

Prequalification Rules for Participation in the Bilateral Balancing Market and Terms of Use for the Bidding Platform of Trading Hub Europe GmbH

(hereinafter referred to as “Prequalification Rules”)

The Prequalification Rules set out herein apply to all Bidders wishing to participate in the bilateral balancing market of the Market Area Manager **Trading Hub Europe GmbH** (hereinafter referred to as “MAM”) and to the use of the Bidding Platform required for said purpose

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Preamble

In compliance with its obligations under the German Gas Network Access Ordinance (*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 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 physical imbalances between inputs and offtakes in a transparent, non-discriminatory and market-based process.

The MAM applies these principles when taking External System Balancing Actions. Any Balancing Group Manager in the Trading Hub Europe Market Area (hereinafter referred to as “Bidder”) who is in a position to offer the relevant Balancing Products and who wishes to participate in the MAM's bilateral balancing market is required to complete a prequalification procedure. This document describes the details of said prequalification procedure, including the required prequalification application documents.

§ 1 General Information on the Prequalification Procedure for Being Admitted as a Bidder

- (1) The successful completion of the prequalification procedure set out herein is a prerequisite for participating in the MAM's bilateral balancing market. By completing and signing the admission form, the applicant agrees to these Prequalification Rules.

- (2) Any Bidder may participate in the MAM's prequalification procedure and submit an application for admission (Annex 1). Companies wishing to use the Bidding Platform¹ have to be registered as a Balancing Group Manager.
- (3) Bidders are not permitted to participate in the prequalification procedure as a bidding consortium.
- (4) In the course of the prequalification procedure, the Bidder shall demonstrate that it is able to meet the MAM's requirements for the supply and/or offtake of balancing gas by the Bidder (hereinafter: "Qualification"). In order to demonstrate its Qualification, the Bidder shall collect and submit to the MAM all the documents and evidence laid down in sections 3 and 4 hereinbelow. All documents submitted must be either original documents or certified copies. Non-certified copies of original documents will not be taken into account by the MAM. The Bidder must use any forms made available by the MAM and complete such forms using permanent ink or any other medium that is fit for archiving. No amendments and/or additions of any type may be made to the forms provided by the MAM, and any Bidder submitting such forms with amendments and/or additions will be excluded from the prequalification procedure.
- (5) No official documents submitted may have been issued more than three months prior to submission. Any evidence and/or documents not written in English or German must be translated into English or German by a translator officially authorised by national authorities to prepare certified translations, and submitted alongside such translation. Any verification documents issued in other countries must at least be equivalent to the corresponding German documents required. The Bidder shall bear the risks associated with any translation errors.
- (6) The Bidder is responsible for the completeness and correctness of any and all information, documents and evidence submitted. The MAM reserves the right to require the Bidder to submit additional documents and evidence where necessary, in particular where necessary in order to ensure a safe, secure and reliable operation of the network.

¹ So-called: Balancing Services Portal (<https://www.tradinghub.eu/en-gb/Portals/BSP>)

- (7) If the Bidder submitting the application is a natural person the application must be signed personally. If the Bidder submitting the application is a legal person the application must be signed either by a single person that is authorised to represent the entity individually, or by a group of persons authorised to act jointly on behalf of said entity; verification of the acting person's power of agency must be submitted. The application for admission is a legally binding undertaking.
- (8) The Bidder may submit its application documents by fax in advance, provided that the original documents are received by the MAM within seven (7) business days² of the receipt of the faxed documents. In such case the application is deemed to have been submitted on the day when the faxed documents have been received. However, if the original documents are not received by the MAM within seven (7) business days of the receipt of the faxed documents, the application will be considered to be incomplete and, if the Bidder had already been rated as prequalified based on any documents previously submitted by fax, and included in the Bidders List, the Bidder will be reclassified as not prequalified. Documents may not be transmitted electronically (by email etc.).
- (9) Any and all costs and expenses for the preparation and submission of the documents required for prequalification shall be borne by the Bidder. This also applies with respect to any translation costs. Upon completion of the prequalification procedure the documents submitted by the Bidder will not be returned to the Bidder; any documents which are no longer required will be destroyed. Any documents, forms, etc. made available by the MAM remain the property of the MAM.
- (10) Any queries the Bidder may have in connection with the prequalification procedure must be addressed to the contact provided on the website³.
- (11) The Bidder is responsible for providing a correct and valid email address at which it can receive emails at any point in time.

