

Terms and Conditions for External System Balancing Actions

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 (implementation of the Network Code on Gas Balancing of Transmission Networks) handed down by the German national regulatory authority Bundesnetzagentur (the “**Federal Network Agency**”) on 19 December 2014 (ref: BK7-14-020; the so-called “GaBi Gas 2.0” decision) and the official notifications issued by the regulator in relation thereto, the MAM takes market-based system balancing actions (“**External System Balancing Actions**”) to physically balance the gas supply networks in its 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. All contracts to be made with market participants offering to supply or receive the gas required for this purpose will be governed by the terms and conditions set out herein.

1 Object of Contract

The Terms and Conditions for External System Balancing Actions set out herein (hereinafter referred to as the “**System Balancing Terms & Conditions**”), including any and all appendices attached hereto, 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 (“**Balancing Products**”):

- (a) Long-Term Options (LTO): LTOs are Balancing Products in the form of availability contracts the MAM enters into 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 its market area. This product category is sub-divided into the product variants “Rest-of-the-Day” (RoD) and “Hour” (H).

- (b) Short-Term Balancing Services (STB): STBs are Balancing Products under which Providers undertake to supply (System Buy) or receive (System Sell) a specified gas quantity at a constant hourly rate in accordance with the provisions set out in the relevant Product Description on receiving a Call Order from the MAM, starting from the hour specified in the Call Order up until the end of the relevant gas day, i.e. for a maximum of 24 hours per gas day and a minimum of 1 hour per gas day. STBs are short-term, non-standardised balancing services for the provision of flexibility the MAM may procure in addition to its LTO Balancing Product.
- (c) Short-Call Balancing Services (SCB): SCBs are Balancing Products under which Providers undertake to have another party supply (System Buy) or receive (System Sell) L-gas quantities for short-term structuring purposes in accordance with the provisions set out in the relevant Product Description. It is a long-term Balancing Product which can be tendered in addition to the LTO product if there is a need for structuring.

The individual Balancing Products are defined in greater detail in the corresponding product descriptions (“**Balancing Product Descriptions**”) attached as an appendix hereto.

2 Applicable law

In the event of any discrepancy between any Balancing Product Description and the System Balancing Terms & Conditions set out herein, including any other appendix attached hereto, the provisions set out in the Balancing Product Description as modified from time to time shall prevail. In the event of any discrepancy between the System Balancing Terms & Conditions set out herein and the prequalification documents for participation in the bilateral balancing market operated by NetConnect Germany GmbH & Co. KG which govern the prequalification process required for the inclusion of market participants in the list of prequalified providers of balancing gas and balancing services (the “**Prequalification Rules**”), the System Balancing Terms & Conditions set out herein shall prevail.

3 Tendering and Contract Award Process

The specific rules governing the tendering and contract award process for each Balancing Product are defined in each invitation to tender and in the applicable Balancing Product Description.

Sections 3.1 to 3.5 below set out some additional general rules for tendering and contract award processes which apply to all Balancing Products.

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. To this end, the MAM publishes invitations to tender in response to which the Provider may submit bids in accordance with the requirements set out in the relevant invitation to tender as well as in the applicable Balancing Product Description; on acceptance of any such bid by the MAM, or the issuance of a Call Order in respect thereof (as the case may be), the Provider shall 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 provisions set out in the relevant invitation to tender and the applicable Balancing Product Description.
2. Each bid that is placed on the **Bidding Platform**¹ will receive a time stamp documenting the time of receipt which will be taken into account in the contract award process pursuant to section 3.3 below.
3. Following submission of a bid by the Provider, the Provider shall generally remain bound by its bid up until the end of the relevant Contract 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. Except as otherwise provided above, each bid submitted will be legally binding on the Provider.

¹ <https://regelenergie.net-connect-germany.de/emwebnbg/startApp.do>

4. No costs or expenses incurred by the Provider in the course of preparing and/or submitting a bid will be paid for by the MAM.
5. 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 the relevant invitation to tender or the applicable Balancing Product Description, or which is subject to a condition or reservation, incomplete or unclear, will be deemed not to have been submitted.

