

**[DATE]**

**[CAPACITY PLATFORM OPERATOR]**

and

**[CUSTOMER]**

---

**AGREEMENT**

**RELATING TO THE MULTIPLE TSO**

**CAPACITY PLATFORM SERVICES**

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This Agreement is made:

BETWEEN:

- (1) Fluxys S.A., a company incorporated under the laws of Belgium with its registered office at 1040 Brussels, Kunstlaan 31 and registered at the Register for Legal Entities under number 0402.954.628, VAT number 402.954.628 (hereinafter called the “Capacity Platform Operator” which expression includes its successors in title and permitted assigns);

of the one part;

and:

- (2) [COMPANY], a company incorporated under the laws of [COUNTRY] with its registered office [ADDRESS] and registered in [REGISTRY] under n° [NUMBER] (hereinafter called the “Customer” which expression includes its successors in title and permitted assigns);

of the second part.

Capacity Platform Operator and Customer may hereinafter be referred to collectively as the “Parties” and individually as a “Party”.

**WHEREAS:**

- A. The Customer desires to transfer Capacity Rights and/or Capacity Titles commercialised on the Capacity Platform to or from another Market Participant and/or subscribe to Primary Capacity commercialised on the Capacity Platform by the TSOs and wants the Capacity Platform Operator to provide the services defined under **Exhibit I** as the Capacity Platform Services; and,
- B. The Capacity Platform Operator is willing to facilitate the transfer of Capacity Rights and Capacity Titles between Customer and other Market Participants on the Capacity Platform and the subscription of Primary Capacity by the Customer with the TSOs, and to provide the Capacity Platform Services in accordance with and subject to the terms and conditions of this Capacity Platform Services Agreement.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

### **Section 0**

Except where the context otherwise requires, all capitalised expressions (when used in this Agreement) shall have the meaning attributed to these expressions in the Agreement.

## Section 1

The Capacity Platform Operator and the Customer hereby enter into a Capacity Platform Services Agreement which shall include the Capacity Platform Services Agreement Terms and Conditions as laid out under Exhibit I and the Appendices A to D.4 hereto. The Capacity Platform Operator warrants that any and all other agreements for transfer of Capacity Rights and Capacity Titles and the subscription of Primary Capacity on the Capacity Platform entered into between the Capacity Platform Operator and a Market Participant shall, but for the commencement and the cessation, be on the same terms as this Agreement as may be amended from time to time and at any time.

## Section 2

The Capacity Platform Operator shall provide to the Customer the Capacity Platform Services in accordance with this Capacity Platform Services Agreement and subject to the conditions set out therein:

- (i) as from the later between [DATE] and Launch Date (the “**Start Date**”);
- (ii) for [NUMBER] Connection(s);
- (iii) for the following markets:
  - Fluxys Market
  - GRTgaz Market
  - Bundled Fluxys-GRTgaz Market
  - Bundled Fluxys-OGE Market
  - Bundled GRTgaz-GRTgaz Deutschland Market

## Section 3

Contact details of the Customer with regard to notices under Clause 10.1 of the Capacity Platform Services Agreement Terms and Conditions:

Telephone: [TELEPHONE NUMBER]  
Telefax: [TELEFAX NUMBER]  
Address: [ADDRESS]  
E-mail : [EMAIL]

## Section 4

This Capacity Platform Services Agreement shall take effect on the date of signature of the Capacity Platform Services Agreement by both Parties.

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**IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be executed by its duly authorised representatives on [DATE].

For and on behalf of:

**CAPACITY PLATFORM OPERATOR:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

For and on behalf of:

**CUSTOMER:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit I**  
**Capacity Platform Services Agreement**  
**Terms and Conditions**

**LIST OF CONTENTS**

	<u>Page</u>
1. DEFINITIONS.....	7
2. ACCESS CONDITIONS.....	15
3. CAPACITY PLATFORM SERVICES .....	18
4. RULES OF USAGE & CONDUCT .....	20
5. INTENTIONALLY LEFT BLANK .....	25
6. INTENTIONALLY LEFT BLANK .....	25
7. LIABILITY AND INSURANCE .....	25
8. TERM OF AGREEMENT AND AMENDMENTS.....	26
9. FORCE MAJEURE .....	27
10. MISCELLANEOUS.....	28
11. DISPUTES.....	31
12. APPLICABLE LAW.....	32
Appendix A	ICT Technical Requirements
Appendix B.1	Standard Capacities Fluxys Market
Appendix B.2	Standard Capacities GRTgaz Market
Appendix B.3	Standard Capacities Bundled Fluxys – GRTgaz
Appendix B.4	Standard Capacities Bundled Fluxys – OGE
Appendix B.5	Standard Capacities Bundled GRTgaz-GRTgaz Deutschland
Appendix C	Intentionally left blank
Appendix D.1	Confirmation Letter by Fluxys TSO
Appendix D.2	Confirmation Letter by GRTgaz TSO

Appendix D.3	Confirmation Letter by OGE TSO
Appendix D.4	Confirmation Letter by GRTgaz Deutschland TSO

# 1. DEFINITIONS

1.1 The terms below shall have the following meaning in these Capacity Platform Services Agreement Terms and Conditions:

**“Access Conditions”** shall mean the conditions to which the Customer’s Access Rights are subject, as set out in Clause 2.

**“Access Right”** shall mean the rights pursuant to this Agreement to have access to the Capacity Platform and use the Capacity Platform for the purpose of entering into Transactions.

**“Access Services”** shall mean the services provided by the Capacity Platform Operator set out under Clause 3.2(i) pursuant to and in accordance with this Capacity Platform Services Agreement.

**“Affiliated Company”** or **“Affiliate”** shall mean:

- a) any company which directly or indirectly holds fifty (50) per cent or more of the share capital or the votes, in a Party hereto; or
- b) any company in which one of the Parties hereto directly or indirectly holds fifty (50) per cent or more of the share capital or the votes; or
- c) any company in which fifty (50) percent or more of the share capital or votes are held directly or indirectly by one or more company(s) which hold directly or indirectly fifty (50) per cent or more of the share capital or the votes in a Party hereto.

**“Agreement”** or **“Capacity Platform Services Agreement”** or **“CPSA”** shall mean the present Capacity Platform Services Agreement signed between the Capacity Platform Operator and the Customer including these Capacity Platform Services Agreement Terms and Conditions and Appendices A to D.4, as amended from time to time by the Parties.

**“Belgian Gas Act”** shall mean the Belgian gas act concerning the transportation of gaseous and other substances by pipeline of 12 April 1965 as amended from time to time.

**“BNetzA”** shall mean shall mean the German regulatory authority, being the “Bundesnetzagentur”.

**“Bundled Fluxys-GRTgaz Market”** shall mean such part of the Capacity Platform enabling Market Participants having access to both the Fluxys Market and the GRTgaz Market to conclude Transactions relating to Primary Capacity offered by the Relevant TSO(s) or to Capacity Rights or Capacity Titles originally commercialized by the Relevant TSO(s).

**“Bundled Fluxys-OGE Market”** shall mean such part of the Capacity Platform enabling Market Participants having access to both the Fluxys Market and the OGE Market to conclude Transactions relating to Primary Capacity offered by the Relevant TSO(s).

**“Bundled GRTgaz – GRTgaz Deutschland Market”** shall mean such part of the Capacity Platform enabling Market Participants having access to both the GRTgaz Market and the GRTgaz Deutschland Market to conclude Transactions relating to Primary Capacity offered by the Relevant TSO(s).

**“Capacity Platform”** shall mean the internet based interactive market operated by the Capacity Platform Operator for the transfer of Capacity Rights or Capacity Titles or subscription of Primary Capacity.

**“Capacity Platform Operator”** shall mean the company mentioned under the preamble of the Capacity Platform Services Agreement.

**“Capacity Platform Services”** shall mean the Access Services, the Transaction Notification Services and the TSO Notification and Status Follow-up Services.

**“Capacity Platform System”** shall mean the software supporting the Capacity Platform, which can be upgraded or replaced at the Capacity Platform Operators sole discretion.

**“Capacity Rights”** shall mean the amount of Standard Capacity that the relevant Market Participant is entitled to and may have available for:

- (i) transfer of the usage right relating thereto on the GRTgaz Market; and/or
- (ii) assignment on the Fluxys Market, according to the clause “Assignment through the Capsquare Platform”, as set out in the MTSA;

on the Capacity Platform, in accordance with the respective Transmission Agreements with the Relevant TSO(s).

**“Capacity Titles”** shall mean the amount of Standard Capacity that the relevant Market Participant is entitled to and may have available for assignment of all rights and obligations relating thereto on the Capacity Platform taking into account its existing transmission agreements with GRTgaz TSO.

**“Capacity Transaction Period”** shall mean the period for which Primary Capacity is subscribed or Capacity Rights or Capacity Titles are transferred pursuant to and in accordance with the terms of a Transaction.

**“Capacity Transferee”** shall mean the Market Participant to whom the Relevant TSO is selling Primary Capacity or the Capacity Transferor is transferring its Capacity Rights or Capacity Titles in whole or in part, pursuant to and in accordance with the terms of a Transaction.

**“Capacity Transferor”** shall mean the Relevant TSO selling Primary Capacity or the Market Participant transferring its Capacity Rights or Capacity Titles in whole or in part to the Capacity Transferee, pursuant to and in accordance with the terms of a Transaction.

