



CONSULTATION OF THE GAS TRANSMISSION CONTRACT FOR NEW CAPACITY

23rd January 2017

Following the market survey, which has been carried out within the capacity4gas process in course of the first quarter of 2016, the company NET4GAS s.r.o., as the transmission system operator in the Czech Republic, launches a public consultation of the terms of the gas transmission contract for new capacity. This new capacity will be offered via the "PRISMA" online platform for booking transmission capacity in an auction on 6th March 2017. The transmission system operator hereby calls the gas market participants for sending their comments on the below attached draft gas transmission contract.

Rules of the consultation process:

1. The only possible means for submitting comments is via e-mail konzultace@net4gas.cz.
2. In the subject line please indicate: Consultation 1/2017
3. Comments must contain a reasoning.
4. Comments must be submitted in Czech or English.
5. Deadline for submission of comments is 31st January 2017.
6. The transmission system operator will evaluate the received comments and the relevant comments will be taken into account in further procedure.
7. Comments that do not comply with these rules may not be taken into account by the transmission system operator.

DRAFT FOR PUBLIC CONSULTATION PROCESS ONLY
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CONTRACT FOR PROVISION OF GAS TRANSMISSION SERVICE NO. **X**

(hereinafter the “**Contract**”)

by and between

NET4GAS, s.r.o., with its registered seat at Na Hřebenech II 1718/8, Prague 4 - Nusle, Postal Code 140 21, Business ID No. 272 60 364, entered in the Commercial Register maintained by the Prague Municipal Court under File No. C 108316 (hereinafter the “**TSO**”);

and

X (hereinafter the “**Shipper**”)

WHEREAS

- A. The TSO is the sole Czech gas transmission system operator and intends to increase the capacity of its transmission system;
- B. The Shipper is interested in having natural gas (hereinafter “**gas**”) shipped using the gas transmission system operated by the TSO;
- C. Entering into this Contract is a precondition for the Shipper’s participation in the Auction (as those terms are defined below);
- D. The conclusion of this Contract is an initial (although not the only) pre-requisite for the TSO to proceed with the project for capacity increase referred to under A. above.

THE PARTIES AGREE AS FOLLOWS:

1. Subject Matter of Contract

- 1.1** The TSO shall provide the Shipper with the gas transmission entry and exit capacity as set out in Annex No. 1 hereto (hereinafter the “**Entry Capacity**” and the “**Exit Capacity**”, respectively) in accordance with the applicable entry/exit regime, subject to the terms and conditions set out in this Contract.
- 1.2** The Shipper shall pay to the TSO the price set out in this Contract for the capacity reserved in Section 1.1 above and for the related gas transmission (on the “ship-or-pay” principle).
- 1.3** The undertakings set out in Sections 1.1 and 1.2 above are subject to the terms agreed in this Contract. In particular, their becoming effective is subject to the fulfilment of the conditions listed in Section 5 below, and the timing and scope of their applicability is further subject to the fulfillment of the conditions set out in Section 4 below.
- 1.4** The Network Code of NET4GAS, s. r. o. (hereinafter the “**Network Code**”), as amended from time to time, shall apply between the parties in relation to the Contract always in its then-effective version. Section 1752 of Act No. 89/2012, the Civil Code, shall not apply to the Contract or the Network Code. Once the Fulfillment Date (as defined below) in relation to a particular portion of capacity has occurred, Sections 2, 4, 5 and 9 no longer apply to the legal relations between the parties related to such portion of capacity.

2. Conclusion of Contract and Relation Thereof to Auction

- 2.1** The parties enter into this Contract with Provisional Annex No. 1 setting out the maximum volumes of gas transmission capacity that may be the subject matter of this Contract. Provisional Annex No. 1 is not binding on either party.

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- 2.2 The TSO intends to hold a transmission capacity auction commencing on March 6, 2017 for the capacities referred to in this Contract using the on-line capacity booking platform PRISMA (hereinafter “**PRISMA**” and the “**Auction**”). The Shipper intends to submit a bid in the Auction. The TSO does not hereby undertake to hold the Auction, and the Shipper does not hereby undertake to submit such a bid.
- 2.3 If and when the TSO holds the Auction, and the Shipper submits a bid, which results in transmission capacity in a certain volume being allocated to it, the capacity allocation confirmations generated by the PRISMA platform shall, upon generation thereof, automatically become part of this Contract as Interim Annex No. 1 hereto, replacing Provisional Annex No. 1. If there are multiple offer levels at which allocation may be made after the Auction, the TSO will select the applicable offer level (hereinafter the “**TSO Post-Auction Decision**”); in such a case, Interim Annex No. 1 will consist of the capacity allocation confirmations related to the selected offer level, and will become part of the Contract upon the TSO Post-Auction Decision being issued by the TSO.
- 2.4 Within ten working days from the Auction, the TSO shall consolidate the text of the Contract by filling out the table contained in Annex No. 1 hereto with the data resulting from the Auction (and from the TSO Post-Auction Decision, if applicable), and submit two counterparts of such consolidated version of the Contract to the Shipper, who will sign both of them and return them to the TSO within five working days from receipt thereof, whereupon the TSO shall sign them and return one of them to the Shipper. At the end of this process, Interim Annex No. 1 ceases to form part of the Contract, with its purpose and contents effectively being replaced by Annex No. 1 filled out as set out above.
- 2.5 Regardless of Sections 2.2 through 2.4 above, the Contract is entered into upon its signing by both parties, and the respective capacity is reserved in a binding manner and subject to the terms and conditions of this Contract upon its reservation at the Auction; the process outlined in Section 2.4 above serves only to ensure that a consolidated version of the Contract exists.
- 2.6 Where a reference is made to Annex No. 1, it means a reference to Interim Annex No. 1 during the period in which Interim Annex No. 1 is in place.
- 2.7 If no entry capacity at the Entry Point and no exit capacity at the Exit Point are allocated to the Shipper in the Auction, the Contract is automatically terminated as of the end of the Auction, or once the TSO Post-Auction Decision has been issued, if applicable.

