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General Agreement

Concerning The Delivery And Acceptance Of Natural Gas

Between

having its registered office at _____

(“*[abbreviation of name]*”)

and

having its registered office at _____

(“*[abbreviation of name]*”)

(referred to jointly as the “**Parties**” and individually as a “**Party**”)

entered into on _____ (the “**Effective Date**”)

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§ 1

Subject of Agreement

- 1. Subject of Agreement:** Unless otherwise specified in the Election Sheet, this General Agreement (which includes its Annexes and the election sheet ("**Election Sheet**")) governs all transactions the Parties shall enter into for the purchase, sale, delivery and acceptance of Natural Gas including Options on the purchase, sale, delivery and acceptance of Natural Gas (each such transaction being an "**Individual Contract**"). The Parties enter into this General Agreement and into Individual Contracts on the understanding that all Individual Contracts and this General Agreement shall form a single agreement between the Parties (collectively referred to as the "Agreement") and that the Parties would not enter into Individual Contracts if this was not the case. The provisions of this General Agreement constitute an integral part of, but may be supplemented by the terms of, each Individual Contract.
- 2. Pre-Existing Contracts:** If § 1.2 (*Pre-Existing Contracts*) is specified as applying in the Election Sheet, each transaction between the Parties regarding the purchase, sale, delivery and acceptance of Natural Gas, including Options on such transactions, entered into before the Effective Date but which remain either not yet fully or partially performed by one or both Parties, is deemed to be an Individual Contract under the Agreement.

§ 2

Definitions and Construction

- 1. Definitions:** Terms used in the Agreement shall have the meanings set out in Annex 1.
- 2. Inconsistencies:** In the event of any inconsistency between the provisions of the Election Sheet and the other provisions of this General Agreement, the Election Sheet shall prevail. In the event of any inconsistency between the terms of an Individual Contract (whether evidenced in a Confirmation or by other means) and the provisions of this General Agreement (including its Election Sheet), the terms of the Individual Contract shall prevail for the purposes of that Individual Contract.
- 3. Interpretation:** Headings and titles are for convenience only and do not affect the interpretation of the Agreement.
- 4. References to Time:** References to time shall be to Central European Time (CET) unless otherwise specified in the Election Sheet or the terms of an Individual Contract.
- 5. Energy Units:** If the terms of an Individual Contract do not specify which energy units shall apply, the Parties shall operate such Individual Contract in MWh unless the Parties agree otherwise.

§ 3

Concluding and Confirming Individual Contracts

- 1. Conclusion of Individual Contracts:** Unless otherwise agreed between the Parties, Individual Contracts may be concluded in any form of communication (whether orally or otherwise) and shall be legally binding and enforceable from the time the terms of such Individual Contract are concluded.
- 2. Confirmations:** In the event that an Individual Contract is not concluded in written form, both Parties shall be free to confirm, or have confirmed, in writing their understanding of the agreed terms of the Individual Contract (each such written confirmation constituting a "**Confirmation**"). A Confirmation shall not constitute a requirement for a legally valid Individual Contract. A Confirmation shall contain the information stipulated in, and shall be substantially in the form of the applicable confirmation sheet from among those attached to this General Agreement as Annex 2 a – d.

3. **Objections to Confirmations:** Without prejudice to the provisions of § 3.2 (*Confirmations*), if a Party receives a Confirmation, it shall promptly review the terms of such Confirmation and if they differ from its understanding of the terms of the applicable Individual Contract notify the other Party of any inconsistency without delay. If both Parties send a Confirmation without delay and their terms contradict, then each such Confirmation shall be deemed to be a notice of objection to the terms of the other Party's Confirmation.

4. **Authorised Persons:** If § 3.4 (*Authorised Persons*) is specified as applying to a Party in the Election Sheet, Individual Contracts may be negotiated, confirmed and signed on behalf of that Party exclusively by those persons listed by it for such purposes as may be specified in an Annex to this General Agreement. Each Party may unilaterally amend and supplement in writing the list of persons currently authorised to act on its behalf at any time. Such amendments and supplements shall become effective upon their receipt by the other Party.

§ 4

Primary Obligations For Delivery and Acceptance of and Payment For Natural Gas

1. Delivery and Acceptance and Net Scheduling Obligations:

- (a) In accordance with each Individual Contract, the Seller shall Schedule and deliver, or cause to be delivered, at the Delivery Point the Contract Quantity during each Time Unit of the Total Supply Period and the Buyer shall Schedule and accept, or cause to be accepted, at the Delivery Point the Contract Quantity during each Time Unit of the Total Supply Period. In performing their respective obligations under this § 4.1, the Seller and the Buyer shall Schedule against the Applicable Code.
- (b) Provided that (i) the Parties are mutually agreeable to Scheduling their receipts and deliveries on a net basis and (ii) it is possible to so Schedule at the relevant Delivery Point; then where in respect of any Time Unit there is more than one Individual Contract between the Parties for delivery of Natural Gas at the same Delivery Point, each Party shall be deemed to have fulfilled its obligations to Schedule in respect of the Contract Quantity for each such Individual Contract for the relevant Time Unit if it Schedules to the Network Operator the aggregate net result of all Contract Quantities being bought and sold under all relevant Individual Contracts between the Parties in such Time Unit at such Delivery Point (the "**Net Contract Quantity**"); in such circumstances the Party delivering Natural Gas shall be the "**Net Seller**" and the Party receiving Natural Gas shall be the "**Net Buyer**". In instances where the Net Contract Quantity for a Time Unit and Delivery Point is zero, the Parties shall be relieved of any obligation to Schedule in respect of such Time Unit. For the avoidance of doubt, the Parties fully intend at the time of entering into each Individual Contract that such Individual Contract will result in physical delivery, and it is simply for administrative convenience that the Parties may agree to net Schedule. Unless otherwise provided, if there is more than one Individual Contract between the Parties for delivery of Natural Gas at the same Delivery Point in the same Time Unit, all references in this General Agreement and an Individual Contract to a "**Seller**" shall be deemed to be references to a "**Net Seller**", references to a "**Buyer**" shall be deemed to be references to a "**Net Buyer**", references to a "**Contract Quantity**" to a "**Net Contract Quantity**" and references to an "**Individual Contract**" shall be deemed to be references to all such Individual Contracts.

2. Definition of Schedule and Applicable Code:

"**Schedule**" shall mean, as applicable, those actions necessary for a Party to effect its respective delivery or acceptance obligations, which may include nominating, scheduling, matching, notifying, requesting and confirming with the other Party, their respective designated agents and authorised representatives, and the Network Operator, as applicable, the Contract Quantity (and exchanging relevant shipper codes), for each Time Unit for each Individual Contract as required in accordance with (a) any relevant terms of the Individual Contract, (b) the Nomination and Allocation Arrangements and (c) any applicable rules and/or procedures of the Network Operator.

The "**Applicable Code**" shall be determined as follows:

- (a) the Applicable Code shall either be the code issued by, in the case of the Buyer, the

Physical Downstream Transporter to the person to whom delivery is to be made or, in the case of the Seller, the code issued by the Physical Upstream Transporter to the person who is to make the delivery;

- (b) the Parties acknowledge that the Applicable Code that they are required to Schedule against may not be the other Party's code provided that the Applicable Code is a code of a person who has the right to offtake Natural Gas from the Physical Upstream Transportation System at the Delivery Point or of a person who has transportation capacity from the Delivery Point in the Physical Downstream Transportation System, as applicable;
- (c) each Party shall, in respect of each Time Unit in the Total Supply Period, provide the other Party with the Applicable Code(s) on a timely basis taking into account the rules and procedures of the Physical Upstream Transporter and the Physical Downstream Transporter;
- (d) subject to the Buyer complying with its obligations under § 4.2(c), if the Seller fails in respect of a Time Unit to Schedule against the Applicable Code, the Seller shall be deemed to be in Seller's Default for the purposes of § 8 (***Remedies for Failure to Deliver or Accept the Contract Quantity***);
- (e) subject to the Seller complying with its obligations under § 4.2(c), if the Buyer fails in respect of a Time Unit to Schedule against the Applicable Code, the Buyer shall be deemed to be in Buyer's Default for the purposes of § 8 (***Remedies for Failure to Deliver or Accept the Contract Quantity***); and
- (f) neither the Seller nor the Buyer shall be entitled to claim Force Majeure for any failure by the relevant Network Operator to deliver Natural Gas to or from the Delivery Point in a Time Unit which failure results from an act or omission of a person whose Applicable Code they have provided to the other Party for such Time Unit in accordance with this § 4.2.

3. Payment for Natural Gas: In respect of each Individual Contract the Buyer shall pay the Seller for the Delivered Quantity in respect of each Time Unit of each Month at the Contract Price in accordance with the provisions of § 13 (***Invoicing and Payment***).

§ 5

Primary Obligations for Options

1. Delivery and Acceptance Pursuant to an Option: When an Individual Contract provides for the purchase and sale of a physical option to buy Natural Gas (a "**Call Option**") or to sell Natural Gas (a "**Put Option**") (each, an "**Option**"), the seller of the Option (the "**Writer**") grants to the purchaser of the Option (the "**Holder**") the right, but not the obligation, by complying with certain designated procedures described below in this § 5 (***Primary Obligations for Options***), to require each Party to meet its respective obligations under § 4 (***Primary Obligations for Delivery and Acceptance of and Payment for Natural Gas***) for the delivery and acceptance of, and payment for, Natural Gas in accordance with that respective Individual Contract.

2. **Premium for the Option:** The Holder shall pay the Writer the Premium for the Option on or before the Premium Payment Date (and if no Premium Payment Date is designated in the terms of the Individual Contract, the Premium Payment Date shall be the fifth (5th) Business Day following the day on which the Parties entered into the Individual Contract). If the Option is Exercised, invoicing and payment of the Contract Price for the Delivered Quantities in each Time Unit shall be in accordance with §13 (*Invoicing and Payment*) unless otherwise agreed.

3. **Exercise of Option and Deadline:** The Holder of an Option may exercise its rights under the Option (in accordance with § 5.4 (*Notice of Exercise*)) by giving the Writer irrevocable notice of such Exercise during the Exercise Period. Unless otherwise agreed in the Election Sheet, if no Exercise Deadline is specified in an Individual Contract for an Option, the Exercise Deadline shall be 1700 hours on the fifth Business Day prior to commencement of the Total Supply Period under such Individual Contract.

4. **Notice of Exercise:** Each notice of Exercise shall be effective upon receipt by the Writer and may be given in writing or verbally, provided that Exercise may not be effected by email and verbal Exercise may not be effected by leaving a message on a voicemail or similar verbal electronic messaging system. In the case of verbal Exercise, the Holder shall promptly confirm the Exercise in writing (including without limitation by facsimile), provided that such written confirmation is not a prerequisite to the validity of verbal Exercise.

§ 6

Delivery, Measurement, Transportation and Risk

1. **Off-Spec Gas:** The provisions of § 8a (*Off-Spec Gas*) shall apply in respect of Off-Spec Gas.

2. **Flat Transactions:** In respect of an Individual Contract the Contract Quantity shall be the same for each Time Unit during the Total Supply Period unless otherwise agreed by the Parties.

3. **Transfer of Rights to Natural Gas:** In respect of each Individual Contract the Seller warrants and represents to the Buyer that in each Time Unit it has the right to transfer (or cause to be transferred) to the Buyer full entitlement to the Delivered Quantity at the Delivery Point free and clear of any adverse claims and the Seller shall indemnify and hold harmless the Buyer against any such adverse claims in respect of the Delivered Quantity or any part thereof.

4. **Measurement of Natural Gas Deliveries and Receipts:** In respect of an Individual Contract and each Time Unit of the Total Supply Period, the quantity of Natural Gas delivered by the Seller and accepted by the Buyer (the "**Delivered Quantity**") for such Individual Contract for such Time Unit shall be determined in accordance with the Nomination and Allocation Arrangements at the Delivery Point and the allocation statements of the relevant Network Operator; provided, however, that, subject to § 4.1(b) (*Delivery and Acceptance and Net Scheduling Obligations*), where there is more than one Individual Contract between the Parties for a Time Unit at the same Delivery Point, the Delivered Quantity shall be deemed to be a reference to the Quantity of Natural Gas delivered by the Net Seller and accepted by the Net Buyer in respect of all such Individual Contracts. The Parties may agree which meter readings and/or allocation statements shall prevail in respect of an Individual Contract. The meaning of "Nomination and Allocation Arrangements" shall be construed taking into account any such agreement in respect of an Individual Contract.

5. **Documentation of Scheduled Quantities and Delivered Quantities:** Upon reasonable request, a Party shall:

- (a) provide to the other Party documentation in its possession or control that evidences quantities Scheduled and Delivered Quantities in respect of an Individual Contract for the purposes of determining the cause of any deviations between the Contract Quantities for each Time Unit pursuant to the terms of an Individual Contract and the Delivered Quantities for such Time Units; and
- (b) use its reasonable and diligent efforts to request and acquire from the Network Operator, and shall share with the requesting Party, any additional documentation necessary to reconcile inconsistencies between Contract Quantities and Delivered Quantities pursuant to any Individual Contracts.

PROVIDED THAT the obligations of a Party under (a) and (b) above shall only require it to extract from such documentation and provide to the other Party information relating to Individual Contracts between the Parties and not information relating to contracts or transactions with other counterparties.

Without prejudice to (a) and (b) above, where the Parties have agreed in respect of an Individual Contract that a single set of allocation statements shall prevail, the Party receiving them if so requested by the other Party shall, within three Business Days of receiving such allocation statements, provide copies of them (or of the relevant information in, or derived from, them) relating to the Individual Contract to the requesting Party except where both Parties have received copies of such allocation statements from the Network Operator.

6. Reimbursement of External Costs: In the event that a Party, at the request of the other Party or to resolve a dispute raised by the other Party, incurs reasonable external expenses in verifying that it has properly performed its delivery or acceptance obligations or that the other Party has failed to properly perform its delivery or acceptance obligations under the terms of an Individual Contract, such expenses shall, upon request by the Party which incurred them, be reimbursed by the Party that raised such dispute or requested such verification if the Party requesting reimbursement is shown to have been right.