**“Connections”** shall mean one or more simultaneous connection(s) to the Capacity Platform maintained (simultaneously) for the Customer by the Capacity Platform Operator enabling one or more user(s) to access and use the Capacity Platform on behalf of the Customer.

**“Covered Transaction”** shall mean a Transaction having the Transaction Status Covered, as given in Clause 4.2.5(ii)(a).

**“CRE”** shall mean the French regulatory authority, being the “Commission de Régulation de l’Energie”.

**“CREG”** shall mean the Belgian regulatory authority, being the “Commission pour la Régulation de l’Electricité et du Gaz” as referred to under Article 15/14 of the Belgian Gas Act.

**“Customer”** shall mean the company mentioned under the preamble of the Capacity Platform Services Agreement, being either Capacity Transferor or Capacity Transferee.

**“Due Date”** shall have the meaning given in Clause 6.2.

**“Due Time”** shall mean:

- (i) the moment in time at which Transactions for the relevant Primary Capacity or Capacity Rights or Capacity Titles are no longer possible; and
- (ii) in case of Capacity Rights or Capacity Titles: the ultimate time at which Capacity Transferor must have sufficient Capacity Rights or Capacity Titles available during the whole Capacity Transaction Period in order to complete the Transaction;

as set out below:

- a. for the Fluxys Market: at 18h the day before the start of the Capacity Transaction Period;
- b. for Capacity Rights transfer on the GRTgaz Market: at 14h the French working day before the start of the Capacity Transaction Period;
- c. for Capacity Titles transfer on the GRTgaz Market: at 18h the last French working day before the 10th of the Month for a Transaction made between the 1st and the 10th of the Month;
- d. for the Bundled Fluxys-GRTgaz Market: at 18h on the fifteenth calendar day of the Month before the start of the Capacity Transaction Period for the Monthly product; at 16h30 the day before the start of the Capacity Transaction period for the Day-ahead products;
- e. for the Bundled Fluxys-OGE Market: at 16h the day before the start of the Capacity Transaction Period;
- f. for the Bundled GRTgaz-GRTgaz Deutschland Market: at 18h on the fifteenth calendar day of the Month before the start of the Capacity Transaction Period for the Monthly backhaul product; at 18h on the day before seven days before the Month-ahead auction on TRAC-X Primary for the Monthly firm product (the Month-ahead auction on TRAC-X primary takes place on a variable day following

this rule: two weeks before the beginning of month M, then on the Tuesday backwards); at 16h30 the day before the start of the Capacity Transaction period for the Day-ahead products.

"**EUR**" shall mean euro.

"**Fluxys Market**" shall mean such part of the Capacity Platform enabling Market Participants to conclude Transactions relating to Primary Capacity offered by Fluxys TSO or relating to Capacity Rights originally commercialised by Fluxys TSO.

"**Fluxys TSO**" shall mean the operator of the Transmission System in Belgium, being Fluxys NV/SA, a company incorporated under the laws of Belgium, having its registered office at 1040 Brussels, Kunstlaan 31, registered at the Register for Legal Entities under number 0402.954.628.

"**Force Majeure**" shall have the meaning given in Clause 9.

"**Gas Day**" or "**Day**" shall mean the period of twenty-three (23), twenty-four (24) or twenty-five (25) hours, as the case may be, beginning at 06:00 hours (CET) on each Day and ending at 06:00 hours (CET) on the following Day and the date of any Gas Day shall be the date of its beginning as herein defined.

"**Grid**" shall mean the high pressure Natural Gas transmission network and Natural Gas Transmission System in Belgium, France and/or Germany operated by Fluxys TSO, GRTgaz TSO, OGE TSO and/or GRTgaz Deutschland TSO.

"**GRTgaz Deutschland Market**" shall mean such part of the Capacity Platform enabling Market Participants to conclude Transactions relating to Primary Capacity offered by GRTgaz Deutschland in the market area NetConnect Germany (NCG)

"**GRTgaz Deutschland TSO**" shall mean the operator of the high pressure Natural Gas Transmission System in Germany, being GRTgaz Deutschland GmbH, a company incorporated under the laws of Germany, having its registered office at Zimmerstraße 56, 10117 Berlin, registered at Amtsgericht Charlottenburg under number HRB 91992.

"**GRTgaz Market**" shall mean such part of the Capacity Platform enabling Market Participants to conclude Transactions relating to Primary Capacity offered by GRTgaz or relating to Capacity Rights or Capacity Titles originally commercialised by GRTgaz TSO.

"**GRTgaz TSO**" shall mean the operator of the high pressure Natural Gas Transmission System in France, a company incorporated under the laws of France, having its registered office at rue Raoul Nordling 6, 92277 Bois-Colombes Cedex, registered at RCS Paris 440 117 620.

"**Launch Date**" shall mean the date as from which the Capacity Platform Operator shall launch the Capacity Platform Services, which shall be anterior to 31<sup>st</sup> January 2009 and which shall be notified in writing by the Capacity Platform Operator to the Customer.

**“Market Participant”** shall mean the Customer or, as the case may be, a party having concluded a capacity platform services agreement, in the same format as the present Agreement, with the Capacity Platform Operator.

**“Master Transit Services Agreement”** shall mean the framework Transmission Agreement concluded with Fluxys TSO.

**“Month”** shall mean a calendar month, starting at 00:00 on the first Day and ending at 24:00 on the last Day of such month.

**“Natural Gas”** shall mean any hydrocarbon or mixture of hydrocarbons and non-combustible gases which, when extracted from the subsoil of the earth in its natural state separately or together with liquid hydrocarbons, is in the gaseous state.

**“NCG VTP”** shall mean the Virtual Trading Point in the market area NetConnect Germany (NCG).

**“NetConnect Germany GmbH & Co. KG”** is a joint company for operating the market area cooperation from the TSOs bayernets GmbH, Eni Gas Transport Deutschland S.p.A., Open Grid Europe GmbH, GRTgaz Deutschland GmbH, GVS Netz GmbH and Thyssengas GmbH for the merged market area NetConnect Germany (NCG).

**“Not Covered Transaction”** shall mean a Transaction having the Transaction Status Not Covered, as given in Clause 4.2.5(ii)(d).

**“Office Hours”** shall mean the period between 09:00 (CET) and 17:00 hours (CET) on a Working Day.

**“OGE Market”** shall mean such part of the Capacity Platform enabling Market Participants to conclude Transactions relating to Primary Capacity offered by OGE TSO in the market area NetConnect Germany (NCG).

**“OGE Network Access Conditions”** shall mean the Open Grid Europe Network Access Conditions, or similar provisions published by OGE TSO which replace the current Network Access Conditions of 01.04.2011, stating the rules for access to the networks of OGE TSO including the auxiliary services offered in connection with such access.

**“OGE TSO”** shall mean the operator of the OGE Transmission System in Germany, being Open Grid Europe GmbH, a company incorporated under the laws of Germany, having its registered office at Kallenbergstraße 5, D-45141 Essen, registered at Essen Amtsgericht/Registry Court under number Essen HRB 17487.

**“OTC Transaction”** shall mean a Transaction, which is concluded following the bilateral and exclusive discussions between two Market Participants and which is registered through the "Add Deal" function of the Capacity Platform.

**“Pending Transaction”** shall mean a Transaction having the Transaction Status Pending, as given in Clause 4.2.5(ii)(b) and (c).

**“Primary Capacity”** shall mean the amount of Standard Capacity relating to transmission capacity that the Relevant TSO(s) offer on the Capacity Platform.

**“Reasonable and Prudent Operator”** as used herein to describe the standard of care to be exercised by a Party in performing its obligations hereunder shall mean that degree of diligence, prudence and foresight reasonably and ordinarily exercised by experienced operators engaged in the same line of business under the same or similar circumstances and conditions having due consideration to the interest of the other Party under this Agreement.

**“Relevant Market”** shall mean the Fluxys Market and/or the GRTgaz Market and/or the Bundled Fluxys-GRTgaz Market and/or the Bundled Fluxys-OGE Market and/or the Bundled GRTgaz-GRTgaz Deutschland Market.

**“Relevant Regulator”** shall mean the CREG and/or the CRE and/or the BNetzA.

**“Relevant TSO(s)”** shall mean Fluxys TSO and/or GRTgaz Deutschland TSO and/or GRTgaz TSO and/or OGE TSO.

**“Signatories”** shall mean the Customer and the parties having signed a capacity platform services agreement in substantially the same format as the present Capacity Platform Services Agreement, which is still effective at the moment when a notice for amendment to the Agreement in accordance with Clause 8 is being sent.

**“Standard Capacity”** shall mean transmission capacity which has the characteristics specified in Appendix B.1, B.2, B.3, B.4 and B.5 of this Capacity Platform Services Agreement.

**“Start Date”** shall mean the date defined in Section 2 of the Capacity Platform Services Agreement, as from which the Capacity Platform Operator shall provide the Capacity Platform Services to the Customer.

**“Subscribed Primary Capacity”** shall mean the amount of Primary Capacity to which the Capacity Transferee has agreed to subscribe with the Capacity Transferor under a Transaction.

**“Tariffs”** shall mean the tariffs for services as approved by the CREG in application of the Belgian Gas Act for Fluxys Market or as approved by CRE for GRTgaz Market or as approved by BNetzA for OGE Market or GRTgaz Deutschland Market.

