

## Terms and Conditions

# Governing the Conclusion of Contracts for and the Use of Stage 1 "Strategic Storage-Based Options"

(hereinafter referred to as "Stage 1 SSBO Terms & Conditions")

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## Preamble

Section 35a of the German Energy Industry Act (*Gesetz über die Elektrizitäts- und Gasversorgung - EnWG*) requires the market area manager (hereinafter referred to as "MAM") to cooperate in ensuring security of supply and to take further measures, especially with a view to achieving certain storage levels at the gas storage facilities located in its market area.

Section 35b (1) of the German Energy Industry Act requires the operators of gas storage facilities to ensure specific gas storage levels in the period from 1 October of a calendar year to 1 February of the following year by making appropriate contractual arrangements. Pursuant to Section 35c (1) of the German Energy Industry Act ("Stage 1"), the MAM shall, following the approval from the Federal Ministry of Economics and Climate Protection (BMWK) and in agreement with the Federal Network Agency (BNetzA), procure strategic options for the provision of gas as appropriate to ensure that the gas storage levels pursuant to Section 35b are achieved as part of market-based, transparent and non-discriminatory public tender procedures so as to ensure security of supply. If the gas quantities injected into storage by the users of a gas storage facility and the tenders pursuant to section 35c(1) are not sufficient to achieve the gas storage levels pursuant to section 35b, the MAM may conduct additional tenders pursuant to section 35c(2) ("Stage 2").

Against this background, the MAM concludes contracts for products of the "Strategic Storage-Based Options" type ("SSBO Products"). Each balancing group manager in the MAM's market area who has accepted the "Prequalification Rules for Participation in Tenders for SSBO Products and Terms of Use for the Bidding Platform of Trading Hub Europe GmbH" ("SSBO Prequalification Rules") with its application and has successfully completed the prequalification procedure (hereinafter referred to as "Provider") may participate in the MAM's tender for Stage 1 SSBO Products. The Stage 1 SSBO Product serves the purpose of ensuring security of supply in the winter months and is intended to support efforts to reach the aforementioned storage levels. All contracts to be entered into with market participants offering to supply or receive the gas required for this purpose shall be governed by the terms and conditions set out herein.

## **1 Object of Contract**

- (1) The Stage 1 SSBO Terms and Conditions set out herein provide the contractual framework for all individual Stage 1 SSBO Product Contracts to be entered into by the MAM and the Provider in relation to measures pursuant to Section 35c (1) of the EnWG. Stage 1 and Stage 2 SSBO products are hereinafter collectively referred to as "SSBO Products".
- (2) Stage 1 SSBO Products are long-term products designed to ensure security of supply while maintaining certain storage levels. For this purpose, the MAM shall enter into a contract with the Provider for a certain quantity of gas, which the Provider shall store in a storage facility in accordance with the provision set out hereinbelow and shall keep part of it available for the MAM to call off at any time. These terms and conditions set out the Provider's specific contractual obligations.

## **2 Acknowledgement of the Stage 1 SSBO Terms & Conditions, Relationship to the SSBO Prequalification Rules**

- (1) The Provider agrees to these Stage 1 SSBO Terms & Conditions and, where applicable, other terms and conditions set out in an invitation to tender each time it submits a bid for a Stage 1 SSBO Product by ticking the "I accept the SSBO Terms and Conditions" box provided for this purpose in the bidding screen of the MAM's Bidding Platform<sup>1</sup>. The aforementioned contractual terms and conditions, as amended are available on the MAM website<sup>2</sup>.
- (2) Full and unconditional acceptance of the Terms & Conditions pursuant to section 2 (1) shall be a prerequisite for participation in the tendering process for Stage 1 SSBO Products.
- (3) In the event of any discrepancy between these Stage 1 SSBO Terms & Conditions and the SSBO Prequalification Rules the provisions set out in the Stage 1 SSBO Terms & Conditions shall prevail.

## **3 General Rules Governing the Tendering Process**

- (1) The contracts for the SSBO Products governed by the Stage 1 SSBO Terms & Conditions shall be concluded via a tendering process. According to Section 35c (1) of the EnWG, the procurement of Stage 1 SSBO Products is subject to approval by the Federal Ministry for

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<sup>1</sup> also referred to as Balancing Services Portal, (<https://www.tradinghub.eu/en-gb/Portals/BSP>)

<sup>2</sup> [www.tradinghub.eu](http://www.tradinghub.eu)

Economic Affairs and Climate Action (BMWK) in agreement with the Federal Network Agency (BNetzA).