7. Seller and Buyer Risks: Subject to § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*), in respect of each Individual Contract and each Time Unit of the Supply Period,:

- (a) Seller shall bear all risks associated with and shall be responsible for any costs or charges imposed on or associated with Scheduling, transportation and delivery of the Contract Quantity up to the Delivery Point (including all risks associated with the Seller's System, if applicable); and
- (b) Buyer shall bear all risks associated with and shall be responsible for any costs or charges imposed on or associated with Scheduling, acceptance and transportation of, the Contract Quantity at and from the Delivery Point (including all risks associated with the Buyer's System, if applicable).

§ 7

Non-Performance Due to Force Majeure

1. Definition of Force Majeure: Unless otherwise specified in the Election Sheet, for purposes of the Agreement "**Force Majeure**" means an occurrence beyond the reasonable control of the Party claiming Force Majeure (the "**Claiming Party**") which it could not reasonably have avoided or overcome and which makes it impossible for the Claiming Party to perform or procure performance of its delivery or acceptance obligations, including, but without limitation, due to one or more of the following:

- (a) the failure of communications or computer systems of the relevant Network Operator(s) which prevents the Claiming Party from performing its obligations of delivery or acceptance; or
- (b) the relevant Network's Operator failure to respond to all efforts by the Claiming Party to communicate with such Network Operator;

Provided that "**Force Majeure**" shall not include any curtailment or interruption of transportation rights or any problem, occurrence or event affecting any relevant pipeline system unless this constitutes a Transportation Failure.

2. Release from Delivery and Acceptance Obligations: If a Party is fully or partly prevented due to Force Majeure from performing or procuring performance of its obligations of delivery or acceptance under one or more Individual Contracts and such Party complies with the requirements of § 7.3 (*Notification and Mitigation of Force Majeure*) then, without prejudice to § 7.5 (*Long Term Force Majeure Limit*), no breach or default on the part of the Claiming Party shall be deemed to have occurred and it shall be released (and not merely suspended) from those obligations but only for the period of time and to the extent that such Force Majeure prevents its performance. Without prejudice to § 7.5 (*Long Term Force Majeure Limit*), no obligation to pay damages pursuant to § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*) will accrue to the Claiming Party with respect to Default Quantities arising under such Individual Contracts as a result of Force Majeure affecting the Claiming Party's obligation.

3. Notification and Mitigation of Force Majeure: The Claiming Party shall as soon as practicable after learning of the Force Majeure notify the other Party of the commencement of the Force Majeure and of the Individual Contract(s) affected thereby and, to the extent then available, provide to it a bona fide non-binding estimate of the extent and expected duration of its inability to perform. The Claiming Party shall use all commercially reasonable efforts to mitigate and overcome the effects of the Force Majeure (which, in the case of a

Transportation Failure, shall include using all commercially reasonable efforts to procure that the relevant Network Operator mitigates and overcomes the effects of the Transportation Failure) and shall, during the continuation of the Force Majeure, provide the other Party with reasonable bona fide updates, when and if available, of the extent and expected duration of its inability to perform such Individual Contract(s).

4. Effects of Force Majeure on Other Party: In the event, and to the extent, that a Seller's delivery obligations are released by Force Majeure, the Buyer's corresponding acceptance and payment obligations shall also be released. In the event, and to the extent that a Buyer's acceptance obligations are released by Force Majeure, the Seller's corresponding delivery obligations shall also be released.

5. Long Term Force Majeure Limit: Where in respect of an Individual Contract the obligations of the Claiming Party have been adversely affected by Force Majeure on each Day for a consecutive period of Days exceeding the Long Term Force Majeure Limit and by on average more than fifty (50) per cent of the contracted quantity during such period, then the Party which is not the Claiming Party shall have the right to terminate such Individual Contract forthwith by written notice to the Claiming Party. Such termination shall be without prejudice to the accrued rights and obligations of the Parties under such Individual Contract up to the date of termination but neither Party shall have any liability whatsoever to the other in respect of the unexpired portion of the Total Supply Period under such Individual Contract after the date of termination.

§ 8

Remedies for Failure to Deliver or Accept the Contract Quantity

1. Underdelivery: If in respect of a Time Unit and an Individual Contract, the Contract Quantity exceeds the Delivered Quantity by more than the Tolerance by reason of Seller's Default, the Seller shall pay to the Buyer as compensation for its resulting losses an amount equal to the product of:

- (a) the amount, if positive, by which the price, at which the Buyer acting in a commercially reasonable manner is or would be able to contract to purchase or otherwise acquire in an arm's length purchase from a third party (which may include the relevant Network Operator) an equivalent quantity of Natural Gas to replace the Default Quantity for such Time Unit, exceeds the Contract Price; and
- (b) the Default Quantity.

Such amount shall be increased by the amount of any incremental transportation costs and charges and other reasonable and verifiable costs or expenses incurred by the Buyer in respect of the Default Quantity.

2. Under Acceptance: If in respect of a Time Unit and an Individual Contract, the Contract Quantity exceeds the Delivered Quantity by more than the Tolerance by reason of Buyer's Default, the Buyer shall pay to the Seller as compensation for its resulting losses an amount equal to the product of:

- (a) the amount, if positive, by which the Contract Price exceeds the price at which the Seller acting in a commercially reasonable manner is or would be able to contract to sell a quantity of Natural Gas equivalent to the Default Quantity in an arm's length sale to a third party (which may include the relevant Network Operator) for such Time Unit; and
- (b) the Default Quantity.

Such amount shall be increased by the amount of any incremental transportation costs and charges and other reasonable and verifiable costs or expenses incurred by the Seller in respect of the Default Quantity.

3. Overdelivery: If in respect of a Time Unit and an Individual Contract, the Delivered Quantity exceeds the Contract Quantity by more than the Tolerance by reason of Seller's Default, the Seller shall pay to the Buyer as compensation for its resulting losses an amount equal to the product of:

- (a) the amount, if positive, by which the Contract Price exceeds the price at which the Buyer acting in a commercially reasonable manner is or would be able to contract to sell in an arm's length sale to a third party (which may include the relevant Network Operator) a quantity of Natural Gas equal to the absolute value of the Default Quantity for such Time Unit; and
- (b) the absolute value of the Default Quantity.

Such amount shall be increased by the amount of any incremental transportation costs and charges and other reasonable and verifiable costs or expenses incurred by the Buyer in respect of the Default Quantity or such arm's length sale.

4. Over Acceptance: If in respect of a Time Unit and an Individual Contract, the Delivered Quantity exceeds the Contract Quantity by more than the Tolerance by reason of Buyer's Default, the Buyer shall pay to the Seller as compensation for its resulting losses an amount equal to the product of:

- (a) the amount, if positive, by which the price, at which the Seller acting in a commercially reasonable manner is or would be able to contract to purchase or otherwise acquire in an arm's length purchase from a third party (which may include the relevant Network Operator) a replacement quantity of Natural Gas for such Time Unit equal to the absolute value of the Default Quantity, exceeds the Contract Price; and
- (b) the absolute value of the Default Quantity.

Such amount shall be increased by the amount of any incremental transportation costs and charges and other reasonable and verifiable costs or expenses incurred by the Seller in respect of the Default Quantity or the acquisition of such replacement quantity.

5. Definitions and Interpretation: For the purposes of this § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*) the following definitions and interpretation shall apply:

- (a) a Default Quantity shall be deemed to arise by reason of "**Seller's Default**" if it arises because the Seller failed, in respect of the relevant Time Unit and Individual Contract, to comply with its obligations under § 4.1 (*Delivery and Acceptance*) or the Default Quantity is attributable to the Seller pursuant to § 6.7 (*Seller and Buyer Risks*) unless, in each case, the Seller is relieved from liability on the grounds of Force Majeure in accordance with § 7 (*Non-Performance Due to Force Majeure*);
- (b) a Default Quantity shall be deemed to arise by reason of "**Buyer's Default**" if it arises because the Buyer failed, in respect of the relevant Time Unit and Individual Contract, to comply with its obligations under § 4.1 (*Delivery and Acceptance*) or the Default Quantity is attributable to the Buyer pursuant to § 6.7 (*Seller and Buyer Risks*) unless, in each case, the Buyer is relieved from liability on the grounds of Force Majeure in accordance with § 7 (*Non-Performance Due to Force Majeure*);
- (c) for the purposes of § 8.1 (*Underdelivery*) and § 8.3 (*Overdelivery*) and subject to § 4.1(b) (*Delivery and Acceptance and Net Scheduling Obligations*), where there is more than one Individual Contract between the Parties in respect of a Time Unit and a Delivery Point, the Contract Quantity shall be the Net Contract Quantity, the Contract Price shall be the energy weighted average of the Contract Prices of the relevant Individual Contracts for that Time Unit and that Delivery Point in respect of which the Net Seller is the Seller and the "**Default Quantity**" shall be the difference between the Net Contract Quantity and the Delivered Quantity; and
- (d) for the purposes of § 8.2 (*Under Acceptance*) and § 8.4 (*Over Acceptance*) and subject to § 4.1(b) (*Delivery and Acceptance and Net Scheduling Obligations*), where there is more than one Individual Contract between the Parties in respect of a Time Unit and a Delivery Point, the Contract Quantity shall be the Net Contract Quantity, the Contract Price shall be the energy weighted average of the Contract Prices of the relevant Individual Contracts for that Time Unit and that Delivery Point in respect of which the Net Buyer is the Buyer and the "**Default Quantity**" shall be the difference between the Net Contract Quantity and the Delivered Quantity.

6. Amounts Payable: Amounts that are due according to this § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*) shall be invoiced and paid in accordance with § 13 (*Invoicing and Payment*).

7. Genuine and Reasonable Estimate: The Parties agree and acknowledge that sums calculated in accordance with § 8.1 (*Underdelivery*) to § 8.4 (*Over Acceptance*) (as applicable) will represent a genuine and

reasonable estimate of the costs and losses likely to be suffered by the Buyer in the event of Seller's Default or by the Seller in respect of Buyer's Default.

8. Use of Tolerance: Where, in respect of an Individual Contract and a Time Unit, the absolute value of the Default Quantity is less than the Tolerance, the Tolerance shall be deemed to be zero (notwithstanding that a non-zero Tolerance is specified in the Election Sheet or in the terms of the Individual Contract) in the event that the Party (which would, in the absence of the non-zero Tolerance, be required to make a payment under this § 8) has failed to take all the steps within its reasonable control to Schedule the correct Contract Quantity for such Individual Contract for such Time Unit.

§ 8a

Off-Spec Gas

1. Seller's Obligation: In respect of an Individual Contract, the Seller shall procure that Natural Gas delivered at the Delivery Point conforms to the Transportation Requirements.

2. Notification: As soon as reasonably practicable after the Seller becomes aware that Natural Gas which is being delivered at the Delivery Point, or which is about to be delivered, is Off-Spec Gas, it shall:

- (a) serve notice of that fact on the Buyer, specifying the nature and extent of the non-conformity with the Transportation Requirements, and the cause and probable duration of the non-conformity;
- (b) take such steps as are reasonably practicable to procure that Natural Gas which conforms with the Transportation Requirements is made available as soon as reasonably practicable;

and the Seller shall keep the Buyer fully informed in relation to the problem and the steps being taken to remedy it. If the Buyer becomes aware that Natural Gas which is being delivered at the Delivery Point is Off-Spec Gas (before it receives notice from the Seller pursuant to § 8a.2(a)) it shall notify the Seller of that fact and of any information available to it as to the nature, extent and cause of the non-conformity.

3. Rights of the Buyer: If Natural Gas to be delivered or being delivered at the Delivery Point is Off-Spec Gas and if the Physical Downstream Transporter has refused to take delivery of such Off-Spec Gas, the Buyer will, promptly following its receipt of notice of such refusal from the Physical Downstream Transporter, give notice to the Seller by telephone or in writing stating that it does not wish to take delivery of quantities of Natural Gas until the non-conformity with the Transportation Requirements has been remedied, and the Buyer shall not be in breach of any of its obligations by reason thereof. For the avoidance of doubt, the Buyer shall be obligated to take delivery of Off-Spec Gas if the Physical Downstream Transporter is willing to accept delivery of such Off-Spec Gas from the Buyer; provided, however, that in the event the Physical Downstream Transporter subsequently refuses to accept delivery of Off-Spec Gas it had previously agreed to accept from the Buyer or if Buyer is charged with any additional costs as a result of delivering the Off-Spec Gas to the Physical Downstream Transporter, then the Seller shall indemnify the Buyer in accordance with the terms of §8a.5 hereof. Any notice given pursuant to § 8a.3 by telephone shall be confirmed in writing as soon as reasonably practicable.

4. Underdelivery due to Off-Spec Gas: To the extent that the Delivered Quantity is less than the Contract Quantity in any Time Unit by reason of any of the circumstances described in or actions of the Parties taken in accordance with § 8a.3 (*Rights of the Buyer*), unless the Seller is relieved from liability under 8.1 (*Underdelivery*) due to Force Majeure in accordance with § 7 (*Non-Performance due to Force Majeure*), this shall constitute an underdelivery due to Seller's Default and the provisions of § 8.1 (*Underdelivery*) shall apply in relation to the Default Quantity

5. Indemnity: If, in respect of an Individual Contract:

- (a) any quantities of Natural Gas are delivered at the Delivery Point without or prior to the Buyer becoming aware that such quantities constitute Off-Spec Gas, or
- (b) any quantities of Natural Gas are delivered to the Buyer when the Buyer serves a notice on the Seller in accordance with § 8a.3 and before the non-conformity has been remedied, or
- (c) Buyer is charged with additional costs pursuant to § 8a.3 (*Rights of the Buyer*) as a result of the delivery of Off-Spec Gas to the Physical Downstream Transporter;

then the Seller shall (irrespective of any event of Force Majeure affecting the Seller in relation to such Off-Spec Gas) indemnify the Buyer from and against all direct loss, damage and expense for which the Buyer is or becomes liable as a result of the delivery of such quantities of Off-Spec Gas, arising as a result of a claim by the Physical Downstream Transporter under its transportation agreement with the Buyer or with the relevant shipper transporting such quantities away from the Delivery Point. Unless otherwise agreed in the terms of an Individual Contract, the Seller's aggregate liability to the Buyer under this § 8a.5 (*Indemnity*) or otherwise in respect of quantities of Off-Spec Gas delivered under an Individual Contract shall be unlimited.