**“Trading Partners”** shall mean the Market Participants with whom the Customer agrees to enter into Transactions on the Capacity Platform in accordance with Clauses 2.1(iii) and 3.2(ii) for both the Fluxys Market and GRTgaz Market.

**“Transaction”** shall mean an agreement concluded on the Capacity Platform, pursuant to which Primary Capacity is subscribed or Capacity Rights or Capacity Titles are transferred.

**“Transaction Notification Services”** shall mean the provision by the Capacity Platform Operator of the services set out under Clause 3.2(ii) pursuant to and in accordance with this Capacity Platform Services Agreement.

**“Transaction Status”** shall mean the status of registration of a Transaction into the systems of the Relevant TSO(s), being either:

- (i) **“Pending”**, meaning that the Transaction is under evaluation; or,
- (ii) **“Covered”**, meaning that the Transaction is registered into the system; or
- (iii) **“Not Covered”**, meaning that the Transaction is not registered into the system.

**“Transferred Capacity Rights”** shall mean the amount of transferred Capacity Rights relating to Standard Capacity which the Capacity Transferor has agreed to transfer to the Capacity Transferee under a Transaction. Capacity Rights have the same characteristics as Standard Capacity.

**“Transferred Capacity Titles”** shall mean the amount of transferred Capacity Titles relating to Standard Capacity which the Capacity Transferor has agreed to transfer to the Capacity Transferee under a Transaction. Capacity Titles have the same characteristics as Standard Capacity.

**“Transaction End Date”** shall mean the end date of the Capacity Transaction Period.

**“Transaction Start Date”** shall mean the start date of the Capacity Transaction Period.

**“Transmission Agreement”** shall mean an agreement related to Natural Gas transmission of Primary Capacity or Capacity Rights or Capacity Titles through the Transmission System between the Market Participant and the Relevant TSO.

**“Transmission System”** shall mean the part of the Grid, which the Relevant TSO needs to perform its transmission services.

**“TSO Notification and Status Follow-up Services”** shall mean the provision by the Capacity Platform Operator of the services set out under Clause 3.2(iii) pursuant to and in accordance with this Capacity Platform Services Agreement.

**“Working Day”** shall mean a day in Belgium (other than a Saturday, Sunday or a public holiday on which banking institutions are authorised or required by law to close) on which the banks in Belgium are generally open for business.

**“Year”** shall mean a period of twelve (12) Months starting on the Start Date or on any anniversary date thereof and ending on the next following anniversary date thereof.

1.2 The Clause headings in these Capacity Platform Services Agreement Terms and Conditions are for convenience only.

1.3 A reference to the singular in these Capacity Platform Services Agreement Terms and Conditions includes a reference to the plural and vice versa unless the context requires otherwise.

- 1.4 Any reference to time shall be construed as whatever local time shall be in force in Belgium.
- 1.5 Where there are references made to laws and agreements these are the ones applicable at the time of providing the Capacity Platform Services hereunder.
- 1.6 Unless otherwise expressly provided, any reference in this Capacity Platform Services Agreement:
- (i) to a Clause is a reference to a Clause of these Capacity Platform Services Agreement Terms and Conditions;
  - (ii) to a Section is a reference to a section of the present Capacity Platform Services Agreement;
  - (iii) to an Appendix is a reference to an appendix of the present Capacity Platform Services Agreement.
- 1.7 Appendices to this Capacity Platform Services Agreement are an integral part of this Capacity Platform Services Agreement.
- 1.8 In the event of any inconsistency or conflict between the Capacity Platform Services Agreement and the Appendixes, the following order of priority shall apply:
- (i) Sections 0 through 4 of the Capacity Platform Services Agreement;
  - (ii) Capacity Platform Services Agreement Terms and Conditions;
  - (iii) Appendix A - ICT Technical Requirements;
  - (iv) Appendix B.1 - Standard Capacities Fluxys Market;
  - (v) Appendix B.2 - Standard Capacities GRTgaz Market;
  - (vi) Appendix B.3 - Standard Capacities Bundled Fluxys-GRTgaz Market;
  - (vii) Appendix B.4 - Standard Capacities Bundled Fluxys-OGE Market;
  - (viii) Appendix B.5 – Standard Capacities Bundled GRTgaz-GRTgaz Deutschland Market
  - (ix) Appendix D.1 – Confirmation Letter with Fluxys TSO;
  - (x) Appendix D.2 – Confirmation Letter by GRTgaz TSO; and,
  - (xi) Appendix D.3 – Confirmation Letter by OGE TSO.
  - (xii) Appendix D.4 – Confirmation Letter by GRTgaz Deutschland

## 2. ACCESS CONDITIONS

- 2.1 The Customer's access to the Capacity Platform shall be subject to the following conditions
- A. the general conditions (the "**General Access Conditions**"):
- (i) the Customer has signed the Agreement,
  - (ii) the Customer meets the technical requirements regarding ICT systems as described in Appendix A. The Customer is responsible for the operation and maintenance of its own ICT facilities needed for access to the Capacity Platform and use of the Capacity Platform Services. The Customer shall immediately notify the Capacity Platform Operator of technical deficiencies of its ICT system which affect or could affect interaction with the Capacity Platform.
  - (iii) the Customer has notified in writing to Capacity Platform Operator the Market Participants that shall be considered as Trading Partners and shall communicate any changes in this respect in accordance with Clause 3.2(ii). The notification will have effect as of the Start Date of the Capacity Platform Services Agreement.
- B. the conditions applicable for the Fluxys Market (the "**Fluxys Access Conditions**"):
- (i) the Customer agrees that Fluxys TSO registers any Covered Transaction concluded on the Capacity Platform in accordance with the Master Transit Services Agreement; and
  - (ii) the Customer has signed a Master Transit Services Agreement and is in possession of a Confirmation Letter sent by Fluxys TSO, included in Appendix D.1.
- C. the conditions applicable for the GRTgaz Market (the "**GRTgaz Access Conditions**"):
- (i) the Customer agrees that GRTgaz TSO registers any Covered Transaction concluded on the Capacity Platform according to its Transmission Agreement; and
  - (ii) the Customer has signed a Transmission Agreement with GRTgaz TSO and is in possession of a Confirmation Letter sent by GRTgaz TSO, included in Appendix D.2.
- D. the conditions applicable for the Bundled Fluxys-GRTgaz Market (the "**Bundled Fluxys-GRTgaz Access Conditions**"):
- (i) the Customer is a Market Participant for the Fluxys Market; and
  - (ii) the Customer is a Market Participant for the GRTgaz Market; and
  - (iii) the Customer complies with the Access Conditions as specified under A, B and C of this article 2.1.

- E. the conditions applicable for the OGE Market (the “**OGE Access Conditions**”):
- (i) the Customer agrees that OGE TSO registers any Covered Transaction concluded on the Capacity Platform in accordance with the OGE Network Access Conditions; and
  - (ii) the Customer has been registered as shipper with OGE TSO; and
  - (iii) the Customer has concluded a Balancing Group Contract in the market area NetConnect Germany (NCG) according to the relevant contractual Conditions published by NetConnect Germany GmbH & Co. KG. The Customer must be Balancing Group Manager according to the relevant contractual Conditions published by NetConnect Germany GmbH & Co. KG and must provide OGE TSO with its Balancing Group number and/or sub-balancing group account number; and
  - (iv) the Customer is in possession of a Confirmation Letter sent by OGE TSO, included in Appendix D.3.
- F. the conditions applicable for the Bundled Fluxys-OGE Market (the “**Bundled Fluxys-OGE Access Conditions**”):
- (i) the Customer is a Market Participant for the Fluxys Market; and
  - (ii) the Customer is a Market Participant for the OGE Market; and
  - (iii) the Customer complies with the Access Conditions as specified under A, B and E of this article 2.1.
- G. the conditions applicable for the GRTgaz Deutschland Market (the “**GRTgaz Deutschland Access Conditions**”):
- (i) the Customer agrees that GRTgaz Deutschland TSO registers any Covered Transaction concluded on the Capacity Platform in accordance with the GRTgaz Deutschland Network Access Conditions; and
  - (ii) the Customer has been registered as shipper with GRTgaz Deutschland TSO; and
  - (iii) the Customer has concluded a Balancing Group Contract in the market area NetConnect Germany (NCG) according to the relevant contractual Conditions published by NetConnect Germany GmbH & Co. KG. The Customer must be Balancing Group Manager according to the relevant contractual Conditions published by NetConnect Germany GmbH & Co. KG and must provide GRTgaz Deutschland TSO with its Balancing Group number and/or sub-balancing group account number; and
  - (iv) the Customer is in possession of a Confirmation Letter sent by GRTgaz Deutschland TSO, included in Appendix D.4.
- H. the conditions applicable for the Bundled GRTgaz-GRTgaz Deutschland Market (the “**Bundled GRTgaz-GRTgaz Deutschland Access Conditions**”):
- (i) the Customer is a Market Participant for the GRTgaz Market; and

- (ii) the Customer is a Market Participant for the GRTgaz Deutschland Market; and
- (iii) the Customer complies with the Access Conditions as specified under A, C and G of this article 2.1.

2.2 The Customer must at all times comply with the General Access Conditions and the Access Conditions with regard to the Relevant Market(s) set out in Clause 2.1. Regardless of any information obligations under other provisions of this Agreement, the Customer shall immediately inform the Capacity Platform Operator and/or the Relevant TSO('s) in writing, of any circumstance which affects or may affect its compliance with the said Access Conditions.

