

CONTRACT FOR PROVISION OF GAS TRANSMISSION SERVICE NO. [●]

(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

[●company name] incorporated under the laws of [●] with its registered seat at [●] (hereinafter the “**Shipper**”)

WHEREAS

- A. The TSO is the sole Czech gas transmission system operator, which based on the results of the demand assessment for incremental capacity between the Czech Republic and Poland held in 2019 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 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;
- E. The TSO proceeds in compliance with the Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 (hereinafter the “**NC CAM**”);

THE PARTIES AGREE AS FOLLOWS:

**1. Subject Matter of Contract**

- 1.1** The TSO shall provide the Shipper with the gas transmission entry capacity set out in Annex No. 1 hereto (hereinafter the “**Entry Capacity**”) 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 under this Contract (and available for use by the Shipper) and for the related gas transmission services actually provided by the TSO on the “ship-or-pay” principle, i.e. the principle that the Shipper is obliged to pay the transmission fee regardless of whether or not it actually uses the reserved capacity for the shipping of gas.
- 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becoming effective is subject to the fulfilment of the Condition set out in Section 4 below, the Contract not being withdrawn from in compliance with Section 5 below and the economic test as set out in Section 6 below rendering a positive outcome.
- 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 (hereinafter the “**Civil**”

Code”), shall not apply to the Contract or the Network Code.

## **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.

**2.2** The TSO intends to offer the capacities referred to in this Contract in the 2021 annual yearly capacity auction (expected to commence on July 5, 2021) at the on-line capacity booking platform GSA (hereinafter the “**Platform**” and the “**Auction**”). The Shipper intends to submit a bid in the Auction. The TSO does not hereby undertake to offer the said capacities in the Auction, and the Shipper does not hereby undertake to submit such a bid.

The TSO’s intention to offer the said capacities in the Auction is conditional upon, *inter alia*, the following:

- (a) Whether the Czech Energy Regulatory Office (in Czech: *Energetický regulační úřad*, hereinafter the “**ERO**”) publishes the price decision that is supposed to be applicable to this Contract pursuant to Section 8.1 below in the Energy Regulatory Journal (in Czech: *Energetický regulační věstník*), or the price to be applicable to the Contract is set out in another binding manner pursuant to the applicable legislation, and the actual price so set; and
- (b) Whether the TSO reaches a legally binding agreement in writing, and in line with industry practice, with the transmission system operator with whose transmission system the TSO’s transmission system is to be connected at the Entry Point (as defined below), that the designed (projected) hand-over gas pressure will be at the Entry Point at least 46 barg (from Poland to the Czech Republic), or the TSO receives confirmation in writing (reasonably satisfactory to the TSO as regards its form and substantially equivalent to a legally binding agreement as regards its legal relevance) to the same effect from the said transmission system operator.

The TSO shall inform the Shipper by no later than three working days before the scheduled commencement of the Auction about the status of the above conditions and whether, on that basis, it intends to offer the capacities referred to in this Contract in the Auction. If it is established before the scheduled commencement of the Auction that the TSO does not intend to offer the said capacities in the Auction due to unsatisfactory developments in relation to any of the above conditions, the TSO shall notify the Shipper thereof without undue delay after it ascertained the relevant facts.

**2.3** If and when the TSO offers the capacities referred to in this Contract in 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 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 based on the actual capacity bookings; in such a case, Interim Annex No. 1 will consist of the capacity allocation confirmations related to the selected offer level.

**2.4** Within ten working days from the day the TSO sends out the notification of the outcome of the economic test as set out in Section 6.2 below and assuming that the outcome is positive, 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 without any other changes and/or modifications to the Contract and submit two signed counterparts of such consolidated version of the Contract

to the Shipper, who will, without undue delay, sign both of the counterparts and return one of them to the TSO. 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 is allocated to the Shipper in the Auction, the Contract is automatically terminated as of the end of the Auction.

### **3. Reserved Transmission Capacity**

- 3.1** The entry point of the transmission capacity reserved as set out in Section 1.1 is the Český Těšín entry point (hereinafter the “**Entry Point**”).
- 3.2** The volume of the Entry 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 Condition set out in Section 4 below.