3.3 Contract Award

1. For each Balancing Product, the MAM will create and maintain separate lists defining the order in which bids will be accepted and/or Call Orders issued (as the case may be) (each a “**Merit Order List**”), with separate Merit Order Lists being used for the purchase (System Buy) and sale (System Sell) of gas by the MAM. As a general rule, all bids submitted for LTOs and SCBs (each an “**LTO Bid**”) – each irrespective of the commodity charge offered in each bid – and all bids submitted for STBs (each an “**STB Bid**”) will always rank at level 4 of the Merit Order List. The detailed rules for the arrangement of bids in each Merit Order List and for the order in which Call Orders will be issued are set out in the applicable Balancing Product Description.
2. The MAM reserves the right to re-arrange the order defined by a Merit Order List where necessary to ensure network safety and/or stability, for reasons of gas quality (high CV gas or low CV gas), i.e. where the MAM operates a multi-quality market area and gas of a particular gas quality is required, and/or where a system balancing requirement relates to a particular location, i.e. a specific physical entry and/or exit point or balancing zone or sector.

3.4 Acceptance of Bid, Call Order and Contract Formation

1. A System Balancing Transaction Agreement for an LTO placing an obligation on the Provider to ensure its availability to supply or receive (as the case may be) the gas quantity offered by the Provider in an LTO Bid will be created between the MAM and the Provider where the MAM provides notice of acceptance of such LTO Bid to the Provider by email. The Provider shall acknowledge receipt of each such email immediately by sending a confirmation email to the email address “balancing-gas@net-connect-germany.com” set up by the MAM. This confirmation is required for verification purposes only; the validity of the System Balancing Transaction Agreement concerned shall remain unaffected. 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 an Edig@s request message (REQUEST) to the Provider specifying the details of such Call Order. Providers whose LTO Bids have not been accepted by the MAM will also receive notice by email informing them of the LTO Bids that have not been accepted. Providers will not be required to confirm receipt of any such email.

2. Except as otherwise provided in the applicable Balancing Product Description, a System Balancing Transaction Agreement for an STB will be created between the MAM and the Provider where the MAM issues an instruction to the Provider (“Call Order”) to supply or receive (as the case may be) a gas quantity offered by the Provider in an STB Bid by sending an Edig@s request message (REQUEST) to the Provider specifying the details of such Call Order. Providers whose STB Bids are not accepted will not be notified thereof by the MAM.
3. A System Balancing Transaction Agreement between the MAM and the Provider for an SCB is created by the MAM confirming by e-mail to the Provider that it will accept the bid. The Provider is obliged to confirm the receipt of this e-mail immediately by sending an e-mail to the MAM's e-mail address "balancing-gas@net-connect-germany.com". This reconfirmation is for verification purposes only and does not affect the validity of the conclusion of the respective agreement. Providers whose bids are not accepted will also be notified by the MAM about the bids that have not been accepted. The Call Order by the MAM for the gas quantities to be supplied or received under the contracted Balancing Product will be made by telephone or e-mail to the Provider, unless otherwise specified in the respective Balancing Product Description.
4. The Provider shall confirm each Call Order it receives from the MAM pursuant to paragraphs (1) to (2) above by sending an Edig@s request response message (REQRES) to the MAM. This confirmation is required for verification purposes only; the validity of the System Balancing Transaction Agreement concerned shall remain unaffected.
5. In the event that in the cases described in sub-sections 1 and 2 of this section 3.4 a Call Order cannot be issued by way of an Edig@s request message (REQUEST) for technical reasons, the MAM shall notify the Provider by telephone, email or any other appropriate means using the contact details as stated under the Prequalification Rules. In each such case the Provider shall accordingly confirm the relevant Call Order by telephone, email or any other appropriate means. 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 Balancing Zones or Sectors or at Specified Physical Entry and/or Exit Points

1. The MAM may invite tenders for individual physical entry and/or exit points or for balancing zones or sectors comprising a number of such points. The relevant physical entry and/or exit points and the balancing zones they are assigned to are published on the MAM's website².
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 balancing zones or sectors or at the physical entry and/or exit points specified in the course of the corresponding tendering and contract award process.
3. In the cases described in paras (a) and (b) of section 1 hereinabove, the following additional provisions shall apply:
 - (a) Throughout the time during which the Provider is supplying (System Buy) and/or receiving (System Sell) gas under a Call Order issued in respect of a particular location the Provider shall not make any renomination which would result in a flow of gas in the balancing zone or sector or at the physical entry and/or exit point concerned which would be in the opposite direction of the gas instructed to be supplied and/or received.
 - (b) 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 Parties in the agreed gas quality (high CV gas and/or low CV gas) at the VTP of the market area NetConnect Germany.
 - (c) Where the Parties have agreed that the Provider is to supply (System Buy) and/or receive (System Sell) gas in a specified balancing zone or sector or at a specified physical entry and/or exit point, the Provider shall adjust its transport nominations or inputs and/or offtakes (as the case may be) in that balancing zone or sector or at that physical entry and/or exit point accordingly.

