

**Supplementary Terms and Conditions of  
Trading Hub Europe GmbH ("THE")  
for the Use of Portals  
("Portal Terms of Use")**

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## 1 General

- (1) Trading Hub Europe (THE) gives balancing group managers, network operators and shippers access to various portals (hereinafter individually referred to as "Portal" or collectively as "Portals") via its website<sup>1</sup> for balancing group management, system balancing and capacity buyback<sup>2</sup>-related processes.
- (2) These Portal Terms of Use govern the relationship between THE as the Portal operator and a company using any such Portal (hereinafter individually referred to as "Company" or collectively as to as "Companies"). Other contracts between THE and the Companies (hereinafter also individually referred to as "Party" or collectively as "Parties") as shall remain unaffected by these Portal Terms of Use, unless the Parties have expressly agreed otherwise.
- (3) By confirming its acceptance of these Portal Terms of Use via the checkbox with the text: "I hereby accept the Portal Terms of Use and data protection policy of THE", the market partner (in the market role of balancing group manager, network operator or transport customer) agrees to the Portal Terms of Use as set out below.
- (4) These Portal Terms of Use may be accessed, printed, downloaded and saved at any time via the link provided on the THE website.

## 2 Terms and definitions

Save as otherwise provided in these Portal Terms of Use, the following definitions shall apply:

"Balancing Services Portal (BSP)" means the bidding platform for system balancing-related processes made available on the THE website and protected by login details.

"Checkbox" is a box to be checked as part of the online registration process in order to make a statement.

"Capacity Buy-back Portal" means the platform for handling capacity buy-back-related processes made available on the THE website and protected by login details.

"Customer Portal" means the platform for handling balancing group management processes made available on the THE website and protected by login details.

"Login Details" means the username and password provided to a registered Company or User by THE for use of the Portals.

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<sup>1</sup> [www.tradinghub.eu](http://www.tradinghub.eu)

<sup>2</sup> See Appendix 1 - Terms and Conditions of Registration for the Capacity Buy-back Portal of Trading Hub Europe GmbH

"User" means any natural person accessing the Portals on behalf of a Company.

"Portals" means the platforms made available by THE.

"Company" means any legal entity or natural person that concludes or has concluded a Portal Use Agreement with THE in at least one of the market roles pursuant to section 4 (1) (balancing group manager, network operator or shipper).

"VTP Portal" means the platform for processing nominations for the transmission of gas quantities ("VTP Nominations") made available on the THE website and protected by login details.

"Business Days" means any day which is not a Saturday, Sunday or public holiday in at least one of the German federal states. 24 December and 31 December of each year shall be considered public holidays.

### 3 Description of the services

- (1) The Customer Portal features both a public area accessible to anyone, which allows visitors to complete the admission process described in section 4, and a protected area accessible only to authorised Users, which features the following functions, among others:

For balancing group managers:

- Master data maintenance (e.g. address and bank data) by Users
- Contract management (e.g. conclusion and termination of balancing group contracts)
- Transfer of biogas flexibilities
- Access to balancing group-relevant market data and correction processes in connection with allocation data
- Retrieval and creation of subscriptions to reports offered by THE

For network operators:

- Master data maintenance (e.g. address and bank data) by Users
- Access to market data relevant to network operators
- Handling of declaration, allocation and clearing processes
- Retrieval and creation of subscriptions to reports offered by THE

For shippers:

- Master data maintenance (e.g. address and bank data) by the User

- (2) THE's VTP Portal features the following functions:

- Execution of VTP nominations in balancing groups in the market area
- Overview of nominations and their matching status

- Retrieval and creation of subscriptions to reports offered by THE
- (3) THE offers the Portals only in accordance with these Portal Terms of Use and only to the extent that it is technically and operationally feasible for THE to do so.