- (2) Invitations to tender for Stage 1 SSBO Products shall be issued by the MAM across Germany (hereinafter referred to as “market area tender”) or for storage zones (hereinafter referred to as “zone-specific tender”) or for specific storage facilities (hereinafter referred to as “storage-specific tender”). The MAM will publish the specific type of the tender in each case with the announcement of the specific tender. An overview of the relevant storage facilities located in Germany and their allocation to the storage zones is provided on the MAM’s website.<sup>3</sup> When the Provider submits its offer in accordance with section 7, it shall name the storage facility it offers as a delivery point.
- (3) The subject matter of the tendering process is the conclusion of individual contracts for the tendered Stage 1 SSBO Product between the Provider and the MAM. The individual contract (hereinafter referred to as "Stage 1 SSBO Product Contract") consists of all bids submitted in response to a specific invitation to tender in each case for the same storage facility and accepted by the MAM, the terms and conditions of the invitation to tender and these Stage 1 SSBO Terms and Conditions.
- (4) Invitations to tender for Stage 1 SSBO Products are published on the MAM’s website and conducted via the MAM’s Bidding Platform. The Provider is invited to submit bids for the Stage 1 SSBO Product described in the invitation to tender and these Stage 1 SSBO Terms and Conditions, and, if a Stage 1 SSBO Product Contract is concluded with the MAM upon acceptance of the bids summarised in accordance with section 3 (3) hereinabove, shall be obliged to perform the relevant services in accordance with these Stage 1 SSBO Terms and Conditions.
- (5) The contract period, i.e. the period in which the Provider must ensure performance of the Stage 1 SSBO Product Contract, shall commence at 6:00 a.m. on 1 October of the year specified in the invitation to tender (at the beginning of the 1 October gas day) and shall end at 6:00 a.m. on 1 February of the following year (following the end of the 31 January gas day).
- (6) The bidding period ("Bidding Period"), i.e. the period during which the Provider may submit bids for a tendered Stage 1 SSBO Product, shall be at least ten (10) business days<sup>4</sup>. The Bidding Period applicable to a tender shall be announced in advance by the MAM on its

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<sup>3</sup> The document will be made available in the download centre of the MAM’s website under "Terms & Conditions for SSBO" together with the other contracts and documents.

<sup>4</sup> For the purposes of these Stage 1 SSBO Terms and Conditions, a “business day” means any day from Monday to Friday with the exception of public holidays as well as 24 December and 31 December; in this context any public holiday observed in any German federal state is regarded as a public holiday.

website.

- (7) The MAM may, in justified exceptional cases and in derogation of section 3 (6), issue an invitation to tender without adhering to the aforementioned notice period. A justified exceptional case shall be deemed to exist in particular if the MAM identifies a demand for a Stage 1 SSBO Product which cannot be met or can no longer be met if the notice period set out in section 3 (6) above is observed, or if an identified demand could not be met or not be met in full by a previous invitation to tender. In all other respects, the provisions of these Stage 1 SSBO Terms & Conditions shall apply mutatis mutandis to any invitation to tender which does not observe the aforementioned notice period.

#### **4 Product Design**

- (1) Contracts for Stage 1 SSBO Products concluded between the MAM and a Provider as part of measures pursuant to Section 35c (1) of the EnWG contain a number of components described in more detail hereinbelow:
  - Injection into storage or keeping in storage the contractually agreed gas quantities at a specific storage facility (also referred to as "Contracted Storage Quantity") in accordance with the more detailed provisions set out in section 4 (2)
  - Provision of a certain percentage of said storage quantities (also referred to as "Call-off Quantity") and ensuring the availability thereof for call orders issued by the MAM at any time in accordance with the more detailed provisions set out in section 4 (3)
- (2) The Provider shall inject into storage and/or keep in storage the Contracted Storage Quantity in such a way that the following percentages of the Contracted Storage Quantity are stored in the contracted storage facility at the times defined hereinbelow in relation to the start of the respective gas day. Whether or not this storage quantity was already in the contracted storage facility at the time the contract was concluded shall be irrelevant for the performance of the contract.
  - (a) On 1 October at least 90 % of the Contracted Storage Quantity shall be stored in the contracted storage facility.
  - (b) On 1 November 100 % of the Contracted Storage Quantity shall be stored in the contracted storage facility.

- (c) On 1 February<sup>5</sup> at least 45 % of the Contracted Storage Quantity shall be stored in the contracted storage facility.
- (d) At any time during the contract period, at least the Call-off Quantity detailed in paragraph (3) shall be stored in the contracted storage facility.

If the MAM has previously issued a call order pursuant to section 9 to the Provider for the contracted storage facility, the aforementioned percentages shall be reduced by the relevant share for all cut-off dates following the call order. In the case of lit. (d) above, the Call-off Quantity to be secured at any time shall be reduced accordingly for the whole of the remaining contract period.

The Provider shall be responsible for ensuring that it can procure and inject into storage the gas quantities required to achieve the relevant Contracted Storage Quantities as defined above. Gas storage shall require, in particular, booking the relevant storage capacities (fixed working gas quantities as required including the relevant injection rates) as well as exit capacities needed for taking the gas from the network of the relevant network operator at the relevant connection point to the contracted storage facility, which the Provider has to ensure. Both the injection rate and the exit capacity may in principle also be booked on an interruptible basis. In this case, however, the Provider must also ensure that the above requirements can be met. The Provider shall bear the risk of interruption.

