

Portal Terms of Use for the Market Partner Web Portal (Market Partner Portal) and the Portal for the Use of the Virtual Trading Point (VTP Portal) provided by the Market Area Manager NetConnect Germany GmbH & Co. KG (NCG)

I. Scope, definitions

1. Introduction

- (1) On its website at <https://datenportal.net-connect-germany.de/>, NetConnect Germany GmbH & Co. KG (“NCG”) maintains and provides free of charge a Market Partner Web Portal (“Market Partner Portal”) for market participants acting under the market roles of balancing group managers (“BGM”) or network operators (“NO”), as well as a dedicated portal for balancing group managers allowing them to make use of the virtual trading point (“VTP Portal”); the portals are hereinafter also collectively referred to as the “Web Portals”).
- (2) The Portal Terms of Use (hereinafter referred to as “Portal Terms”) set out herein govern the legal relationship between NCG and the balancing group managers and network operators using the non-public area of the Market Partner Portal and/or the VTP Portal provided on the website www.net-connect-germany.com. Save where a specific market role or Web Portal is expressly referred to, the rules set out herein apply equally to the two market roles and the two Web Portals.

By activating the checkbox containing the declaration: “I hereby accept the Portal Terms of Use and the Data Protection Policy of NetConnect Germany GmbH & Co. KG” and submitting the registration form, the balancing group manager or network operator, as the case may be, agrees to be bound by the Portal Terms set out herein.

The Portal Terms can be viewed, printed, downloaded and saved to a computer any time by following the link provided at www.net-connect-germany.com.

2. Definitions

- (1) “User” means any natural person accessing the NCG Web Portals.
- (2) “Business Day” means any day except a Saturday, a Sunday or any other day which is a public holiday in any German state.
- (3) “Registered User” means any User having been allowed access to the non-public area of the Market Partner Portal after completing the registration procedure as set out in subsection 2 of section II below.

II. Market Partner Portal

1. Introduction

The Market Partner Portal (accessible via www.net-connect-germany.com) comprises an anonymous, publicly accessible area from where Users can initiate the registration procedure described in subsection 2(3) of this section II (public area) as well as a private area which is only available to Registered Users (non-public area) and provides, inter alia, the following functionality:

For balancing group managers:

- maintenance of master data (e.g. address and bank details) by the User
- contract management (e.g. conclusion and administration of balancing group contracts)
- transfers of biogas flexibility
- access to balancing-related market data and allocation data clearing processes

For network operators:

- maintenance of master data (e.g. address and bank details) by the User
- access to market data relevant for network operators
- management of declaration, allocation and data clearing processes

2. Registration for access to the non-public area of the Web Portal

- (1) Registration is required in order to use the non-public area of the Web Portal. Businesses (each individual business entity below being referred to as a “Company”) may apply to be registered for the non-public area of the Web Portal via the website <https://datenportal.net-connect-germany.de/>. By submitting a registration request, the Company applies to be assigned either of the two following access profiles depending on the Company’s market role:

- (a) balancing group manager (“BGM”)
- (b) network operator (“NO”)

- (2) Consumers within the meaning of section 13 of the German Civil Code (*BGB*) cannot be registered. Companies applying for registration must hold a non-temporary business licence issued in accordance with the regulations of the country in which the Company has its registered office and from where it is registering, the terms of which must be such that the Company is entitled to carry out its business on a permanent basis. Companies wishing to act as service provider for different market roles have to register their customers separately for each market role.
- (3) Users can initiate the registration procedure by completing and submitting the online registration form provided in the public area of the Web Portal. For the registration procedure to be initiated the User must provide all required information by truthfully entering it in the online registration form:

