

## Terms and Conditions of GASPOOL Balancing Services GmbH for System Balancing Transactions

agreed by and between

Provider

– hereinafter referred to as **Provider** –

and

GASPOOL Balancing Services GmbH, Anna-Louisa-Karsch-Str. 2, D-10178 Berlin,

– hereinafter referred to as **MAM** –

– Provider and MAM hereinafter also referred to individually as a **Party** or collectively as the **Parties**

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## WHEREAS

In compliance with its obligations under the German Gas Third-Party Access Regulations (*Gasnetzzugangsverordnung - GasNZV*) as amended from time to time as well as in accordance with the requirements set out in the administrative ruling on gas balancing handed down by the German national regulatory authority Bundesnetzagentur on 19 December 2014 (implementation of the Network Code on Gas Balancing of Transmission Networks, so-called “GaBi Gas 2.0” decision, ref: BK7-14-020), the MAM takes market-based system balancing actions (“**External System Balancing Actions**”) to physically balance the gas supply networks in the market area GASPOOL (“**Market Area**”) and enters into system balancing transactions with third parties (“**External System Balancing Transactions**”) to procure the gas quantities it requires for this purpose.

Section 22(1) of the German Energy Industry Act (*Gesetz über die Elektrizitäts- und Gasversorgung - EnWG*) imposes an obligation on the operators of energy supply networks to procure the energy they require to balance imbalances in a transparent, non-discriminatory and market-based process. The MAM applies these principles when taking External System Balancing Actions.

### 1. Object of Contract

1. The Terms and Conditions for External System Balancing Transactions (hereinafter referred to as “**System Balancing Terms & Conditions**”) set out herein, including the annexes attached hereto, these comprising the Balancing Product Description “Commodity” (**Annex 1**) and the Balancing Product Description “Flexibility Services” (**Annex 2**) (with these annexes being referred to as the “**Balancing Product Descriptions**”), as applicable from 1 October 2018, set out the detailed provisions governing the business relationship between the MAM and the Provider and provide the contractual framework for all individual contracts (each a “**System Balancing Transaction Agreement**”) to be entered into by the MAM and the Provider in relation to any External System Balancing Action taken by the MAM using any of the following products (the “**Balancing Products**”):
  - a) Short-Term Balancing Services: The product category “Short-Term Balancing Services” comprises such Balancing Products where the MAM buys (System Buy) or sells (System Sell) the gas quantities it requires to balance any physical gas imbalances occurring within the Market Area. The Balancing Products falling into this product category are tendered on a Rest-of-the-Day basis (“**RoD**”). The detailed arrangements governing these Balancing Products are set out in the Balancing Product Description provided in Part I of Annex 1 to these System Balancing Terms & Conditions.
  - b) Long-Term Options (“**LTO**”): The product category “Long-Term Options” comprises such Balancing Products where the MAM enters into availability contracts with Providers who

undertake to ensure their availability to supply or receive the gas quantities the MAM might need to buy (System Buy) or sell (System Sell) to balance any physical gas imbalances occurring within the Market Area. The Balancing Products falling into this product category are procured on a Rest-of-the-Day basis (“**RoD**”). The detailed arrangements governing these Balancing Products are set out in the Balancing Product Description provided in Part II of Annex 1 to these System Balancing Terms & Conditions.

c) Flexibility Services: The product category “**Flexibility Services**” comprises non-standardised Balancing Products under which the MAM makes use of flexibility services provided by Providers. The detailed arrangements governing these Balancing Products are set out in the Balancing Product Description provided in Annex 2 to these System Balancing Terms & Conditions.

2. In the event of any discrepancy between any Balancing Product Description (Annexes 1 and 2 to these System Balancing Terms & Conditions) and any other provision of the System Balancing Terms & Conditions set out herein, the provisions set out in the relevant Balancing Product Description shall prevail. In the event of any discrepancy between the System Balancing Terms & Conditions and the terms and conditions applicable for use of the bid platform operated by GASPOOL (the “**ASP**”; with the terms of use being referred to as the “**Portal Terms of Use**”)<sup>1</sup>, the provisions of the System Balancing Terms & Conditions shall prevail. Save where expressly agreed otherwise between the relevant parties, any and all other contracts in place between the MAM and the Provider shall remain unaffected.

## 2. Formation of System Balancing Framework Agreement Incorporating System Balancing Terms & Conditions

1. The MAM will only enter into a framework contract with a Provider for the provision of balancing gas or balancing services to the MAM (“**System Balancing Framework Agreement**”) on the basis of the System Balancing Terms & Conditions set out herein if all of the following conditions are met:

a) The Provider has entered into a separate contract incorporating these System Balancing Terms & Conditions with the MAM, registering a dedicated balancing group for system balancing purposes that can be used to record the gas quantities supplied to or received from the MAM under any System Balancing Transaction Agreement made with the MAM. For processing purposes this balancing group used by the Provider for system balancing purposes must be registered as a subordinate balancing group, i.e. it must be linked to

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<sup>1</sup> <https://regelenergieportal.gaspool.de/mts.web/gow.repo/?inst=repo#>, this is the separate login-protected area of the portal provided by the MAM which is used to operate the MAM's system imbalance management processes.

another higher-level balancing group via linking arrangements in accordance with the MAM's Balancing Group Contract Terms & Conditions. Both these linked balancing groups must be registered by and for the same Provider.

b) The Provider has been admitted as a registered user of the ASP platform in accordance with the Portal Terms of Use applied by the MAM