§ 2 Review of Application Documents and Result of Prequalification

² For the purpose of the Prequalification Rules set out herein, "business day" means any day between and including Monday to Friday, with the exception of public holidays and the 24th and 31st of December; in this context any public holiday observed in any German federal state is regarded as a public holiday.

³ www.tradinghub.eu

- (1) The MAM will start reviewing the application documents as soon as it has received from the Bidder all documents and evidence required, and if such documents are complete, in the required form and in compliance with the Prequalification Rules set out herein. The prequalification application is deemed to be complete if all the documents and evidence listed in sections 3 and 4 below have been submitted in the form as required under the Prequalification Rules set out herein. Any prequalification application which is incomplete, not in the required form or not in compliance with the Prequalification Rules set out herein will not be processed. All documents and evidence submitted by the Bidder will be reviewed by the MAM within 15 business days following receipt of a complete application, subject to any queries the MAM might have. The Bidder is not entitled to participate in the review of the documents.
- (2) The MAM will verify the Bidder's Qualification solely on the basis of the documents and evidence submitted by the Bidder, unless any circumstances or information known to the MAM (as, in particular, the credit rating of a credit rating agency) give rise to any doubt as to the Bidder's Qualification. In determining whether the Bidder is suitable and has the reliability required for ensuring a safe, secure and reliable supply and/or offtake of balancing gas, the MAM shall exercise its discretion in a way which is non-discriminatory and free from abuse.
- (3) Upon completion of its review of the documents and evidence submitted, the MAM will notify the Bidder of its decision as to the Bidder's prequalification application.
- (4) The Bidder will be informed about the outcome of the review in writing or by email. Any Bidder whose prequalification application has been successful will receive from the MAM the login details required for access to the MAM's Bidding Platform

§ 3 General Data and Documentation

The Bidder shall submit the following documents concerning its business and/or itself:

- Up-to-date excerpt from the commercial register (*Handelsregister*),
- Fully completed application for admission as a Bidder (Appendix 1).

§ 4 Proof of Qualification

- (1) In order to prove its Qualification, the Bidder shall meet the following requirements and submit the relevant supporting documents:
- (2) In order to prove its technical and operational Qualification, the Bidder shall demonstrate, at the request of the MAM, that it is in a position to ensure a safe, secure and reliable supply and/or offtake of balancing gas. In particular, the Bidder shall provide proof that it has in place the required computer systems and that an appropriate level of availability is maintained. For this purpose, the Bidder shall provide a central point of contact (German or English-speaking contact person) available on a 24/7 basis in compliance with statutory working time regulations with overall responsibility for the coordination and use of the balancing gas offered by the Bidder. Any and all costs incurred in connection with the installation and proper operation of the required computer systems shall be borne by the Bidder.
- (3) The Bidder shall comply with the following communication requirements:
 - (a) This paragraph only applies to Bidders intending to offer LTO and STB Balancing Products. The Bidder shall indicate its intention on the admission form. If the Bidder has not indicated during the admission procedure that it intends to offer LTO and STB Balancing Products and decides to do so after admission has been granted, it must first comply with the communication requirements described below in order to be able to participate in the bidding procedure for these Balancing Products.
 - (b) The Bidder shall ensure that it is capable of establishing an AS2 communications connection with the MAM's production system which enables the Bidder to communicate with the MAM in the MAM-specific REQUEST data format edig@s (hereinafter referred to as "MAM REQUEST") and to respond to any balancing call orders issued by the MAM in the MAM-specific REQRES data format (hereinafter referred to as "MAM REQRES ")

by sending a corresponding confirmation message to the MAM without undue delay (AS2 Live Connection).

