affecting Upstream or Downstream Facilities.
- (2) As soon as reasonably practicable following the occurrence of an Exemption Event, the reduction in the available capacity of the OPAL resulting from such Exemption Event shall be assessed by OGT and taken into account when calculating and issuing the next Monthly Invoice. For the purposes of such calculation, the Shipper shall be deemed to have paid the Capacity Charge throughout the period of the Exemption Event.
- (3) Notwithstanding § 12 (1) and (2) (*Suspension of Obligations*), either Party shall be entitled to suspend its respective contractual obligations in the event of a breach of a material contractual obligation Contract by the other Party, as defined in § 16 (4) (*Liability*), including non-fulfilment of payment obligations by the Shipper or non-fulfilment of obligations to render Capacity Services by OGT, if the other Party fails to remedy such breach within 2 (two) Weeks after receiving written notification from the other Party.

§ 13 TAXES AND TITLE

- (1) OGT and the Shipper shall each bear and promptly pay all taxes including but without limitation income/corporate taxes, duties, customs duties including surcharges, social security taxes, social insurance charges, fees, whatsoever arising as their own liability now or in the future out of or in connection with the Contract.
- (2) If OGT is required to pay any of the Shipper's unpaid taxes, duties, customs duties including surcharges, social security taxes, social insurance charges, fees, interests, and other charges of whatever nature, the Shipper shall reimburse OGT for such payment, without delay, after the Shipper was presented documents evidencing such payments.
- (3) In the event the Shipper (or its Affiliates, as the case may be) is subject to VAT legislation, the Capacity Tariff is exclusive of VAT and duties or levies of a similar nature. The VAT treatment of the Capacities Services rendered under the Contract

shall be determined pursuant to the VAT laws of the jurisdiction where a taxable transaction for VAT purposes is deemed to have taken place. OGT may add to the Capacity Tariff any VAT or any duties or levies of a similar nature (but excluding any taxes on income and profit) to be paid by OGT for the provision of Capacity Services performed by OGT in accordance with the Contract in cases where such taxes, duties or levies are due according to the norms of the applicable legislation.

- (4) Title to the Natural Gas delivered at the Entry Point shall at no point in time pass to OGT.
- (5) Subject to and without prejudice to the provisions of § 6 (2) and § 6 (3) (*Exit Point*), OGT shall be entitled to transmit and redeliver the quantities of Natural Gas accepted for Capacity Services at the Entry Point commingled with other Natural Gas. OGT shall be under no obligation to ensure the physical identity of the Natural Gas transported for the Shipper.

§ 14 INVOICING AND PAYMENTS

- (1) During the Capacity Booking Period the Shipper shall, whether or not it makes available any Natural Gas at the Entry Point but provided OGT continues to perform the Capacity Services and the Booked Shipper Capacities, pay the Capacity Charge to OGT on a monthly basis.
- (2) Following the commencement of the Capacity Services, by the 5th (fifth) Banking Day of each Month immediately following the Month in which the Capacity Services were performed under the Contract OGT shall provide the Shipper with a Monthly Invoice.
- (3) The amount specified in a Monthly Invoice may be reduced as a result of an Exemption Event.
- (4) The due date for payment shall be the last Banking Day of the Month in which the Monthly Invoice is sent, provided however that such payment shall not be due before the 20th (twentieth) Day following receipt by the Shipper of the corresponding Monthly Invoice (the "**Due Date**").
- (5) In the event that the Due Date is not a Banking Day, then all sums to be paid under the relevant Monthly Invoice shall be due on the subsequent Banking Day.
- (6) Any amounts owing to OGT for the provision of Capacity Services shall be paid in Euros into a bank account nominated by OGT in the Monthly Invoice or otherwise.
- (7) Each Party shall bear its own banking charges.
- (8) Upon Shipper's request OGT shall provide a delivery and acceptance report for the Capacity Services provided in the previous Month.
- (9) The Shipper may dispute any amounts specified in a Monthly Invoice and it shall pay any undisputed amounts by the Due Date.