3. Reserved Transmission Capacity

- 3.1 The entry and exit points of the transmission capacity reserved as set out in Section 1.1 are as follows:
- (a) Brandov EUGAL entry point (hereinafter the “**Entry Point**”); and
 - (b) Lanžhot exit point (hereinafter the “**Exit Point**”).
- 3.2 The volume of the Entry Capacity and of the Exit Capacity in each respective gas year is set out in Annex No. 1 hereto, but the actual volume to be made available is subject to the conditions set out in Section 4 below.
- 3.3 Capacity equal to or exceeding 50% of the sum of (i) the overall entry capacity set out in Provisional Annex No. 1 and (ii) the overall exit capacity set out in Provisional Annex No. 1 represents the “**Volume Threshold**”. For the purposes of calculating the Volume Threshold, Provisional Annex No. 1 is not replaced by Interim Annex No. 1, nor by Annex No. 1, by means of the procedure set out in Sections 2.3 and 2.4 above. If the bookings of the sum of the Entry Capacity and the Exit Capacity (i.e. the overall capacity booked by the Shipper pursuant

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to Annex No. 1 hereto) equals or exceeds the Volume Threshold, the Shipper qualifies as the “**Qualified Shipper**” for the purposes of those provisions of this Contract where the term is used. If there are more shippers belonging to the same group of companies, or otherwise linked together, such as by acting in concert, the sum of whose combined bookings (ascertained as in the previous sentence) meets the Volume Threshold, such shippers together qualify as the “**Qualified Group of Shippers**” for the purposes of those provisions of this Contract where the term is used.

4. Particular Conditions Precedent

4.1 The obligation of the TSO to make the respective volume of the Entry Capacity and of the Exit Capacity available is subject to the conditions related to the availability of each particular piece of infrastructure needed for the performance of the Contract, as set out below.

4.2 Infrastructure A

4.2.1 Infrastructure A means the infrastructure needed for making available what is designated as “Entry Capacity A” in Annex No. 2 hereto, in particular, the interconnection of the proposed EUGAL pipeline to the existing and planned gas transmission infrastructure in the Czech Republic, consisting of (i) a high-pressure pipeline from the Czech-German border to the border transmission station at Hora Svaté Kateřiny (hereinafter the “**HSK BTS**”), (ii) the upgrade of the HSK BTS in the form of the extension of the commercial metering facility and construction of a junction node, (iii) a high-pressure pipeline from the HSK BTS to the Kateřinský Creek junction node, and (iv) the Kateřinský Creek junction node itself, subject to adjustments resulting from the respective design phase (hereinafter “**Infrastructure A**”, the completion thereof “**Condition A**”, and the date of fulfilment thereof “**Fulfilment Date A**”).

4.2.2 Condition A is fulfilled once the following steps have been accomplished:

- (a) The Entry Point (i.e. Brandov EUGAL entry point) has been established; the establishment includes, but is not limited to, the fact that a tariff for the Entry Point has been set out in the respective price decision, and that the Entry Point has been included in the Network Code and that such amended Network Code has been approved by the Czech Energy Regulatory Authority (in Czech: *Energetický regulační úřad*) (hereinafter the “**ERO**”);
- (b) The TSO has obtained all planning permits (in Czech: *územní rozhodnutí* and/or *územní souhlas*) required for Infrastructure A, and all these permits have taken effect (in Czech: *nabytí právní moci*) (hereinafter “**Planning Permit Condition A**”);
- (c) The TSO has obtained all public law permits required for the construction, commissioning and operation of Infrastructure A (other than that under Letter (b) above), in particular (but not only), all construction permits (in Czech: *stavební povolení*), and all these permits have taken effect (in Czech: *nabytí právní moci*); and
- (d) The TSO has set up all real estate ownership-related arrangements required for the construction, acquisition of necessary permits, commissioning and operation of Infrastructure A, in particular (but not only), all easements (in Czech: *věcné břemeno*), whether by agreement or by expropriation, and these arrangements have been entered into the land registry.

4.3 Infrastructure B

4.3.1 Infrastructure B means the infrastructure needed for making available what is designated as “Entry Capacity B” in Annex No. 2 hereto, in particular, the compressor station at Jirkov with expected installed power in the range of 18 – 22 MW, including its interconnection to the

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electricity and engineering networks, subject to adjustments resulting from the respective design phase (hereinafter “**Infrastructure B**”, the completion thereof “**Condition B**”, and the date of fulfilment thereof “**Fulfilment Date B**”).

4.3.2 Condition B is fulfilled once the following steps have been accomplished:

- (a) Condition A is fulfilled;
- (b) The TSO has obtained all planning permits (in Czech: *územní rozhodnutí* and/or *územní souhlas*) required for Infrastructure B, and all these permits have taken effect (in Czech: *nabytí právní moci*) (hereinafter “**Planning Permit Condition B**”);
- (c) The TSO has obtained all public law permits required for the construction, commissioning and operation of Infrastructure B (other than that under Letter (b) above), in particular (but not only), all construction permits (in Czech: *stavební povolení*), and all these permits have taken effect (in Czech: *nabytí právní moci*); and
- (d) The TSO has set up all real estate ownership-related arrangements required for the construction, acquisition of necessary permits, commissioning and operation of Infrastructure B, in particular (but not only), all easements (in Czech: *věcné břemeno*), whether by agreement or by expropriation, and these arrangements have been entered into the land registry.