In case of non-compliance with (i) the General Access Conditions or the Fluxys Access Conditions, the obligations of the Capacity Platform Operator shall be suspended for the Fluxys Market for the duration of such non-compliance but not the payment obligations of the Customer under Clauses 5 and 6, and in case of non-compliance with (ii) the General Access Conditions or the GRTgaz Access Conditions, the obligations of the Capacity Platform Operator shall be suspended for the GRTgaz Market for the duration of such non-compliance but not the payment obligations of the Customer under Clauses 5 and 6, and in case of non compliance with (iii) the General Access Conditions or the OGE Access Conditions, the obligations of the Capacity Platform Operator shall be suspended for the OGE Market for the duration of such non-compliance but not the payment obligations of the Customer under Clauses 5 and 6, and in case of non compliance with (iv) the General Access Conditions or the GRTgaz Deutschland Access Conditions, the obligations of the Capacity Platform Operator shall be suspended for the GRTgaz Deutschland Market for the duration of such non-compliance but not the payment obligations of the Customer under Clauses 5 and 6, and in case of non compliance with (v) the General Access Conditions or the Bundled Fluxys-GRTgaz Market Access Conditions, the obligations of the Capacity Platform Operator shall be suspended for the Bundled Fluxys-GRTgaz Market for the duration of such non-compliance, but not the payment obligations of the Customer under Clauses 5 and 6 and in case of non compliance with (vi) the General Access Conditions or the Bundled Fluxys-OGE Market Access Conditions, the obligations of the Capacity Platform Operator shall be suspended for the Bundled Fluxys-OGE Market for the duration of such non-compliance, but not the payment obligations of the Customer under Clauses 5 and 6, and in case of non compliance with (vii) the General Access Conditions or the Bundled GRTgaz-GRTgaz Deutschland Access Conditions, the obligations of the Capacity Platform Operator shall be suspended for the Bundled GRTgaz-GRTgaz Deutschland Market for the duration of such non-compliance but not the payment obligations of the Customer under Clauses 5 and 6.

### 3. CAPACITY PLATFORM SERVICES

- 3.1 Subject to all terms and conditions hereof, the Capacity Platform Operator, acting as a Reasonable and Prudent Operator, shall, as from the Start Date and until the Agreement is terminated in accordance with Clause 8, provide the Customer with access to the Capacity Platform and provide the Capacity Platform Services to the Customer. Notwithstanding the foregoing, Capacity Platform Operator reserves the right at any moment to suspend or otherwise limit the availability of part or all of the Capacity Platform from time to time to make all modifications likely to improve or expand the operation of the Capacity Platform or to ensure its maintenance. Capacity Platform Operator will use its reasonable endeavours to keep such unavailability to a minimum.
- 3.2 The services to be provided by the Capacity Platform Operator to the Customer under this Agreement shall mean all of the following services (together the **“Capacity Platform Services”**):

(i) Access Services

The Capacity Platform Operator shall provide Access Rights, for the number of Connections and for the Relevant Market(s) specified in Section 2 of the Capacity Platform Services Agreement, to the Capacity Platform as from the Start Date subject to compliance with Clause 2.

For each Connection, a login and password is provided to the Customer by the Capacity Platform Operator for the purpose of accessing to the Capacity Platform.

(ii) Transaction Notification Services

The Capacity Platform Operator shall notify to the Customer the Transactions to which the Customer is a party upon the conclusion of said Transactions by means of an electronic notification through the Capacity Platform System.

The Capacity Platform Operator shall not allow Transactions between the Customer and a Market Participant unless said Market Participant has been notified as Trading Partner by the Customer and vice-versa.

The Customer shall notify Capacity Platform Operator in writing of any and all changes as to the Market Participants that shall be considered as Trading Partners. Such notification shall have effect at the latest five (5) Working Days after reception of this notification by the Capacity Platform Operator.

The Capacity Platform Operator shall at any time have the right to request an update from the Customer with regard to the Market Participants that shall be considered as Trading Partners. Customer shall send such update at the latest five (5) Working Days after receipt of such

request. Such update shall have effect at the latest five (5) Working Days after reception of this update by the Capacity Platform Operator.

Absent a notification of such update in accordance with the preceding paragraph, the Capacity Platform Operator shall by default consider Trading Partners previously notified by the Customer as being continued to be accepted as Trading Partners of the Customer.

(iii) Relevant TSO(s) Notification and Status Follow-up Services

The Capacity Platform Operator shall notify the Transactions to which the Customer is a party to the Relevant TSO(s), as further detailed under Clause 4.2.5.

The Capacity Platform Operator shall keep the Customer informed, electronically through the Capacity Platform System, of the evolution of the Transaction Status, as communicated by the Relevant TSO(s).

- 3.3 For the avoidance of doubt, the Capacity Platform Services provided hereunder by the Capacity Platform Operator for the Customer are no transmission services. The Capacity Platform Operator's purpose and function under this Agreement are strictly limited to facilitating Transactions between the Customer and a Market Participant, as customers on the Capacity Platform. The Capacity Platform Operator is not an insurer, bailor, or guarantor of any such Transactions.

## 4. RULES OF USAGE & CONDUCT

### 4.1 Rules of conduct

4.1.1 The Parties shall act as Reasonable and Prudent Operators so as to ensure the proper functioning of the Capacity Platform.

4.1.2 Without prejudice to Clause 4.1.1, the Customer:

- (i) warrants the correctness and the accuracy of the information it quotes on the Capacity Platform;
- (ii) undertakes not to make improper or unauthorised use of the technology of the Capacity Platform; and
- (iii) warrants that it has title to the Capacity Rights or Capacity Titles it offers on the Capacity Platform and has the right to transfer such offered Capacity Rights or Capacity Titles in accordance with the relevant Access Conditions set out in Clause 2.

4.1.3 The Capacity Platform Operator reserves to itself the right to modify, upgrade or replace at any time the electronic means of communication used for the services offered through the Capacity Platform. The Capacity Platform Operator reserves to itself the right at any moment to make all modifications likely to improve or expand the operation of the Capacity Platform or to ensure its maintenance. The Capacity Platform Operator will notify the Customer in due time of any change in the Capacity Platform.

## **4.2 Rules of usage**

### **4.2.1 General**

A Market Participant may only subscribe Primary Capacity or transfer Capacity Rights or Capacity Titles through Transactions on the Capacity Platform under the conditions set out in this Clause 4.2.

The Relevant TSO(s) are the sole parties entitled to offer Primary Capacity on the Capacity Platform.

4.2.2 Only Standard Capacity, as described in Appendix B.1, B.2, B.3, B.4 and B.5, may be subscribed, offered for transfer and transferred under a Transaction.

### **4.2.3 Rights and obligations of the Capacity Transferor pursuant to a Transaction**

#### **A. Transactions on the Fluxys Market**

By entering into a Transaction on the Capacity Platform, the Capacity Transferor concludes an assignment in accordance with the clause “Assignment through the Capsquare Platform” of the Master Transit Services Agreement with regard to the Transferred Capacity Rights during the relevant Capacity Transaction Period. Such assignment shall have effect as of the registration by Fluxys TSO of the Transaction as a Covered Transaction in accordance with Clause 4.2.5.

#### **B. Transactions on the GRTgaz Market**

(i) By entering into a Transaction relating to Capacity Rights on the Capacity Platform, the Capacity Transferor waives all its rights to nominate with regard to the Transferred Capacity Rights during the relevant Capacity Transaction Period, in accordance with the Transmission Agreement with GRTgaz TSO. Such waiver of its rights to nominate shall have effect as of the registration by GRTgaz TSO of the Transaction as a Covered Transaction in accordance with Clause 4.2.5.

(ii) By entering into a Transaction relating to Capacity Titles on the Capacity Platform, the Capacity Transferor waives all its rights and obligations, including the payment obligation, with regard to the Transferred Capacity Titles during the relevant Capacity Transaction Period. Such waiver of its rights and obligations shall have effect as of the registration by GRTgaz TSO of the Transaction as a Covered Transaction in accordance with Clause 4.2.5.

#### **C. Transactions on the Bundled Fluxys-GRTgaz Market**

(i) By entering into a Transaction relating to Primary Capacity on the Capacity Platform, the Capacity Transferors conclude the sale of Primary Capacity in accordance with the Transmission Agreement of (i) Fluxys TSO and (ii) GRTgaz TSO with regard to the Subscribed Primary Capacity during the

relevant Capacity Transaction Period. Such sale shall have effect as of the registration by the Relevant TSO of the Transaction relating to Primary Capacity as a Covered Transaction in accordance with Clause 4.2.5.

D. Transactions on the Bundled Fluxys-OGE Market

By entering into a Transaction relating to Primary Capacity on the Capacity Platform, the Relevant TSOs conclude the sale of Primary Capacity in accordance with the Transmission Agreement of (i) Fluxys TSO and (ii) OGE TSO with regard to the Subscribed Primary Capacity during the relevant Capacity Transaction Period. Such sale shall have effect as of the registration by the Relevant TSO of the Transaction relating to Primary Capacity as a Covered Transaction in accordance with Clause 4.2.5.