2. In order to extend an offer to enter into a balancing group contract for system balancing purposes the Provider shall complete the applicable contract template (provided on the MAM's website at <https://www.gaspool.de/en/download/balancing-group-contract-control-energy-h-gas/> for high CV gas and at <https://www.gaspool.de/en/download/balancing-group-contract-control-energy-l-gas/> for low CV gas), sign it and send the original signed version to the MAM. In said offer the Provider shall confirm its acceptance of the System Balancing Terms & Conditions set out herein. A balancing group contract for system balancing purposes is formed between the Provider and the MAM once the MAM also signs the original signed version of the Provider's offer.
3. Whenever the Provider wishes to submit a binding bid for a Balancing Product via the ASP platform, the Provider will be required to again confirm its acceptance of the System Balancing Terms & Conditions in relation to the Balancing Product in question right before submitting the bid.

### **3. Tendering and Contract Award Process**

Sections 3.1 to 3.5 below set out the general rules for the tendering and contract award process for the procurement of Balancing Products. Section 3.5 does not apply to Balancing Products falling into the product category "Flexibility Services".

The specific rules governing the tendering and contract award process for each Balancing Product are defined in the applicable Balancing Product Description (Annexes 1 and 2 to these System Balancing Terms & Conditions) as well as in each invitation to tender.

#### **3.1 Purpose of Tendering and Contract Award Process**

The MAM engages in a tendering and contract award process for each Balancing Product with the aim of entering into System Balancing Transaction Agreements with market participants. Save where otherwise provided in these System Balancing Terms & Conditions, all tendering processes will be announced and carried out via the ASP platform and the MAM's website at <https://www.gaspool.de/en/>.

For this purpose, the MAM publishes invitations to tender in response to which the Provider may submit bids in accordance with the requirements set out in the applicable Balancing Product Description as well as in the relevant invitation to tender. Where a bid submitted by the Provider is accepted by the MAM, the Provider has an obligation to the MAM to provide the Balancing

Product contracted in each case in accordance with the arrangements applicable in relation thereto.

### **3.2 Submission of Bid and Content of Bid**

1. All bids must be complete and not be subject to any conditions or reservations. A bid will be deemed to be complete if it contains all the information required to be specified under the applicable Balancing Product Description and the provisions set out in the relevant invitation to tender.
2. Each bid that is placed on the ASP platform or received by the MAM in accordance with paragraph (4) below will receive a time stamp documenting the time of receipt.
3. Subject to sentences 2 and 3 of this paragraph, once the Provider has submitted a bid, the Provider shall generally remain bound by its bid up until the end of the relevant Bidding Period. Where under the rules applying to the relevant Balancing Product the Provider is granted the right to subsequently withdraw a bid previously placed by the Provider, the corresponding process and deadlines are defined in the applicable Balancing Product Description. Once the deadline for the withdrawal of a bid has expired, the bid will be legally binding on the Provider.
4. In the event that the ASP platform is unavailable, Providers may submit, amend and withdraw their bids by sending an email to [dispatching@gaspool.de](mailto:dispatching@gaspool.de). Where a Provider intends to submit, amend or withdraw a bid by email, the Provider shall announce this to the MAM's dispatching team by telephone by calling the number of the 24/7 dispatching hotline published on the MAM's website at <https://www.gaspool.de/en/contact/dispatching/>.
5. Any and all costs incurred by the Provider in the course of preparing and/or submitting a bid shall be borne by the Provider.
6. The Provider shall be fully and solely responsible for the correctness and completeness of any and all information specified in any bid. Any bid which is not in accordance with the requirements set out in these System Balancing Terms & Conditions (including the Balancing Product Descriptions set out in Annexes 1 and 2 hereto) or the relevant invitation to tender, or which is subject to a condition or reservation, incomplete or unclear, will be deemed not to have been submitted.

### **3.3 Tendering Process and Contract Award**

When inviting tenders for a Balancing Product the MAM will create and maintain an ordered list of all bids received for that Balancing Product ("**Merit Order List**"). The detailed rules for the arrangement of bids in each Merit Order List and the order in which they are accepted are set out in the applicable Balancing Product Description.