6. **Payment for Off-Spec Gas:** Without prejudice to the foregoing provisions of this § 8a (*Off-Spec Gas*), the Buyer's obligation to pay for quantities of Natural Gas delivered pursuant to an Individual Contract, in accordance with § 13 (*Invoicing and Payment*), shall not be affected or diminished by the delivery of Off-Spec Gas.

§ 9

Suspension of Delivery or Acceptance

In addition to any other rights or remedies available to a Party (the "**Non-Defaulting Party**"), should a Party (the "**Defaulting Party**") default on any payment that is due under the Agreement, or should it or its Credit Support Provider fail to provide, replace or increase the amount of any Credit Support Document or any Performance Assurance as required pursuant to the Agreement, the Non-Defaulting Party shall be entitled, no earlier than three (3) Business Days after sending a written notice to the Defaulting Party immediately to cease further delivery or acceptance (as the case may be) of Natural Gas (and be released (and not merely suspended) from its underlying delivery or acceptance obligations) under all Individual Contracts and (provided that the Non-Defaulting Party has already exercised any rights available to it to set off its obligations to make payments under the Agreement to the Defaulting Party against amounts owed by the Defaulting Party to it) the Non-Defaulting Party shall have the right to withhold payments owed by it to the Defaulting Party under the Agreement in each case until such time as the Non-Defaulting Party, has received either the required Credit Support Document or Performance Assurance or full payment (including all applicable default interest and expenses) of all outstanding amounts owed to the Non-Defaulting Party.

§ 10

Term and Termination Rights

1. **Term:** This General Agreement shall come into force as of the Effective Date. It may be terminated in accordance with either § 10.2 (*Expiration Date and 30 Day Termination Notice*) or § 10.3 (*Termination for Material Reason*) through § 10.5 (*Definition of Material Reason*).

2. **Expiration Date and 30 Day Termination Notice:** This General Agreement will terminate on the Expiration Date (if one is specified in the Election Sheet) or if no Expiration Date has been specified in the Election Sheet, by a Party giving the other Party 30 days prior written notice of termination (in both cases "**Ordinary Termination**"). In the event of Ordinary Termination, the General Agreement shall remain legally binding on the Parties until, but only in respect of, all rights and obligations already created or existing under the Agreement prior to the date of the Ordinary Termination are fully performed by both Parties.

3. **Termination for Material Reason:**

- (a) If a Material Reason (as defined below) with respect to a Party has occurred and is continuing, the other Party (the "**Terminating Party**") may terminate the Agreement ("**Early Termination**") by giving the other Party notice. A notice of Early Termination may be given by telephone if that notice is confirmed in writing within two Business Days.
- (b) A notice of Early Termination shall specify the relevant Material Reason for the Early Termination and shall designate a day as an early termination date (the "**Early Termination Date**"). The Early Termination Date may not be earlier than the day the notice is deemed to have been received under the Agreement nor later than 20 days after such day. With effect from the Early Termination Date all further payments and performance in respect of all Individual Contracts shall be released (and not merely suspended) and existing duties and obligations of the Parties shall be replaced by the obligation of one Party to pay the Termination Amount to the other Party as calculated in accordance with § 11.1 (*Termination Amount*).

- (c) If notice designating an Early Termination Date is given, the Early Termination Date shall occur on the date so designated even if the applicable Material Reason is no longer continuing. On, or as soon as practicable after, the Early Termination Date, the Terminating Party shall calculate in a commercially reasonable manner, and shall notify the other Party of, the Termination Amount (if any) to be received or paid by it by deriving the same from aggregating all Settlement Amounts as stipulated in § 11 (*Calculation of Termination Amount*).
- (d) The Termination Amount shall be payable by the relevant Party to the other Party within three (3) Business Days of its notification by the Terminating Party (a "**Due Date**").
- (e) The Terminating Party may take into account any Performance Assurance or credit support available pursuant to the Agreement or any Credit Support Document.
- (f) The right to designate an Early Termination Date under this §10.3 (*Termination for Material Reason*) is in addition to any other remedies available under the Agreement or at law.

4. Automatic Termination: If "Automatic Termination" is specified as applying to a Party in the Election Sheet, and upon the occurrence of a Material Reason described in § 10.5(c) (*Winding-up/Insolvency/Attachment*), the Terminating Party need not send that Party any notice of the designation of an Early Termination Date and the Early Termination Date in such event shall be as specified in the Election Sheet. Except as provided in this § 10.4 (*Automatic Termination*), Early Termination by virtue of operation of Automatic Termination shall be as provided in § 10.3 (*Termination for Material Reason*).

5. Definition of Material Reason: The Agreement may be terminated at any time for one or more of the following reasons (each, a "**Material Reason**"):

- (a) **Non-Performance:** The failure of a Party or its Credit Support Provider, when required, to make a payment, to deliver any Performance Assurance or to perform any other material obligation (other than when such obligation is released pursuant to § 7 (*Non-Performance Due to Force Majeure*)):
 - (i) under the Agreement; provided, that in the case of a failure to pay, such failure is not cured within two (2) Business Days of a written demand, or, in the case of any other failure of performance (not covered by sub-paragraphs (ii) or (iii) below), such failure is not cured within ten (10) Business Days of a written demand;
 - (ii) under any Credit Support Document (after giving effect to any applicable notice or grace period thereunder); or
 - (iii) in accordance with § 17 (*Performance Assurance*).
- (b) **Cross Default and Acceleration:**
 - (i) any default, event of default or other similar condition or event (however described) in respect of such Party, such Party's Credit Support Provider (if such Party has a Credit Support Provider) or such Party's Controlling Party (if such Party does not have a Credit Support Provider but has a Controlling Party) under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the Threshold Amount (as specified for that Party in the Election Sheet) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable, or
 - (ii) the default of a Party or its Credit Support Provider or Controlling Party (individually or collectively) to make one or more payments on the due date thereof in an aggregate amount of not less than the Threshold Amount (as specified for that Party in the Election sheet) under one or more agreements or instruments relating to Specified Indebtedness (after giving effect to any applicable notice requirement or grace period).
- (c) **Winding-up/Insolvency/Attachment:** A Party or its Credit Support Provider:
 - (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);

- (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
 - (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
 - (iv) institutes or has instituted against it a proceeding seeking a judgement of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and, if specified in the Election Sheet, is not withdrawn, dismissed, discharged, stayed or restrained within such period as specified in the Election Sheet;
 - (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
 - (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
 - (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;
 - (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in § 10.5(c)(i) to § 10.5(c)(vii) (inclusive); or
 - (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this § 10.5(c).
- (d) **Failure to Deliver or Accept:** If specified as applying in the Election Sheet, the failure of a Party to comply with its obligation to deliver or accept Natural Gas under an Individual Contract, (other than, when such obligation is released pursuant to § 7 (*Non-Performance due to Force Majeure*)) for more than seven consecutive days or for more than seven (7) days in aggregate within a period of sixty (60) days.
- (e) **Representation or Warranty:** A representation or warranty when made or repeated or deemed to have been made or repeated by a Party to this General Agreement or an Individual Contract or by its Credit Support Provider in a Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated.

Unless otherwise specified in the Election Sheet, the above Material Reasons shall constitute the exclusive reasons for Early Termination under this § 10 (*Term and Termination Rights*).

§ 11

Calculation of the Termination Amount

1. Termination Amount: The Terminating Party shall calculate an amount (the "**Termination Amount**") to be paid in accordance with § 10.3 (*Termination for Material Reasons*) and § 10.4 (*Automatic Termination*) by calculating the sum (whether positive or negative) of all Settlement Amounts for all Individual Contracts and taking account of any or all other amounts payable between the Parties under or in connection with the Agreement. If the Termination Amount is negative, an amount equal to the absolute value of the Termination Amount shall be payable to the Terminating Party by the other Party. If the Termination Amount is positive, an amount equal to the Termination Amount shall be payable by the Terminating Party to the other Party.

2. Settlement Amount: The "**Settlement Amount**" for an Individual Contract shall be the Gains less the aggregate of the Losses and Costs which the Terminating Party incurs as a result of the termination of the Individual Contract. For the purpose of this provision:

- (a) "**Costs**" means brokerage fees, commissions and other third party costs and expenses reasonably incurred by the Terminating Party either in terminating any arrangement pursuant to which it has

hedged its obligation or entering into new arrangements which replace a terminated Individual Contract and all reasonable legal fees, costs and expenses incurred by the Terminating Party in connection with its termination of such Individual Contract;

- (b) **"Gains"** means an amount equal to the present value of the economic benefit to the Terminating Party, if any (exclusive of Costs), resulting from the termination of an Individual Contract, determined in a commercially reasonable manner; and
- (c) **"Losses"** means an amount equal to the present value of the economic loss to the Terminating Party, if any (exclusive of Costs), resulting from its termination of an Individual Contract, determined in a commercially reasonable manner.

In calculating the Settlement Amounts, the Terminating Party may, but is not obliged, to calculate its Gains and Losses as at the Early Termination Date, at its discretion, without entering into any replacement transactions.

§ 12

Limitation of Liability

1. Application of Limitation: This § 12 (*Limitation of Liability*) will apply unless otherwise specified by the Parties in the Election Sheet.

2. Exclusion of Liability: Subject to § 12.3 (*Consequential Damage and Limitation of Liability*) and § 12.4 (*Intentional Default, Fraud and Other Mandatory Rules*) and except in respect of any amounts payable under § 6.3 (*Transfer of Rights to Natural Gas*), § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*), § 8a (*Off-Spec Gas*), § 10.3 (*Termination for Material Reason*), §10.4 (*Automatic Termination*), § 13 (*Invoicing and Payment*) and § 14 (*VAT and Taxes*), a Party and its employees, officers, contractors and/or agents, shall not be liable to the other Party for any loss, cost, expense or damages ("**Damages**"), incurred by the other Party under or in connection with the Agreement, except where such Damages are due to the negligence, intentional default or fraud of a Party or its employees, officers, contractors and/or agents used by such Party in performing its obligations under the Agreement.

3. Consequential Damage and Limitation of Liability: Subject to § 12.4 (*Intentional Default, Fraud and Other Mandatory Rules*), the liability of each Party to the other Party under or in connection with this Agreement:

- (a) shall (except as provided in § 6.3 (*Transfer of Rights to Natural Gas*), § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*), § 8a (*Off-Spec Gas*), § 10.3 (*Termination for Material Reason*) § 10.4 (*Automatic Termination*), § 13 (*Invoicing and Payment*) and § 14 (*VAT and Taxes*)) exclude liability for loss of profit, goodwill, business opportunity or anticipated saving and for indirect or consequential Damages (and the above categories of loss shall be considered independently and the eiusdem generis rule of construction under English law shall not apply); and
- (b) shall be limited to an aggregate amount equal to the aggregate amounts payable for Natural Gas supplied or to be supplied by a Party under any relevant Individual Contract provided that such limitation shall not apply to payments due in accordance with § 6.3 (*Transfer of Rights to Natural Gas*), § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*), § 8a (*Off-Spec Gas*), § 10.3 (*Termination for Material Reason*) § 13 (*Invoicing and Payment*) or § 14 (*VAT and Taxes*)).

4. Intentional Default, Fraud and other Mandatory Rules: Nothing in the Agreement operates to exclude or limit a Party's liability for:

- (a) intentional default;
- (b) fraud; or
- (c) personal injury or death resulting from the negligence of such Party or any of its officers or employees.

5. **Duty to Mitigate Losses:** For the avoidance of doubt, and subject to applicable law, each Party agrees that it has a duty to mitigate its Damages and covenants that it will use commercially reasonable efforts to minimise any Damages it may incur under or in connection with the Agreement.

§ 13

Invoicing and Payment

1. **Invoice:** Each Party who is a Seller of Natural Gas in an Individual Contract shall transmit to the other Party in the course of the calendar month following delivery of Natural Gas under Individual Contract(s) for the previous month an invoice setting forth the total quantities of Natural Gas that were sold by it under each Individual Contract in the previous calendar month. In connection with such invoice the Party shall state all amounts then owed between the Parties pursuant to each Individual Contract for which it is the Seller including, without limitation, all amounts owed for the purchase and sale of Natural Gas, fees, charges, reimbursements, damages, interest, and other payments or credits owed between the Parties (including, without limitation, under § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*), § 8a (*Off-Spec Gas*) and § 14 (*VAT and Taxes*)) and the net amount due for payment in respect of each Individual Contract. Invoicing of Premiums due under an Individual Contract for Options shall be as agreed by the Parties in the Individual Contracts.

2. **Payment:** On or before the later to occur of (a) the twentieth (20th) day of the calendar month or if not a Business Day the immediately following Business Day; or (b) the tenth (10th) day following receipt of an invoice (whichever being the "**Due Date**"), a Party owing an invoiced amount shall pay, by wire transfer in freely available funds, the amount set forth on such invoice to the payment address or bank account provided by the other Party as specified in the Election Sheet. Such payment shall be made, unless otherwise agreed, in EURO, and subject to § 14 (*VAT and Taxes*) and the remitter shall pay its own bank charges. Notwithstanding the foregoing, the Due Date for payment of a Premium under an Individual Contract for Options shall be the Premium Payment Date applicable to the Individual Contract.

3. **Payment Netting:** If this § 13.3 (*Payment Netting*) is specified as applying in the Election Sheet, if on any day the Parties are each required to pay one or more amounts in the same currency (for which purpose all EURO currencies shall be considered a single currency) under one or more Individual Contracts then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their respective payment obligations through netting, in which case the Party, if any, owing the greater aggregate amount shall pay the other Party the difference between the aggregate amounts owed.