E. Transactions on the Bundled GRTgaz-GRTgaz Deutschland Market

By entering into a Transaction relating to Primary Capacity on the Capacity Platform, the Relevant TSOs conclude the sale of Primary Capacity in accordance with the Transmission Agreement of (i) GRTgaz TSO and (ii) GRTgaz Deutschland TSO with regard to the Subscribed Primary Capacity during the relevant Capacity Transaction Period. Such sale shall have effect as of the registration by the Relevant TSO of the Transaction relating to Primary Capacity as a Covered Transaction in accordance with Clause 4.2.5.

4.2.4 Rights and obligations of the Capacity Transferee pursuant to a Transaction

A. Transactions on the Fluxys Market

By entering into a Transaction on the Capacity Platform, the Capacity Transferee concludes an assignment in accordance with the Master Transit Services Agreement with regard to the Transferred Capacity Rights during the relevant Capacity Transaction Period. Such assignment shall have effect as of the registration by Fluxys TSO of the Transaction as a Covered Transaction in accordance with Clause 4.2.5.

B. Transactions on the GRTgaz Market

(i) As of the registration by the Capacity Platform Operator of a Transaction relating to Capacity Rights as a Covered Transaction in accordance with Clause 4.2.5, the Capacity Transferee shall have the right to nominate to GRTgaz TSO with regard to the Transferred Capacity Rights during the relevant Capacity Transaction Period.

(ii) As of the registration by the Capacity Platform Operator of a Transaction relating to Capacity Titles as a Covered Transaction in accordance with Clause 4.2.5, the Capacity Transferee shall have all the rights and obligations, in accordance with the Transmission Agreement with GRTgaz TSO, with regard to the Transferred Capacity Titles during the relevant Capacity Transaction Period.

C. Transactions on the Bundled Fluxys-GRTgaz Market

By entering into a Transaction relating to Primary Capacity on the Capacity Platform, the Capacity Transferee subscribes Primary Capacity in accordance with the Transmission Agreement of (i) Fluxys TSO and (ii) GRTgaz TSO with regard to the Subscribed Primary Capacity during the relevant Capacity Transaction Period. Such subscription shall have effect as of the registration by the Relevant TSOs of the Transaction relating to Primary Capacity as a Covered Transaction in accordance with Clause 4.2.5.

D. Transactions on the Bundled Fluxys-OGE Market

By entering into a Transaction relating to Primary Capacity on the Capacity Platform, the Capacity Transferee subscribes Primary Capacity in accordance with the Transmission Agreement of (i) Fluxys TSO and (ii) OGE TSO with regard to the Subscribed Primary Capacity during the relevant Capacity Transaction Period. Such subscription shall have effect as of the registration by the Relevant TSOs of the Transaction relating to Primary Capacity as a Covered Transaction in accordance with Clause 4.2.5.

E. Transactions on the Bundled GRTgaz-GRTgaz Deutschland Market

By entering into a Transaction relating to Primary Capacity on the Capacity Platform, the Capacity Transferee subscribes Primary Capacity in accordance with the Transmission Agreement of (i) GRTgaz TSO and (ii) GRTgaz Deutschland TSO with regard to the Subscribed Primary Capacity during the relevant Capacity Transaction Period. Such subscription shall have effect as of the registration by the Relevant TSOs of the Transaction relating to Primary Capacity as a Covered Transaction in accordance with Clause 4.2.5.

4.2.5 Transaction Status and Transaction Registration

- (i) The Capacity Platform Operator notifies all Transactions to the Relevant TSO(s) and the Relevant TSO(s) registers the Transactions. The Relevant TSO(s) will only register Transactions as Covered Transactions, if the Capacity Transferor has sufficient Primary Capacity, Capacity Rights or Capacity Titles available in order to complete the Transaction. The Capacity Platform Operator shall request the Relevant TSO(s) to carry out such verification upon notification of the Transaction, in accordance with the provisions of this Clause 4.2.5. The Relevant TSO(s) shall verify the Transactions in chronological order of priority. The Capacity Platform Operator shall keep the Customer informed as to the outcome of such verification in accordance with Clause 3.2, (iii). Awaiting the verification by the Relevant TSO(s), the Transaction shall be registered on the Capacity Platform as a Pending Transaction.

- (ii) If:
- (a) the Capacity Transferor has the requested Primary Capacity, Capacity Rights or Capacity Titles available during the whole Capacity Transaction Period for all Relevant TSO(s), the Transaction is registered under the status **“Covered Transaction”** which implies that the Capacity Transferee acquires:
    - i. the right to nominate to the Relevant TSO(s) with regard to the Transferred Capacity Rights; or
    - ii. all rights and obligations with regard to the Subscribed Primary Capacity or Transferred Capacity Titles in accordance with the Transmission Agreement with the Relevant TSO.
  - (b) for a Transaction relating to Capacity Rights, a Transaction is awaiting the verification by the Relevant TSO(s) or if it turns out on the basis of the verification that the Capacity Transferor does not have the whole Capacity Rights available during the whole Capacity Transaction Period in order to complete the Transaction, the Transaction is classified under the status **“Pending Transaction”** as long as the Transaction has not been verified by the Relevant TSO(s) or as long as the Capacity Transferor does not have sufficient Capacity Rights available during the Capacity Transaction Period to complete the Transaction.
  - (c) for a Transaction relating to Capacity Titles or Primary Capacity, a Transaction is awaiting the verification by the Relevant TSO, the Transaction is classified under the status **“Pending Transaction”** as long as the Transaction has not been verified by the Relevant TSO.
  - (d) a Transaction has been classified under the status **“Pending Transaction”** at the Due Time and the Capacity Transferor still does not have sufficient Primary Capacity, Capacity Rights or Capacity Titles available during the whole Capacity Transaction Period in order to complete the Transaction for at least one Relevant TSO, the Transaction will be classified under the status **“Not Covered Transaction”**.
  - (e) Deviant from (d) if a Transaction relating to the Bundled Fluxys-OGE Market has been classified under the status **“Pending Transaction”** at the Due Time and the Relevant TSO(s) still do not have sufficient Primary Capacity available during the whole Capacity Transaction Period in order to complete the Transaction for at least one Relevant TSO, the Transaction will be classified under the status **“Not Covered Transaction”** at latest at 18:00h.

The list of the Transactions and all relevant details thereto can be consulted by the Customer via the Capacity Platform.

## 5. INTENTIONALLY LEFT BLANK

## 6. INTENTIONALLY LEFT BLANK

## 7. LIABILITY AND INSURANCE

7.1 The Capacity Platform Operator is towards the Customer only liable for gross negligence or wilful misconduct committed in the framework of fulfilling its obligations under this Agreement.

7.2 Without prejudice to Clauses 7.1, 7.3 and 7.5, the Capacity Platform Operator shall under no circumstances be liable for damage resulting from:

- (i) inaccurate information provided by the Customer or any third party;
- (ii) improper or unauthorised access to or use of the Capacity Platform;
- (iii) failure to perform an obligation under a Transaction by any of the parties thereto; or
- (iv) suspension, or any reason causing a limited or lack of availability of the Capacity Platform due to for instance maintenance or modifications made to improve or expand the Capacity Platform.

7.3 Without prejudice to Clauses 7.1, 7.2 and 7.5, the Capacity Platform Operator shall not be liable for any direct or indirect damage flowing from the consultation of its website or connected website, the use of software or documents made available to the Customer or the use of information collected on the Capacity Platform Operator's website.

7.4 The Customer agrees to defend, indemnify and hold harmless the Capacity Platform Operator from any and all costs, expenses, penalties, fines, claims, liabilities, damages or judgments imposed on the Capacity Platform Operator arising out of the Customer's acts or omissions related to the Customer's obligations under this Agreement. The Capacity Platform Operator will not be indemnified in respect of any damages and liabilities relating to its own gross negligence or wilful misconduct in such damages or liability.

7.5 Neither Party shall be liable to the other for any loss of use, profits, contracts, production, revenue or for business interruption or for any consequential or indirect loss or damage of whatsoever nature and howsoever arising except in respect of gross negligence or wilful misconduct by the Party.

In case of gross negligence of the Capacity Platform Operator the damages paid by the Capacity Platform Operator shall in no event during any calendar year exceed EUR 50.000.

7.6 Any insurance in respect of the Parties' liabilities under the Agreement shall contain waivers of subrogation in favour of the other Party.

## 8. TERM OF AGREEMENT AND AMENDMENTS

- 8.1 The Agreement shall enter into force on the date of signature by the Parties and shall have an indefinite term.
- 8.2 The Agreement may be terminated by either Party upon at least three (3) Months prior written notice with effect from the first day of the month following such notification of the terminating Party.
- 8.3 For any amendment to the Agreement by the Capacity Platform Operator the following shall apply:
- (i) the Capacity Platform Operator may issue to the Customers, in writing, amendment notices to implement amendments, additions to the Agreement including the text of the proposed amendment. Said notice shall be issued at least six (6) weeks in advance of the proposed change(s) becoming effective; and,
  - (ii) the Customer may terminate the Agreement in case of any effective amendment under this Clause upon at least one (1) Month prior written notice with effect as from the first day of the month following such written notice of the Customer.
- 8.4 A Party may terminate the Agreement forthwith on giving notice to the other Party:
- (i) in the event of the other Party becoming insolvent, or having a receiver, liquidator, administrator, administrative receiver or the equivalent thereof appointed over some or all of its assets or if proceedings are commenced for its dissolution or winding up (other than a voluntary winding up for the purposes of solvent amalgamation or reconstruction); or,
  - (ii) in the event of a material adverse change in the financial standing of the other Party when compared to such Party's financial standing as at the date of signature of the Agreement which change affects its ability to perform its financial obligations in respect of the Agreement, and such Party fails to provide reasonable security for the performance of its financial obligations in respect of the Agreement within five (5) Working Days of the other Party's request therefore.
- 8.5 The non-defaulting Party may terminate the Agreement by giving five (5) Working Days' notice to the other Party in the event that the other Party:
- (i) is materially in breach of its obligations under the Agreement and has failed to remedy the breach within five (5) Working Days of a notice from the non-defaulting Party requiring such remedy. For the avoidance of doubt, the non-compliance after the Start Date with the Access Conditions by the Customer shall be deemed to constitute a serious breach; or,
  - (ii) fails to pay the amount specified in the Monthly invoice in accordance with Clause 6.1 provided that the Party in breach has failed to remedy

the breach before expiry of the notice period. In the case of the breach being remedied, the notice is deemed not to have been given.