- (3) For the Stage 1 SSBO Product, the Provider shall make 20% of its Contracted Storage Quantity available as a Call-off Quantity, which may be called by the MAM during the contract period in accordance with section 9. For the Call-off Quantities, the Provider shall ensure that, in the event of a call order by the MAM in accordance with section 9, it can at any time effect withdrawal from storage in accordance with the call order. Once the entire Call-off Quantity has been called off, the MAM shall not issue any further call orders before the end of the contract period, and the Provider's obligation to secure and make stored gas available with regard to the Call-off Quantity according to paragraph (2) lit. (d) shall cease to apply for the rest of the contract period.

When a call order is issued by the MAM, the Provider shall physically provide the Call-off Quantity in accordance with section 9 by effecting physical entries (EntrySO data series type) at least in the amount of the call made by using appropriate nominations or renominations at a storage connection point to the contracted storage facility for gas withdrawal from the storage facility. The Call-off Quantities shall in each case be provided at a constant hourly

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<sup>5</sup> A special characteristic of the specific date 1 February: The 1 February means the end of the gas day 31 January.

flow rate from the hour defined as the first delivery hour at the time of the call-off ("Call-off Hour") until the end of the relevant gas day (hereinafter referred to as "Call-off Period"), i.e. a maximum of 24 hours per gas day<sup>6</sup> and a minimum of one (1) hour per gas day. Contracted Call-off Quantities may be called for each lot at a withdrawal rate of 10 MWh/h. The maximum withdrawal rate at a contracted storage facility that can be called by the MAM under a contract for a Stage 1 SSBO Product is therefore determined by multiplying the number of lots contracted under the respective contract for the Stage 1 SSBO Product by 10 MWh/h. A partial call shall be permissible, whereby the withdrawal rate shall always be a multiple of 10 MWh/h.

If, at the time of the call order, a physical flow rate (EntrySO nominations) has already been set at the contracted storage facility in the amount of the call order for all hours of the call period and if the Provider wants to use said flow rate for the call, the Provider may in this case also balance the quantity called at the virtual trading point (VTP) by the MAM at other entry and exit points within the called gas quality in order to avoid over- or under-supply its balancing group.

For call orders received, the Provider may only use storage connection points to a transmission system allocated to the German market area that are shown in the list pursuant to section 3 (2).

The Provider is aware that compliance with the aforementioned obligations requires a corresponding withdrawal rate at the relevant storage facility as well as entry capacities for transferring gas into the network of the relevant network operator at the relevant storage connection point, which the Provider shall ensure. As a rule, the Provider may also draw on Products which cannot be used permanently on a firm basis for its bookings. In this case, however, the Provider shall also ensure that the above requirements can be met. The Provider shall not bear the risk of interruption only if, in the event of an interruption, it proves to the MAM that it was unable to book permanent firm capacity at the time of the booking and has chosen the next best product. Appropriate proof shall be provided as and when requested by the MAM. The Provider shall bear the risk of interruption if it fails to provide such evidence.

- (4) If the Provider culpably breaches its obligations hereunder, section 12 shall apply. In this case, the MAM may also issue a warning to the Provider. If the Provider breaches its obligations hereunder again after having received such warning from the MAM, the MAM may bar the Provider from participating in the next SSBO tenders. Such barring may be imposed

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<sup>6</sup> On the day the clocks change there can be a maximum of 25 hours or a maximum of 23 hours.



by the MAM after due consideration of the individual case for up to twelve (12) months from receipt of the written notice from the MAM. The foregoing shall be without prejudice to section 6 of the SSBO Prequalification Rules.

## **5 Lot Size**

As a rule, bids shall be submitted in lots. The MAM shall specify the applicable lot size for each tender in its invitation to tender.

## **6 Price Model**

- (1) The Provider may charge a price in euros for keeping gas quantities in storage in accordance with section 4 (2) for the duration of the contract period (hereinafter "Service Fee"). The Service Fee shall remain constant for the duration of the contract period. If no Service Fee is specified, the Service Fee charged by the Provider shall be set to zero (0).
- (2) In addition, the Provider may request a capacity charge ("Capacity Charge") in euros for ensuring the availability of the Call-off Quantity at all times in accordance with section 4 (3) for the entire contract period. The Capacity Charge shall remain constant over the contract period and shall be due and payable regardless of whether or not a call order is executed. If no Capacity Charge is specified, the Capacity Charge requested by the Provider shall be set to zero (0).
- (3) The withdrawal of gas quantities by the Provider upon request of the MAM pursuant to section 9 shall be priced with a commodity charge ("Commodity Charge") in euros per MWh. Said commodity charge shall be composed of the Day Ahead (D+1) index price "EEX European Gas Spot Index (EGSI) THE EUR/ MWh"<sup>7</sup> formed for the gas day D on which the delivery takes place (on day D of the delivery the Day Ahead/Weekend price for day D+1 is formed, which is then used for the delivery), as well as a premium or discount on the index price in euros per MWh on this index price to be quantified by the supplier (also known as "Commodity Charge Surcharge"). Said Commodity Charge shall only be payable if a call order is issued by the MAM and only in the amount of the quantity called.