§ 15 FORCE MAJEURE

- (1) The expression "Force Majeure" means any event or circumstance and the consequences of such event or circumstance beyond the control of the Party affected (acting in accordance with Good Industry Practice) which delays, hinders or prevents the affected Party from fulfilling any one or more of its obligations under the Contract. Events which (provided that they satisfy the requirements stated in the preceding sentence) shall constitute Force Majeure shall include any Change in Law, wars, strikes and lock-outs (provided that the lock-outs are lawful), acts of God such as inter alia forces of nature, fires, landslides, floods, earthquakes, explosions and seriously adverse weather conditions affecting the OPAL and/or the Capacity Services and/or any other facilities used for implementing all or any part of the Contract (including, for the avoidance of doubt, the events specified in § 16 of the German Energy Industry Act). For the avoidance of doubt, any event or circumstance and the consequences of such event or circumstance listed above in this § 15 (1) (*Force Majeure*) and affecting facilities upstream of the Entry Point or downstream of the Exit Point to the extent those facilities are directly connected to the OPAL shall not constitute Force Majeure hereunder. Notwithstanding anything to the contrary, a Party's inability to pay or lack of funds shall not be deemed to constitute an event of Force Majeure or a cause thereof.
- (2) The Party affected by Force Majeure shall be suspended from performing any of its obligations under the Contract to the extent that and as long as it is rendered unable by Force Majeure to perform such obligations under the Contract. The other Party shall be released from its corresponding obligations to the extent and as long as the Party affected is prevented from performing its obligations because of Force Majeure. The Parties affected shall resume their respective obligations without undue delay as soon as the reasons for such suspension cease to exist.
- (3) The Party affected by Force Majeure shall promptly, without delay, take all technically and economically reasonable measures to restore the conditions for the performance of its obligations under the Contract.
- (4) The Party affected by Force Majeure shall notify the other Party immediately thereof and shall, without delay, provide the other Party with details on the expected duration and cause of the disruption.
- (5) If the circumstances of Force Majeure and/or the effects thereof exceed a period of 6 (six) Months, the Parties shall negotiate and endeavour to find a solution acceptable for both Parties.

§ 16 LIABILITY

- (1) OGT shall be liable for loss or damage suffered by the Shipper as a result of the interruption of or disturbances in network access in accordance with Section 5 GasNZV in conjunction with Section 18 NDAV (Ordinance Concerning General Conditions for Network Connection). The wording of Section 18 NDAV is attached as Annex 2.
- (2) Moreover, each of the Parties shall be liable to the other Party for death, personal injury or damage to health, unless the party itself and its statutory representatives or vicarious agents ("Erfüllungs- und Verrichtungsgehilfen") have neither acted wilfully nor negligently.

- (3) In the event of a breach of a material contractual obligation (“wesentliche Vertragspflichten”), each of the Parties shall be liable to the other Party for damage to property (“Sachschäden”) and financial loss (“Vermögensschäden”), unless such loss or damage was not caused by wilful act or omission or negligence of the Party itself, its statutory representatives or vicarious agents. The liability of the Parties in the event of damage to property or financial loss caused by slight negligence shall be limited to the loss or damage typically foreseeable in connection with such contracts.
- (4) Material contractual obligations are obligations the performance of which is prerequisite to the proper performance of the contract, and the performance of which the parties to the contract normally rely on and may at all times expect.
- (5) Loss or damage typically foreseeable is loss or damage a party to the contract foresaw as a possible consequence of a breach of contract or ought to have foreseen as a possible consequence of a breach of contract under the circumstances of which the party was aware at that time or ought to have been aware at that time if it had exercised due care (“verkehrsübliche Sorgfalt”).
- (6) It is to be assumed that the typical loss or damage in connection with contracts of this type is EUR 2.5 million for damage to property and EUR 1 million for financial loss.
- (7) Each of the Parties shall be liable to the other Party for damage to property and financial loss arising from breach of non-material contractual obligations, unless such loss or damage was not caused by wilful act or omission or gross negligence of the Party itself, its statutory representatives or vicarious agents.
 - (a) In the case of damage to property or financial loss caused by gross negligence, the liability of the Parties and their statutory representatives or managing vicarious agents (“Leitende Erfüllungs- und Verrichtungsgehilfen”) shall be limited to the loss or damage typically foreseeable in connection with such contracts.
 - (b) In the case of damage to property caused by gross negligence, the Parties' liability for ordinary vicarious agents (“einfache Erfüllungsgehilfen”) shall be limited to EUR 1.5 million for damage to property, and EUR 0.5 million for financial loss.
- (8) Section 16 and 16a EnWG shall not be affected. Measures in accordance with Section 16 (2) EnWG shall include, without limitation, action taken to ensure a secure natural gas supply for domestic customers in accordance with Section 53a EnWG.
- (9) The Parties' liability under mandatory provisions of the Public Liability Act (“Haftpflichtgesetz”) and other laws shall not be affected.
- (10) The above sections in this § 16 shall also apply to the statutory representatives, employees, vicarious agents of the Parties, if and to the extent that these conditions are applicable to the respective Party.