- name of the Company
 - surname, name and sex of the User applying for registration
 - phone and fax numbers
 - chosen username, which may be freely selected by the User provided that the chosen name has not been registered for another User
 - for “BGM” Users: valid market participant ID (“MP ID”) as specifically issued to them in their role as balancing group manager (as issued by GS1 or DVGW) and as published on the DVGW code database. Where a User has obtained several MP IDs, in their dealings with NCG they shall use only such MP ID they have obtained for their BGM market role
 - where only a GLN code (as issued by GS1) is provided, the relevant ACER registration code
 - for “NO” Users: valid MP ID as specifically issued to them in their role as network operator (as issued by the DVGW) and as published on the DVGW code database
 - valid business email address (publicly accessible email domains such as gmx, gmail, web.de, t-online, yahoo etc will not be accepted)
 - recipient of invoice, business address as stated in the Company’s company register record and as valid for serving documents on the Company (address for service)
 - contact details for all relevant contacts within the Company
 - full bank details of the Company (e.g. IBAN, BIC and/or SWIFT codes)
 - VAT identification number
- (4) After entering the information requested and accepting the Portal Terms set out herein by activating the [checkbox] containing the declaration “I accept the Portal Terms of Use and the Data Protection Policy of NetConnect Germany GmbH & Co. KG”, the User may submit their application for registration to NCG by clicking on the registration button provided for this purpose. By so doing the User extends an offer to enter into a user agreement for use of the NCG Market Partner Portal provided on the website <https://datenportal.net-connect-germany.de/>.
- (5) Upon NCG’s receiving the data required for registration an automated email confirming receipt of said data is sent to the User’s email address as stated by the User in their application for registration. This confirmation of receipt does not constitute acceptance of the User’s offer to enter into a user agreement for use of the NCG Market Partner Portal provided on the website <https://datenportal.net-connect-germany.de>. Following successful initial verification of the information submitted by the User via the registration form, the User receives a second email. In this second email, which is also sent automatically, the User is asked to provide such additional information and documents as are required for completion of the registration process:
- relevant additional information and documents for Companies registering for the “BGM” market role to be provided in addition to section 2(3) above may include:
 - a copy of the Company’s company register record dated no earlier than three months before the date of the registration request;

- certified copies of the identity documents of all members of the Company's management, of all registered authorised signatories with general authority to act on behalf of the Company (in German: *Prokurist*, if any) and of the User;
 - audited financial statements for the last three years or opening balance sheet (as the case may be);
 - a description of the Company's planned business model covering at least the first six months in which the Company intends to make active use of any balancing group(s), including information on the expected number of balancing groups by gas quality, the start date from which they are to be actively used, the trading volumes, the expected trading counterparties, the type of trading activity (physical vs. financial trading) and a statement as to whether or not and to what extent the Company plans to supply gas to end users;
 - where a service provider is to be involved, a copy of the document authorising the service provider to act on behalf of the Company;
 - digital certificates for the electronic submission of EDIFACT messages in accordance with NCG's communication data sheet;
 - details and documents regarding the preferred communication channel for 1-to-1 communications;
 - tax clearance certificate issued by the competent tax office (original or certified copy);
 - for Companies having their registered office in a country outside the European Union, proof of their business status as certified by a public authority of the country in which the Company has its registered office (which must at least include the information specified in the standard VAT form "USt 1TN" provided by the German Federal Ministry of Finance);
 - (European) criminal record certificates for the Company's owner(s) (in the case of unincorporated business entities) or all members of its management (in the case of incorporated business entities) as well as for each User, with either the original documents or certified copies to be submitted;
 - a representation confirming that at the time of registering the Company is able to pay all of its debts and that there are no pending court proceedings that are highly likely to result in the Company's inability to pay its debts.
- a written document authorising the User to use the Web Portal's functions and setting out the User's access rights and permissions as specified below:
 - maintenance of the Company's master data
 - balancing group contract management ("BGM" Users only)
 - transfers of biogas flexibility ("BGM" Users only)
 - whether the User is to have "read" or "write" permission for the data portal

which must be signed by an authorised signatory named in the Company's company register record and which must be in either German or English.

- for Companies registering for the “BGM” market role: security for the amount of EUR 100,000 pursuant to the security clause of the Balancing Group Contract Terms & Conditions, where applicable

If the Company is subject to a jurisdiction where the requested types of documents do not exist in the form typically used in Germany, the Company shall submit documents of comparable content and in comparable form. Documents issued in languages other than German or English must be accompanied by a certified translation.

- if the Company is not yet registered for the Web Portal and/or if the User is to be granted access to the contract portal: a signed copy of the registration form signed by an authorised signatory named in the Company’s company register record or by a duly authorised representative;
- if the Company is already registered for the Web Portal and the User is to be granted access to the data portal or the right to maintain the Company’s master data: a signed copy of the registration form signed by a person authorised to represent the Company to NCG in connection with the Company’s use of the Web Portal;

The above information and documents must be submitted to NCG within two months from the date on which NCG first requested them. The relevant date for determining whether this deadline is met is the day on which the complete set of registration documents including all relevant email(s) and original documents sent by post has been fully received by NCG.