### **4. Condition**

- 4.1** The obligation of the TSO to make the respective volume of the Entry Capacity available is subject to the Condition related to the availability of the Infrastructure (as set out below). This is without prejudice to Section 9 below.
- 4.2** Infrastructure means the infrastructure needed for making technically available the Entry Capacity, in particular, (i) a DN 500 high-pressure pipeline between Libhošť and Třanovice and (ii) a compressor station (with two compressors plus one back-up compressor, each of them per 3.5 MW), subject to adjustments resulting from the respective design phase (hereinafter “**Infrastructure**”, the completion thereof “**Condition**”, and the date of fulfilment thereof “**Fulfilment Date**”).
- 4.3** The Condition is fulfilled once the following steps have been accomplished:
- (a) A tariff for the Entry Capacity (i.e., incremental entry capacity at the Entry Point) has been set out in the respective price decision;
  - (b) The TSO has obtained all public law permits required for planning and construction (in Czech: *územní rozhodnutí/územní souhlas/stavební povolení/společné povolení*) required for the Infrastructure, and all these permits have taken effect (in Czech: *nabytí právní moci*);
  - (c) The TSO has obtained all public law permits required for the commissioning and operation of the Infrastructure and all these permits have taken effect (in Czech: *nabytí právní moci*);
  - (d) The TSO has completed all real estate ownership-related arrangements required for the construction, acquisition of necessary permits, commissioning and operation of the Infrastructure, in particular, set up all easements (in Czech: *věcné břemeno*) and acquired all land plots, as the case may be, whether by agreement or by expropriation (all such real estate ownership-related arrangements as the “**Use of Land Arrangements**”), and all these Use of Land Arrangements have been entered into the land registry;

(e) The Infrastructure has been constructed.

- 4.4** The fulfilment of the Condition results in the Entry Capacity becoming technically available.
- 4.5** Entry Capacity shall be made available by the TSO to the Shipper as set out in Annex No. 1 hereto, always commencing on October 1 of the respective gas year, subject to this Section 4.
- 4.6** If the Condition is not fulfilled in time to allow for the capacity to be made available pursuant to Section 4.5 above, the capacity shall be made available by the TSO to the Shipper at 06:00 CET on the day immediately following Fulfilment Date (hereinafter “**Commencement Date**”).
- 4.7** The Shipper shall pay the price under this Contract always only for such portion of the Entry Capacity as actually made available to it. If the Commencement Date occurs later than on October 1 of the respective gas year, the price related to such capacity and such gas year shall be calculated as a pro rata amount of the price for yearly capacity applicable pursuant to Section 8 below.
- 4.8** Subject to Section 9.4, if the TSO does not make the Entry Capacity available to the Shipper due to the Condition 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. Withdrawal**

- 5.1** If public law permits required for planning and construction under the Section 4.3 Letter b) above are not obtained and/or Use of Land Arrangements are not put in place by the TSO by [●]<sup>1</sup> (inclusive, the “**Withdrawal Right Date**”), the TSO has the right to withdraw from this Contract (i.e. to unilaterally terminate it) subject to the rules set out in Section 5.2 below (hereinafter the “**Withdrawal Right**”). The TSO shall inform the Shipper that public law permits required for planning and construction have not been obtained and/or that the Use of Land Arrangements have not been put in place by the Withdrawal Right Date (inclusive) within ten working days of the Withdrawal Right Date.
- 5.2** For the Withdrawal Right to be exercised by the TSO, the respective withdrawal notice shall be delivered to the Shipper by [●]<sup>2</sup> (inclusive). The Withdrawal Right of the TSO ceases to exist if it is not exercised by the end of the said date. The Contract is terminated without any further liabilities of the parties (unless such liabilities arise with respect to the period before termination of the Contract) upon the exercise of the Withdrawal Right by the TSO in compliance with this Contract.

## **6. The Economic Test**

- 6.1** The undertakings of the TSO and the Shipper set out in Sections 1.1 and 1.2 above only take effect if the outcome of the economic test performed by the TSO according to applicable legislation, in particular the NC CAM, is positive.
- 6.2** The economic test as set out in Section 6.1 above shall be carried out by the TSO, and the Shipper will be notified of the outcome thereof by the TSO in line with the NC CAM.

## **7. Duration**

- 7.1** Subject to Section 4.1 above, the Contract takes effect upon its signing by both parties.

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<sup>1</sup> The Withdrawal Right Date will be set on the basis of the parameters of the economic test, including the applicable tariff to be set by the ERO.

<sup>2</sup> This date will be a day reasonably soon after the Withdrawal Right Date.

Any Section of this Contract that has taken effect pursuant to the above 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.

**7.2** The Shipper does not have the right to withdraw from the Contract other than in the event of a particularly gross breach of the Contract by the TSO.

## **8. Price**

**8.1** The price for the reservation of capacity at the Auction and the related gas transmission shall be that as set by the ERO in accordance with applicable legislation.

**8.2** Invoicing and payment rules are set out in the Network Code.

## **9. Liability for Damage & Change in Circumstances**

**9.1** 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.

**9.2** Lost profit is excluded from the scope of damage to be compensated in any instance of any breach of this Contract or a related duty by either party.

**9.3** Any obligation of either party shall be temporarily suspended during the period in which it is unable to perform such obligation by reason of Force Majeure, but only to the extent of such inability to perform. The term "Force Majeure" means circumstances not reasonably foreseen by, unable to be avoided by and beyond the control of the party, including but not limited to the following:

- (a) acts of God, forces of nature, floods, earthquakes, landslides, fires, explosions and other unavoidable accidents,
- (b) strikes, boycotts, lockouts, sabotage and military operations.