§ 17 MAINTENANCE AND REPAIR WORKS

- (1) By 31 October of each Gas Year, OGT shall set up and publish a schedule of the Maintenance and Repair Works of the OPAL which are to be carried out during the following Gas Year (the “**Scheduled Maintenance**”).
- (2) The total aggregate period of time spent carrying out Scheduled Maintenance in any Gas Year shall not exceed 14 (fourteen) Days. For the avoidance of doubt, such 14

(fourteen) Day limit shall not include any time required to perform any Emergency Works or carry out *Unscheduled Maintenance*. OGT shall use its best endeavours to ensure that any Maintenance and Repair Works which may result in a reduction of Capacity Services is only carried out during the period from (and including) 1 April to (and excluding) 1 October of each Gas Year.

- (3) Subject to the provisions of § 17 (2) (*Maintenance and Repair Works*), OGT may amend the programme of Scheduled Maintenance provided it uses its best endeavours to ensure that it provides the Shipper and third party shippers (if applicable) with 42 (forty two) Days advance notice of the revised date when such Maintenance and Repair Work shall take place.
- (4) If OGT wishes to carry out any Maintenance and Repair Works which:
 - (a) are not Scheduled Maintenance; and
 - (b) are not the subject of a valid amendment to the Scheduled Maintenance pursuant to § 17 (3) (*Maintenance and Repair Works*); and
 - (c) do not constitute Emergency Works,

then OGT may not carry out such Maintenance and Repair Works ("**Unscheduled Maintenance**") unless the Shipper and third party shippers (if applicable) consents to the proposed start date of such works and the expected duration of such *Unscheduled Maintenance* not less than 42 (forty two) Days in advance of the proposed start date of such work. The Shipper shall not unreasonably withhold its consent for any *Unscheduled Maintenance*. OGT shall use reasonable endeavours to coordinate to the extent possible any such work with the Shipper and third party shippers (if applicable).

§ 18 "USE-IT-OR-LOSE-IT"-PRINCIPLE

- (1) In the event:
 - (a) the Booked Shipper Capacities have not been fully nominated according to § 8 (*Nomination and Renomination*) on the Day prior to the Day on which Capacity Services shall be rendered (the "Relevant Gas Day") OGT shall be entitled to offer the Booked Shipper Capacities to third parties on a non-discriminatory and day-ahead basis as capacities for the Relevant Day ("Short Term UIOLI"), provided that in offering such capacities to third parties OGT shall ensure compliance with the Festlegung "Kapazitätsregelungen und Auktionsverfahren im Gassektor" (No. BK7-10-001) issued by the FRO on 24 February 2011 (as amended from time to time); or
 - (b) the term of the Capacity Booking Period is exceeding 1 (one) Quarter and the Booked Shipper Capacities are not utilized by nomination at all according to § 8 (*Nomination and Renomination*) or are utilized only to a Minor Extent by the Shipper during a Quarter (the "Relevant Quarter") OGT shall be entitled to offer the Booked Shipper Capacities to third parties on a non-discriminatory and daily, monthly or quarterly basis as firm capacities for the following Quarter ("Long Term UIOLI");