#### 4 Portal registration

- (1) Use of the Customer Portal requires registration. In order to register, the Company must have successfully completed the process of admission by THE and it must have accepted these Portal Terms of Use. The Company can apply for admission to the Portal on the THE website. By submitting a registration request, the Company will apply for at least one of the following types of access, depending on its market role:
- balancing group manager
  - shipper
  - network operator
- (2) Registration is only permissible for entrepreneurs in the sense of section 14 (1) of the German Civil Code (BGB).
- (3) When requesting registration, the Company must ensure that all information requested by THE on its website is provided completely and correctly.
- (4) Having entered all the information requested, the User has to submit its registration request to THE. After THE has checked and confirmed the registration data, it will send the Company the contract documents or request further information needed for the registration process, including but not limited to the following documents or information:
- (a) Fully completed and signed "Market Participant´s power of attorney for the user" based on the specimen provided;
  - (b) The User´s valid personal e-mail address with the Company (no collective e-mail addresses and no generally accessible e-mail domains such as gmx, gmail, web.de, t-online, yahoo);
  - (c) Business address of the service recipient according to the commercial register, to which mail can be sent;
  - (d) Details of the invoice recipient, e-mail address to which the invoice (pdf file) can be sent (only collective e-mail addresses and Company e-mail address may be used);
  - (e) Market partner code;
  - (f) ACER code;
  - (g) Contact details of relevant contact persons at the Company;
  - (h) Full bank details of the Company (including IBAN, BIC or SWIFT);

- (i) VAT identification number;
  - (j) Digital certificates for the electronic transmission of EDIFACT messages as well as documents and information on the desired communication channel for 1:1 communication in accordance with THE's communication data sheet;
  - (k) If service providers are used, the fully completed and signed "Power of Attorney for Service Provider" or „Dienstleistungsvollmacht für Bilanzkreisverantwortliche“<sup>3</sup> specimen provided;
  - (l) Commercial register No.
  - (m) Extract from commercial register not older than three (3) months;
  - (n) If available: Certificate from the main customs office for natural gas suppliers in accordance with section 38 (3) of the Energy Tax Act ("*EnergieStG*");
  - (o) If available: evidence of a certified compliance management system that can be used.
- (5) For the market role of network operator, the Company shall submit the following documents in addition to the documents listed in paragraph (4):

The Application to set up a network account ("*Beantragung zur Einrichtung eines Netzkontos*"<sup>4</sup>) form along and the reseller certificate.

- (6) For the market role of balancing group manager, the Company shall submit the following documents shall in addition to the documents listed in paragraph (4):
- (a) The last three (3) audited annual financial statements or the opening balance sheet of the Company;
  - (b) A description of the intended business model for at least the first six months of balancing group management, stating in particular the expected number of balancing groups by gas quality, the start of balancing group management, the traded volumes, the expected trading partners, the type of trading (physical or financial), as well as whether and to what extent it is intended to supply gas to end users;
  - (c) Proof of entrepreneurial status for companies registered outside the European Union issued by an authority in the country of its registered office, the content of which shall correspond to the USt 1TN form of the Federal Ministry of Finance;
  - (d) A (European) certificate of good conduct of the Company (in the case of natural persons) or of all members of the board of management (in the case of legal persons), of the authorised

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<sup>3</sup> only German network operator

<sup>4</sup> only German network operator

- signatories and of the User either in the original or as a certified copy;
- (e) Assurance that the Company is not currently insolvent and that no legal proceedings are pending that will most probably lead to the Company's insolvency;
  - (f) A certificate relating to tax matters (formerly known as Tax Clearance Certificate) from the competent tax office either in the original or as a certified copy;
  - (g) A certified copy of the identity card of all members of the management and any authorised signatories as well as the User; it must be ensured that the identity card number is made illegible before dispatch, otherwise it will be rejected.
- (7) If the Company is subject to legislation in which the requested documents do not exist in the format that is prevalent in Germany, it shall provide documents with similar content in a comparable format. If the documents are not in German or English, certified translations shall be prepared and provided.
- (8) The documents and/or information referred to in section 4 (4), (5) and (6) shall be sent to THE in advance by e-mail and thereafter by post within two (2) months of THE's request. The date of receipt of the complete e-mail(s) and the date of receipt by THE of the original documents sent by post shall be the dates determining whether or not the documents and/or information were submitted in time.
- (9) THE shall be entitled to request proof of the aforementioned information and to request further explanations and information, as may be required for admission to the Portal, for which it may set a new reasonable deadline.
- (10) The Company undertakes to ensure that all information and documents provided for the registration are complete and correct.
- (11) The Portal Use Agreement will be concluded as follows:
- (a) The Company will furnish a full set of duly and truthfully completed and signed documents, thereby making an offer to enter into a Portal Use Agreement and accepting these Portal Terms of Use.
  - (b) THE will review the information and documents submitted and declare acceptance of the Company's offer by sending an email containing a user name and a password which is available via a link provided. The Portal Use Agreement shall enter into effect upon receipt of this e-mail by the Company.