### 3.4 Formation of System Balancing Transaction Agreements

1. Except as otherwise provided in each case, a Short-Term Balancing Service will be created between the MAM and the Provider where the MAM issues an instruction to the Provider (“**Call Order**”) to supply and/or receive (as the case may be) a gas quantity offered by the Provider in a bid for a Short-Term Balancing Service (each such bid an “**STB Bid**”) by sending an Edig@s request message (“**REQUEST**”) to the Provider specifying the details of such Call Order, or alternatively by telephone. REQUEST Call Order messages can be sent via different communication channels, in particular AS 2 or email. The MAM and the Provider will agree on the use of a specific communication channel for REQUEST Call Order messages. The communication channel can only be changed by mutual consent with the other Party and only be effected after a successful test of the functionality. Responsibility for the functionality of the changed communication channel lies with the Party that initiated the change. Providers whose STB Bids have not been accepted shall have no right to receive express notice thereof from the MAM.
2. A System Balancing Transaction Agreement for a Long-Term Option placing an obligation on the Provider to ensure its availability to supply and/or receive (as the case may be) the gas quantity offered by the Provider in a bid for a Long-Term Option (each such bid an “**LTO Bid**”) will be created between the MAM and the Provider once the Provider receives notice of acceptance of such LTO Bid from the MAM by email. Except as otherwise provided in each case, the MAM will instruct (“**Call Order**”) the Provider to supply or receive (as the case may be) the contracted gas quantity in accordance with the provisions applying to the relevant Balancing Product by sending a REQUEST message to the Provider specifying the details of such Call Order, or alternatively by telephone. REQUEST Call Order messages can be sent via different communication channels, in particular AS 2 or email. The MAM and the Provider will agree on the use of a specific communication channel for REQUEST Call Order messages. The communication channel can only be changed by mutual consent with the other Party and only be effected after a successful test of the functionality. Responsibility for the functionality of the changed communication channel lies with the Party that initiated the change. Providers whose LTO Bids have not been accepted by the MAM will be notified thereof by email.
3. A System Balancing Transaction Agreement for a Flexibility Service placing an obligation on the Provider to ensure its availability to provide the Flexibility Service offered by the Provider in a bid for this type of Balancing Product (each such bid a “**Flexibility Bid**”) will be created between the MAM and the Provider once the Provider receives notice of acceptance of such Flexibility Bid from the MAM by email. Following acceptance of any Flexibility Bid submitted by the Provider, the Provider shall be required to enter into a separate contract governing the relevant Flexibility Service (a “**Flexibility Service Agreement**”) with the MAM on the terms set out in Appendix 1 or 2 (as the case may be) to Annex 2 to these System Balancing Terms & Conditions. With respect

to the MAM's actual use of the services agreed in relation to the relevant product the arrangements set out in the applicable Balancing Product Description as well as in the relevant invitation to tender shall apply. Providers whose Flexibility Bids have not been accepted by the MAM will be notified thereof by email.

4. In the event that a Call Order cannot be issued by way of a REQUEST message or by telephone for technical reasons, the MAM will issue that Call Order by sending an email to the email address specified by the Provider as the 24/7 dispatching contact in the data sheet submitted when registering with the MAM as a provider of balancing gas and/or balancing services, or, where no such email address has been specified by the Provider, to the email address specified by the Provider as the dispatching contact when entering into the relevant balancing group contract. In each such case the Provider shall confirm the relevant Call Order to the MAM by telephone by calling the MAM's 24/7 dispatching hotline published on the MAM's website at <https://www.gaspool.de/en/contact/dispatching/> or by sending an email to [dispatching@gaspool.de](mailto:dispatching@gaspool.de). This confirmation is required for verification purposes only; the validity of the System Balancing Transaction Agreement concerned shall remain unaffected.

### **3.5 Supply/Receipt of Gas in Specified Network Areas or at Specified Physical Entry or Exit Points**

1. In each invitation to tender the MAM will specify either the individual physical entry and/or exit point(s) at which Providers are to supply or receive gas under a Balancing Product or one or several network areas comprising a number of such points. A list of these network areas and the physical entry and/or exit points they encompass is provided on the MAM's website at [https://www.gaspool.de/fileadmin/download/regelenergie/GASPOOL\\_System\\_points\\_physical\\_nominations\\_180917.pdf](https://www.gaspool.de/fileadmin/download/regelenergie/GASPOOL_System_points_physical_nominations_180917.pdf).
2. On receiving a Call Order from the MAM, the Provider shall supply (System Buy) and/or receive (System Sell) the instructed Balancing Product in accordance with the applicable Balancing Product Description in the agreed gas quality (high CV gas and/or low CV gas) and in the network area(s) or at the physical entry and/or exit point(s) specified in the course of the corresponding tendering process.
3. All entry and/or exit capacity rights required by the Provider in the relevant network area or at the relevant physical entry and/or exit point (the "**Delivery Location**", as the case may be) in order to be able to supply and/or receive gas under a Balancing Product must be procured by the Provider for the duration of the entire Contract Period at the Provider's cost. No interruptible entry capacity and no transportation capacity based on backhaul services may be used for this purpose.



4. The title to any gas supplied or received under a Call Order, and the risk of loss or damage relating to any such gas, shall pass between the MAM and the Provider in the agreed gas quality (high CV gas or low CV gas) at the virtual trading point of the Market Area GASPOOL (the “VTP”).
5. In relation to each Call Order, the MAM shall perform its obligation to make or take (as the case may be) delivery of the instructed gas quantity by nominating a gas quantity for delivery to or offtake from (as the case may be) the balancing group used by the Provider that is equal to the gas quantity stated in the corresponding Call Order.
6. Where the Provider has agreed to supply (System Buy) or receive (System Sell) gas in a specified network area or at a specified physical entry or exit point, it shall cause the required physical effect via its balancing group or balancing subgroup (as the case may be)
  - a) by way of making corresponding nominations or renominations in respect of a relevant cross-border interconnection point, market area interconnection point or storage connection point so as to initiate the corresponding physical inputs or offtakes of gas. In so doing the Provider shall ensure
    - that it causes gas to be physically delivered and/or physical offtakes of gas to be reduced where it has agreed to supply gas to the MAM;
    - that it causes gas to be physically offtaken and/or physical inputs of gas to be reduced where it has agreed to receive gas from the MAM.
  - The relevant physical input or output nominations or renominations, as the case may be, shall be purposefully made with a view to causing the required effect.
  - b) (as an alternative to paragraph (a) above) by securing that an end user who receives gas at an exit point equipped with a supply meter installation that records hourly consumption (each such exit point an “RLM Exit Point”) and whose RLM Exit Point is registered to the balancing group or a balancing subgroup of the Provider
    - reduces its demand accordingly where the Provider has agreed to supply gas to the MAM, or
    - increases its demand accordingly where the Provider has agreed to receive gas from the MAM.
7. Throughout the relevant Call Period the Provider shall then procure that the physical offtakes made at one or several such RLM Exit Points (with eligible RLM Exit Points being those assigned to the allocation groups “**RLMoT**”, i.e. RLM Exit Points with a structured allocation profile, and “**RLMmT**”, i.e. RLM Exit Points with a flat allocation profile) belonging to the Provider’s balancing group or balancing subgroup (as the case may be) and located within the agreed network area (as specified by the MAM in the relevant invitation to tender and as offered by the Provider) are reduced