4.4 **Infrastructure C**

4.4.1 Infrastructure C means the infrastructure needed for making available what is designated as “Entry Capacity C” in Annex No. 2 hereto, in particular, a DN 1400 high-pressure pipeline between the Kateřinský Creek junction node and the Přimda junction node, subject to adjustments resulting from the respective design phase (hereinafter “**Infrastructure C**”, the completion thereof “**Condition C**”, and the date of fulfilment thereof “**Fulfilment Date C**”).

4.4.2 Condition C is fulfilled once the following steps have been accomplished:

- (a) Condition A is fulfilled;
- (b) Condition B is fulfilled;
- (c) The TSO has obtained all planning permits (in Czech: *územní rozhodnutí* and/or *územní souhlas*) required for Infrastructure C, and all these permits have taken effect (in Czech: *nabytí právní moci*) (hereinafter “**Planning Permit Condition C**”);
- (d) The TSO has obtained all public law permits required for the construction, commissioning and operation of Infrastructure C (other than that under Letter (c) above), in particular (but not only), all construction permits (in Czech: *stavební povolení*), and all these permits have taken effect (in Czech: *nabytí právní moci*); and
- (e) The TSO has set up all real estate ownership-related arrangements required for the construction, acquisition of necessary permits, commissioning and operation of Infrastructure C, in particular (but not only), all easements (in Czech: *věcné břemeno*), whether by agreement or by expropriation, and these arrangements have been entered into the land registry.

4.4.3 If and when all of the conditions set out in Section 4.4.2 above are fulfilled, with the exception of the condition listed under Section 4.4.2, Letter (b) above, the “**Fulfilment Date C Limited**” occurs. This is without prejudice to the occurrence of Fulfilment Date C once Condition C has been completed.

4.5 Infrastructure D

4.5.1 Infrastructure D means the infrastructure needed for making available what is designated as “Exit Capacity” in Annex No. 2 hereto, in particular, the upgrade of the border transmission station at Lanžhot in the form of the extension of the commercial metering facility, subject to adjustments resulting from the respective design phase (hereinafter “**Infrastructure D**”, the completion thereof “**Condition D**”, and the date of fulfilment thereof “**Fulfilment Date D**”).

4.5.2 Condition D is fulfilled once the following steps have been accomplished:

- (a) The TSO has obtained all planning permits (in Czech: *územní rozhodnutí* and/or *územní souhlas*) required for Infrastructure D and all these permits have taken effect (in Czech: *nabytí právní moci*) (hereinafter “**Planning Permit Condition D**”);
- (b) The TSO has obtained all public law permits required for the construction, commissioning and operation of Infrastructure D (other than that under Letter (a) above), in particular (but not only), all construction permits (in Czech: *stavební povolení*), and all these permits have taken effect (in Czech: *nabytí právní moci*); and
- (c) The TSO has set up all real estate ownership-related arrangements required for the construction, acquisition of necessary permits, commissioning and operation of Infrastructure D, in particular (but not only), all easements (in Czech: *věcné břemeno*), whether by agreement or by expropriation, and these arrangements have been entered into the land registry.

4.6 The fulfilment of the conditions set out in this Section 4 above has the following effect:

- (a) The fulfilment of Condition A results in entry capacity at the Entry Point in the volume indicated as such in Annex No. 2 hereto becoming available (this entry capacity hereinafter “**Entry Capacity A**”);
- (b) The fulfilment of Condition B results in entry capacity at the Entry Point in the volume of indicated as such in Annex No. 2 hereto becoming available (this entry capacity hereinafter “**Entry Capacity B**”);
- (c) The fulfilment of Condition C results in entry capacity at the Entry Point in the volume indicated as such in Annex No. 2 hereto becoming available (this entry capacity hereinafter “**Entry Capacity C**”); and
- (d) The fulfilment of Condition D results in exit capacity at the Exit Point in the volume equal to the Exit Capacity becoming available.

Entry Capacity A, Entry Capacity B, Entry Capacity C and Exit Capacity and their expected gradual availability are illustrated in Annex No. 2 hereto.

Entry Capacity A and Entry Capacity B combined are referred to as “**Entry Capacity AB**”. Entry Capacity A, Entry Capacity B and Entry Capacity C combined represent the Entry Capacity.

Any of Condition A, Condition B, Condition C and Condition D is referred to as a “**Condition**”.

4.7 Entry Capacity and Exit Capacity shall be made available by the TSO to the Shipper gradually as set out in Annex No. 1 hereto, always commencing on October 1 of the respective gas year, subject to Sections 4.8 through and including 4.12 below.

4.8 If any of the Conditions is not fulfilled in time to allow for the respective portion of capacity

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to be made available pursuant to Section 4.7 above, such a portion of capacity shall be made available by the TSO to the Shipper as follows.

- (a) At 06:00 CET on the day immediately following Fulfilment Date A (hereinafter “**Commencement Date A**”), entry capacity in a volume equal to Entry Capacity A (but in the maximum volume of the Entry Capacity, if lower) shall be made available by the TSO to the Shipper, regardless of the fact that the Entry Capacity for the respective gas year as set out in Annex No. 1 may be higher than Entry Capacity A;
- (b) At 06:00 CET on the day immediately following Fulfilment Date B (hereinafter “**Commencement Date B**”), entry capacity in a volume equal to Entry Capacity AB (but in the maximum volume of the Entry Capacity, if lower) shall be made available by the TSO to the Shipper, regardless of the fact that the Entry Capacity for the respective gas year as set out in Annex No. 1 may be higher than Entry Capacity AB; and
- (c) At 06:00 CET on the day immediately following Fulfilment Date C (hereinafter “**Commencement Date C**”), entry capacity in a volume equal to the Entry Capacity shall be made available by the TSO to the Shipper.
- (d) At 06:00 CET on the day immediately following Fulfilment Date D (hereinafter “**Commencement Date D**”), exit capacity in a volume equal to the Exit Capacity shall be made available by the TSO to the Shipper.