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<sup>7</sup> The price is currently published by EEX on its website (<https://www.powernext.com/spot-market-data>) under the heading "Natural gas markets > Spot market data > Day Ahead and Weekend > European Gas Spot Index" for the market area THE in EUR/MWh.

## 7 Submission of Bid

- (1) Bids for a Stage 1 SSBO Product put out to tender shall always be issued via the Bidding Platform.
- (2) The offer shall contain at least the following information:
  - Name of the Provider
  - The designation of the storage facility as the point of delivery
  - The number of lots pursuant to section 5 offered by the Provider at the specific storage facility
  - The Service Fee offered per lot pursuant to section 6 (1)
  - The Capacity Charge offered per lot pursuant to section 6 (2)
  - The Commodity Charge Surcharge pursuant to section 6 (3) offered per lot
  - The balancing group contract number of a balancing group contract of the Provider for the gas quality of the storage facility to which the offer refers
- (3) All bids shall be submitted in accordance with the terms of the invitation to tender published by the MAM and shall meet the requirements detailed in these Stage 1 SSBO Terms and Conditions. In addition, all bids must be correct, complete and not be subject to any conditions or reservations. A bid shall be deemed to be complete if it contains all the information to be specified under the provisions set out in the relevant invitation to tender and section 7 (2). The Provider shall be fully and solely responsible for the correctness and completeness of any and all information specified in a bid. Any bid which is not in accordance with the requirements set out in the relevant invitation to tender or the Stage 1 SSBO Terms and Conditions, or which is subject to a condition or reservation, or is incomplete or unclear, shall not be accepted by the MAM.
- (4) The Provider shall be entitled to submit several bids for the tendered Stage 1 SSBO Product as part of a tender. The Provider may also submit several bids for a storage facility, whereby each bid can contain several lots. However, for technical reasons, the total number of bids that may be submitted per tender is limited to 1,000 bids per Provider.
- (5) When a bid is posted on the Bidding Platform, it is given a time stamp of receipt which is subsequently taken into account in the acceptance of bids in accordance with section 8 (2).

- (6) Bids submitted for a Stage 1 SSBO Product may be amended or withdrawn until the end of the respective bidding period. Any such amendment or withdrawal shall be made via the Bidding Platform. In the event of a change, the time stamp of receipt in accordance with section 5 shall also be adjusted to the time of the change. When the bidding period has ended, the bid shall be binding.
- (7) During any period of unavailability of the Bidding Platform, the Provider may submit bids by completing and signing a form and sending it to the e-mail address of the MAM's dispatching centre and may amend or withdraw such bids subject to the conditions set out in paragraph (6) above. Both the email address and the 24/7 hotline of the dispatching centre are published on the MAM's website.
- (8) All costs incurred by the Provider in connection with the submission of its bid shall be borne by the Provider.

## **8 Acceptance of Bids and Contract Award**

- (1) As a rule, all bids shall be examined from a cost efficiency perspective, taking into account the requirements of the relevant tender.
- (2) For this purpose, the bids received put out to tender shall be ranked according to their projected total costs in euros per lot, starting with the lowest-cost bid. If the projected total costs per lot are the same, bids submitted earlier shall be considered before bids submitted later. In case of a market area tender the ranking of the bids will take place without any consideration to the location of the storage facility as the point of delivery according to section 7(2) the Bidder provided. In case of a storage-specific tender the ranking of the bids will always take place for each gas storage facility; this means, that only bids for the specific gas storage facility of the tender will be considered for the acceptance of bids. In case of a zone-specific tender the ranking of the bids will take place for each storage zone accordingly.
- (3) The projected total cost of a tender in euros per lot shall be determined as follows:

$$TC_{lot} = SF + CaC + LS * CS * OF * CoC$$

where

$TC_{lot}$  = Projected total costs of the tender in EUR per lot

SF = Service Fee in euros per lot according to section 6 (1) and/or section 7 (2)

CaC = Capacity Charge in euros per lot according to section 6 (2) and/or section 7 (2)

LS = The Contracted Storage Quantity in MWh per lot resulting from the lot size defined by the MAM for the relevant tender pursuant to section 5.

CS = Call share in percent, i.e. the percentage share of the storage quantity whose availability as a Call-off Quantity for a call by the MAM must be ensured by the Provider pursuant to section 4 (3)

OF = Occurrence factor in percent; the occurrence factor represents the predicted call-off probability for the contracted Call-off Quantities and is defined by the MAM for each tender on the basis of appropriate assumptions

CoCs = Commodity Charge Surcharge in EUR/MWh according to section 6 (3) and section 7 (2); the index price component shall not be taken into account in the calculation

- (4) The MAM shall then accept the most cost-effective bids in each case until the tendered demand has been met in full. If the last offer to be accepted, taking into account the number of lots offered by the Provider, exceeds the MAM's demand, the MAM shall be entitled to accept only the number of lots necessary to meet its requirements.
- (5) Further details and any ancillary conditions governing bid acceptance are set out in the relevant invitation to tender.
- (6) The MAM may deviate from the principles set out herein to the extent necessary to ensure of security of supply.
- (7) In the case of Stage 1 SSBO Products, acceptance by the MAM of a bid made by the Provider shall constitute a contract between the Provider and the MAM for the Stage 1 SSBO Product pursuant to section 3 (3) offered by the Provider for the relevant Contract Period. The MAM shall confirm its acceptance of a bid by e-mail to the Provider. Said e-mail shall contain the exact reference numbers of all of the Provider's bids that have been accepted by the MAM. The Provider shall acknowledge receipt of each such email immediately by sending a confirmation email to the MAM's sender address. This confirmation is required for verification purposes only and does not affect the validity of the relevant contract. Providers whose bids have not been accepted by the MAM shall also receive notice by email informing them of the bids that have not been accepted. Providers shall not be required to confirm receipt of any such email by the MAM.