- (12) The registered Company has an obligation to ensure that the data and details provided in the course of the registration process and during use of the Portal is kept up to date. If any of this data changes during the term of this Portal Use Agreement, the Company shall correct the relevant details in its portal settings without undue delay. If the relevant details cannot be changed in the Portal settings, the registered Company shall notify THE of the changed data or information in text form (cf. Section 126b of the German Civil Code (*BGB*)).
- (13) THE may refuse to grant a Company or a User access to the Portal in the following cases:
- (a) If the documents and information referred to in section 4(4), (5) or (6) above are not correct and/or have not been submitted in full or have not been sent by the deadlines specified in section 4(8) above. In this case, the admission process can be restarted at the earliest after the expiry of a six-month blocking period. If any such blocking period would cause undue hardship to the Company, THE may, at the Company's request, grant an earlier admission upon submission of all required documents and information.
  - (b) If the Company requests access to the Portal in the market role of balancing group manager and there are concrete indications of unreliability of the Company (in the case of natural persons) or the members of the board of management (in the case of legal entities). The Company will be classified as unreliable if there are concrete indications that the Company will not properly fulfil its statutory obligations as balancing group manager or its obligations under these Portal Terms of Use or under the balancing group contract. Without limitation, such indications shall be deemed to exist if the (European) certificate of good conduct of the Company (in the case of natural persons) or a member of the board of management (in the case of legal persons) shows an entry for fraud or a comparable criminal offence.
  - (c) If there is any other good cause.
  - (d) If admission to the Portal is refused, the documents submitted for registration will be returned to the applying Company, relieving THE of any further responsibilities.
- (14) Companies admitted to the market role of "balancing group manager" or "network operator" in the Portal may authorise other companies by power of attorney to act as service providers. Any such authorisation shall be submitted without delay. If the authorised Company agrees, THE will assign the authorised Company as service provider to the authorising Company. A service provider may perform certain actions via the Portal for the Company



to which it is assigned. Section 6 shall apply mutatis mutandis. For the duration of the assignment vis-à-vis THE and other authorised Companies the service provider will be deemed to be authorised to perform such actions. Both the service provider and the Company granting the power of attorney can terminate the assignment by notifying THE in writing (cf. section 126 of the German Civil Code (*BGB*)).

## 5 Provision of security

- (1) In justified cases, THE may require the Company requesting access as a balancing group manager to provide THE with security for any and all future payment claims arising out of or in connection with the balancing group contract still to be concluded before admitting said Company to the Portals. THE will decide on the need for such security after having reviewed all documents submitted and will only request such security if there are no other objections to the Company's admission to the Portals. The Company concerned may already provide such security beforehand.
- (2) Without limitation, a justified case shall be deemed to have occurred if, in the last two (2) years prior to the conclusion of the balancing group contract, a previous balancing group contract between THE and the Company was terminated extraordinarily in accordance with section 37 (3) (b) of the Terms and Conditions for the Balancing Group Contract.
  - (a) A justified case shall also be deemed to have occurred if, on the basis of information obtained about the Company from a credit agency recognised by the business world or on the basis of any other factual situation, there is a justified concern that it will not meet its obligations under the balancing group contract still to be concluded and the Company does not rebut any such concern by providing suitable evidence of its creditworthiness within five (5) Business Days after being requested to do so by THE. For this purpose, the Company may submit suitable evidence of creditworthiness such as the certificate of an auditor, a certificate of a credit institution authorised to do business in the Federal Republic of Germany confirming sufficient liquidity, the latest annual report, an extract from the commercial register and, if necessary, further information relevant to creditworthiness.
  - (b) Notwithstanding the foregoing, a well-founded concern shall also be deemed to exist in any case if any rating from a recognised rating agency is not at least
    - a long-term rating of BBB- or better from Standard & Poor's,
    - a long-term rating of BBB- or better from Fitch,

- a long-term rating of Baa3 or better from Moody's,
- a Creditreform rating (credit index score 2.0) of risk class II (in accordance with the Creditreform Rating Map Germany as amended from time to time).

The foregoing shall also apply if the Company does not have a comparable rating from any other recognised rating agency. If several ratings are available, a reasonable concern shall also be deemed to exist if only one of said ratings does not at least correspond to the aforementioned rating level.