- 8.6 If it is reasonably foreseeable that the circumstances of Force Majeure affecting the Capacity Platform Operator may exceed a period of six (6) Months either Party may terminate the Agreement by giving thirty (30) Days notice to the other Party.
- 8.7 The expiry or termination of the Agreement, however occurring, shall not affect any rights or obligations that may have accrued to either Party under these Capacity Platform Services Agreement Terms and Conditions prior to such expiry or termination.
- 8.8 Termination taking place in accordance with this Clause 8, will take place without the need for a court's intervention and without compensation for termination being due by the terminating Party.

## 9. FORCE MAJEURE

- 9.1 The term "Force Majeure" shall mean any event or circumstances beyond the control of a Party acting in accordance with the standards of a Reasonable and Prudent Operator which causes or results in a failure by such Party to fulfil any obligation under the Agreement, other than the obligation to make money payments hereunder.

Events which, provided they fulfil the requirements stated in the preceding sentence, constitute Force Majeure, shall include, but not be limited to: forces of nature, strikes, lock-outs, acts of Government or any governmental authority or representative thereof (whether or not legally valid), wars, insurrections, riots, landslides, fires, floods, earthquakes, explosions, breakage or accidents to any equipment or software of the Capacity Platform Operator.

Any labour dispute shall be settled at the sole discretion of the Party having such dispute.

- 9.2 If by reason of Force Majeure either Party is rendered unable wholly or in part to carry out its obligations under the Agreement, then the obligations of the Party concerned, as long as and to the extent that the obligations are affected by such Force Majeure, shall be suspended.

However, if the Customer is affected by Force Majeure, the Customer shall not be released from its obligations under Clauses 5 and 6.

To the extent the Capacity Platform Operator's obligations are suspended as a result of the Capacity Platform Operator being affected by Force Majeure the Customer shall be released pro rata temporis from its obligations under Clause 5.1 (i).

- 9.3 A Party claiming relief on account of Force Majeure shall:

- (i) forthwith notify the other Party of the event or circumstances constituting Force Majeure and shall with reasonable diligence furnish all available information on the cause of the event and estimate the time required to remedy the Force Majeure situation; and
- (ii) forthwith take all reasonable practicable steps to rectify the circumstances preventing the performance of its obligations immediately after those circumstances arise and to minimise the damage caused thereby.

## 10. MISCELLANEOUS

### 10.1 Notices

10.1.1 Unless otherwise expressly stated in the Agreement any notice or other communication to be given or made hereunder by one Party to the other shall be given or made in writing to the other at that Party's registered office or such other address or contact number as that Party shall notify to the other from time to time and shall be deemed to have been received:

- (i) if delivered by hand, on the Working Day so delivered or on the first Working Day following the date of delivery if delivered on a day other than a Working Day;
- (ii) if sent by registered post, on the second Working Day after the day of posting or, if sent from one country to another, on the fifth Working Day following the day of posting;
- (iii) in the case of a facsimile transmission, on the day of transmission if that day is a Working Day or on the first Working Day following the day of transmission if that day of transmission is not a Working Day and provided that a valid transmission report confirming good receipt is generated.

If a notice is sent by facsimile, the Party giving the notice shall (but without prejudice to Clause 10.1 (iii), first paragraph), if so requested by the other Party, resend the notice as soon as practicable by post.

10.1.2 Parties may agree upon using other forms of communications than those above.

10.1.3 Notices can be given to the following addresses (or any other address notified in writing by a Party to the Other Party):

For the Capacity Platform Operator: Kunstlaan 31, 1040 Brussels, Belgium

Fax: +32 (0) 2 282 02 50

For the Customer:

as provided under Section 3 of the Capacity Platform Services Agreement

### 10.2 Assignment

- 10.2.1 Neither the Capacity Platform Operator nor the Customer may, in whole or in part, assign any of its rights and obligations under this Agreement without prior written consent of the other Party.
- 10.2.2 Notwithstanding Clause 10.2.1, the Customer and the Capacity Platform Operator shall be free to assign any of its rights and obligations under the Agreement to (i) an Affiliated Company or (ii) to a joint venture created by Fluxys TSO, GRTgaz TSO, OGE TSO and GRTgaz Deutschland TSO and if applicable, by any other TSO's, without the prior written consent of the other Party provided that the assignor shall remain liable for the obligations of the assignee hereunder towards the other Party.
- 10.2.3 Without prejudice to Clauses 10.2.1 and 10.2.2, no assignment by a Party shall be effective for the purpose of the Agreement until after written notice of such assignment has been given by the assignor to the other Party, or to his successors or assignees.

### **10.3 Confidentiality**

- 10.3.1 Without prejudice to what is set out under Section 10.3.2, all information obtained hereunder by one Party from the other Party shall be treated as confidential and shall not be disclosed without the prior written consent of the other Party, save that such consent shall not be required for disclosure:
- (i) to directors, employees or Affiliated Companies of either Party subject to Clause 10.4 and if and only to the extent that such disclosure is required for the performance of their operations or work in relation to the Agreement, or to Market Participants provided that they in turn are required by that Party to treat the information so disclosed as confidential;
  - (ii) to consultants or advisors under contract with either Party, provided that they in return are required by that Party to treat the information so disclosed as confidential;
  - (iii) to any government department, regulatory authority or agency having jurisdiction over that Party;
  - (iv) to any bank or other financial institution in relation to the financing of either Party's business activities, provided that the bank or other financial institution, as the case may be, is required by that Party to treat the information so disclosed as confidential;
  - (v) to the extent required by any applicable law, judicial process or the rules and regulations of any recognised stock exchange;
  - (vi) to any intended assignee of the rights and interests of either Party under the Agreement provided that such intended assignee in turn is required by that Party to treat the information so disclosed as confidential;

- (vii) to the Relevant TSO(s) provided that the Relevant TSO(s) in return is required by that Party to treat the information so disclosed as confidential; or,
- (viii) to the extent that such information is in or lawfully comes into the public domain other than by breach of this Clause 10.

10.3.2 Notwithstanding the provisions of Clause 10.3.1, (i) the Customer agrees that the following information is not confidential and that the Capacity Platform Operator shall be entitled to publish or disclose the following information to third parties:

- (a) the names of all Market Participants including the Customer;
- (b) with regard to Transactions not being OTC Transactions: the details of any Covered Transaction excluding the identity of Transferor and Transferee; and
- (c) with regard to OTC Transactions: aggregated traded volumes and the amount of Covered OTC Transactions;

and (ii) the Capacity Platform Operator agrees that the Customer shall be entitled to disclose to third parties that it has entered into a Capacity Platform Services Agreement.

10.3.3 The Customer shall use the Capacity Platform System and the operational information in respect of the Capacity Platform only for the purposes set forth in this Agreement and the Customer agrees that the aforementioned items remain the exclusive property of the Capacity Platform Operator or of one of its (sub)contractors and undertakes not to copy or reproduce such materials by any means whatsoever or to provide or otherwise make available such materials in full or in part to any third party.

#### **10.4 Intellectual Property Rights**

10.4.1 The intellectual property rights associated with the Capacity Platform and its component parts belong exclusively to Capacity Platform Operator and/or its licensors. Customer undertakes to respect the concerned rightholders' intellectual property rights to works, computer software and databases, made available to it, in whatsoever form, with due regard to applicable national and international copyright, software and database protection laws.

## 11. DISPUTES

- 11.1 All claims, disputes and other matters arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the Belgian Centre for Mediation and Arbitration (the “**CEPINA Rules**”) by one or more arbitrators appointed in accordance with the said CEPINA Rules, as amended from time to time.
- 11.2 Unless otherwise agreed by the Parties such arbitration shall be conducted by three (3) arbitrators, one (1) selected by each Party and the third arbitrator nominated by the arbitrators so selected within thirty (30) Days after the appointment of the second arbitrator. The third arbitrator shall act as chairman of the board of arbitration and shall be a fully educated and trained lawyer.
- 11.3 The arbitration proceedings shall be held in Brussels and conducted in the English language. The Parties expressly exclude any application for setting aside the arbitral award.

## 12. APPLICABLE LAW

- 12.1 The Agreement shall be exclusively governed by and construed in accordance with Belgian law.

## APPENDIX A -- ICT TECHNICAL REQUIREMENTS

Operating System:	One of the following: <ul style="list-style-type: none"><li>• Microsoft Vista Business edition</li><li>• Microsoft Windows XP with service pack 2.</li><li>• Microsoft Windows 2000 with service pack 4.</li><li>• Microsoft Windows NT with service pack 6.</li></ul> Note: support for Microsoft Windows NT has been deprecated. Future versions of GlobalVision Dealing System may not support this operating system
Processor	1 Ghz Pentium class
Memory	At least 1 GB RAM
Software	Internet Explorer version 6.