(each a "Capacity Hoarding Event").
- (2) In the event of Long Term UIOLI the Shipper may anticipate a withdrawal of the Booked Shipper Capacities by notifying OGT of a sub-let to a third party according to § 19 (*Sub-let of Booked Shipper Capacities*) at least 1 (one) Month prior to the end of the Relevant

Quarter. In any Capacity Hoarding Event the Shipper may anticipate a withdrawal of the Booked Shipper Capacities according to § 18 (1) (*Use-it-or-lose-it-Principle*) by a binding decision of a competent court.

- (3) In any Capacity Hoarding Event the Shipper:
 - (a) shall not be exempted from payment of the Capacity Charge according to § 11 (3) (*Capacity Tariff and Capacity Charge*); and
 - (b) shall only be entitled to utilize the withdrawn Booked Shipper Capacities by nomination and renomination according to § 8 (*Nomination and Renomination*), provided and to the extent the withdrawn Booked Shipper Capacities are not nominated by third parties.
- (4) If the Booked Shipper Capacities are not nominated at all according to § 8 (*Nomination and Renomination*) or are utilized only to a Minor Extent by the Shipper in each case due to the unavailability of the upstream transportation facilities/Nord Stream Pipeline such situation shall not be deemed Capacity Hoarding Event.

§ 19 SUB-LET OF BOOKED SHIPPER CAPACITIES

Notwithstanding § 23 (*Assignment*) the Shipper shall be entitled to sublet for use all or part of the Booked Shipper Capacities permanently or for a period of time according to Section 12 paragraph 2 Gas Network Access Regulation to a third party subject to the prior notification to OGT and subject to such third party fulfilling the Booking Limitation requirements at all times and delivering a duly signed Declaration to OGT.

§ 20 TERM

- (1) The Contract shall, subject to § 2 (*Prequalification Requirements*), come into full force and effect upon signature of the Contract Data Sheet and shall terminate no earlier (unless terminated earlier in accordance with the provisions of these General terms and conditions) than the end of the Capacity Booking Period specified in the Contract Data Sheet.
- (2) Either Party shall be entitled to terminate the Contract with immediate effect if a request for initiation of insolvency proceedings for the party's assets has been filed and despite a request, the insolvency administrator has not declared the continuation with the meaning of Section 103 German Bankruptcy Act (InsO) and in the case of requesting initiation of insolvency proceedings by a third party, the respective Party or the insolvency administrator do not prove the absence of a reason to open the insolvency proceeding with the meaning of Section 17 (2), Section 19 (2) German Bankruptcy Act (InsO) within 5 (five) Business Days.
- (3) OGT shall be entitled to terminate the Contract with immediate effect if:
 - (a) the Shipper at any time during the term of the Contract fails to fulfil any or all of the prequalification requirements as set out under § 2 (*Prequalification Requirements*) or is in breach of any of the obligations set out in § 2 (*Prequalification Requirements*); whereby, in case of the Shipper's inability to evidence the

creditworthiness in accordance with the provisions of § 2 (*Prequalification Requirements*) and § 3 (*Deposit*), the Shipper shall be entitled to remedy this creditworthiness default within 7 (seven) Business Days.

- (b) the FRO prohibits the rendering of Capacity Services to the Shipper on the basis of the TPA Exemption; or
 - (c) the Shipper assigns the Contract or sublets the usage of the Booked Shipper Capacities in breach of the provisions of these General terms and conditions.
- (4) Both Parties' right of termination for good cause shall remain unaffected.
 - (5) The Contract shall terminate in case the TPA Exemption is determined invalid by a court of competent jurisdiction or revoked or withdrawn by the competent authorities.
 - (6) In case of such termination, the Shipper shall use best endeavours to book capacities corresponding to the Booked Shipper Capacities for the period between the date of termination of the Contract and the remaining term of the Capacity Booking Period under the regulated regime in compliance with the applicable legal framework.
 - (7) This § 20 (6) (*Term*) shall survive any termination of the Contract.