- (c) When requesting the Company to provide security, THE shall disclose to the Company all of the data and the material content of the information on which the reasonable concern according to section 5(2) is based.
- (3) The Company shall provide such security within two (2) months of THE's request. If such security is not provided in time, registration will be refused and the documents provided for the registration will be returned to the applying Company, relieving THE of any further responsibilities.
  - (4) Types of security include unconditional and irrevocable bank guarantees, unconditional and irrevocable company guarantees (including without limitation unrestricted letters of comfort and ultimate parent company guarantees) and unconditional, irrevocable and directly enforceable guarantees of a credit institution duly authorised to do business in the Federal Republic of Germany. It shall be for the Company to for select the type of security.
  - (5) As regards the requirements to be met by the individual types of security, the following shall apply:
    - (a) A bank security shall be provided in the form of an unconditional, irrevocable and directly enforceable guarantee of a credit institution duly authorised to do business in the Federal Republic of Germany. The credit institution issuing the guarantee shall have at least a long-term rating of A- from Standard & Poor's or a long-term rating of A3 from Moody's or belong to the German savings bank or cooperative sector.
    - (b) For corporate guarantees and sureties, the Company providing the collateral shall have a long-term rating of at least A- from Standard & Poor's, a rating of at least A- form Fitch, a long-term rating of at least A3 from Moody's or a Creditreform rating (credit index score 2.0) of at least risk class I (in accordance with the Creditreform Rating Map Germany as amended from time to time). Furthermore, the total amount of the collateral deposited with THE by a Company may not exceed 10% of the liable equity capital of the collateral provider. The

Company shall provide appropriate evidence thereof to THE by providing the security deposit.

- (c) Any surety or guarantee declaration shall contain a waiver of the defence of failure to pursue remedies, the defence of voidability and set-off. Any absolute surety or guarantee shall be valid for a duration of at least twelve (12) calendar months from the date of issue.
- (6) The amount of the security shall be EUR 100,000 for each Company intending to conclude a balancing group contract with the MAM. After issuing the first six valuable balancing group invoices (invoice amount > EUR 0.00), THE will calculate the security according to the rules of the balancing group contract still to be concluded.
- (7) THE may draw on the security according to the rules of the balancing group contract still to be concluded. The current version of the terms and conditions for the balancing group contract is available on the website.
- (8) THE will immediately return the security if the Company is not admitted to the Portals or if the admission to the Portals is terminated without a balancing group contract having been concluded by the Company. The foregoing shall also apply mutatis mutandis if the contract for the relevant balancing group is terminated.

## **6 Balancing group contract management (only BGM market role)**

Companies admitted in the market role of "balancing group manager" can conclude and terminate balancing group management contracts via the Portals. To do so, an authorised User of the Company must first log in to the protected area of the relevant Portal and enter the required data via the User interface. Submitting the data via the Portal only creates an offer to conclude a contract. The actual conclusion, amendment or termination of a contract only becomes effective upon confirmation of the respective transaction by THE.

## **7 Registration for VTP Portal and VTP nominations (only BGM market role)**

- (1) The VTP Portal may only be used if there is a valid balancing group contract of the "FZK" type in the protected area of the Customer Portal.
- (2) By offering to conclude such a balancing group contract, the admitted User simultaneously submits an offer to conclude a contract on the use of the VTP Portal. In doing so, the User implicitly declares its consent to the Company name and, if reported, the telephone number being published in the VTP Portal. The User has the right to withdraw its consent to the publication of the Company name and telephone number at any time with a notice period of five (5) business days in writing to THE.

- (3) After conclusion of a balancing group contract, the admitted User will receive the access details (User name, password) for the use of the VTP Portal at the latest by the date the balancing group is activated by THE. The receipt of said access details establishes a contract on the use of the VTP Portal between THE and the admitted User ("VTP Portal Usage Relationship"), and the User is granted access to the VTP Portal and the information provided on that Portal along with the functionalities mentioned under section 3 (2) as further defined in the service description on the Trading Hub Europe website.
- (4) The User name and password are non-transferable.
- (5) VTP nominations shall be submitted by the authorised Users using the balancing group contract number. For the transfer of quantities between balancing groups, only one nomination of the disposing balancing group manager and one nomination of the acquiring balancing group manager is required in each case.
- (6) Due to a default setting, the Company name and, if reported, the telephone number of the balancing group manager are always displayed in the VTP Portal for the balancing group contract number. This function can be deactivated with immediate effect by the relevant balancing group manager's administrator in the VTP Portal. It can be reactivated at any time.