(c) To prove the availability of a proper communications connection, the Bidder shall participate in a communications test to be carried out between the Bidder and the MAM:

- For the purpose of carrying out such a communication test a communications connection between the Bidder's system and the MAM's test system (Test Connection) is required. Upon receiving the Bidder's application documents, provided they are complete and in the required form as provided in section 2 above, the MAM shall therefore send an AS2 Connection Template to the Bidder without undue delay, which the Bidder shall complete and return to the MAM together with the digital certificate⁴ required for setting up the communications connection. Within ten (10) business days after receiving the duly completed Connection Template and the certificate the MAM shall establish a Test Connection. The MAM shall then test the Bidder's communications capability by issuing a series of simulated balancing call orders via the Test Connection. As a general rule, the communications test comprises ten (10) test call orders in the course of which the Bidder shall prove that it is capable of responding to a simulated balancing call order issued by the MAM in MAM REQUEST format by sending a corresponding confirmation message in the applicable MAM REQRES format to the MAM without undue delay. The MAM may allow the Bidder to complete less than ten (10) test call orders if and where the availability of a proper communications connection has already been proven to the satisfaction of the MAM by a smaller number of test call orders. If and where the MAM has reasonable grounds for doubting that the Bidder's Test Connection is capable of ensuring proper communications, the MAM shall have the

⁴ The details relating to the certificate to be submitted will be communicated to the Bidder together with the Connection Template to be completed by the Bidder.

right to require the Bidder to complete more than ten (10) test call orders.

- Upon successful completion of the communications test via the Test Connection the MAM shall establish a Live Connection with the Bidder's system within a period of ten (10) business days. The Bidder's communications capability shall then also be tested via the Live Connection. For this purpose, the MAM will send simulated balancing call orders for a quantity of 0 (zero) megawatt to the Bidder in MAM REQUEST format. The communications test via the Live Connection shall be deemed to have been successfully completed where in a series of ten (10) test call orders the Bidder has been able to prove that it is capable of sending a confirmation message in MAM REQRES format to the MAM without undue delay after receiving a corresponding MAM REQUEST message from the MAM. The MAM may allow the Bidder to complete less than 10 test call orders if and where the availability of a proper communications connection has already been proven to the satisfaction of the MAM by a smaller number of test call orders. If and where the MAM has reasonable grounds for doubting that the Bidder's Live Connection is capable of ensuring proper communications, the MAM shall have the right to require the Bidder to complete more than ten (10) test call orders.
- Since there is an implementation period, the communications test via the Live Connection must be completed at least ten (10) business days prior to the start of any tender for balancing gas for which the Bidder wishes to submit bids.
- For communication between the Bidder and the MAM, only the communications connection already established within the framework of the existing balancing group agreement is to be used. If the Bidder has only set up an e-mail connection within the framework of the previous sentence, the communications connection must be completely converted to the AS2 protocol. The Bidder guarantees the uninterrupted availability of its communications connection.

- (4) The Bidder shall meet the following financial capability requirements
- (a) The Bidder shall have sufficient creditworthiness. Sufficient creditworthiness of the Bidder will be refutably assumed if the Bidder has a long-term rating from the credit rating agency
 - Standard & Poors, and the minimum rating shall be A-,
 - Fitch, and the minimum rating shall be A-,
 - Moody's, and the minimum rating shall be A3, or
 - Dun & Bradstreet, and the minimum rating shall be 1A2.
 - (b) Sufficient creditworthiness shall be deemed to have been disproved if the Bidder also has a credit rating from another of the aforementioned credit rating agencies or from another recognised rating agency which is lower than the aforementioned credit ratings, or is not at least equivalent to any of the aforementioned ratings.
 - (c) If the Bidder's creditworthiness cannot be assumed on the basis of an existing credit rating in accordance with the above rules, the MAM may allow the Bidder to prove its sufficient creditworthiness way of other reasonable evidence of creditworthiness. This can also be done by furnishing a security under the conditions of section 6 (4) (b) and the further requirements of section 6. The provision of other securities as proof of sufficient creditworthiness is excluded
 - (d) At the MAM's request, the Bidder shall specify which credit rating agencies have rated the Bidder and disclose the relevant credit ratings.