(“**Demand Reduction**”) or increased (“**Demand Increase**”) by an amount equal to the bid size agreed in each case (the “**Demand Response Rate**”). The Demand Reduction or Demand Increase (as the case may be) to be delivered in each case will be measured in relation to the rate at which gas was offtaken at the relevant RLM Exit Point(s) (RLMoT and/or RLMmT) in the hour in which the MAM issued the relevant Call Order (the “**Demand Response Reference Rate**”). The rate at which gas is offtaken at the relevant RLM Exit Point(s) (RLMoT and/or RLMmT) must not exceed (in the case of an instructed Demand Reduction) or be less than (in the case of an instructed Demand Increase) the difference between the Demand Response Reference Rate and the Demand Response Rate instructed in the corresponding Call Order. If during any Call Period another Call Order for a Demand Reduction or Demand Increase is issued in respect of the time period immediately following the relevant Call Period, the relevant Demand Response Reference Rate will remain unchanged, i.e. the Demand Response Reference Rate applicable in the following Call Period will be equal to the Demand Response Reference Rate applicable in the preceding Call Period. In each hour of a Call Period the Provider instructed in each case shall continue to make corresponding gas deliveries equal to the instructed Demand Response Rate to its balancing group or balancing subgroup (as the case may be) by nominating inputs for delivery at the VTP and/or physically delivering gas to the Market Area, e.g. at market area interconnection points, cross-border interconnection points, storage connection points or entry points from production facilities. In no case shall the Provider reduce these gas deliveries.

8. Where the Provider receives a request for evidence from the MAM, the Provider shall prove in a suitable manner that the relevant change in demand was purposefully effected as a result of the Provider’s entering into the trade transaction for delivery of the relevant product subject to specific physical delivery restrictions and that the relevant change in demand had not already been prompted prior to receipt of the corresponding Call Order. Without limitation, evidence may be established based on confirmations of nominations or renominations made at physical points, allocation data and/or measured offtake data confirming that a certain demand level has been met by a relevant end user. System Balancing Transaction Agreements cannot be made for the supply (System Buy) or receipt (System Sell) of gas at any exit point that has been assigned a dedicated entry point where the corresponding entry flows are controlled on the basis of alternative flow management arrangements other than the usual nomination process.

#### **4. Notice Obligations**

1. If the Provider is unable to perform any of its obligations arising under or in connection with any System Balancing Transaction Agreement, or restricted in its ability to do so, the Provider shall notify the MAM thereof without undue delay. The Provider shall give such notification to the MAM’s dispatching team by telephone by calling the number of the MAM’s 24/7 dispatching hotline

published on the MAM's website at <https://www.gaspool.de/en/contact/dispatching/> and at the same time also by email by sending an email to [dispatching@gaspool.de](mailto:dispatching@gaspool.de). Any such notification will not release the Provider from any of its contractual obligations.

2. Each Party shall notify the other Party in a written form in accordance with section 126b of the German Civil Code (*BGB*; "Text Form"), giving advance notice of at least ten (10) business days, of any change in any of the following contact details: the contact details of the MAM's dispatching team as specified in the foregoing paragraph; the contact details of the Provider's commercial and dispatching contacts as specified by the Provider in the data sheet submitted when registering with the MAM as a provider of balancing gas and/or balancing services; where no dispatching contact was specified in the aforementioned data sheet, the Provider's dispatching contact specified by the Provider when entering into the relevant balancing group contract.

## 5. Charges and Invoicing

1. For all gas quantities supplied (System Buy) and/or received (System Sell) under a System Balancing Transaction Agreement for a Balancing Product of the type "Commodity" (Short-Term Balancing Services and Long-Term Options), the fee agreed under the relevant System Balancing Transaction Agreement shall be paid in accordance with the rules set out below. Paragraphs (2) to (4) below do not apply to services rendered under System Balancing Transaction Agreements for Balancing Products falling into the product category "Flexibility Services".
2. Where the Provider has supplied gas to the MAM (System Buy), the commodity fee payable under the relevant System Balancing Transaction Agreement in respect of each relevant gas day shall be calculated by multiplying the gas quantity instructed to be supplied under that System Balancing Transaction Agreement on that gas day by the applicable commodity charge agreed between the Parties for the supply of gas by the Provider (System Buy) under that System Balancing Transaction Agreement.
3. Where the Provider has received gas from the MAM (System Sell), the commodity fee payable under the relevant System Balancing Transaction Agreement in respect of each relevant gas day shall be calculated by multiplying the gas quantity instructed to be received under that System Balancing Transaction Agreement on that gas day by the applicable commodity charge agreed between the Parties for the receipt of gas by the Provider (System Sell) under that System Balancing Transaction Agreement.
4. If on any gas day gas was supplied or received between the Parties under more than one System Balancing Transaction Agreement for a Balancing Product of the type "Commodity", the MAM may aggregate all fees payable pursuant to section 5(1) to (3) above and show them as a single item.