4. **Invoicing and Payment of Scheduled Contract Quantities:** Invoicing and payment shall (so far as available at the time of invoicing) be based on the Delivered Quantities in respect of Individual Contracts for all Time Units of the respective month; provided, however, that, subject to § 4.1(b) (*Delivery and Acceptance and Net Scheduling Obligations*), with respect to Time Units for which there was more than one Individual Contract between the Parties for delivery of Natural Gas at the same Delivery Point, invoicing and payment shall be based on the Delivered Quantity plus any Quantity of Natural Gas which was sold by the Seller to the Buyer but was not Scheduled because it was the subject of net Scheduling or because there was no requirement to Schedule pursuant to § 4.1 (*Delivery and Acceptance and Net Scheduling Obligations*). However, to the extent such data is not available to the Seller at the time of invoicing, the Seller's invoice shall be based on Contract Quantities for Individual Contracts for such Time Units. When and if data becomes available confirming the Delivered Quantities in respect of Individual Contracts for such Time Units and the discrepancies between Delivered Quantities and Contract Quantities, invoicing and payment will be adjusted to reflect any discrepancies between the Contract Quantities and Delivered Quantities including any payment (or adjustments to payments) due under § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*).

5. **Default Interest:** Late payments shall accrue interest from, and including, the Due Date to, but excluding, the date of payment, at the Interest Rate. For this purpose the "**Interest Rate**" shall be the rate of interest specified in the Election Sheet.

6. **Disputed Amounts:** If a Party, in good faith, disputes the accuracy of an invoice, it shall on or before the Due Date provide a written explanation of the basis for the dispute and shall pay:

- (a) if this § 13.6(a) is specified as applying in the Election Sheet, the full amount invoiced no later than the Due Date. If any amount paid under dispute is finally determined to have not been due, such overpayment shall, at the election of the owed Party, be credited or returned to it within ten (10) days of such determination, along with interest accrued at the Interest Rate from, and including, the date such amount was paid, to the other Party, but excluding, the date returned or credited; or
- (b) if this § 13.6(b) is specified as applying in the Election Sheet, the undisputed amount invoiced no later than the Due Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount shall, at the election of the owed Party, be credited or returned to it within ten (10) days of such determination, along with interest accrued at the Interest Rate from, and including, the date such amount was due, to the other Party, but excluding, the date paid or credited.

7. Invoices Based on Contract Quantities: For the avoidance of doubt, it is acknowledged that each invoice shall be based on the Contract Quantities agreed by the Parties pursuant to each Individual Contract and not the Net Contract Quantities which are used pursuant to § 4.1(b), to calculate the net Quantities to be Scheduled, made available and offtaken by the Parties pursuant to § 4.1 (*Delivery and Acceptance and Net Scheduling Obligations*) after aggregating all Individual Contracts between the Parties for the relevant Time Unit at the same Delivery Point. It is further acknowledged that, subject to § 4.1(b), to the extent there is Buyer's Default by the Net Buyer under § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*) in circumstances where there is more than one Individual Contract between the Parties for a Time Unit at the same Delivery Point then the Default Quantity for the relevant Time Unit shall be allocated on a pro rata basis to those Individual Contracts under which the Net Buyer is the Buyer (such allocation to be calculated by the Net Seller) and to the extent there is a Seller's Default by the Net Seller under § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*), then the Default Quantity shall be allocated on a pro rata basis to those Individual Contracts under which the Net Seller is the Seller (such allocation shall be calculated by the Net Buyer).

§ 14

VAT and Taxes

1. ~~VAT/Other Taxes:~~ All amounts referred to in this General Agreement are exclusive of ~~any applicable VAT/Other Taxes. VAT.~~ The VAT ~~/Other Tax~~ treatment of the supply of Natural Gas under an Individual Contract shall be determined pursuant to the VAT ~~/Other Tax~~ laws of the jurisdiction where a taxable transaction for VAT ~~/Other Tax~~ purposes is deemed to take place. ~~In the case of VAT, if~~ VAT is payable on any such amounts, the Buyer shall pay to the Seller an amount equal to the VAT at the rate applicable from time to time; provided that such amount shall only be required to be paid once the Seller provides the Buyer with a valid VAT invoice (applicable in the jurisdiction of supply) in relation to that amount. ~~Each Party shall to the extent permitted by law provide the other with any additional valid VAT invoices as required for the purposes of this General Agreement.~~

Where, in accordance with EU and/or national legislation, any supplies under an Individual Contract may be Zero-Rated and/or subject to the reverse charge in accordance with Articles 38, 39 or 195 of Council Directive 2006/112/EC, the following shall apply:

- (a) the Buyer and the Seller hereby covenant that they will do all such proper acts, deeds and things as are necessary (which may include and shall not be limited to providing to the Seller all such proper, true and accurate documentation or assistance as may reasonably be required by the relevant taxing authority) to ensure that such supply is Zero-Rated or subject to the reverse charge for the purposes of such legislation;
- (b) in the event that the Buyer or the Seller fails to comply with such obligation, the non-complying party shall indemnify the other party in respect of any and all VAT, penalties and interest incurred by the other party as a result of the non-complying party's failure to comply with the above covenant; and
- (c) in the absence of the Buyer providing any documentation as referred to in (a) above, the Seller reserves the right to charge local VAT.

2. Other Taxes: All amounts referred to in this General Agreement are exclusive of "Other Taxes". In the case of Other Taxes, if the cost of an Other Tax is charged or passed on by the Seller to the Buyer, the Buyer shall pay this amount of Other Tax to the Seller; provided that such amount of Other Tax is identified separately on the invoice issued by the Seller and confirmation is received by the ~~Seller~~Buyer, where applicable, that such amount of Other Tax has been duly paid or accounted for to the relevant Tax authority, as appropriate.

~~2. Zero Rating:~~

Where in accordance with ~~such VAT Rules~~EU and/or national legislation there is an exemption or other relief, as applicable, from Other Taxes in respect of any supplies under an Individual Contract ~~may be Zero Rated, such supplies shall be Zero Rated and,~~ the following shall apply:

- (a) ~~(a)~~ — the Buyer ~~hereby covenants to~~and the Seller ~~hereby covenant~~ that ~~it~~they will do all such proper acts, deeds and things as are necessary (which may include and shall not be limited to providing to the Seller all such proper, true and accurate documentation or assistance as may reasonably be required by the relevant taxing authority) to ensure that such supply is ~~Zero Rated~~exempt from Other Taxes for the purposes of such ~~VAT Rules; and~~legislation;
- (b) ~~(b)~~ — in the event that the Buyer ~~or the Seller~~ fails to comply with such obligation, the ~~Buyer~~non-complying party shall indemnify the ~~Seller~~other party in respect of any and all ~~VAT~~Other Taxes, penalties and interest incurred by the ~~Seller~~other party as a result of the ~~Buyer~~non-complying party's failure to comply with the above covenant; and
- (c) in the absence of the Buyer providing any documentation as referred to in (a) above the Seller reserves the right to charge Other Taxes.

3. **Seller's and Buyer's Tax Obligation:** The Seller shall pay or cause to be paid all Tax on or with respect to Natural Gas delivered pursuant to an Individual Contract arising before the transfer of risk and title at the Delivery Point. The Buyer shall pay or cause to be paid all Tax on or with respect to the Natural Gas delivered pursuant to an Individual Contract arising ~~at or~~ after the transfer of risk and title at the Delivery Point. Subject to §14.2 the Parties shall pay all Tax arising at the transfer of risk and title at the Delivery Point in accordance with applicable local laws. In the event that the Seller is required by law to pay any Tax which is properly for the account of the Buyer, the Buyer shall promptly indemnify or reimburse the Seller in respect of such Tax. In the event that the Buyer is required by law to pay any Tax which is properly for the account of the Seller, the Buyer may deduct the amount of any such Tax from the sums due to the Seller under the Agreement and the Seller shall promptly indemnify or reimburse the Buyer in respect of any such Tax not so deducted.

4. **Taxes Targeted at End-Users:** The Buyer covenants to the Seller that, for the purposes of a Tax which is targeted at the end-user, burner or consumer of Natural Gas ~~but which is levied up the distribution chain,~~ either :

- (a) it will not be an end-user, burner or consumer of such Natural Gas delivered to it under any Individual Contract, and/or
- (b) that the Buyer has the status of an intermediary or any equivalent status as defined in any applicable legislation, and/or
- (c) that the Natural Gas so delivered will either be transported out of the jurisdiction in which the Delivery Point is situated under such Individual Contract or will be re-sold within such jurisdiction.

and the Buyer will provide such documentation as may be required by applicable legislation to evidence any of the foregoing.

5. **Exemption Certificates:** If, however, the Buyer intends to burn or otherwise consume any of the Natural Gas delivered under an Individual Contract, the Buyer shall provide to the Seller, if required under the applicable legislation, a Valid Certificate evidencing the exemption of the Buyer's relevant facility from the Tax which is targeted at the end-user, burner or consumer of Natural Gas, in respect of its ~~fuel~~energy supply to the reasonable satisfaction of the Seller. If such a Valid Certificate, which is required by any applicable legislation, is not provided and/or the Seller is not so satisfied by the relevant time of invoicing and the Seller is liable to pay the Tax targeted at the end-user, burner or consumer of Natural Gas, the Seller shall charge the Buyer and the Buyer shall pay to the Seller in addition to the Contract Price an amount equal to the Tax which is applicable to the end-user, burner or

consumer of Natural Gas on the Natural Gas delivered under such Individual Contract, at the rate applicable at the time of the sale. If the Buyer, subsequent to the Seller charging such Tax, provides the Seller within the applicable time (if any) with a Valid Certificate, the Seller shall reimburse the Buyer for any such Taxes paid by the Buyer, provided the Seller has reclaimed such Tax.

6. **Indemnity:** In the event that, in respect of an Individual Contract, a Party is in breach of its obligations under § 14.4 (*Taxes targeted at end-users*) or § 14.5 (*Exemption Certificates*), it shall indemnify and hold harmless the other Party against any liability for Tax which is targeted at the end-user, burner or consumer of Natural Gas (and any associated charges or penalties) in respect of Natural Gas delivered under such Individual Contract.

7. **New Taxes:** If any New Tax is applicable to an Individual Contract, and the Buyer is, by the use of reasonable endeavours, able to obtain any available exemption or relief ~~therefrom~~there from or is contractually able to pass the same through to or be reimbursed in respect thereof by, a third party, the Buyer shall pay or cause to be paid, or reimburse the Seller if the Seller has paid, such New Tax, and the Buyer shall indemnify, defend and hold harmless the Seller from and against any claims for such New Tax.

8. **Termination for New Tax:** Unless otherwise specified in the Election Sheet or in the terms of an Individual Contract, the provisions of this § 14.8 shall only apply in respect of an Individual Contract if the period from the date on which the Parties concluded such Individual Contract pursuant to § 3.1 (*Conclusion of Individual Contracts*) to the end of the Total Supply Period exceeds two years.

Where the provisions of this § 14.8 apply in respect of an Individual Contract and:

- (a) ~~(a)~~ a New Tax is imposed on a Party (the “**Taxed Party**”) in respect of the Contract Quantity; and
- (b) ~~(b)~~ having used reasonable endeavours to do so, the Taxed Party is unable contractually to pass on the cost of the New Tax to the other Party or a third ~~party~~Party; and
- (c) ~~(c)~~ the total amount of the New Tax that would be payable in respect of the balance of the total amount of Natural Gas to be delivered during the ~~remainder~~remainder of the ~~total supply term~~Total Supply Period (the “**Remaining Contract Quantity**”), unless otherwise specified in the Election Sheet, shall exceed five percent (5%) of the product of the Remaining Contract Quantity and the Contract Price;

then, the Taxed Party shall be entitled to terminate the Individual Contract subject to the following conditions:

- ~~(a)~~ the Taxed Party must give the other Party (the “**Non-Taxed Party**”) at least five (5) Business Days' prior written notice (the “**Negotiation Period**”) of its intent to terminate the Individual Contract (and which notice shall be given no later than 180 Days after the later of the enactment or the effective date of the relevant New Tax), and prior to the proposed termination the Taxed Party and the Non-Taxed Party shall attempt to reach an agreement as to the sharing of the New Tax;
- ~~(b)~~ if such agreement is not reached, the Non-Taxed Party shall have the right, but not the obligation, upon written notice to the Taxed Party within the Negotiation Period, to pay the New Tax for any continuous period it so elects on a calendar month to calendar month basis, and in such case the Taxed Party shall not have the right during such continuous period to terminate the ~~Transaction~~Individual Contract on the basis of the New Tax; ~~and~~
- ~~(c)~~ should the Non-Taxed Party elect to pay the New Tax on a calendar month to calendar month basis, the Non-Taxed Party may elect to cease the payment of the New Tax upon giving five (5) Business Days' prior written notice to the Taxed Party of its election to cease payment of such New Tax, in which case the Non-Taxed Party shall indemnify the Taxed Party for the New Tax and related interest and penalties that may be incurred by the Taxed Party in respect of the period during which the Non-Taxed Party had elected to pay the New Tax and the Taxed Party shall again be subject to the provisions of this ~~clause~~§ 14.8 as if the New Tax had an effective date as of the date on which the Non-Taxed Party ceased payment of such New Tax;
- ~~(d)~~ if agreement as to sharing a New Tax is not reached and the Non-Taxed Party does not elect to

pay the New Tax for any period of time within the Negotiation Period, the Individual Contract affected shall be terminated on the expiry of the Negotiation Period;

- (he) upon termination of the Individual Contract, the provisions of § 11 (*Calculation of the Termination Amount*) relating to the calculation and payment of the Termination Amount shall apply but only in respect of the Individual Contract(s) so terminated, and for these purposes:
 - (i) the Non-Taxed Party shall be understood to be the Terminating Party for the calculation of the Termination Amount; and
 - (ii) the effect (if any) of the relevant New Tax on the calculation of the Termination Amount (or any Settlement Amount) shall be expressly excluded ~~in calculating pursuant to clause 11.2 (b) or (c) the present value of the economic loss or the economic benefit to the Terminating Party (exclusive of Costs) resulting from the termination of each such Individual Contract.~~

9. **Withholding Tax:** If this § 14.9 is specified as applying in the Election Sheet, the following shall apply between the Parties:

- (a) **Payments Free and Clear:** All payments under an Individual Contract shall be made without any withholding of or deduction for or on account of any Tax unless such withholding or deduction is required by law. If a Party is so required to withhold or deduct Tax from a payment to be made by it, then that Party ("**Paying Party**") shall notify the other Party ("**Receiving Party**") immediately of such requirement and pay to the appropriate authorities all amounts withheld or deducted by it. If a receipt or other evidence can be issued evidencing the payment to the authorities, the Paying Party shall deliver such evidence (or a certified copy thereof) to the Receiving Party.
- (b) **Grossing-Up:** The Paying Party shall increase the amount of any payment which is required to be made subject to a withholding or deduction to the extent necessary to ensure that, after the making of the required withholding or deduction, the Receiving Party receives the same amount it would have received had no such withholding or deduction been made or required to be made, except that no increase shall be made in respect of any Tax:
 - (i) which is only imposed as a result of a connection between the Receiving Party and the jurisdiction of the authority imposing the Tax (including, without limitation, a connection arising from the Receiving Party having or having had a permanent establishment or other fixed place of business in that jurisdiction, or having been present or engaged in business in that jurisdiction) other than the mere execution or delivery of this General Agreement, any Confirmation or any Credit Support Document;
or
 - (ii) which could have been avoided if the Receiving Party had delivered to the Paying Party or to the appropriate authority as reasonably requested by the Paying Party, any declaration, certificate, or other documents specified in the Election Sheet in a form reasonably satisfactory to the Paying Party; or
 - (iii) which is only imposed as a result of any Tax representation made by the Receiving Party in the Election Sheet for the purposes of this § 14.9, failing or ceasing to be true and accurate provided that this paragraph (iii) shall not apply (and the Paying Party shall be obliged to increase the amount of any payment pursuant to this § 14.9(b)) if such representation has failed or ceased to be true and accurate by reason of:
 - (aa) any change in, or in the application or interpretation, of any relevant law, enactment, directive, or published practice of any relevant Tax authority being a change occurring on or after the date on which the relevant Individual Contract is entered; or

(bb) any action taken by a Tax authority, or brought in a court of competent jurisdiction, on or after the date on which the relevant Individual Contract is entered into.