4.9 If Fulfilment Date C Limited occurs, entry capacity in the limited volume equal to the portion of Entry Capacity C designated for such purpose in Annex No. 2 hereto (hereinafter “**Entry Capacity C Limited**”) shall be made available by the TSO to the Shipper on the day following Fulfilment Date C Limited (hereinafter “**Commencement Date C Limited**”). This is without prejudice to the occurrence of Commencement Date C, once Condition C has been fulfilled.

4.10 The respective gas year in which Commencement Date A, Commencement Date B, Commencement Date C (or Commencement Date C Limited, if applicable) and Commencement Date D (any of them hereinafter a “**Commencement Date**”), respectively, occurs is referred to as the “**Initial Gas Year**”. The Initial Gas Year shall be identified independently for each of the Commencement Dates. The Shipper shall pay the price under this Contract always only for such portion of the Entry Capacity and of the Exit Capacity as made available to it in compliance with this Section 4 during the respective Initial Gas Year. The price shall be calculated as a *pro rata* amount of the price for yearly capacity applicable pursuant to Section 7 below for the respective Initial Gas Year.

4.11 If:

- (a) there is a shipper or shippers other than the Shipper who have reserved entry capacity at the Entry Point at the Auction, and at the same time
- (b) the entry capacity actually available at a given moment is less than the capacity booked by all such shippers (including the Shipper),

the volume of entry capacity to be made available by the TSO to the Shipper upon Commencement Date A, Commencement Date B and Commencement Date C (or Commencement Date C Limited, if applicable) shall be reduced on a *pro rata* basis so as to allow for the application of an identical provision in the contract or contracts with such other shipper or shippers. The *pro rata* reduction shall be made on the basis of the overall volumes of entry capacity booked by the respective shippers.

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- 4.12** If the TSO does not make any portion of the Entry Capacity or of the Exit Capacity available to the Shipper due to any of the respective particular conditions precedent set out in this Section 4 not being fulfilled, the fact of not making such portion available cannot amount to a breach of this Contract by the TSO, and may thus not give rise to any liability on the part of the TSO.

5. General Conditions Precedent

- 5.1** The undertakings of the TSO and the Shipper set out in Sections 1.1 and 1.2 above only take effect if and when all of the following conditions are fulfilled:

- (a) The TSO has carried out an economic test as set out in Annex No. 3 hereto, and the test has rendered a positive result.
- (b) The existing exit capacity at the Exit Point as offered at the Auction has been booked as follows: (i) more than 80% of the offered volume for the gas year 2019/2020; and (ii) in the full offered volume for the entire period of gas years 2020/2021 through 2031/2032.
- (c) The existing entry capacity at the Hora Svaté Kateřiny – Olbernhau entry point and the existing entry capacity at the Hora Svaté Kateřiny entry point as offered at the Auction have been booked in full for the entire period of gas years 2019/2020 through 2031/2032.
- (d) A contractual undertaking has been entered into under which the TSO and a person reasonably satisfactory to the TSO, whereby such person has agreed to submit first round bids for existing exit capacity at the Exit Point, as such capacity will be offered in the future auctions for the period after October 1, 2032 in the amount equal to, or in excess of, the levels set out in Part I of Annex No. 4 hereto, for each particular auction subject to the condition that the price offered at such auction does not exceed the price applicable pursuant to this Contract, taking into account any escalation as set out in the price decision effective as of the conclusion of this Contract.
- (e) A contractual undertaking has been entered into under which the TSO and a person reasonably satisfactory to the TSO, whereby such person has agreed to submit first round bids for the portion of the exit capacity at the Exit Point set aside pursuant to the applicable rules, equal to, or in excess of, the levels set out in Part II. of Annex No. 4 hereto, for each particular auction subject to the condition that the price offered at such auction does not exceed the price applicable pursuant to this Contract, taking into account any escalation as set out in the price decision effective as of the conclusion of this Contract.

- 5.2** If any of the conditions set out in Section 5.1 above are not fulfilled within three months from the end of the Auction (hereinafter the “**General CPs Decisive Date**”), the TSO has the right to withdraw from the Contract. Such withdrawal may only be done within one month from the General CPs Decisive Date, regardless of whether the given condition has in the meantime been fulfilled after the General CPs Decisive Date; if it is not done within one month from General CPs Decisive Date and in compliance with this Contract, the right to do so ceases to exist. The parties are aware of the applicability of Section 5.3 below in the event of the termination of the Contract pursuant to this Section 5.2.

- 5.3** In the event that the Contract is terminated in full or in part pursuant to Section 5.2 above, or Section 6.2, Letter a), Section 6.2, Letter b), Section 6.2, Letter c) or Section 6.3 below, the Shipper shall:

- (a) reimburse the TSO for any and all costs reasonably incurred by it in connection with

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this Contract and the preparation for its performance, in particular, construction and administrative costs incurred in order to make Infrastructure A, Infrastructure B, Infrastructure C and Infrastructure D available (hereinafter the “**Eligible Costs**”). It is explicitly agreed by the parties that the Eligible Costs include, *inter alia*, costs of material, plant and equipment, as well as costs related to upgrading or revamping the existing infrastructure, which the TSO needs to incur in order to work towards being able to provide the capacities pursuant to the envisaged timetable as follows from Annex No. 1 hereto, as well as costs connected to the termination of any contractual relationship linked to such material, plant and equipment, if applicable. A termination fee in the amount of 10% shall be added to the Eligible Costs and shall also be reimbursed;

- (b) indemnify the TSO for any and all claims raised by any operators of upstream or downstream transmission systems in connection with the termination of the Contract and/or the fact that the gas transmission hereunder will not proceed.