§ 21 CONFIDENTIALITY

- (1) OGT shall be entitled to transmit to other network operators such data in so far as and as long as strictly necessary for proper performance of Capacity Services. The Shipper hereby declares its acceptance of automated data processing by OGT or by a company contracted by OGT in accordance with the applicable provisions of data protection laws.
- (2) Subject to the provisions of § 21 (1) and (3) (*Confidentiality*), the Parties shall treat as confidential the content of the Contract Data Sheet and all information which they obtain in connection with the fulfilment of the Contract and shall not disclose such Confidential Information or make it accessible to third parties without the prior written consent of the other Party. The Parties undertake to use the Confidential Information obtained exclusively for the purpose of performing their respective obligations under the Contract.
- (3) Either Party shall be entitled to disclose without the written consent of the other Party any Confidential Information obtained from the other Party:
 - (a) to an Affiliate, *provided* that such Affiliate assumes the same confidentiality obligation;
 - (b) to its directors, employees, representatives, consultants, auditors, advisers, banks and insurers if and to the extent that disclosure is needed for proper performance of that Party's contractual obligations and such persons or companies have undertaken on terms and conditions at least as strict as those stipulated in this § 21 (*Confidentiality*) to treat such information confidentially prior to the receipt thereof or are under a professional secrecy obligation in respect of such Confidential Information; or
 - (c) to the extent that the Confidential Information:

- (i) was legitimately known to the Party receiving the Confidential Information free from any restrictions on disclosure at the time it was obtained from the other Party;
- (ii) was already in the public domain or becomes publicly available other than as a result of a breach of this § 21 (*Confidentiality*);
- (iii) has to be disclosed by a Party due to a statutory or other provision of any applicable law, the rules of any court of competent jurisdiction, any recognized stock exchange, any governmental official, or a request of any regulatory authority (including FRO and European Commission), or any binding judgment, order or requirement of any other competent authority;
- (iv) is disclosed to any tax authority to the extent reasonably required for the purposes of the tax affairs of the Party concerned or any of its Affiliates; or
- (v) has been disclosed with the prior written consent of the other Party.

In any such case, the disclosing party shall, to the extent legally permissible, inform the other Party thereof without undue delay.

- (4) The confidentiality obligations shall survive for a period of 4 (four) years after the expiry or termination according to § 20 (*Term*) of the Contract.
- (5) The present § 21 (*Confidentiality*) is without prejudice to § 6a of the German Energy Industry Act.

§ 22 NOTICES AND EXCHANGE OF INFORMATION

- (1) Except for nominations according to § 8 (*Nomination and Renomination*), any notice, claim or demand in connection with the Contract, or with any arbitration under the Contract, shall be in writing in English and/or in German (each a "**Notice**"), and shall be sufficiently given if delivered or sent to the contact details as specified in the Contract Data Sheet.
- (2) Any Notice shall be sent by delivering it by hand, transmitting it by fax or sending it by pre-paid recorded delivery or internationally recognised courier to the other Party.
- (3) A Party may, at any time, notify the other Party of a change of its name, relevant addressee, address, fax number or email address for the purposes of this § 22 (*Notices and Exchange of Information*), provided that such Notice shall only be effective on:
 - (a) the date specified in such Notice as the date on which the change is to take place; or
 - (b) if no date is specified, or if the date specified is less than 5 (five) Banking Days after the date on which such Notice is given, the date following five 5 (five) Banking Days after the date of such Notice.