On the part of the TSO, a Force Majeure event includes also acts of public authorities, or a lack thereof.

On the part of the Shipper, a Force Majeure event does not include any act of public authorities of the country where the Shipper is incorporated or the country where the Shipper has its registered seat, or a lack thereof.

Following the occurrence of any circumstances of Force Majeure, the affected party shall notify the other party of the occurrence and the expected extent and duration of such circumstances and take all economically reasonable measures, which may be useful to ensure the resumption of the normal performance of the Contract within the shortest possible time.

The termination of the Contract due to Force Majeure circumstances shall take place only by mutual consent of the parties.

**9.4** The TSO is obliged to exercise economically reasonable efforts in order to ensure that the Condition is fulfilled, and that the TSO is in a position to perform its undertaking set out in Section 1.1 of this Contract above; in relation to the Condition, the status of the relevant public law permits and Use of Land Arrangements shall be taken into account when assessing the contents and scope of the economically reasonable efforts. If, however, despite the TSO having exercised 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. This especially applies to activities which are to a large extent beyond the control of the TSO, in particular the permitting process and the setting up of the Use of Land Arrangements.

The term “economically reasonable efforts” when used in this Contract shall mean taking such steps towards the completion of the project that can be justified by reference to the economic test of the project and its outcome, as viewed from the perspective of the TSO as a prudent business entity acting in good faith. As Use of Land Arrangements, this means utilizing all rights set out in the Expropriation Act and proceeding in compliance with it in good faith and a timely manner, but does not include seeking settlement with owners outside of the framework of the said Act involving payment of higher than customary price. The term “economically reasonable efforts” shall not require the TSO to commit to any major expenditure under contracts for supply of material and services for the construction of the Infrastructure before the Withdrawal Right expires.

- 9.5** If the circumstances that existed at the time of the conclusion of this Contract substantially change so as to make its continued performance grossly unreasonable for either party, whereas such change was not reasonably foreseen by, unable to be avoided by and beyond the control of the affected party, the affected party may request that the parties enter into negotiations regarding the situation. The parties shall in such a case negotiate in good faith with the aim of amending the Contract in order to restore the economic balance of the Contract as existed at the time of the conclusion hereof. For the avoidance of doubt, both parties acknowledge that the TSO is a regulated entity that needs to work within the limits of the applicable regulatory framework. Neither requesting such negotiations, nor their commencement, nor a failure to agree on an amendment pursuant to this Section 9.5 gives the affected party the right to terminate the Contract or to suspend its performance. This provision represents the sole remedy in the event of a change in circumstances.

## **10. Confidentiality**

- 10.1** Each party undertakes to keep confidential all information that has come to its attention in connection with the conclusion or performance of this Contract.

- 10.2** A party may only disclose the information referred to in Section 10.1 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.

## **11. Information Duty**

- 11.1** 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 (using e-mail accounts to be specified by the parties in due time) is sufficient for the purposes of this provision.

## **12. Final Provisions**

- 12.1** 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.

- 12.2** The volume of gas actually transmitted shall be measured in accordance with the Network Code.
- 12.3** 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 the economic test outcome notification and statements connected to termination of the Contract) shall be made by e-mail and by registered mail or by courier, whereas delivery by registered mail or courier is conclusive. This provision is subject, in particular, to Section 12.8 below.
- 12.4** 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.
- 12.5** The application of the following provisions of the Civil Code to the Contract is hereby also excluded: Section 1727, second and third sentence, Section 1748, Section 1765, Section 1766, Section 1799, Section 1800 and Section 2000.
- 12.6** Working days as referred to in this Contract mean working days in the Czech Republic.
- 12.7** 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.
- 12.8** 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.
- 12.9** 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.
- 12.10** This Contract is executed in two counterparts, of which each party shall receive one.

On \_\_\_\_\_

On \_\_\_\_\_

\_\_\_\_\_  
For NET4GAS, s.r.o.



Executive

\_\_\_\_\_  
For 





\_\_\_\_\_  
For NET4GAS, s.r.o.



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For 



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Executive





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**Provisional Annex No. 1**  
**Maximum Volumes of Capacity that May be Subject Matter of Contract**

(in GWh / day)

Gas Year	Entry Point
	Entry
2025/2026	
2026/2027	
2027/2028	
2028/2029	
2029/2030	
2030/2031	
2031/2032	
2032/2033	
2033/2034	
2034/2035	
2035/2036	
2036/2037	
2037/2038	
2038/2039	
2039/2040	

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**Annex No. 1**

**Reserved Capacities**

(in GWh / day)

Gas Year	Entry Point
	Entry
2025/2026	
2026/2027	
2027/2028	
2028/2029	
2029/2030	
2030/2031	
2031/2032	
2032/2033	
2033/2034	
2034/2035	
2035/2036	
2036/2037	
2037/2038	
2038/2039	
2039/2040	