NCG has the right to request additional documents evidencing the above information and to request more detailed explanations and information, each to be provided within a reasonable additional timeframe to be determined by NCG, where necessary for determining access to the non-public area of the Web Portal.

If at any time following registration NCG should have reasonable doubts as to whether the stated facts are true or continue to be correct or where essential circumstances covered by section II.2.(3) and (5) above have subsequently changed and the balancing group manager has failed to notify NCG thereof in a written form in accordance with section 126b of the German Civil Code (“Text Form”), NCG has the right to terminate the Portal User Agreement and/or the relevant balancing group contract in accordance with the termination provisions set out therein, provided NCG has given the balancing group manager an opportunity to comment and set a reasonable deadline for doing so and the balancing group manager has failed to remove NCG’s reasonable doubts regarding the subsequent circumstances or changes (as the case may be).

The above information and documents may be submitted by email, fax or post, and should be sent to:

Email: market@net-connect-germany.com
Fax: +49 (0)2102 59 79 6 - 59
Post: NetConnect Germany GmbH & Co. KG
Abteilung Market
Kaiserswerther Strasse 115
D-40880 Ratingen

For data protection reasons, copies of identity documents and criminal record certificates must only be sent by post to the address indicated above.

- (6) NCG has the right to refuse to grant access to the Web Portal to a Company or User
- (a) where the Company has failed to submit the documents and information listed in section II.2.(3) and (5) above or has failed to do so by the relevant deadline as set out in section II.2.(3) and (5) above or if the documents and information submitted are incomplete or incorrect. In these cases the registration process can only be re-initiated after a six-month waiting period. Where adherence to this waiting period would impose undue hardship on a Company, the Company may apply to NCG to be registered at an earlier date, providing a complete set of all documents and information required.
 - (b) where the Company has applied to be registered on the Web Portal for the “BGM” market role and NCG has specific grounds to believe that the Company’s owner(s) (in the case of unincorporated business entities) or the members of its management (in the case of incorporated business entities) are unreliable. A Company will be deemed unreliable where NCG has specific grounds to believe that the Company will not duly comply with its statutory obligations as balancing group manager or its obligations under the Portal User Agreement or any balancing group contract. This will especially, without limitation, be deemed to be given where any (European) criminal record certificate provided for the Company’s owner(s) (in the case of unincorporated business entities) or the members of its management (in the case of incorporated business entities) lists a conviction for fraud or a comparable criminal offence.
 - (c) where NCG has any other due cause for refusing access.
- (7) Provision of security
- (a) Where a Company applies to be registered for the “BGM” market role, NCG may in justified cases require the Company to provide security to NCG as a condition for the Company’s registration to secure any and all claims for payment NCG may have under future balancing group contracts yet to be entered into by the Company. In determining whether to request security NCG will consider all documents received and only request security if it has no other concerns about registering the Company. The Company in question, however, is free to provide security at an earlier time.

- (b) Without limitation, a justified case will be deemed to be established if and where in the two years immediately preceding the date of the Company's registration request any balancing group contract previously made between NCG and the Company was lawfully terminated for cause pursuant to section 37(3)(b) of the Balancing Group Contract Terms & Conditions.

A justified case will further be deemed to be given where NCG 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 Company will not meet its obligations under the balancing group contract(s) yet to be concluded, unless the Company provides suitable evidence of its creditworthiness within 5 Business Days of receiving a request to this effect from NCG. To this end, suitable documents evidencing creditworthiness may be submitted, such as 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, a company register record, or if necessary any other information supporting creditworthiness.

Without prejudice to the foregoing provision, NCG shall in any event be deemed to have reasonable grounds where the Company has been rated by a recognised credit rating agency and the Company'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 modified from time to time).

The same applies where the Company does not have a comparable rating from any other recognised rating agency. Where the Company has obtained more than one such ratings, NCG shall be deemed to have reasonable grounds if only one of these ratings does not meet the minimum rating requirements set out above.

When requiring the Company to provide security NCG shall fully disclose to the Company the data and the essential content of the information that gave rise to reasonable grounds.