§ 15

Floating Prices and Fallback Procedure for Market Disruption

- 1. Calculation of Floating Contract Prices:** In the event the Contract Price is based on an index, exchange or any other kind of variable reference price (such price being a "**Floating Price**") the Contract Price shall be determined on the Settlement Date at the Settlement Price as specified in the applicable Individual Contract. The Settlement Price shall be determined in accordance with the Calculation Method on the Calculation Date as specified in the Individual Contract. The Calculation Date is the date specified as such in the Individual Contract on which the Settlement Price for the specific delivery is determined. The Calculation Agent shall provide prompt notice of the Settlement Price determined as well as the amount to be paid on the Due Date. Payment shall be made pursuant to § 13 (***Invoicing and Payment***).
- 2. Market Disruption:** Upon the occurrence of a Market Disruption Event as specified in § 15.4 (***Definition of Market Disruption Event***), the Calculation Agent shall determine an alternative price to which the relevant Individual Contract shall be settled (the "**Alternative Settlement Price**") according to the applicable Fallback Mechanism contained in the provisions of § 15.3 (***Fallback Mechanism***). In the event of a Market Disruption Event, the order of succession of § 15.3 (***Fallback Mechanism***) from (a) to (c) shall be binding upon the Calculation Agent. The Calculation Agent can only use the next following Fallback Mechanism provision if the previous Fallback Mechanism provision is not available due to a Market Disruption Event or otherwise as provided in § 15.3 (***Fallback Mechanism***), as applicable.
- 3. Fallback Mechanism:** In the event of a Market Disruption Event the Calculation Agent shall determine the Alternative Settlement Price according to the following procedure (each a "**Fallback Mechanism**"):

 - (a) **Fallback Reference Price:** The Calculation Agent shall determine the Alternative Settlement Price which shall be the price for that Calculation Date of the first Alternate Commodity Reference Price (if any, specified in the applicable Individual Contract), which is not itself subject to a Market Disruption Event; if an Alternate Commodity Reference Price has not been agreed on in the Individual Contract, the next applicable Fallback Mechanism shall apply for the relevant Individual Contract.
 - (b) **Negotiated Fallback:** Each Party shall promptly negotiate in good faith to agree with the other on an Alternative Settlement Price (or a method for determining the Alternative Settlement Price), and, if the Parties have not so agreed on or before the fifth Business Day following the first Calculation Date on which the Market Disruption Event existed, the next applicable Fallback Mechanism shall apply.
 - (c) **Dealer Fallback:** On or after six Business Days following the first Calculation Date on which the Market Disruption Event occurred or existed, the Parties shall promptly and jointly agree upon three independent leading participants in the relevant market ("**Dealers**") selected in good faith from among participants of the highest credit standing which satisfy all the criteria that the Parties apply generally in deciding whether to offer or to make an extension of credit or to enter into a transaction comparable to the Individual Contract that is affected by the Market Disruption Event. The Dealers shall be appointed to make a determination of the Alternative Settlement Price taking into consideration the latest available quotation for the relevant commodity reference price and any other information that in good faith is deemed relevant. The Alternative Settlement Price shall be the arithmetic mean of the three amounts determined to be the Alternative Settlement Price by each Dealer, in which case the calculation shall be binding and conclusive in the absence of manifest error.
- 4. Definition of Market Disruption Event:** "**Market Disruption Event**" under this § 15 (***Floating Prices and Fallback Procedure for Market Disruption***) shall mean the events stipulated under § 15.4(a) through § 15.4(f) (the existence of which shall be determined in a commercially reasonable manner by the Calculation Agent). For purposes of this § 15.4 (***Definition of Market Disruption Event***), "**Price Source**" shall mean any institution determining and publishing the price for a relevant commodity (a "**Commodity Reference Price**") including exchanges trading in any relevant future contracts or commodities on which the Floating Price is based:

- (a) the failure of any relevant Price Source to announce or publish information necessary for determining the Commodity Reference Price;
- (b) the temporary or permanent objective unavailability of any relevant Commodity Reference Price;
- (c) a temporary or permanent closing of the Price Source of any relevant Commodity Reference Price;
- (d) the discontinuance or suspension of, or the imposition of a material limitation on, trading in any relevant futures contract or commodity offered by the relevant exchange for the Commodity Reference Price;
- (e) the occurrence since the date such Individual Contract was entered into of a material change in the details of the composition of or specifications for any relevant commodity or Commodity Reference Price (i) which are entered into or incorporated in any relevant futures contract or offered by the relevant exchange or (ii) which are used by any other relevant institution for determining the Commodity Reference Price in compiling the price information necessary for determining such Floating Price; or
- (f) the occurrence since the commencement of the relevant Individual Contract of a material change in the method of calculation used for any relevant Commodity Reference Price to determine the price information necessary for determining such floating price.

5. **Calculation Agent:** Unless the Parties otherwise specify in the Election Sheet or in the relevant Individual Contract, the Seller shall be the Calculation Agent.

§ 16

Guarantees and Credit Support

To address each Party's risk relating to the creditworthiness of the other Party, and to secure the prompt fulfilment of all obligations resulting from this General Agreement and Individual Contracts, the Parties may agree, on or at any time after the Effective Date, or at the time of the concluding of each Individual Contract, upon the circumstances in which Credit Support Documents may be required to be provided for the benefit of a Party, including, the form of Credit Support Documents, the amount of credit support, and the identity of one or more acceptable Credit Support Providers.

§ 17

Performance Assurance

1. **Right to Require Performance Assurance:** At any time and from time to time, when a Party (the "**Requesting Party**") believes in good faith that a Material Adverse Change has occurred in respect of the other Party, the Requesting Party shall be entitled to require, by written notice, that the other Party provide to it or increase in amount: (a) a Letter of Credit; (b) cash; or (c) other security (including a bank or parent guarantee), in a form, amount and from an entity which is reasonably acceptable to the Requesting Party (each a "**Performance Assurance**"). Upon receipt of such written notice, the other Party shall within three Business Days provide to the Requesting Party the Performance Assurance required. For the avoidance of doubt, in the event that an entity providing Performance Assurance on behalf of a Party does not thereafter continue to be reasonably acceptable to the Requesting Party, the Requesting Party shall have the right to require the other Party to provide to it additional Performance Assurance in accordance herewith.

2. **Material Adverse Change:** A Material Adverse Change shall have occurred if any one or more of following events has occurred and is continuing in so far as such event is specified as applying to a Party in the Election Sheet:

- (a) **Credit Rating:** If the Credit Rating of an Entity listed in (i) to (iii), each such Entity being a "**Relevant Entity**" of such Party, is withdrawn or downgraded below the rating set out for such Party in the Election Sheet:
 - (i) the other Party (unless all of that other Party's financial obligations under the Agreement are fully guaranteed or assured under a Credit Support Document);

- (ii) the other Party's Credit Support Provider or provider of Performance Assurance (other than a bank); or
 - (iii) any Entity who is a party to a control and/or profit transfer agreement (Berherrschungs-Gewinnabführungsvertrag) within the meaning of the German Stock Corporation Act (Aktiengesetz; AktG) (a "**Control and Profit Transfer Agreement**") with the other Party and such other Party is in relation to such Entity, its subsidiary over which such Entity has control (a "**Controlling Party**"); or
- (b) **Credit Rating of a Credit Support Provider or Provider of Performance Assurance That is a Bank:** If the Credit Rating of a bank serving as the other Party's Credit Support Provider or provider of Performance Assurance is withdrawn or downgraded below the Credit Rating set out in the Election Sheet.
- (c) **Financial Covenants:** In so far as a Relevant Entity does not have a Credit Rating, if such Relevant Entity does not fulfil any of the following financial requirements as determined by reference to its most recent financial statement:
- (i) **EBIT to Interest:** The ratio of EBIT to the sum of all interest and any amounts in the nature of interest charged to expense relating to financial indebtedness for borrowed money (which includes debts payable to Affiliates as well as debt instruments to financial institutions) for such Relevant Entity in any fiscal year is greater than the ratio specified in the Election Sheet.
 - (ii) **Funds from Operations:** The ratio of Funds from Operations to Total Debt for such Relevant Entity in any fiscal year is greater than the ratio specified in the Election Sheet.
 - (iii) **Total Debt to Total Capitalisation:** The ratio of Total Debt to Total Capitalisation for such Relevant Entity in any fiscal year is less than the ratio specified in the Election Sheet.
- (d) **Decline in Tangible Net Worth:** If the Tangible Net Worth of a Relevant Entity falls below the amount specified in the Election Sheet.
- (e) **Expiry of Performance Assurance or Credit Support Document:** If any Performance Assurance or any Credit Support Document expires or terminates with respect to any outstanding obligations of the other Party under the Agreement, or, if a Performance Assurance or Credit Support Document is due to expire or terminate within the period of time, if any, specified in the Election Sheet, or the failing or ceasing of such Credit Support Document or Performance Assurance to be in full force or effect for the purpose of the Agreement (in each case other than in accordance with its terms or the terms of the Agreement) before the satisfaction of all outstanding obligations of such other Party under the Agreement to which such Credit Support Document or Performance Assurance relates, without the written consent of the Requesting Party.
- (f) **Failure of Performance Assurance or Credit Support Document:** If any Credit Support Provider or provider of Performance Assurance of the other Party disaffirms, disclaims, revokes, repudiates or rejects in whole or in part, or challenges the validity of, any Credit Support Document or Performance Assurance provided by it or otherwise fails to comply with or perform its obligations under or in respect of such Credit Support Document or Performance Assurance and such failure is continuing after any applicable grace or cure period.
- (g) **Failure of Control and Profit Transfer Agreement:** If any Controlling Party of the other Party disaffirms, disclaims, revokes, repudiates or rejects in whole or in part, or challenges the validity of any Control and Profit Transfer Agreement entered into by it or otherwise fails to comply with or perform its obligations under such Control and Profit Transfer Agreement.
- (h) **Impaired Ability to Perform:** If in the reasonable and good faith opinion of the Requesting Party, the ability of the Relevant Entity to perform its obligations under the Agreement, any Credit Support Document or any Control and Profit Transfer Agreement, as the case may be, is materially impaired.

- (i) **Amalgamation/Merger:** If the other Party or its Credit Support Provider undergoes a change of control, consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates, or reconstitutes into or as, another Entity, or another Entity transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates, or reconstitutes into or as, such other Party or its Credit Support Provider and:
- (i) the creditworthiness of such Party, its Credit Support Provider or the resulting, surviving, transferee or successor Entity is materially weaker than that of the other Party or such Credit Support Provider, as the case may be, immediately prior to such action;
 - (ii) the resulting, surviving, transferee or successor Entity fails to assume all the obligations of that other Party or such Credit Support Provider under the Agreement or any Credit Support Document to which it or its predecessor was a party either by operation of law or pursuant to an agreement reasonably satisfactory to the Requesting Party; or
 - (iii) the benefits of any Credit Support Document cease or fail to extend (without the consent of the Requesting Party) to the performance by such resulting, surviving, transferee or successor Entity of its obligations under the Agreement.

§ 18

Provision of Financial Statements and Tangible Net Worth

1. **Provision of Financial Statements:** Unless otherwise specified in the Election Sheet, if requested by a party, the other Party shall deliver:

- (a) within 120 days following the end of each fiscal year, a copy of such other Party's, or for such period the other Party's obligation are supported by a Credit Support Provider or if it is a party to a Control and Profit Transfer Agreement, its Credit Support Provider's or its Controlling Party's, as the case may be, annual report containing audited consolidated financial statements for such fiscal year; and
- (b) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements.

2. **Decline in Tangible Net Worth:** If this § 18.2 is specified as applying in the Election Sheet, as soon as it becomes aware of such decline, each Party shall promptly notify the other Party of the occurrence of a decline in its Tangible Net Worth or the Tangible Net Worth of its Credit Support Provider or Controlling Party, to a level below the amount specified in the Election Sheet.

3. **Accounting Principles:** In all cases the financial statements referred to in this § 18 (*Provision of Financial Statements and Tangible Net Worth*) shall be prepared in accordance with generally accepted accounting principles in the relevant jurisdiction.

§ 19

Assignment

1. **Prohibition:** Neither Party shall be entitled to assign its rights and/or transfer its obligations under the Agreement to a third party without the prior written consent of the other Party. Such consent shall not be unreasonably delayed, refused or withheld.