§ 5 Changes with Respect to Prequalification Requirements

- (1) By submitting its application for prequalification, the Bidder undertakes to notify the MAM in writing, without it being necessary for the MAM to request such notification, in the event of any significant change affecting the information and/or documents submitted for the purpose of the Bidder's application, and to do so without undue delay. Within 15 business days⁵ following the receipt of any

⁵ For the purpose of the Prequalification Rules set out herein, "business day" means any day between and including Monday to Friday, with the exception of public holidays and the 24th and 31st of December; in this context any public holiday observed in any German federal state is regarded as a public holiday.

change notification, the MAM shall verify whether any Prequalified Bidder continues to meet the prequalification requirements set out in section 4 above. The MAM is entitled to remove the Prequalified Bidder temporarily from the Bidding Platform for the duration of such review.

- (2) If the MAM reaches the conclusion that following a change in any of the circumstances which are relevant for prequalification the Prequalified Bidder no longer meets the prequalification requirements, the Bidder's Prequalified status may be revoked and the Bidder will be removed from the Bidders List. Especially in cases of a subsequent deterioration in financial situation pursuant to section 4 (4) hereinabove, the MAM may also ask the Bidder to provide a security in accordance with section 6 hereinbelow. If the Prequalified Bidder continues to meet the prequalification requirements, it will retain its status as a Prequalified Bidder. The Prequalified Bidder will be notified thereof in writing or by email.

§ 6 Provision of Security

- (1) In justified cases, the MAM may require the Bidder to provide reasonable security for claims arising out of contracts concluded between the MAM and the Bidder for a Balancing Product (hereinafter referred to as the "Business Relationship"). The reasons for requesting a security shall be explained to the Bidder in text form.
- (2) Without limitation, a justified case shall be deemed to have occurred if
 - (a) the Bidder is in default of performance (including but not limited to the payment of an amount of money that is due and payable) towards the MAM and has failed to ensure performance within five (5) business days from the date of receipt of an express request from the MAM (with cash payments having to be credited to the MAM's account within the aforementioned period),
 - (b) the Bidder is in default of performance or has not performed as owed to the MAM a service that is due and cannot be rendered at a later time (fixed debt, e.g. the provision or offtake of gas quantities at a certain point in time),
 - (c) on the basis of information obtained about the Bidder from a credit agency generally recognised in the business world or on the basis of any other facts,

there is a justified concern that the Bidder will not fulfil its obligations towards the MAM arising from the Business Relationship and the Bidder does not allay the concern by providing suitable evidence of its creditworthiness within five (5) working days of being notified of the main reasons for the concern. Suitable evidence of creditworthiness may be, for example, the certificate of an auditor, a certificate of a credit institution authorised to do business in the Federal Republic of Germany confirming sufficient liquidity, an up-to-date annual report and, if necessary, further information relevant to creditworthiness. In this case, the MAM shall disclose to the Bidder the data and the essential content of the information on which the justified concern is based when requesting a security.

- (3) Notwithstanding the above, if the Bidder has a rating from a recognised rating agency, a justified case within the meaning of paragraph (1) shall in any case also be deemed to exist if its rating deteriorates following successful prequalification and if it does not at least meet the financial capability requirements set out in section 4 (4) hereinabove. Section 4 (4) shall apply accordingly.
- (4) The Bidder may furnish security as follows:
 - (a) Provision of security from a bank in the form of an unconditional, irrevocable and directly enforceable bank guarantee. The bank issuing the bank guarantee must have at least a long-term A- rating from Standard & Poor's or a long-term A3 rating from Moody's or belong to the sector of savings banks and cooperative banks in Germany.
 - (b) Provision of an unconditional irrevocable corporate guarantee or an irrevocable directly enforceable guarantee by a company that is not a credit institution, with the company providing the security having to at least meet the financial capability requirements pursuant to section 4 (4) hereinabove. Furthermore, the amount of the corporate guarantee shall not exceed ten (10) per cent of the guarantor's liable equity. The Bidder shall furnish appropriate proof thereof to the MAM when providing the security. If the security is furnished to prove the sufficient creditworthiness of the provider

in accordance with section 4 (4) (c), the requirement of sentence 2 does not apply.