- (c) 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) and unconditional, irrevocable directly enforceable guarantees provided by a credit institution duly authorised to operate in the Federal Republic of Germany. The Company has the right to decide what type of security to provide.
- (d) The requirements for the individual types of security are as follows:

- aa) Bank sureties must be provided in the form of an unconditional, irrevocable and directly enforceable bank indemnity letter or

guarantee, either of which must have been issued by a credit institution duly authorised to operate in the Federal Republic of Germany. The credit institution issuing the surety 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.

- bb) As far as corporate sureties are concerned, the company providing the surety 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 (according to Creditreform Rating Map Germany as modified from time to time). Furthermore, the corporate surety shall not be in an amount that exceeds 10% of the surety provider's liable equity capital. The Company shall submit evidence of this to NCG when providing the surety.
 - cc) Indemnities or guarantees 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. Any such directly enforceable indemnity or guarantee must be valid for a duration of at least 12 calendar months.
 - dd) The amount to be secured shall be EUR 100,000 for balancing group contracts relating to natural gas. After a balancing group invoice for an invoice amount > EUR 0 has been issued for the first time, NCG will recalculate the amount of the security in accordance with the provisions of the balancing group contract yet to be entered into by the Company. The Balancing Group Contract Terms & Conditions as applicable from time to time can be accessed at <https://www.net-connect-germany.com>.
 - ee) NCG has the right to realise any security provided in accordance with the provisions of the balancing group contract yet to be entered into by the Company. The Balancing Group Contract Terms & Conditions as applicable from time to time can be accessed at <https://www.net-connect-germany.com>.
 - ff) NCG will release any security provided without undue delay if the Company's application for access to the Web Portals is denied or if the Company's access to the Web Portals is cancelled before the Company has entered into any balancing group contract(s).
- (8) Once NCG has verified that the information and documents submitted are complete and correct, NCG accepts the User's offer to enter into a user agreement for use of the NCG Market Partner Portal provided on the website <https://datenportal.net-connect-germany.de/> by activating the User's access to the non-public area of the Market Partner Portal and informing the User

thereof by email. Subsequently, NCG sends the User their password and username in separate emails.

Through NCG's acceptance of the User's offer a user agreement for use of the NCG Market Partner Portal provided on the website <https://datenportal.net-connect-germany.de/> is formed between NCG and the User ("Market Partner Portal User Agreement"), and the User is granted access to the non-public area, including any and all information available in and through said area and including the functionality described in subsection 1 of this section II, in accordance with the service description published on the website.

- (9) Neither the username nor the password may be transferred to another person. If another, unregistered User is to replace a Registered User, a new registration procedure must be completed, and the username and password of the previously registered User must be deactivated.
- (10) Where a User is appointed by more than one Company to perform on their behalf the functions available in the non-public area of the Market Partner Portal, the User does not have to re-apply for registration if the scope of the User's access rights and permissions for use of the Web Portal's functions is identical in each case. However, even where only one of the Companies authorising the User to use the Portal on their behalf should vary the scope of the User's access rights and permissions, the User will have to obtain a new registration for the non-public area in relation to such Company. This means that the User is required to state a new email address in order for the User to obtain an additional registration.

3. Balancing group contract management (for "BGM" Users only)

- (1) Any Registered User having been granted the relevant access rights and permissions may on behalf of the Company represented by the User enter into balancing group contracts with NCG, and manage or amend them, by using the dedicated functions provided in the non-public area of the Web Portal.
- (2) If and once a User enters into a balancing group contract with NCG, the Balancing Group Contract Terms & Conditions apply in addition to the Portal Terms set out herein. During the balancing group contract creation process the Balancing Group Contract Terms & Conditions can be opened and downloaded in pdf format by clicking on the link displayed. By submitting the relevant data to NCG, the User extends an offer to enter into a balancing group contract to apply between NCG and the User or, more specifically, between NCG and the Company on whose behalf the User is acting. NCG accepts this offer by assigning the User a balancing group number and sending this balancing group number to the User by email.
- (3) By offering to enter into a balancing group contract, the User is deemed to have also extended an offer to enter into a user agreement for use of the VTP Portal. The details are set out in subsection 2 of section III of the Portal Terms set out herein.