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

² <http://www.net-connect-germany.com>

notify the MAM thereof without undue delay irrespective of the causes underlying such inability or restriction.

Notification must be given by telephone first, to be followed without undue delay by notice in writing which must be addressed to the MAM's contact person as indicated under the Prequalification Rules. Any such notification will not release the Provider from any of its contractual obligations.

2. Each Party shall notify the other Party in writing in good time, giving advance notice of at least ten (10) business days, of any change in the notifying Party's contact person(s) specified by that Party under the Prequalification Rules.

5 Charges and Invoicing

1. For all gas quantities supplied (System Buy) and/or received (System Sell) under a System Balancing Transaction Agreement the fees agreed in each case must be paid in accordance with the rules set out below.
2. If on any gas day gas was supplied or received between the Parties under more than one contract, the MAM may aggregate all payments to be made pursuant to section 5.1 above and show them as a single item.
3. Where the Provider has supplied gas to the MAM (System Buy) under an STB, LTO or an SCB, the commodity charge 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 on that gas day as stated in the corresponding Edig@s request (REQUEST) or communicated by telephone or e-mail message by the applicable commodity charge agreed between the Parties for the supply of gas by the Provider (System Buy).
4. Where the Provider has received gas from the MAM (System Sell) under an STB, LTO or SCB, 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 on that gas day as stated in the corresponding Edig@s request (REQUEST) or communicated by telephone or e-mail message by the applicable commodity charge agreed between the Parties for the receipt of gas by the Provider (System Sell).
5. All fees and charges payable between the Parties 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 (06:00 hours on the first day of the calendar month following the relevant month), the MAM shall raise an invoice for all gas days of the relevant gas month and submit such invoice to the Provider by letter. All payments to be made by either Party to the other Party shall be effected within 60 calendar days following the end of the relevant delivery month.

6. Where payment of a capacity charge has been agreed between the Parties, the capacity charge payable in each case will be as agreed under the relevant System Balancing Transaction Agreement. After the end of the last month of the Contract Period agreed for any Balancing Product in respect of which payment of a capacity charge has been agreed, the MAM shall raise a separate invoice for such capacity charge, which shall be payable within 60 calendar days following the end of the last month of the relevant Contract Period.
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.
8. All payments must be made by the agreed due dates using a fixed value date. A payment will only be deemed to have been made in due time if the amount payable has been credited to the account of the receiving Party specified by the receiving Party by the stated due date.

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 must not disclose such Confidential Information or make it available to any third party without the prior written consent of the Party affected. Each Party hereby undertakes to use any Confidential Information solely for the purpose of performing the aforementioned contracts.
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*), provided that such entity is subject to an equivalent confidentiality requirement,
 - (b) to its employees, boards, representatives, consultants, shareholders, 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 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:
 - (aa) was legitimately known to the receiving Party prior to receiving such Confidential Information from the other Party,
 - (bb) was already in the public domain or becomes publicly available other than through an act or omission of the receiving Party; and/or
 - (cc) 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 confidentiality requirement set out herein shall expire 2 years after the term of the relevant System Balancing Transaction Agreement ends.

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) below. 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 notify the other Party without undue delay, stating the reasons for the occurrence of the Event of Force Majeure and its expected duration. In any such case, the Party affected shall make an effort to take all technically feasible and commercially reasonable steps to resume the performance of its obligations as soon as possible.
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.
5. Where possible, the Parties hereto shall cooperate to remedy any errors or disturbances.