5. Where the MAM has made use of any balancing service contracted under a System Balancing Transaction Agreement for Balancing Products falling into the product category “Flexibility Services”, the fee payable in each case shall be as agreed for the relevant Balancing Product.
6. All fees and charges shall be invoiced on a monthly basis. Immediately after the end of each gas month during which gas was supplied or received by either Party, the MAM shall raise an invoice for all gas days of the relevant gas month and provide such invoice to the Provider. All payments to be made by either Party to the other Party shall be effected within 30 calendar days following the end of the relevant delivery month.
7. Any and all applicable taxes and/or other public charges shall be added to each invoice by the MAM, with all applicable taxes and/or other public charges to be determined and itemised separately. All payments must be made within the agreed payment periods or by the agreed due dates (as the case may be) using a fixed value date. Payment will only be deemed to have been made once the amount payable has been credited to the receiving Party’s account as agreed between the Provider and the MAM.
8. All invoices will be issued electronically and sent to the Provider by email in Portable Document Format (PDF file). The Provider shall provide the MAM with an email address to be used by the MAM for invoicing purposes within five (5) business days from the date on which the Provider has entered into a System Balancing Framework Agreement with the MAM. If the Provider fails to provide such an email address within this deadline, all invoices will be sent to the email address specified by the Provider for balancing group invoicing purposes.

## 6. Confidentiality

1. The Parties shall treat as confidential all provisions set out in each System Balancing Transaction Agreement as well as all information and data in whatsoever form they obtain in connection with the performance of such System Balancing Transaction Agreement (hereinafter referred to as “**Confidential Information**”), and – save as otherwise provided in paragraph (2) below – shall neither disclose such Confidential Information nor make it available to any third party without the prior written consent of the Party affected.
2. Each Party shall be entitled to disclose any Confidential Information it has obtained from the other Party without the written consent of the other Party:
  - a) to an affiliated entity within the meaning of section 15 of the German Joint Stock Corporation Act (*Aktiengesetz*),
  - b) to its employees, boards, representatives, consultants, shareholders, banks and insurers where and to the extent that (i) disclosure is required to ensure the proper performance of the relevant contractual obligations and (ii) 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; and/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,
- was already in the public domain or becomes publicly available other than through an act or omission of the receiving Party; or
- where the disclosing Party is required to publish or disclose such Confidential Information under any statutory provision or a court or official order or a request received from a regulatory authority.

3. The confidentiality requirement set out in paragraphs (1) and (2) of this section 6 shall expire two (2) years after the relevant System Balancing Transaction Agreement comes to an end.

## **7. Force Majeure**

1. Either Party shall be released from its contractual obligations where and to the extent that it is prevented from performing such obligations due to an Event of Force Majeure as defined in paragraph (2) of this section 7. To the extent and for such time as that Party is prevented from performing its obligations due to an Event of Force Majeure, the other Party shall be released from its corresponding obligations.
2. For the purposes of this contract, an Event of Force Majeure means any unforeseeable external circumstance which the Party affected could not have been expected to prevent or could not have prevented in good time even by applying reasonable care and taking such measures as would have been technically feasible and commercially reasonable. Such events include, without limitation, natural disasters, terrorist attacks, power failures, telecommunications failures, strikes, lawful lockouts, legal requirements and government, court or official orders (regardless of their legality).
3. The Party affected in each case shall inform the other Party without undue delay that it is unable to perform its obligations due to an Event of Force Majeure by providing notice to the other Party in accordance with section 4(1) of these System Balancing Terms & Conditions. In its notice the notifying Party shall state the reasons for the occurrence of the Event of Force Majeure and indicate for how long it expects to be unable to perform its obligations as a result thereof. The Party prevented from performing its obligations due to the Event of Force Majeure shall take action to ensure that it can resume the performance of its obligations without undue delay.

4. Where a Party makes use of services by a third party to perform its contractual obligations, an event that would constitute an Event of Force Majeure for that third party as defined in paragraph (2) above shall also constitute an Event of Force Majeure for that Party.

## **8. Prohibition of Inappropriate Arbitrage**

1. The Provider shall not misuse any contract it has entered into with the MAM or the balancing regime as such and/or the gas quality conversion mechanism with a view to gaining inappropriate arbitrage profits. Without limitation, inappropriate arbitrage will be deemed to be given
  - a) where the Provider, whilst supplying (System Buy) and/or receiving (System Sell) gas under a System Balancing Transaction Agreement, incurs energy imbalances in respect of its highest-level balancing group that is part of the same cascade of balancing groups as the balancing group the Provider has registered for system balancing purposes. For the purpose of determining such energy imbalances only gas quantities of the same gas quality will be taken into account.
  - b) where under any System Balancing Transaction Agreement the Provider has entered into with the MAM the Provider supplies (System Buy) and/or receives (System Sell) any gas quantities originating from the Provider's use of gas quality conversion services.
2. Where the MAM has purchased gas from the Provider (System Buy) and the Provider is in breach of any of its obligations as defined in paragraph (1) above, the MAM shall be entitled to pay in respect of the relevant gas quantity the Positive Daily Imbalance Price applicable on the day on which that gas quantity was supplied by the Provider instead of the applicable commodity charge payable under section 5(2) above. Where the MAM has sold gas to the Provider (System Sell), the MAM shall be entitled to charge in respect of the relevant gas quantity the Negative Daily Imbalance Price applicable on the day on which that gas quantity was received by the Provider instead of the applicable commodity charge payable under section 5(3) above.
3. The foregoing shall not preclude the MAM from asserting any other claims the MAM may have against the Provider.