- (5) A guarantee pursuant to paragraph 4 hereinabove shall be payable on first demand and shall 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 said claim. Any directly enforceable indemnity or guarantee must be valid for a duration of at least twelve (12) calendar months and shall expire no later than at the end of the term of all contracts concluded between the MAM and the Bidder for a Balancing Product and the two months immediately following this date.
- (6) The Bidder shall provide the security to the MAM within seven (7) business days of the MAM's request.
- (7) If the requirements for the respective guarantor as defined in paragraph (4) cease to apply after the provision of the security (e.g. in the event of a rating downgrade of the guarantor), the Bidder shall provide new security within seven (7) business days of the date on which the requirements cease to apply.
- (8) The amount of the sureties to be provided shall be based on the MAM's potential Default Risk, i.e. the financial risk that would arise for the MAM if the Bidder were to fail to meet its obligations as part of its Business Relationship under contracts with the MAM for Balancing Products (hereinafter "Default Risk"). Said risk shall be determined on the one hand by the MAM's Default Risk in the event of a breach of payment obligations by the Bidder (hereinafter "Non-payment Risk") and on the other hand by the MAM's Default Risk in the event of a breach of other performance obligations by the Bidder, including but not limited to the obligation to supply and/or take gas quantities (hereinafter "Non-performance Risk"). If the Bidder has payment obligations as well as other performance obligations towards the MAM as part of its Business Relationship with the MAM, the Default Risk shall correspond to the sum of the Non-payment Risk plus the Non-performance Risk.

The amount of the Default Risk shall be determined in accordance with the following provisions:

- (a) The Non-payment Risk shall correspond to twice the value of the MAM's highest monthly payment claim against the Bidder to be expected under the Business Relationship.
- (b) The Non-performance Risk shall correspond to twice the value of the Bidder's highest monthly payment claim against the MAM to be expected under the Business Relationship.
- (c) When determining the MAM's and the Bidder's monthly payment claims expected as part of the Business Relationship as defined in sub-paragraphs (a) and (b) hereinabove, it shall be assessed which monthly claims can be expected under the contracts for Balancing Products concluded between the MAM and the Bidder in view of
 - the MAM's expected future demand for balancing actions based on historical data and taking into account any current aspects;
 - the volume of the contracts for Balancing Products concluded between the MAM and the Bidder, and
 - the position of the respective contracts on the Merit Order List pursuant to section 5 of the System Balancing Terms and Conditions.
- (d) Notwithstanding sub-paragraphs (a) and (b) hereinabove, if the term of all contracts for Balancing Products concluded as part of the Business Relationship ends within a period of two (2) months from the time of the request for a security, the Non-payment Risk shall correspond to the value of the maximum amount of the MAM's claims for payment against the Bidder still to be expected as part of the Business Relationship as a whole, and the Non-performance Risks shall correspond to the value of the maximum amount of the Bidder's claims for payment against the MAM still to be expected as part of the Business Relationship as a whole. The relevant amount of the claims shall be determined in accordance with sub-paragraph (c) hereinabove.