§ 23 ASSIGNMENT

- (1) Except as provided in § 23 (2) (*Assignment*), no Party may assign or transfer to any Person any benefit, right or obligation under the Contract, in whole or in part, absolutely or conditionally.
- (2) Notwithstanding § 23 (1) (*Assignment*), a Party may assign or transfer any benefit, right or obligation under the Contract:
 - (a) to an Affiliate with the prior written consent of the other Party (such consent not to be unreasonably withheld); or
 - (b) pursuant to the orders of any regulatory authority (including, but not limited to those of the European Commission or FRO), or in accordance with applicable law to (i) an Affiliate or, if indispensable, (ii) a third party subject to the approval of the other Party which shall not be unreasonably withheld.
- (3) Any assignment shall be subject to the assignee fulfilling the prequalification requirements under § 2 (*Prequalification Requirements*) at all times and delivering a duly signed Declaration to OGT.
- (4) Notwithstanding § 23 (1) (*Assignment*), OGT may create a security assignment of its rights under the Contract in favour of any financing party with respect to the debt financing and the Shipper has to agree upon the written request of OGT to execute such documents as may reasonably and customarily be required to give effect to such assignment under applicable law.
- (5) The provision of § 19 (*Sub-let of Booked Shipper Capacities*) shall remain unaffected.
- (6) Notwithstanding § 23 (1) to (3) (*Assignment*) (inclusive) OGT shall be entitled to use subcontractors (including Affiliates) to perform its obligations under Contract without any assignment of such obligations provided that OGT shall remain wholly and primarily liable for the performance and fulfilment of those obligations.

§ 24 AMENDMENTS

- (1) Without prejudice to § 11 (*Capacity Tariff and Capacity Charge*) and to the § 7 (*Specification / Gas Specification Dispute*) OGT may amend the General terms and conditions with immediate effect as necessary to comply with applicable laws, regulations or legally binding orders by national or international courts or authorities – including without limitation determinations and related announcements of the FRO – or to comply with generally approved technical standards. Sentence 1 also covers relevant common network operating tools (including business requirements specification) according to Section 8 (3a) of Regulation (EC) No. 715/2009. OGT shall advise the Shipper without delay of any amendment under the foregoing regulations. If the amendments of these General terms and conditions result in detrimental commercial or financial impact on the Shipper which is more than insignificant, which impact shall be proved by the Shipper, the Shipper shall be entitled to terminate its Contract by 15 (fifteen) Business Days' notice as of the end of the month following the effective date of such amendments. No compensation shall be payable. This provision shall apply mutatis mutandis to amendments necessary for the further consolidation of market areas.

- (2) OGT shall also be entitled to amend the General terms and conditions with future effect in cases other than those stated in § 24 (1) (*Amendments*) in the event that OGT has a justified interest in the respective changes. OGT shall give the Shipper 2 (two) months' advance notice of any such amendments in text form and publish the amendment on its website. In justified cases, OGT may deviate from said notice period of 2 (two) months. Amendments to the General terms and conditions shall be deemed to have been accepted by the Shipper unless the Shipper terminates the Contract within 30 (thirty) days of the receipt of notification thereof. No compensation shall be payable. The Shipper shall not be entitled to terminate the Contract if the amendment concerned does not represent any or any significant commercial or financial disadvantage to the Shipper. In the event that the Shipper considers that any such amendment would represent significant financial disadvantage to the Shipper, the Shipper shall submit evidence of such disadvantage. OGT shall notify the Shipper of the start of the termination notice period and of the fact that the amended General terms and conditions will be deemed to have been accepted by the Shipper in the event that the Shipper does not terminate the Contract.

§ 25 INVALIDITY

If any provision of the Contract is held to be or becomes illegal, invalid or unenforceable, in whole or in part, under the law of any jurisdiction:

- (i) the legality, validity or enforceability of such provision or part under the law of any other jurisdiction and the legality, validity and enforceability of the remainder of the Contract shall not be affected; and
- (ii) the Parties shall agree in the Contract Data Sheet on one or more provisions which shall replace any such illegal, invalid or unenforceable provision and restore as nearly as is practicable in all the circumstances the original balance of the commercial interests of the Parties.