8 Damages and Prohibition of Misuse of Contract for Inappropriate Arbitrage Purposes

1. The Provider shall not misuse any contract made between the Parties with a view to gaining any inappropriate arbitrage profits. Without limitation, misuse of a contract for the purpose of gaining inappropriate arbitrage profits will be deemed to be given
 - (a) where the Provider intentionally causes energy imbalances under any Balancing Group Contract made between the Provider and the MAM with a view to gaining arbitrage profits by simultaneously supplying (System Buy) and/or receiving (System Sell) gas under any System Balancing Transaction Agreement the Provider has entered into with the MAM, or
 - (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 directly originating from the Provider's use of gas quality conversion services. In each such case the Provider shall be liable to the MAM where the Provider has acted wilfully or negligently.
2. Moreover, where the MAM has purchased gas from the Provider (System Buy) and the Provider is in breach, within the meaning of section 1, of any of its obligations under sections 3.5 or 8(1)(a) or 8(1)(b) above, the MAM shall be entitled to pay to the Provider the Positive Daily Imbalance Price³ applicable on the day on which the relevant gas quantity was supplied by the Provider instead of the applicable commodity charge payable under section 5(3) above for all System

³ As determined in accordance with the administrative ruling on gas balancing handed down by the Federal Network Agency on 28 May 2008 (ref: BK7-08-002) and the official notifications issued by the regulator in relation thereto.

Balancing Transaction Agreements affected. Where the MAM has sold gas to the Provider (System Sell) under the System Balancing Transaction Agreements affected, the MAM shall be entitled to charge to the Provider the Negative Daily Imbalance Price⁴ applicable on the day on which the relevant gas quantity was received by the Provider instead of the applicable commodity charge payable under section 5(4) above. The financial settlement of the balancing group(s) concerned under the respective Balancing Group Contract(s) shall remain unaffected. The Provider shall have the right to submit suitable evidence to the MAM that the conditions set out in section 8(1)(b) above are not satisfied. Where such evidence is submitted and conclusive, sentences 1 to 3 of paragraph (2) above shall not apply.

3. The MAM reserves the right to make a claim for damages.

9 Liability

1. The MAM shall be liable for loss of life, personal injury or damage to health, except where the MAM, or the legal representative or vicarious agent acting on its behalf, as the case may be, acted neither wilfully nor negligently.
2. The MAM shall be liable for any financial loss or damage to property 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 contract's purpose, except where the MAM, or the legal representative or vicarious agent acting on its behalf, as the case may be, acted neither wilfully nor negligently. Where any such financial loss or damage to property was caused due to minor negligence, the liability of the MAM shall be limited to such loss or damage as is typical for the relevant type of contract and could reasonably have been foreseen at the time that contract was entered into.
3. The MAM shall be liable for any financial loss or damage to property suffered as a result of a breach of a non-material contractual obligation, except where the MAM, or the legal representative or vicarious agent acting on its behalf, as the case may be, acted neither wilfully nor with gross negligence. The MAM's liability for any financial loss or damage to property caused

⁴ As determined in accordance with the administrative ruling on gas balancing handed down by the Federal Network Agency on 28 May 2008 (ref: BK7-08-002) and the official notifications issued by the regulator in relation thereto.

due to gross negligence shall be limited to such loss or damage as is typical for the relevant type of contract and could reasonably have been foreseen at the time that contract was entered into.

10 Provision of Security

1. The MAM may in justified cases require the Provider to provide reasonable security 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 (with all these System Balancing Transaction Agreements being collectively referred to as the “**Business Relationship**”). In each such case the MAM shall give notice to the Provider in a written form in accordance with section 126b of the German Civil Code (*BGB*; “**Text Form**”) to explain its reasons for requiring such security.
2. Without limitation, a justified case within the meaning of paragraph (1) above shall be deemed to be established
 - (a) where the Provider has failed to perform 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 due payment), and where, despite the MAM having submitted an express demand for performance to the Provider, this continues to be the case 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 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 (where the

time of performance is of the essence, 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, or
- (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. In its request for security the MAM shall in this case fully disclose to the Provider the data and the essential content of the information on which the MAM based its assessment.

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 A-,
 - Fitch long-term rating is lower than A-,
 - Moody's long-term rating is lower than A3,
 - Dun & Bradstreet long-term rating is lower than 5A 2, 4A 2, 3A 2, 2A 2, 1A 2 or Allow.