## **8 Master data maintenance**

- (1) In the protected area of the Customer Portal, the authorised User can view and edit its master data and, if applicable, the master data of the associated company, depending on the authorised User's Portal authorisation.
- (2) Depending on the authorised User's Portal authorisation, the User is obliged to check that all User and Company data are complete and correct and shall maintain said data on its own responsibility (changes of name or address, etc.). Data maintenance constitutes a material contractual obligation.

## **9 User accounts**

- (1) In the course of the registration process pursuant to section 4, THE will create a User account for a natural person for the Company. The User will have access to the functionalities detailed in section 3 as defined by its market role according to section 4 (1).
- (2) The first User shall name a responsible User for the VTP Portal.
- (3) Each User shall duly and truthfully complete the "Market Participant's power of attorney for the user" form and shall submit a certificate of good conduct

and a certified copy of an identity card by post. If all requirements are met, THE will grant the User access to the Portal.

- (4) The Company shall only assign User accounts to individuals who are entitled to represent the Company on the Portal vis-à-vis THE and other companies, and shall authorise such individuals by signing the "Market Participant's power of attorney for the user" form.
- (5) Login details are non-transferable. If another, previously unnamed User is to replace an authorised User, a new authorisation must be issued and the previous User's account must be deactivated by the Company.
- (6) THE shall have the right to suspend or terminate a User's access if there are reasonable grounds to believe that the User is or has been in breach of these Portal Terms of Use or any applicable law relating to Portal use, or if there are reasonable grounds to believe that the User is unreliable, or if THE has another legitimate interest in suspending the User. THE will give appropriate consideration to the legitimate interests of the affected Company when deciding to lock an account.
- (7) The Company shall be generally liable for any and all activities conducted under its User accounts. The foregoing shall not apply if the Company is not responsible for any misuse of its User accounts because it has not breached its due diligence obligation.

## **10 Scope of permitted use, monitoring of User activities**

- (1) Each User's right of use shall be limited to accessing the respective Portal and using the services available on such Portal in each case as provided in these Portal Terms of Use.
- (2) The Company shall be responsible for creating the technical prerequisites for the use of the services available via the Portals within its own sphere of influence. THE shall have no obligation to provide any advice in this regard.
- (3) It is hereby pointed out by THE that the User's activities may be monitored to the extent permitted by law. Such monitoring may include logging and analysing IP connection details in the event of a suspected breach of these Portal Terms of Use and/or in the event of a concrete suspicion of any other illegal act or criminal offence in connection with the use of the Portal.

## **11 Portal availability**

- (1) The right to use the Portals and their functions is granted only to the extent that it is technically and operationally feasible and reasonable for THE to

make the Portals and their functions available. THE will make every effort to ensure uninterrupted use of the Portals and their functions. However, temporary restrictions or interruptions may occur due to technical problems (including, without limitation, power cuts, hardware and software errors, technical problems affecting data lines).

- (2) THE shall be entitled to temporarily restrict its services to the extent required to maintain the security and integrity of the technical facilities or to implement technical measures that serve the proper or improved provision of the services or in the event of the occurrence of unforeseeable technical malfunctions including, without limitation, power cuts, hardware or software errors or technical problems affecting data lines. In such cases the Company shall not have any legal claim against THE to use the Portal in question. THE will inform the Company thereof without undue delay by e-mail and take all reasonable steps to restore Portal availability.

## **12 Special due diligence obligations of the admitted Company**

- (1) The Company shall use the Portals only as permitted under applicable laws and regulations.
- (2) The Company shall keep the login details confidential and take all necessary precautions to prevent unauthorised third parties from gaining access to the login details. The Company shall inform THE without undue delay of any suspected use of the login details by third parties.
- (3) All data submitted to THE as part of the use of the Portals shall always be complete and correct.
- (4) The Company shall ensure that no malware (including, without limitation, computer viruses, Trojans, etc.) is present on its devices, which could lead to damage or any adverse effects on the hardware or software of THE or other Company or Users. The foregoing shall also apply mutatis mutandis to third-party software used by the Company, including, without limitation, special encryption software.