§ 26 GOVERNING LAW

The Contract shall be governed by and construed in accordance with German law (excluding its conflict of law rules).

§ 27 LOYALTY

- (1) If circumstances occur during the term of the Contract which were not foreseeable at the time it was entered into and which have considerable economic, technical or legal effects on the Contract, but which were not provided for in the Contract or were not considered when the Contract was concluded (including inflation), and, if it would consequently be unreasonable for a Party to fulfil a particular contractual provision, the Party affected shall be entitled to request the other Party to amend the Contract correspondingly taking account of the changed circumstances as well as all economic, technical and legal consequences for the other Party.
- (2) The Party citing the circumstances described in § 27 (1) (*Loyalty*) shall specify and prove the necessary facts.

- (3) The Parties may claim an amendment of the contractual provisions as of the date on which the requesting Party requests amendments to the contractual provisions for the first time due to changed circumstances, unless the requesting Party could not be reasonably expected to make such request at an earlier time.

§ 28 ARBITRATION

- (1) Any disputes arising out of or connected with the Contract Data Sheet or these General terms and conditions, as the case may be, including a dispute as to the validity or existence of the Contract, but excluding Gas Specification Disputes which shall be resolved in accordance with § 7 (*Specification / Gas Specification Dispute*), shall be resolved by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC).
- (2) The arbitration shall be conducted by three (3) arbitrators, of which each Party to the dispute shall appoint one (1) arbitrator and the two (2) arbitrators thus appointed shall appoint the presiding arbitrator. At least the presiding arbitrator shall be a qualified lawyer.
- (3) The decision of the arbitrators shall be final and legally binding upon the Parties to the dispute.
- (4) The seat of the arbitration shall be Berlin, Germany.
- (5) The arbitration shall be conducted in the English language. The Parties may agree on an alternative language for conducting arbitration.
- (6) The resulting arbitral award shall be final and binding without any right of appeal.
- (7) A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect. The choice of arbitration to resolve any dispute is exclusive except in respect of interim measures available to the Parties in any competent court.

§ 29 LATE PAYMENT / NO SET-OFF

Any sum due and payable under the Contract (including any sums due and payable with respect to the Capacity Services) shall:

- (a) if not paid when due, bear interest (after as well as before judgment) of 3% (three percent). To the extent such interest is due and payable hereunder the Party demanding such payment shall provide a copy of the relevant Reuters Screen (displaying the relevant EURIBOR rate) together with its demand for payment. Such interest shall be payable on demand and accrue daily from the date such sum was due and payable until the date of actual payment in full of such sum and such interest; and
- (b) be made without set-off of any amounts (unless otherwise agreed between the Parties).

§ 30 FINAL PROVISIONS

- (1) These General terms and conditions form an integral part of the Contract Data Sheet, shall be deemed as unconditionally accepted by the Shipper upon the execution of the Contract Data Sheet and shall constitute together with the Contract Data Sheet a Contract for the provision of the Capacity Services. In case of any inconsistencies between the provisions of the Contract Data Sheet and these General terms and conditions, the Contract Data Sheet shall prevail.
- (2) Each Party shall be solely responsible for its own costs and expenses (including the costs and expenses of any professional advisers) incurred in connection with the preparation, negotiation and execution of the Contract.
- (3) The General terms and conditions are written in the English language. In the event of translation of the General terms and conditions into another language, the English language version shall prevail.
- (4) Each Party shall perform, or shall use all reasonable endeavours to procure the performance of, all such acts and things and shall execute and deliver, or shall use all reasonable endeavours to procure the execution and delivery of, all such documents as may be required by applicable law or as the other Party may reasonably require in order to implement or to give legal effect to the Contract.
- (5) The Annexes attached form an integral part of these General terms and conditions.

List of Annexes:

1. Annex 1 to GTC: Declaration model form (English and German version);
2. Annex 2 to GTC: Section 18 Low Pressure Connection Ordinance (NDAV) (German version)