III. VTP Portal (for "BGM" Users only)

1. Introduction

The NCG VTP Portal (accessible via www.net-connect-germany.com) provides the following functionality:

- maintenance of master data by Users
- submission of nominations for the purpose of transferring gas quantities to other balancing groups
- overview of nominations and their matching status

2. Access to the VTP Portal

- (1) In order to be able to use the VTP Portal, Users must have in place a valid balancing group contract of the “FZK” type (for capacity not subject to any transportation route restrictions), which can be entered into through the non-public area of the Market Partner Portal.
- (2) By offering to enter into such a balancing group contract, the Registered User is deemed to have also extended an offer to enter into a user agreement for use of the VTP Portal. In so doing the Registered User is deemed to have implicitly agreed to publication of the Company’s name and contact address (Company contact details) on the VTP Portal. The User shall have the right to withdraw their consent to publication of this data in writing with 5 Business Days’ prior notice at any time.
- (3) On entering into a balancing group contract the Registered User receives their access details (username, password) for use of the VTP Portal, which NCG must send to the Registered User no later than by the date on which the balancing group is due to be activated. Through the User’s receipt of these access details a user agreement for use of the VTP Portal (“VTP Portal User Agreement”) is formed between NCG and the Registered User, and the Registered User is granted access to the VTP Portal, including any and all information available in and through said Web Portal and including the functionality described in subsection 1 of this section III, in accordance with the service description published on the website www.net-connect-germany.com.
- (4) Neither the username nor the password may be transferred to another person.

3. Administrator

- (1) Each Registered User must nominate an administrator for use of the VTP Portal.
- (2) The administrator so nominated has the right to designate other persons as being authorised to use the VTP Portal, or to delete or modify such permissions, including service providers. Any such permission may relate to all or any of the VTP Portal’s functions described in subsection 1 of this section III.

4. Nominations

- (1) Registered Users must state the balancing group contract number when submitting nominations for transfers of gas quantities. Any transfer of gas quantities between two balancing groups requires the disposing balancing group manager and the acquiring balancing group manager involved to submit one nomination each. Details are set out in the service description for the VTP Portal (which can be downloaded from www.net-connect-germany.com).
- (2) Due to the default settings on the VTP Portal, the VTP Portal will always show balancing group managers' company names in addition to their balancing group contract numbers. Balancing group managers can have this function deactivated on the VTP Portal with immediate effect by their designated administrators. The administrator can later reactivate this function at any time.

IV. General terms and conditions for use of the Web Portals

1. Services provided, portal availability, secure web area

- (1) Throughout the duration of any Portal User Agreement NCG provides information and other services to the User through the Web Portals, which will vary according to the access rights and permissions granted to the User for each Web Portal. The content and scope of these services are governed by the respective contractual provisions as supplemented by the current functionality provided through the Web Portals.
- (2) The User's right to use the Web Portals and the functionality provided through them only extends in scope to such activities as are within NCG's technical and operational limits. NCG will make an effort to ensure uninterrupted availability of the Web Portals to the extent possible. However, the operation of the Web Portals may be temporarily restricted, suspended or disturbed in the event of technical failures (e.g. a loss of electricity supply, hardware and software errors, technical problems relating to the data lines).
- (3) The non-public area of the Market Partner Portal and the VTP Portal are located within a dedicated web area protected by NCG. NCG takes precautionary measures to ensure the security of personal data and of all data retrievable through the Web Portals. All such data is duly protected from loss, destruction, falsification, manipulation and unauthorised access or unauthorised disclosure.

2. Special duties of care owed by Registered Users

- (1) All Registered Users must keep their usernames and passwords confidential. NCG hereby informs each User that any person knowing a Registered User's username and password is able to access and use the Web Portal services in the name of the Registered User. Registered Users have the possibility to change their password and it is recommended to make use of this possibility on a regular basis. Upon confirmation of any change the previous password is no longer valid.