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. In its request for security the MAM shall 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 Provider may provide security by:
- a. providing an unconditional, irrevocable and directly enforceable bank indemnity letter or guarantee. The credit institution issuing the letter of indemnity or guarantee must



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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. providing an unconditional and irrevocable corporate letter of indemnity, in which case the entity issuing the letter of indemnity must have a Standard & Poor's long-term rating of A- or better, a Fitch rating of A- or better, a Moody's long-term rating of A3 or better, or a Dun & Bradstreet rating of 5A 2, 4A 2, 3A 2, 2A 2, 1A 2, Allow or better. Furthermore, the corporate letter of indemnity must not be in an amount that exceeds 10% of the issuing entity's liable equity capital. The Provider shall submit evidence of this to the MAM when providing the security.
- c. providing an irrevocable and directly enforceable guarantee issued by an entity other than a credit institution, in which case the guarantor must have a Standard & Poor's long-term rating of A- or better, a Fitch rating of A- or better, a Moody's long-term rating of A3 or better, or a Dun & Bradstreet rating of 5A 2, 4A 2, 3A 2, 2A 2, 1A 2, Allow or better. Furthermore, the guarantee must not be in an amount that exceeds 10% of the guarantor's liable equity capital. The Provider shall submit evidence of this to the MAM when providing the security.
- d. paying cash by way of security, which must be deposited to an account specified by the MAM. Any such cash paid by way of security shall bear interest at the base rate published by the German Bundesbank on the first bank business day of the respective billing month.

Any letter of indemnity or guarantee provided pursuant to subparagraphs (a) to (c) above must be payable on first demand and must 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 12 calendar months but expire no later than two months after the end of the term of all System Balancing Transaction Agreements made between the MAM and the Provider.

5. The Provider shall provide security to the MAM no later than 5 business days after it receives the latter's request for security.

If at any time after a security has been provided the relevant surety no longer satisfies the requirements defined in paragraph (4) above (e.g. where the surety's credit rating is subsequently

downgraded), the Provider shall re-provide security within 5 business days of the date on which the relevant requirements are no longer satisfied.

6. The amount to be secured shall be determined on the basis of the MAM's potential risk exposure in the event of a default, i.e. the financial risk borne by the MAM in the event that the Provider fails to comply with its obligations under the System Balancing Transaction Agreements made between the MAM and the Provider in the course of their Business Relationship (the "**Default Risk**"). The MAM's Default Risk comprises two elements, the risk borne by the MAM in the event that the Provider fails to comply with its payment obligations ("**Credit Risk**"), on the one hand, and 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, most notably, without limitation, its obligation to supply energy to and/or receive energy from the MAM ("**Performance Risk**"), on the other hand. Where the Provider has both payment obligations and other performance obligations to the MAM under the Business Relationship, the MAM's Default Risk shall correspond to the sum of the MAM's Credit Risk and the MAM's Performance Risk. The MAM's Default Risk exposure shall thus be determined as follows:
- a. The MAM's Credit Risk shall be equal to twice the anticipated maximum monthly amount receivable by the MAM from the Provider under the Business Relationship.
 - b. The MAM's Performance Risk shall be equal to twice the anticipated maximum monthly amount receivable by the Provider from the MAM under the Business Relationship.
 - c. For the purpose of determining the anticipated monthly amounts receivable by the MAM and the Provider under the Business Relationship as set out in subparagraphs (a) and (b) above, the monthly amounts receivable expected to arise under the System Balancing Transaction Agreements made between the MAM and the Provider shall be assessed, with due consideration to be given to
 - the MAM's anticipated future system balancing requirements as determined on the basis of historical data and taking account of current circumstances
 - the volumes contracted between the MAM and the Provider under existing System Balancing Transaction Agreements, and
 - the position of the relevant contracts in the corresponding Merit Order List pursuant to section 3.3 above.
 - d. Notwithstanding the provisions set out in paragraphs (6)(a) and (b) above, where the term of each and all of the System Balancing Transaction Agreements entered into

under the Business Relationship will end during the two months following the MAM's request for security, the MAM's Credit Risk shall be equal to the anticipated maximum total amount receivable by the MAM from the Provider in the period remaining until the end of the Business Relationship and the MAM's Performance Risk shall be equal to the anticipated maximum total amount receivable by the Provider from the MAM in the period remaining until the end of the Business Relationship. The relevant amounts receivable shall be determined in accordance with paragraph (6)(c) above.

The MAM shall have the right to review at any time whether the realisable value of all security provided by the Provider is less than the MAM's Default Risk exposure as determined in accordance with the foregoing provisions. Where this is the case, the MAM shall be entitled to require the Provider to adjust the amount of security provided within 5 business days of receiving a request to this effect from the MAM.