## **9. Liability**

1. The MAM shall only be liable for loss or damage which was incurred or suffered as a result of a breach of a material contractual obligation, i.e. any contractual obligation breach of which places at risk the achievement of the relevant contract's purpose or any contractual obligation the performance of which is absolutely essential to the proper execution of the relevant contract and compliance with which the Provider may reasonably rely on; in any such case the MAM's liability

shall, however, be limited to such foreseeable loss or damage as is typical for the relevant type of contract. The foregoing limitation of liability shall not apply

- a) where the loss or damage in question was caused by wilful act or gross negligence,
  - b) in the case of death, injury to the body or damage to health, or
  - c) where a guarantee was given.
2. The MAM shall not be liable where the circumstances giving rise to a claim against the MAM
- a) were the result of an extraordinary and unforeseeable event which was outside the control of the MAM and the consequences of which could not have been prevented even by applying due care, or
  - b) were brought about by the MAM acting in compliance with a statutory obligation.
3. Moreover, the MAM shall not be liable for any failure of or disturbance on any technical infrastructure operation of which is outside the MAM's responsibility (*Force Majeure*).
4. The above shall be without prejudice to any liability the MAM may have under mandatory statutory provisions (e.g. under the German Product Liability Act (*Produkthaftungsgesetz*)).

## 10. Provision of Security

1. The MAM may in justified cases require the Provider to provide reasonable security or to make reasonable advance payment for the purpose of securing any and all claims that may arise under the System Balancing Transaction Agreements made between the MAM and the Provider (the "**Business Relationship**"). In any such case the MAM shall give notice to the Provider in Text Form to explain its reasons for requiring such security or advance payment.
2. Without limitation, a justified case within the meaning of paragraph (1) above shall be deemed to be established
  - a) where the Provider has defaulted to a significant extent on any obligation to the MAM which was due to be performed and which is still capable of being performed (especially, without limitation, where the Provider has defaulted on any payment), and where, despite the MAM having submitted an express demand for performance to the Provider, this continues to be the case five (5) business days after the Provider has received such demand for performance (with payments required to be received in the account of the MAM by this deadline),
  - b) where to a significant extent the Provider has failed to perform, or not duly complied with, any obligation to the MAM which was due to be performed and which is no longer capable of being performed (e.g. where energy is to be supplied or received at a particular point in time),

- c) where enforcement measures have been initiated against the Provider for a monetary claim (sections 803 – 882a of the German Code of Civil Procedure (*ZPO*)),
  - d) where the Provider has applied to have insolvency proceedings initiated against its assets,
  - e) where a third party has applied to have insolvency proceedings initiated against the Provider's assets, unless the Provider proves within the deadline stated in sentence 2 of paragraph (7) below that none of the grounds for such proceeding as set out in section 17(2) and section 19(2) of the German Insolvency Code (*Insolvenzordnung*) applies,
  - f) where the MAM has reasonable grounds for believing, based on a report provided by a generally recognised credit reporting agency or based on any other factual circumstances, that the Provider will not meet its obligations to the MAM under the Business Relationship, unless the Provider provides suitable evidence of its creditworthiness within five (5) business days of being notified by the MAM of the main reasons on which the MAM based its assessment. Suitable documents evidencing creditworthiness include but are not limited to a certificate issued by a certified public accountant, a confirmation of adequate liquidity issued by a credit institution duly authorised to operate in the Federal Republic of Germany, a recent annual report, or if necessary any other information supporting creditworthiness.
3. Without prejudice to the foregoing, a justified case within the meaning of paragraph (1) above shall in any event be deemed to be established where the Provider has been rated by a recognised credit rating agency and the Provider's
- Standard & Poors long-term rating is lower than BBB-,
  - Fitch long-term rating is lower than BBB-,
  - Moody's long-term rating is lower than Baa3,
  - Creditreform rating (Credit-Standing Index 2.0) is lower than Risk Class II (according to Creditreform Rating Map Germany as at 31 December 2016).

The same shall apply where the Provider has been rated by any other recognised credit rating agency and such rating is not at least equivalent to any of the aforementioned ratings. Where the Provider has obtained more than one such ratings, a justified case shall be deemed to be established even if only one of these ratings does not meet the minimum rating requirements set out above.

Where the MAM requires the Provider to provide security under this paragraph (3), the MAM shall in its request for security fully disclose to the Provider the data and the essential content of the information on which the MAM based its assessment that a justified case is established.