- (2) If a Registered User becomes aware or suspects that an unauthorised third party has obtained knowledge of the Registered User's username and/or password, the Registered User shall notify NCG thereof without undue delay. Where as a consequence the respective Registered User's access to the Web Portal in question is blocked by NCG, the Registered User may apply to be assigned a new username and/or password.
- (3) NCG recommends Users to store neither the username nor the password.
- (4) Each Registered User is liable in accordance with the statutory provisions for any and all activities carried out under the Registered User's username and password, unless the Registered User cannot be held responsible for such activities.
- (5) Each Registered User has an obligation to verify all data entered by them, the username and password in particular, to ensure that the data is complete and correct.
- (6) All confirmations and written documents relating to a User's registration, access to the non-public area and use of the Web Portals which the Registered User receives from NCG must be verified by the Registered User without undue delay, and NCG must be notified of any inaccuracies or errors within seven days.
- (7) All Registered Users must ensure that their equipment is free from any malware (e.g. computer viruses, Trojans etc) that will or can destroy, damage or compromise the hardware, software or web content (including website, non-public area, VTP Portal) of NCG or, through the NCG website, of any other User. This applies analogously to any third-party software including dedicated encryption software used by the Registered User.
- (8) Registered Users may only use the Web Portals in compliance with the applicable statutory provisions and the Portal Terms set out herein.
- (9) Each Registered User undertakes to notify NCG without undue delay of any changes or additions required in relation to the information submitted as part of the registration documents. If a Registered User fails to comply with this notification duty, NCG is entitled to deny the User access to the Web Portals until the Registered User has complied therewith.
- (10) NCG has the right to temporarily or permanently block a User's access to a Web Portal if and where NCG has specific grounds to believe that the User has acted in contravention of these Portal Terms of Use or any other legal provision applicable in connection with the User's use of the Web Portal or continues to do so, where NCG has specific grounds to believe that the User is unreliable or where NCG has any other legitimate interest to have the User blocked from accessing the Web Portal. In taking any such decision NCG will give due consideration to the legitimate interests of the Company affected.

3. Master data maintenance

- (1) In the non-public area of the Market Partner Portal and on the VTP Portal any Registered User having been granted the relevant access rights and permissions can view and edit their master data and, where applicable, the master data of the respective Company.
- (2) Each Registered User having been granted the relevant access rights and permissions has an obligation to verify all User and Company data on their own initiative to ensure that the data is complete and correct, and to update it where necessary (e.g. following a change of the Company's name or change of address). The foregoing is deemed to be a material obligation under this agreement.

4. Term, termination, right to rescind the contract in the event of system errors

- (1) Any and all Portal User Agreements entered into between NCG and the Registered User are executed for an indefinite period of time.
- (2) NCG is entitled to terminate any Portal User Agreement with immediate effect at any time for due cause. Without limitation, due cause for such action is deemed to be given if NCG strongly doubts a Registered User's fitness to continue to use the Web Portal in question for technical, commercial or security-related reasons. Due cause is equally deemed to be given if the Registered User fails to comply with their obligations in connection with their use of the Web Portals or does not do so within the applicable time limits. This particularly applies if NCG cannot make contact with the Registered User at the contact addresses stated by them. Where NCG wishes to terminate this agreement on grounds of a breach of an obligation on the part of the Registered User, it can only do so if it has granted the User a time limit for rectification of such breach and the User continues in breach of their obligation even after expiry of such time limit, or if it has issued the User with a warning notice relating to such breach and the User continues in breach of the contract despite having been issued with such notice; the foregoing does not apply if there are special circumstances justifying an immediate termination on the part of NCG without requiring a previous warning notice.

If at any time following registration to a Web Portal NCG should have reasonable doubts as to the correctness of the registration details provided by a Company pursuant to section II.2(3) and/or (5) above, NCG shall have the right to terminate the relevant Portal User Agreement with immediate effect, provided NCG has given the Company in question reasonable time to comment and the Company has been unable to remove NCG's doubts. In determining whether to terminate a Portal User Agreement with immediate effect, NCG shall give due consideration to the legitimate interests of the Company affected. Where a Portal User Agreement has been terminated, neither the Company affected nor any other business having the same management may re-apply for registration until at least a six-month waiting period has passed.

NCG has the right to terminate a Portal User Agreement with immediate effect if and where the relevant Company has breached any of its obligations thereunder, in particular, without limitation, its obligations under sections II.2 (3) and/or (5) above. In determining whether to terminate a Portal User Agreement with immediate effect, NCG shall give due consideration to the legitimate interests of the Company affected. Where a Portal User Agreement has been terminated, neither the Company affected nor any other business having the same management may re-apply for registration until at least a six-month waiting period has passed.