2. **Assignment to Affiliates:** If this § 19.2 is specified as applying in the Election Sheet, each Party shall be entitled to assign and transfer the Agreement without the prior written consent of the other Party to an Affiliate of an equivalent or greater creditworthiness, provided that such Affiliate is incorporated in the same jurisdiction as the assigning and transferring Party. Such assignment and transfer shall only become effective upon notice being received by the other Party and provided that any Credit Support Document issued or agreed on behalf of the assigning and transferring Party has first been reissued or amended to support the obligations of the Affiliate for the benefit of the other Party.

§ 20

Confidentiality

1. **Confidentiality Obligation:** Unless this § 20 (*Confidentiality*) is specified as not applying in the Election Sheet, and subject to § 20.2 (*Exclusions from Confidential Information*), neither Party shall disclose the terms of an Individual Contract ("**Confidential Information**") to a third party.
2. **Exclusions from Confidential Information:** Confidential Information shall not include information which:
 - (a) is disclosed with the other Party's prior written consent;
 - (b) is disclosed by a Party to a Network Operator, its directors, employees, Affiliates, agents, professional advisers, bank or other financing institution, rating agency or intended assignee;
 - (c) is disclosed to comply with any applicable law, regulation, or rule of any exchange, Network Operator or regulatory body, or in connection with any court or regulatory proceeding; provided that each Party shall, to the extent practicable and permissible under such law, regulation, or rule, use reasonable efforts to prevent or limit the disclosure and to give the other Party prompt notice of it;
 - (d) is in or lawfully comes into the public domain other than by a breach of this § 20 (*Confidentiality*); or
 - (e) is disclosed to price reporting agencies or for the calculation of an index provided that such disclosure shall not include the identity of the other Party.
3. **Expiration:** A Party's obligation in respect of an Individual Contract under this § 20 (*Confidentiality*) shall expire one year after the expiration of such Individual Contract.

§ 21

Representations and Warranties

If specified as applying to a Party in the Election Sheet, that Party hereby represents and warrants to the other Party upon entering into this General Agreement and each time it enters into an Individual Contract as follows:

- (a) it is an Entity duly organised, validly existing and in good standing under the laws of its jurisdiction of incorporation or organisation;
- (b) the signing and the entering by it into of the General Agreement, any Credit Support Document to which it is a party and each Individual Contract and the carrying out of the transactions contemplated therein, shall not violate any provision of its constitutional documents;
- (c) it has the power and is authorised to execute, deliver and perform its obligations under the Agreement and any Credit Support Document to which it is a party and has taken all necessary action to authorise that execution, delivery, performance and its entry into the Agreement and its execution, delivery and the performance of the Agreement and any Credit Support Document do not violate or conflict with any other term or condition of any contract to which it is a party or any constitutional document, rule, law or regulation applicable to it;
- (d) no Material Reason for termination as outlined in § 10.5 (*Definition of Material Reason*), with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under the Agreement;
- (e) it has all governmental, regulatory and other authorisations, licences, approvals and consents necessary for it legally to perform its obligations under the Agreement and any Credit Support Document to which it is party;
- (f) it has negotiated, entered into and executed the Agreement and any Credit Support Document to which it is a party as principal (and not as agent or in any other capacity, fiduciary or otherwise);

- (g) it regularly enters into agreements for the trading of Natural Gas as contemplated by the Agreement, and does so on a professional basis in connection with its principal line of business, and may be reasonably characterised as a professional market party;
- (h) it is acting for its own account (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise), has made its own independent decision to enter into this General Agreement and each Individual Contract and as to whether this General Agreement and each such Individual Contract is appropriate or proper for it based upon its own judgement, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of the Agreement;
- (i) the other Party is not acting as its fiduciary or adviser;
- (j) it is not relying upon any representation made by the other Party other than those expressly set forth in the Agreement or any Credit Support Document to which it is a party;
- (k) with respect to a Party, it is not insolvent, and there are no pending or threatened legal or administrative proceedings to which it is a party which to the best of its knowledge would materially adversely affect its ability to perform any Individual Contract under the Agreement or any Credit Support Document to which it is party, such that it could become insolvent;
- (l) with respect to a Party that is a governmental Entity or public gas system or municipality, such governmental Entity or public gas system or municipality represents and warrants to the other Party as follows: (i) all acts necessary for the valid execution, delivery and performance of the Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures have or shall be taken and performed; (ii) entry into and performance of the Agreement by a governmental Entity or public gas system or municipality are for a proper public purpose within the meaning of relevant constitutional or other governing documents and applicable law; and (iii) the term of the Agreement does not extend beyond any applicable limitation imposed by any relevant constitutional or other governing documents and applicable law.

§ 22

Governing Law and Arbitration

OPTION A

1. **Governing Law:** If Option A is specified in the Election Sheet, this Agreement shall be construed and governed by English law, excluding any application of the "United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980."

2. **Arbitration:** If Option A is specified in the Election Sheet, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three, each Party having the right to nominate one arbitrator. The place of arbitration shall be London, England where all hearings and meetings shall be held, unless the Parties agree otherwise. Unless otherwise specified in the Election Sheet, the language to be used in the arbitral proceedings shall be English and the Parties hereby expressly waive any right of appeal to any court having jurisdiction on any question of fact or law. It is agreed that the arbitrators shall have no authority to award exemplary or punitive damages of any type under any circumstances whether or not such damages may be available under the relevant applicable law, the parties hereby waiving their right, if any, to recover such damages.

OPTION B

1. **Governing Law:** If Option B is specified in the Election Sheet, this Agreement shall be construed and governed by the substantive law of the Federal Republic of Germany, excluding any application of the "United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980".

2. **Arbitration:** If Option B is specified in the Election Sheet, any disputes which arise in connection with this Agreement shall be referred for resolution to the German Institution of Arbitration (DIS) and decided

according to its rules, ousting the jurisdiction of the ordinary courts. The number of arbitrators shall be three. The arbitration shall be conducted in the language specified in the Election Sheet.

DEFAULT RULE

If neither Option A nor Option B is specified in the Election Sheet and the Parties' agreed choice of law and dispute resolution procedure is not specified in the Election Sheet or in the terms of the Individual Contract, then § 22.1 (***Governing Law***) and § 22.2 (***Arbitration***) of Option A shall apply.

§ 23

Miscellaneous

1. Recording Telephone Conversations: Each Party is entitled to record telephone conversations held in connection with the Agreement and to use the same as evidence. Each Party waives any further notice of such recording and acknowledges that it has obtained all necessary consents of its officers and employees to such recording.

2. Notices and Communications: Except as otherwise provided herein or agreed with respect to an Individual Contract, all notices, declarations or invoices sent by one Party to the other shall be in writing and shall be delivered by letter (overnight mail or courier, postage pre-paid) or facsimile as provided in the Election Sheet. Each Party may change its notice information by written notice to the other. Written notices, declarations and invoices shall be deemed received and effective:

- (a) if delivered by hand, on the Business Day delivered or on the first Business Day after the date of delivery if delivered on a day other than a Business Day;
- (b) if sent by first class post, on the second Business Day after the date of posting, or if sent from one country to another, on the fifth Business Day after the day of posting; or
- (c) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 17.00 hours (recipient's time) on a Business Day or otherwise at 09.00 hours (recipient's time) on the first Business Day after transmission.

3. Amendments: Except as provided in § 3 (***Concluding and Confirming Individual Contracts***) with respect to Confirmations, any amendments or additions to this General Agreement shall be made only in writing signed by both Parties.

4. Partial Invalidity: If, at any time, any provision of this General Agreement or an Individual Contract is or becomes illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this General Agreement or of any Individual Contract, shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision which comes as close as possible to the invalid provision as regards its economic intent.

5. Third Party Rights: The Parties do not intend that any third party shall have any rights under or be able to enforce the Agreement and the Parties exclude to the extent permitted under applicable law any such third party rights that might otherwise be implied.

Executed by the duly authorised representative of each Party effective as of the Effective Date.

[Name of Party]

[Name of Party]

[Name of Signatory/ies]

[Name of Signatory/ies]

[Title of Signatory/ies]

[Title of Signatory/ies]

EFET

European Federation of Energy Traders

ANNEX 1 To The General Agreement

Defined Terms

Terms used in the General Agreement shall have the following meanings:

"**Affiliate**" means with respect to a Party, any Entity Controlled, directly or indirectly, by that Party, any Entity that Controls, directly or indirectly that Party or any Entity directly or indirectly under the common Control of a Party;

"**Agreement**" has the meaning specified in § 1.1 (*Subject of Agreement*);

"**Alternate Commodity Reference Price**" has the meaning, if any, specified in each Individual Contract containing a Floating Price;

"**Alternative Settlement Price**" has the meaning specified in § 15.2 (*Market Disruption*);

"**American Style Option**" means a style of Option which may be Exercised during an Exercise Period that consists of more than one day;

"**Automatic Termination**" has the meaning specified in § 10.4 (*Automatic Termination*);

"**Business Day**" means a day (other than Saturday or Sunday) on which commercial banks are open for general business at the places where each Party has its registered office;

"**Buyer**" has the meaning specified in the Individual Contract;

"**Buyer's Default**" has the meaning specified in § 8.5(b);

"**Buyer's System**" means, in respect of an Individual Contract, the gas pipeline system(s) referred to as such in the terms of such Individual Contract;

"**Calculation Agent**" has the meaning specified in § 15.5 (*Calculation Agent*);

"**Calculation Date**" has the meaning specified in a Floating Price Individual Contract;

"**Calculation Method**" has the meaning specified in a Floating Price Individual Contract;

"**Call Option**" has the meaning specified in § 5.1 (*Delivery and Acceptance Pursuant to an Option*);

"**Central European Time**" or "**CET**" means GMT + 2 hours during the summer-time period and GMT + 1 hour during the rest of the year and for these purposes the "**summer-time period**" shall be as defined in the Eighth Directive (97/44/EC) and Directive 2000/84/EC and any succeeding EC legislation on summer-time arrangements;

"**Claiming Party**" has the meaning specified in § 7.1 (*Definition of Force Majeure*) and refers to a Party claiming relief under § 7 (*Non-Performance Due to Force Majeure*);

"**Commodity**" means, unless otherwise provided in the Election Sheet, any tangible or intangible commodity of any type or description (including, without limitation, electric power, electric power capacity, natural gas, natural gas liquids, heating oil and other petroleum by-products or fuels).

[Annex 1-1](#)

"**Commodity Reference Price**" has the general meaning specified in § 15.4 (*Definition of Market Disruption Event*), and with respect to a Floating Price Individual Contract, as specified in that Floating Price Individual Contract;

"**Confidential Information**" has the meaning specified in § 20.1 (*Confidentiality*);

"**Confirmation**" has the meaning specified in § 3.2 (*Confirmations*);

"**Contract Price**" means, in respect of an Individual Contract, the price agreed between the Parties;

"**Contract Quantity**" means, in respect of an Individual Contract, the quantity of Natural Gas, expressed in MWh, to be delivered by the Seller and accepted by the Buyer in a Time Unit pursuant to such Individual Contract as agreed between the Parties;

"**Control**" means ownership of more than 50% of the voting power of a Party or Entity and "**Controlled**" or "**Controlling**" shall be construed accordingly;

"**Control and Profit Transfer Agreement**" has the meaning specified in § 17.2(a)(iii) (*Credit Rating*);

"**Controlling Party**" has the meaning specified in § 17.2(a)(iii) (*Credit Rating*);

"**Costs**" has the meaning specified in § 11.2(a) (*Settlement Amount*);

"**Credit Rating**" means in respect of an Entity any of the following:

- (i) the long-term unsecured, unsubordinated (unsupported by third party credit enhancement) public debt rating;
- (ii) the debt issuer's credit rating; or
- (iii) the corporate credit rating given to that entity, in each of cases (i) to (iii) by Standard & Poor's Rating Group (a division of McGraw-Hill Inc.) or Moody's Investor Services Inc.;

"**Credit Support Documents**" has the meaning specified with respect to a Party in the Election Sheet, which may include, without limitation, a parent guarantee, bank guarantee, letter of awareness, letter of credit or any credit support agreement;

"**Credit Support Provider**" has the meaning specified with respect to a Party in the Election Sheet;

"**Damages**" has the meaning specified in § 12.2 (*Exclusion of Liability*);

"**Day**" means a period commencing at 0600 hours CET on any day and ending at 0600 hours CET on the following day, unless otherwise agreed by the Parties for an Individual Contract;

"**Dealers**" has the meaning specified in § 15.3(c) (*Dealer Fallback*);

"**Defaulting Party**" has the meaning specified in § 9 (*Suspension of Delivery or Acceptance*);

"**Default Quantity**" means, in respect of a Time Unit and an Individual Contract, the quantity equal to the Contract Quantity minus the Delivered Quantity;

"**Delivered Quantity**" has the meaning specified in § 6.4 (*Measurement of Natural Gas Deliveries and Receipts*);

"**Delivery Point**" means, in respect of an Individual Contract, the delivery point agreed between the Parties;

"**Due Date**" has the meaning specified in § 13.2 (*Payment*) and § 10.3(d) (*Termination for a Material Reason*);

"**Early Termination**" has the meaning specified in § 10.3(a) (*Termination for a Material Reason*);

"**Early Termination Date**" has the meaning specified in § 10.3(b) (*Termination for a Material Reason*);

[Annex 1-2](#)

"**EBIT**" means earnings before interest and taxes which, shall be in respect of the relevant fiscal year, the net revenue of the Relevant Entity before deducting corporate taxes (or any other tax on income or gains in the relevant jurisdiction of the Relevant Entity); plus the sum of all interest and any amounts in the nature of interest charged to expense relating to financial indebtedness for borrowed money (which amounts include debts payable to Affiliates as well as debt instruments to financial institutions) of the Relevant Entity;

"**Effective Date**" has the meaning set out on the first page of this General Agreement;

"**Election Sheet**" has the meaning specified in § 1.1 (*Subject of Agreement*);

"**Entity**" means an individual, government or state or division thereof, government or state agency, corporation, partnership or such other entity as the context may require;

"**EU**" means the European Community as it exists from time to time.