4. The amount to be secured in each case shall be determined on the basis of the MAM's potential risk exposure in the event of a default (the "**Default Risk**"). This shall be equivalent to the financial disadvantage the MAM may suffer in the event that the Provider fails to comply with its obligations under any System Balancing Transaction Agreement made between the MAM and the Provider in the course of the Business Relationship. The MAM's Default Risk shall comprise the risk borne by the MAM in the event that the Provider fails to comply with its payment obligations as well as the risk borne by the MAM in the event that the Provider fails to comply with any other contractual obligation to be performed by the Provider.
5. The types of security that may be provided include unconditional, irrevocable bank indemnity letters, unconditional, irrevocable corporate indemnity letters (e.g. unrestricted letters of comfort and parent company guarantees), unconditional, irrevocable and directly enforceable guarantees issued by a credit institution duly authorised to operate in the Federal Republic of Germany, and deposits of cash or fixed-income securities. The Provider shall have the right to decide what type of security to provide in each case.
6. The Provider shall have the right to avoid any obligation to provide security by making advance payments. In order to avoid its obligation to provide security, the Provider shall within five (5) business days of receiving a request for security from the MAM submit a written statement (Text Form) to the MAM declaring that it will make advance payments instead of providing security.
7. The Provider shall provide security, or pay the advance payment amount where the Provider has chosen to make advance payment in lieu of providing security, to the MAM no later than seven (7) business days after it receives the latter's request for security. In cases falling within the scope of paragraph (2)(d) above, security must be provided within ten (10) business days from the date of receipt of the MAM's request for security unless the Provider proves within this deadline that none of the grounds for an insolvency proceeding as set out in section 17(2) and section 19(2) of the German Insolvency Code applies.
8. The requirements for the individual types of security are as follows:
  - a) Where the Provider provides a bank indemnity letter or guarantee, this must be an unconditional, irrevocable and directly enforceable letter of indemnity or guarantee issued by a credit institution duly authorised to operate in the Federal Republic of Germany. The credit institution issuing the letter of indemnity or guarantee must 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) Where the Provider provides a corporate indemnity letter or guarantee, the entity issuing the letter of indemnity or guarantee must 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 rating (Credit-Standing Index 2.0) of Risk Class II or better (as per Creditreform Rating Map as at 31 December 2016). The corporate letter of indemnity or guarantee must not be in an amount that exceeds 10% of the issuing entity's liable equity capital. Providers providing this type of security shall at the time of providing the security submit evidence to the MAM that the conditions set out in sentence 2 above are met.

c) Any letter of indemnity or guarantee provided by the Provider must be payable on first demand and must generally include a waiver of the surety's defence of voidability, its right to declare a set-off against other claims, and its right to deny performance until all remedies available against the principal debtor have been exhausted, except where the relevant claim is undisputed or an enforceable judgment has been rendered in respect of that claim. Where a directly enforceable guarantee or letter of indemnity is provided, it must be valid for a duration of at least twelve (12) calendar months but expire no later than two months after the end of the term of the longest-term System Balancing Transaction Agreement in place between the Parties.

9. The MAM shall have the right to realise any security provided where (i) it has issued a payment reminder to the Provider on occurrence of a payment default setting a reasonable deadline for payment and (ii) the deadline stated in the payment reminder has expired without payment being made. On realising any security provided by a Provider, the MAM shall have the right to demand that the Provider re-provide the proportion of security that has been used, provided the grounds for requiring the Provider to provide security as set out in paragraphs (1) to (4) above continue to apply. The Provider shall then provide the proportion of security to be re-provided within the time limit set out in paragraph (7) above.

10. Any security provided must be released without undue delay once the conditions for its being requested are no longer satisfied. The MAM shall review every six months whether the grounds for the provision of security by the Provider as set out in paragraphs (1) to (3) above continue to apply and whether the secured amount as determined pursuant to paragraph (4) above continues to be appropriate. Where the aforementioned review reveals that the realisable value of all security provided significantly exceeds the value to be applied pursuant to paragraph (4) above, the MAM shall release the proportion of the security that exceeds a reasonable amount as determined pursuant to paragraph (4) above to the Provider. Where the realisable value of all security provided is significantly lower than the value to be applied pursuant to paragraph (4) above, the MAM shall be entitled to require the Provider to provide additional security.

## **11. Term and Termination**

1. Either Party shall have the right to terminate the System Balancing Framework Agreement in place between the Parties for convenience with effect from the end of any given month by giving at least

three (3) months' prior notice. Once the terminating Party's notice of termination has been received by the other Party, the Parties may only enter into System Balancing Transaction Agreements for terms ending on or before the date on which the System Balancing Framework Agreement comes to an end. Where the System Balancing Framework Agreement is terminated in accordance with the foregoing provisions, the Parties shall in any case continue to be bound by their obligations thereunder until the System Balancing Transaction Agreements in place between the Parties at the time the terminating Party's notice of termination was received by the other Party come to an end.

2. Save as provided above, both the System Balancing Framework Agreement as well as any System Balancing Transaction Agreement may only be terminated for cause, in which case the relevant contract will be terminated with immediate effect. Due cause shall in particular, without limitation, be given where
  - the Provider fails to meet any specifications and/or representations relevant for obtaining prequalification that were provided as part of the prequalification process for a balancing group contract entered into by the Provider, whether for energy or system balancing purposes,
  - either Party has breached a material contractual obligation under the System Balancing Framework Agreement or any System Balancing Transaction Agreement, i.e. any contractual obligation breach of which places at risk the achievement of the relevant contract's purpose,
  - the Provider does not or no longer satisfy the requirements for being registered as a user of the ASP platform,
  - the Provider has defaulted to a significant extent on any due payment obligation and continues to be in default despite having been issued with a payment reminder by the MAM on occurrence of the default,
  - the Provider has failed to provide any security due under this contract,
  - an application has been made to have insolvency proceedings initiated against the Provider's assets and initiation has been refused for a lack of assets,
  - insolvency proceedings have been initiated against the Provider's assets and the responsible administrator fails to declare a continuation of business activities as defined in section 103 of the German Insolvency Code, despite having been called on to do so.
3. Notice of termination must be given in writing and signed by the terminating Party.