- (3) Each Registered User is entitled to terminate any Portal User Agreement by giving at least one Business Day's notice in writing. Such termination does not affect the validity of any balancing group contracts entered into between NCG and the Registered User, which will remain in full force and effect.
- (4) Where a balancing group contract entered into between NCG and a Registered User is terminated – irrespective of the legal grounds on which such termination may be based – this will also result in the automatic expiry of the associated Portal User Agreements in force between the Parties, unless NCG and the Registered User, or the Company represented by the Registered User, have entered into additional balancing group contracts which continue in force. Notwithstanding sentence 1 of this section 4(4), NCG may terminate a Portal User Agreement automatically even where other balancing group contracts continue in force between NCG and the Company in question if the balancing group contract being terminated was terminated by NCG for due cause.
- (5) Where a Market Partner Portal User Agreement is terminated – irrespective of the legal grounds on which such termination may be based – this will also result in the automatic expiry of the VTP Portal User Agreement in force between the Parties.
- (6) NCG is entitled to rescind any contract having been entered into through the non-public area of a Web Portal within 2 Business Days where such contract has only come into existence due to errors in connection with electronic data processing and it is either impossible for NCG to render the services contracted or it cannot be reasonably expected to do so.
- (7) The above provisions are without prejudice to any statutory rights entitling NCG to terminate any contract for due cause.

5. Copyright, rights of use

- (1) The design and content of the Web Portals including all components thereof such as texts and images are protected by copyright. Save where permitted under the German Copyright Act (*Urheberrechtsgesetz*), no such component may be used without the prior consent of NCG. This does not apply to any press releases published by NCG.
- (2) Throughout the duration of any Portal User Agreement the Registered User is entitled on a non-exclusive basis to access and view online any content

available through the relevant Web Portal for the purpose of performing their function as a balancing group manager or network operator, as the case may be.

- (3) For “NO” Users only: By submitting allocation and declaration data to NCG the Registered User grants NCG a gratuitous and transferable right to:
 - store this data on the server of NCG,
 - publish this data and make it available to the Users of the Market Partner Portal by displaying it in the non-public area of said portal,
 - edit and copy this data where necessary to keep it available for or to publish it in the non-public area, and to
 - grant licence to other Users to use this data.
- (4) NCG reserves the right to edit, block or remove any allocation and/or declaration data retrievable through the Market Partner Portal if and to the extent that NCG becomes aware or has reasonable grounds to suspect that any such data has been submitted to NCG incorrectly, incompletely or unlawfully, or that it is incorrectly or incompletely displayed in the non-public area. In handling such a case NCG will give due consideration to the interests of the User having submitted such data.

6. Portal Terms updates, modifications or additions

- (1) NCG reserves the right to modify the Portal Terms set out herein where, in due consideration of the interests of NCG, the User can be reasonably expected to accept such modification. Without limitation, a modification is deemed to be reasonable where it is required to achieve compliance with changed statutory or other legal provisions. Any modification of the Portal Terms will be communicated to the User in writing and, except where a later point in time has been expressly stated, will come into force 4 weeks after the User has been notified thereof.
- (2) Where a modification adversely affects a User, the User is entitled to terminate the Portal User Agreement in question on grounds of exceptional circumstances as of the date on which the notified modification is due to enter into force by giving notice in Text Form. In its notice to the User communicating the modification NCG will inform the User of their right to terminate the agreement on grounds of exceptional circumstances and of the fact that the modification will enter into force unless the User exercises such exceptional right to termination within the specified time limit. Any modification of the Portal Terms aimed at ensuring compliance of the Portal Terms with mandatory statutory or other legal provisions within the meaning of paragraph (1) above are never deemed to constitute a modification adversely affecting the customer.

7. Liability

- (1) The content available through the Web Portals is in part provided by NCG and in part by other, third-party Users. Any content provided by such third-party Users is hereinafter collectively referred to as “Third-Party Content” and

expressly designated as such where applicable. NCG does not check any Third-Party Content for its completeness, correctness and lawfulness, and, therefore, does not accept any responsibility or liability for the completeness, correctness, lawfulness and topicality of any Third-Party Content.