This Section 5.3 only applies in the event that the Shipper is the Qualified Shipper or if the Shipper is a member of the Qualified Group of Shippers; in the latter case, the Shipper is liable to fulfil Section 5.3 in full jointly and severally with all other members of the Qualified Group of Shippers.

This Section 5.3 remains in force as a separate undertaking regardless of the termination of the Contract by any means.

- 5.4** Section 5.3 above does not apply if the lack of fulfilment of any of the conditions listed in Section 5.1 above by the deadline set out in Section 5.2 above has been caused solely by the intentional or negligent breach of duties on the part of the TSO.
- 5.5** The timing and scope of the applicability of the undertakings of the TSO and the Shipper set out in Sections 1.1 and 1.2 above is further conditional upon the conditions set out in Section 4 above.

6. Duration

- 6.1** The Contract takes effect upon its signing by both parties and remains in effect for as long as any of the rights or duties arising from it exist or are meant to exist. The duration of the respective transmission capacity reservation is set out in Annex No. 1 and is subject to the conditions set out in Section 4 above.
- 6.2** In addition to Section 5 above, the TSO has the right to withdraw from the Contract in the following scenarios:
 - (a) If it is reasonably established that any operator of an upstream or downstream gas transmission system is not going to put into operation the infrastructure required for the economically viable operation of any of the components of Infrastructure A, Infrastructure B, Infrastructure C or Infrastructure D; such fact may be reasonably established in particular if:
 - (i) the respective stakeholder makes a formal announcement to that effect, or
 - (ii) there has been no material progress on any one of the projects to be implemented by the respective stakeholder and required for the economically viable operation of any of the components of Infrastructure A, Infrastructure B, Infrastructure C or Infrastructure D for a period exceeding 6 months

In case of such withdrawal, Section 5.3 above also applies;

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- (b) If it is reasonably established that the hand-over gas pressure at the Entry Point will be lower than 73 bar. In case of such withdrawal, Section 5.3 above also applies;
- (c) If a breach of either of the undertakings referred to in Section 5.1, Letters d) and e) above occurs; the TSO may only exercise this right within 17 months from the end of the Auction; if such a breach is committed by the Qualified Shipper or any member of the Qualified Group of Shippers whose member the Shipper is, Section 5.3 above also applies;
- (d) If the Principles of Regulation (in Czech in full: *Zásady cenové regulace pro odvětví elektroenergetiky, plynárenství a pro činnosti operátora trhu v elektroenergetice a plynárenství*) for the V. Regulatory Period, as issued by the ERO, contain a provision that worsens the economic outlook of the TSO; the TSO may only exercise this right within 17 months from the end of the Auction;
- (e) For no reason, at any time until February 15, 2018.

6.3 The TSO further has the right to withdraw from the Contract:

- (a) to the extent of the Entry Capacity, if Planning Permit Condition A is not fulfilled by July 31, 2020;
- (b) to the extent of Entry Capacity B, if Planning Permit Condition B is not fulfilled by June 30, 2020; in case of withdrawal from the Contract under and to the extent as set out in this Letter (b), references to Entry Capacity C in this Contract become references to Entry Capacity C Limited, with the exception of the reference in Letter (c) below;
- (c) to the extent of Entry Capacity C, if Planning Permit Condition C is not fulfilled by May 30, 2021;
- (d) to the extent of the Exit Capacity, if Planning Permit Condition D is not fulfilled by September 30, 2019.

In case and to the extent of such withdrawal under this Section 6.3, Section 5.3 above also applies. Any withdrawal under this Section 6.3 is without prejudice to the right of the TSO to withdraw in any other way under the same Section or under any other provision of this Contract.

6.4 If the Shipper is the Qualified Shipper and at the same time has capacity bookings with the adjacent upstream and downstream transmission system operators allocated to it in the March 2017 auction, it may request that the TSO enter into a separate agreement providing for terms of withdrawal from this Contract by the Shipper, subject to compensation of costs together with a 10 % termination fee to the TSO; such withdrawal by the Shipper pursuant to the agreement may only be made by a deadline set out in the agreement, which shall not be later than by January 31, 2018. For the avoidance of doubt, entering into such an agreement shall be at the sole discretion of the TSO.

6.5 The Shipper does not have the right to withdraw from the Contract other than pursuant to Section 6.4 (subject to the condition that the agreement referred to in Section 6.4 is made in writing) or in the event of a particularly gross breach of the Contract by the TSO. In particular, the Shipper does not have the right to raise a material change in circumstances or the long-term nature of the Contract as reasons or arguments for the termination of the Contract or for the need to renegotiate it.

6.6 If the Shipper is not the Qualified Shipper, and at the same time a contract equivalent to this

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one between the TSO and another shipper was terminated pursuant to its Section 6.4 above, the Contract is automatically terminated. The TSO shall notify the Shipper of the termination of the Contract under this Section 6.6 without undue delay after it has learned of it.

- 6.7** If the Contract is terminated pursuant to Section 5.2, Section 6.2, Section 6.3, Section 6.4 above or Section 6.6, the Shipper that has booked in the Auction existing entry capacity at the Hora Svaté Kateřiny entry point and/or at the Hora Svaté Kateřiny – Olbernhau entry point, and/or existing exit capacity at the Exit Point (all such capacity booked in the Auction hereinafter the “**Related Capacity**”) has the right to return the Related Capacity (i.e. to terminate the respective contract or contracts with the TSO) to the extent exceeding the level of booking (if any) of the Shipper at each of the Hora Svaté Kateřiny entry point, the Hora Svaté Kateřiny – Olbernhau entry point and the Exit Point, as applicable, in the gas year 2018/2019. The Shipper may only exercise this right within 30 days from the day it is notified by the TSO of the termination of this Contract; thereafter this right ceases to exist.