## **12. Amendment of System Balancing Terms & Conditions**

1. The MAM shall have the right to amend the System Balancing Terms & Conditions set out herein insofar as the Provider can reasonably be expected to accept such amendment, giving due consideration to the interests of the MAM. In particular, without limitation, an amendment shall be deemed to be reasonable within the meaning of the foregoing sentence where it is required to ensure compliance with changed statutory and/or other legal requirements. The MAM shall notify the Provider of any such amendment to the System Balancing Terms & Conditions by giving notice to the Provider in Text Form (each such notice an “**Amendment Notice**”); save where a later date is expressly stated in each case, the relevant amendment will come into effect four (4) weeks after the Provider has received such Amendment Notice.
2. The Provider shall have the right to terminate the System Balancing Framework Agreement as well as any System Balancing Transaction Agreement affected by any such amendment on grounds of exceptional circumstances with effect from the date on which such amendment to the System Balancing Terms & Conditions is to come into effect by giving notice to the MAM in writing within four (4) weeks from the date on which the Provider received the relevant Amendment Notice. If the Provider does not exercise this exceptional termination right, the Provider will be deemed to have accepted the relevant amendment to the System Balancing Terms & Conditions. In its Amendment Notice, the MAM shall inform the Provider of its right to terminate the aforementioned contracts on grounds of exceptional circumstances and shall alert the Provider to the fact that the amendment in question will come into effect unless the Provider exercises its exceptional termination right within the applicable deadline.

## **13. Assignment**

1. Neither Party shall transfer any right and/or obligation arising under these System Balancing Terms & Conditions and/or under any System Balancing Transaction Agreement, whether in whole or in part, to any third party unless the other Party hereto has given its prior consent to such transfer. Consent may only be withheld for due cause. No right or obligation may be transferred to any entity that has not been admitted as a user of the ASP platform.
2. Any transfer pursuant to paragraph (1) above to an affiliated entity as defined in section 15 of the German Joint Stock Corporation Act shall not require prior consent but shall be notified to the other Party in writing, provided that affiliated entity has been admitted as a user of the ASP platform.

## **14. Severability**

1. If any provision set out in these System Balancing Terms & Conditions or in any System Balancing Transaction Agreement is, becomes or is held to be invalid, unenforceable or incomplete, it shall

not serve to invalidate or affect the completeness of the remaining provisions set out in these System Balancing Terms & Conditions or in the relevant System Balancing Transaction Agreement, which shall remain in full force and effect as if such provision had not originally been contained therein and shall be deemed to be otherwise complete.

2. The Parties hereby undertake to replace any such invalid, unenforceable or incomplete provision by a valid, enforceable and complete provision having as far as reasonably possible the commercial and legal effect intended under these System Balancing Terms & Conditions and reflecting as closely as reasonably possible the intentions of the Parties.

#### **15. Changes in Circumstances**

1. Where during the term of these System Balancing Terms & Conditions unforeseen circumstances should arise in respect of which no provision has been made under a System Balancing Transaction Agreement, or which the Parties failed to take into account when entering into that System Balancing Transaction Agreement, and where such circumstances have such significant commercial, technical or legal impact on the relevant System Balancing Transaction Agreement so as to render any provision of that contract untenable for either Party, the affected Party shall have the right to require its counterparty to agree to a corresponding amendment of the contract's terms that duly reflects any such changed circumstances whilst having regard to all commercial, technical and legal implications this would have for the counterparty.
2. Where a Party pleads circumstances falling within the scope of paragraph (1) above, that Party shall be required to specify and prove the facts on which it has based its amendment request.
3. If the conditions for amending the relevant contract as set out in the foregoing paragraphs are satisfied, the pleading Party's right to have the contract amended shall arise at the first time that Party raises a demand to amend the contract's terms on the grounds of changed circumstances. The pleading Party's right to have the contract amended shall also apply retrospectively if, and only going back for such time as, the pleading Party could not reasonably have been expected to raise its demand for amendment of the relevant contract at an earlier time.

#### **16. Requirements for Written Form and Authoritative Version of Contract**

1. The Parties have not entered into any oral agreements on the subject of these System Balancing Terms & Conditions. Except as otherwise provided in these System Balancing Terms & Conditions, any and all amendments or additions to the System Balancing Framework Agreement and/or to any System Balancing Transaction Agreement as well as the termination or revocation thereof shall be invalid unless made in writing and signed by the Parties. This shall also apply with respect to any agreement made with respect to this requirement for the written form.

2. Only the German language version of these System Balancing Terms & Conditions shall be legally binding.

**17. Jurisdiction and Governing Law**

1. The Parties hereby agree that the Berlin courts are to have exclusive jurisdiction in any type of proceeding to settle any dispute arising out of or in connection with these System Balancing Terms & Conditions and/or any System Balancing Transaction Agreement or the performance or validity thereof.
2. These System Balancing Terms & Conditions shall be governed by, and construed and interpreted in accordance with, the law of the Federal Republic of Germany to the exclusion of the UN Convention on the International Sale of Goods of 11 April 1980 (CISG).

**18. Documents Forming Part of the Contract**

The following annexes shall constitute an integral part of the System Balancing Terms & Conditions set out herein:

1. Annex 1 – Product Description “Commodity”
2. Annex 2 – Product Description “Flexibility Services”

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