- (2) The Web Portals contain links to other websites maintained by third parties. NCG is not responsible for the content of such websites and cannot accept any liability in connection therewith. The content of such linked websites is the sole responsibility of the person maintaining the website. At the time of establishing the link NCG was not aware of any unlawful content provided on any linked site. If NCG should become aware of any breach or infringement of the law, NCG will remove such links immediately.
- (3) NCG has unlimited liability for any loss or damage suffered as a consequence of death, personal injury or damage to health, as well as for any loss or damage caused by wilful act or gross negligence on the part of NCG, its statutory agents or its vicarious agents, and for any loss or damage suffered as a consequence of any breach of a promise of indemnity.
- (4) NCG's liability for any loss or damage caused by a slightly negligent breach of any material obligation under the agreement is limited to such typical loss or damage as could reasonably have been foreseen in connection with the agreement when the agreement was entered into. For the purposes of this agreement a material contractual obligation is an obligation the fulfilment of which is essential to ensure the proper execution of this contract and compliance with which both contracting parties generally do and may rely on.
- (5) NCG does not accept any liability for any other loss or damage, neither under this agreement nor under the statutory provisions, irrespective of the grounds on which any such action may be based.
- (6) The foregoing limitations of liability apply analogously to any personal liability incurred by any statutory agent, employee, contractor or vicarious agent acting on behalf of NCG.
- (7) NCG is not liable for any loss or damage suffered as a consequence of
 - any misuse of a username and/or password, or
 - any erroneous data being entered on the Market Partner Portal and/or the VTP Portalunless NCG can be held responsible for any such loss or damage under the liability provisions set out hereinabove.
- (8) Each Company shall generally be liable for any and all activities carried out using any of the User accounts registered on its behalf. Where the Company has not violated its duty of care and cannot therefore be held responsible for any misuse of its User accounts, the Company shall not incur any liability.
- (9) The foregoing provisions as to liability shall be without prejudice to any other liability rules agreed under the Portal Terms set out herein, or any other

agreement entered into using the Web Portals, or any other mandatory statutory provisions such as the provisions of the German Product Liability Act (*Produkthaftungsgesetz*).

8. Portal suspension or discontinuation

NCG is entitled to temporarily or permanently suspend or discontinue the operation of the Web Portals to the extent and for such duration as may be necessary for maintenance, technical or security reasons or due to force majeure. NCG will notify the User of and state the reasons for any such suspension or discontinuation of the Web Portals.

9. Data protection

It is part of the NCG quality policy to handle the personal data of Users responsibly. NCG will only collect, process or use any personal data submitted by any User where permitted by law for the purpose of registration or use of the Web Portals. Any data submitted by any User will not be processed or used for any other purpose unless and to the extent that the User has expressly given their consent or NCG is under a legal obligation to do so. Please refer to NCG's Data Protection Policy/Data Protection Remarks to find out more about data protection (the statement can be accessed on the website www.net-connect-germany.com). This content becomes part of the respective Portal Usage Relationship.

10. Confidentiality

- (1) Save as otherwise provided in paragraph (2) below, the Parties shall treat as confidential any and all information they obtain in connection with the registration procedure and which was marked as confidential (hereinafter referred to as "Confidential Information") and shall not disclose or make available any such Confidential Information to any third party without the affected Party's prior written consent. Each Party hereby undertakes to use any Confidential Information solely for the purpose of performing the relevant contract.
- (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, provided that such entity is subject to an equivalent confidentiality requirement,
 - b) to its shareholders, representatives, consultants, banks and insurers where 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.

- (3) The obligation to uphold confidentiality in accordance with this section shall end 2 years after receipt of the relevant Confidential Information if no balancing group contract is concluded. The submitted documents will be destroyed afterwards. In all other cases the confidentiality obligations as set out in the balancing group contract will also apply to any Confidential Information received during the registration procedure according to these Portal Terms.

11. Miscellaneous provisions

- (1) If any provision set out in these Portal Terms is, becomes or is held to be invalid or unenforceable, it shall not serve to invalidate the remaining provisions, which shall remain in full force and effect as if such provision had not originally been contained in these Portal Terms. The Parties hereby undertake to replace such invalid or unenforceable provision by a valid and enforceable provision approximating as closely as possible the originally intended commercial effect of the provision it is to replace. The same applies accordingly to any gaps in the provisions.
- (2) Any and all disputes arising out of or in connection with the registration for or use of the Web Portals shall be exclusively and finally settled by the ordinary German courts, with the Düsseldorf Regional Court (*Landgericht Düsseldorf*) having jurisdiction over such disputes.
- (3) The registration for and use of the Web Portals shall be governed by German law to the exclusion of any provisions concerning conflict of laws and international conventions incorporated into the law of the Federal Republic of Germany, to the extent that the application of such conventions is not mandatory.
- (4) Any and all modifications or additions to the Portal Terms set out herein are invalid unless made in writing and signed by the Parties.