7. Price

- 7.1** The price for the reservation of capacity hereunder and the related gas transmission shall be that as set in accordance with the applicable price decision of the ERO.¹
- 7.2** If the applicable price decision of the ERO provides for an option of the Shipper to choose to pay the transmission fee hereunder in EUR at a fixed exchange rate, such an option of the Shipper, if made, is binding on it for the entire duration of the Contract remaining after the option was made and cannot be changed, unless the price decision provides otherwise.
- 7.3** Invoicing and payment rules are set out in the Network Code.

8. Liability for Damage

- 8.1** Each party shall be liable to the other party for any damage it causes through the breach of its obligations arising from this Contract or in connection with it.
- 8.2** The overall amount of the TSO’s liability for damage caused by its breach of obligations arising from this Contract or in connection with it shall not exceed 5% of the amount calculated as follows: The amount corresponding to the price set out by the ERO in its price decision applicable in the year 2017 applied to a volume calculated as the sum of (i) the aggregate volume of the Entry Capacity as set out in Annex No. 1 hereto and (ii) the aggregate volume of the Exit Capacity as set out in Annex No. 1 hereto.
- 8.3** The TSO shall not be liable for any damage resulting from a force majeure event or its non-performance of the Contract brought about by a force majeure event. A force majeure event shall include, in particular, but not only, the following:
- (a) Any delay on the part of any operator of an upstream or downstream transmission system that prevents or hampers performance of this Contract by the TSO;
 - (b) Any delay in any legal proceedings (particularly judicial or administrative) related to the performance of this Contract, or preparation of such performance, by the TSO; or
 - (c) Any action or lack of action by any public authority of any state, in particular, also any new piece of legislation or secondary legislation.
- 8.4** The Shipper shall not have the right to invoke force majeure in any way nor under any circumstances. In particular, no issue anywhere outside of the Czech Republic (such as any

¹ To be further confirmed/adjusted once the price decision in its final form has been issued.

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issue related to any transmission system operator) shall allow the Shipper to withdraw from or postpone or suspend its performance of the Contract, or to request the renegotiation of the Contract.

- 8.5** The TSO is obliged to exercise all economically reasonable efforts in order to ensure that Condition A, Condition B, Condition C, Condition D and the conditions set out in Section 5.1 above are fulfilled, and that the TSO is in a position to perform its undertaking set out in Section 1.1 of this Contract above; if, however, despite the TSO having exercised all such economically reasonable efforts, its performance of the Contract turns out to be impossible or possible only with such difficulties as to make it unreasonable, no breach of the Contract and no liability on the part of the TSO toward the Shipper shall arise.
- 8.6** If the Shipper is the Qualified Shipper, it shall indemnify the TSO for any and all claims raised by any operators of upstream or downstream transmission systems in connection with the fact that any Condition was fulfilled later than would have been necessary in order for the transmission service to be provided by the TSO within the timeframe apparent from Annex No. 1 hereto. The Shipper has the same duty as set out in the previous sentence if it is a member of the Qualified Group of Shippers; in such a case the Shipper is liable to fulfil it in full jointly and severally with all other members of the Qualified Group of Shippers. The Shipper will relieve itself in relation to a particular Condition of the duty set out in the previous two sentences if it demonstrates that the TSO has in relation to such Condition breached its duty set out in Section 8.5 above.

9. Confidentiality

- 9.1** Each party undertakes to keep confidential all information that has come to its attention in connection with the negotiation, conclusion or performance of this Contract.
- 9.2** A party may only disclose the information referred to in Section 9.1 above in the following cases:
- (a) The information has become publicly available;
 - (b) It is necessary for the fulfillment of the parties' statutory or other legal duties, including when requested by competent authorities;
 - (c) In the course of court or arbitration proceedings commenced by either party against the other party in connection with this Contract; or
 - (d) The disclosure is made to the respective party's advisors, subject to the condition that such advisors are bound by a substantially identical confidentiality undertaking.

10. Information Duty

- 10.1** The parties shall inform one another of all developments that may have a material impact on their rights or duties arising from this Contract. Information sent by e-mail is sufficient for the purposes of this provision.

11. Special Capacity Undertaking

- 11.1** The TSO undertakes to hold auctions for entry capacity at the Entry Point and exit capacity at the Exit Point to the extent set out in Annex No. 4 hereto.
- 11.2** The Shipper undertakes to submit first round bids for existing exit capacity at the Exit Point, as such capacity will be offered in the future auctions for the period after October 1, 2032 in the amount equal to, or in excess of, the levels set out in Part I of Annex No. 5 hereto, for each particular auction, subject to the condition that the price offered at such auction does not

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exceed the price applicable pursuant to this Contract, taking into account any escalation as set out in the price decision effective as of the conclusion of this Contract.

- 11.3** The Shipper undertakes to submit first round bids for the portion of the exit capacity at the Exit Point set aside pursuant to the applicable rules, equal to, or in excess of, the levels set out in Part II of Annex No. 5 hereto, for each particular auction, subject to the condition that the price offered at such auction does not exceed the price applicable pursuant to this Contract, taking into account any escalation as set out in the price decision effective as of the conclusion of this Contract.
- 11.4** Sections 13.3 through 13.8 (inclusive) and 13.10 of the Contract shall also apply to this undertaking set out in this Section 11 and Annex No. 5 hereto.
- 11.5** The undertaking in this Section 11 and Annex No. 5 hereto represents an agreement separate from the Contract, and the Shipper's and the TSO's consent to it is only certified by their separate signatures as indicated below.