- (8) The Provider shall not be entitled to demand acceptance of one bid or all of the bids by the MAM. In particular, the MAM shall be entitled not to accept offers for price reasons, even if this means that the demand put out to tender shall not be met.

## **9 Call Orders**

- (1) If, after the MAM has been heard as provided for in Section 35d of the EnWG, the BMWK decides (in agreement with the Federal Network Agency) that the MAM should call off quantities from the Providers, in particular because of the reasons provided for in Section 35d (1) paras. 1 - 3 of the EnWG, a corresponding instruction shall be issued to the MAM. The MAM shall then issue the necessary call orders in accordance with the decision referred to in sentence 1 of this paragraph. In these call orders, priority shall be given to SSBO Product lots which, in particular due to the location of the contracted storage facility, lend themselves particularly well to meeting the demand determined by the authorities. All SSBO Product lots determined to be suitable in this way shall then be ranked according to price, i.e. the ranking shall be from the lowest to the highest Commodity Charge. If the criteria referred to above do not require the location to be taken into account, the SSBO Product lots shall only be ranked according to the contracted Commodity Charge. Where Commodity Charges are the same, bids submitted earlier shall be considered before bids submitted later.
- (2) The MAM shall issue a call order for a Stage 1 SSBO Product at least three (3) hours before the start of the call hour (hereinafter referred to as "Lead Time") by sending a message in the MAM-specific REQUEST data format ("MAM-REQUEST") to the Provider. The Provider shall confirm receipt of the call order with a confirmation message in the corresponding MAM-specific REQRES data format ("MAM-REQRES"). This reconfirmation message is for control purposes only and does not affect the validity of the contract in respect of the relevant SSBO Product.
- (3) If a call order cannot be issued using MAM-REQUEST for technical reasons, the Provider shall be informed by telephone and by e-mail or in another suitable manner in text form via the contact point specified as part of the prequalification process, in compliance with the aforementioned Lead Time. In this case, the Provider shall confirm receipt of the call order by telephone and e-mail or by other suitable means in text form. This reconfirmation is for control purposes and does not affect the validity of the call order for the relevant Stage 1 SSBO Product.
- (4) In the event of a call order pursuant to the aforementioned paragraphs, the MAM shall make a nomination at the VTP of the market area for the respective gas quality (H-gas or L-gas) for

the MAM and the Provider (single-sided nomination). The nomination shall be made for exit gas flows at the VTP from the balancing group of the Provider specified by the Provider in accordance with section 7 (2) (VTP exit nomination). In this nomination the quantities of several of the Provider's offers called by the MAM for each gas quality shall be nominated together in the relevant balancing group.

- (5) A fee charged for the use of the VTP shall also be charged for the nomination of gas quantities as part of call orders made under these Stage 1 SSBO Terms and Conditions.
- (6) The transfer of title to the gas quantities provided by the Provider as well as the transfer of risk between the MAM and the Provider (hereinafter referred to individually as "Party" or collectively as "Parties") shall occur at the VTP in the gas quality (H-gas or L-gas) agreed in each case.
- (7) The Provider shall not be entitled to demand that the MAM issue a call order for any Call-off Quantities.

## **10 Test Call Orders**

- (1) The MAM shall have the right to occasionally issue call orders outside the regular call orders in accordance with section 9 for the purpose of testing the functioning of the system and the reliability of its call options (each such call order a "Test Call Order") without providing advance notice of this to the relevant Provider.
- (2) In particular, without limitation, Test Call Orders pursuant to section 1 (1) above may be issued to a Provider there is objective evidence indicating that the Provider may not duly comply with its obligations on receiving a call order.
- (3) In all other respects, Test Call Orders are regular call orders to which the other provisions of these Stage 1 SSBO Terms and Conditions apply without restriction. Section 12 shall apply subject to the proviso that any contract penalty shall be halved.

## **11 Provider's Duty to Prove Compliance with Contractual Obligations**

- (1) On request by the MAM, the Provider shall prove in a suitable manner that it has duly complied with its obligations under these Stage 1 SSBO Terms and Conditions or that it is able to do so (as the case may be), especially, without limitation, its obligation to store gas quantities in accordance with section 4 (2) and guarantee that the MAM can call off the Call-

off Quantities at any time in accordance with section 4 (3). This may be done in particular in the form of a confirmation by the relevant storage operator.