## **13 Term, termination and right to rescind the contract in the event of system errors**

- (1) Each Portal Usage Agreement is concluded for an indefinite period of time. The Company may terminate the Portal Usage Agreement at any time with a notice period of five (5) Business Days in writing if no valid balancing group contracts exist with THE. In the event that balancing group contracts exist, section 6 shall apply.

- (2) If, after Portal registration, reasonable doubts arise as to the correctness of the Company's registration information provided under these Portal Terms of Use, THE may terminate the Portal Usage Agreement with immediate effect, provided that the Company has been unable to dispel such doubts after expiry of a reasonable period of time for comment. In deciding on termination without notice, THE will give appropriate consideration to the legitimate interests of the Company concerned. In case of termination, a new admission process of the Company or another Company with the same management can be started no earlier than after a six-month blocking period.
- (3) THE shall be entitled to terminate the Portal Usage Agreement with immediate effect if the Company has breached or is in breach of its obligations pursuant to section 4 (12). In deciding on termination without notice, THE will give appropriate consideration to the legitimate interests of the Company concerned. In the event of termination, a new admission process of the Company or of another Company with the same management can be started no earlier than after a six-month blocking period.
- (4) Notice of termination shall be provided in text form (cf. Section 126b of the German Civil Code (*BGB*)).
- (5) Upon termination of a balancing group contract between THE and the Company, the Portal Use Agreement will terminate at the same time, unless there is another balancing group contract between THE and the Company or THE expressly declares the continuation of the Portal Use Agreement prior to the termination date of the balancing group contract. THE will give appropriate consideration to the legitimate interests of the Company when deciding on the continuation.
- (6) Upon termination of the Portal Usage Agreement, THE will block Portal access for the Company concerned and its Users. All personal data will be deleted in accordance with the data protection regulations.
- (7) THE shall be entitled to rescind a contract concluded in the protected area within two (2) Business Days if the conclusion of such contract was only made possible by errors in connection with electronic data processing and if it is impossible or unreasonable for THE to render the service.
- (8) The foregoing shall be without prejudice to the Parties' statutory rights to terminate a contract.

## 14 Use of data

- (1) The market data submitted by the Company to THE as part of its use of the Portal enables THE in its capacity as market area manager to comply with its



statutory responsibilities to publish and provide information relating to balancing group management and system balancing activities in the market area and thus to increase transparency for the market partners. Where market data and/or content submitted to THE is the property of the Company submitting the data and/or content, the Company shall grant THE, to the extent required for handling the balancing group management processes, the free-of-charge and transferable right to:

- store such data and/or content,
  - publish such data and/or content by displaying such data and/or content in the protected area of the Portal and to make such data and/or content accessible to the Users of the Portal,
  - process and reproduce such data and/or content, insofar as this is necessary for the provision or publication of such data and/or content in the protected area, and
  - grant other companies and Users the right to use such data and/or content.
- (2) THE reserves the right to edit, block or remove any market data provided on the Portal if and to the extent that THE becomes aware or has reasonable grounds for suspecting that such data and/or content has been transmitted to THE inaccurately, incompletely or unlawfully or is presented in an inaccurate or incomplete manner. In so doing THE will give appropriate consideration to the legitimate interests of the transmitting Company.

## 15 Data protection

- (1) THE's quality standards include the responsible handling of the User's personal data and ensuring compliance with the German Data Protection Act and the General Data Protection Regulation (GDPR) as amended from time to time. THE will process the personal data provided by the User only to the extent permitted by law and by contract for the purpose of admission to, and use of, the online Portals and contractual performance (cf. Art. 6 et seq. GDPR). THE will only process or use the data submitted by the User for other purposes if the User has given its express consent or if THE is legally obliged to do so. Further information on data protection is contained in THE's Privacy Policy (available on the THE website). This Privacy Policy shall not form part of the respective Portal usage relationship.
- (2) The Parties undertake to comply with all relevant provisions of all applicable data protection laws and to protect any and all data they collect and store in connection with the performance of the contract against unauthorised access by third parties.