- (9) By way of derogation from the provisions of Section 8, the amount of the security deposit shall be unlimited, provided that the security is furnished to prove the sufficient creditworthiness of the Bidder pursuant to section 4 (4) (c).
- (10) The MAM may at any time examine whether the realisable value of all security provided by the Bidder is lower than the Default Risk to be determined in accordance with the above provisions. If this is the case, the MAM may request an adjustment of the security within five (5) working days from the date of the request for adjustment.
- (11) The MAM may draw on the security provided if, after the Bidder has defaulted on payment of a monetary claim (including but not limited to any claims for damages in lieu of performance), it has issued a payment reminder and the Bidder fails to make the payment that has fallen due within five (5) business days from the date of receipt of the relevant payment reminder with the relevant amount having been credited to the MAM's account. If the security is drawn upon, the MAM may demand that the part of the security deposit used be replaced. The Bidder shall provide any such additional security within the period specified in paragraph (6).
- (12) Any security provided shall be returned without undue delay once the conditions for its being requested, are no longer met. The MAM shall review the continued existence of the grounds for the provision of the security in accordance with the above paragraphs and its amount in accordance with paragraph (8) every six (6) months. If the review shows that the realisable value of all security deposits exceeds the amount pursuant to paragraph (8) by more than ten (10) per cent, the MAM shall return to the Bidder the part of the security deposits above said reasonable amount. If several securities have been provided, the MAM may decide which security or securities are to be returned either in whole or in part. Insofar as the realisable value of all securities is more than ten (10) percent lower than the amount offered, the MAM may demand further securities from the Bidder.

§ 7 Revocation of Qualified Status for Good Cause

- (1) The MAM is entitled to immediately revoke any Qualified Bidder's Qualified status and to immediately remove such Prequalified Bidder at any time for good cause.

Without limitation, any of the following circumstances, whether separately or concurrently, are deemed to constitute good cause for such action:

- (a) The Bidder no longer meets the prequalification requirements according to the Prequalification Rules set out herein
 - (b) The MAM has obtained reliable information that the Bidder will no longer comply with the prequalification requirements set out herein in the imminent future.
 - (c) The Bidder is in default under an agreement concerning a Balancing Product (“**System Balancing Transaction Agreement**”) with a due performance towards the MAM that can still be performed (in particular the payment of a due amount) and the Bidder has not provided performance within five (5) business days upon the receipt of a respective request (whereas, with regard to payment obligations, a receipt of such payments on the MAM's bank account within this period is required).
 - (d) The Bidder's multiple or serious non-performance or defective performance under a System Balancing Transaction Agreement of an obligation that can no longer be performed (fixed date performance obligation, e.g. the obligation to supply or take-off gas quantities at a specific point in time).
 - (e) Enforcement measures have been initiated against the Bidder for monetary claims (Sections 803 - 882a of the German Code of Civil Procedure (ZPO))
 - (f) An application is made for the initiation of insolvency proceedings or similar proceedings against the Bidder's assets
 - (g) The Bidder or any person acting on behalf of the Bidder engages in a proven misconduct which raises doubt as to the Bidder's reliability
 - (h) An enforceable judgment is rendered against the Bidder or any person acting on behalf of the Bidder that raises doubt as to the person's professional reliability
 - (i) Submission of forged or otherwise incorrect documents and/or information in the course of the prequalification procedure.
- (2) Revocation shall be in writing or by facsimile.

§ 8 Modification of Prequalification Rules

- (1) The MAM reserves the right to modify the Prequalification Rules for Participation in the MAM's Bilateral Balancing Market at any time provided that it does so based on appropriate, non-discriminatory and transparent considerations. In such case, the MAM is entitled to require any Bidder who has already been qualified as a Prequalified Bidder to complete a new prequalification procedure according to the modified provisions.
- (2) If the MAM does not require the Bidder to complete a new prequalification procedure according to the modified provisions, the MAM will inform the Bidder in writing or by e-mail about the amendment of the Prequalification Rules, requesting the Bidder to express its consent with the amended Prequalification Rules within two (2) weeks.
- (3) If the MAM requests the Bidder to complete a new prequalification procedure in accordance with paragraph (1) or if the Bidder does not express its consent as requested in accordance with the preceding paragraph, the MAM shall be entitled to immediately revoke any existing prequalification of the Bidder and to immediately exclude such Bidder. In any such case, any System Balancing Transaction Agreements which are already concluded at this point in time shall be subject to the Prequalification Rules in its version valid at the time of the conclusion of the relevant System Balancing Transaction Agreement, as far as such System Balancing Transaction Agreement refers to Prequalification Rules.