- (2) The Provider agrees to the MAM requesting relevant evidence and data from the competent storage system operator and the competent network operator, if required.

## 12 Penalty

- (1) Pursuant to section 35c(1) of the EnWG, contracts entered into and Call Orders for Stage 1 SSBO Products issued by the MAM shall serve to ensure security of supply. For this reason, the MAM shall levy contractual penalties in accordance with paragraphs (2) to (4) if the Provider has at least partially breached its obligations under these Stage 1 SSBO Terms and Conditions in at least one hour of the contract period. The foregoing shall not apply where the Provider submits evidence to the MAM that it cannot be held responsible for the breach in question.
- (2) If the Provider has breached its obligations pursuant to section 4 (2) by failing to store the required storage quantity on the due date either in whole or in part, the MAM shall levy a penalty. The amount of the penalty shall be determined in accordance with the following formula:

$$P = SQ * 0.33 * SF_{A_{max}} * 2$$

where

**P** = Penalty in EUR due for breach of obligation

**SQ** = Shortfall quantity in percent, i.e. the share of the storage quantity not provided by the Provider in the storage facility on the respective cut-off date pursuant to section 4 (2)

**SF<sub>A<sub>max</sub></sub>** = The higher of the following fees: either the total Service Fee (i.e. the sum for all contracted lots for the respective gas storage facility) in EUR to be paid by the MAM to the Provider for the contract period pursuant to section 6 (1) or section 7 (2), or the average price for the Service Fees of the contracted lots of all Providers for the relevant storage zone which is assigned to the respective gas

storage facility multiplied by the total number of contracted lots of this Provider at the relevant contracted storage facility.<sup>8</sup>

- (3) If the Provider has breached its obligations pursuant to section 4 (3) by failing to make available, or by only making available in part, the requested and not yet called-off quantity at any time during the contract period, the MAM shall levy a penalty. Said penalty shall be due for each day on which Provider has breached any obligation for at least one hour, and it shall be calculated per day in accordance with the following formula:

$$P_d = CaC_d * 2$$

where

$P_d$  = Penalty in EUR due for day on which breach of obligation has occurred

$CaC_d$  = total Capacity Charge per day of the contract period (i.e. total for all contracted lots of the Bidder at the specific gas storage facility) in EUR pursuant to section 6 (2) or section 7 (2)

- (4) If, in the event of a Call Order, the Provider has at least in part breached its obligations, including but not limited to its obligations pursuant to section 4 (3), the amount of the penalty for each day on which it has at least partially breached its obligations pursuant to section 4 (3) shall be determined in accordance with the following formula:

$$P = SQ_c * CoC_{Av} * 2$$

where

$P$  = Penalty in EUR due for breach of obligation

$SQ_c$  = Shortfall of the Call-off Quantity in MWh, i.e. the share of the Call-off Quantity not provided by the Provider in accordance with the contract

$CoC_{Av}$  = Average of the payable Commodity Charge in EUR/MWh for the Provider's contracted lots in respect of the contracted storage facility pursuant to section 6 (3) and section 7 (2), respectively.

- (5) If the Provider simultaneously breaches several of its obligations as set out above by one related act or omission, the highest of the relevant penalties shall be applied in each case.

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<sup>8</sup> The MAM will publish on its website the surcharges and prices.



In the event of multiple breaches of contractual obligations during a contract period, the individual penalties shall, as a rule, be added up, and the MAM shall levy a maximum penalty of 200% of the price components under the contract with the Provider in each case for the entire contract period and for the call-off of the entire Call-off Quantity in accordance with section 6.

- (6) If the Provider has chosen a negative price for one of the relevant price components pursuant to section 6 and this results in an overall negative price in the case of the Commodity Charge pursuant to section 6 (3), the MAM shall use the average price per lot for the respective price component of the contracted lots of all Providers in the calculation of the contract penalties pursuant to paragraphs (2) and (3).
- (7) The foregoing shall be without prejudice to the MAM's right to assert further claims for damages, including but not limited to cases where the Provider's failure to provide storage quantities or Call-off Quantities has resulted in the MAM having to take further measures in accordance with Section 35c of the EnWG to ensure the storage level required by Section 35b (1) of the EnWG. Any penalty to be paid in accordance with this section 12 (7) shall be offset against any damages to be paid by the Provider.
- (8) Any penalties levied by the MAM under a contract for a Stage 1 SSBO Product shall be due and payable ten (10) business days after receipt of the invoice in each case. Any contract penalties levied by the MAM under a Stage 1 SSBO Product Contract shall be payable ten (10) business days after receipt of the invoice in each case. All payments shall be made by the agreed due dates using a fixed value date. Payments shall 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.

### **13 Notice and Information Obligations**

If the Provider is unable to perform any of its obligations arising under or in connection with any Stage 1 SSBO Product Contract, or is restricted in its ability to do so, it shall notify the MAM thereof without undue delay irrespective of the causes underlying such inability or restriction. The Provider shall first notify the MAM by telephone on the 24/7 hotline of the MAM's dispatching centre and subsequently by e-mail to the MAM's dispatching centre. Such notification shall not release the Provider from its contractual obligations.