## 16 Confidentiality

- (1) Save as otherwise provided in paragraph (2) of this section 16, the Parties shall treat as confidential all information received in connection with registration under these Portal Terms of Use and designated as confidential (hereinafter referred to as "Confidential Information") and shall not disclose or make available any such Confidential Information to third parties without the affected Party's prior written consent. The Parties undertake to use Confidential Information exclusively for the purpose of implementing the respective contract.
- (2) Each Party shall be entitled to disclose Confidential Information it has received from the other Party without the latter's written consent
  - (a) to an affiliated entity, provided that such entity is under a similar obligation of confidentiality,
  - (b) to its shareholders, representatives, agents, advisers, banks and insurance companies, if and to the extent that disclosure is required to ensure the proper performance of the relevant contractual obligations, and provided that such persons or entities have undertaken to keep such Confidential Information confidential prior to their receipt thereof or are subject to a statutory professional confidentiality requirement in respect of such Confidential Information; or
  - (c) to the extent that such Confidential Information was legitimately known to the receiving Party prior to receiving such Confidential Information from the other Party, already in the public domain or becomes publicly available other than through an act or omission of the receiving Party, or must be disclosed by the disclosing Party under any statutory provision or a court or official order or a request received from a regulatory authority, or.
- (3) The obligation to observe confidentiality shall end two (2) years after receipt of the information if no balancing group contract is concluded. The documents shall then be destroyed. In all other respects, the confidentiality obligations under the balancing group contract shall also apply to the Confidential Information received in the course of registration under these Portal Terms of Use.

## 17 Liability

- (1) THE shall only be liable hereunder if it fails comply with a material contractual obligation the breach of which either places at risk the achievement of the contract's purpose and/or the fulfilment of which is a prerequisite for the proper performance of the contract, and on whose fulfilment the Company

may regularly relies and may rely (hereinafter referred to as "Cardinal Obligation").

- (2) THE shall not be liable if the circumstances giving rise to a claim against THE
  - (a) are based on an unusual and unforeseeable event beyond THE's control, the consequences of which could not have been avoided despite the exercise of reasonable care, or
  - (b) were brought about by THE complying with a legal obligation.
- (3) THE shall not be liable for any failures of or disruptions to the technical infrastructure outside THE's sphere of responsibility ("Force Majeure").
- (4) The foregoing limitations of liability under section 17(1) to (3) shall not apply in the case of
  - (a) damage caused by intent or gross negligence,
  - (b) personal injury (injury to life, body, health),
  - (c) as well as the assumption of guarantees.

The foregoing shall be without prejudice to THE's liability under mandatory statutory provisions (including without limitation the Product Liability Act).

## 18 Modification of these Portal Terms of Use

- (1) THE reserves the right to modify these Portal Terms of Use to the extent that such modification is reasonably acceptable to the User, with appropriate consideration being given to the legitimate interests of THE. Without limitation, an amendment shall be deemed reasonable if it is required in order to be able to comply with any changes in statutory, legal or regulatory requirements. Changes to the Portal Terms of Use will be communicated to the Company in text form (cf. Section 126b of the German Civil Code (BGB)) ("Change Notice") and will come into effect four (4) weeks after notification, unless a later date is expressly specified.
- (2) If changes are made to the disadvantage of the User, the User shall have the right to terminate the respective Portal usage relationship in text form at the time the change becomes effective (exceptional right of termination). THE will inform the User in the Change Notice both of the exceptional right of termination and of the fact that the change will become effective if the User does not exercise its exceptional right of termination within the set period of time. Any modification of these Portal Terms of Use to comply with the statutory or legal requirements referred to in paragraph (1) shall in no case be deemed to be a change to the disadvantage of the Customer in the event of an adaptation to mandatory law.

## 19 Applicable law, place of jurisdiction, final provisions

- (1) The Portal Usage Agreement including these Portal Terms of Use shall be governed by and be construed and interpreted in accordance with the laws of the Federal Republic of Germany.
- (2) The place of jurisdiction for any and all disputes between THE and the Company arising from the Portal Usage Agreement and these Portal Terms of Use shall be Düsseldorf, Germany, to the extent that such an agreement on jurisdiction is permissible.
- (3) No oral agreements have been made in relation to these Portal Terms of Use.
- (4) If any provision of these Portal Terms of Use is or becomes invalid or unenforceable, the remaining provisions shall remain full force and effect. In place of the invalid or unenforceable provision, the valid provision that comes closest to the purpose of the invalid provision shall be deemed to be agreed. In the event of any gap or loophole herein, that provision shall be deemed to be agreed which corresponds to what would have been agreed in accordance with the purpose hereof had the Parties considered the matter.
- (5) These Portal Terms of Use are available in German and English. Only the German version shall be legally binding.