§ 9 Validity of Prequalification

These Prequalification Rules, including without limitation the admission and access to the Bidding Platform, shall apply for an indefinite period of time. The Bidder may terminate its use of the Portal at any time with one month's written notice. Any such termination shall be without prejudice to the contracts concluded between the MAM and the Bidder in respect of individual Balancing Products.

§ 10 General Information on Access to, and Use of, the Bidding Platform

Use of the Bidding Platform by the Bidder shall be governed by sections 10 to 12 of the Supplementary Terms and Conditions of TRADING HUB EUROPE GmbH governing Portal Use (hereinafter "Portal Terms and Conditions"). Said Portal Terms and Conditions are available to the Bidder on the MAM website. The Bidder will have agreed to said Terms and Conditions as part of its admission as Balancing Group Manager.

§ 11 User accounts

- (1) Following successful admission by the MAM, the Bidder will receive a user account along with an access to the Bidding Platform.
- (2) The Bidder may apply to the MAM for access by additional users. To do so, the Bidder shall properly complete and sign the corresponding "Registration of User(s) for the Balancing Services Portal" form and send it to the MAM. The form is available on the MAM website.
- (3) The Bidder undertakes to assign a user account only to those persons who are authorised to represent the Bidder vis-à-vis the MAM as part of the Bidder's use of the Bidding Platform.
- (4) Login details must not be passed to others. If another, previously unnamed user is to replace the previous authorised user, the MAM shall be informed immediately and a new user authorisation must be issued. Upon notification by the Bidder, the MAM will deactivate the user account of the previous user.
- (5) The MAM may block a user's access temporarily or permanently if there is concrete evidence suggesting that the user is violating or has violated these Prequalification Rules or applicable law in connection with the use of the Bidding Platform or if there is concrete evidence suggesting that the user is not reliable or if the MAM has another justified interest in blocking the user. When deciding whether or not to block a user, the MAM will give due consideration to the legitimate interests of the Bidder concerned.
- (6) The Bidder shall be liable for all activities performed under its user accounts. The forgoing shall not apply if the Bidder is not responsible for the misuse of its user accounts because it has not breached its obligation to exercise due diligence.

§ 12 Assignment

- (1) Neither the MAM nor the Bidder (hereinafter individually referred to as “Party” or collectively as the "Parties") 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 company within the meaning of Section 15 of the German 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 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 Data Protection

As part of its commitment to quality, the MAM undertakes to handle all personal data of the user in a responsible manner. The MAM will collect, process and use the personal data provided by the user only to the extent permitted by law for the purpose of granting admission to, and/or use of, the Bidding Platform. The MAM will only process or use of the data provided by the user 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).

§ 14 Confidentiality

- (1) The Parties shall treat as confidential and not disclose or make available to third parties any and all information which they obtain in connection with the admission and which has been designated as confidential (hereinafter referred to as "Confidential Information") subject to the provisions in the following paragraph, unless the other Party has given its prior written consent. The Parties

undertake to use such Confidential Information exclusively for the purpose of executing the respective contract.

- (2) Each Party shall have the right to disclose Confidential Information received from the other Party without the latter's written approval
 - (a) to an affiliated company, provided that the latter is under a similar obligation of confidentiality
 - (b) to its shareholders, agents, advisors, banks and insurance companies, if and to the extent that disclosure is necessary for the proper performance of the contractual obligations, and such persons or companies have themselves previously undertaken to keep the information confidential or are bound by a professional obligation of confidentiality, or
 - (c) to the extent that such Confidential Information is already legitimately known to the receiving Party at the time of receipt from the disclosing Party or is already in the public domain or becomes available to the public other than by act or omission of the receiving Party or is required to be disclosed by a Party pursuant to a provision of law or a court or administrative order or a request by the regulatory authority.