12. Contingency Capacity Undertaking

- 12.1** If it is reasonably established to the satisfaction of the TSO that in cases referred to in Section 4.10 above it is not possible to commence providing the capacity booked hereunder earlier than on October 1 of the gas year immediately following the Initial Gas Year, the TSO has a right to notify the Shipper of such a fact. Upon receiving such notification, the Shipper is bound by the undertaking set out in this Section 12.
- 12.2** The Shipper undertakes to submit first round bids in the future auctions for the short-term bookings of entry capacity at the Entry Point and short-term bookings of exit capacity at the Exit Point for the Initial Gas Year, whereas for each of the Commencement Dates, the Initial Gas Year shall be identified independently. In terms of duration, this undertaking applies to the entire remainder of the respective Initial Gas Year. In terms of volume, it applies to such annual volume of capacity as booked by the Shipper for the respective Initial Gas Year under this Contract, reduced on a *pro rata* basis by reference to the part of the Initial Gas Year left after the respective Commencement Date or the date on which the notification under Section 12.1 was served, whichever is later.
- 12.3** The undertaking set out in Section 12.2 above is entered into separately in relation to each of Entry Capacity A, Entry Capacity B, Entry Capacity C (and Entry Capacity C Limited, subject to the condition that it becomes applicable) and the Exit Capacity.
- 12.4** The purpose of this Section 12 is to implement the intention of the parties to the utmost in that it ensures the maximum use of the respective portion of the Entry Capacity and of the Exit Capacity in the respective Initial Gas Year.

13. Final Provisions

- 13.1** The Preamble and the Annexes to this Contract form an integral part hereof. The list of the Annexes is as follows:
- (a) Provisional Annex No. 1 (only until replaced by Interim Annex No. 1);
 - (b) Interim Annex No. 1 (only once it replaces Provisional Annex No. 1 and only until it has been replaced by Annex No. 1 filled out in accordance with Section 2 above);
 - (c) Annex No. 1: Reserved Capacities;
 - (d) Annex No. 2: Expected Gradual Availability of Entry Capacity A, Entry Capacity AB and Entry Capacity and Designation of Entry Capacity C Limited;

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- (e) Annex No. 3: Criteria of Economic Test;
 - (f) Annex No. 4: Parameters of General Condition Precedent Set in Section 5.1, Letters d) and e);
 - (g) Annex No. 5: Special Capacity Undertaking of Shipper
- 13.2** The volume of gas actually transmitted shall be measured in accordance with the Network Code.
- 13.3** Communication between the parties related to matters connected with this Contract shall be made in English. Communication between the parties shall primarily be transmitted by e-mail. Notifications that have or may have a material impact on the rights and duties of the parties (in particular, changes to the Network Code, notifications pursuant to Section 12.1 above and statements connected to termination of the Contract) shall be made by e-mail and by registered mail or by courier, whereas delivery by mail or courier is conclusive. This provision is subject, in particular, to Section 13.7 below.
- 13.4** This Contract is governed by and construed in accordance with Czech law, with the exclusion of its choice of law rules referring to any other law.
- 13.5** The application of the following provisions of Act No. 89/2012, the Civil Code, to the Contract is hereby excluded: Section 1727, second and third sentence, Section 1748, Section 1765, Section 1766, Section 1799, Section 1800 and Section 2000.
- 13.6** If any part of this Contract is or becomes invalid, ineffective, unenforceable or inoperable, that does not affect the validity, effectiveness, enforceability or operability of the Contract, unless the invalidity, ineffectiveness, unenforceability or inoperability of that part changes the overall balance of the Contract to such an extent that its continuation is not reasonable. The parties shall negotiate in good faith in order to replace such invalid, ineffective, unenforceable or inoperable provision with a provision that will be as close to the originally intended meaning as possible.
- 13.7** Any change to this Contract may only be made by means of a written amendment (whereas e-mail communication is not regarded as constituting the written form) designated as such and signed by both parties.
- 13.8** The conditions precedent set out in Sections 4 and 5 above are for the sole benefit of the TSO, and the TSO has the right to waive any of them; any such condition is deemed fulfilled upon the delivery of a written notification of the TSO to the Shipper to that effect, subject to the condition that the notification makes an explicit reference to this Section 13.8 and an explicit reference to the respective provision of this Contract establishing the condition being waived.
- 13.9** All disputes arising out of or in connection with this Contract shall be exclusively and finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with said Rules. The place of arbitration shall be Prague and the language of arbitration shall be English.
- 13.10** This Contract is executed in two counterparts, of which each party shall receive one.

On _____

On _____

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For NET4GAS, s. r. o.
 Executive

For

For NET4GAS, s. r. o.
 Executive

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The parties also agree to the undertaking set out in Section 11 of the Contract, to the extent as set out in Annex No. 5 to the Contract:

On _____

On _____

For NET4GAS, s. r. o.
 Executive

For

For NET4GAS, s. r. o.
 Executive

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Provisional Annex 1

Maximum Volumes of Capacity that May be Subject Matter of Contract

(in GWh / day)

Gas Year	Brandov EUGAL Entry Point	Lanžhot Exit Point
	entry	exit
2019/2020	598.14	299.43
2020/2021	964.08	299.43
2021/2022	964.08	299.43
2022/2023	856.96	299.43
2023/2024	856.96	299.43
2024/2025	856.96	299.43
2025/2026	856.96	299.43
2026/2027	856.96	299.43
2027/2028	856.96	299.43
2028/2029	856.96	299.43
2029/2030	856.96	299.43
2030/2031	856.96	299.43
2031/2032	856.96	299.43
2032/2033	856.96	299.43
2033/2034	856.96	299.43
2034/2035	856.96	299.43
2035/2036	856.96	299.43
2036/2037	856.96	299.43
2037/2038	856.96	299.43
2038/2039	856.96	299.43