## 14 Invoicing

- (1) The amount of the agreed Service Fee pursuant to section 6 (1) and (2) shall be determined in accordance with the relevant contract for the Stage 1 SSBO Product. The total amount to be paid by the MAM to the Provider shall in each case be determined by multiplying the Service Fee per lot and the number of lots offered by the Provider pursuant to section 7 (2) and accepted by the MAM according to section 8 (4) or (7). The Service Fee pursuant to section 6 (1) shall be invoiced at the end of the gas months in which one of the key dates pursuant to section 4 (2) falls, i.e. in three parts at the end of the gas months of October, November and January. The MAM shall, no later than the 20th calendar day after the end of the gas month to be billed for a Stage 1 SSBO Product pursuant to this section 14 (1) under which payment of a Service Fee has been agreed, prepare a separate invoice for the Service Fee to be paid and send it to the Provider by e-mail. The fee payable in accordance with sentence 1 above shall be due within 30 calendar days after the end of the gas month of the contract period to be invoiced.
- (2) The amount of the agreed Capacity Charge pursuant to section 6 (2) shall be determined in accordance with the relevant contract for the Stage 1 SSBO Product. The total amount to be paid by the MAM to the Provider shall in each case be determined by multiplying the Service Fee per lot and the number of lots offered by the Provider pursuant to section 7 (2) and accepted by the MAM pursuant to section 8 (4) or (7). The Capacity Charge price pursuant to section 6 (2) shall be invoiced and paid monthly, i.e. in four (4) parts. The MAM shall, no later than the 20th calendar day after the end of the gas month to be billed for a Stage 1 SSBO Product pursuant to this section 14 (2) under which payment of a Capacity Charge has been agreed, prepare a separate invoice for the Capacity Charge to be paid and send it to the Provider by email. The Capacity Charge payable pursuant to sentence 1 shall be due within 30 calendar days after the end of the gas month of the contract period to be invoiced.
- (3) For the withdrawal of gas quantities under a Stage 1 SSBO Product Contract, the fee agreed in each case (hereinafter referred to as “Call Fee”) shall be paid. The Call Fee for call orders issued in respect of Stage 1 SSBO Products shall be calculated by multiplying the called-off gas quantity in MWh by the agreed Commodity Charge in EUR per MWh in accordance with section 6(3).
- (4) If on any gas day gas was withdrawn under more than one Stage 1 SSBO Product Contract between the MAM and a Provider, the MAM may aggregate all Call Fees pursuant to section 14 (3) above and show them as a single item.

- (5) The invoice for Call Fees payable under a contract between the MAM and the Provider (hereinafter referred to individually as “Party” or collectively as “Parties”) shall be made out by the MAM for all gas days of the relevant gas month within 30 calendar days after the end of the gas month to be invoiced and shall be submitted to the Provider by email. All payments to be made by the MAM shall be effected within 45 calendar days after the end of the gas month to be invoiced.
- (6) If the MAM finds that the Provider has not fulfilled all or part of its obligations under the relevant Stage 1 SSBO Product Contract by not providing or failing to secure storage or Call-off Quantities, the MAM shall pay the Service Fee or the Capacity Charge provided for in paragraph (1) and (2) hereinabove or, in the case of the gas withdrawal, the Call Fee pursuant to paragraph (3) hereinabove only to the extent that the Provider has actually delivered on its obligations toward the MAM to store or provide gas quantities or pursuant to section 4. For this purpose, the MAM shall reduce the Service Fee, the Capacity Charge or the Call Fee proportionately and invoice the reduced amount. The provisions on the contract penalty shall remain unaffected by any reduction of the payment under this clause.
- (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 shown separately.

## **15 Confidentiality**

- (1) The parties shall treat as confidential all provisions set out in each Stage 1 SSBO Product Contract as well as all information and data in whatsoever form they obtain in connection with the performance of such Stage 1 SSBO Product Contract (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.
  - (dd) is exchanged by a Party with the competent authorities for the purpose of these contractual provisions and the fulfilment of the MAM's tasks pursuant to section 35c of the EnWG.
- (3) The confidentiality requirement set out herein shall expire two (2) years after the term of the relevant Stage 1 SSBO Product Contract ends.

## **16 Data Protection**

- (1) As part of its commitment to quality, the MAM undertakes to handle all personal data of the Parties in a responsible manner and ensure compliance with the Federal Data Protection Act (*Bundesdatenschutzgesetz*) and the General Data Protection Regulation (GDPR), as amended from time to time. The MAM shall collect, process and use the personal data provided by the users under these Stage 1 SSBO Terms & Conditions only to the extent required the purposes of these Stage 1 SSBO Terms & Conditions and permitted by law (Section 6 et seq. GDPR). The MAM shall only process or use the data provided by contracting parties for other purposes where the user has given its express consent or if the MAM is legally obliged to do so. Further information on data protection is contained in the MAM's data protection declaration (provided on its website).
- (2) The parties undertake to observe the relevant provisions of the applicable data protection

laws and to protect the data collected and stored as part of the performance of the contract against access by unauthorised third parties.