"**European Style Option**" means a style of Option which may be Exercised only on the day of the Exercise Deadline;

"**Exercise**" means the exercise of an Option pursuant to § 5.3 (*Exercise of Option and Deadline*) and "**Exercises**" and "**Exercised**" shall be construed accordingly;

"**Exercise Deadline**" means the day and time by which Exercise must be given under § 5.3 (*Exercise of Option and Deadline*);

"**Exercise Period**" means:

- (i) in respect of a European Style Option, the day of the Exercise Deadline; and
- (ii) in respect of any other Option including an American Style Option, each of the periods specified in the Individual Contract;

"**Expiration Date**" has the meaning specified in § 10.2 (*Expiration Date and 30 Day Termination Notice*) of the Election Sheet;

"**Fallback Mechanism**" has the meaning specified in § 15.3 (*Fallback Mechanism*);

"**Floating Price**" has the meaning specified in § 15.1 (*Settlement Price Calculation*);

"**Force Majeure**" has the meaning specified in § 7.1 (*Definition of Force Majeure*);

"**Funds from Operations**" means the amount of cash generated or employed by the Relevant Entity in its operating activities;

"**Gains**" has the meaning specified in § 11.2(b) (*Settlement Amount*);

"**General Agreement**" means this General Agreement Concerning the Delivery and Acceptance of Natural Gas;

"**Gigajoules**" or "**GJ**" means 1,000,000,000 Joules;

"**GMT**" means Greenwich Mean Time;

"**Holder**" has the meaning specified in § 5.1 (*Delivery and Acceptance Pursuant to an Option*);

"**Interest Rate**" has the meaning specified in § 13.5 (*Default Interest*);

"**Individual Contract**" has the meaning specified in § 1.1 (*Subject of Agreement*);

"**Joule**" or "**J**" means the unit of energy defined as such in ISO 1000 [1992 (E)];

"**Letter of Credit**" means an irrevocable standby letter of credit payable on demand in a form and substance satisfactory to the Requesting Party and issued by a financial institution whose Credit Rating is at least the rating specified in the Election Sheet as provided in § 17.2(b) (*Credit Rating of a Credit Support Provider that is a Bank*);

[Annex 1-3](#)

"Long Term Force Majeure Limit" shall, in respect of an Individual Contract, have the meaning specified in the terms of such Individual Contract and if not so specified, shall be determined as follows:

- (a) if the supply period of the Individual Contract is one year or more, the Long Term Force Majeure Limit shall be ninety (90) consecutive Days;
- (b) if the supply period of the Individual Contract is not less than three months but not more than one year the Long Term Force Majeure Limit (LTFML) shall be calculated in accordance with the following formula:

$$LTFML = Z \times \frac{90}{365}$$

where Z = the number of Days in the Total Supply Period of the relevant Individual Contract; and

- (c) if the supply period of the Individual Contract is less than three months, there shall be no Long Term Force Majeure Limit;

"Losses" has the meaning specified in § 11.2(c) (*Settlement Amount*);

"Maintenance Notice" means a notice issued by the upstream, downstream, or hub operator (as applicable) which provides sufficient information to market participants in a non-discriminatory manner regarding such operator's schedule for planned maintenance;

"Market Disruption Event" has the meaning specified in § 15.4 (*Definition of a Market Disruption Event*);

"Material Adverse Change" has the meaning specified in § 17.2 (*Material Adverse Change*);

"Material Reason" has the meaning specified in § 10.5 (*Definition of a Material Reason*);

"Megawatt Hours" or "MWh" means three decimal six (3.6) GJ;

"Month" means a period beginning at 06:00 hours CET on the first day of a calendar month and ending at 06:00 hours CET on the first day of the next succeeding calendar month, unless otherwise agreed by the parties for an Individual Contract;

"Natural Gas" means any hydrocarbons or mixture of hydrocarbons and non-combustible gases, consisting primarily of methane, which, when extracted from the subsoil of the earth in its natural state, separately or together with liquid hydrocarbons, is in the gaseous state;

"Negotiation Period" has the meaning specified in § 14.8 (*Termination for New Tax*);

"Network Operator" means:

- (a) in respect of the Seller, the operator of the Seller's System or of the Relevant System (according to the terms of the Individual Contract); and
- (b) in respect of the Buyer, the operator of the Buyer's System or the Relevant System (according to the terms of the Individual Contract);

together, in each case, with any nomination matching agent, despatching agent, allocation agent or hub operator in respect of the Delivery Point or any of them, as the context requires;

"New Tax" means in respect of an Individual Contract, any Tax enacted and effective after the date on which the Individual Contract is entered into, or that portion of an existing Tax which constitutes an effective increase (taking effect after the date on which the Individual Contract is entered into) in applicable rates, or extension of any existing Tax to the extent that it is levied on a new or different class of persons as a result of any law, order, rule, regulation, decree or concession or the interpretation thereof by the relevant taxing authority, enacted and effective after the date on which the Individual Contract is entered into;

"Non-Defaulting Party" has the meaning specified in § 9 (*Suspension of Delivery or Acceptance*);

[Annex 1-4](#)

"**Non-Taxed Party**" has the meaning specified in § 14.8 (**Termination for New Tax**);

"**Nomination and Allocation Arrangements**" means the arrangements and procedures which are in effect at the Delivery Point for the purpose of determining the quantities of Natural Gas which flowed or are deemed to have flowed in one or both directions at such Delivery Point in any Time Unit and allocating such flow between shippers in gas pipeline systems either upstream or downstream of the Delivery Point, including any arrangements and procedures for receiving and matching nominations;

"**Notified Planned Maintenance Point**" means any point so identified from time to time by EFET on the list of Notified Planned Maintenance Points published on, and accessible through, its web page at <www.efet.org>.

"**Off-Spec Gas**" means Natural Gas which does not comply with the Transportation Requirements;

"**Option**" has the meaning specified in § 5.1 (*Delivery and Acceptance Pursuant to an Option*);

"**Ordinary Termination**" has the meaning specified in § 10.2 (*Expiration Date and 30 Day Termination Notice*);

"**Other Tax**" means any energy Tax or excise duty ~~including but not limited to Mineralölsteuer auf Erdgas and Brandstoffenbelastung Tax~~ but not including Taxes targeted at end users.

"**Party A**" means the Party identified as such in the Election Sheet;

"**Party B**" means the Party identified as such in the Election Sheet;

"**Performance Assurance**" has the meaning specified in § 17.1 (*Performance Assurance*);

"**Physical Downstream Transportation System**" means, in respect of the Delivery Point specified in an Individual Contract, the gas pipeline system into which the stream of Natural Gas is flowing at such Delivery Point at the relevant time;

"**Physical Downstream Transporter**" means, in respect of a delivery point specified in an Individual Contract, the operator of the Physical Downstream Transportation System;

"**Physical Upstream Transportation System**" means, in respect of the Delivery Point specified in an Individual Contract, the gas pipeline system out of which the stream of Natural Gas is flowing at such Delivery Point at the relevant time;

"**Physical Upstream Transporter**" means, in respect of a delivery point specified in an Individual Contract, the operator of the Physical Upstream Transportation System;

"**Premium**" has the meaning specified in the Individual Contract for an Option;

"**Premium Payment Date**" has the meaning specified in the Individual Contract for an Option or if not so specified, as provided by § 5.2 (*Premium for the Option*);

"**Price Source**" has the meaning specified in § 15.4 (*Definition of a Market Disruption Event*);

"**Put Option**" has the meaning specified in § 5.1 (*Delivery and Acceptance Pursuant to an Option*);

"**Relevant Entity**" has the meaning specified in § 17.2(a) (*Credit Rating*);

"**Relevant System**" means, in respect of an Individual Contract, the gas pipeline system referred to as such in the terms of such Individual Contract;

"**Remaining Contract Quantity**" has the meaning specified in § 14.8 (**Termination for New Tax**);

"**Requesting Party**" has the meaning specified in § 17.1 (*Credit Rating*);

"**Schedule**" has the meaning specified in § 4.2 (*Definition of Schedule*) and "**Scheduled**" and "**Scheduling**" shall be construed accordingly;

"**Seller**" has the meaning specified in the Individual Contract;

[Annex 1-5](#)

"**Seller's Default**" has the meaning specified in § 8.5(a);

"**Seller's System**" means in respect of an Individual Contract, the gas pipeline system(s) referred to as such in the terms of such Individual Contract;

"**Settlement Amount**" has the meaning specified in § 11.2 (*Settlement Amount*);

"**Settlement Date**" has the meaning specified in the Individual Contract;

"**Settlement Price**" has the meaning specified in the Individual Contract;

"**Specified Indebtedness**" means any financial indebtedness (whether present or future, contingent or otherwise, as principal or surety or otherwise) for borrowed money (which includes debts payable to Affiliates as well as debt instruments to financial institutions);

"**Tangible Net Worth**" means the sum of all paid up shareholder cash contributions to the share capital account or any other capital account of the Relevant Entity ascribed for such purposes of the Relevant Entity and any accumulated retained earnings less any accumulated retained losses and intangible assets including, but not limited to, goodwill;

"**Tax**" means any tax, levy, impost, duty, charge, assessment, royalty, tariff or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment, nomination and allocation under any Individual Contract, on Natural Gas, or on the sale, transportation or supply of Natural Gas, and "Taxes" shall be construed accordingly. For the avoidance of doubt Tax shall exclude (i) any tax on net income or net wealth; (ii) any tax on income derived from the exploration or exploitation of Natural Gas fields; (iii) a stamp, registration, documentation or similar tax, and (iv) VAT;

"**Taxed Party**" has the meaning specified in § 14.8 (*Termination for New Tax*);

"**Terminating Party**" has the meaning specified in § 10.3 (*Termination for Material Reason*);

"**Termination Amount**" has the meaning specified in § 11.1 (*Termination Amount*);

"**Time Unit**" means, in respect of an Individual Contract, the Time Unit agreed by the Parties for the purposes of such Individual Contract;

"**Tolerance**" shall subject to § 8.8 (*Use of Tolerance*), in respect of an Individual Contract, have the meaning specified in the terms of such Individual Contract and, if not so specified, shall be zero;

"**Total Capitalisation**" means in respect of the relevant period the sum of Total Debt and all paid up shareholder cash contributions to the share capital account or any other capital account of the Relevant Entity ascribed for such purposes of the Relevant Entity;

"**Total Debt**" means in respect of the relevant period the sum of financial indebtedness for borrowed money (which includes debts payable to affiliated companies as well as debt instruments to financial institutions) of the Relevant Entity;

"**Total Supply Period**" means, in respect of an Individual Contract, the supply period agreed between the Parties;

"**Transportation Failure**" means an event or occurrence affecting the operation of a gas pipeline system (in which the Claiming Party has contracted firm transportation rights for the purpose of the relevant Individual Contract) on one or other side of the Delivery Point which:

- (a) is beyond the reasonable control of the Claiming Party and which could not reasonably have been avoided or overcome by the Claiming Party and which makes it impossible for the Claiming Party to perform its delivery or acceptance obligations in respect of the relevant Individual Contract; and
- (b) is beyond the reasonable control of the Network Operator for such gas pipeline system and which could not reasonably have been avoided or overcome by such Network Operator and which makes it impossible for such Network Operator to fulfil its contractual obligations to the Claiming Party in respect of the delivery or acceptance of Natural Gas (as the case may be).

[Annex 1-6](#)

For the avoidance of doubt "Transportation Failure" shall include both unplanned and planned maintenance on the Seller's/Buyer's/Relevant System (as applicable) which prevents the performance of the claiming Party; *provided, however,* that in the event the applicable Delivery Point is a Notified Planned Maintenance Point and the operator of the Delivery Point, or, as applicable, the pipeline system facilities necessary for, as applicable to the underlying claim, delivery or acceptance of Natural Gas at such Delivery Point, issued a Maintenance Notice, prior to the time at which the relevant Individual Contract was first concluded, of a period of planned maintenance at, on or directly impacting Natural Gas flows at such Delivery Point, such period of planned maintenance shall not constitute Transportation Failure.

"Transportation Requirements" means the quality and pressure requirements for the entry of Natural Gas into the Physical Downstream Transportation System at the Delivery Point;

"Valid Certificate" means any appropriate documentation accepted by the relevant taxing authorities or as required by applicable law, order, rule, regulation decree or concession or the interpretation thereof;

"VAT" means any value added tax or any tax analogous thereto but excluding any statutory late payment interest or penalties; and

"VAT Rules" means any VAT law, order, rule, regulation, decree or concession or the interpretation thereof;

"Zero-Rated" means, in respect of a supply, ~~an intra-European Community supply or~~ tax exempt export or tax-free export under applicable VAT Rules and **"Zero-Rating"** shall be construed accordingly.

"Writer" has the meaning specified in § 5.1 (*Delivery and Acceptance Pursuant to an Option*).

EFET

European Federation of Energy Traders

Election Sheet to the General Agreement

with an Effective Date of _____

between _____ and _____

“Party A”

“Party B”

PART I: CUSTOMISATION OF PROVISIONS IN THE GENERAL AGREEMENT

§1

Subject of Agreement

§ 1.1 Subject of Agreement: § 1.1 shall apply, or
 § 1.1 shall apply, except that this General Agreement shall not apply to Individual Contracts in respect of which the Delivery Point is the National Balancing Point in the UK or the Zeebrugge Hub in Belgium

§ 1.2 Pre-Existing Contracts: § 1.2 shall apply, or
 § 1.2 shall not apply

§2

Definitions and Construction

§ 2.4 References to Time: time references shall be: as provided in the General Agreement (CET), or
 to the following time: _____.

§3

Concluding and Confirming Individual Contracts

§ 3.4 Authorised Persons: § 3.4 shall apply to Party A and shall be as designated in Annex _____, or
 § 3.4 shall not apply to Party A
 § 3.4 shall apply to Party B and shall be as designated in Annex _____, or
 § 3.4 shall not apply to Party B

§5

Primary Obligations for Options

§ 5.3 Exercise of Option and Deadline: If in respect of an Individual Contract which provides for an Option no Exercise Deadline is specified:

the Exercise Deadline shall be as provided in § 5.3; or
 the Exercise Deadline shall be _____.



§7

Non-Performance Due to Force Majeure

§ 7.1 Definition of Force Majeure:

- § 7.1 shall apply as written in the General Agreement, or
- § 7.1 shall not apply as written but instead shall be as follows:

_____.

§10

Term and Termination Rights

§ 10.2 Expiration Date:

- § 10.2 shall apply and the Expiration Date shall be: _____, or
- § 10.2 shall not apply and there shall be no Expiration Date.