- (3) The obligation to maintain confidentiality shall expire two (2) years after receipt of the Confidential Information if no admission is granted under these Prequalification Rules. The documents shall then be destroyed. Otherwise, the confidentiality obligations shall also apply to the Confidential Information received as part of the admission.

§ 15 Liability

- (1) The MAM shall only be liable hereunder in the event of a breach of a material obligation, the breach of which either places at risk the achievement of the Prequalification Rules's purpose and/or the fulfilment of which is a prerequisite for the proper performance of the Prequalification Rules, and on the fulfilment of which the Bidder regularly relies and may rely (hereinafter referred to as "Cardinal

Obligation"). Moreover, liability hereunder shall be limited to the foreseeable damage, which is typical of these Prequalification Rules.

- (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) Moreover, the MAM shall not be liable for failures or disruptions in the technical infrastructure outside the MAM's sphere of responsibility (force majeure).
- (4) The aforementioned limitations of liability as set out in paragraphs (1) to (3) above shall not apply in the case of
 - (a) damage due to intent or gross negligence,
 - (b) personal injury (injury to life, body, health),
 - (c) as well as the assumption of guarantees.
- (5) The foregoing shall be without prejudice to liability under mandatory statutory provisions (including without limitation the Product Liability Act).

§ 16 Applicable law, place of jurisdiction, final provisions

- (1) These Prequalification Rules are available in the German and English languages. In the event of any discrepancy between the German-language and the English-language versions, the German-language version shall prevail.
- (2) These Prequalification Rules 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).
- (3) The place of jurisdiction for all disputes between the MAM and the Bidder arising from these Prequalification Rules shall be Düsseldorf/Germany, insofar as such an agreement on the place of jurisdiction is permissible.
- (4) There are no verbal collateral agreements in addition to these Prequalification Rules.

- (5) If any provision of these Prequalification Rules is or becomes invalid or unenforceable, the remaining provisions shall remain in full force and effect. Instead of such invalid or unenforceable provision, a new valid provision coming as close as reasonably possible to the purpose of the invalid provision shall be deemed to have been agreed. In the event of any loopholes or gaps herein, a provision shall be deemed to have been agreed which corresponds to what would have been agreed in accordance with the purpose of these Prequalification Rules had the Parties considered the matter.

[Appendix 1](#)

**Application for Admission as a Bidder to the Bilateral Balancing Gas Market of Trading
Hub Europe GmbH**

Trading Hub Europe GmbH

Anna-Louisa-Karsch-Str. 2

10178 Berlin

Fax: +49 (0) 30 364 289 420

Bidder:

Name/full company name including legal form:

Street/street No:

Postcode and city/town:

Country:

Telephone/fax:

Website/email:

Object of business:

DVGW code in the capacity as Balancing Group Manager:

Dispatching Contact:

Contact person for operational handling of balancing actions (24/7):

Telephone (24/7):

Fax:

Email:

Valid Balancing Group Contract of the "FzK" type with access to the Bidder's VTP:

Balancing group number for high CV gas (if Bidder wishes to bid for high CV gas products):

Balancing group number for low CV gas (if Bidder wishes to bid for low CV gas products):

Participation in the bidding process for the following balancing gas products is requested:

- LTO & STB
- SCB & FLEX

Legally binding declaration:

The Bidder hereby affirms:

- that all information provided in this application and all documents submitted in connection therewith are true and correct, and that they reflect the current situation of the business and the current business practices as applied in said business;
- that it accepts the Prequalification Rules for Participation in the Bilateral Balancing Market and the Terms of Use for the Bidding Platform of Trading Hub Europe GmbH & Co. KG as amended.
- that no application has been made for the initiation of insolvency proceedings against the Bidder's assets;
- that it is in a position to ensure a safe, secure and reliable supply/offtake of balancing gas.

Place, date

Bidder's signature / company seal