It is understood that these ICT Technical Requirements may be revised or modified from time to time by the Capacity Platform Operator in view of technological evolutions or when upgrading or replacing the Capacity Market System. Such revisions or modifications will be notified in due time by the Capacity Platform Operator to the Customer.

## APPENDIX B.1 – STANDARD CAPACITIES FLUXYS MARKET

On the Fluxys Market, only Transit Services Rights, being Transit Services which Shipper has subscribed under and in accordance with the Master Transit Services Agreement with Fluxys TSO, shall be considered as Standard Capacities.

Capitalised terms in this Appendix B shall have the meaning given to them in the Master Transit Services Agreement, with the terms “Entry Point”, “Entry/Exit between Zones” and “Exit Point” defined in Attachment C of the Master Transit Services Agreement.

For Capacity Rights on Entry Points, Entry/Exits between Zones and Exit Points the Standard Capacity is Firm Capacity, except if a condition is mentioned, in which case the Standard Capacity is Conditional Capacity.

Instruments on Capacity Platform	Capacity Rights on		
	Entry Point	Entry/Exit between Zones	Exit Point
Entry ZPT	ZPT	-	-
Entry IZT	IZT	-	-
Exit IZT	-	-	IZT
Entry LNG	LNG	-	-
Entry Hub	Zeebrugge Hub	-	-
Exit Hub	-	-	Zeebrugge Hub
Entry Zelzate 1 [GTS]	Zelzate 1		
Exit Zelzate 1 [GTS]	-	-	Zelzate 1
Entry Zelzate 2 [Zebra]	Zelzate 2		
	Standard forward flow condition for Entry Point Zelzate 2: The total net confirmed nominations on Zelzate 2 may not exceed 0 m <sup>3</sup> (n)/h in the Entry direction.		
Exit Zelzate 2 [Zebra]	-	-	Zelzate 2
Entry Eynatten 1 [WINGAS Transport]	Eynatten 1	-	-
Exit Eynatten 1 [WINGAS Transport]	-	-	Eynatten 1
Entry Eynatten 2 [Open Grid Europe]	Eynatten 2	-	-
Exit Eynatten 2 [Open Grid Europe]	-	-	Eynatten 2
Entry Blaregnies Troll	Blaregnies Troll	-	-
	Standard forward flow condition for Entry Point Blaregnies Troll: The total net confirmed nominations on Blaregnies Troll may not exceed 0 m <sup>3</sup> (n)/h in the Entry direction.		
Exit Blaregnies Troll	-	-	Blaregnies Troll
VTN_West Entry/Exit +	-	VTN_West Entry/Exit in the positive direction	-
	-		-

VTN_West Entry/Exit -		VTN_West Entry/Exit in the negative direction	
VTN_East Entry/Exit +	-	VTN_East Entry/Exit in the positive direction	-
VTN_East Entry/Exit -	-	VTN_East Entry/Exit in the negative direction	-
West_South Entry/Exit +	-	West_South Entry/Exit in the positive direction	-
West_South Entry/Exit -	-	West_South Entry/Exit in the negative direction	-

Bundled instruments on Capacity Platform	Capacity Rights on		
	Entry Point	Entry/Exit between Zones	Exit Point
Hub to Eynatten 1 [WINGAS Transport]	Zeebrugge Hub	VTN_West Entry/Exit in the positive direction and VTN_East Entry/Exit in the positive direction	Eynatten 1
Hub to Eynatten 2 [Open Grid Europe]	Zeebrugge Hub	VTN_West Entry/Exit in the positive direction and VTN_East Entry/Exit in the positive direction	Eynatten 2
Hub to Zelzate 1 [GTS]	Zeebrugge Hub	VTN_West Entry/Exit in the positive direction	Zelzate 1
Hub to Zelzate 2 [Zebra]	Zeebrugge Hub	VTN_West Entry/Exit in the positive direction	Zelzate 2
Hub to Blaregnies Troll	Zeebrugge Hub	West_South Entry/Exit in the positive direction	Blaregnies Troll
Eynatten 1 [WINGAS Transport] to Hub	Eynatten 1	VTN_East Entry/Exit in the negative direction and VTN_West Entry/Exit in the negative direction	Zeebrugge Hub
Eynatten 2 [Open Grid Europe] to Hub	Eynatten 2	VTN_East Entry/Exit in the negative direction and VTN_West Entry/Exit in the negative direction	Zeebrugge Hub
VTN_West Entry/Exit - and Exit Hub		VTN_West Entry/Exit in the negative direction	Zeebrugge Hub
Blaregnies Troll to Hub	Blaregnies Troll	West_South Entry/Exit in the negative direction	Zeebrugge Hub
	<ul style="list-style-type: none"> <li>• <u>Standard forward flow condition on the Entry Point Blaregnies Troll:</u> The total net confirmed nominations on Blaregnies Troll may not exceed 0 m<sup>3</sup>(n)/h in the Entry direction.</li> <li>• Capacity on Zeebrugge Hub and West_South Entry/Exit in the negative direction is firm.</li> </ul>		

## **APPENDIX B.2 – STANDARD CAPACITIES GRTgaz MARKET**

### **B.2.1 Firm Forward Capacity**

For Capacity Rights and Capacity Titles at:

- (i) Taisnières H entry point;
- (ii) Taisnières B entry point;
- (iii) Dunkerque entry point;
- (iv) Obergailbach entry point;
- (v) Oltingue exit point;
- (vi) North to South link;
- (vii) South to North link;
- (viii) Midi entry point; and
- (ix) Midi exit point;

The Standard Capacity is Firm Forward Capacity.

### **B.2.2 Firm Backhaul Capacity**

For Capacity Rights and Capacity Titles at:

- (i) Taisnières H exit point;
- (ii) Obergailbach exit point; and
- (iii) Oltingue entry point;

the Standard Capacity is Firm Backhaul Capacity in accordance with §.3.1.3.2 of the General Terms and Conditions of GRTgaz Transmission Agreement.

## **APPENDIX B.3 – STANDARD CAPACITIES**

### **BUNDLED FLUXYS-GRTgaz MARKET**

The Bundled instruments between Zeebrugge HUB and PEG Nord on the Capacity Platform consist of Standard Capacities offered by Fluxys TSO and GRTgaz TSO:

#### **Product 1**

##### **B.3.1 Monthly Interruptible Capacity Level 1 offered by Fluxys TSO**

For Primary Capacity at:

- (i) Entry Point Zeebrugge Hub
- (ii) Entry/Exit between Zones: West\_South Entry/Exit in the positive direction
- (iii) Exit Point Blaregnies Troll

These interruptible Level 1 Capacities are considered not having the option “last upgraded” as referred to in the MTSA.

##### **B.3.2 Monthly Firm Forward Capacity offered by GRTgaz TSO**

For Primary Capacity at:

- (iv) Taisnières H entry point;

The Standard Capacity is Firm Forward Capacity.

#### **Product 2**

##### **B.3.3 Day-ahead Firm Capacity offered by Fluxys TSO**

For Primary Capacity at:

- (i) Entry Point Zeebrugge Hub
- (ii) Entry/Exit between Zones: West\_South Entry/Exit in the positive direction
- (iii) Exit Point Blaregnies Troll

#### **B.3.4 Day-ahead Firm Forward Capacity offered by GRTgaz TSO**

For Primary Capacity at:

- (iv) Taisnières H entry point;

The Standard Capacity is Firm Forward Capacity.

#### **Product 3**

#### **B.3.5 Day-ahead Interruptible Capacity Level 1 and/or Level N offered by Fluxys TSO**

For Primary Capacity at:

- (i) Entry Point Zeebrugge Hub
- (ii) Entry/Exit between Zones: West\_South Entry/Exit in the positive direction
- (iii) Exit Point Blaregnies Troll

#### **B.3.6 Day-ahead Firm Forward Capacity offered by GRTgaz TSO**

For Primary Capacity at:

- (iv) Taisnières H entry point;

The Standard Capacity is Firm Forward Capacity.

The Bundled instrument 'PEG Nord to Zeebrugge HUB' on the Capacity Platform consists of Standard Capacities offered by Fluxys TSO and GRTgaz TSO:

#### **Product 4**

#### **B.3.7 Day-ahead Conditional Capacity offered by Fluxys TSO**

For Primary Capacity at:

- (i) Exit Point Zeebrugge Hub
- (ii) Entry/Exit between Zones: West\_South Entry/Exit in the negative direction
- (iii) Entry Point Blaregnies Troll

#### **B.3.8 Day-ahead Backhaul Capacity offered by GRTgaz TSO**

For Primary Capacity at:

- (iv) Taisnières H exit point;

The unit in which the Standard Capacity is offered on the Bundled Fluxys-GRTgaz Market is MWh (GCV 25°C) per day, where GCV 25°C shall mean that quantity of heat expressed in kiloWatt-hour produced by the complete combustion of one (1) normal cubic metre of Natural Gas at twenty-five (25) degrees Celsius and an absolute pressure of one decimal zero one three two five (1.01325) bar with excess air at the same temperature and pressure as the Natural Gas when the products of combustion are cooled to twenty-five (25) degrees Celsius and when the water formed by combustion is condensed to the liquid state and the products of combustion contain the same total mass of water vapour as the Natural Gas and air before combustion.