## **17 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 (“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 MAM and the Provider shall cooperate to remedy any errors or disturbances.
- (6) If and to the extent that a general gas shortage situation, a situation pursuant to Section 35d (1) to (3) of the EnWG or a situation comparable thereto also occurs as a result of events referred to in section 2 (2), this shall not constitute force majeure, and the Parties may not invoke this force majeure clause. The contract shall serve to deal with precisely these situations.

## 18 Liability

- (1) The MAM shall only be liable hereunder if it fails comply with a material contractual obligation the breach of which either places at risk the achievement of the contract's purpose and/or the fulfilment of which is a prerequisite for the proper performance of the contract, and on whose fulfilment the Bidder regularly relies and may rely (hereinafter referred to as "Cardinal Obligation"). Moreover, liability hereunder shall be limited to
  - (a) damage caused by intent or gross negligence,
  - (b) personal injury (injury to life, body, health) and
  - (c) as well as the assumption of guarantees.
- (2) The MAM shall not be liable if the circumstances giving rise to a claim against the MAM
  - (a) are based on an unusual and unforeseeable event over which the MAM has no control and the consequences of which could not have been avoided despite the exercise of due care, or
  - (b) were brought about by the MAM complying with a legal obligation.
- (3) The MAM shall not be liable for any failures of or disruptions in the technical infrastructure outside the MAM's sphere of responsibility (Force Majeure).
- (4) The foregoing shall be without prejudice to the MAM's liability under mandatory statutory provisions (including without limitation the Product Liability Act).

## 19 Termination

- (1) A Stage 1 SSBO Product Contract may be terminated for good cause only, in which case it shall be terminated with immediate effect. Without prejudice to section 314 of the German Civil Code (*BGB*) and without limitation, good cause shall in particular be given where
  - (a) either Party has repeatedly breached any material contractual obligation hereunder or under any Stage 1 SSBO Product Contract, i.e. any contractual obligation, the 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 SSBO Prequalification Rules,

- (c) 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,
  - (d) 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. The foregoing shall be without prejudice to termination in accordance with section 9 of the SSBO Pre-Qualification Rules.

## **20 Amendment of these Stage 1 SSBO Terms & Conditions**

- (1) The MAM reserves the right to amend these Stage 1 SSBO Terms & Conditions at any time on the basis of appropriate, non-discriminatory and transparent considerations, and in particular in cases of an amendment of regulatory or legislative requirements and to update or adapt the product requirements or the contractual modalities. The Provider shall be notified by way of a Stage 1 SSBO Product Contract of any amendments to these Stage 1 SSBO Terms & Conditions during the contract period in text form (hereinafter "Amendment Notice") which shall enter into force six (6) weeks after receipt of the Amendment Notice by the Provider, unless a later date is expressly specified.
- (2) The Provider may terminate any Stage 1 SSBO Product Contract affected by the amendment to these Stage 1 SSBO Terms & Conditions by way of a special right of termination to be exercised in writing within a period of six (6) weeks after receipt of the Amendment Notice with effect from the date on which the amendment to these Stage 1 SSBO Terms & Conditions takes effect. If the Provider does not exercise said special right of termination, the Provider shall be deemed to have given its consent to the amendment to these Stage 1 SSBO Terms & Conditions. In the Amendment Notice, the MAM shall advise the Provider of the special right of termination and point out that the amendment to these Stage 1 SSBO Terms & Conditions shall take effect if the Provider does not exercise its special right of termination within the period provided.

## **21 Assignment**

- (1) Neither Party shall transfer any rights and/or obligations hereunder, 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 good cause.

- (2) Any transfer to an affiliated entity as defined in section 15 of the German Joint Stock Corporation Act (*AktG*) shall not require prior consent but shall be notified to the other Party in writing.
- (3) No right or obligation under any Stage 1 SSBO Product Contract may be transferred to any entity that has not successfully completed the prequalification process as required under the Prequalification Rules.

## **22 Severability**

- (1) If any provision set out in these Stage 1 SSBO Terms & Conditions or in any Stage 1 SSBO Product Contract 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 Stage 1 SSBO Product Contract, 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 MAM and the Provider 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 relevant Stage 1 SSBO Product Contract affected and reflecting as closely as reasonably possible the intentions of the MAM and the Provider.

## **23 Requirement for Written Form and Authoritative Version**

- (1) The MAM and the Provider have not entered into any oral agreements. Except where any further restrictions as to form are imposed by statute and except as otherwise provided herein, any and all amendments or additions to, as well as the termination or revocation of, a Stage 1 SSBO Product Contract shall be invalid unless made in writing and signed by the MAM and the Provider. The foregoing shall also apply to the written form requirement.
- (2) Only the German language version of these Stage 1 SSBO Terms & Conditions shall be legally binding.



## **24 Jurisdiction and Governing Law**

- (1) The MAM and the Provider 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 Stage 1 SSBO Product Contract or the performance or validity thereof.
  
- (2) These Stage 1 SSBO 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).