§ 10.4 Automatic Termination:

- § 10.4 shall apply to Party A, with termination effective _____, or
- § 10.4 shall not apply to Party A
- § 10.4 shall apply to Party B, with termination effective _____, or
- § 10.4 shall not apply to Party B

§ 10.5(b) Cross Default and Acceleration:

- § 10.5(b)(i) shall apply to Party A and the Threshold Amount for Party A shall be _____, or
- § 10.5(b)(i) shall not apply to Party A
- § 10.5(b)(i) shall apply to Party B and the Threshold Amount for Party B shall be _____, or
- § 10.5(b)(i) shall not apply to Party B

- § 10.5(b)(ii) shall apply to Party A and the Threshold Amount for Party A shall be: _____, or
- § 10.5(b)(ii) shall not apply to Party A
- § 10.5(b)(ii) shall apply to Party B and the Threshold Amount for Party B shall be: _____, or
- § 10.5(b)(ii) shall not apply to Party B

§ 10.5(c) Winding-up/Insolvency/Attachment:

§ 10.5(c)(iv) shall apply only if such proceedings (as are referred to in § 10.5(c)(iv)) are not withdrawn, dismissed, discharged, stayed or restrained within days of their institution; or

§ 10.5(c)(iv) shall apply without any applicable grace period for the Party to have such proceedings (as are referred to in § 10.5(c)(iv)) withdrawn, dismissed, discharged, stayed or restrained.

§ 10.5(d) Failure to Deliver or Accept:

- § 10.5(d) shall apply, or
- § 10.5(d) shall not apply;

§ 10.5 Other Material Reasons:

- Material Reasons shall be limited to those stated in the General Agreement, or
- the following additional Material Reasons shall apply to Party A:
_____.
- the following additional Material Reasons shall apply to Party B:
_____.

§12
Limitation of Liability

§ 12 Application of Limitation: [] § 12 shall apply as written in the General Agreement, or
[] § 12 shall be amended or replaced in its entirety as follows:

_____.

§13
Invoicing and Payment

§ 13.2 Payment: initial billing and payment information for each Party is set out in § 23.2 (*Notices and Communications*) of this Election Sheet.

§ 13.3 Payment Netting: [] § 13.3 shall apply, or
[] § 13.3 shall not apply

§ 13.5 Interest Rate: the Interest Rate shall be the one month EURIBOR interest rate for 11:00 a.m. on the Due Date, plus _____ percent (%) per annum

§ 13.6 Disputed Amounts: [] §13.6 (a) shall apply, or
[] §13.6 (b) shall apply

§14
VAT and Taxes

§ 14.8 Termination for New Tax: [] unless otherwise specified in the terms of an Individual Contract the provisions of § 14.8 shall apply to such Individual Contract only in the circumstances specified in the first paragraph of § 14.8, or

[] subject to the terms of an Individual Contract, the provisions of § 14.8 shall only apply in the following circumstances:

[]

§ 14.9 Withholding Tax: [] § 14.9 shall apply, or
[] § 14.9 shall not apply

§15
Settlement of Floating Prices and Fallback Procedures For Market Disruption

§ 15.5 Calculation Agent: [] the Calculation Agent shall be Seller, or
[] the Calculation Agent shall be _____

§16
Guarantees and Credit Support

§ 16 Credit Support Documents: Party A shall provide Party B with the following Credit Support Document(s):

Party B shall provide Party A with the following Credit Support Document(s): _____

§ 16 Credit Support Provider: Credit Support Provider(s) of Party A shall be:

Credit Support Provider(s) of Party B shall be:

§17

Performance Assurance

§ 17.2 **Material Adverse Change:** the following categories of Material Adverse Change shall apply to Party A:

- §17.2 (a) (**Credit Rating**), and the minimum rating shall be: _____;
- §17.2 (b) (**Credit Rating of Credit Support Provider that is a Bank**);
- §17.2 (c) (**Financial Covenants**), and
the EBIT to Interest ratio shall be: _____,
the Funds From Operations to Total Debt ratio shall be: _____, and
the Total Debt to Total Capitalisation ratio shall be: _____;
- §17.2 (d) (**Decline in Tangible Net Worth**), and the relevant figure is: _____;
- §17.2 (e) (**Expiry of Performance Assurance or Credit Support**), and
 the relevant time period shall be _____, or
 no time period shall apply;
- §17.2 (f) (**Failure of Performance Assurance or Credit Support**);
- §17.2 (g) (**Failure of Control and Profit Transfer Agreement**);
- §17.2 (h) (**Impaired Ability to Perform**); and
- §17.2 (i) (**Amalgamation/Merger**)

the following categories of Material Adverse Change shall apply to Party B:

- §17.2 (a) (**Credit Rating**), and the minimum rating shall be: _____;
- §17.2 (b) (**Credit Rating of Credit Support Provider that is a Bank**);
- §17.2 (c) (**Financial Covenants**), and
the EBIT to Interest ratio shall be: _____,
the Funds From Operations to Total Debt ratio shall be: _____, and
the Total Debt to Total Capitalisation ratio shall be: _____;
- §17.2 (d) (**Decline in Tangible Net Worth**), and the relevant figure is: _____;
- §17.2 (e) (**Expiry of Performance Assurance or Credit Support**), and
 the relevant time period shall be _____, or
 no time period shall apply;
- §17.2 (f) (**Failure of Performance Assurance or Credit Support**);
- §17.2 (g) (**Failure of Control and Profit Transfer Agreement**);
- §17.2 (h) (**Impaired Ability to Perform**); and
- §17.2 (i) (**Amalgamation/Merger**)

§18

Provision of Financial Statements and Tangible Net Worth

§ 18.1 (a) **Annual Reports:** Party A shall deliver annual reports, or
 Party A need not deliver annual reports, and
 Party B shall deliver annual reports, or
 Party B need not deliver annual reports

§ 18.1(b) **Quarterly Reports:** Party A shall deliver quarterly reports, or
 Party A need not deliver quarterly reports, and
 Party B shall deliver quarterly reports, or
 Party B need not deliver quarterly reports

D

§18.2 Tangible Net Worth: Party A shall have a duty to notify as provided in §18.2, and the applicable figure for it shall be _____, or
 Party A shall have no duty to notify as provided in §18.2, and
 Party B shall have a duty to notify as provided in §18.2, and the applicable figure for it shall be _____, or
 Party B shall have no duty to notify as provided in §18.2

§19
Assignment

§ 19.2 Assignment to Affiliates: Party A may assign in accordance with § 19.2, or
 Party A may not assign in accordance with § 19.2, and
 Party B may assign in accordance with § 19.2, or
 Party B may not assign in accordance with § 19.2

§20
Confidentiality

§ 20.1 Confidentiality Obligation: § 20 shall apply, or
 § 20 shall not apply

§21
Representation and Warranties

The Following Representations and Warranties are made:

	by Party A:	by Party B:
§21(a)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
§21(b)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
§21(c)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
§21(d)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
§21(e)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
§21(f)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
§21(g)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
§21(h)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
§21(i)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
§21(j)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
§21(k)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
§21(l)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no

In addition Party A represents and warrants the following: _____
In addition Party B represents and warrants the following: _____

§22
Governing Law and Arbitration

§ 22.1 Governing Law and Arbitration:
 Option A shall apply; or
 Option B shall apply and the language of the arbitration shall be _____; or
 Neither Option A nor Option B shall apply and the following provisions shall apply in respect of governing law and dispute resolution:
_____.

§23
Miscellaneous

§ 23.2 Notices, Invoices and Payments:

(a) **TO PARTY A:**

Notices & Correspondence

Address:

Telephone No:

Fax No:

Attention: [Job Title]

Invoices

Fax No:

Attention: [Job Title]

Payments

Bank account details

(b) **TO PARTY B:**

Notices & Correspondence

Address:

Telephone No:

Fax No:

Attention: [Job Title]

Invoices

Fax No:

Attention: [Job Title]

Payments

Bank account details

Annex 1 – Defined Terms

- "Commodity" shall have the meaning specified in Annex 1; or
- "Commodity" shall _____.

PART II: ADDITIONAL PROVISIONS TO THE GENERAL AGREEMENT

Executed by the duly authorised representative of each Party effective as of the Effective Date.

"Party A"

"Party B"

[Name of Party]

[Name of Party]

[Name of Signatory/ies]

[Name of Signatory/ies]

[Title of Signatory/ies]

[Title of Signatory/ies]

EFET

European Federation of Energy Traders

ANNEX 2A

CONFIRMATION OF INDIVIDUAL CONTRACT (FIXED PRICE)

BETWEEN:

(1) _____ ("Seller"); and

(2) _____ ("Buyer").

concluded on [/ /], [:] hours

Delivery Point :

INTRA SYSTEM

Relevant System :

INTER SYSTEM

Seller's System :

Buyer's System :

Contract Quantity : []MWh

Time Unit :

Total Supply Period : From [] hours on [/ /]
to [] hours on [/ /]

[Planned Maintenance periods to be excluded or not?]

Contract Price :

Long Term Force Majeure Limit :

(§ 7.5)

Prevailing Meter Readings and Allocation Statements :

(§ 6.4)

Tolerance :

OTHER ARRANGEMENTS

References to time are to Central European Time or other?

Days are 0600 hours CET to 0600 hours CET or other?

[Annex 2A- 1](#)

Off-Spec Gas Liability Limit (as per § 8a.5 or other?)

This Confirmation confirms the Individual Contract entered into pursuant to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas between the Parties (General Agreement) and supplements and forms part of that General Agreement. In case of any inconsistencies between the terms of this Confirmation and the Individual Contract, please contact us immediately.

Date : _____

Signature : _____

[Annex 2A-2](#)

EFET

European Federation of Energy Traders

ANNEX 2B

CONFIRMATION OF INDIVIDUAL CONTRACT (FLOATING PRICE)

BETWEEN:

(1) _____ ("Seller"); and

(2) _____ ("Buyer").

concluded on [/ /], [:] hours

Delivery Point :

INTRA SYSTEM

Relevant System :

INTER SYSTEM

Seller's System :

Buyer's System :

Contract Quantity : []MWh

Time Unit :

Total Supply Period : From [] hours on [/ /]
to [] hours on [/ /]

[Planned Maintenance periods to be excluded or not?]

Price Source :

Commodity Reference Price :

Alternate Commodity Reference Price :

Calculation Date :

Calculation Agent :

Calculation Method :

Long Term Force Majeure Limit :

[Annex 2B-1](#)

(§ 7.5)

Prevailing Meter Readings and Allocation Statements :

(§ 6.4)

Tolerance :

OTHER ARRANGEMENTS

References to time are to Central European Time or other?

Days are 0600 hours CET to 0600 hours CET or other?

Off-Spec Gas Liability Limit (as per § 8a.5 or other?)

This Confirmation confirms the Individual Contract entered into pursuant to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas between the Parties (General Agreement) and supplements and forms part of that General Agreement. In case of any inconsistencies between the terms of this Confirmation and the Individual Contract, please contact us immediately.

Date : _____

Signature : _____

[Annex 2B-2](#)

EFET

European Federation of Energy Traders

ANNEX 2C

CONFIRMATION OF INDIVIDUAL CONTRACT (CALL OPTION)

BETWEEN:

(1) _____ ("Writer"); and

(2) _____ ("Holder").

concluded on [/ /], [:] hours

Option Details :

- (a) Option Type : Call
- (b) Option Style: American/European
- (c) Exercise Deadline :
- (d) Exercise Period: (if American Style Option)
- (e) Premium :
- (f) Premium Payment Date :

Delivery Point :

INTRA SYSTEM

Relevant System :

INTER SYSTEM

Seller's System :

Buyer's System :

Contract Quantity : []MWh

Time Unit :

Total Supply Period : From [] hours on [/ /]
to [] hours on [/ /]

[Planned Maintenance periods to be excluded or not?]

Contract Price :

Long Term Force Majeure Limit :

[Annex 2C-1](#)

(§ 7.5)

Prevailing Meter Readings and Allocation Statements :

(§ 6.4)

Tolerance :

OTHER ARRANGEMENTS

References to time are to Central European Time or other?

Days are 0600 hours CET to 0600 hours CET or other?

Off-Spec Gas Liability Limit (as per § 8a.5 or other?)

This Confirmation confirms the Individual Contract entered into pursuant to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas between the Parties (General Agreement) and supplements and forms part of that General Agreement. In case of any inconsistencies between the terms of this Confirmation and the Individual Contract, please contact us immediately.

Date : _____

Signature : _____

Annex 2C-2

EFET

European Federation of Energy Traders

ANNEX 2D

CONFIRMATION OF INDIVIDUAL CONTRACT (PUT OPTION)

BETWEEN:

(1) _____ ("Writer"); and

(2) _____ ("Holder").

concluded on [/ /], [:] hours

Option Details :

- (a) Option Type : Put
- (b) Option Style: American/European
- (e) Exercise Deadline :
- (f) Exercise Period: (if American Style Option)
- (e) Premium :
- (f) Premium Payment Date :

Delivery Point :

INTRA SYSTEM

Relevant System :

INTER SYSTEM

Seller's System :

Buyer's System :

Contract Quantity : []MWh

Time Unit :

Total Supply Period : From [] hours on [/ /]
to [] hours on [/ /]

[Planned Maintenance periods to be excluded or not?]

Contract Price :

Long Term Force Majeure Limit :

[Annex 2D-1](#)

(§ 7.5)

Prevailing Meter Readings and Allocation Statements :

(§ 6.4)

Tolerance :

OTHER ARRANGEMENTS

References to time are to Central European Time or other?

Days are 0600 hours CET to 0600 hours CET or other?

Off-Spec Gas Liability Limit (as per § 8a.5 or other?)

This Confirmation confirms the Individual Contract entered into pursuant to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas between the Parties (General Agreement) and supplements and forms part of that General Agreement. In case of any inconsistencies between the terms of this Confirmation and the Individual Contract, please contact us immediately.

Date : _____

Signature : _____

Annex 2D-2

Document comparison done by DeltaView on Thursday, April 26, 2007 1:47:47 PM

Input:	
Document 1	iManageDeskSite://LONFS01/London01/3732/3
Document 2	iManageDeskSite://LONFS01/London01/9335/1
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	153
Deletions	115
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	268