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Annex 2

Expected Gradual Availability of Entry Capacity A, Entry Capacity AB and Entry Capacity and Designation of Entry Capacity C Limited

(in GWh / day)

Gas Year	Brandov EUGAL Entry Point				Lanžhot Exit Point
	Entry*				Exit*
	Entry Capacity A (i.e. with Condition A fulfilled)	Entry Capacity AB (i.e. with Conditions A and B fulfilled)	Entry Capacity C Limited (i.e. with Conditions A and C fulfilled)	Entry Capacity (i.e. with Conditions A, B and C fulfilled)	Exit Capacity (i.e. with Condition D fulfilled)
2019/2020	187.4	664.6			332.7
2020/2021**	187.4	664.6	708	1071.2	332.7
2021/2022	187.4	664.6	708	1071.2	332.7
2022/2023 – 2038/2039	187.4	664.6	708	1071.2	332.7

* For the avoidance of doubt, it is noted that, in compliance with applicable legislation, entry and exit capacities are booked separately (while this Annex No. 2 does not contain a full list of entry and exit points offered by the TSO). It is the sole responsibility of the shipper to book such combination of entry and exit capacity as will suit its commercial purposes.

** Making the capacity available in the volumes and at the times indicated in the table is subject to the terms and conditions set out in the Contract, in particular, also to the conditions set out in Sections 4 and 5 of the Contract. In particular, in relation to the Entry Capacity in the gas year 2020/2021, it is noted that the possibility of it not being available is high. Nonetheless, it may still be made available as indicated in the table in the course of the gas year 2020/2021 if, *inter alia*, the respective authorities proceed with utmost expediency, in particular, if such a course of action is supported by the adoption of an appropriate amendment to the Infrastructure Construction Acceleration Law, and if there are no appeals against permits issued by the authorities and against expropriation decisions.

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Annex No. 3

Criteria of Economic Test (For Purposes of Section 5.1, Letter (a) of Contract)

The economic test will be based primarily on the following criteria:

1. Tariff

The TSO shall take into account the tariff set out for Entry Capacity and Exit Capacity in the respective price decision, subject to the condition that it is based on an appropriate and comprehensive benchmarking analysis and complies with the applicable legal rules.

2. Volume of Entry Capacity and Exit Capacity Booked at Auction

The minimum volume of Entry Capacity reserved at the Auction by all shippers should amount to 100% of the capacity of Infrastructure A, Infrastructure B and Infrastructure C offered at the Auction.

The minimum volume of Exit Capacity reserved at the Auction by all shippers should amount to 100% of the capacity of Infrastructure D offered at the Auction.

3. Duration of Entry Capacity and Exit Capacity Bookings

The duration of the bookings of the Entry Capacity and the Exit Capacity made at the Auction in the volume set out above should be 20 years, namely 2019/2020 through 2038/2039.

4. Booking of Existing Capacity

The existing exit capacity at the Exit Point as offered at the Auction is expected to be booked as follows: (i) more than 80% of the offered volume for the gas year 2019/2020, and (ii) in the full offered volume for the entire period of gas years 2020/2021 through 2031/2032.

The existing entry capacity at the Hora Svaté Kateřiny – Olbernhau entry point and the existing entry capacity at the Hora Svaté Kateřiny entry point as offered at the Auction are expected to be booked in full for the entire period of gas years 2019/2020 through 2031/2032.

5. Other Conditions Precedent

All other general conditions precedent set out in Section 5.1 of the Contract have been fulfilled.

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Annex No. 4

Parameters of General Condition Precedent Set in Section 5.1, Letters d) and e)

(in GWh / day)

Part I

Section 5.1, Letter d)

For the general condition precedent set out in Section 5.1, Letter d) of the Contract to be fulfilled, the undertaking referred to in the Section needs to be entered into at least to the following extent.

Gas Year	Existing Exit Capacity at Lanžhot
2032/2033	730.944
2033/2034	730.944
2034/2035	730.944
2035/2036	730.944
2036/2037	730.944
2037/2038	730.944
2038/2039	730.944

Part II

Section 5.1, Letter e)

For the general condition precedent set out in Section 5.1, Letter e) of the Contract to be fulfilled, the undertaking referred to in the Section needs to be entered into at least to the following extent.

Gas Year	Existing Set-Aside Exit Capacity at Lanžhot
2022/2023	91.368
2023/2024	91.368
2024/2025	91.368
2025/2026	91.368
2026/2027	91.368
2027/2028	91.368
2028/2029	91.368
2029/2030	91.368
2030/2031	91.368
2031/2032	91.368

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2032/2033	91.368
2033/2034	91.368
2034/2035	91.368
2035/2036	91.368
2036/2037	91.368
2037/2038	91.368
2038/2039	91.368

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Annex No. 5

Special Capacity Undertaking of Shipper

(in GWh / day)

Part I

Section 11.2 of Contract

The Shipper makes the undertaking set out in Section 11.2 of the Contract to the extent set out in the table below.

Gas Year	Existing Exit Capacity at Lanžhot
2032/2033	
2033/2034	
2034/2035	
2035/2036	
2036/2037	
2037/2038	
2038/2039	

Part II

Section 11.3 of Contract

The Shipper makes the undertaking set out in Section 11.3 of the Contract to the extent set out in the table below.

Gas Year	Existing Set-Aside Exit Capacity at Lanžhot
2022/2023	
2023/2024	
2024/2025	
2025/2026	
2026/2027	
2027/2028	
2028/2029	
2029/2030	
2030/2031	

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2031/2032	
2032/2033	
2033/2034	
2034/2035	
2035/2036	
2036/2037	
2037/2038	
2038/2039	