7. The MAM shall have the right to realise any security provided where it has issued a payment reminder to the Provider on occurrence of a payment default (also in the case of any claim for damages in lieu of performance) and the Provider has failed to make the due payment in question to the account of the MAM within 5 business days of receiving the payment reminder (with the relevant date being the date on which the money is received in the account of the MAM). Where a security is realised, the MAM may demand that the proportion of the security that has been realised be re-provided. The Provider shall re-provide any such security within the time limit set out in the first subparagraph of paragraph (5) above.
8. Any security provided must be released without undue delay once and to the extent that the conditions for its being requested are no longer satisfied. The MAM will review no less than every six months whether the grounds for the provision of security continue to apply. Where the aforementioned review reveals that the realisable value of all security provided exceeds the value to be applied pursuant to paragraph (6) above by more than 10 per cent, the MAM shall release the security provided or the relevant proportion thereof (as the case may be). Where multiple securities have been provided, the MAM may choose at its discretion which of these securities will be released and/or which of these securities will be released in full or in part (as the case may be).

11 Termination

1. A System Balancing Transaction Agreement may be terminated for cause only, in which case the relevant System Balancing Transaction Agreement will be terminated with immediate effect.

Without prejudice to section 314 of the German Civil Code and without limitation, due cause shall in particular be given where

- (a) either Party has repeatedly breached any material contractual obligation under this contract or under any System Balancing Transaction Agreement, i.e. any contractual obligation breach of which places at risk the achievement of the contract's purpose, despite having been issued with a warning notice.
 - (b) the Provider does not or no longer meet the requirements and prerequisites set out in the Prequalification Rules.
 - (c) the Provider has failed to make payment on any due payment obligation despite having been issued with a payment reminder by the MAM on occurrence of the default.
 - (d) the Provider has failed to provide any security due under this contract.
 - (e) 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 (*Insolvenzordnung, InsO*), despite having been called on to do so.
 - (f) 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.
2. Notice of termination must be given in writing and signed by the terminating Party.
 3. The MAM shall have the right to amend, or add new provisions to, the System Balancing Terms & Conditions set out herein at any time. The MAM shall provide written notice of any such amendments or additions to the System Balancing Terms & Conditions or Product Descriptions to the Provider no later than 6 weeks ahead of the date on which the relevant amendments and/or additions are to take effect. If the Provider does not agree with any such amendment or addition, the Provider shall be entitled to terminate this contract within 4 weeks of receiving notice thereof, with such termination to take effect as of the date on which said amendment or addition is to take effect. If the Provider fails to exercise its right to termination, the Provider shall be deemed to have accepted the amendment or addition in question.

12 Assignment

1. Neither Party shall transfer any rights and/or obligations under this contract, 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.
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.
3. No right or obligation under any System Balancing Transaction Agreement may be transferred to any entity that has not successfully completed the prequalification process as required under the Prequalification Rules.

13 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 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 the System Balancing Transaction Agreement affected and reflecting as closely as reasonably possible the intentions of the Parties.

14 Changes in Circumstances

1. Where during the term of any System Balancing Transaction Agreement unforeseen circumstances should arise in respect of which no provision has been made in the relevant contract, or which the Parties failed to take into account when entering into that contract, and where such circumstances have such significant commercial, technical or legal impact on that contract 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 either Party pleads such circumstances, that Party shall be required to specify and prove the pertinent facts.
3. Save where the pleading Party could not be reasonably expected to raise such demand at an earlier time, 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.

15 Requirement for Written Form

The Parties have not entered into any oral agreements on the subject hereof. Except where any further restrictions as to form are imposed by statute and except as otherwise provided in this contract, any and all amendments or additions hereto as well as the termination or revocation hereof shall be invalid unless made in writing and signed by the Parties. This shall also apply with respect to this requirement for the written form.

16 Jurisdiction and Governing Law

1. The Parties hereby agree that the Düsseldorf courts are to have exclusive jurisdiction in any type of proceeding to settle any dispute arising out of or in connection with 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 (CISG).

17 Documents Forming Part of the Contract

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



1. Prequalification Rules for Participation in the Bilateral Balancing Market and Terms of Use for the Bidding Platform of Trading Hub Europe GmbH
2. "LTO" Product Description
3. "STB" Product Description
4. "SCB" Product Description