Before registration by the Relevant TSO, the Subscribed Primary Capacity is converted into the standard unit of the Relevant TSO.

Subscribed Primary Capacity in MWh (GCV 25°C) per day is converted by Fluxys TSO into normal cubic metre per hour by multiplying by thousand (1000), dividing by twenty-four (24) and dividing by eleven point sixty-three (11,63). The result is rounded to zero (0) significant decimals according following rules:

- A non-significant decimal equal to zero (0), one (1), two (2), three (3) or four (4) does not increase the significant decimal.
- A non-significant decimal equal to five (5), six (6), seven (7), eight (8) or nine (9) increases the significant decimal.

Subscribed Primary Capacity in MWh (GCV 25°C) per day is converted by GRTgaz TSO into MWh (GCV 0°C) by multiplying by one point zero zero twenty-six (1,0026). The result is rounded to three (3) significant decimals as described in the Transmission Agreement with GRTgaz

## **APPENDIX B.4 – STANDARD CAPACITIES BUNDLED FLUXYS-OGE MARKET**

The Bundled instrument ‘Zeebrugge HUB to NCG VTP’ on the Capacity Platform consists of Standard Capacities offered by Fluxys TSO and OGE TSO:

### **B.4.1 Firm Capacity, offered by Fluxys TSO**

For Primary Capacity at:

- (i) Entry Point Zeebrugge Hub
- (ii) Entry/Exit between Zones: VTN West in the positive direction
- (iii) Entry/Exit between Zones: VTN East in the positive direction
- (iv) Exit Point Eynatten 2

### **B.4.2 Firm Capacity offered by OGE TSO**

For Primary Capacity at:

- (i) Entry point Eynatten/Raeren

The Bundled instrument ‘NCG VTP to Zeebrugge Hub’ on the capacity platform consists of Standard Capacities offered by Fluxys TSO and OGE TSO:

### **B.4.3 Firm Capacity, offered by Fluxys TSO**

For Primary Capacity at:

- (i) Exit Point Zeebrugge Hub
- (ii) Entry/Exit between Zones: VTN West in the negative direction
- (iii) Entry/Exit between Zones: VTN East in the negative direction
- (iv) Entry Point Eynatten 2

### **B.4.4 Firm Capacity offered by OGE TSO**

For Primary Capacity at:

- (i) Exit point Eynatten/Raeren

The unit in which the Standard Capacity is offered on the Bundled Fluxys-OGE Market is kWh (GCV 25°C) per hour, where GCV 25°C shall mean that quantity of heat expressed in kiloWatt-hour produced by the complete combustion of one (1) normal cubic metre of Natural Gas at twenty-five (25) degrees Celsius and an absolute pressure of one decimal zero one three two five (1.01325) bar with excess air at the same temperature and pressure as the

Natural Gas when the products of combustion are cooled to twenty-five (25) degrees Celsius and when the water formed by combustion is condensed to the liquid state and the products of combustion contain the same total mass of water vapour as the Natural Gas and air before combustion.

Before registration by the Relevant TSO, the Subscribed Primary Capacity is converted into the standard unit of the Relevant TSO.

Subscribed Primary Capacity in kWh (GCV 25°C) per hour is converted by Fluxys TSO into normal cubic metre per hour by dividing by eleven point sixty-three (11,63). The result is rounded to zero (0) significant decimals according following rules:

- A non-significant decimal equal to zero (0), one (1), two (2), three (3) or four (4) does not increase the significant decimal.
- A non-significant decimal equal to five (5), six (6), seven (7), eight (8) or nine (9) increases the significant decimal.

## **APPENDIX B.5 – STANDARD CAPACITIES**

### **BUNDLED GRTgaz-GRTgaz Deutschland MARKET**

The Bundled instruments between PEG Nord and NCG VTP on the Capacity Platform consist of Standard Capacities offered by GRTgaz TSO and GRTgaz Deutschland TSO:

#### **B.5.1 Firm Capacity offered by GRTgaz TSO**

For Primary Capacity at:

- (i) Entry Point Obergailbach (NCG VTP to PEG Nord direction)

The Standard Capacity is Firm Forward Capacity.

#### **B.5.2 Backhaul Capacity offered by GRTgaz TSO**

For Primary Capacity at:

- (i) Exit Point Obergailbach (PEG Nord to NCG VTP direction)

The availability of this capacity is subject to actual entry flow (forward flow) conditions.

#### **B.5.3 Firm Capacity offered by GRTgaz Deutschland TSO**

For Primary Capacity at:

- (i) Exit Point Medelsheim (NCG VTP to PEG Nord direction)

The Standard Capacity is Firm Forward Capacity.

#### **B.5.4 Backhaul Capacity offered by GRTgaz Deutschland TSO**

For Primary Capacity at:

- (i) Entry Point Medelsheim (PEG Nord to NCG VTP direction)

The availability of this capacity is subject to actual entry flow (forward flow) conditions

### **B.5.5 Product duration**

The products offered by GRTgaz and GRTgaz Deutschland are offered on a Day-Ahead and a Monthly basis

The unit in which the Standard Capacity is offered on the Bundled GRTgaz - GRTgaz Deutschland Market is kWh (GCV 25°C) per hour, where GCV 25°C shall mean that quantity of heat expressed in kiloWatt-hour produced by the complete combustion of one (1) normal cubic metre of Natural Gas at twenty-five (25) degrees Celsius and an absolute pressure of one decimal zero one three two five (1.01325) bar with excess air at the same temperature and pressure as the Natural Gas when the products of combustion are cooled to twenty-five (25) degrees Celsius and when the water formed by combustion is condensed to the liquid state and the products of combustion contain the same total mass of water vapour as the Natural Gas and air before combustion.

Before registration by the Relevant TSO, the Subscribed Primary Capacity is converted into the standard unit of the Relevant TSO.

Subscribed Primary Capacity in kWh (GCV 25°C) per hour is converted by Fluxys TSO into normal cubic metre per hour by dividing by eleven point sixty-three (11,63). The result is rounded to zero (0) significant decimals according following rules:

- A non-significant decimal equal to zero (0), one (1), two (2), three (3) or four (4) does not increase the significant decimal.
- A non-significant decimal equal to five (5), six (6), seven (7), eight (8) or nine (9) increases the significant decimal.

**APPENDIX C – [INTENTIONALLY](#) LEFT BLANK**

## APPENDIX D.1 – CONFIRMATION LETTER BY FLUXYS TSO

Fluxys NV/SA, a company incorporated under the laws of Belgium, having its registered office at 1040 Brussels, Kunstlaan 31, registered at the Register for Legal Entities under number 0402.954.628; hereinafter called “**Fluxys**”;

agrees that:

[**COMPANY**], a company incorporated under the laws of [**COUNTRY**] with its registered office [**ADDRESS**] and registered in [**REGISTRY**] under n° [**NUMBER**];

has signed a Master Transit Services Agreement with Fluxys in accordance with Clause 2.B(ii) of the Capacity Platform Services Agreement;

For and on behalf of:

**FLUXYS:**

By: [●]	By: [●]
Name: [●]	Name: [●]
Title: [●]	Title: [●]

## APPENDIX D.2 – CONFIRMATION LETTER BY GRTgaz TSO

GRTgaz, a company existing under French law, having its registered office rue Raoul Nordling 6, 92277 Bois-Colombes Cedex, registered at RCS Paris 440 117 620; hereinafter called “GRTgaz”;

agrees that

[COMPANY], a company incorporated under the laws of [COUNTRY] with its registered office [ADDRESS] and registered in [REGISTRY] under n° [NUMBER];

has signed a Transmission Contract with GRTgaz in accordance with Clause 2.C (ii) of the Capacity Platform Services Agreement;

For and on behalf of:

**GRTgaz:**

By:

Name:

Title:

### APPENDIX D.3 – CONFIRMATION LETTER BY OGE TSO

Open Grid Europe GmbH, a company incorporated under the laws of Germany, having its registered office at Kallenergstraße 5, D-45141 Essen, registered at Essen Amtsgericht/Registry Court under number Essen HRB 17487; hereinafter called “OGE”;

agrees that

[COMPANY], a company incorporated under the laws of [COUNTRY] with its registered office [ADDRESS] and registered in [REGISTRY] under n° [NUMBER];

has registered as shipper with OGE and has provided OGE with its Balancing Group number and/or sub-balancing group account number in accordance with Clause 2.E(ii) and 2.E(iii) of the Capacity Platform Services Agreement

For and on behalf of:

**OGE:**

By:

Name:

Title:

## APPENDIX D.4 – CONFIRMATION LETTER BY GRTgaz Deutschland TSO

GRTgaz Deutschland, a company existing under German law, having its registered office Zimmerstraße 56, 10117 Berlin, registered at Amtsgericht Charlottenburg under number HRB 91992; hereinafter called “GRTgaz Deutschland”;

agrees that

[COMPANY], a company incorporated under the laws of [COUNTRY] with its registered office [ADDRESS] and registered in [REGISTRY] under n° [NUMBER];

has signed a Transmission Contract with GRTgaz Deutschland in accordance with Clause 2.G (iv) of the Capacity Platform Services Agreement;

For and on behalf of:

**GRTgaz Deutschland:**

By:

Name:

Title: